INTERNATIONAL NATIONAL MINORITY REGIME
AND DELIBERATIVE CAPACITY IN TRANSITION

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Abstract

The paper explores the influence of the international national minority regime (INMR) on ethnic diversity accommodation in Ukraine. It argues that a 'one size fit all' approach does not respond to the complexity on the ground and diversity of national contexts. Therefore, the paper suggests a more deliberation-based policy-making procedure. The paper discusses the impact of the INMR on the deliberative capacity (DC) for debating cultural claims, elaborating on three aspects of DC: authenticity, inclusiveness and consequentialism. The paper uses interviews with ethnic groups representatives, government officials and experts from 7 Ukrainian cities. This data demonstrates how the INMR shapes domestic discussions on cultural claims and demonstrates the difficulties in applying the INMR in the Ukrainian context, like perceptions that INMR is oppressive, paternalistic and hypocritical. It also pays attention to the opportunities through which the international actors may contribute to a more equitable democracy with respect to cultural diversity.

Introduction

This paper is a part of my dissertation project that explores the deliberative capacity in post-Soviet transition, specifically focusing on the case of inter-ethnic relations in Ukraine. By deliberative capacity I refer to the extent to which the societal system holds structures that allow authentic, inclusive and consequential deliberation (Dryzek 2009). This paper, in particular, addresses the external effects on the deliberative capacity and thereby on ethnic relations in transition. It specifically focuses on the international national minority protection regime. According to Stephen D. Krasner a regime is a a set of explicit or implicit "principles, norms, rules, and decision making procedures around which actor expectations converge in a given issue-area". The
The definition is intentionally broad, and covers human interaction ranging from formal organizations (for example, the UN) to informal groups (such as major banks during the economic crisis). Therefore by the international national minority regime (INMR) I refer to the set of key international documents pertaining to national minority protection; the list of these key documents and core principles of the regime in general are discussed in the next subsection.

The paper demonstrates that the current regime is inadequate due to its “one size fit all” approach, and a new regime is therefore needed. At the current stage, the effects on the INMR on deliberative capacity are mixed. Yet, the fieldwork conducted suggests what kind of modifications would facilitate the positive change.

The international national minority regime serves as a guideline for specific policy choices by the countries that comply with its core documents. Yet in reality, there is a need for deliberation in such policy-making since the situation is often special in each case and no universal schemes can respond to each and every case’s necessities. On the ground, the situation is often too complex and may be characterized by logical and moral deadlocks. It is therefore difficult to make clear decisions without deliberation and, more so, for these decisions to be legitimate. For this reason, it is not advised to apply the international best practices blindly since such approach is not legitimate and not effective.

The deliberative democratic approach to minority accommodation policies has a potential of dealing with the weaknesses of international minority regime that being universal cannot address the deeply contested and case-specific justice-based and interest-based claims of the different kinds of identity groups.

In what follows, I first present the current international national minority regime, then I illuminate the major problems with it, and finally discuss the ways in which the international community may have a positive impact on the development of intercultural relations in particular states.
International National Minority Regime

In terms of ethnic relations, unlike in the area of basic individual civic and political rights, it is difficult to identify the key principles applied in Western states (Kymlicka and Opalski et. al 2005: 13). On the one hand, different Western states responded differently to their minority issues. On the other hand, Western political theory neglected the issue of ethno-cultural relations till the end of the XX century (Kymlicka and Opalski et. al 2005: 14).

Nevertheless, Kymlicka argues that the end of the XXth century has witnessed the global diffusion of multicultural discourse and codification of multiculturalism (MC) in international law, that is internationalization of state-minority relations. At the same time, he stresses that the driving force behind this process often came from the inside of international organizations, as opposed to member states as these international organizations were trying to justify their mandate (Kymlicka 2007). This suggests that even at the stage of formulating the principles of global multiculturalism specific case actors were involved only marginally, which violated the principles of inclusion of all the affected and jeopardizes legitimacy and thus effectiveness of the regime according to the deliberative democratic theory.

It is also important that Kymlicka observed two reasons why in the 1990s minority rights have reemerged on the agenda of the global community. First, this was due to the pessimism of ethnic politics in the developing world, that is, fear of ethnic conflict spread after the collapse of the Soviet Union. Second, it was because of the optimism of the new models of ethnic politics in the West, that is, hope for a viable liberal form of multiculturalism. This illustrates that the international community did not consider the local peoples capable of solving ethnic issues on the ground while thought of itself as an external actor capable of offering optimal solutions. Such perspective raises issues of inclusion at the stage of deliberation and decision-making as well as vision of the other as incapable while oneself as capable of producing the best solution.

Kymlicka continues that in the XXI century international organizations started the shift from idealism to pragmatism as it became clear that both their pessimism and optimism were exaggerated. As a result the most recent trends include: (1) exporting Western models without
attention to local context and dominated by Western perspectives on the one hand, and (2) denying MC rights as too risky in developing countries on the other hand.

To give a brief overview, the IMNR in the twentieth century is characterized by three stages according to Kymlicka. In 1919-1939 the League of Nations pioneered the business of minority protection, which targeted only minorities with kin states, while now the principle of kin-state protection is dismissed. In 1945-1989 there was a significant backlash in the area on minority protection because of Hitler’s speculation on the issue of minority rights in starting the Word War II. Finally, in 1990-1995 minority protection saw an outburst of activity again.

The system of international organizations and core documents comprising the international national minority regime is reflected in the table.

**Table 1. International Organizations and International Documents**

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<tr>
<th>International Organizations</th>
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<tr>
<td>United Nations</td>
<td>Declaration on the Right of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)</td>
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<td>- Art. 1: requires states to protect the existence of minorities within their territories, calls to “protect the national or ethnic, cultural, religious, and linguistic identity” of minorities, and to “adopt appropriate legislative and other measures to achieve these goals”</td>
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<td>- Art. 2, 3: prohibit discrimination against minorities on various grounds</td>
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<td>- Art. 4: “states shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards”</td>
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<td>Declaration on the Rights of Indigenous Peoples (2007)</td>
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<td></td>
<td>Convention on Elimination of Racial Discrimination</td>
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<td>Convention on Political &amp; Socio-Economic Rights (1966)</td>
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<td>ILO</td>
<td>1989 Convention</td>
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<td>UNESCO</td>
<td>Operating policy (respect to indigenous)</td>
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<tr>
<td>Organization</td>
<td>Document/Recommendation</td>
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<td>- Art. 5(1): “The parties undertake to promote the conditions necessary for persons belonging to NM to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”</td>
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<td>- Art. 4(2): states are to promote “effective equality” between minority and majority in all areas</td>
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<td></td>
<td>- No definition of NM</td>
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<td>Charter for Regional and Minority languages (1992)</td>
<td>- Protects languages, rather than speakers</td>
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<td>PA Recommendation: autonomy for NM comprising regional majorities (1993)</td>
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<td>Lund Recommendation on Effective Participation by NM in Political Life (1999), suggests autonomy</td>
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<td>European Union</td>
<td>Copenhagen criteria for accession (1993):</td>
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<td>- “respect for and protection of minorities” as a condition for accession</td>
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<td>Treaty of Maastricht</td>
<td>- Respect to national and regional diversity (art. 151)</td>
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<td>- European Parliament resolutions on NM protection</td>
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<td>OSCE</td>
<td>Lund Recommendations</td>
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<td>Declarations (Copenhagen 1990, Geneva 1991)</td>
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<td></td>
<td>- conflict between norm-making and security wings (impact of Russia)</td>
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<td></td>
<td>High Commissioner on National Minorities</td>
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<td>Organization of American States</td>
<td>Declaration on Indigenous People (1997)</td>
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The mechanisms through which the INMR functions include publicizing best practices with normative assessment behind them, issuing legal standards, granting support to mediation- and tolerance-focused NGOs, and case-specific interventions in order to resolve conflicts\(^1\).

\(^1\) For example, international actors’ involvement in the cases of Cyprus Constitution-making process, Iraq, East Timor, Sudan, Sri Lanka, Daeton Agreement and others.
Shortcomings of the Current International National Minority Regime

Despite the good goal of guaranteeing the basic needs of minorities and numerous precedents of successful activities, the INMR is also characterized by a number of shortcomings.

First, the INMR is too rigid. Cultural identity is a constructed and dynamic phenomenon and this implies that there can be no once and forever solutions as identities and cultural group’s needs may themselves change. For this reason, the international minority regime cannot simply rely on a rigid collection of rules that are to cover all situations across time and space. To illustrate, as Kymlicka (2007: 17) and Moser (1999: 360) observe, proportional representation electoral systems as a solution to ethnic division problems are widely recommended by international bodies. Yet, as discussed in Barry (1975), Tsebelis (1990), Horowitz (2000), Pierson (2004), Moser (2005), Moser and George (2009), and Salnykova (2012) among others, this electoral system is far from being the best in many specific circumstances. For example, Horowitz (2000: 269) writes that: “helping to develop institutions in other countries international institutional advisers bring along their usual toolkits, which were developed for more homogenous societies” (Pierson, 2004: 112). The rigidity and undue universalism of the INMR also impact the deliberative capacity negatively since the INMR’s generic recommendations and legalistic language do not help authenticity of the political expression much. Another example of why norms rigidity is problematic is illustrated by the Ukrainian case.

Second, the INMR is too universalistic and does not provide the conceptual apparatus to accommodate diversity between cases and within cases. This is well illustrated by the case of Ukraine. It is not clear who is the minority in this case: a minoritized Ukrainian majority, a majoritized Russian minority; or other ethnic minorities. All of these groups may be considered minorities in one respect or the other. Yet the international norms do not presuppose differential treatment of such different minority types. Second, major ethnic identity tensions are based on contested normative claims in which one side upholds a remedial justice approach and the other side maintains a forward-looking approach to justice. International norms are not helpful in dealing with such normative clashes\(^2\). Third, it is also unclear who the group is in the Ukrainian case; for example, is it the Russians or the Russophone population, especially given that identity boundaries

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\(^2\) This shortcoming is true for most cases in post-communism.
are very blurred and fluid in the case of Ukraine. Due to this complexity on the ground in specific cases, and differences between Western and non-Western, for example post-Communist, context – there is a need for a more communicative-based approach in designing norms and policies. For these reasons, a coherent application of international minority rights protections is hardly possible and not very helpful in the case of Ukraine, even though it provides valuable orienting principles.

Third, the INMR is self-contradictory as it, for example, supports both the right to territorial integrity and the right to national self-determination. This leads to appealing to the INMR by stakeholders with opposing claims and as a result to a logical dead-end even in case of a reasoned discussion. In addition, the “national minority” category is frustratingly elusive. As Keating has put it, it is fruitless to speak of nation’s right to self-determination since it is the claim to self-determination that helps to define a nation (Keating 2007).

Fourth, the INMR lacks effectiveness as it is difficult to appeal to judiciary system and restore the violated rights with any of the INMR documents. Moreover, besides lacking a clear sanctions mechanism, there is also no continuity and coherence. For example, such European monitoring mechanism as the European Union’s regular report on national minorities is characterized by ad hocism (Hughes and Sasse 2003: 16). Interestingly the World Bank procedures, including the principles respecting national minorities and indigenous populations, are considered to be more effective due to the World Bank internal monitoring of their implementation in a variety of contexts.

Fifth, the INMR is also seen as self-interested, paternalistic and hypocritical which significantly jeopardizes its legitimacy and thus effectiveness. Although these aspects are interrelated, I will discuss them in turn since each of them is complex in itself.

Thus part of the problem with legitimacy is that international actors, including the European Union, which is the main international force from the perspective of post-communist states, do not comply with many so-called international national minority regulations themselves. Moreover, sometimes these norms are not even part of the Western states’ national legislation. For example, in formulating its stance on minority issues the EU drew from the OSCE norms (Hughes, Sasse

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3 In the sense of prioritizing the interests of Western states who are more engaged in promoting the regime
Of all the ‘Copenhagen criteria’, that are used by the EU to assess the eligibility of non-member state for prospective EU accession, minority rights protection is the most weakly defined by the EU as it lacks a clear foundation in Europe’s own law, and there are no established internal EU benchmarks (Hughes and Sasse 2003: 12). The EU regular report on national minorities resorts to ambiguous references to ‘international standards’ or ‘European standards’, while these standards are never specified (Hughes and Sasse 2003: 17). Examination of minority abuse falls disproportionately upon societies in Eastern Europe. The behavior of Romania and Slovakia towards their Hungarian minorities is subject to a scrutiny absent regarding France and its Arab minority for example (Burgess 1996: 24). Germany does not consider its Turks a national minority. France, Greece and the Netherlands also have not signed the treaty on national minority protection. While minority issues have been at the forefront of the enlargement rhetoric and are often singled out as a prime example of EU’s positive establishing impact in Central and Eastern Europe, the EU has in fact promoted norms, which lack a basis in EU’s own law and do not directly translate into the acquis communautaire. Minority rights fall outside the European Commission’s and the EU’s traditional catalogue of fundamental freedoms and competences (Sasse 2005: 1). A double standard is apparent: new democratic states are forced to choose between the economic advantage of membership in the EU and legislation designed to protect the language and culture of the majority group (Johns 2003: 682). Another concern is that the candidate countries need to adopt the entire acquis of the EU with only a few transitional phase-ins” and many of changes the East is forced to make do not reflect the laws of the West and accession process imposes “double standard in a handful of areas, chiefly the protection of ethnic minority rights, were candidates are asked to meet standards that the EU-15 have never met themselves” (Johns 2003: 683-684).

In relation to this problem of hypocrisy, the INMR is also viewed as oppressive and unjust by local actors. For example, a Ukrainian activist from Donetsk responded to my question about the possibility of Canadian-type (as he called it) dialogue between cultures in Ukraine with strong negativism:

“No, no, no… We are now going through the stage that other countries have gone through before. … What was the intercultural dialogue in the US some time ago: between Indians and whites?… Therefore let them not be so refined today and demand other societies to be different when they go through such a stage.”
Thus the justice of international principles is challenged as in the view of my respondent no universal system of rights and principles can fit all the countries since these countries are at different stages of development. Instead, applying same principles in such different kinds of societies would be itself unjust.

Another part of legitimacy problem is that international actors often act based on strategic interests, not normative commitments, despite declaring otherwise. For example, a notable feature of the EU regular report on national minorities is that two minority groups are consistently stressed: Russo-phone minority in Estonia and Latvia and Roma people (Hughes, Sasse 2003: 14). Emphasis on these minorities suggests that the EU is more concerned with its external relations with its most powerful neighbor and main energy supplier, and own narrow soft security migration problems, than with minority protection as a norm per se. In addition, the report strikingly emphasizes the integration of minorities; to such an extent that it is plausible to argue that they indicate a preference for assimilation (Hughes and Sasse 2003: 16). In addition, the Commissioner is charged with identifying potential conflict in the entire OSCE region, not just in Eastern Europe. Yet Western countries have historically not been examined equally with the East. All fourteen recommendations produced by the OSCE were on Eastern European cases. This is explained by two facts: on the one hand the OSCE avoids criticizing the hand that feeds it, and on the other hand the HCNM knows that recommendation to Western countries will be ignored and thus monitoring Eastern Europe is more effective (Johns 2003: 689). Kymlicka (2005) also criticizes the international minority rights regime more generally. He observes that when a minority group acted extra-constitutionally, the HCNM acted to satisfy that minority to reduce danger. This was, for example, the case with Russians in Crimea in 1990-s. Yet those minorities who acted within the national legal framework were not satisfied by the OSCE in order not to increase tensions. This is perverse from the point of view of justice, but this is the inevitable outcome of the security-based approach underlying the INMR (Kymlicka 2005: 209-210). Paradoxically, such security-based logic undermines the long-term security, which would require that both state and minorities moderate their claims, accept democratic negotiations and seek fair accommodation. Long-term security needs state-minority relations to be guided by some conception of justice and rights, and not just
power politics. Therefore, Kymlicka suggests, the legal rights track needs to supplement the security track in international minority rights protection (Kymlicka 2005: 210).

The final part of the legitimacy problem is **paternalism** of the INMR. Already in 1996 Burgess has diagnosed that the language of civilization has now made an explicit comeback (Burgess 1996: 25). The notion is essentially one of civilizing a part of Europe scarred by collectivist traditions and cultural intolerance. The task is to bring modern ideas of toleration and fair play to people unfamiliar with compromise and restraint (Burgess 1996: 25). Moreover, pushing this problem further, Kymlicka is also concerned that this aspect of the international system may be disallowing indigenous developments. He stresses that the initial impulse to develop international minority protection norms was the undue pessimism about the likelihood of ethnic violence. Yet if violence is unlikely, as it was later reassessed, post-communist states might as well develop their own settlements on the ethnic issue in their own speed. It is argued that Western countries’ success in accommodation is because it was gradually negotiated internally and not imposed (Kymlicka 2005: 215). Western intervention should be aimed at creating conditions for post-communist societies to work out their own accounts of minority rights through peaceful and democratic deliberations, rather than seeking to impose some canonical set of internationally defined minority rights. It can be even counterproductive to jump-start this process through the codification and imposition of international norms of substantive minority rights (Kymlicka 2005: 216).

The next shortcoming is that, while sometimes minorities are not attended to due to strategic interests of states or international bodies, at other times minorities are accommodated in cases when they rather need to be restrained. In other words, minorities may perform two different roles: they may be either victims or oppressors, while the INMR only focuses on minorities as victims. The dissolution of the Soviet Union and Yugoslavia, however, reveal a paradox: the emergence of new large ethnic minorities means that it is now necessary to establish more extensive guarantees of minority rights; but ethnic minorities have dramatically demonstrated their ability to undermine and destroy the state itself (Musgrave: 147). After World War II a diplomat declared during the discussion that led to the UN Charter: “what the world needs now is not protection for minorities but protection from minorities” (Burgess 1996: 23). This problem is not less relevant in today’s Europe.
The problem of minorities as oppressors is very present in contemporary Ukraine with its pro-Russian minority that is being instrumentalized according to the strategic economic and geopolitical interests of its kin-state. From the very beginning of post-Soviet era, the Russian Federation has been indicating that it will not remain indifferent to the fate of ethnic Russians in other successor states. In August 1991 Pavel Voshchanov, Yeltsin’s press-secretary, declared that Russia must take care of the Russian minorities that live in other states and “not forget that these lands were settled by Russians”. In October 1991 the Russian Federation circulated a document of the Russian State Council which noted that in some areas of the disintegrating Soviet Union there had been “infringements of the rights of Russians”, and declared that the “rights, lives, honor and dignity of ethnic Russians and others coming from Russia” would be defended by “all legitimate forms and methods”. In October 1992, Boris Yeltsin declared that Russia would not tolerate the violation of ethnic Russians human rights (Musgrave: 141). Yet this rhetoric was never realized in practice under Yeltsin himself. While over a decade later, his follower, Vladimir Putin, has militarily invaded and occupied Ukraine’s Crimean peninsula with the unfounded excuse of protecting Crimea’s Russian speakers from the nationalizing Ukrainian government. Therefore, although the INMR generally impact deliberative capacity positively through enhancing various groups’ inclusion, the Ukrainian majority feels disadvantaged in Ukraine because of the post-colonial trauma that it is bearing, and because of the special geopolitical context around this country.

**Deliberative Democratic Potential for the INMR**

The discussed shortcomings suggest that there is a need for a greater use of the *deliberative democratic approach* in designing and implementing the INMR provisions. While according to Kymlicka most principles developed in the West are applicable in Eastern and Central Europe, although their implementation may be more difficult, there are also some *cases that do not have analogues* in the West and therefore the West provides no useful models or principles. Two of these hard cases are relevant for Ukraine: the case of Crimean Tatars and the case of Russian settlers in the Near Abroad (Kymlicka and Opalski et al. 2005: 73). For these cases, Kymlicka argues, we need completely new models of ethno-cultural justice (Kymlicka and Opalski et al. 2005: 82). Given the problems with often hypocritical, incoherent and self-interested nature of the European national minority protection, the EU is a poor advocate for national minority rights in
other states. Instead, real stakeholders on the ground need to be involved both in order to find the best solutions and for them to be legitimate.

More generally, Kymlicka (2005) argues that there is a need to develop a new approach in international minority rights that would be neither too strong, nor too weak\(^4\), but enable effective participation of minority groups in public affairs, particularly in matters affecting them. Therefore, although international norms of minority rights protection represent a good basic set of criteria of minority rights accommodation, they need to be developed further or supplemented by other policies. I agree with Kymlicka that communication and moderation need to supplement the security track that international minority rights are based on now. I would suggest, however, that deliberative democratic track is more effective than the legal rights track he is suggesting. This would make this international regime more context specific and more legitimate, thus also addressing Kymlicka’s concern about indigenous development.

For example, the rigidity of the INMR would disappear if the decisions on specific cases where arrived at the process of deliberation since in this way the decisions arrived at may be different (for example, PR electoral system in some states, while SMD or other electoral system in other states). Moreover, in the deliberative setting such decisions can be renegotiated over time should the needs of the minority groups change or the demographic situation itself.

Next, to complexity on the ground, including controversial statuses of cultural group, normative and logical deadlocks have a chance of being meaningfully addresses though arriving at a compromise in the process of deliberation. Alternatively, the formal negotiations process or, even worse, the blind application of some internationally borrowed solutions will inevitably lead to dissatisfaction.

Similarly, deliberative democracy holds potential in resolving the dilemma of INMR’s self-contradictory nature. If the INMR norms are not treated as universal – they cannot be contradictory, rather different norms may be decided to be the most relevant in different cases.

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\(^4\) It is the feature of contemporary minority rights provisions that Article 1 of the International Covenant on Civil and Political Rights (ICCPR) is too weak and Article 27 of the ICCPR is too strong in their treatment of minority rights, saying nothing of the fact that they are contradictory (Kymlicka 2001: 123).
Turning to the effectiveness problem of the INMR – deliberative democracy can also be helpful here: deliberation-based decision-making holds more legitimacy and therefore is more effective on the stage of implementation. Nevertheless, there is still the need to grant certain status to the outcome of such deliberation, so that its decision could have legal consequences and protected by the sanctions of the legal system.

Holding public deliberations as a way of arriving at the national minority protection decisions, would also eliminate the legitimacy problem which is rooted in the current INMR being seen as hypocritical, paternalistic and strategic in nature. In addition deliberative democracy would encourage indigenous developments.

Finally, deliberation allows differentiating on the case-to-case basis the role that minority is plating within the larger society and in connection to this decide on the policies to accommodate its claims in order to avoid the problem of minoritized majorities.

This deliberative democratic turn is yet to happen in the context of the INMR, although certain sporadic improvements are already occurring. For example, the OSCE’s HCNM is among other functions charged with encouraging various forms of structural dialogue between the local authorities and minority representatives so that these parties would interact and find solutions on their own (Johns 2003: 688).

Possible Impact of International Actors

Despite the discussed problems with the INMR, there are also a number of potential or actual positive effects of international actors and norms on deliberative capacity within post-Soviet states.

The first important issue is the potential for mediating discussions among the local actors. For example, in the case of Ukraine, both Ukrainian-cultured and Russian-cultured groups, as well as Crimean Tatars, refer to international and especially European principles, norms, and documents in their lobbying of particular outcomes favorable for their respective group. For example, recently, the pro-Russian “Party of Regions” and nationalist “Svoboda” party have both issued a language law draft: the former suggesting the introduction of Russian as a second state language and the latter suggesting legislating that Ukrainian as the only state language and that it
needs to be developed in view of its dramatic past. Interestingly both law drafts appealed to the European Charter for Regional and Minority Languages in their logic. Thus, even though the content of groups’ demands is often opposite, the kinds of arguments brought in support of these demands are much more compatible with each other. In this context, international actors may have an important role in influencing the way in which principles of democracy and human rights are being interpreted and applied by the groups as they are seen as of moral authority by all sides. This feature is also important since such perception of international actors creates the context in which the appeal to the INMR has a positive impact on the deliberative capacity of a discursive system by raising its consequentialism in terms of effecting local political of social affairs.

Second, notwithstanding all the discussed problems, main achievement of the EU in the area of minority protection was that it successfully implanted the objective of ‘minority protection’ as an integral part of the political rhetoric of ‘EU speak’ in the Central and Eastern European countries, that may represent a step forward in the transmission of values that will be internalized and reflected, given time, in institutional changes and modified political behavior (Hughes and Sasse 2003: 30). Indeed, no matter which political force, ideology or interest group specific politicians represent they routinely try to frame their positions in reference to the international norms and principles, including the ones dealing with national minorities. This feature is also important since it impacts the deliberative capacity of the new democratizing states positively, as broadened inclusion of a variety of groups’ needs into policy-making is a feature of high deliberative capacity.

Third, the EU is able to promote deliberation-enhancing institutions through its conditionality policy. According to Fesenko, elements of liberal-pluralist approach can be enhanced by Ukraine’s gradual advancement into European institutions. Kyiv is prepared to make serious domestic policy concessions in instances where the integration of Ukraine into European structures is at stake. The best example is the introduction in Ukraine of a moratorium on capital punishment following pressure of the Council of Europe, despite the fact that a considerable part of the political elite and the majority of the population – according to the data of sociological surveys – support the death penalty (Fesenko 2005: 295). This potential function is very important. To illustrate, the main problem with implementing centripetalism - or its elements that would enhance deliberation - is that
it is hard to create political incentives for introducing the moderation/communication incentives into the political system. If there is no benevolent leader who could implement such institutional innovations at a cost of his own electoral support, the only hope is for the pressure from the international community. Thus Europeanization may create a necessary carrot offered for following the normative rules, that otherwise lack political will behind them. Thus the EU can endorse the ideas of deliberation. Such external ideational pressure has helped to reverse the highly discriminatory policies against minorities in Estonia and Latvia through this conditionality mechanism.

Conclusions
To summarize the above discussion, the international effects on the deliberative capacity in post-Soviet states are mixed. First, the international national minority regime suffers from undue universalism and norms rigidity that does not account for local specificities and the dynamic nature of identity-related needs. In connection to this the INMR also lacks authenticity. Second, the INMR is hard to use since it is characterized by contradictory norms, lack of coherence, conceptual fuzziness and lacks effective monitoring mechanisms and enforcement tools. Finally, the INMR also lacks legitimacy among those it intends to protect and this jeopardizes its effectiveness on the ground. Specifically, it is often viewed as hypocritical, paternalistic and/or self-interested.

Because of these shortcomings, a new approach to national minority protection is needed. I argue that a deliberative democratic approach holds potential in terms of addressing the discussed shortcomings and becoming a foundation for further development of the new regime. The shortcomings may be solved or significantly reduced by adding greater degree of deliberation, especially with the local stakeholders.

At the same time, the international actors do have certain positive effects on local deliberative capacity: either potential or realized. Thus, they are seen as legitimate mediation moderators which will be a crucial asset if INMR does turn more deliberative. Second, the international national minority regime has succeeded in spreading minority-sensitive discourse. Even if often hypocritical, this discourse frames internal debates within the post-Soviet states and
brings national minorities issues on the agenda. Third, international actors, especially the EU in the context of its conditionality policy may play a crucial role in terms of promoting the deliberation-enhancing institutions that are extremely hard to adopt without such external pressure.

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