



**Old and New Minorities:
Reconciling Diversity and Cohesion**

A Human Rights Model for Minority Integration

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Immigration, Minorities and Multiculturalism in Democracies

Fairmont Queen Elizabeth
Montréal, Quebec, Canada
October 24-27, 2007

Abstract

The central question of this paper is whether it is possible to develop a defensible model for minority integration encompassing old and new minority groups that reconciles unity and diversity.¹ Respecting and reconciling these two, apparently conflicting, principles present for contemporary societies major difficulties in conceptual, practical and policy terms. If they privilege unity, the risk is to alienate minorities, provoke resistance, and endanger the very unity they seek. If they refuse to recognise diversity, they would not be able to accommodate the conflicting demands of their communities and pursue common goals, and would risk disintegration. How to reconcile the demands of cultural diversity and political unity, that is, how to create a political community that is both cohesive and stable and satisfies the legitimate aspirations of minorities, has been a subject of considerable discussion ever since the rise of the modern state, and particularly during the past few decades.

The present paper contends that it is possible to address these issues by bridging two fields of research: minorities and migration. Studying the interaction and complementarities between 'old' and 'new' minority groups is a rather new task because so far these topics have been studied in isolation from each other. It is also an important task for future research in Europe where many states have established systems of 'old' minority rights, but have not yet developed sound policies for the integration of new minority groups originating from migration.

Introduction

Accommodating diversity and cohesion in contemporary society is more problematic and uncertain than some decades ago when the implementation of multiculturalism policies was facilitated by an optimistic attitude towards diversity. Europe is facing much more complex dilemmas than traditional immigration countries - Canada, Australia, United States - had to face in the 1970s-1980s when they initially adopted multiculturalism policies. In those countries most immigrant groups had European origins and even those stemming from rural and economically backward parts of Europe could eventually integrate because their European origins made them culturally similar to the existing core groups, mainly from some northern and western European countries. In contemporary Europe the new minority groups stemming from migration have mostly non-European origins and display a strong distinctiveness in terms of culture, language and especially religious faith. The events starting from 11 September 2001 have amplified this divide, adversely impacting on the image of some minority groups, Muslims in particular, and increasing the danger of racism, xenophobia and intolerance.²

Moreover, in Europe, a deteriorated economic, political and social situation is generally not favourable towards policies that encourage the promotion of diversity through, for instance, affirmative actions or exemptions from general rules. And indeed, in some countries that have

¹ The terms *old, historical, traditional, autochthonous minorities* refer to communities whose members have a distinct language and/or culture or religion compared to the rest of the population. Very often, they became minorities as a consequence of a re-drawing of international borders and their settlement area changing from the sovereignty of one country to another; or they are ethnic groups which, for various reasons, did not achieve statehood of their own and instead form part of a larger country or several countries. The *new minority groups stemming from migration* refers to groups formed by the decision of individuals and families to leave their original homeland and emigrate to another country generally for economic and, sometimes, also for political reasons. They consist, thus, of migrants and refugees and their descendants who are living, on a more than merely transitional basis, in another country than that of their origin.

² EUMC, *Report on Anti-Islamic reactions within the European Union after the acts of terror against the USA, 12th September - 31st December 2001*, Vienna, May 2002.

celebrated multiculturalism, such as the Netherlands, this model is experiencing a reverse process even if there are signs that multiculturalism is still a current policy option.

As migration flows continue to increase to an unprecedented high level,³ the question of social cohesion reveals unequivocal urgency for many countries that consider themselves to be reasonably homogenous and cohesive. As a result, the process of integration of minorities is seen as an important and urgent strategy to be adopted by most countries in order to retain an adequate level of social cohesion and prosperity.

State Responses to the Challenge of Diversity and Cohesion

State responses to cultural, linguistic, ethnic and religious diversity that stems from minorities, old and new alike - perceived by some as a problem and by others as an enriching component of the whole society - can be analysed from different perspectives. Literature, mainly from comparative constitutional law, social and political sciences, has identified a variety of models for accommodating minority claims and cohesion.

By combining the analysis developed by scholars in different fields - from studies on 'old' minorities to migration - the following broad typologies of state responses to diversity and cohesion can be identified: (a) the exclusionist model; (b) the assimilationist model; and (c) the multicultural model.

1) The *exclusionist, repressive, nationalist* model denies minority groups civic standing and respectful participation in the polity by perpetuating primordial and ethnonationalist ideologies and by putting emphasis on blood loyalty, common ethnic origin and homogeneous culture (one people-one nation). The national unity and homogeneity of the population is ideologically emphasised in terms of its exclusiveness and superiority to the point of legitimising policies that officially deny the existence of minorities: the banning of the use of minority languages in schools and in public offices, but also in private relationships, the enforced translation of names, surnames and place-names, etc. In this model that has historically led to policies of 'ethnic cleansing' and even genocide, minorities are subject to systematic forms of hostility and aggression. With regard to access to citizenship, this model imposes strong barriers to naturalisation by way of high institutional requirements.

In a perspective of developing a viable option for minority integration in a democratic society, the repressive, nationalist model can be easily discarded from a theoretical and historical viewpoint.

2) The *assimilationist* model requires minorities to give up their identity in order to be integrated in the mainstream society. This model has two variations: a) a *radical* version that requires minority communities to renounce their particular ethnic or cultural identity and embrace the culture of the majority community, and b) an *intermediate*, half-way position that tolerates differences in so far as they are confined into the private realm (ethnicity as private matter following the pattern of institutional separation between Church and State). Usually both versions provide for easy formal access to citizenship, among other things, through *jus soli* acquisition at birth, although a high degree of assimilation is required and little or no recognition to cultural differences is given.

The former version of assimilation, the 'pure assimilation' model (a) has two basic disadvantages: firstly, it expects minorities to become assimilated into majority culture that does not reflect the presence and values of minorities; minorities are thus not able to identify with it and offer it their

³ See, John Salt, "2005 Report – Current Trends in International Migration in Europe", CDMG(2006)22, Council of Europe, March 2006.

whole-hearted support. Secondly, this radical version of the assimilationist model would not be an option available to societies that are committed to equal respect for individuals and their identities.

The second variant of the assimilationist model, defined also as *agnostic, liberal, colour-blind, laissez faire* model (b), is inspired by the principle of formal equality of citizens: it provides general rules for the protection of individual rights, but it is indifferent to the development and promotion of ethnic, religious, cultural, and linguistic identities of minorities as groups.

In both versions of the assimilationist model the emphasis on socio-cultural assimilation, or one-way adoption of the majority culture, acts more as a barrier than as facilitator of successful integration and healthy inter-group relations. Indeed, many minority groups interpret the emphasis on assimilation as fundamentally hostile to them, at least in effect, if not in intent. The resulting accumulation of perceived 'hostility' has the effect of delaying integration and probably reduces the prospects for realising the kinds of accommodation that focus on the broader community. Pressures to assimilate tend to sharpen group differences and polarise perceptions and behaviour, rather than diminish them.

In the milder version of assimilation (b), the private-public distinction, namely the division between spheres governed by law (public realm) and spheres left to the individual choices (private realm), plays a crucial role. Recognising cultural or religious differences cannot thus be accepted, at least in the public sphere. The unity of the society is sought and located in the public realm, whereas diversity is left free to flourish solely in the private realm that includes not only the family but also the civil society.

In much of the British and American literature, this model is called *integration* and distinguished from *assimilation*. However this is linguistically arbitrary and obscures the fact that this model involves assimilation too, at least partially, and differs from its radical version only in degree. The main criticism to this intermediate model is that minority cultures are merely tolerated and can flourish or even only survive solely in the private realm, whereas we will see that some forms of integration in the public realm is also relevant.

More generally, one of the main problems with the assimilationist model is that it is not clear *what* the minorities are to be assimilated into. In fact, although the cultural structure of a society has some internal coherence, it is never a homogeneous and unified whole: as it will be argued in the next paragraphs, it consists of a core of democratic principles and human rights standards, but it is also made up of diverse and conflicting strands and several different practices, which can in turn be interpreted and related in several different ways. The assimilationist model ignores all this in order to arrive at a homogenised and highly abridged and distorted version of the national culture; accordingly minorities are assimilated not into the collective culture in all its richness and complexity but into an "ideologue's crude and sanitised version of it."

Since the assimilation model, in its variations, does nothing to relieve the alienation of minorities from the public realm, it is unable to demand their support and cannot provide a stable basis of unity. And, moreover, since it does nothing to reduce the disadvantages of minorities, it runs the risk of encouraging fundamentalism among them.⁴

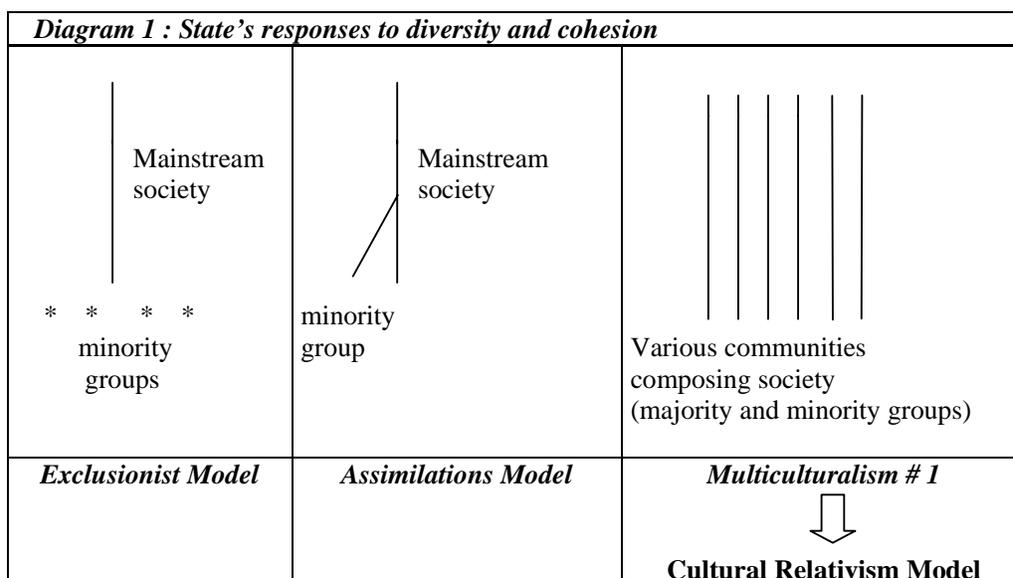
⁴ As Bauböck notes: "[T] here is a real problem of widespread ambivalence toward, or even sympathy for, the "causes" of the terrorists within socially marginalized sections of Muslim communities." Rainer Bauböck, "Farewell to Multiculturalism? Sharing Values and Identities in Societies of Immigration", in 3(1) *Journal of International Migration and Integration* (2002), 1-16.

3) The *pluralist, promotional, multicultural, intercultural* model does not condition integration and political belonging on cultural conformity. As in the previous model, two versions can be identified. A first typology is based on a *radical relativism of values* (a): according to this model minorities are first of all defined in terms of their group membership, which is usually determined by their national origin or their religion (e.g. Muslims, Jews). Individuals are above all cultural beings and embedded in specific communities, the ultimate source of what gives meaning to people's lives. All that deeply matters to them - their customs, practices, values, sense of identity, historical continuity, norms of behaviour and patterns of family life - are derived from their cultures. Individuals owe their primary loyalty to their respective communities and derivatively and secondarily to the state.

This version of the multicultural model (a) is based on a perspective of *cultural relativism*: it advocates that all cultures present in a territory, including those of newly arrived immigrants, must be recognised and preserved, and that the state should facilitate minorities' cultures at any rate.

This radical version has two main disadvantages: firstly, it can lead to the creation of parallel societies with recognition, for instance, of elements of foreign legal systems, especially on family and criminal law that might be in contrast with democracy and human rights principles. On this view, while multiculturalism policies may have noble and sincere intentions - to create a more inclusive and just society - they have had dire consequences in practice, encouraging 'ethnic separatism' and 'ethnic ghettos', resulting in society becoming increasingly unstable. An additional aspect of this criticism, namely that multiculturalism is not integrative but ultimately segregationist, is that the philosophy of multiculturalism, at least in its radical version would suggest that minorities should be absolved or discouraged from adopting a superordinate political identity: radical forms of multiculturalism, it is said, recognise minority identities without simultaneously linking them to an overarching identification with (and loyalty to) the larger political community and state. Secondly, multiculturalism raises the problem of anti-democratic practices carried out by members of minorities against their own fellows, the so-called 'internal cruelty' within minority groups. In this perspective the rights of most vulnerable members of minority groups, children and women in particular, are sacrificed in the name of cultural relativism.

The following diagram summarises the main characteristics and outcomes of the most common models so far analysed that, as discussed earlier, should be discarded as models contributing to foster the integration of minorities:



In the *exclusionist* model minority groups – symbolised by stars in the graphic - are marginalised and lack civic standing and participation in the polity. In the *assimilationist* model a minority group – identified with a side line - is required to give up its distinctive ethnic or cultural identity and embrace the majority culture in order to be integrated in the mainstream society. A variation of the pluralist or multicultural model of integration is the *cultural relativism* model whereby all groups present in a territory – represented in the diagram with a series of parallel lines - must be recognised and preserved on an equal footing with the majority groups even if their culture or traditions are anti-democratic and in breach of human rights.

The 'Tree Model' For Minority Integration

In light of the criticisms raised against multiculturalism, especially in the form of cultural relativism, some have even argued that, at least in Europe, multiculturalism requires “a dignified retirement”.⁵ Multiculturalism supporters observe though that rather than the multicultural policies themselves is perhaps the *discourse* or *rhetoric* of multiculturalism that has lost force and fascination and has become less fashionable.

Hence, in many European countries and most EC discourse, the framework in which diversity is accommodated has shifted away from *multiculturalism* in favour of *integration* policies. This is not just a terminological shift, but it has also theoretical and practical repercussions: this change emphasises a factual distinction from celebrating diversity to celebrating communalities.

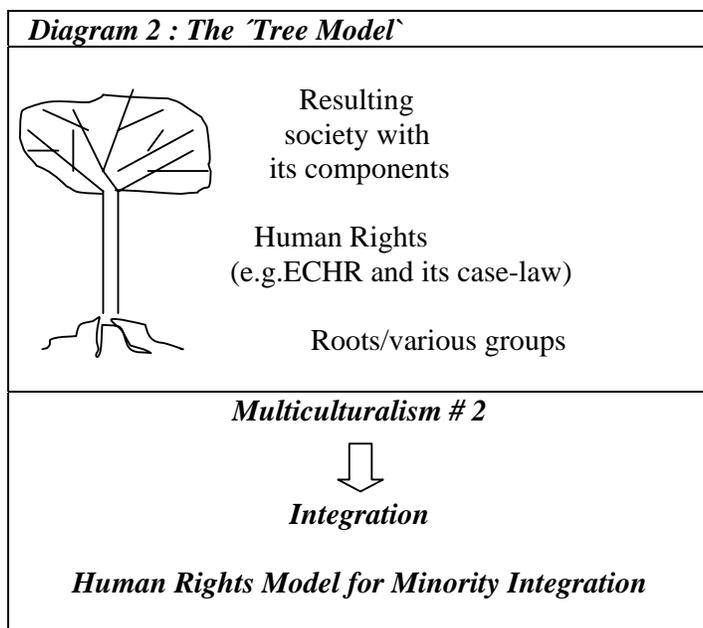
The integration model defended in this paper is a variation of the pluralist-multicultural model or post-multiculturalism (b). This model - the human rights minority integration model or 'Tree Model' (b) – is based on the assumption that, on the one hand, the recognition, protection and promotion of minorities are integral components of a state's constitution and appear among its fundamental values, and on the other hand, that in the private and public realms, minority and majority communities are expected to share some core universal principles such as human rights, democracy, rule of law, gender equality, minority rights.⁶ These core values constitute the foundation of a stable and prosperous society and the standards against which minority claims will be assessed, recognised and promoted. Therefore, this model advocates that no polity can be stable and cohesive unless all its members share at least a core of common values that will permit to build up the necessary bonds of solidarity and common sense of belonging.

In comparison with analogous models such as the Canadian *salad bowl* and *cultural mosaic* models, this model seeks to build up a stable and cohesive community not through the emphasis on the differences among individuals and groups but conversely through the commitment to a core of commonly accepted values. The state, under the supervision of supra-national bodies such as, for Europe, the CoE European Court of Human Rights (ECHR) and the EU European Court of Justice (ECJ), is the custodian of these principles and values as enshrined in main human rights treaties and further specified by their implementing mechanisms.

⁵ Trevor Phillips (Chairman, Commission for Racial Equality UK), Presentation at the Multicultural Futures Conference, Monash Centre, Prato, 22-23 September 2004.

⁶ Art. I-2 of the Treaty Establishing a Constitution for Europe lists among the founding values of the European Union 'human rights' including the rights of persons belonging to minorities.

The following graphic sums up the main characteristics of the human rights integration model or 'tree model' of minority integration.



The tree represents the permanent dialogue among groups – minority and majority groups – present in a society: in the model the roots symbolise the various groups in society and the foliage with the branches represent the resulting society in which unity and diversity coexist in harmony. The crown of the tree – the diverse but integrated society - is sustained by a trunk representing the catalogue of human rights as those enshrined in the ECHR and its case-law, which all European countries are bound to respect. The human rights trunk functions as a 'filter' through which only those minority claims, practices or traditions that are compatible with human rights standards will be admitted and recognised in society.

This model has two strong components: (a) the recognition of diversity, namely the recognition of religious, ethnic, linguistic and cultural identity and groups that identify with them, through the extension of the scope of application of certain provisions typical of the protection of historical minorities, such as those from the CoE Framework Convention on National Minorities, to all minority groups, including new minority groups stemming from migration; (b) the preservation of unity and cohesion through the protection of a core of common values based on the universal human rights catalogue contextualised and detailed, as far as Europe is concerned, by the European Court of Human Rights and its case-law.⁷ Hence, according to this model only those minority groups that acknowledge and are committed to human and minority rights standards will be recognised as worth and valuable to build up a stable and cohesive community.

The two components of the Tree Model – human and minority rights – represent the legal framework around which it will be possible to create the basis of the 'Tree Model' for Minority Integration as

⁷ It is worth recalling that the universality, indivisibility and interdependency of human rights has been acknowledged by the UN World Conference on Human Rights held in Vienna in 1993 (A/CONF.157/23, 12 July 1993, para. 5), and later confirmed in the 2000 UN Millennium Declaration (GA Res. 55/2, 8 September 2000).

they are composed of a series of specific and more general principles inferred from the analysis of the jurisprudence of the Strasbourg Court that can guide decision-making, legal and social operators, and others, when facing with controversies and conflicts between diversity and unity

Minority rights, along with human rights, represent important tools for the integration of minorities and in particular of new minority groups as they create a legal framework in which minorities can see their claims recognised within the limits of the legal provisions enshrined in the texts of relevant international instruments as interpreted and implemented by national and supranational bodies. Moreover, this legal framework is composed of rights and freedoms but also of limitations and restrictions thereby providing a guarantee that minority claims will not exceed certain limits. In this way, minority claims for diversity and the more general concern for unity, cohesion, security and public order can be accommodated in the framework of an 'institutionalised' dialogue in which national and supranational bodies, in cooperation with each other, act as objective and neutral third parties.

International Human Rights Law as Reference for Minority-Majority Relations

Common criticisms when applying the human rights catalogue as a limit to the anti-democratic tendency of certain forms of multiculturalism or cultural relativism are that few specific cases are decided by international tribunals in comparison to the numerous issues arising from cultural claims, and treaty texts are formulated at a high level of abstraction leaving much room for interpretation. In other words, the human rights catalogue is deemed to be too vague and leaves too much room for interpretation to provide any meaningful guidelines to solve the wide variety of complex issues arising from the clashes between diversity and cohesion and the integration of minorities

Main international human rights instruments, such as the European Convention of Human Rights, set forth indeed relatively broad principles for the protection of human rights. In this regard they resemble domestic bills of rights or other constitutional analogous more than legal codes. But, if it is true that human rights are often vague and broad in their formulation, it is also true that through judgments and legal opinions by international monitoring bodies such as the UN Human Rights Committee, the Strasbourg Court or the Advisory Committee on the Framework Convention, they become more explicit and detailed, and can become applicable in broader and different situations beyond the specific case that have originated the judgment or opinion. It is indeed the case-law and collection of opinions of supervisory organs that give life and breath to the provisions of these international instruments.

The European Convention on Human Rights, for instance, is one of the oldest international legal instruments purporting to guarantee human rights in Europe. Its system of protection is one of the most developed and provides a rich source of international human rights jurisprudence. It is also a unique system, constituting as it does an "international common law" and self-referential regime. It is a common law system in that its life-blood is the case-law of the Court (and the former Commission), who considers itself to be bound by precedent (the principle of *stare decisis*). And it is a self-referential system in that the Strasbourg Court operates independently from the courts of the States Parties to the Convention, for whom the European Court is not a "fourth instance" tribunal, but interprets the contested domestic law or practice exclusively for its compatibility with the Convention. Despite the independent role of the Strasbourg Court vis-à-vis national courts, the express mandate of the Strasbourg Court, to develop and articulate a "common European standard" for human rights protection,⁸ demands at least some attention to the domestic law and practice in a

⁸ The Preamble of the European Convention on Human Rights refers to the "common understanding and observance of the Human Rights upon which they [Fundamental Freedoms] depend."

number of States Parties, in order to maintain the integrity of the system at the international level.⁹

With its several decades of interpretative jurisprudence, the European Convention on Human Rights has engendered the most sophisticated jurisprudence of any of the international judicial instruments promulgated to protect human rights. The key to understanding the Convention lies in the case-law of the European Court, whose role it is to interpret the Convention.¹⁰ The Strasbourg Court has no jurisdiction to review laws *in abstracto*, only concrete cases brought before it by individuals or, in rare instances, by one or more states parties. In this attribute, the Strasbourg system parallels the common law rather than the civil law judicial systems, the latter of which often have constitutional courts conducting just such abstract reviews.

This present paper contends that from concrete individual cases brought before the Strasbourg Court it is possible to infer general principles and guidelines useful to solve the complex dilemmas of contemporary ethnically diverse societies. The Strasbourg system is particularly appropriate in this regard as the judgments of the European Court of Human Rights are legally binding upon States Parties and thus their impact is more effective than the views of the UN Human Rights Committee or the opinions of the Advisory Committee of the Framework Convention. Besides, the geographical limitation of this instrument and the higher degree of homogeneity among its Members States in comparison to the UN instruments, simplify the process of searching for a consensus around the issues brought under its scrutiny.

Moreover, the Convention norms have found application beyond their original scope and have consequently engendered a rich jurisprudence affording protection to groups and situations, which were not originally foreseen. Precisely this jurisprudence can provide a set of sophisticated guidelines that can be applied in the conflicts between unity and diversity beyond the specific case that have originated the individual application before the Court.

In other words, although, the jurisprudence of the Strasbourg Court reflects the implementation of the Convention articles in their specific terms and in light of the facts of each individual case, it is also illustrative of a wider conception of human rights norms as reflections of social interests and moral values in a broader European context on which a model for minority integration can be firmly based.

The list below (Table 1) represents a selected, not exhaustive catalogue of main minority claims and principles on minority and human rights protection as determined by the Strasbourg Court. The selection of issues and principles has been determined by the most common demands raised by minority groups, old and new alike, with a special attention on religiously related questions, as the most topical and pressing in our contemporary diverse society.

States may certainly grant broader and more sophisticated range of rights according to the specific circumstances of the minority groups living on their territory as well as historical, economic, political and social factors. Yet, states cannot refuse to recognise a minimum core of rights, a common denominator of minority protection, in line with the European Convention on Human Rights and the jurisprudence of the Strasbourg Court. Similarly, minority groups will have a clear picture of which are their basic set of rights that states are due to respect and which are, on the other hand, claims and demands that have to be negotiated with the majority as they are neither expressly based on legal provisions nor are they inferred from the jurisprudence of the Strasbourg Court.

⁹ According to the President of the Strasbourg Court, Jean-Paul Costa: “Despite the absence of an *erga omnes* effect of its [ECtHR] judgments, they influence judges and lawmakers in all states parties; they do contribute to harmonizing European standards in the field of rights and freedom.”. Solemn Hearing of the ECtHR, 19 January 2007, Human Rights Information Bulletin, No. 70, Strasbourg, p. 26).

¹⁰ Art. 19 ECHR.

Minority Claims and ECHR'S Case Law Principles

Table 1

<u>Minority Claims</u>	<u>ECHR's Case-law principles</u>
<u>Existence</u>	
Physical integrity	Prohibition of genocide; Prohibition of torture, inhumane/degrading treatment e.g. prohibition of genital cuttings (Art. 3) (see also, UN Genocide Convention)
Existence of a group	Freedom of association (Art. 11) (<i>Sidiropoulos, Stankov, Görzelik</i>)
Official Recognition Registration	Principle deducted from right to existence; For religious minorities the principle is inferred from Art.9 (Freedom of religion) (<i>Metropolitan Church of Bessarabia</i>) Registration if group has no intents contrary to the law, but no right to be recognised as a nation (<i>Görzelik</i>)
Prohibition of forced assimilation	Principle deducted from right to identity/diversity as enshrined in the following articles: Right for private life/home/family (minority lifestyle) (Art. 8); freedom of thought/religion (Art. 9); freedom of expression (Art. 10); freedom of assembly/association(Art. 11); right to education (Art.2/Prot.1); anti-discrimination clause (Art. 14 and Prot.12)
Expulsion of 'integrated aliens'	Prohibition of expulsion of 'integrated aliens' according to criteria set up in Strasbourg case-law, e.g. family ties, that must be balanced against grounds of expulsion (seriousness crime, recidivism, and so on)
<u>Equality</u> <u>Non-discrimination</u>	
Equality	Art. 14 and Protocol 12 – Non-discrimination clause Same treatment for analogous situations; differential treatment for different situations (<i>Thlimmenos</i>)
Differential treatment based on nationality	Only if based on objective and reasonable justifications e.g. differential treatment between EU/non-EU citizens (EU as special legal order) justified in case of expulsion (<i>Moustaquim</i>) but not in case of unemployment benefits (<i>Gaygusuz</i>)
Positive action	No obligation but if granted by a state no interference from Strasbourg (<i>Lindsay</i>) Some level of 'substantiation' as to membership to a minority group may be required to obtain an exemption or benefit not commonly available (<i>Kosteski</i>)
Exemptions from general rules	Granted in a non-discriminatory manner; differential treatment justified only if based on objective and reasonable basis, e.g. conscientious objection (<i>Thlimmenos, Grandrath</i>)
Restrictions Convention rights based on the 'necessary in a democratic society' clause	Strict interpretation of restrictions such as 'protection of morals', 'national security', 'protection of the rights and freedoms of others'; For borderline cases : favourable balancing of individual rights against state interests (<i>Sunday Times</i>)
Minority lifestyle v. general interests	'Special consideration' must be given to minorities but not in breach of superior general interests such as environmental protection (<i>Gypsy Cases</i>)
<u>Identity /Diversity</u>	
<u>Education</u>	
Religious Education	Respect for religious/philosophical parents' convictions also within the public school system (Art. 2/Prot.1) Education provided in an objective, critical and pluralistic manner; prohibition of indoctrination (<i>Kjeldsen, Madsen and Pedersen</i>)

Funding of Private Schools	- No obligation (<i>Belgian Linguistic case</i>) - However, if a state chooses to provide public funding to religious schools then it must be available to other religions without discrimination (<i>Appl. No. 7782/77</i>)
Wearing of Islamic headscarf by students in public schools	If a country/region has a majority Muslim population and has a presence of fundamentalist movements (e.g. Turkey), then it would be legitimate to prohibit wearing Islamic headscarf by students in public schools in order to protect the beliefs of others and/or the peaceful coexistence and to avoid pressure on students who do not practice that religion or on those who belong to another religion (<i>Sahin</i>)
Wearing of Islamic headscarf by teachers in primary schools	A prohibition may be based on the very young age of the pupils and on the imposition on women of a religious precept that is against the message of gender equality/tolerance/respect for others; in addition, under these circumstances, the practice can also have a proselytising effect (<i>Dahlab</i>)
Withdrawing pupils from certain classes e.g. swimming classes, to respect parents religious/ philosophical convictions	If the aim of the state is to inform and not to indoctrinate pupils, obligatory attendance is legitimate even if a given lecture may involve the inculcation of value judgments, especially if there is no alternative and feasible means to respond to the parents' concerns, for example by enabling them to withdraw their children from specific lessons offensive to their convictions (<i>Danish Sex Education Case, Kjeldsen, Madsen and Pedersen</i>).
<u>Language</u>	
Use of language in political activity	No right for elected representative to use minority language in statements/votes as members of public bodies (e.g. municipal councils/assemblies) (<i>Clerfayt, Legros and others</i>)
Use of language with PA	No freedom to use minority language in administration matters (<i>Nasjonale Partij and others</i>)
Use of language in judicial proceedings	Right to be informed in the minority language on reason of arrest/detention; nature/cause of accusation; free interpreter before and during trial and on appeal unless there is evidence of sufficient knowledge of the official language (Arts. 5 and 6) (<i>Kamasinski</i>)
Use of language in education	No right of education in a minority language but only in the national language or one of the national languages (<i>Belgian Linguistic case</i>) Right of education in minority language only if provided initially by the state and subsequently abrogated (<i>Cyprus case</i>)
<u>Religion</u>	
Secularism Relation State/Church	State's role : neutral and impartial organiser of the exercise of various religions; role must be conducive to public order, religious harmony and tolerance and must ensure mutual tolerance between opposing groups (<i>Refah, Sahin</i>) No protection is granted to conducts which failed to respect principle of secularism : they are not recognised as being part of the freedom to manifest one's religion (<i>Refah</i>) <i>De facto</i> separation between church and state is upheld; State's neutrality means respect for all religious beliefs and protection for freedom of religion as long as not contrary to Convention rights; 'soft' 'open' secularism model is upheld
Plurality of legal systems Application of legal norms to a given group only, for instance <i>Sharia's</i> private law rules to Muslim community	Prohibition of a plurality of legal systems as implying the application within a state's jurisdiction of private-law rules of religious inspiration prejudicial to public order and the values of democracy for Convention purposes (such as rules permitting gender discrimination); Rights would be granted not to 'individuals' but to 'followers' of a given religion which constitutes discriminatory treatment on the basis of religion This would also impinge on the state's role as guarantor of individual rights and freedoms and as impartial organiser of the practices of various religions: individuals would be obliged to obey not to rules laid down by the state but by the religion concerned (<i>Refah</i>)

Wearing of Islamic headscarf in public schools Withdrawing pupils from certain classes	See above under <i>Education</i>
<i>Sharia</i>	Freedom to discuss it and defend it without calling for the use of violence to establish it: prohibition of hate speech (<i>Gündüz</i>) Prohibition to introduce the Sharia as a political system and dissolution of parties that have real and immediate opportunity to achieve this objective (<i>Refah</i>)
Freedom of expression (shocking, offending, disturbing ideas) v. protection of the rights of others (right to freedom of religion), e.g. offensive expressions referring to persons/objects of religious veneration (e.g. Mohammed Danish Cartoons controversy)	Criteria for balancing interests/rights at stake : - topic is the object of public and widespread debate and/or it concerns a problem of general interest (<i>Gündüz</i>) - in the territory/region concerned there is a high proportion of members of the group affected by the offensive expressions (<i>Otto-Preminger-Institute</i>) - expressions that are gratuitously offensive to others and that do not contribute to public debate and do not further progress in human affairs must be avoided as far as possible (<i>Otto-Preminger-Institute; Wingrove</i>) - forms of expression that spread, incite, promote or justify hatred based on intolerance, including religious intolerance must be sanctioned and/or prevented (<i>Gündüz</i>)
Legal proceedings against publication that has offended the sensitiveness of an individual or group of individuals	Freedom of religion (art. 9 ECHR) does not guarantee a right to bring any specific form of proceedings against those who, by authorship or publication, offend the sensitiveness of an individual, for instance criminal charges against the author, Salman Rushdie, and publisher of 'Satanic Verses'. (<i>Choudhury</i>)
Exemption from alternative civilian service for clergy in case of conscientious objection	Exemption from alternative civilian service for clergy depending on the functions and time necessary to perform the religious tasks (<i>Grandrath</i>)
Religious practice v. health protection/road safety	Wearing of crash helmets is deemed to be compulsory regardless of the Sikhs obligation to use of turban (<i>Appl. No. 7992/77</i>)
Attending religious service during working hours in public employment	No right to public employment; employment contract based on free will: thus no right to attend religious service during working hours (<i>Appl. No. 8160/78</i>)
Fundamentalist opinions held by army officer	Disciplinary regulations forbidding certain types of conduct and even dismissal especially if inimical to an established order are allowed; legitimate limitations based on military rules that could not be imposed on civilians; military discipline accepted on free will by person concerned. (<i>Kalac</i>)
Participation of state activity inimical to religion or conscientiously held beliefs	Protection of practices and/or acts necessary to a specific religion but right to freedom of religion refers to acts intimately linked to personal beliefs and religious creeds (<i>forum internum</i>) such as acts of worship or devotion ; Therefore, obligation to pay taxes for defence activities instead of for peaceful programmes, has no specific conscientious implication (<i>Appl. No. 10358/83</i>)
<u>Participation in political life</u>	
Minority representation in political life	No positive obligation to guarantee minority representation but no interference from Strasbourg if a state promotes interest of minority groups (<i>Lindsay</i>)
Political Parties	- Repudiation of violence or call for it (<i>Refah</i>) - Art. 16 allowing restrictions on political activity by aliens is obsolete following the adoption of Protocol 12 (ant-discrimination clause)
Dissolution of political parties	- See above under <i>Religion- Sharia</i>
National parliament's working language	Obligation to possess sufficient knowledge of the official language as verified by a fair language examination is legitimate (<i>Podkolzina</i>)
MP's oath	Prohibition to oblige MPs to declare a commitment to a particular set of beliefs/religion as a condition to exercise the parliamentary mandate (<i>Buscarini</i>); but there is obligation to respect values and principles that are integral part of the constitutional order of a state (<i>McGuinness</i>)

The analysis hitherto conducted shows that from concrete individual cases brought before the Strasbourg Court it is possible to infer general principles and guidelines useful to solve the complex dilemmas of contemporary ethnically diverse societies. Referring to a minimum standard of human and minority rights, and to a supranational mechanism such as the Strasbourg Court acting as independent and neutral arbiter, holds the most promising potential for accommodating diversity and cohesion in a peaceful framework. In this way, minorities' claims for diversity and general concerns for unity can be addressed in the frame of an 'institutionalised' dialogue that reduces the risk of overreacting or underestimating and thus misjudging certain issues, such as security and public order or legitimate claims for the recognition of certain traditional practices.

In addition to the specific principles that can be deduced from legal norms and the Strasbourg case-law as summarised in Table 1, it is possible to infer a system of rules – the so-called 'Diversity Management Decalogue' - that can guide decision-making, legal and social operators, and so on, when facing with controversies and conflicts between diversity and unity. This rulebook, as illustrated below, is composed of a series of macro-standards that find application in addition to the more specific ones earlier analysed, especially when these specific principles present gaps or pose interpretative ambiguities.

<u>Diversity Management Decalogue</u>	
1.	To override general interests, minority interests must be based on enforceable rights or large consensus by states
2.	Implementation of minority claims must be reasonable and feasible
3.	Minority claims should not be used to achieve undemocratic objectives
4.	If a state gives special consideration to a specific minority situation, it will not entail any interference
5.	If positive discrimination applied, this may be justified, but there is no state obligation
6.	Exemptions from general rules are not generalised but depend on specific circumstances
7.	In religious, ethic and moral issues, the context plays an important role
8.	Democracy and (<i>de facto</i>) secularism are intimately linked
9.	The principle of gender equality is a decisive standard
10.	Freedoms of expression, assembly and association have limits given by : incitement of hate speech, call to violence, real and immediate risk to democratic values
Table 2	

The 'Diversity Management Decalogue' is composed of a series of principles that have been inferred from the jurisprudence of the Strasbourg Court. The 'Decalogue' is an interpretative tool that complements the more specific set of principles formulated by the Strasbourg Court in its case-law (Table 1). These diversity management principles – the Decalogue and its corollary composed of the

more specific principles - represent thus the framework around which it is possible to create the basis of the `Tree Model` for Minority Integration.

As discussed earlier, the `Tree Model for Minority Integration` is based on a series of principles and guidelines acting as a sort of `filter` for minority claims, traditions and practices that will be admitted and recognised in society only if they are compatible with these principles and standards. This legal framework is composed of rights and freedoms but also of a variety of limits and restrictions. These limitations, along with a thorough understanding of the context and other circumstances in which they have been determined constitute likewise a valuable interpretative tool and, therefore, a valid reference for minority integration. Indeed, they provide, together with the proactive, positive principles, a guarantee for the mainstream society that minority claims will not exceed certain limits of general interests in particular those referring to state unity and security. And, within this legal framework it will be possible to negotiate minority claims in a continuous dialogue supervised by a neutral and objective arbiter such as the Strasbourg court.

The final part of this paper will address a crucial issue, namely which type of protection, old and new minorities respectively, are entitled to and how is it possible to develop a common but differentiated system of protection for these two typologies of minorities. In other words, what are the elements and factors distinguishing rights and legitimate demands that old and new minorities can claim respectively. In this way, the analysis will contribute to clarify the positions of majority and minority groups in their negotiations over rights and legitimate claims.

Defining a Common But Differentiated Protection of Minorities Beyond the Old/New Minority Dichotomy

The model for minority integration proposed in this paper - the so-called `Tree Model` - is based on the conviction that minority groups, regardless of being old or new minorities, have some basic common claims, namely, the right to existence, equal treatment and non-discrimination, preservation and development of identity, and effective participation in public life while maintaining one's identity.

As a result of this assumption, a general definition of minorities encompassing historical minorities and new minority groups stemming from migration can be formulated. In this definition the element of citizenship, which is usually required by states in order to limit the personal scope of application of most international instruments on minorities, is replaced by the element of residence or legal abode. This general definition is the basis for advocating the extension of the scope of application of international instruments pertaining to minorities, in particular the CoE Framework Convention for the Protection of National Minorities as to include new minority groups originating from migration.¹¹

A general definition of minorities will guarantee an effective protection of the identity and diversity of new minority groups that in most international instruments pertaining to migrants are

¹¹ In the current discussion on minority issues it is debated whether the scope of application of international treaties pertaining to minorities that are usually applied to historical, old minorities can be extended to new minority groups stemming from migration. The positions in this regard are extremely diversified: among states, some have adopted rather narrow views firmly opposing the extension of minority provisions to new minorities (Germany, Estonia), others have instead pragmatically applied some provisions to new groups (United Kingdom, Finland), others have not yet taken an official position. Most international bodies dealing with minorities have adopted an open approach especially the Advisory Committee on the Framework Convention, the European Commission for Democracy Through Law (the CoE Venice Commission), the Human Rights Committee, the UN Working Group on Minorities, and the OSCE High Commissioner on National Minorities that has recently extended its mandate to new minority groups stemming from migration.

contemplated in a rather vague and weak perspective.¹² Identity and diversity of minorities are indeed important tools for integration as through their recognition and protection minorities can develop a sense of loyalty and common belonging without being threatened of being assimilated.

It is well known that, on the whole, drafters of international instruments have been so far unsuccessful in efforts to define the term 'minorities'. In international law there is no generally recognised legally binding definition of the term 'minority', not to mention ethnic, religious or linguistic minorities, despite several attempts in the past decades to elaborate such concepts. A significant amount of energy and time has been spent over the past five decades by various international organisations in the quest for a generally acceptable definition of the term minority, mainly for codification purposes, yet no conclusive results can be reported. In the case of the UN Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities as well as the CoE Framework Convention for the Protection of National Minorities, drafters expressly avoided a definition of the term 'minorities', leaving this to the courts, parliaments, governments or other bodies involved in the interpretation of these instruments.

However, an approach that leaves the question of minority definition open to the state's margin of appreciation is not fully satisfactory because it can lead to inconsistent implementation to minority groups that find themselves in analogous situations of the same provisions by different states in breach of the principle of non-discrimination.¹³

On the basis of a combination of objective and subjective elements - i.e. ethnic, cultural, religious or linguistic characteristics, residence or legal abode, numerical minority, non-dominant position and a sense of solidarity or will to survive - a general definition of minorities can be formulated as follows : a minority is any group of persons, (i) resident within a sovereign state on a temporary or permanent basis, (ii) smaller in number than the rest of the population of that state or of a region of that state, (iii) whose members share common characteristics of an ethnic, cultural, religious or linguistic nature that distinguish them from the rest of the population and (iv) manifest, even only implicitly, the desire to be treated as a distinct group.¹⁴

This general definition encompasses historical minorities and new minority groups stemming from migration. As mentioned earlier, new minority groups originating from migration could benefit mostly from a general legal definition of minorities as this constitutes the basis for advocating the extension of the scope of application of international instruments pertaining to minorities as to include them. This extension would reverse the fact that most international instruments on migrants' rights contain only vague and weak references to the protection of migrants' identity and diversity. But the protection of the identity of minorities, and in particular of new minorities, is one of the bases of a veritable process of integration in which minority groups can develop a genuine sense of loyalty and common belonging with the rest of the population without being threatened of being

¹² See, for instance, the UN 1990 International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, the CoE 1977 Convention on the Legal Status of Migrant Workers or the recent EU Directive on the status of third-country national who are long-term residents: they contain only a vague reference to the protection and promotion of their identities, or even a potential conflicting requirement of 'integration', while the notion of groups rights is completely absent.

¹³ Any reliance in an international instrument on the notion of 'minorities', as for instance, in Article I-2 of the Treaty establishing a Constitution for Europe, or of 'national minority', as in Article II-81 of the Charter of Fundamental Rights, should be based on a common legally binding definition of minorities and should not be subject to diverse interpretations in different Member States. Moreover, insofar as the notion of rights of minorities is relied upon in the future EU accession processes with respect to Croatia and Turkey – as it should, according to the criteria defined by the Copenhagen European Council of June 1993 – the understanding of the concept of minority should be clarified.

¹⁴ The requirement to manifest the desire to be treated as a 'distinct group' includes in the definition 'constitutive peoples' as those existing in BiH.

forcibly assimilated in the mainstream society, which as a result can engender resistance and alienation.

Many, especially among governments' representatives, worry that by extending the definition and protection of minority rights to migrants, they will claim the recognition of rights and powers similar to those granted to traditional minorities thereby threatening unity and diluting the protection intended for old minority groups.

However, firstly, if it is true that in Western countries some immigrant groups are demanding certain group rights, it would be incorrect to interpret immigrant demands for recognition of their identities as the expression of a desire, for instance, for self-government.¹⁵ Migrants are generally aware that if they want to access the opportunities made available by the host countries, then, they must do so within the economic and political institutions of these countries. For example, it is still the case that immigrants must learn the official language to gain citizenship, or to get government employment, or to gain professional accreditation. Active civic participation and effective integration amongst immigrants are essential to the economic prospects of most migrants, and indeed to their more general ability to participate in social and political life of the host country.¹⁶

Obviously, this leaves open the possibility that some leaders of ethnic groups hope that integration policies will provide a channel for obtaining separatist policy. But, as Kymlicka observes, this is a vain hope which massively underestimates the sort of support needed to create and sustain a separate societal culture: “[S]ustaining a certain culture is not a matter of having yearly ethnic festivals, or having a few classes taught in one's mother-tongue as a child. It is a matter of creating and sustaining a set of public institutions through the use of instruments that are similar to those used by the majority in their programme of nation-building, i.e. standardized public education, official languages, including language requirements government employment, etc.”¹⁷ So far, there is no evidence from any of the major Western immigration countries that immigrants are seeking, and succeeding, to adopt a nationalist political agenda.¹⁸ Indeed, when attempts have been made, these were rejected by national and international courts.¹⁹

As said earlier, a general common definition of minorities is based on the conviction that in spite of their differences, claims of old and new minorities are in many respects essentially the same. While there are differences between groups these clearly relate only to certain rights in the international catalogue. This is not a matter of interpretation. It is clearly expressed in the international instruments.

For instance, only three articles of the Framework Convention on the Protection of National Minorities condition their entitlements on ‘traditional’ ties, which, according to the Explanatory Report of the Framework Convention, are not necessarily only those of historical minorities.²⁰ These

¹⁵ Will Kymlicka and Magda Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford University Press, Oxford, 2001), 31-6.

¹⁶ See, among others, Communication from the Commission, *A Common Agenda for Integration. Framework for the Integration of Third-Country Nationals in the European Union*, 1 September 2005, COM(2005) 389 final.

¹⁷ Will Kymlicka, *States, Nations and Cultures*, Spinoza Lectures, University of Amsterdam (Van Gorcum, Assen, 1997), 52-6.

¹⁸ *Ibid.*

¹⁹ See, for instance, ECtHR, *Kalifatstaat v. Germany*, Appl. No. 13828/4, decision on the admissibility of 11 December 2006, concerning the ban of an association whose aim was the restoration in Germany of the caliphate and the creation of an Islamic State founded on *sharia* law.

²⁰ According to the Framework Convention and its Explanatory Report, these provisions may be invoked only by persons belonging to a national minority living either *traditionally* in a given area or in a *substantial number* - for the topographical indications, these requirements are cumulative - and only if there is a *real need* or a *sufficient demand* and, with regard to the use of a minority language in relations with the administrative authorities and the teaching of and

provisions pertain to the use of the minority language in public administration and on public signs and also in relation to education in the mother tongue; all other entitlements relate to all individuals who may be in the position of a minority, thus old and new minorities alike, groups officially recognised as national minorities and those not recognised, individuals with or without the citizenship of the country in which the live.²¹

Hence, when reference is made to universal human rights or some basic norms of minority protection there is no need to distinguish between persons belonging to ethnic, religious or linguistic groups made up of recent immigrants, or those living in a given territory from 'immemorial' time. Other claims, such as the claim to use a minority language in relations with the authorities or the claim to street names in the minority language are more specific and need to be differentiated.

This is also the approach of the article-by-article basis favoured by the Advisory Committee of the Framework Convention and by Asbjørn Eide, former President of the Advisory Committee and former Chairman of the UN Working Groups on Minority. He summarised this point by saying: "The scope of rights is contextual."²² An inclusive approach based on a common and broad legally binding definition of minorities would be thus the starting point for appropriate qualifications in regard to which specific right should be granted to which specific group and under which conditions they shall apply.

The conviction that minority groups, regardless of being old or new minorities, have some basic common claims and can be subsumed under a common definition, does not mean that all minority groups have all the same rights and legitimate claims: some have only minimum rights, while others have or should be granted more substantial rights; some can legitimately put forward certain claims - not enforceable rights - that have to be negotiated with the majority, while others not. For instance, the members of any minority have the right to use their own language, in private and public, with anyone who is prepared to communicate with them in that language; but not all minorities, or not all their members, have the legitimate claim to receive state-funded education in their own language, or to use their own language in communicating with public officials.

In this context the difference is not (only) based on the fact that a given group belongs to the 'old' or 'new' minority category: other factors are relevant and apply indistinctively to old and new minorities alike such as socio-economic, political and historical factors, legacy of past colonisation or forms of discrimination, but also the fact that members of a minority live compactly together in a

instruction in a minority language, depending on the available resources of the state concerned ("as far as possible"). However, the Explanatory Report clarifies that the Framework Convention deliberately refrains from defining "areas inhabited by persons belonging to national minorities traditionally or in substantial numbers" because it was considered preferable to adopt a flexible form of wording which will allow each state's particular circumstances to be taken into account. Besides, the Explanatory Report states, rather ambiguously, that the term 'inhabited ... traditionally' - referred to by Art. 10 (2), Art.11 (3), and Art. 14 (2) of the FCNM - "does not refer to historical minorities, but only to those *still* living in the same geographical area." (Emphasis added) (para. 66), at <<http://conventions.coe.int>>.

²¹ For example, Art. 6 of the FCNM applies clearly to all persons within a State Party's territory: It obliges States to protect everyone from threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity. It also requires states to encourage tolerance and intercultural dialogue. Or, Art. 7 that requires States Parties to guarantee the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion; or Art. 8, which refers to the right to manifest a religion or belief and to establish religious institutions, organisations and associations. Or, Art. 9 that contains more detailed rules for the protection of the freedom of expression, and refers specifically to the freedom to receive and impart information and ideas in the minority language, but it also implies the freedom to receive and impart information and ideas in the majority or other languages. Moreover, this provision encourages States Parties to facilitate access to the media in order to promote tolerance and cultural pluralism.

²² Asbjørn Eide, *Protection of Minorities*, Report submitted to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth session, 10 August 1993, UN Doc. E/CN.4/Sub.2/1993/34, para. 27.

part of the state territory or are dispersed or live in scattered clusters, or the fact that members of a community having distinctive characteristics have long been established on the territory, while others have only recently arrived. Minority groups, old and new minorities alike, are not a sort of indistinctive monoliths but are composed of groups very different from each other. The catalogue of minority rights has been so far implemented to historical minorities without an abstract differentiation among various minority groups, but by taking into account other more pragmatic factors, as those mentioned above. The same approach should be applied when extending minority protection to new minority groups stemming from migration.

In contrast to the earlier analysis (Tables 1 and 2), in which a set of guidelines and principles valid for both groups, old and new minorities alike, has been identified, in the table below a set of rights and legitimate claims that can be demanded respectively by old minorities, new minority groups stemming from migration or by both groups will be identified and differentiated. Similarly to the previous tables, this scheme too is based on an analysis of the jurisprudence of the Strasbourg Court.

The main difference, in these cases, is between *justiciable* or *enforceable rights* expressly provided in legal norms or can be deducted from legally binding judgments, as those of the Strasbourg Court, and *legitimate claims* that acquire strength from contextual, specific factors. The classification of a claim as 'legitimate' is based on factors which cannot be reduced on the old/new minority dichotomy, but it is based on contextual factors such as long presence on a territory, type of settlement (compact, scattered or dispersed), past forms of discrimination, colonial legacy, contribution to the history or economy of the national wider society, and so on.

<u>Old/New Minorities :</u> <u>A Common But Differentiated System of Protection</u>				
ISSUE	OLD MINORITIES		NEW MINORITIES	
General Rule	More emphasis on Diversity		More emphasis on Equality	
Claim Typology	Justiciable right*	Legitimate claim**	Justiciable right*	Legitimate claim**
<u>Language</u>				
Use of minority language in political activity	no	yes (knowledge of the official language may be required)	no	no (not reasonable /feasible)
Use of minority language with PA	no	yes	no	no (not reasonable /feasible)
Use of minority language in judicial proceedings	yes (unless there is evidence of sufficient knowledge of the official language) <i>(Kamasinski)</i>	yes (even in case of knowledge of the official language)	yes (unless there is evidence of sufficient knowledge of the official language)	no (in case of knowledge of the official language) (not reasonable /feasible)
<u>Education</u>				
Publicly funded	no	yes	no	yes

education in minority language/religion	(unless provided for other groups)	(state may legitimately require respect for certain principles /values in the curricula)	(unless provided for other groups)	(state may legitimately require respect for certain principles /values in the curricula)
Use of minority language in public education	no (unless initially provided and then abrogated) (<i>Cyprus vs Turkey</i>)	yes (empirical evidence in different forms/contexts : South Tyrol, Catalonia, Québec, etc) More emphasis on the knowledge of minority language	no	yes (empirical evidence mainly as extracurricula classes) More emphasis on the knowledge of the official language
<u>Political Participation</u>				
Electoral Rights (passive/active rights)	yes (on the basis of citizenship)		no (in case of individuals without citizenship of the country of residence)	yes (at least at local level)
Participation in decision-making (e.g. reserved seats/quota /advisory bodies)	no (but no interference from the Strasbourg Court if forms of participation - exemptions from threshold/quota- are recognized) (<i>Lindsay</i>)	yes (empirical evidence/ precedents at local and national level)	no (but no interference from the Strasbourg Court if forms of participation - exemptions from threshold/quota- are recognized) (<i>Lindsay</i>)	yes (at least at local level)
Autonomy (Local/ territorial/ regional)	no	yes (empirical evidence; South Tyrol, Catalonia, etc)	no	no (no empirical evidence as well as decisions of the Strasbourg Court in this sense) (<i>Kalifataat v. Germany</i>)
<u>Non-discrimination</u>	yes (all rights that go with citizenship)		yes (but differential treatment on the basis of citizenship is admitted in some cases; ECHR 'rewarding' approach => see Table 1)	yes (to eliminate differential treatment based on citizenship)
<u>Positive action</u>	no (<i>Magnago and SVP vs Italy</i>)	yes (on a permanent basis as they are subject 'permanently' to the majority rule)	no	yes (on a temporary basis as long as such action is needed to correct discrimination)

Table 3

* Justiciable rights can be enforced in court (national and international tribunals); they are based on norms directly enforceable i.e. European Convention in Human Rights, or are inferred from ECHR case-law
 ** Legitimate claims have to be negotiated with majority and depend on contextual factors such as type of settlement (scattered/concentrated), long or recent presence, legacy with past colonization or forms of discrimination, specific contribution to the history of a country, and so on.

To clarify the difference *justiciable rights* and *legitimate claims*, examples can be taken from the so-called 'symbolic ethnocultural disputes' that in contrast to 'claims of assistance rights', are disputes regarding aspects pertaining to the identity of a minority group that do not directly affect the ability of a group to enjoy or live according to its culture. These aspects range from how the state names

groups or places to what historical figures are honoured with public buildings named after them or statues to special constitutional recognition of founding peoples or official languages. These disputes are about claims to recognition: recognition as a (or, 'the') founding people of the polity, or recognition as a group which has made important contributions to the state in which they live.

In this context, the demand to have a minority language be made one of a state's 'official' languages (or the demand to eliminate or prevent the category of 'official languages' altogether) is a symbolic one, albeit one that might have an important impact on the whole range of assistance language-claims. In these cases groups with long-lasting, traditional ties with a given territory, groups that were settled on a territory before the 'social contract' or the constitutive national agreement was reached among the national groups or groups that have made special contributions to the state where they live or with whom the state has a legacy of past discrimination, colonization, slavery (for instance, Afro-Americans in the US, Jews in Germany, etc), all these groups may formulate claims that, although cannot be defined as enforceable rights, acquire 'legitimization' and have more weight in the negotiations with majority groups due to the above considerations.

Moreover, in case of lack of clarity or uncertainty from legal provisions, precedents or contextual factors as to whether a specific demand is an 'enforceable' right or a 'legitimate' claim, a general principle can be inferred from the analysis of relevant human rights and minority legal provisions and the case-law of main human rights bodies, particularly the Strasbourg Court. In fact, while in the case of old minorities more emphasis is usually placed on *diversity*, in the case of new minority groups stemming from migration, more emphasis is put on *non-discrimination and equality*. Therefore, despite the fact that minority integration is generally an asymmetric process *vis-à-vis* majority groups, in the case of new minorities this process is even more asymmetric or, in other words, more based on equality than on diversity, than in the case of old minorities.

The claim of using a minority language in the context of education can serve to illustrate this principle: despite the fact that both groups, old and new minorities, are under the obligation to learn the official language of the majority, in areas inhabited by old minorities members of the majority can be sometimes obliged to learn the minority language (for instance, in South Tyrol where the members of the Italian-speaking group living in South Tyrol are under the obligation to learn the minority language, German, at school and must provide evidence of the knowledge of the minority language if they want to obtain a public post in the province), whereas the same obligation cannot be found in areas inhabited even largely by new minorities.

Therefore, if it is true that the integration process of minorities is intrinsically asymmetric due to the fact that members of minorities, old and new, are more under pressure than members of the majority to 'adapt' to the majority society, for instance, in terms of language knowledge or recognition of qualifications, in the case of new minorities this asymmetry is more accentuated.

Conclusion - Accommodating Diversity and Unity: The Squaring of the Circle?

Questions concerning whether and how the rights of minorities should be recognised in politics, and how to maintain and strengthen the bonds of community in ethnically diverse societies are among the most salient and vexing on the political agenda of many societies. The growing diversity of national communities has generated pressures for the construction of new and more defensible forms of accommodating social cohesion and diversity.

States seem increasingly more convinced that it is not enough to ensure 'equality' to ethnic, linguistic and religious minorities living within their borders, and that minorities are entitled to a

variety of measures aimed at enhancing their culture, their language and their religion. But if it was relatively easy to reach a general agreement on the prevention and punishment of genocide, and on the elimination of racial discrimination - subjects for which there exist important and widely-ratified instruments – it is far more difficult to convince those who still manifest the view that minority claims are subversive and a danger to the integrity of the state, and that minority rights and diversity need to take second place to imperatives of state security and unity.

The model defended in this work – the Tree Model - is an integration model that, according to the broad definition of multiculturalism, namely a wide range of forms of interaction in societies that contain a variety of cultures, can be subsumed under the category of multiculturalism to which, though, some essential corrections must be added. Accordingly, the Tree Model is strictly anchored to the respect and commitment to a set of core, non-negotiable principles as enshrined in European human rights instruments such as the European Convention on Human Rights and its case-law, and the extension of the scope of application to old and new minorities of minority protection enshrined in the Framework Convention. The new European Constitutional Treaty uses the term ‘Unity in Diversity’ to illustrate this process. Such a process must emphasise not only the freedom of individuals to express and share their cultural values within the limits of human rights standards but also their commitment to abide by mutual civic obligations. Along these lines a legal framework composed of general as well as more specific principles – the Diversity Management Decalogue and its corollaries – has been identified, with some principles being applicable to all minority groups and other to old and new minorities separately.

This set of principles is essential to build a cohesive society because in the absence of a shared minimum core of values a community lacks the ability to formulate and resolve differences, and pursue common goals. In this regard, the private/public dichotomy - the public realm governed by the law in contrast to the private realm left to the individual decision - should not play a crucial role. The unity of the society ought to be not only in the public realm, but also in the private realm, which includes civil society and family where, for instance, certain practices against women or children should not be accepted if they violate the minimum core of values enshrined in human rights standards.

Yet, this legal framework, composing the ‘trunk’ of the tree in our ‘Tree Model for Minority Integration’, must be complemented by other measures that contribute to develop the sense of belonging, fellow-citizens, loyalty and trust that are essential to achieve a veritable and effective integration of minority groups while respecting their identities whereby assuring cohesion and stability of the broader community.

In other words, the Tree Model constitute the basis for a process, a permanent dialogue between majority and minority groups: limits and thresholds are established so that the majority does not undermine important minority demands and minority groups do not claim unreasonable or illegitimate claims. At the same time, this framework is nurtured and supported by a series of measures and policies aiming at facilitate the integration of minorities in the mainstream society while allowing them to maintain their identities, such as funding for minority associations, language tuition, civic orientation, professional labour market training, right to vote to non-citizens, urban renewal schemes. Along the line of the ‘botanic’ metaphor applied in this present work, it can be said that the integration measures in the Tree Model act as a ‘fertiliser’ allowing the tree – symbolising the broader community - to grow and flourish.

In conclusion, the elements analysed hitherto – the so-called Decalogue and its corollaries - are the backbone of a model that, by engendering a series of guiding principles, contributes to solve major and complex questions arising from conflicts between unity and diversity: a sort of compass to

navigate in the 'stormy sea' of dilemmas of contemporary increasingly diverse societies. These principles epitomise the tension between minority rights and general interests of society as a whole and are illustrative of a "common European standard" for minority and human rights protection thereby contributing to solve the most widespread and urgent questions of our increasingly diverse society.

Although the 'Tree Model' has been presented as more adequate to accommodate cohesion and diversity than others, it cannot be taken as a detailed model for all societies, especially outside Europe. A society has to start from where it is and choose a model that best coheres with its history, traditions, self-understanding, moral and cultural resources, level of economic and political development, the nature, number and demands of its minorities, as well as level of cohesiveness among main actors in the country, from individuals to political parties, from civic society to national and local authorities. The Tree Model, with its combination of human and minority rights complemented by general and specific integration measures, may represent, paraphrasing Leibniz and his "The best of all possible worlds", the best of all possible models of minority integration, at least as Europe is concerned.

Yet, the Tree Model for Minority Integration is not without difficulties. It is based on a vision of society in which different communities should interact with each other in a spirit of equality and openness, creating a rich, plural and tolerant society. The process is thus burdensome for both parties. Minorities must learn to negotiate often in an unfamiliar or even hostile environment where their minority statuses make them vulnerable to marginalisation and segregation. The majority group, on the other hand, must cope with diversity in its schools, workplaces, housing, public spaces, and neighbourhoods and must display tolerance and broadness. The vision is not easy to realise and has its own problems. Some groups might not be open and experimental and others might jealously guard their inherited identities. At the heart of any successful model lays, in the end, a sincere willingness on both sides - majority and minority – for continuous interaction, mutual adjustments and accommodations.

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Diversity and cohesion: new challenges. The divisive factors constituted by racism, xenophobia, political, cultural or religious intolerance and discrimination against minorities. They also expressed their will to build on the community of culture formed by a Europe enriched by its diversity, confident in its identity and open to the world. The present report on "Diversity and cohesion in a changing Europe" sets as a basic principle that integration of immigrants and national minorities is one of the pillars of social cohesion. The report is based on a thorough review of community relations and Minority rights protection under international human rights law. . 14. A. Main sources of minority rights . The recognition and protection of minority rights under international law began with the League of Nations through the adoption of several "minority treaties". Since country engagement and a human rights-based approach constitute key It suggests that "the best approach appears to be to avoid making an absolute distinction between "new" and "old" minorities by excluding the former and including the latter, but to recognize that in the application of the Declaration the "old" minorities have stronger entitlements than the "new".

W. Kymlicka (2006) *Immigration Integration and Minority Nationalism* in: M. Keating and J. McGarry (eds) *Minority Nationalism and the Changing International Order* New York ny: Oxford Univeristy Press pp. 61-83. 11. See A. Patten and W. Kymlicka (eds) (2003) *Language Rights and Political Theory* New York ny: Oxford University Press pp. 8-9; W. Kymlicka (2001) *Politics in the Vernacular: nationalism Multiculturalism and Citizenship* New York ny: Oxford University Press. 12. See R. Medda-Windischer (2009) *Old and New Minorities: Reconciling Diversity and Cohesion* A Human Rights Model for Minority Integration Baden-Baden: Nomos. Index Card. Page Count: 442-466. Subjects: Human Rights, Human Rights and Humanitarian Law. Copyright PUBLICATIONS Single-Authored Books *Old and New Minorities: Reconciling Diversity and Cohesion. A Human Rights Model for Minority Integration* (Nomos, Baden-Baden, 2009). 3 *Nuove Minoranze. A Human Rights Model for Minority Integration*, Paper presented at the Conference *Immigration, Minorities and Multiculturalism in Democracies* (EDG-GDE), Montr al, Qu bec, October L *immigrazione in Alto Adige/S d Tirol, oggi: problemi sociali, soluzioni legislative, questioni aperte*, Lecture presented at the Conference "Il diritto d asilo in Europa:problemi e prospettive", Bolzano/Bozen, October 2007, organised by "Institut International d Etudes. While numerous autochthonous ethnic, national and regional groups formulate claims on power-sharing and minority rights, pushing their host states to accommodate diversity, increased mobility has contributed to the further proliferation of cultural, linguistic, and religious diversity in the European Union and its south-eastern vicinity. This increasingly complex diversity of the European societies, together with the global spread of supranational norms and values of human rights is continuously undermining the Westphalian system of homogeneous nation states. The question arises how these challenges can be reconciled, what best practices can be identified for both "old" and "new" minorities, and whether the arrangements for the former can be a model for