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## The Act of Hungarians Living Abroad: A Misguided Approach to Minority Protection

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## STUDENT NOTE

# THE ACT ON HUNGARIANS LIVING ABROAD: A MISGUIDED APPROACH TO MINORITY PROTECTION

*Christin J. Albertie\**

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## I. INTRODUCTION

On June 19, 2001 the Hungarian Parliament passed the Act on Hungarians Living in Neighboring Countries by an overwhelming 92.4 percent majority.<sup>1</sup> The Act, also referred to as the Hungarian Status Law, grants, inter alia, Hungarian work permits and subsidized travel to ethnic Hungarians living in Slovakia, Ukraine, Romania, Yugoslavia, Croatia, and Slovenia.<sup>2</sup> The Hungarian Status Law entered into force amidst protest from neighboring countries on January 1, 2002. The most adamant objections came from Slovakia and Romania, which are home to the largest number of ethnic Hungarians. These countries claim that the Status Law violates principles of international law.<sup>3</sup> Indeed, both the Council of Europe<sup>4</sup> and most recently the European Union<sup>5</sup> have expressed doubts regarding the legality of the Hungarian Status Law.

This Note analyzes the Hungarian Status Law in the context of general principles of international law. By specifically examining the Hungarian minority, this Note questions whether the implementation of the Hungarian Status Law is the most effective method of ensuring the protection and respect of the Hungarian minority in Eastern Europe. The conclusion argues that the unilateral approach of the Hungarian Status Law should be abandoned for a bilateral approach to secure rights for the Hungarian minority.

The first Part of this Note traces the development of minority rights protection in the twentieth century and considers the need for measures to ensure the protection of and respect for the Hungarian minority. The second Part examines different international agreements and procedures available to ensure the protection and respect of minorities in Europe. The third Part outlines the kin-State action in Central Eastern Europe, specifically examining the Status Law and bilateral treaties concerning

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1. Act LXII of 2001, On Hungarians Living in Neighboring Countries (2001), 40 I.L.M. 1242 [hereinafter Hungarian Status Law].

2. *Id.* arts. 8, 15.

3. See Press Release, Gov't of Rom., Declaration of the Romanian Government with Regard to the Adoption of the Law on the Hungarians Living in Neighboring Countries (June 6, 2001) (on file with author) [hereinafter Rom. Gov't Declaration] ("The Law in its entirety has a discriminatory character, in contradiction with the international documents applicable in the field of minorities.")

4. Eur. Comm'n for Democracy Through Law (Venice Comm'n), Report on the Preferential Treatment of National Minorities by Their Kin-State, adopted Oct. 19–20, 2001, 48th plen. mtg. [hereinafter Venice Comm'n Rep.], available at [http://www.venice.coe.int/docs/2001/CDL-INF\(2001\)019-e.html](http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.html).

5. Letter from Gunter Verheugen, EU Commissioner on Enlargement, to the Premiers of Hungary, Romania, and Slovakia (Dec. 18, 2002) (on file with author); *Slovak Foreign Minister Satisfied with EU Commissioner's Stance on Status Law*, RFE/RL NEWSLINE, Dec. 19, 2002, available at <http://www.rferl.org/newsline/2002/12/3-CEE/cee-191202.asp>.

ethnic minorities entered into by Hungary. The fourth Part analyzes the Status Law in the context of the principles of international law. Lastly, this Note considers the future of the Hungarian Status Law and suggests an alternative methodology for Hungary to achieve its stated goals with respect to protection of ethnic Hungarians residing abroad.

## II. INTERNATIONAL RECOGNITION OF THE NEED TO PROTECT AND RESPECT MINORITIES

The protection of national minorities is established in international law as necessary to promote peace and stability.<sup>6</sup> However, the manner in which national minorities should be protected is by no means clear. No conclusive definition of the term minority exists. This creates uncertainty about the best mechanism for minority protection. The *Greco-Bulgarian Communities* case acknowledged the fact that there must be an objective difference between the majority and a minority in a State.<sup>7</sup> The case defined a community as:

a group of persons living in a given country or locality hav[ing] a race, religion, language and tradition of their own and united by this identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and tradition of their race and rendering mutual assistance to each other.<sup>8</sup>

Both the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities and the United Nations Commission on Human Rights recognized that “it was difficult, if not impossible, to group together under a satisfactory definition every

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6. The Explanatory Report of the Framework Convention for the Protection of National Minorities states that in 1993 the Heads of State and Government of the Council of Europe's Member States agreed that “the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability.” Explanatory Report of the Framework Convention for the Protection of National Minorities, para. 5, Feb. 1, 1995, Europ. T.S. No. 157, *reprinted in* FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES: COLLECTED TEXTS 18 (2d ed. 2001) [hereinafter Explanatory Report of the Framework Convention]; *see also* Venice Comm'n Rep., *supra* note 4.

7. Geoff Gilbert, *The Legal Protection Accorded to Minority Groups in Europe*, 23 NETH. Y.B. INT'L. L. 67, 71 (1992).

8. 1930 P.C.I.J. (ser. B) Nos. 17, 19, 21, 22, and 33.

minority group in need of special measures of protection.”<sup>9</sup> Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities used the term “minority” to refer to:

[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[ing], if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.<sup>10</sup>

This definition is most commonly followed in international law.<sup>11</sup> Yet, even a Council of Europe committee of experts in human rights declared there is “no consensus on the interpretation of the term ‘national minorities.’”<sup>12</sup> Furthermore, attempts to define the term are often discouraged.<sup>13</sup>

This Section traces the emergence of minority rights throughout the twentieth century. The nineteenth century policy of non-interventionism stunted the development of international human rights until the early twentieth century.<sup>14</sup> The approach changed with the formation of the

9. Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, para. 27, U.N. Doc. E/CN.4/Sub.2/384/Rev.1, U.N. Sales No. E.78.XIV.1 (1979). Capotorti reports that the Sub-Commission on Prevention of Discrimination and Protection of Minorities strongly recommended that the Commission on Human Rights adopt a draft resolution defining minorities for purpose of protection by the United Nations. *Id.* para. 22. The Commission on Human Rights continually referred the issue back to the Sub-Commission for further study. *Id.* After many attempts to define the term minority, the Sub-Commission deferred attempts to find an adequate definition until specifically directed to do so by the Commission on Human Rights. *Id.* paras. 22–27 (internal citations omitted).

10. *Id.* para. 568.

11. Gilbert, *supra* note 7, at 71.

12. Explanatory Report of the Framework Convention, *supra* note 6, para. 4.

13. Members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities generally recognized that

it was extremely difficult to state precisely what the term covered and, in the view of some members, it would be an impossible task to try and define a concept that embraced a very dynamic reality varying considerably from one country to another. Consequently, the attempt should not be made.

Capotorti, *supra* note 9, para. 568.

14. See Michael R. Geroe & Thomas K. Gump, *Hungary and a New Paradigm for the Protection of Ethnic Minorities in Central and Eastern Europe*, 32 COLUM. J. TRANSNAT'L L. 673, 676 (1995) (“In the 19th century, the general concept of international human rights made little sense in light of an established policy that nation-states would not interfere in each other’s affairs.”)

League of Nations at the end of World War I. The League of Nations “guaranteed treaties designed to protect the rights of minorities located in both the defeated and newly created countries in the wake of World War I.”<sup>15</sup> These treaties contained provisions directing, *inter alia*, nondiscrimination, equal treatment under the law, and factual equality for members of minority groups.<sup>16</sup> While intended to preserve international peace, they provided more protection in theory than in reality and served as a catalyst for further conflict.<sup>17</sup> The League of Nations did not function as envisioned, eventually falling apart.<sup>18</sup>

The failure of the League of Nations tainted the notion of minority rights.<sup>19</sup> Drafters of international treaties signed after World War II distinguished minority rights and individual rights.<sup>20</sup> Post-war documents provided human rights protection to individuals rather than minority groups.<sup>21</sup> Under this approach, “a broad system of individual rights . . . would by itself protect the legitimate interests of members of national minorities, if supported by a strong prohibition against discrimination based on race, ethnicity, language or religion.”<sup>22</sup> While the United Nations’ Universal Declaration of Human Rights is devoid of any mention of minority rights, blanket terms such as “everyone” and “all human beings” were expected to fulfill this goal.<sup>23</sup>

Communist rule in Central Eastern Europe during the latter half of the twentieth century suppressed the expression of ethnic and national identity.<sup>24</sup> According to Marxist theory, political and social conflict would cease. Thus, diverging group interests would be transcended.<sup>25</sup> Soviet policy recognized different nationalities, but attempted to control

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15. *Id.* at 677.

16. David Wippman, *The Evolution and Implementation of Minority Rights*, 66 *FORDHAM L. REV.* 597, 600 (1997).

17. Geroe & Gump, *supra* note 14, at 677; *see also* WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 57 (1995) (“The first important change in liberal views came with the failure of the League of Nations’ minority protection scheme, and its role in the outbreak of World War II.”). Kymlicka explains how the unmet demands of the internationally recognized German-speaking minorities in Czechoslovakia and Poland were used as a pretext for Nazi aggression.

18. *See generally* F.S. NORTHEGE, *THE LEAGUE OF NATIONS* 255–77 (1986).

19. Patrick Thornberry, *The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, Observations, and an Update*, in *UNIVERSAL MINORITY RIGHTS* 17 (Alan Phillips & Allan Rosas eds., 1995).

20. *Id.* at 17.

21. Geroe & Gump, *supra* note 14, at 677.

22. Wippman, *supra* note 16, at 602–03.

23. *See* Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948); *MINORITY RIGHTS GROUP REPORT* 11 (Mar. 1991).

24. Michael A. McFaul, *Introduction*, 10 *DEMOKRATIZATSIIA* 109, 112 (2002).

25. *Id.* at 111.

the minority groups.<sup>26</sup> The communist regimes sought “to drain nationality of its content even while legitimating it as a form, and thereby to promote the long-term withering away of nationality as a vital component of social life.”<sup>27</sup>

The fall of communism in Central Eastern Europe produced a revival of ethnic tension in the region.<sup>28</sup> The demise of communism has been followed by “a rekindling of long-smoldering ethnic and national problems which could lead to conflict.”<sup>29</sup> The Soviet strategy resulted in a region where countries were unable to integrate minorities into society.<sup>30</sup> Young democracies lacked democratic traditions and had weak economies. This led to a “heightened sense of identification of individuals with their respective ethnic group.”<sup>31</sup> This identification allowed individuals to distinguish their group from the “guilty” group responsible for the “predicament.”<sup>32</sup> Politicians seized power in post-communist countries by seizing the opportunity to “build their rule on the democratic and economic deficits” of their countries.<sup>33</sup> Nationalistic politicians remain influential in post-communist countries; ethnic conflict and nationalism pose a danger to regional and national security, threatening stability and peace of the region.<sup>34</sup>

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26. Steven R. Ratner, *Does International Law Matter in Preventing Ethnic Conflict?*, 32 N.Y.U. J. INT'L L. & POL. 591, 597 (2000).

27. ROGERS BRUBAKER, NATIONALISM REFRAMED: NATIONHOOD AND THE NATIONAL QUESTION IN THE NEW EUROPE 25 (1996), cited in Ratner, *supra* note 26, at 597 n.11.

28. See Celestine Bohlen, *East Europe's Past Imperils 3 Nations*, N.Y. TIMES, Dec. 16, 1990, at A16; Jan Urban, *Eastern Europe—Divided It Fails*, N.Y. TIMES, Nov. 21, 1990, at A23.

29. U.N. Comm'n on Hum. Rts., Summary Record of the 17th Meeting, para. 4, U.N. Doc. E/CN.4/1992 SR.17 (Feb. 7, 1992).

30. Ratner, *supra* note 26, at 598.

31. *Id.* at 598 (internal citations omitted).

32. E.J. HOBBSBAWN, NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY 174 (2d ed. 1992), cited in Ratner, *supra* note 26, at 598 n.14.

33. Ratner, *supra* note 26, at 598. Ratner cites ultranationalists Franjo Tudjman of Croatia and Slobodan Milosevic of Serbia as examples of politicians who secured power by exploiting the democratic and economic conditions of their respective countries. Ratner is also careful to point out that whether nationalism emerged as a result of conscious political decisions to secure power is debated. *Id.* at 598 n.14.

34. See U.N. Comm'n on Hum. Rts., *supra* note 29, para. 38; MICHAEL KYMLICKA, ETHNICITY AND GROUP RIGHTS 3 (1997) (“[w]hat replaced communism in most of Eastern Europe and the former Soviet Union was not liberal democracy but ethnonationalism . . . . What used to be seen as stable liberal democracies are now riven by bitter disputes between ethnocultural groups over immigration and multiculturalism, and some even face the threat of secession.”)

## III. THE HUNGARIAN MINORITY

The turbulent Magyar history of the twentieth century left millions of ethnic Hungarians living outside the borders of the Hungarian State.<sup>35</sup> Contemporary Hungarian history is haunted by the memory of the 1920 Treaty of Trianon.<sup>36</sup> In the Treaty of Trianon, Hungary lost two-thirds of its territory and three-fifths of its population.<sup>37</sup> As a result, ethnic Hungarians now make up the largest minority in Europe.<sup>38</sup> Since 1920, members of the Hungarian minority have been subjects of multiple different countries.<sup>39</sup> The *New York Times* reported the story of Reverend Zsigmond Csukas. Reverend Csukas, an elderly pastor of the Hungarian Reformed Church in a Hungarian town in Slovakia, has been a citizen of five different countries without ever having left his hometown near the border of Hungary and Slovakia. Born in 1918 into the Austro-Hungarian Empire, Reverend Csukas became a Czechoslovakian citizen after the end of World War I, when Central Eastern Europe was carved into more ethnically homogenous nation-states. In 1938 his village was returned to Hungary by Nazi Germany. After World War II, this land was returned to Czechoslovakia. With the break up of Czechoslovakia in 1993, Reverend Csukas obtained his fifth passport—this one from the Slovak Republic.<sup>40</sup>

Since Trianon, Hungarians within Hungary have lamented the plight of their Magyar compatriots now living abroad.<sup>41</sup> Discrimination against the Hungarian minority appears in many forms, most commonly indirect.<sup>42</sup> Central European countries subtly discriminate against the

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35. Patrick Thornberry, *Hungarian Bilateral Treaties, in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES: THE CASE OF CENTRAL AND EASTERN EUROPE* 130 (Arie Bloed & Pieter van Dijk eds., 1999).

36. Der rumänisch-ungarische Optantenstreit vor dem Gemischten Schiedsgericht und dem Völkerbund: Zugleich ein Beitrag zur Lehre von der Enteignung im Völkerrecht (1920) [hereinafter Treaty of Trianon]. For an English translation, see Treaty of Peace Between the Allied and Associated Powers and Hungary and Protocol and Declaration, Signed at Trianon June 4, 1920, available at <http://www.lib.byu.edu/~rdh/www/versa/tri5.htm>.

37. COUNT ALBERT APPONYI ET AL., JUSTICE FOR HUNGARY: REVIEW AND CRITICISM OF THE EFFECT OF THE TREATY OF TRIANON 125 (1928) ("Of all the Peace Treaties concluded after the world war, the Treaty of Trianon is undoubtedly the harshest, the most inhuman, and the most unjust. Upon none of the vanquished were such terrible penalties, threatening the very existence of the nation, inflicted as upon Hungary."); OTTO LEGRADY, JUSTICE FOR HUNGARY 17 (1933).

38. See Geroe & Gump, *supra* note 14, 677 n.8 (citing Kristian Gerner, *Ethnic Rights as Human Rights, in HUMAN RIGHTS AND SECURITY* 167 (Vojtech Mastny et al. eds., 1991)).

39. Stephen Engelberg & Judith Ingram, *Now Hungary Adds its Voice to the Ethnic Tumult*, N.Y. TIMES, Jan. 25, 1993, at A3.

40. *Id.*

41. Geroe & Gump, *supra* note 14, at 684.

42. *Id.*



Hungarian minority by failing to make allowances for their customs and traditions.<sup>43</sup> As Geroe and Gump point out, “[w]hile such provisions do not specifically discriminate against minority groups on their face, the fact that the government forces minority members to use cultural elements belonging to the national majority could contribute to the gradual decimation of minority cultures as they assimilate into the majority culture.”<sup>44</sup>

Though it is settled in international law that assimilation is not a valid governmental policy,<sup>45</sup> indirect discrimination exists in the countries surrounding Hungary. Indeed such indirect discrimination is State sanctioned. In Romania and Slovakia, constitutional provisions declare the official language of instruction in schools to be Romanian and Slovakian.<sup>46</sup> Georgehe Funar, the current mayor of Cluj-Napoca, a historically Hungarian town currently under Romanian sovereignty, directed the painting of park benches and flagpoles in the colors of the Romanian flag.<sup>47</sup> Funar has also banned conferences involving Hungarians and has tried to prohibit Hungarian language signs identifying streets, schools, and other civic institutions.<sup>48</sup>

The need to protect the rights and the interests of all minorities living in Europe is recognized in both Europe and beyond.<sup>49</sup> Global and local organizations have concluded treaties to further this aim.<sup>50</sup> The Republic of Hungary, in light of the situation regarding the “Hungarians abroad,” *Határon Túli Magyarok*,<sup>51</sup> took a proactive stance on the rights

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43. See *infra* notes 46–49.

44. Geroe & Gump, *supra* note 14, at 684.

45. Wippman, *supra* note 16, at 605.

46. ROM. CONST. art. 13; SLOVK. CONST. art. 6.

47. Andrew Purvis, *The Empire Strikes Back*, TIME (Europe), Feb. 25, 2002, <http://www.time.com/time/europe/magazine/article/0,13005,901020225-203631,00.html>.

48. Engelberg & Ingram, *supra* note 39, at A3.

49. See, e.g., U.N. Comm’n on Hum. Rts., *supra* note 29, para. 62 (Mr. Mezzalama (Italy) “said that they need for a body of principles on the delicate question of the rights of persons belonging to national, ethnic, religious and linguistic minorities had become more and more urgent.”). Mr. Fatio of the Baha’i International Community stated that the Draft Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief represented an important step toward developing universally accepted guiding principles on which a dynamic social order responsive to the needs of minorities could be founded. *Id.* para. 89.

50. See, e.g., Framework Convention for the Protection of National Minorities, Europ. T.S. No. 157; 34 I.L.M. 351 (1995) [hereinafter Framework Convention], reprinted in FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES: COLLECTED TEXTS, *supra* note 6, at 7.

51. Stephen Deets & Sherrill Stroschein, *Minority Autonomy in Liberal Democracies: Rights, Justice, and Hungarians in Central Europe* (manuscript at 3), Paper Presented at the 43d International Studies Association Convention, New Orleans (2002). The government office addressing matters of the Hungarian minority abroad is named *Határon Túli Magyarok*

of their ethnic kin by passing the Hungarian Status Law in June 2001.<sup>52</sup> The following Part outlines the most significant documents and procedures pertaining to minority protection available to the Hungarian minority.

#### IV. PROCEDURES FOR MINORITY PROTECTION

##### A. *Global Agreements*

The United Nations system concerns itself with minority protection, albeit weakly. The International Covenant on Civil and Political Rights<sup>53</sup> is one of the most important human rights treaties,<sup>54</sup> seen by some as the “foundation for minority protection in the contemporary international system.”<sup>55</sup> Article 27 is the sole provision in the ICCPR regarding minority rights.<sup>56</sup> Article 27 addresses cultural, religious, and linguistic rights:

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.<sup>57</sup>

The ICCPR creates an obligation on each ratifying State to ensure the individual rights enumerated in the Covenant.<sup>58</sup> To assure domestic remedy of ICCPR violations, each State must take the steps necessary to implement the rights protections.<sup>59</sup> This implementation occurs via the legislature of some other adequate body.<sup>60</sup>

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*Hivatala* (Government Office for Hungarian Minorities Abroad); *Határon Túli Magyarok* is an official term of the Hungarian government. See [www.htmh.hu/english.htm](http://www.htmh.hu/english.htm).

52. Hungarian Status Law, *supra* note 1.

53. International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 179, 6 I.L.M. 368, 375–76 (1967) [hereinafter ICCPR].

54. See, e.g., Thornberry, *supra* note 19, at 20.

55. ALESSANDRA LUINI DEL RUSSO, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 31 (1971), cited in Geroe & Gump, *supra* note 14, at 678.

56. ICCPR, *supra* note 53, art. 27. Though the right to identity of minorities is not named in article 27, it is the general focus of the article. The general comment of the Human Rights Committee on article 27 identifies the protection “of the identity of a minority” as a goal of article 27. See Hum. Rts. Comm., General Comment No. 23, Report of the Human Rights Committee, vol. I, U.N. GAOR, 49th Sess., Supp. 40, at 107–19, para. 6.2, U.N. Doc. A/49/40 (1994), available at <http://lawhk.hku.hk/demo/unhrdocs/hrgc23.htm>.

57. ICCPR, *supra* note 53.

58. DEL RUSSO, *supra* note 55, at 43.

59. *Id.*; see also ICCPR, *supra* note 53.

60. DEL RUSSO, *supra* note 55, at 43.

Article 27 is not without its shortcomings. It is formulated in negative terms, stating that these rights “shall not be denied.”<sup>61</sup> However, article 27 is interpreted by some as imposing a positive obligation upon States to assist minorities.<sup>62</sup> Special Rapporteur Capotorti was of the opinion that article 27 requires “active and sustained measures” on the part of States.<sup>63</sup> A “positive” reading of article 27 has been accepted by some States.<sup>64</sup> The Human Rights Committee endorses this interpretation: “The obligation under the Covenant is not confined to the respect of human rights, but . . . States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities.”<sup>65</sup>

Thornberry argues that the requirement of “specific activities” beyond mere “enactments” suggests the allocation of resources.<sup>66</sup> Insofar as human rights consume resources,<sup>67</sup> article 27 applies to civil and political rights.<sup>68</sup>

The phrase “[i]n those States in which . . . minorities exist”<sup>69</sup> weakens the Covenant’s application to States. Rather than referring to all minorities, “it almost invites States to declare that they have no minorities on their territory.”<sup>70</sup> However, the Human Rights Committee of the United Nations insists that the “existence of an ethnic, religious, or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”<sup>71</sup> Thus, the existence of minorities is a question of fact, not law, and cannot be decisive for the application of article 27.<sup>72</sup>

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61. See ICCPR, *supra* note 53, art. 27.

62. Wippman, *supra* note 16.

63. Capotorti, *supra* note 9, para. 588.

64. Denmark, Finland, Iceland, Norway, and Sweden. See U.N. Comm’n on Hum. Rts., *supra* note 29, para. 69.

65. Report of the Human Rights Committee, U.N. GAOR, 36th Sess., Supp. 40, at 109, U.N. Doc. A/37/40.

66. Thornberry, *supra* note 19, at 25.

67. *Id.* Thornberry argues that all human rights consume resources “since even the most commonly accepted and basic freedoms such as the right to a fair trial . . . require a state infrastructure to secure them in practice.” *Id.*

68. *Id.*

69. ICCPR, *supra* note 53, art. 27.

70. Thornberry, *supra* note 19, at 21.

71. General Comment No. 23, *supra* note 56.

72. Thornberry, *supra* note 19, at 21–22. Thornberry cites the *Greco-Bulgarian Communities* case as evidence that the “factual” nature of existence criteria has existed in international law since the beginning of the twentieth century. See Advisory Opinion No. 17, *Greco-Bulgarian Community*, 1930 P.C.I.J. (Ser. B) No. 17, at 22.

This Note does not attempt to define the rights of minorities that must be protected. Simply put, two theories of minority rights exist: individual rights and collective and/or group rights. The classic theory of human rights is based upon individual rights concepts. The assumption is that “group rights would be taken care of automatically as the result of the

Lastly, the right recognized in article 27 is granted only to individuals—"persons belonging to such minorities."<sup>73</sup> The rights in article 27 are not group rights;<sup>74</sup> instead, they may be viewed as "an individual right collectively exercised."<sup>75</sup> While the rights are to be enjoyed "in community with the other members of their group," the protections offered in article 27 "should be understood as predominantly individual rather than collective rights."<sup>76</sup>

Universal documents that specifically name minority groups are sparse and widely varied.<sup>77</sup> The International Conventions on the Elimination of All Forms of Racial Discrimination,<sup>78</sup> the Suppression and Punishment of the Crime of Apartheid,<sup>79</sup> and the Political Rights of

protection of the rights of individuals." Ian Brownlie, *The Rights of Peoples in Modern International Law*, in *THE RIGHTS OF PEOPLES* 2 (1988).

Collective rights measures establish human rights guarantees at a minority group level. Kymlicka notes that while the idea of group rights remains substantially unexplored in Western political philosophy, "[t]he resurgence of ethnonational conflict in both the East and the West has reignited interest in the issue of 'group rights.'" KYMLICKA, *supra* note 34, at 3. Conversely, Deets and Stroschein state that "European agreements have specifically denied the existence of collective rights . . . clearest in the eventual rejection of Recommendation 1201 and the negative reaction to the Hungarian Status Law." However, they agree with Kymlicka in that the West "should clarify the liberal principles upon which the majority of rights documents are based." Deets & Stroschein, *supra* note 51 (manuscript at 33). In fact, the constitutions of many Central Eastern European countries guarantee group rights. The Constitution of the Republic of Hungary grants ethnic minorities the right to local self-government and the right to educate members in their native language. *See* REP. HUNG. CONST. arts. 68(2), 68(4). The Romanian Constitution guarantees organizations of national minorities one seat in Parliament each if they fail to receive the number of votes necessary for representation. *See* ROM. CONST. art. 59(2). The Slovakian Constitution guarantees minorities the right to use their minority language in dealings with government authorities and the right to educate their members in their native language. SLOVK. REP. CONST. art. 34(2)(a).

Geroe and Gump argue that collective rights should not replace individual rights, but rather supplement the existing rights regime. The authors contend that enactment of collective rights measures at the international level will substantially improve the protection of minority rights in Central Eastern Europe. Geroe & Gump, *supra* note 14.

73. ICCPR, *supra* note 53, art. 27.

74. Thornberry, *supra* note 19, at 23.

75. *Id.*

76. Wippman, *supra* note 16, at 604; *see also* Louis B. Sohn, *The Rights of Minorities*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 270, 274 (Louis Henkin ed., 1981); Arie Bloed & Pieter van Dijk, *Introduction to PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES* *supra* note 35, at 4.

77. Thornberry, *supra* note 19, at 19.

78. 660 U.N.T.S. 195, 5 I.L.M. 350 (1966). ("Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment of exercise of human rights and fundamental freedoms . . ." Art. 1(4)).

79. 1015 U.N.T.S. 243, 13 I.L.M. 50 (1974).

Women,<sup>80</sup> all address the need for special measures for minorities and “aim at eliminating barriers to equality among individuals.”<sup>81</sup>

A second United Nations instrument is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>82</sup> The Declaration is formally nonbinding, but is recognized as “an important point of reference in the field of global minority rights protection.”<sup>83</sup> The Declaration establishes the rights of persons belonging to minorities, though, like the ICCPR, it fails to define minority or how to determine membership of a minority group.<sup>84</sup> Unlike article 27, the Declaration is formulated in positive terms.<sup>85</sup> Further, it designates several rights of persons belonging to a minority group, such as the right to use minority language, culture, and religion, and social and political decision making.<sup>86</sup>

### B. Regional Agreements

The Council of Europe, created in 1949 to promote democracy, the rule of law, and unity among Western European countries, has a significant record concerning human rights.<sup>87</sup> The Council of Europe initially stood as a group of States ideologically opposed to communism.<sup>88</sup> The organization now aims to protect human rights and pluralist democracy and to seek solutions to discrimination against minorities, among other things.<sup>89</sup> To be admitted to the Council, a State must “accept the principles of the rule of law and of the enjoyment by all

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80. 193 U.N.T.S. 135, 19 I.L.M. 33 (1980).

81. Wippman, *supra* note 16, at 604.

82. U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, U.N. Doc. E/CN.4/Sub.2/L.734 (July 2, 1980).

83. Bloed & van Dijk, *supra* note 76, at 4.

84. *Id.* At the seventeenth meeting of the forty-eighth session of the Commission on Human Rights in which representatives discussed the final draft of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Hungary specifically regretted the failure of the declaration to give a clear definition of minorities. Summary Record of the 17th Meeting, *supra* note 29, para. 12.

85. U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *supra* note 82, art. 2(1) (“Persons belonging to national or ethnic, religious and linguistic minorities . . . have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”) (emphasis added).

86. *Id.*; see also Bloed & van Dijk, *supra* note 76, at 4–5. For further discussion, see Thornberry, *supra* note 19, at 39–62.

87. HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 789 (2000).

88. *Id.*

89. Council of Europe Overview, available at [http://www.coe.int/T/E/Communication\\_and\\_Research/Contacts\\_with\\_the\\_public/About\\_Council\\_of\\_Europe/An\\_overview/](http://www.coe.int/T/E/Communication_and_Research/Contacts_with_the_public/About_Council_of_Europe/An_overview/) (last visited June 2, 2003).

persons within its jurisdiction of human rights and fundamental freedoms.”<sup>90</sup>

### 1. European Convention on Human Rights

Member State collaboration with the Council of Europe involves signing the European Convention on Human Rights (ECHR), the first treaty that emerged from the Council of Europe in 1950.<sup>91</sup> The ECHR is a seminal document in the field of international human rights.<sup>92</sup> It was the first treaty to deal with international human rights, and has the most judicially developed human rights system.<sup>93</sup> The ECHR continues to evolve through the addition of protocols strengthening the rights and improving the protection mechanism.<sup>94</sup>

The ECHR does not directly guarantee minority rights.<sup>95</sup> The European Court of Human Rights, in interpreting the Convention, stated “[t]he Convention does not provide for any rights of a . . . minority as such, and the protection of individual members of such minority is limited to the right not to be discriminated against in the enjoyment of the Convention rights on the grounds of their belonging to the minority.”<sup>96</sup> Article 14 is a nondiscrimination provision: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, color, language, religious, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”<sup>97</sup>

The ECHR does not provide adequate minority protection. The inadequacy of the Convention is due to the fact that the ECHR sees the

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90. Statute of the Council of Europe, May 5, 1949, art. 3, Europ. T.S. No. 1, *reprinted in* A.H. ROBERTSON, *THE COUNCIL OF EUROPE: ITS STRUCTURE, FUNCTIONS AND ACHIEVEMENTS* app. 1 (1961).

91. STEINER & ALSTON, *supra* note 87, at 789.

92. STEINER & ALSTON, *supra* note 87, at 788; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, 232 [hereinafter ECHR].

93. *Id.*

94. *Introduction to EUROPEAN CONVENTION ON HUMAN RIGHTS: COLLECTED TEXTS 9* (Council of Eur. Press 1994).

95. A protocol directly guaranteeing minority rights is under consideration. At the 1993 Vienna Summit of the Heads of State and Government of the Council of Europe’s Member States, the Heads of State instructed the Committee of Ministers to “begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.” See Explanatory Report of the Framework Convention, *supra* note 6, para. 5.

96. *X. v. Austria*, App. No. 8142/78, 18 Eur. Comm’n H.R. Dec. & Rep. 88, 92–93 (1979), *cited in* Gilbert, *supra* note 7, at 81.

97. ECHR, *supra* note 92, art. 14.

minority question only in the context of discrimination.<sup>98</sup> By itself, article 14 an insufficient method of minority protection.<sup>99</sup> As a nondiscrimination provision, article 14 is not a true guarantee of minority rights.<sup>100</sup>

Article 14 is not an autonomous provision.<sup>101</sup> An applicant to the European Court of Human Rights can refer to article 14 only in conjunction with another article.<sup>102</sup> "Article 14 has no independent existence, but plays an important role by complementing the other normative provisions of the Convention and the Protocols."<sup>103</sup> This deficiency can be compensated if the European Court on Human Rights and the European Commission on Human Rights take a liberal view of the scope of the Convention.<sup>104</sup> However, the nonautonomous nature of article 14 explains the failure of the Court and Commission to enlarge its scope.<sup>105</sup>

## 2. Framework Convention for the Protection of National Minorities

The Council of Europe adopted specific standards for the protection of national minorities in the 1994 Framework Convention for the Protection of National Minorities.<sup>106</sup> The Framework Convention aims to "specify the legal principles which States undertake to respect in order to ensure the protection of national minorities."<sup>107</sup> The goal of the Convention is "the effective protection of national minorities and that of the rights and

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98. PÉTER KOVÁCS, *The Context and the History of the Framework Convention for the Protection of National Minorities in Europe*, in INTERNATIONAL LAW AND MINORITY PROTECTION: RIGHTS OF MINORITIES OR LAW OF MINORITIES? 80, 82 (2000).

99. *Id.*

100. Geoff Gilbert, *The Council of Europe and Minority Rights*, 18 HUM. RTS. Q. 160, 160 (1996).

101. See KOVÁCS, *supra* note 98, at 82.

102. See *id.*; see also PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES 300 (1991). "The Commission of Human Rights holds that Article 13 only sanctions the principle of non-discrimination as regards enjoyment of the rights and freedoms set out in the Convention, and initially held that violations of Article 14 presupposed violations of another article of the Convention." *Id.* at 300 (citing App. No. 86/55; App. No. 107/56; App. No. 436/58; App. No. 2373/64; App. No. 2145/64; App. No. 3325/67; App. No. 6745/74; App. No. 6746/74; App. No. 808/60) (internal citations omitted).

103. *M. v. United Kingdom*, App. No. 10316/83, 37 Eur. Comm'n H.R. Dec. & Rep. 129, 134 (1984).

104. Kovács, *supra* note 98, at 82–83; see also Heinrich Klebes, *The Council of Europe's Framework Convention for the Protection of National Minorities*, 16 HUM. RTS. L.J. 92 (1995).

105. Kovács, *supra* note 98, at 97. ("The non-autonomous nature of this article made it hardly possible to articulate concerns linked to minority protection before the European Commission on Human Rights and the European Court on Human Rights. That's why the jurisprudential activism and the case-law could not realize the enlargement of the scope, which they do practically with all other articles of the ECHR.")

106. Framework Convention, *supra* note 50.

107. Explanatory Report of the Framework Convention, *supra* note 6, para. 10.

freedoms of persons belonging to those minorities within the rule of law, respecting the territorial integrity and national sovereignty of states.”<sup>108</sup>

The Framework Convention is an international treaty and therefore a binding legal instrument.<sup>109</sup> It is the first legally binding multilateral instrument devoted to the protection of national minorities.<sup>110</sup> The Framework Convention contains “mostly programme-type provisions setting out objectives which the Parties undertake to pursue.”<sup>111</sup> The provisions of the Framework Convention are not directly applicable and give States “discretion in the implementation of the objective which they have undertaken to achieve.”<sup>112</sup> Thus, the Framework Convention “formulates a number of vaguely defined objectives and principles, the observation of which will be an obligation of the Contracting States but not a right.”<sup>113</sup> The fact that States are given wide discretion in implementation of the Framework Convention weakens its effect considerably.<sup>114</sup>

The rights provided to minorities in the Framework Convention are no more than “watered-down versions” of minority rights.<sup>115</sup> Many articles are restricted by clauses such as “as far as possible”<sup>116</sup> or “within the framework of their legal systems.”<sup>117</sup>

Like article 27 of the ICCPR, the Framework Convention does not recognize collective rights.<sup>118</sup> Rather, “[t]he emphasis is placed on the protection of persons belonging to national minorities, who exercise their rights individually and in community with others.”<sup>119</sup>

The implementation machinery is “feeble” at best.<sup>120</sup> There is no judicial or quasi-judicial organ.<sup>121</sup> The Committee of Ministers of the Council of Europe monitors the implementation of the Framework

108. Framework Convention, *supra* note 50.

109. Klebes, *supra* note 104, at 93.

110. Explanatory Report of the Framework Convention, *supra* note 6, para. 10.

111. *Id.* para 11.

112. *Id.*; see also Klebes, *supra* note 104, at 97 n.23 (citing Binding Report, Doc 7228 of 31.1.1995).

113. *Id.*

114. STEINER & ALSTON, *supra* note 87.

115. Wippman, *supra* note 16, at 611.

116. Framework Convention, *supra* note 50, art. 10(2) (“[T]he Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language . . .”).

117. *Id.* art. 14(2) (“[I]f there is sufficient demand, the Parties should endeavor to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language . . .”); see also Klebes, *supra* note 104, at 94.

118. Explanatory Report of the Framework Convention, *supra* note 6, para. 13.

119. *Id.*

120. Klebes, *supra* note 104, at 94.

121. See Framework Convention, *supra* note 50, arts. 24–26.



Convention. The Committee of Ministers evaluates the adequacy of the measures taken.<sup>122</sup> Only States may submit reports to the Committee of Ministers based on article 25.<sup>123</sup> Thus, there is no forum for individuals, nongovernmental organizations, or the national minority.<sup>124</sup> The fear of many is that “the monitoring process may be left entirely to the governments.”<sup>125</sup> Left to governments, the Framework Convention’s effectiveness is “dependent solely on national legislation and governmental policies which are monitored on the basis of reports submitted by those same governments.”<sup>126</sup>

### 3. Organization for Security and Co-operation in Europe (OSCE)

The Organization for Security and Co-operation (OSCE) in Europe has adopted multiple formal documents pertaining to minorities.<sup>127</sup> Originally opened as the Conference on Security and Co-operation in Europe (CSCE), it met to expand upon the obligations of the Helsinki Accord.<sup>128</sup> The result of these conferences was a series of “Concluding Documents,” the most important of which was the concluding document of the CSCE’s Copenhagen Meeting of the Conference on the Human

122. *Id.*

123. Article 25(1) states:

Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

*Id.* art. 25(1).

124. Gilbert, *supra* note 100, at 188.

125. Recommendation 1255(1995)1, On the Protection of the Rights of National Minorities, adopted by the Committee of Ministers on 31 January 1995, [http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/Adopted\\_Text/ta95/EREC1255.htm](http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/Adopted_Text/ta95/EREC1255.htm), cited by Klebes, *supra* note 104, at 94.

126. Gilbert, *supra* note 100, at 188.

127. See, e.g., Conference for Security and Cooperation in Europe: Final Act, Aug. 1, 1975, 14 I.L.M. 1292; Document of the Copenhagen Meeting of the Conference on Human Dimension, June 29, 1990, 29 I.L.M. 1305; Charter of Paris for a New Europe, Nov. 21, 1990, 30 I.L.M. 190 (1991); Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating State of the Conference on Security and Cooperation in Europe, Jan. 17, 1989, 28 I.L.M. 527 (1989); Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect for Human Rights, Pluralist Democracy, the Rule of Law, and Procedures for Fact-Finding, Oct. 3, 1991, 30 I.L.M. 1670.

128. In 1995, the CSCE transformed into the OSCE. In the Helsinki Final Act of 1975, European States recognized the inviolability of their post-WWII borders and pledged to respect basic human rights. Ratner, *supra* note 26, at 604.

Dimension.<sup>129</sup> This concluding document created a mechanism to monitor the implementation of human rights principles.

Paragraph 32 of the Copenhagen Document guarantees the right of an individual the freedom to choose to belong to a national minority.<sup>130</sup> It further grants the right of persons belonging to national minorities to “express, preserve and develop their ethnic, culture, linguistic or religious identity . . . .”<sup>131</sup> The Copenhagen Document is significant in that it “mark[s] the change in the state’s role and reflect[s] the evolution in public opinion across Europe on what constitute[ ] just policies.”<sup>132</sup> Since Copenhagen, European norms on minority policy “have shifted dramatically from a negative rights perspective of preventing state discrimination against minorities to requiring states to preserve and support such groups.”<sup>133</sup>

Though the Copenhagen Document marks a positive change in European policy toward minorities, the implementation mechanisms of the OSCE are unsophisticated.<sup>134</sup> The provisions governing minorities in this document are at most, politically binding.<sup>135</sup> While some view the nonbinding nature of the OSCE as a detriment to the organization, it is precisely this element that may have contributed to the development of innovative human rights procedures and standards.<sup>136</sup>

129. STEINER & ALSTON, *supra* note 87, at 792; *see* Document of the Copenhagen Meeting of the Conference on Human Dimension, *supra* note 127. This document explains that “human dimension” is the CSCE’s term for human rights and humanitarian issues, one of several dimensions of comprehensive security. *See id.*

130. Document of the Copenhagen Meeting of the Conference on Human Dimension, *supra* note 127, para. 32.

131. *Id.* Paragraph 32 further grants national minorities the right to use their mother tongue in public and private, establish and maintain their own educational, cultural, and religious institutions, practice their religion, and 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. *Id.*

132. Deets & Stroschein, *supra* note 51 (manuscript at 10).

133. *Id.* (manuscript at 10).

134. Wippman, *supra* note 16, at 615.

135. *Id.*

136. As Steiner and Alston have asserted:

The non-binding diplomatic nature of the Helsinki Process . . . clearly played an important role . . . in legitimating human rights discourse within Eastern Europe, providing a focus for nongovernmental activities at both the domestic and international level, and developing standards in relation to democracy, the rule of law, ‘human contacts’, national minorities and freedom of expression which went beyond those already in existence in other contexts such as the Council of Europe and the UN. To a large extent, its formally non-binding nature enabled the CSCE standard-setting process to yield more detailed and innovative standards than those adopted by its counterparts.

STEINER & ALSTON, *supra* note 87, at 792.

Judicial enforcement mechanisms in the OSCE are sorely lacking. There is no individual complaint procedure and there are no reporting requirements.<sup>137</sup> Additionally, OSCE commitments do not apply directly to States.<sup>138</sup>

The most promising feature of the OSCE is the High Commissioner on National Minorities (HCNM). The HCNM position was designed to prevent conflict.<sup>139</sup> The High Commissioner decides whether to make on-site visits to countries, and makes recommendations on short-term policies toward minorities and long-term measures encouraging interaction between a State and its minorities.<sup>140</sup> The mandate of the HCNM reads:

The High Commissioner will 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 state, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council [of Foreign Ministers] or the CSO [Committee of Senior Officials].<sup>141</sup>

As the High Commissioner’s mandate includes the promotion of conflict prevention, the High Commissioner may directly engage governments on minority rights issues.<sup>142</sup> The High Commissioner also makes recommendations on government policy and programs.<sup>143</sup>

The High Commissioner has the potential to be an effective actor in the minority rights arena. However, the position’s effectiveness is limited by formal constraints on the High Commissioner’s mandate and practical constraints regarding limited resources.<sup>144</sup> The mandate of the HCNM is vague.<sup>145</sup> The fundamental terms of the mandate—“early warning,” “tensions,” and “affecting peace, stability or relations”—remain

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137. Wippman, *supra* note 16, at 615–16.

138. Rachel Brett, *Human Rights and the OSCE*, 18 HUM. RTS. Q. 668, 676 (1996).

139. Bloed & van Dijk, *supra* note 76, at 9.

140. STEINER & ALSTON, *supra* note 87, at 793.

141. Conference on Security and Cooperation in Europe: Declaration and Decisions from Helsinki Summit, July 10, 1992, 31 I.L.M. 1385.

142. The High Commissioner is to “provide ‘early warning’ and, as appropriate, ‘early action’ in regard to tensions involving national minority issues” before they have “develop[ed] into conflict[s] within the OSCE area, affecting peace, stability or relations between participating States.” *Id.*

143. Wippman, *supra* note 16, at 617.

144. *Id.* at 618.

145. Bloed & van Dijk, *supra* note 76, at 10.

undefined, giving rise to a debate on formal powers.<sup>146</sup> Previous High Commissioners have been able to further the OSCE's human rights mandate using this vague language.<sup>147</sup> However, as a practical matter, the lack of resources available to the High Commissioner has proven even more problematic for implementation than the vague mandate.<sup>148</sup>

As evidenced above, the mandates of international organizations and terms of international documents regarding the protection of minority rights often overlap. This overlap may be positive if "competition speeds up positive developments in the areas of standard-setting or supervision of implementation of international norms."<sup>149</sup> However, there is also the danger that "different institutions may adopt conflicting standards."<sup>150</sup> Such a development would have a most negative effect on the protection of national minorities.<sup>151</sup>

The action of international organizations is important in furthering the development and protection of minority rights in Europe. However, the existing minority protections are seen by many as weak and ineffectual. Critics point to lack of implementation and enforcement measures of minority rights mechanisms coupled with ineffective nondiscrimination provisions as major weaknesses of international instruments designed to protect minority rights.<sup>152</sup> The process of international standard setting is often seen as insufficient for members of a kin-State. The following Part examines the role of a kin-State in promoting the rights of ethnic kin living in other countries.

## V. KIN-STATE ACTION

"Kin-State," a relatively new term in international law is defined as "a country in which significant political actors, usually representatives of the state, have an avowed commitment to the well-being of citizens in other states on the basis of perceived kinship . . . ."<sup>153</sup> A kin-State is often created by a "historical legacy in which co-ethnics long inhabited a common, larger state structure that was eventually replaced by various

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146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 13.

150. *Id.* at 10.

151. *Id.*

152. *See supra* notes 147–49, 100–02.

153. Konrad Huber & Robert W. Mickey, *Defining the Kin-State: An Analysis of Its Role and Prescriptions for Moderating Its Impact*, in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES: THE CASE OF CENTRAL AND EASTERN EUROPE, *supra* note 35, at 22–24.

new states.”<sup>154</sup> This process results in a “rump ‘ethnic homeland’ that might later be fashioned into a kin-state.”<sup>155</sup>

Kin-State actors often feel compelled to pursue various policies in support of ethnic kin living in other States. Indeed, the 1990 Hungarian Constitution includes a strong constitutional framework within which to assure rights belonging to the *Határon Túli Magyarok*.<sup>156</sup> Article 6 of the Hungarian Constitution reflects the dedication of Hungary to the Hungarians abroad: “[t]he Republic of Hungary feels itself responsible towards all the Hungarians living outside the borders of the country, and assists them in cultivating their relations with Hungary.”<sup>157</sup>

Support and assistance to co-ethnics usually assumes four forms: (1) support directly provided to co-ethnic communities in their home State(s); (2) resettlement assistance offered to co-ethnics wishing to relocate from their State of residence, often to the kin-State itself; (3) bilateral contacts with home-State officials regarding the condition of the minority; and (4) international initiatives aimed at resolving the minority’s alleged predicament.<sup>158</sup> This Section examines the options kin-States face in addressing concern for their co-ethnics—specifically domestic legislation and bilateral agreements.<sup>159</sup>

#### A. Direct Support to Co-Ethnics: The Hungarian Status Law

Kin-State legislation is not a new phenomenon. European States such as Slovakia, Russia, and Italy have passed legislation conferring

154. *Id.*

155. *Id.*

156. REP. HUNG. CONST. art. 6. *Határon Túli Magyarok* means “Hungarians abroad” in English. *See supra* note 51.

157. REP. HUNG. CONST. art. 6(3). Hungary is not the only country to constitutionally provide for this type of minority support. The Romanian Constitution provides: “The State shall support the strengthening of links with the Romanians living abroad and shall act accordingly for the preservation development and expression of their ethnic, cultural, linguistic, and religious identity under observance of the legislation of the State of which they are citizens.” ROM. CONST. art. 7. The Slovenian Constitution reads, “[The government of Slovenia] shall attend to the welfare of the Slovenian minorities in neighboring countries and of Slovenian emigrants and migrant workers abroad and shall promote their contacts with their homeland.” SLOVN. CONST. art. 5(1).

158. PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 32–33.

159. This Note does not examine resettlement assistance offered to co-ethnics wishing to locate from their State of residence to the kin-State or international initiatives aimed at resolving the minority’s alleged predicament. The Hungarian Status Law is “designed to mitigate the risk of a wave of migration of ethnic Hungarians from poorer countries in the region once Hungary joins the European Union.” Tomos Packer, *Hungary—Prime Minister Fails to Reach Agreement with Slovakia over Hungarian Status Law*, WMRC DAILY ANALYSIS, Nov. 28, 2002, available at 2002 WL 104063946. The only international initiatives aimed specifically at the Hungarian minority take the form of bilateral agreements between Hungary and its neighboring countries, discussed in Section V.B, *infra*.

preferential treatment to their kin-minorities.<sup>160</sup> However, the Status Law is unique among the Status Laws of Eastern Europe in that it is legislation enacted domestically in favor of granting benefits to the kin minority abroad.<sup>161</sup>

The aims of the conservative Orbán government in ushering in the Status Law are disputable.<sup>162</sup> The official aim of the Status Law is the

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160. The texts of these laws are not available in English. See Act on Expatriate Slovaks and Changing and Complementing Some Law, No. 70, Feb. 14, 1997, cited in Venice Comm'n Rep., *supra* note 4; Law Regarding the Support Granted to the Romanian Communities from All over the World, July 15, 1998, cited in Venice Comm'n Rep., *supra* note 4; Federal Law on the State Policy of the Russian Federation in Respect of the Compatriots Abroad, Mar. 1999, cited in Venice Comm'n Rep., *supra* note 4; Law for the Bulgarians Living Outside the Republic of Bulgaria, Apr. 11, 2000, cited in Venice Comm'n Rep., *supra* note 4; Law in Favor of the Italian Minority in Slovenia and Croatia, No. 73, Mar. 2001, cited in Venice Comm'n Rep., *supra* note 4.

161. Cf. Eur. Comm'n for Democracy Through Law, Paper Containing the Position of the Hungarian Government in Relation to the Act on Hungarians Living in Neighboring Countries para. 3.9, Aug. 21, 2001, in Venice Comm'n Rep., *supra* note 4. In this position paper, the Hungarian government recognizes that "differences exist between the Hungarian Act and the law and practices of these other states," however, it asserts that ". . . it seems to be an accepted kin-State practice to legislate domestically in favor of granting certain benefits to the kin minority living abroad." *Id.* The Venice Commission Report rejected this assertion that kin-State legislation has reached the status of customary international law, stating, "The adoption by States of unilateral measures granting benefits to the persons belonging to their kin-minorities, . . . in the Commission's opinion does not have sufficient *diuturnitas* to have become an international custom. . . ." See Venice Comm'n Rep., *supra* note 4.

162. See Packer, *supra* note 159 (The Hungarian government claims "the law is designed to mitigate the risk of a wave of migration of ethnic Hungarians from poorer countries in the region once Hungary joins the European Union."); Hungarian Foreign Minister János Martonyi, Statement on Reactions from Neighboring Countries to the Adoption of the Law on Hungarians Living in the Neighboring Countries by the Hungarian Parliament, Budapest (June 20, 2001) ("By adopting and supporting this Law, Hungary and the Hungarians living in the neighboring countries clearly expressed their firm intention to promote the realization of our common objectives of a unified Europe of the 21st century . . ."); Hungarian Foreign Minister János Martonyi, Statement on Reactions from Neighboring Countries to the Adoption of the Law on Hungarians Living in the Neighboring Countries by the Hungarian Parliament, Budapest (June 22, 2001) ("[T]he prosperity and the preservation of the distinct identity of minorities in our region serve the development of the entire region, and the promotion of good-neighborly relations between the countries in our region. Therefore, any support provided to minorities will inevitably serve these objectives."); Purvis, *supra* note 47.

Gheorghe Funar, Mayor of Cluj-Napoca, an historically Hungarian town, now located in Romania declared, "[t]his law is part of an attempt to reclaim old territories . . ." The Status Law has also been linked to labor. See *Controversial Status Law Accepted*, 15 BUS. HUNG. (July 2001), [http://www.amcham.hu/BusinessHungary/15-07/articles/15-07\\_06.asp](http://www.amcham.hu/BusinessHungary/15-07/articles/15-07_06.asp). The article states:

Among the most critical points of the law is the question of special work permits granted to Hungarians living in neighboring states. The attacks came partially after both Prime Minister Viktor Orbán and Economic Minister György Matolcsy declared on various occasions that the country will be facing serious labor shortages within a few years and a possibility to resolve this problem would be via the available Hungarian labor population abroad.

facilitation of a smooth transition for Hungary into the European Union in 2004 by discouraging mass emigration to Hungary after accession.<sup>163</sup> Passage of the Status Law is viewed as symbolic by many ethnic Hungarians living abroad.<sup>164</sup> While the Status Law passed with an overwhelming majority, Hungarian politicians no longer rally around the law, and reaction outside of Parliament has been less than positive.<sup>165</sup> Hungarian journalists and citizens alike have attacked the law while both Romania and Slovakia contend that the Status Law violates international law.<sup>166</sup>

The Status Law applies to ethnic Hungarians living in the countries of Slovakia, the Ukraine, Romania, Yugoslavia, Croatia, and Slovenia.<sup>167</sup> Provisions of the Status Law allow Hungarian minorities in these countries to receive an annual three month work permit in Hungary.<sup>168</sup> The Hungarian minorities are also entitled to medical insurance and pension benefits.<sup>169</sup> Students are eligible for scholarships to Hungarian higher-education institutions<sup>170</sup> and ethnic Hungarians have access to travel discounts to and from Hungary.<sup>171</sup> Under the law, Hungarian

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*Id.*; Eugen Tomiuc, *Hungary: Status Law Causing Dispute with Neighbors*, RFE/RL NEWSLINE Oct. 4, 2001 ("Critics of the law accuse Budapest of using the legislation to preempt massive waves of immigration while at the same time tapping into the labor resources of the neighboring countries."). However, the World Press Review cites the Hungarian newspaper *Magyar Hirlap* as commenting that "[p]arty affiliation is the basic criterion for opinion on the Status Law." David Koch, *Status Symbols*, 49 WORLD PRESS REV. (Apr. 2002), <http://www.worldpress.org/Europe/443.cfm> (quoting Peter Erdelyi, Feb. 11, 2002).

163. Daniela Spinant, *Hungary to Help Hungarians from Outside*, EUOBSERVER.COM, Apr. 20, 2001, at <http://www.euobserver.com/index.phtml?aid=2062> ("Almost one quarter of the three million ethnic Hungarians living abroad intend to leave their country of residence and go to Hungary when it joins the EU.").

164. See Michael Stewart, *The Hungarian Status Law: A New European Form of Transnational Politics?*, in HUNSOR HIFRUTAR 21 (Jan. 6, Subj. 3) (recounting a report from Serbian Vojvodina of an old man in line to apply for the Hungarian identity card who told those around him, "I've waited sixty years for this moment when I can carry an official Hungarian document over my heart.").

165. Koch, *supra* note 162.

166. *Id.* ("The reaction of Hungary's press to the law has been generally negative. Regarding negotiations with Romania, Imre Bednarik wrote: 'Only two people were happy' about the law—'Corneliu Vadim Tudor [leader of the Greater Romanian Party] and [Hungarian Prime Minister] Viktor Orbán, and we know the former to be anti-Hungarian' (Népszabadság, Jan. 5)"); Rom. Gov't Declaration, *supra* note 3 ("The Law in its entirety has a discriminatory character, in contradiction with the international documents applicable in the field of minorities.")

167. See Hungarian Status Law, *supra* note 1, arts. 1(1), 21(3). The Status Law requires that persons must have lost their Hungarian citizenship for reasons other than voluntary renunciation. In addition, they may not be in possession of a permanent residence permit for Hungary. *Id.*

168. See *id.* art. 15.

169. See *id.* art. 7.

170. See *id.* arts. 6, 9.

171. *Id.* art. 8.

teachers may receive training in Hungary, while Budapest supports the development of Hungarian culture and higher education outside its borders.<sup>172</sup> Following this logic, the law allots an \$80 annual allowance to ethnic Hungarian families living outside of Hungary if they have at least two children who attend a Hungarian-language school.<sup>173</sup>

### B. *Bilateral Contacts with Home State*

Following its mandate in the Hungarian Constitution to assist the *Határon Túli Magyarok*, the Hungarian government has entered into bilateral agreements on friendly relations with its neighbors concerning the minority.<sup>174</sup> This bilateral approach has proved to be an effective measure of minority protection.

The bilateral agreement mechanism is endorsed by the general principles of international law.<sup>175</sup> In bilateral agreements, a kin-State is able to extend and tailor international obligations relating to minorities beyond what can be achieved on a multilateral basis.<sup>176</sup> In Central Eastern Europe, kin-States sharing minority problems and interests have entered into bilateral agreements concerning them.<sup>177</sup> States in this type of an agreement agree to protect national minorities in their State in exchange for the same protection being offered to ethnic kin in the other State.<sup>178</sup> Bilateral treaties provide certain "classic" rights, rights such as the right

172. See *id.* art. 11.

173. See *id.* art. 14.

174. Treaty on the Foundations of Good-Neighborliness and Co-operation Between the Republic of Hungary and Ukraine, Dec. 6, 1991, reprinted in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 392 [hereinafter Hungary-Ukraine Treaty]; Treaty Between the Republic of Hungary and the Republic of Croatia on Friendly Relations and Cooperation, Dec. 16, 1992, reprinted in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 339 [hereinafter Hungary-Croatia Treaty]; Treaty on the Foundations of Friendly Relations and Co-operation Between the Republic of Hungary and the Republic of Estonia, Aug. 8, 1992, reprinted in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 341; Treaty on Friendly Co-operation and Partnership in Europe Between the Federal Republic of Germany and the Republic of Hungary, Feb. 6, 1992, reprinted in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 350.

175. See generally Venice Comm'n Rep., *supra* note 4; see also Eur. Comm'n for Democracy Through Law (Venice Comm'n), LAW & FOREIGN POL'Y COLLECTION, *Science and Technique of Democracy*, No. 24, para. 14 ("[I]n their mutual relations, States shall act in accordance with the principles and rules of friendly neighborly relations which must guide their action at [the] international level, particularly in the local and regional context."); Framework Convention, *supra* note 50.

176. Wippman, *supra* note 16, at 619.

177. See, e.g., Hungary-Ukraine Treaty, *supra* note 174; Hungary-Croatia Treaty, *supra* note 174.

178. Wippman, *supra* note 16.



to identity, linguistic rights, cultural rights, education rights, and freedom of religion.<sup>179</sup>

Oftentimes, these agreements refer to preexisting bilateral instruments specifically concerning minorities.<sup>180</sup> For example, The Cooperation Treaty Between Hungary and Slovenia follows the Convention on Providing Special Rights for the Slovenian Minority Living in the Republic of Hungary and for the Hungary Minority Living in the Republic of Slovenia of November 1992.<sup>181</sup>

The birth of the Framework Convention has affected the substance of subsequent bilateral treaties.<sup>182</sup> The Hungary-Romania Treaty on Understanding, Cooperation and Good Neighborliness<sup>183</sup> was concluded after the Framework Convention and closely follows the Framework's wording.<sup>184</sup> The Treaty on Good-Neighborly Relations and Friendly Cooperation between Hungary and Slovakia follows and elaborates the formulas of the Framework Convention.<sup>185</sup> The Treaty took the elastic and programmatic provisions of the Framework Convention and formulated them more strictly.<sup>186</sup> Conversely, the Treaty between Hungary and Croatia, concluded in April 1996, though written after the Framework Convention, does not reflect the programs of the Convention, but the pro-autonomy attitude of both Croatia and Hungary.<sup>187</sup>

While the implementation of these treaties and agreements involve respecting the terms of the instrument and the pursuit of bilateral talks, the implementation is not subject to legal control.<sup>188</sup> One method of

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179. See Venice Comm'n Rep., *supra* note 4.

180. *Id.*

181. See also Hungary-Ukraine Treaty, *supra* note 174. This treaty follows the framework and adopts the terms of The Declaration on the Principles of Co-operation Between the Republic of Hungary and the Ukrainian Soviet Socialist Republic in Guaranteeing the Rights of National Minorities of Hungary, May 31, 1991, reprinted in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 386. The Hungary-Croatia Treaty, *supra* note 174, was complemented by the Agreement between the Republic of Hungary and the Republic of Croatia on the Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary, Apr. 5, 1995, reprinted in PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 341. In addition, an agreement regarding minorities may follow the creation of a bilateral treaty.

182. Kovács, *supra* note 98, at 102, 106 ("The style of the formulation of the given bilateral treaty depends on the one hand on the openness of the states and on the other hand on situation *ratione temporis* (birth) viz. the Framework convention. The approach should be kept in mind when a bilateral treaty concluded by Hungary is being examined.")

183. Treaty On Understanding, Cooperation and Good Neighborliness (Hung.-Rom.), 36 I.L.M. 340 (1997) [hereinafter Hungary-Romania Treaty].

184. Kovács, *supra* note 98, at 107.

185. See *id.*

186. *Id.*

187. *Id.* at 106.

188. See Venice Comm'n Rep., *supra* note 4.

enforcing the terms of a bilateral treaty is State application to the International Conciliation and Arbitration Court (ICAC) for the solution to a dispute or for the interpretation of a provision of the agreement in question.<sup>189</sup> However, no State has as yet taken this step.<sup>190</sup> In addition, the OSCE High Commissioner on National Minorities may be called upon to resolve a dispute.<sup>191</sup> As with the ICAC, no State has requested OSCE High Commissioner on National Minorities intervention.<sup>192</sup> Therefore, the only tool to enforce compliance with a bilateral agreement is political pressure from one party or the international community.<sup>193</sup>

The precise aims of governments concluding these treaties are often in tension with each other. One party may simply desire to repeat existing multilateral commitments in a bilateral agreement while another may desire to codify a progressive development.<sup>194</sup> This tension was evidenced in the context of bilateral agreements between Hungary and its neighbors, Slovakia and Romania, in which Kovács contends that “the Slovak and the Romanian governments were ready to repeat the items already covered by the Framework convention” while “[t]he Hungarian government wanted to deepen the protection by the stipulation of additional or more precise clauses.”<sup>195</sup>

Political pressure is a strong motivational force for States to enter into bilateral agreements with each other.<sup>196</sup> After the collapse of communism in Central Eastern Europe, former communist countries desired membership in the European Union and NATO. Legitimately concerned about minority tension within the EU and NATO, the organizations strongly encouraged the creation of bilateral treaties among former communist countries.<sup>197</sup> International oversight of the

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189. Pact on Stability in Europe art. 16, Paris, Mar. 20–21, 1995, *reprinted in* FLORENCE BENOÎT-ROHMER, *THE MINORITY QUESTION IN EUROPE: TEXTS AND COMMENTARY* app. 4 (Council of Eur. Publ’g 1996) (“The States party to the Convention establishing the International Conciliation and Arbitration Court may refer to the Court possible disputes concerning the interpretation or implementation of their good-neighborliness agreements.”) The ICAC is an OSCE organ. It was established in 1992 pursuant to the Convention on Conciliation and Arbitration within the OSCE. Court of Conciliation and Arbitration Homepage, at <http://www.osce.org/cca/> (last visited June 9, 2003).

190. Venice Comm’n Rep., *supra* note 4.

191. See Pact on Stability in Europe, *supra* note 189, Final Decl. art. 15.

192. Venice Comm’n Rep., *supra* note 4.

193. While no formal procedure exists to enforce the implementation of bilateral agreements, refusal to do so violates the general principle of international law as stated in article 2 of the Framework Convention, that “in their mutual relations, States shall act in accordance with the principles and rules of friendly neighborly relations which must guide their action at international level, particularly in the local and regional context.” *Id.*

194. Kovács, *supra* note 98, at 105.

195. *Id.*

196. See *id.* at 102–18.

197. *Id.* at 104.

bilateral treaties was limited and legal considerations were overlooked by Member States of NATO and the EU.<sup>198</sup> Kovács contends that “the pure existence of a bilateral treaty on borders and minority protection was claimed very loudly as a ‘price’ of the ‘entrance ticket’.”<sup>199</sup> One example cited as disregard of the legal nature of the document is the Hungary-Romania Treaty:

The content of the treaty, the lack of a settlement mechanism in case of potential interpretation disputes, the problem of coherence with other European documents (especially that of the Venice Commission on recommendation 1201) were manifestly neglected in the capitals of member countries of the EU and the NATO. The welcoming telegrams arrived—as this is in fashion today when the partners would like to give a political lift and an empty lip service to government—witnessing the manifest lack of knowledge concerning the content.<sup>200</sup>

Despite these drawbacks, bilateral agreements are popular among the countries of Eastern Europe. Hungary has entered into bilateral agreements with Slovakia, Romania, and Croatia, to name a few.<sup>201</sup> These agreements, as mentioned above, have focused on the treatment of minorities living abroad. Despite the number of international agreements—universal and regional—as well as the number of bilateral agreements securing the protection of the Hungarian minority, the Hungarian Parliament, in June 2001, passed a domestic measure

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198. *Id.*

199. *Id.* at 104.

200. Kovács, *supra* note 98, at 108. Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe was initially intended to be an additional protocol to the European Convention on Human Rights. Article 11 of Recommendation 1201 provides for autonomy of minorities. The Venice Commission declared that there is neither a recognized right of special status for minorities nor a common practice of such rights, and that it would be impossible for international law to impose any territorial solution for minorities. Thus, Recommendation 1201 has not been adopted by the Council of Europe. However, both the Hungary-Slovakia Treaty of 1995 and the Hungary-Romania Treaty of 1996 make reference to Recommendation 1201. Treaty on Good-Neighbourly Relations and Friendly Co-operation Between the Republic of Hungary and the Slovak Republic, Mar. 19, 1995 (Text of treaty unavailable in English); Hungary-Romania Treaty, *supra* note 183. In addition, Hungarian minorities often cite it in their case for autonomy. Recommendation 1201(1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights, available at <http://assembly.coe.int/Documents/AdoptedText/TA93/EREC1201.HTM>. See BENOÎT-ROHMER, *supra* note 189, at 36–38, for a complete discussion on Recommendation 1201.

201. See, e.g., Hungary-Ukraine Treaty, *supra* note 174; Hungary-Croatia Treaty, *supra* note 174; Hungary-Romania Treaty, *supra* note 183.

applicable to the status of the Hungarians living abroad—the Hungarian Status Law.<sup>202</sup>

## VI. THE LEGAL STATUS OF THE HUNGARIAN STATUS LAW

Though kin-States throughout Central Eastern Europe have passed status laws addressing cultural educational and linguistic assistance, even the most benign status laws are often viewed in a highly political light.<sup>203</sup> A status law is viewed as a “direct challenge to the home-state’s policies in these spheres . . . [and] strikes at the heart of insecurities within the home-state.”<sup>204</sup> This has been true for the Hungarian Status Law. Romania, one objecting State, in addition to attacking the law politically, challenged the facial legality of the Hungarian Status Law.

Upon a Romanian request to examine the compatibility of the Status Law with European Standards and public international law, the Council of Europe’s Venice Commission found that the Status Law failed to comply with the following principles of international law:

1. The territorial sovereignty of States;
2. The principle of *pacta sunt servanda*,<sup>205</sup>
3. Prohibition of discrimination (preferential treatment by kin-State shall be limited to education and culture).<sup>206</sup>

The following Section will examine the Hungarian Status Law in light of the principles of the territorial sovereignty of States and the prohibition of discrimination.<sup>207</sup>

### A. Extraterritorial Effect of the Status Law

The provisions of the Hungarian Status Law have caused great consternation in Hungary’s neighbors, the Council of Europe, and the

202. Hungarian Status Law, *supra* note 1.

203. PROTECTIONS OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 34.

204. *Id.*

205. *Pacta sunt servanda* is the principle of good faith enshrined in article 26 of the Vienna Convention: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” See Principles of International Treaty Law, available at <http://www.walter.gehr.net/servanda.html> (last visited June 9, 2003); Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331, reprinted in T.O. ELIAS, THE MODERN LAW OF TREATIES 225 (1974) [hereinafter Vienna Convention].

206. Venice Comm’n Rep., *supra* note 4.

207. See Section IX.A, *infra*, for a discussion of the principle of *pacta sunt servanda* with specific reference to bilateral treaties.

European Union.<sup>208</sup> Within Hungary, the law's effect on foreign citizens is undeniable. However, it is the effect of the Status Law on foreign citizens outside Hungary that is determinative of the Status Law's legality. The following Subsections explore the applicability of the Status Law outside of Hungary and analyze the legality of the law's reach.

The initial question regarding the legality of the Status Law is whether the Hungarian government has the jurisdiction to enact it. The Restatement of Foreign Relations Law discusses the reach of domestic law and the authority of States to prescribe their law in a transnational context.<sup>209</sup> Under international law, a State may have authority to exercise jurisdiction to prescribe, jurisdiction to adjudicate, and jurisdiction to enforce.<sup>210</sup> Jurisdiction to prescribe is the power of a nation to make a rule binding on persons, transactions, and relationships that have some connection with the regulating State.<sup>211</sup> This Section analyzes whether Hungary is jurisdictionally competent to enact the Status Law.<sup>212</sup>

Jurisdiction is based on territoriality, nationality, and the protection of a State.<sup>213</sup> It is a well-settled principle of international law that States enjoy territorial sovereignty.<sup>214</sup> This gives a State the right to regulate conduct and persons within its territory.<sup>215</sup> Thus, Hungary is jurisdictionally competent to prescribe laws which apply to non-Hungarians while they are in Hungary. The fact that the Status Law addresses foreign citizens does not alone constitute an infringement of territorial sovereignty.<sup>216</sup> A State may issue laws concerning foreign citizens "as long as the effects of [the] laws . . . take place within its borders only."<sup>217</sup> The Status Law, insofar as it

208. See, e.g., Mihaela Gherghisan, *Hungary and Slovakia Continue Talks on Status Law*, EUOBSERVER.COM, Feb. 28, 2003, at <http://www.euobserver.com/index.phtml?aid=9524>; Venice Comm'n Rep., *supra* note 4; Tomiuc, *supra* note 162; *Controversial Status Law Accepted*, *supra* note 162.

209. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 401–416 (1987).

210. *Id.* § 401. This authority is subject to certain limitations. *Id.*

211. *Id.* § 401(a).

212. A State may exercise the "jurisdiction to adjudicate, i.e., to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, and whether or not the state is a party to the proceedings; [and] jurisdiction to enforce, i.e., to induce or compel compliance or punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other non-judicial action." *Id.* § 401(2)–(3). I will only address the jurisdiction to prescribe as it speaks to a "state's authority to subject foreign interests or activities to its laws." *Id.* cmt. a.

213. *Id.* § 402.

214. This principle has been codified in the Framework Convention for the Protection of National Minorities which states that no State has the right to "engage in any activity or perform any act contrary to . . . territorial integrity." Framework Convention, *supra* note 50, art. 21.

215. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(1)(a)–(b).

216. Venice Comm'n Rep., *supra* note 4.

217. *Id.*

has effect within the borders of Hungary, does not violate principles of international law.

Many provisions of the Status Law apply exclusively within the borders of Hungary. For instance ethnic Hungarians are entitled to rights identical to those of Hungarian citizens while in Hungary.<sup>218</sup> Eligible ethnic Hungarians may receive funding from the Hungarian State to attend higher education institutions in Hungary.<sup>219</sup> They may also be granted a work permit for employment within Hungary, and Hungarians teaching Hungarian abroad are eligible for teacher training in Budapest.<sup>220</sup> Lastly, the Status Law grants monetary benefits to ethnic Hungarian students, teachers, and pensioners living abroad equal to those of Hungarian nationals.<sup>221</sup> These benefits are available only when the beneficiaries are within the territory of Hungary,<sup>222</sup> thus conforming to the principle of jurisdiction based on territoriality.

The jurisdiction a State may exercise over people and activities in its territory is not exclusive to that State alone.<sup>223</sup> Rather, the persons and activities in one State may be subject to the jurisdiction of another. The Restatement provides that a State has jurisdiction to prescribe law with respect to conduct outside of its territory.<sup>224</sup> Such prescription is limited, however, to "conduct . . . which has or is intended to have substantial effect within its territory."<sup>225</sup> To the extent that the Status Law regulates conduct outside of Hungary which has or is intended to have substantial effects within Hungary, it is justified under general principles of international law.<sup>226</sup> However, as this Section demonstrates, the conduct outside of Hungary regulated by the Status Law does not have substantial effects within Hungary.

The Status Law applies extraterritorially in the realm of educational assistance to ethnic Hungarians in their home State.<sup>227</sup> One method of promoting Hungarian culture in the neighboring countries is through the support of Hungarian higher education institutions in those countries.<sup>228</sup> Pursuant to the Hungarian Status Law, eligible ethnic Hungarians may apply to the Hungarian government for monetary assistance in higher

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218. Hungarian Status Law, *supra* note 1, art. 4. Such rights include the right to use public cultural institutions, and free use of public libraries and museums. *Id.*

219. *Id.* art. 9.

220. *Id.* art. 15.

221. *Id.* arts. 7, 8, 10, 11, 12.

222. *Id.* art. 23.

223. Venice Comm'n Rep., *supra* note 4.

224. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 402(1)(c), 402(3).

225. *Id.* § 402(1)(c).

226. *Id.* § 402(1)(c).

227. Hungarian Status Law, *supra* note 1, art. 14.

228. *Id.* art. 13.

education instruction affiliated with Hungarian culture in neighboring countries.<sup>229</sup> The grant of educational assistance outside of Hungarian borders is not in and of itself a violation of international law. International law allows a State to cultivate its culture outside its borders by promoting the study of “its language or languages, history and civilization in the territory of the other Contracting Parties and grant facilities to the nationals of those Parties to pursue such studies in its territories.”<sup>230</sup> However, assistance to foreign citizens is not authorized when not tailored to the study of the kin-State.<sup>231</sup> The Status Law specifically targets parents of ethnic Hungarian children attending a Hungarian school in a neighboring country.<sup>232</sup> Parents raising at least two children attending a qualified school may receive monetary assistance for books and other learning materials.<sup>233</sup> This assistance is received from the Hungarian government via the public benefit organization established for this purpose.<sup>234</sup> While the education is conducted in Hungarian, this provision of the Status Law does not necessarily promote the study of Hungary.

The education of school age children in the countries bordering Hungary does not have, nor is it intended to have substantial effect within the territory of Hungary.<sup>235</sup> There is a psychological effect on Hungarian nationals knowing that their “brothers and sisters” abroad are not being deprived of their Hungarian culture.<sup>236</sup> Hungarian nationals may receive peace of mind, but such a psychological effect is not

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229. *Id.*

230. See Cultural Convention, Eurp T.S., No. 018, Dec. 19, 1954, art. 2, § 2.

231. Venice Comm’n Rep., *supra* note 4.

232. Hungarian Status Law, *supra* note 1, art. 14.

233. *Id.*

234. *Id.*

235. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(1)(c).

236. Kin-State electorates are less interested in the fate of co-ethnics abroad than most politicians realize. PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 28. More than one-half of ethnic Russians in Moscow are indifferent to the problems of their co-ethnics living abroad. *Id.* (internal citation omitted). Hungarians are divided on the issue of the “other Hungarians.” E-mail from Anonymous, to Christin J. Albertie (Jan. 14, 2003, 18:18 EST) (on file with author). Many Hungarian nationals do not see ethnic Hungarians as “Hungarians beyond the borders.” Rather, many refer to ethnic Hungarians abroad as Serbs, Croats, and Romanians. The wave of ethnic Hungarians fleeing from Transylvania to Budapest in the 1980s prompted anti-Transylvanianism in Hungary. In addition, ethnic Hungarians from the Croatian village of Vörösmart, Croatia have had negative experiences in Hungary. E-mail from Anonymous, to Christin J. Albertie (Jan. 5, 2003, 03:17 EST) (on file with author). On the other hand, other Hungarians think that the question of Hungarians living abroad is important. Szabolcs Parragh, Literary Historian, emphasizes solidarity with the Hungarians abroad. Though the Hungarian Status Law has little effect on his life, he states he is happy to “pay the price” of the Status Law in Hungary. Such “price” may mean more employment competition or higher taxes. E-mail from Szabolcs Parragh, Literary Historian, to Christin J. Albertie (Mar. 21, 2003, 06:23 EST) (on file with author).

“substantial” within the meaning of the Restatement.<sup>237</sup> For example, “substantial effects” may refer to liability for injury from products made outside of the State exercising jurisdiction but which have been introduced into its commerce, and the imposing of liability for violation of economic regulatory laws on the basis of its economic effect in the territory.<sup>238</sup> The education environment provided to ethnic Hungarians in neighboring countries does not have a “substantial effect” in Hungary that would justify the Status Law.

States have jurisdiction to legislate with respect to the activities of their nationals outside of their territory.<sup>239</sup> However, the Status Law does not address the activities of Hungarian nationals; foreign citizens are the object of the law.<sup>240</sup> The Status Law provides for the Hungarian government to establish “public benefit organization(s) in order to evaluate the application of and distribute assistance for persons (organizations).”<sup>241</sup> These organizations shall be governed by Hungarian law on public benefit organizations though they operate in countries outside of Hungary.<sup>242</sup> Thus, the Status Law provides for the government to create an organization which will channel government money from the Hungarian government to foreign citizens, albeit ethnic Hungarians.

Lastly, a State may enact a law with respect to conduct outside its territory by non-nationals directed against the security of the State.<sup>243</sup> The latter “protective” principle grants States the right to punish a small class of crimes committed outside its territory by non-nationals which are directed against State interests.<sup>244</sup> Such State interests include the counterfeiting of the State’s currency, the falsification of official documents, and the violation of customs laws.<sup>245</sup> Clearly, the conduct regulated by the Status Law does not fall within this category.

### 1. Education Benefits

The opponents to the Status Law argue that the law has a “clear extraterritorial effect.”<sup>246</sup> EU Commissioner for Enlargement of the

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237. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402, cmt. d.

238. *Id.*

239. *Id.* § 402(2).

240. Hungarian Status Law, *supra* note 1. (“This Act shall apply to persons declaring themselves to be of Hungarian nationality who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine.”). *Id.* art. 1.

241. *Id.* art. 24(1).

242. *Id.* art. 24(2).

243. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(3).

244. *Id.* cmt. f.

245. *Id.*

246. Verheugen, *supra* note 5.



European Union Gunter Verheugen stresses that educational assistance directly supporting individuals and organizations of accredited Hungarian higher education institutions in neighboring countries has an extraterritorial effect.<sup>247</sup> “Assistance in the area of education that will be provided as direct support to establishments and organizations of accredited Hungarian higher education institutions in neighboring countries needs the formal consent of the Home-State.”<sup>248</sup>

Due to the alleged extraterritorial effect of the educational assistance, Verheugen echoes the concerns of the Venice Commission, stating that the educational provisions of the Hungarian Status Law could interfere with the educational policies of the home State.<sup>249</sup> Thus, to ensure legality of the provisions, Hungary must receive explicit consent from the affected States.<sup>250</sup>

Consent from affected States could be expressed in a bilateral agreement or in a body similar to the Slovak-Hungarian Joint Commission. The Joint Commission meets to address questions concerning “the identity of the Hungarian minority in Slovakia, its development, culture and education.”<sup>251</sup> Such a forum is easily accessible to both parties. However, Hungary has not been amenable to this and similar forums.<sup>252</sup>

## 2. Promotion of Noncultural Goals

The Hungarian Status Law provides that it will offer assistance to Hungarian organizations operating abroad.<sup>253</sup> To receive support, the mission or the organization must adhere to certain goals which provide specified benefits to ethnic Hungarians.<sup>254</sup> Benefits granted by the Status Law are either related to culture and education or to other goals.<sup>255</sup>

247. *Id.*

248. *Id.* This concern also addresses that of the Venice Commission. The Venice Commission’s Report stated that when States legislate outside their territory on issues not covered by treaties or international custom, the consent of the home States affected by the measures of the kin-State should be explicit.

249. *Id.* Venice Comm’n Rep., *supra* note 4.

250. Verheugen, *supra* note 5.

251. *Slovakia Urges Mixed Slovak-Hungarian Body to Discuss Status Law*, BBC MONITORING, Jan. 15, 2003, available at 2003 WL 9190178.

252. *Id.*; see also Rom. Gov’t Declaration, *supra* note 3.

253. Hungarian Status Law, *supra* note 1, art. 18.

254. *Id.* art. 18(2).

255. Benefits relating to culture and education include “the preservation, furtherance and research of Hungarian national traditions; the preservation and fostering of the Hungarian language, literature, culture, and folk arts; the promotion of higher education of Hungarians living abroad by facilitating the work of instructors from Hungary as visiting lecturers; and the restoration and maintenance of monuments belonging to the Hungarian cultural heritage . . . .” *Id.* art. 18(2)(a)–(d). Other benefits include “the enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve

These goals include the “preservation, furtherance and research of Hungarian national traditions” and the “preservation and fostering of the Hungarian language, literature, culture and folk arts.”<sup>256</sup> These goals, insofar as they cultivate Hungarian culture, fall within acceptable bounds of international law.<sup>257</sup> The aim to foster cultural links of the targeted population with the kin-State is justified despite the fact that it results in differential treatment of ethnic minorities and the nationals of that State.<sup>258</sup> However, these preferences must be proportionately and genuinely linked to the culture of the kin-State.<sup>259</sup>

Other goals which the Status Law mandates for Hungarian organizations operating abroad relate more to economic advancement of ethnic Hungarians than the advancement of culture or language.<sup>260</sup> These goals include the “enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve their ability to preserve their population and to develop rural tourism.”<sup>261</sup>

The preservation of the ethnic Hungarian population outside of Hungary and the development of the local economies of other States via the encouragement of rural tourism falls outside the scope of legally acceptable goals of the Hungarian government. Preferential treatment outside the sphere of education and culture may be granted in “exceptional” cases.<sup>262</sup> Where the genuine aim is to maintain links with kin-States and the methods to obtain that aim are proportional, this preferential treatment is acceptable.<sup>263</sup> The Venice Commission provides an example of such an aim: “when the preference concerns access to benefits which are at any rate available to other foreign citizens who do

their ability to preserve their population and to develop rural tourism; the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary.” *Id.* art. 18(2)(e)–(f).

256. *Id.* art. 18(2)(a)–(b).

257. See Cultural Convention, *supra* note 232, art. 2, § 2.

258. Venice Comm’n Rep., *supra* note 4. For instance, the fostering of cultural links between Hungarian nationals and ethnic Hungarians living in the Slovak Republic as citizens of the Slovak Republic results in differential treatment between the members of the Hungarian minority and the Slovak nationals. Members of the Hungarian minority are eligible for benefits which are denied to ethnic Slovaks.

259. *Id.* (“In fields other than education and culture, the Commission considers that preferential treatment might be granted . . . when it is shown to pursue the genuine aim of maintaining the links with the kin-States and to be proportionate to that aim . . .”).

260. Hungarian Status Law, *supra* note 1, art. 18

261. *Id.*

262. Venice Comm’n Rep., *supra* note 4 (“In fields other than education and culture, the Commission considers that preferential treatment might be granted only in exceptional cases . . .”).

263. *Id.*

not have the national background of the kin-State.”<sup>264</sup> The enhancement of the economic capacity of disadvantaged *Hungarian* communities abroad and the development by the Hungarian government of tourism in regions composed predominately of ethnic Hungarians aims to benefit only Hungarian communities. The extent to which benefits are bestowed on non-ethnic Hungarians is irrelevant to the Hungarian government.

A State may not promote the economic status of foreign citizens abroad.<sup>265</sup> Article 18 of the Status Law steps beyond the bounds of cultural and educational goals.<sup>266</sup> Economic activities, such as the maintenance of population and the promotion of tourism do not “pursue the genuine aim of maintaining the links with the kin-States.”<sup>267</sup> As such, they have no place in the Hungarian Status Law.<sup>268</sup>

### B. *Prohibition of Discrimination*

The principle of nondiscrimination, a basic tenet of international law, is embedded in numerous international documents.<sup>269</sup> The simple fact that Hungary’s Status Law confers preferential treatment on individuals based on their ethnicity threatens to violate this principle.

The preeminent document on minority rights and protection, the Framework Convention, provides that “any discrimination based on belonging to a national minority shall be prohibited.”<sup>270</sup> Furthermore, the Universal Declaration of Human Rights,<sup>271</sup> the International Covenant on Civil and Political Rights<sup>272</sup> and the European Convention on Human Rights<sup>273</sup>—each of which Hungary is a signatory to—all contain a nondiscrimination provision.<sup>274</sup>

264. *Id.*

265. *See id.*

266. Hungarian Status Law, *supra* note 1, art. 18.

267. Venice Comm’n Rep., *supra* note 4.

268. Verheugen, *supra* note 5 (“Economic activities as these foreseen under article 18(e) of the law aiming at assisting disadvantaged settlements and rural tourism should remain outside the scope of the law.”).

269. *See, e.g.*, Framework Convention, *supra* note 50, art. 4.

270. *Id.*

271. Universal Declaration of Human Rights, *supra* note 23, art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law.”).

272. ICCPR, *supra* note 53, art. 26 (“[T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion . . . national or social origin, property, birth or other status.”)

273. ECHR, *supra* note 92, art. 14. (“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.”).

274. Hungary ratified the ICCPR on January 17, 1974. Status of Ratifications of the Principal International Rights Treaties as of 09 December 2002, *available at*

The Hungarian Status Law is subject to a nondiscrimination analysis because:

The legislation and regulations . . . aim at conferring a preferential treatment to certain individuals, i.e. foreign citizens with a specific national background. They thus create a difference in treatment (between these individuals and the citizens of the kin-State; between them and the other citizens of the home-State; between them and foreigners belonging to other minorities), which could constitute discrimination—based on essentially ethnic reasons—and be in breach of the principle of non-discrimination . . . .”<sup>275</sup>

Thus, the fact that the Hungarian Status Law bases receipt of the law’s benefits on national ethnicity may breach the principle of nondiscrimination.<sup>276</sup> However, preference does not always constitute discrimination. The fact that “part of the population is given a less favorable treatment on the basis of their not belonging to a specific ethnic group is not, of itself, discriminatory, nor contrary to the principles of international law.”<sup>277</sup> The Framework Convention obliges parties to adopt measures to promote equality between persons belonging to a national minority and those belonging to the majority in all areas of “economic, social, political and cultural life.”<sup>278</sup> Though States may give one class of citizens preferential treatment to achieve “full and effective equality,” the Framework Convention explicitly states that these measures shall not be considered to be an act of discrimination.<sup>279</sup>

Preferential treatment does not violate the principle of nondiscrimination when a legitimate aim is pursued and the means employed to obtain it are proportionate to that goal.<sup>280</sup> The principle of nondiscrimination is not violated by the protection of minorities, but is a vital aspect of minority rights.<sup>281</sup> The two principles are explained by the Sub-Commission on Human Rights:

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<http://www.unhchr.ch/pdf/report.pdf>; Hungary ratified the ECHR on May 11, 1992. Signatures and Ratifications of the Convention for the Protection of Human Rights and Fundamental Freedoms, in *EUROPEAN CONVENTION ON HUMAN RIGHTS: COLLECTED TEXTS*, *supra* note 94, at 62.

275. See Venice Comm’n Rep., *supra* note 4.

276. Hungarian Status Law, *supra* note 1.

277. Venice Comm’n Rep., *supra* note 4 (citing with approval, Framework Convention, *supra* note 50, art. 4.

278. Framework Convention, *supra* note 50, art. 4.

279. *Id.* art. 4(2)–(3).

280. Venice Comm’n Rep., *supra* note 4.

281. Thornberry, *supra* note 19, at 18.

1. Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

2. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. . . . It follows that differential treatment of such groups or individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole.<sup>282</sup>

Thus, preferential treatment afforded to the Hungarian minority outside of Hungary with the goal of promoting cultural and linguistic ties with the home State are legitimate. However, as discussed above, any action taken to promote economic and political goals of the kin-State are illegitimate, no matter how proportionate the means employed.<sup>283</sup> Such objectives have no place in the Status Law.

## VII. THE STATUS LAW AND EUROPEAN UNION LAW

Hungary is set to accede to the European Union in May 2004.<sup>284</sup> The European Commission has expressed concerns that the Hungarian Status Law is not in conformity with EU norms.<sup>285</sup> As a member of the European Union, an area of cooperation and nondiscrimination, Hungary would be bound to ensure freedom of movement to workers and to abide by the principle of nondiscrimination.

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282. *Id.* (internal citations omitted).

283. *See* Venice Comm'n Rep., *supra* note 4; *see also* RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 402.

284. *See* 2002 Regular Report on Hungary's Progress Towards Accession, COM(2002) 700 final [hereinafter Regular Report on Accession].

285. *Id.* at 123 ("In order to complete preparations for membership, Hungary's efforts now need to focus on ensuring that its foreign policy orientation remains in line with the Union's developing foreign and security policy . . . . In particular, Hungary should ensure that its national policies and practice conform to the EU's common positions . . . . As regards the 'status law', the Commission will continue to monitor the situation and will request Hungary to bring the law . . . in line with the . . . provisions enshrined in the EC Treaty.").

### A. *Freedom of Movement*

The Treaty establishing the European Community grants freedom of movement for workers within the Community.<sup>286</sup> This freedom of movement allows workers to move uninhibited within the territory of the European Union with the purpose of securing employment.<sup>287</sup> Under the Europe Agreements, a State must ensure that citizens of all EU Member States are granted the right to self-employment once they have fulfilled the requirements of Hungarian immigration law.<sup>288</sup> As the Status Law refers to a certain category of foreigners, it could contradict the European directives regarding free movement of persons and the right to work.<sup>289</sup>

### B. *Principle of Nondiscrimination*

The Hungarian Status Law violates the principle of nondiscrimination as enshrined in the European Union. Article 12 of the EC Treaty grants that “[w]ithin the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.”<sup>290</sup>

The European Union first addressed the conflict between the Status Law and the principle of nondiscrimination in the context of the application of the Status Law to Austria.<sup>291</sup> The EU successfully demanded that Status Law not apply to Hungarians living in Austria.<sup>292</sup> As citizens of the European Union, Austrian Hungarians cannot be allotted rights beyond those afforded the rest of the citizens of the European Union.<sup>293</sup>

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286. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, art. 12, Nov. 10, 1997, O.J. (C 340) 3 (1997) [hereinafter EC TREATY]. The “European Union” is made up of three pillars: the European Union, the European Community, and Police and Judicial Co-operation in Criminal Matters (PJCC). This Note refers to the European Union, meaning all three pillars.

287. *Id.* art. 39(3)(a)–(b).

288. *See, e.g.*, Elspeth Guild & Nicolas Rollason, Presentation to the Hungarian Embassy, *The Right of Self Employment in the EC/Hungary Agreement, Practical Application for Hungarian Nationals Seeking to Reside in the UK* (June 6, 2000), available at <http://freespace.virgin.net/andras.hirschler/work.htm>.

289. *See* Spinant, *supra* note 163 (citing Romanian News Agency, Mediafax, which reported that Zolt Nemeth, Hungarian State Secretary for Foreign Affairs acknowledged this concern while expressing confidence that the problem could be overcome and that the Status Law could apply after Hungarian accession to the European Union.)

290. EC TREATY art. 12.

291. *Controversial Status Law Accepted*, *supra* note 162.

292. *Id.*

293. *See id.*

## VIII. CURRENT (AND FUTURE) STATUS OF THE STATUS LAW

While the Status Law came into effect on January 1, 2002, the implementation of the law is far from complete. This Part focuses on the reaction of Romania, Slovakia, and the European Union to the Hungarian Status Law. It discusses the changes that have been made to the Hungarian Status Law to meet the objections of the international community.

Many events served as the catalyst of change for the Hungarian Status Law. Hungary was met with criticism of the Status Law almost immediately after it passed through Parliament.<sup>294</sup> Continued criticism from neighboring countries, the Venice Commission, and the EU Commissioner on Enlargement, Gunter Verheugen, led the government of Hungary to amend the Status Law in an attempt to conform with international law norms.<sup>295</sup>

First, Hungary contacted Romania to discuss amendments to the Status Law.<sup>296</sup> Romania has consistently objected to the Status Law on the dual basis that it contravenes EU principles and that the Hungarian government did not consult the Romanian government before passage of the Act.<sup>297</sup>

In late December 2002, Romanian foreign minister Mircea Geoana and his Hungarian counterpart Laszlo Kovács met in Bucharest to discuss amending the Hungarian Status Law. The two ministers agreed that the Status Law will be amended and that the final draft will keep with "European standards, norms and principles of international law, as well as with the community law."<sup>298</sup> The result of the meeting was an agreement that the Status Law will conform with the Romanian legal

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294. See *PACE Chairman Criticizes Hungarian Status Law*, RFE/RL NEWSLINE (June 26, 2001), available at <http://www.rferl.org/ucs/2001/06126-270601.html>. ("Parliamentary Assembly of the Council of Europe (PACE) Chairman Lord Russell-Johnston . . . said he 'disagrees' with the recently passed Hungarian Status Law and does not 'even believe the law can bring about an improvement of the situation of members of the Hungarian minority in neighboring countries.'"); Rom. Gov't Declaration, *supra* note 3 ("The Law in its entirety has a discriminatory character, in contradiction with the international documents applicable in the field of minorities.").

295. *Romanian Foreign Minister: Hungarian Status Law Must Comply with EU Norms*, BBC MONITORING EUR., Dec. 10, 2002, available at LEXIS, News Library, BBC Worldwide Monitoring; Mihaela Gherghisan, *Romania and Hungary agreed over the status law*, EUOBSERVER.COM, Dec. 12, 2002 ("The law will be amended in line with EU principles that countries may not have a law that applies abroad and six major modifications will be made.").

296. Gherghisan, *supra* note 295.

297. *Id.*; Rom. Gov't Declaration, *supra* note 3 ("The Law concerning the Hungarians of the neighboring countries was adopted without taking into account the position expressed by the Romanian side in all its demarches.").

298. *Romanian Foreign Minister: Hungarian Status M Comply with EU Norms*, *supra* note 295.

system, therefore safeguarding the identity of ethnic Hungarians in Romania.<sup>299</sup>

Slovakia has been less agreeable than Romania regarding the Hungarian Status Law. This is the cause of developing conflict between the two countries. Political parties on both sides of the border see the conflict as abuse of nationalist sentiments “for the purpose of domestic political campaigning for the forthcoming elections in their respective countries.”<sup>300</sup>

Hungary amended the Status Law and presented it to Prime Minister Dzurinda in December 2002; he promptly rejected, to the surprise of many.<sup>301</sup> EU Commissioner Gunter Verheugen’s involvement initially enhanced Slovakia’s position in the controversy.<sup>302</sup> Commissioner Verheugen issued a letter in December objecting to certain elements of the Status Law. The Commissioner objected to the creation of a “political bond” between Hungary and minorities in kin-States; the extraterritorial and discriminatory effect of the Status Law; and the Status Law’s incompatibility with EU law.<sup>303</sup> The Commissioner currently denies that his letter has any legal authority.<sup>304</sup> Instead, he insists that the Venice Commission Report is “definitive.”<sup>305</sup> The Hungarian State Secretary Andras Barsony proposed in a letter to the Slovak government in Bratislava “seven principles” to serve as the basis for change in the Status Law.<sup>306</sup> Slovakia has not responded to this

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299. Mihaela Gherghisan, *Hungarian Status Law Not for EU Citizens*, EUOBSERVER.COM, Jan. 3, 2003, at <http://www.euobserver.com/index.phtml?aid=8896>.

300. Press Release, Joint Statement on the Status Law of SZDSZ of Hungary and LDU of Slovakia, Jan. 17 2002 (on file with author). The Alliance of Free Democrats (SZDSZ) of Hungary and the Liberal Democratic Union (LDU) of Slovakia recognize that the Status Law may violate international law, but agree “that minorities should not become the hostages of malicious political forces, who try to build their political strength on historical nationalism.” *Id.*

301. The Prime Minister of Slovakia’s coalition party is the Hungarian Coalition Party (SMK). See Mihaela Gherghisan, *Slovakia EU Referendum Set for 16 and 17 May*, EUOBSERVER.COM, Dec. 19, 2002, at <http://www.euobserver.com/index.phtml?aid=8827>; Mihaela Gherghisan, *Hungary Status Law Not for EU Citizens*, *supra* note 299.

302. *Hungarian Opposition Slams Government over Status Law Change After EU Letter*, BBC MONITORING EUR., Dec. 19, 2002, available at LEXIS, News Library, BBC Worldwide Monitoring.

303. Verheugen, *supra* note 5.

304. *EU Enlargement Commissioner Declines Statement on Hungarian Status Law* (Hungarian Radio broadcast, Jan. 8, 2003).

305. *Id.*

306. *Slovakia Not to Reply to Hungary’s Letter on Status Law Changes*, BBC MONITORING EUR., Jan. 14, 2003, available at LEXIS, News Library, BBC Worldwide Monitoring.



letter,<sup>307</sup> though each country's respective foreign ministers may discuss the law in early 2003.<sup>308</sup>

As of December 18, 2002, the Hungarian government has made many concessions to the international community.<sup>309</sup> The government stated: (1) it will grant support to Hungarians only with the agreement of the countries concerned; (2) no legal or political connections would be established between Hungary and the Hungarians living abroad; (3) the Hungarian ID card will only be used to prove the entitlement to preferences granted by Hungary; and (4) the Status Law will not apply to EU Member States.<sup>310</sup>

Granting support to Hungarians only with the agreement of the countries concerned is tantamount to entering into a bilateral agreement with concerned countries. Subjecting assistance to Hungarians on the approval of neighboring countries radically changes the implementation of the Hungarian Status Law.

Both the Venice Commission and Commissioner Verheugen objected to the risk that the identity card given by Hungary to the minorities in kin-States would create a political or legal bond between the two parties.<sup>311</sup> The Hungarian Dependent Certificate, as authorized by the Hungarian Standing Conference, had the characteristics of an identity card and the potential to create a political bond with Hungary.<sup>312</sup> The guarantee that no political bond will exist between Hungary and the Hungarians living abroad, coupled with the explicit denial of use of the Certificate as an identity card removes this threat.

The concession that the Status Law will not apply to EU Member States is significant in that it will not jeopardize Hungary's accession to the Union. To accede to the European Union, Hungary must assume the obligations of membership, "the legal and institutional framework, known as the *acquis*, by means of which the Union implements its objectives."<sup>313</sup> If Hungary fails to "ensure alignment with the *acquis* on

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307. *Id.*

308. Gherghisan, *supra* note 299. At the time of this printing, no such meeting had occurred.

309. *Hungarian Opposition Slams Government over Status Law Change After EU Letter*, *supra* note 302.

310. This means that the law will not apply to ethnic Hungarians in Slovakia once Slovakia joins the EU. See Gherghisan, *supra* note 299.

311. Venice Comm'n Rep., *supra* note 4; Verheugen, *supra* note 5.

312. Verheugen, *supra* note 5. Verheugen's letter states that the Hungarian Dependent Certificate has the characteristics of an identity card or a passport and has St. Stephen's crown on the cover. St. Stephen's crown is a "symbol representing all members of the Hungarian nation." Paul Nemes, *Crown Fever*, 2 CENTRAL EUR. REV. (Jan. 10, 2000), available at <http://www.ce-review.org/00/1/nemes1.html>.

313. Regular Report on Accession, *supra* note 284, at 37.

anti-discrimination based on [article] 13 of the Treaty<sup>314</sup> its accession to the Union will be jeopardized. The political and legal controversy surrounding the divergence of the Status Law with EU principles and directives was always at the risk of being a moot point. Ethnic Hungarians would lose their privileges under the Status Law once Hungary becomes a member of the European Union.<sup>315</sup> Indeed, one Hungarian official noted that due to the fact that the Status Law does not observe EU regulations regarding nondiscrimination among EU citizens, it will become obsolete once Hungary joins the EU.<sup>316</sup>

### IX. BILATERAL AGREEMENTS REVISITED

While the Hungarian Status Law is an inappropriate mechanism to ensure the protection of the Hungarian minority in Eastern Europe, the controversy caused by passage of the law reflects the need for action to be taken on behalf of the Hungarian minority in Europe. The enactment of the Hungarian Status Law reflects the attempt of the Hungarian government to address the minority issue in the region.<sup>317</sup> Rather, the situation of minorities in Central Eastern Europe demands a solution.<sup>318</sup> The rights of the Hungarian minority must be protected and allowed to preserve cultural and educational links with Hungary. The most appropriate means to this end is the use of bilateral treaties. This Part

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314. *Id.* at 60.

315. Miklos Haraszti, *The Debacle of the Status Law*, BUDAPEST BUS. J., Jan. 14, 2002 ("But in fact, the law was a cruel ruse, since all the benefits it offered must melt away the very moment this country enters the EU. As Hungary looks to be safely within the first five candidates, that moment could, by a conservative estimate, come in two years' time. Thus, soon after obtaining their Hungarian certificates, the beneficiaries would be stripped of the favors that come with it . . .").

316. Eugen Tomiuc, *Hungary: Six-Month-Old Status Law Attracts Few Applicants, Much Trouble*, RFE/RL NEWSWIRE, June 19, 2002, available at [www.rferl.org/nca/features/2002/06/19062002144958.asp](http://www.rferl.org/nca/features/2002/06/19062002144958.asp).

317. E-mail from Anonymous, to Christin J. Albertie (Jan. 8, 2003, 13:29 EST) (on file with author).

318. *Id.* Hungary is spearheading a proposal to the European Union for further measures of minority protection. Jozsef Szájer, Hungarian Representative in the European Union, has called for the creation of a committee for minorities. Due to the fact that EU legislation contains only a few antidiscrimination provisions, Mr. Szájer would like to draw minority issues to the attention of EU law makers. This committee would not only address the concerns of the Hungarian minority, but would primarily benefit the Roma, one of the largest minorities in Europe. *Hungarians Push for Minority Rights in the EU*, EUOBSERVER.COM, Feb. 27, 2003, at <http://www.euobserver.com/index.phtml?aid=9513>. The Committee on Minorities would address the "cultural, educational, and economic problems of minorities." Mihaela Gherghisan, *Hungarian Party Proposes EU Minorities Committee*, EUOBSERVER.COM, Feb. 12, 2003, at <http://www.euobserver.com/index.phtml?aid=9344>.

explores the benefits of adopting a bilateral agreement standard for addressing concerns regarding the Hungarian minority.

### A. *Pacta Sunt Servanda*

The Hungarian Status Law violates the principle of *pacta sunt servanda*.<sup>319</sup> The principle of *pacta sunt servanda* means that treaties must be respected and performed in good faith.<sup>320</sup> Thus, if a State is party to a bilateral treaty concerning minority protection, it must fulfill the obligations stated in the treaty.<sup>321</sup> Often, bilateral treaties on minority protection include a provision ensuring bilateral talks on the effectiveness of the treaty, implementation problems, and modification of rights in the treaty.<sup>322</sup> A State breaches its obligation by acting unilaterally in areas addressed by the treaty.<sup>323</sup> Thus, the Venice Commission declared, "Legislation or regulations on the preferential treatment of kin-minorities should therefore not touch upon areas demonstrably pre-empted by existing bilateral treaties."<sup>324</sup>

The Hungarian Status Law addresses topics addressed in at least one bilateral treaty, the Treaty Between the Republic of Hungary and Romania on Understanding, Cooperation and Good Neighborliness.<sup>325</sup> The Hungary-Romania Treaty confirms that the Parties shall respect the "territorial integrity of the other Party."<sup>326</sup> The bilateral treaty incorporates the Framework Convention to regulate the rights of national minorities living on their territories<sup>327</sup> and provides for cultural and educational provisions similar to those in the Hungarian Status Law.<sup>328</sup> The unilateral action taken by the Hungarian government in the Status Law covers subject matter addressed in the Hungary-Romania Treaty.<sup>329</sup> The Status Law does not address new topics in the field of minority rights. Thus, Hungary's unilateral action violates the principle of *pacta sunt servanda*. Hungary should abandon the Status Law and revert to the bilateral treaties into which it previously entered.

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319. Venice Comm'n Rep., *supra* note 4.

320. *Id.*; Vienna Convention, *supra* note 205, art. 26.

321. Venice Comm'n Rep., *supra* note 4.

322. *Id.*

323. *Id.*; *see also* Vienna Convention, *supra* note 205, art. 31 ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.").

324. Venice Comm'n Rep., *supra* note 4.

325. Hungary-Romania Treaty, *supra* note 183.

326. *Id.* art. 4.

327. *Id.* art. 15(a).

328. *Id.* art. 12.

329. *Id.* arts. 4, 9; Hungarian Status Law, *supra* note 1.

### B. Benefits of Bilateral Agreements

Bilateral treaties are the optimal mechanism to ensure the protection of all minorities in Central Eastern Europe. This Part examines the many benefits of bilateral treaties, especially compared to the Hungarian Status Law.

First, bilateral agreements do not violate general principles of international law. Rather, they represent mutual agreement between two countries. As a result, bilateral treaties respect the sovereignty and territorial integrity of each contracting State. The Status Law does not respect the sovereignty or territorial integrity of the neighboring States.<sup>330</sup> It has effect on foreign citizens in a foreign country, and violates principles of nondiscrimination and *pacta sunt servanda*. On the other hand, the Hungary-Romania Treaty specifically addressed these issues while maintaining respect for these general principles of international law.<sup>331</sup>

Second, bilateral treaties are more effective than general international agreements in effectively protecting minority rights. General international agreements and mechanisms, as we have seen, often fall short of adequately ensuring the rights of minorities. On the other hand, bilateral treaties “constitute exceptions to the blandness of general legal standards by identifying specific beneficiaries.”<sup>332</sup> Bilateral agreements are specifically tailored by two parties to address issues most important to the contracting parties. They often recognize ethnic groups and grant them cultural, religious, linguistic, and national political rights.<sup>333</sup> They produce rules on nondiscrimination while including provisions adapted to specific minorities.<sup>334</sup>

Hungary has taken advantage of this ability to customize minority rights standards in bilateral treaties. Hungary and Slovakia entered into a bilateral agreement to strengthen human rights guarantees to minorities living in their countries.<sup>335</sup> This Treaty generally follows the formulas of

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330. Hungarian Status Law, *supra* note 1.

331. See Hungary-Romania Treaty, *supra* note 183, arts. 4, 14, 21. Article 4 addresses territorial integrity, article 14 addresses nondiscrimination, and article 21 addresses treaty interpretation and dispute settlement.

332. *Id.* art. 17.

333. MINORITY RIGHTS GROUP REPORT, *supra* note 23, at 17.

334. See, e.g., State Treaty for the Re-establishment of an Independent and Democratic Austria, art. 7(1), May 15, 1955, 217 U.N.T.S. 223 (1955) (“Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights on equal terms as all other Austrian Nationals, including the right to their own organizations, meetings and press in their own language.”); Protection of Minorities: Special Protective Measures of an International Charter for Ethnic, Religious or Linguistic Groups, U.N. Sales No. 67.XIV.3, cited in MINORITY RIGHTS GROUP REPORT, *supra* note 23, at 17.

335. *Supra* note 200.

the Framework Convention.<sup>336</sup> Hungary and Slovakia took the opportunity to engage in specific agreement and strengthened the programmatic and voluntary obligations found throughout the Framework Convention.<sup>337</sup> Similarly, the provisions of the 1996 Treaty between Hungary and Croatia<sup>338</sup> reflect Croatia's pro-autonomy attitude.<sup>339</sup> The Hungary-Croatia Treaty is less rigid and does not follow the Framework Convention's formulas.<sup>340</sup> Hungary's use of bilateral treaties with its neighbors to focus on different rights and obligations evidences the flexibility of bilateral treaties.

Similarly, bilateral treaties are superior to the Hungarian Status Law and general international standards in that they include specific implementation measures.<sup>341</sup> The Framework Convention and other programmatic obligation-type documents lack implementation mechanisms and enforcement measures. Likewise, though the Status Law took effect in January 2002, its implementation has been blocked by both Slovakia and Romania.<sup>342</sup> Conversely, bilateral treaties contain specifically tailored enforcement methods and are governed by the Vienna Convention on the Law of Treaties.<sup>343</sup> A bilateral treaty does not contain implementation provisions as broad as a general instrument of international law nor as narrow as those of the Hungarian Status Law.

Bilateral agreements build mutual trust and promote good-neighborly relations between countries.<sup>344</sup> By affirming commitments to respect territorial integrity<sup>345</sup> and promote reciprocal minority rights, bilateral treaties promote good-neighborliness emphasized in the Pact on Stability.<sup>346</sup> Good-neighborliness is an essential element of a stable Europe "in which human rights, including those of persons belonging to national minorities, are respected" and "equal and sovereign States cooperate across frontiers."<sup>347</sup> The conclusion of bilateral treaties and

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336. Kovács, *supra* note 98, at 107.

337. *Id.*

338. Hungary-Croatia Treaty, *supra* note 174.

339. Kovács, *supra* note 98, at 106.

340. *Id.*

341. MINORITY RIGHTS GROUP REPORT, *supra* note 23, at 17.

342. The Status Law was to enter into force on January 1, 2002. Hungarian Status Law, *supra* note 1, art. 27(1).

343. See Vienna Convention, *supra* note 205.

344. Elizabeth F. Defeis, *Minority Protections and Bilateral Agreements: An Effective Mechanism*, 22 HASTINGS INT'L & COMP. L. REV. 291, 321 (1999).

345. *Id.*

346. Pact on Stability in Europe, *supra* note 189, art. 4.

347. *Id.* art. 5.

implementation further stimulates good-neighborliness and cooperation among neighbor States.<sup>348</sup>

On the contrary, the passage of the Hungarian Status Law implies that the Hungarian government does not trust State parties to bilateral treaties to uphold their side of the bargain. This perception creates a culture of distrust and inhibits cooperation and good-neighborliness among States in the region. For example, the European Commission, in its Regular Report on the Accession of Hungary to the European Union noted that, though in June 2001 Hungary assumed the rotating presidency of the Visegrád Group, "dialogue was limited due to disputes on the Hungarian 'status law.'" <sup>349</sup>

Conversely, the Status Law is a unilateral action, promulgated solely by the Hungarian government for the protection of only the Hungarian minority.<sup>350</sup>

Most importantly, bilateral treaties for the protection of national minorities are effective. Sweden and Finland have provided educational assistance to co-ethnics in each other's countries by utilizing bilateral treaties.<sup>351</sup>

### *C. Content of Bilateral Treaties*

The numerous benefits of bilateral treaties do not warrant blanket creation of bilateral treaties. A poorly drafted treaty can have a negative effect on party relations; a bad treaty is not better than no treaty at all.<sup>352</sup> This Section delineates particular elements a bilateral treaty should contain to ensure that the treaty achieves and maintains effective minority protection. It concludes that the existing bilateral treaties in effect between Hungary and its neighbors fulfill the standard exacted here. Thus, Hungary should abandon the Hungarian Status Law for the established bilateral treaty approach.

Bilateral agreements should be generally based on universal and regional legal instruments.<sup>353</sup> It is important to keep in mind that these treaties are not intended as a replacement of international instruments.<sup>354</sup>

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348. PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 15.

349. Regular Report on Accession, *supra* note 284, at 88.

350. Hungarian Status Law, *supra* note 1.

351. PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES, *supra* note 35, at 35 (citing Pirkko Tjárnä, Paper Presented at a Conference on "Inter-Ethnic Relations and Regional Co-operation," Bishkek, Kyrgysstan, May 16, 1995).

352. Thornberry, *supra* note 35, at 159.

353. Pact on Stability in Europe, *supra* note 189, art. 7; Defeis, *supra* note 344, at 311.

354. The Pact on Stability, which promotes good-neighborliness and bilateral agreements, states that these efforts "must be based on effective implementation of the existing

Rather, they “must be seen as part of the broad international effort to promote minority rights . . . [which] supplement but do not substitute [for] general standards.”<sup>355</sup> The Hungary-Romania Treaty incorporates by reference relevant international standards for minority protections as embodied in international instruments.<sup>356</sup> Such instruments include the Document on the Copenhagen Meeting on the Human Dimensions of the Conference on Security and Co-operation in Europe of 1990,<sup>357</sup> the Framework Convention for the Protection of National Minorities,<sup>358</sup> and the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>359</sup>

Second, the Hungary-Romania Treaty specifically articulates the minority rights each State determined to be most important. These rights include the right to use their national language for transactions and for identification, profess and exercise religious beliefs, and create and support educational and cultural institutions.<sup>360</sup> In addition, the Treaty specifically provides that the both Parties will take positive steps to promote minority identity.<sup>361</sup>

Lastly, the Hungary-Romania Treaty affirms the principle of territorial integrity of States,<sup>362</sup> nondiscrimination,<sup>363</sup> and the principles outlined in the Framework Convention.<sup>364</sup> These provisions safeguard bilateral treaties from the international concern regarding the Hungarian Status Law.

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principles and commitments established within the framework of the UN, OSCE, and the Council of Europe.” Pact on Stability in Europe, *supra* note 189, art. 7.

355. Thornberry, *supra* note 35, at 161.

356. Hungary-Romania Treaty, *supra* note 183. The Annex of the Hungary-Romania Treaty incorporates the Document of the Copenhagen Meeting of the Conference on Human Dimension; Declaration of December 18, 1992 of the General Assembly of the United Nations on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Resolution 47/135); and Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights.

357. Document of the Copenhagen Meeting of the Conference on Human Dimension, *supra* note 127.

358. Framework Convention, *supra* note 50.

359. U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *supra* note 82.

360. Hungary-Slovakia Treaty, *supra* note 200, art. 15.

361. The parties “shall take the necessary measures to ensure that such persons can learn their mother tongue and have adequate opportunities for being educated and trained in this language at all levels . . . [and] ensure the conditions allowing the use also of the mother tongue of these persons in their relations with local administrative and judicial authorities.” *Id.* art. 15(3).

362. *Id.* art. 4.

363. *Id.* art. 14.

364. *Id.* art. 15.

Hungary must follow its own example and focus on bilateral agreements as an effective means of minority protection. The country must respect the obligations it has reciprocally undertaken as well as pursue bilateral talks on the matters which are the subject of the bilateral agreements.<sup>365</sup> Refusal to do so is a breach of specific obligations as well as a violation of the principle of *pacta sunt servanda*.<sup>366</sup>

#### X. CONCLUSION

The passage of the Hungarian Status Law in the Summer of 2001 reflects the need for international law to address in a uniform manner the issue of minority rights and the rights of kin-States in voicing their concerns. The universal and regional documents and mechanisms providing protection to minorities fail to meet this goal. The Hungarian Status law, a unilateral action taken by the Hungarian government, violates major principles of international law and cannot be adhered to. Rather, Hungary should abandon the Status Law and revert to use of bilateral agreements to ensure the rights of the Hungarian minority living outside of Hungary. Bilateral mechanisms have proven to be effective in the minority rights arena, and are in accordance with international law.

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365. Venice Comm'n Rep., *supra* note 4.

366. *Id.*