

On Weakening Minority Protection: 'Integration' in International Human Rights Fora

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Abstract

The 'integration' of members of minorities into the European societies where they live seems to have become a buzzword. This paper disagrees with the blanket endorsement of integration as a positive policy, as currently shared by European states. It aims to demonstrate that contrary to the prevailing belief by states and international human rights bodies that 'integration' contributes to the realisation of human rights of minorities and to social cohesion, integration of members of minority communities has been amply used to dilute the protection they enjoy under international human rights law. In order to prove this argument, the article first discusses how international bodies and academic literature present integration as a positive element of minority rights. The article then identifies five specific ways in which integration rhetoric and policies limit minority rights: states have used the integration concept in international fora to justify assimilationist policies; they have interpreted it as setting obligations only to migrants rather than the state; and have used it as an obstacle to the naturalisation of migrants. Integration has been used to deny members of minorities positive protection; and as a vehicle to promote stereotypes of human rights as European only values. The article concludes that the uses of integration at the international level harms minority protection; hence, international policies regarding minority rights should be placed back within the context of existing standards of international law, rather than the loose and hazy context of integration.

Keywords

Integration, minority rights, non-discrimination, equality, United Nations, Human Rights Committee, Committee on the Elimination of All Forms of Racial Discrimination, Framework Convention on National Minorities.

Introduction

'Integration' of immigrants in the national host societies is a relatively new concept, which has sprung mainly in the 1990s. Since then, integration has become central in discussions on migrants and 'newcomers', minorities, multiculturalism and diversity within the state. The concept of integration has expanded to include 'new topics such as language, policymaking in the field, inter-ethnic relations, discrimination, age, gender and generation'.¹ 'Integration' seems to have also become a buzz-word in international fora: European states pride

¹ Penninx, Spencer and Van Hear, *Migration and Integration in Europe: The State of Research*, Report commissioned by the Economic and Social Research Council (ESRC) for NORFACE, ESRC Centre on Migration, Policy and Society (COMPAS) (Oxford: University of Oxford, 2008), p 6.

themselves on the integration policies they have which, they proclaim, form part of their wider anti-discrimination policies. Also, more and more international bodies encourage the 'integration' of persons belonging to minorities. It is not only the EU, where 'integration' of third country nationals has been talked about for some time. Integration has been encouraged in the UN ECOSOC since the Copenhagen Declaration in the mid-90s, integration has been positively regarded by the Council of Europe, has been adopted by the OSCE as 'one of the State's sovereign responsibilities',² and has been established as a separate section of the country reports in the most recent monitoring cycle of the European Committee against Racism and Intolerance (ECRI).³

This paper disagrees with the prominent positive reading of 'integration' policies. It argues that notwithstanding its benefits, 'integration' is currently used in international fora as a ground to restrict the specific minority rights standards that European States have promised to respect. Repeated references to this fuzzy concept shift the debate from the obligation of States to recognise and accommodate cultural diversity to the obligation of migrants to 'conform' to existing and perceived 'national values'. Although academic criticism of integrationist policies at the national level is mounting,⁴ the way integration is used at the international human rights level and its negative impact on the implementation of international human rights standards has been scarcely explored.⁵

² Guideline 1 of the (2012) OSCE *Ljubljana Guidelines on Integration of Diverse Societies* (OSCE Ljubljana Guidelines).

³ ECRI, 'Information document on the fifth monitoring cycle of the European Commission against Racism and Intolerance (ECRI) in http://www.coe.int/t/dghl/monitoring/ecri/activities/Information%20document%20fifth%20monitoring%20cycle_en.pdf.

⁴ I Michalowski and R van Owers, 'Debate: how can we categorise and interpret civil integration policies?' 38 (2012) *Journal of Ethnic and Migration Studies* 163-171; S Wallace Goodman, 'Integration requirements for integration's sake: identifying, categorizing and comparing civil integration policies' 36 (2010) *Journal of Ethnic and Migration Studies* 753-772; R Coopmans, 'Trade-offs between equality and difference: immigrant integration, multiculturalism and the welfare state in cross-national perspective' 36 (2010) *Journal of Ethnic and Migration Studies* 1-26; Jopkke, 'Beyond national models: civil integration policies for immigrants in Western Europe 30 (2007) 1 *West European Politics* 1-22.

⁵ See K Henrard, 'Tracing visions on integration and/of minorities: an analysis of the supervisory practices of the FCNM' (2011) 13 4 *International Community Law Review* 333-360; M Penttinen, 'Social integration of old and new minorities in Europe in views of international expert bodies relying on human rights: contextual balancing and tailoring' (2015) 14 1 *Journal on Ethnopolitics and Minority issues in Europe* (JEMIE) 26-47; R Letschert, 'Successful integration while respecting diversity; old minorities versus new minorities; (2007) 18 1 *Helsinki Monitor* 46-56.

The article plans to prove the negative impact of integration on the implementation of minority standards. After presenting the positive elements of the concept as put forward by scholars and international bodies, the article turns to exploring the way integration is actually used in the international human rights fora. Statements of states in such fora demonstrate that integration is used in a very different manner to what its supporters proclaim. It is argued that integration is used as an excuse for assimilationist policies and as a conditional one-way concept. Integration has actually been used as an obstacle to the naturalisation of migrants; as a round to reject claims for positive protection of minorities; and as a vehicle to promote stereotypes of human rights as European only values.

Definitional issues

Integration as a concept has not only been attached to members of minorities. In her historical overview of the concept, Wieviorka notes how integration has been linked to people seen as vulnerable, fragile, and immature.⁶ Today there are two different streams of 'integration policies': one stream is aimed at 'integrating' vulnerable people in the society, including old persons, persons with disabilities, children and women,⁷ and the other stream focuses on migrants and minorities.

The meaning of 'integration' of members of minorities is not clear; in actual truth the concept is 'exceedingly difficult to pin down'.⁸ According to Rudiger and Spencer, 'in the broadest sense, integration means the process by which people who are relatively new to a country (i.e. whose roots do not reach deeper than two or three generations) become part of society.'⁹ The European Commission has provided a definition of integration as follows:

Integration should be understood as a two-way process based on mutual rights and corresponding obligations of legally resident third country nationals and the host society which provides for full participation of the immigrant. This implies on the one hand that it is the responsibility of the state to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in economic, social, cultural and civic life and on the other, that immigrants respect the fundamental norms and values of

⁶ Wieviorka, 'A Critique of Integration' (2014) *Identities* 637.

⁷ *Ibid.*

⁸ McCrudden, 'Multiculturalism, freedom of religion, equality, and the British constitution: The JFS case re-considered' (2011) 9 *International Journal of Constitutional Law* 200 at 202.

⁹ A Rudiger and S Spencer, 'Social Integration of Migrants and Ethnic Minorities, Policies to Combat Discrimination', Paper delivered in the Conference The Economic and Social aspects of Migration, co-organised by the OSCE and the European Commission, Brussels, 21-22 January 2003.

the host society and participate actively, in the integration process, without having to relinquish their own identity.¹⁰

This definition is quite helpful and similar to the definition given by the OSCE in The Ljubljana Guidelines on Integration of Diverse Societies¹¹:

Integration is a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels. To support the integration process, States should adopt policies that aim to create a society in which diversity is respected and everyone, including all members of ethnic, linguistic, cultural or religious groups, contributes to building and maintaining a common and inclusive civic identity. This is achieved by securing equal opportunities for all to contribute to and benefit from the polity. It requires that the State ensures that the rights of all are respected and creates the conditions for all members of society to take on their share of the responsibilities. Society as a whole benefits from such a policy.

Yet, not all bodies follow the same approach as the EU and OSCE in defining integration. As Henrard has noted with respect to integration, 'the same concepts are/can be used to convey very different meanings, which tends to add to the confusion in debates.'¹² Agree. They note: 'Not surprisingly, the lack of normative guidelines at the international level towards minority integration results in deficient practical application of integration at the state level'. For example, the spirit of the definitions above is at odds with the criteria set by the European Court of Human Rights when deciding whether a migrant is integrated or not. In *Slivenko v. Latvia*,¹³ the Court held that the integration of an individual is proven by, among other, attempts to acquire the host state's nationality, diminishing links to the country of origin, the acquisition of the national language of the host state and her inclusion in the labour market. Contrary to the EU definition of integration, the first two criteria relinquish elements of the migrant's identity. Michael Emerson views integration as a concept that relates to measures to promote the 'competence of minority groups in the host country's language, and to increase awareness of its values, history and traditions' as well as measures to promote social and labour inclusion. He rightly notes:

¹⁰ European Commission, Communication on Immigration, Integration and Employment, COM(2003)336, Brussels, 3 June 2003.

¹¹ OSCE, The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note, November 2012.

¹² Henrard, *supra*, 335.

¹³ *Slivenko v Latvia*, Application No. 48321/99, Judgment of 9 October 2003.

These policies and movements in society mark movement in a certain direction along the spectrum from multiculturalism towards assimilation, yet the end-point of these integration processes is not defined a priori. It could be a movement towards something in the category of either interculturalism or assimilation.¹⁴

Who the subject of integration is also not completely clear. Are only migrants subject to integration policies? Or are members of minorities subject to such policies? And what is the distinction between the two categories? The widely used Capotorti definition of minorities¹⁵ and the position of several European states seem to point towards this criterion.¹⁶ Yet, the Commentary of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities maintains that citizenship 'should not be a distinguishing criterion'.¹⁷ Also, in 2005, the UN Working Group on Minorities recommended that governments protect the rights of all minority persons within their territory 'irrespective of citizenship'.¹⁸ Indeed, states should not be allowed to withhold protection to groups recognised in minority rights by denying citizenship to certain groups.¹⁹ If citizenship is not the defining criterion between minorities and migrants, is it a matter of time? In other words, are minorities migrants who have been living in the host state for a long time? The HRC has noted in its General Comment 23: 'Just as they need not be nationals or citizens, [members of minorities] need not be permanent residents. Thus, migrant workers or even visitors in the State party constituting such minorities are entitled not to be denied the exercise of [minority] rights.'²⁰ The Commentary on Minorities also favours abandoning the dichotomy between 'old' and 'new' minorities.²¹ Similarly, the Advisory Committee to the Framework Convention on National Minorities has on several

¹⁴ M Emerson, 'Summary and conclusions' in Emerson (ed), *Interculturalism, Europe and its Muslims, In search of sound societal models*, (Centre for Policy Studies, Brussels, 2011), 3.

¹⁵ Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities UN Doc. E/CN.4/Sub.2/384/Rev.1, para 205.

¹⁶ Ibid..

¹⁷ UN Commission on Human Rights, 'Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities' UN doc E/CN.4/Sub.2/AC.5/2005/2 paras 10-11.

¹⁸ E/CN.4/Sub.2/2005/27, para 16 (d).

¹⁹ G Alfredsson, 'A Frame with Incomplete Painting: Comparison of the Framework Convention for the Protection of National Minorities with International Standards and Monitoring Procedures' (2000) 7 *International Journal of Minority and Group Rights* 291 at 296.

²⁰ UN Human Rights Committee, General Comment No 23 on 'The Rights of Minorities (Art 27)', UN doc CCPR/C/21/Rev.1/Add.5 para. 5.2.

²¹ UN Working Group on Minorities, *Commentary to the UN Minorities Declaration*, E/CN.4/Sub.2/AC.5/2005/2, para 7.

occasions discussed as part of its mandate rights of recently arrived groups, implying that they also fall within the definition of minorities.²² Moreover, more and more academics also support the collapse of the distinction between migrants and minorities: Packer has noted that such a distinction is discriminatory;²³ and Nowak has stressed that members of so called 'new minorities' also must have the right "not to be assimilated into a melting pot type of newly created 'European citizens' but to enjoy their traditional culture, practice their own religion and speak their mother tongue".²⁴ Medda-Windischer has noted that the differences between migrants and traditional minorities are mainly down to their respective formal legal status and the state's perceptions of them, rather than objective differences.²⁵ Berry has gone a step further and has argued that even most recently arrived migrants fall in the definition of 'new minorities'.²⁶ Henrard rightly notes that 'there seems to be an emerging consensus that (...) 'new' minorities should be considered 'minorities' for the purposes of minority protection.²⁷ In this respect, integration does not affect only 'immigrants' but it also affects greatly members of 'minorities', i.e. anyone belonging to a national or ethnic, religious or linguistic group different to the dominant one and who wants to maintain his/her characteristics.

Integration as a positive concept

Integration can be used to improve the lives of members of minorities as much as promote cohesion in the society; hence, it has attracted positive endorsements by scholars and human rights bodies alike. Modood views integration as a *sine qua non* element of multiculturalism. He believes that multiculturalism is 'an accommodative form of integration' which allow collective identities to be recognised and supported in the public sphere.²⁸ So, integration for him is an element of multicultural policies. Kymlicka also views

²² S Berry, 'Integrating refugees: the case for a minority rights based approach' (2012) 24 *International Journal of Refugee Law* 1-36.

²³ J Packer, 'Problems in Defining Minorities', in B. Bowring and D. Fottrell (eds.), *Minority and Group Rights in the New Millennium* (Martinus Nijhoff, The Hague, 1999) p. 264.

²⁴ M Nowak, 'The Evolution of Minority Rights in International Law, Comments' in Brolmann, Lefeber and Zieck (eds.), *Peoples and Minorities in International Law* (Dordrecht: Martinus Nijhoff, 1993) at 118.

²⁵ B Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion— A human rights model for minority integration* (Nomos Verlagsgesellschaft, 2009) at 247-8.

²⁶ S Berry, "'New minorities', integration and the UN Declaration on Minorities' in U Caruso and R Hofmann (eds), *The United Nations Declaration on Minorities, An Academic Account on the Occasion of its 20th Anniversary (1992-2012)* (The Hague, Brill Publishers, 2015), pp. 192-214.

²⁷ Henrard and Dunbar at 12.

²⁸ T Modood, *Multiculturalism, A civic idea* (Cambridge: Polity Press) 2007) p. 43.

integration as an element of multiculturalism, as in his view, multiculturalism attempts to reconcile integration and inclusion.²⁹ In her 2013 book, Anderson concludes that 'notwithstanding difficulties in the experience of integration, it is an imperative for justice and democracy'.³⁰

Positive understandings of 'integration' focus on the participation of members of minorities in the wider society and link the concept to 'social inclusion'. The UN Under-Secretary-General for Economic and Social Affairs Sha Zukang asked in 2010 that the United Nations 'put social integration and cohesion at the heart of its work' and "inclusive policies that put people at the centre of development".³¹ Social integration was one of the 10 commitments of the Copenhagen Declaration. At the core of social integration in this document is the notion of social inclusion, and, by extension, an inclusive society. An inclusive society is bound to override differences of race, gender, class, generation and geography, and ensures political, social and economic inclusion, equality of opportunity, as well as capability of members in society to impact and shape social institutions that govern social interaction.³² In Chapter IV, the basis and objective of social integration is defined as creating a society for all, in which every individual, each with rights and responsibilities, has an active role to play. The UN Department of Economic and Social Affairs views 'social integration' is 'a dynamic and principled process where all members participate in dialogue to achieve and maintain peaceful social relations'.³³ The Chief of the Social Integration Branch at the United Nations Department of Economic and Social Affairs Zelenev had noted in 2009: 'Member states committed themselves to promoting social integration through fostering inclusive societies that are stable, safe and just, and that are based on the promotion and protection of all human rights and fundamental freedoms. Member States agreed that other dimensions of social integration include respect for diversity, non-discrimination, tolerance, equality of opportunity, solidarity, security and participation of all people, including disadvantaged, and marginalized groups'.

Integration is also seen as an antidote to segregation. Richard Falk has noted: 'In its essence, the near universal affirmation of social integration in these formal UN documents represents an impressive commitment by the official leaders of the overwhelming majority of people on earth. The core of this commitment is to work toward a social order based on the full implementation of human rights for all

²⁹ W Kymlicka, *Finding our way* (Toronto: Toronto university Press, 1998) p 3.

³⁰ E Anderson, *The Imperative of integration* (Princeton: Princeton University Press, 2013), p. 21.

³¹ 'Social integration and inclusive policies need to create a society for all', 5 October 2010 in <http://www.un.org/en/development/desa/news/social/social-integration.html>.

³² S Zelenev, 'Social Integration in a Contemporary World' (2009) 9 (2) *Global Social Policy* 6- 9 at 7.

³³ United Nations Department of Economic and Social Affairs, http://www.un.org/esa/socdev/sib/peacedialogue/soc_integration.htm.

members of society.’³⁴ Falk also links integration to minority rights: ‘This implies a form of governance that ensures effective and inclusive participation in a democratic spirit, and an overall atmosphere of tolerance and respect for diversity in all its forms while vigorously upholding a commitment to equality and equity regardless of cultural, ethnic, and religious identity’.³⁵ The European Court of Human Rights has also linked integration to the fight against segregation. In some cases the Court has put pressure on the state to take integrationist measures to end segregation, for example in the case of Roma children;³⁶ whereas in other cases, the pressure has been on the individual to prove that (s)he has been adequately integrated so that (s)he cannot be expelled.

Integration is finally seen as an important tool in the fight against racism and discrimination. The 2011 report of the UN Special Rapporteur on contemporary forms of slavery, racial discrimination, xenophobia and related intolerance praised the adoption of national action plans and policies to combat racism and ‘to promote the social integration of individuals belonging to minorities’.³⁷ The UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) often asks for the integration of minority groups in the life of the state, especially with respect to Roma.³⁸ Integration measures have been suggested by the Committee in the

³⁴ R Falk, ‘Policy Options for Social Integration’ 12 (1999) 51 162 *International Social Science Journal* 559 – 566 at 559.

³⁵ *Ibid*, at

³⁶ *Orsus and Others v. Croatia*, Application no. 15766/03, Judgment of 16 March 2010.

³⁷ A/HRC/18/44.

³⁸ CERD Concluding Observations with respect to Lithuania, CERD/C/LTU/CO/4-5 (2011), para. 17; also Slovenia, UN Doc. CAT/C/SVN/CO/3 (2011), paras. 18 and 21; and Italy, UN Doc. CRC/C/ITA/CO/3-4 (2011), para. 80 (b).

recent universal periodic reports of Norway,³⁹ Albania,⁴⁰ Cyprus,⁴¹ Portugal⁴² and Italy.⁴³ Particularly in Europe, integration has been strongly encouraged as a state policy. In 2011, the Council of Europe published the Report on 'Combining Diversity and Freedom in 21st century Europe', written by a Group of Eminent Persons of the Council of Europe which recommended that 'the Council of Europe should as a matter of priority promote its standards in this field through several European Union instruments (...) aimed inter alia at developing a comprehensive EU policy to combat discrimination, racism and xenophobia, and to promote equality and integration'.⁴⁴ More importantly, article 5 of the Framework Convention on National Minorities (FCNM) is the only international human rights instrument with an explicit reference to the concept. It reads:

Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

The Explanatory Report of the FCNM contains further references to 'integration' in its interpretation of two further articles: article 6 on the promotion of tolerance and inter-cultural dialogue among all sections of the population; and article 14.2 on the parallel teaching of minority and the official language.⁴⁵ The Advisory Committee to the FCNM often urges states to take measures to realise integration.⁴⁶

The European Court of Human Rights has also engaged with the concept of integration in cases related to the expulsion of aliens. In *Üner*, the Court explicitly included integration in the criteria to be considered by the

³⁹ Report of the Working Group on Universal Periodic Review, Norway, UN Doc. A/HRC/13/5 of 4 January 2010, para. 68 and recommendations 20, 28.

⁴⁰ Report of the Working Group on Universal Periodic Review, Albania, UN Doc. A/HRC/13/6 of 4 January 2010, recommendation 82.

⁴¹ Report of the Working Group on Universal Periodic Review, Cyprus, UN Doc. A/HRC/13/7 of 4 January 2010, recommendation 59.

⁴² For example, 'Belarus commended on efforts to promote the integration of migrants, to support cultural diversity and stimulate intercultural dialogue.' Report of the Working Group on Universal Periodic Review, Portugal, UN Doc. A/HRC/13/10 of 4 January 2010, para. 26 and recommendation 41.

⁴³ Report of the Working Group on Universal Periodic Review, Italy, UN Doc. A/HRC/14/4 of 18 March 2010, recommendation 30.

⁴⁴ Living together. Combining diversity and freedom in 21st century Europe - Report of the Group of Eminent Persons of the Council of Europe (Strasbourg: Council of Europe, 2011).

⁴⁵ Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory Report, February 1995, H(1995)010 para 46.

⁴⁶ Pentikainen, 32-5.

national courts when discussing the expulsion of a migrant, recognising in this way a role for the courts in determining the level of integration of an individual and highlighting the importance that integration can have on the rights of the individual, even preventing one's expulsion.⁴⁷ In *Boultif*, the Court established specific criteria that establish the integration of the individual,⁴⁸ discussed further in *Slivenko*.⁴⁹ In addition, the Court's case-law on religious symbols and minority clothing has also been relevant to anti-discrimination.⁵⁰ In *SAS v France*, the Court explicitly discussed whether a full-face veil amounts to an insurmountable barrier to integration.⁵¹ Of equally great interest for the integration debate is the Court's discussion on linguistic rights.⁵²

Finally, the 2012 'Ljubljana Guidelines on Integration of Diverse Societies' adopted by the OSCE were the outcome of the repeated recommendations of several High Commissioners on National Minorities.

⁴⁷ R Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (2010) 12 *European Journal of Migration and Law* 23 at 29.

⁴⁸ A Thym, 'Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?' (2008) 57 *International and Comparative Law Quarterly* 92.

⁴⁹ *Slivenko v Latvia*, Application No. 48321/99, Judgment of 9 October 2003.

⁵⁰ For more on religious clothing, see Hunter- Henin, 'Why the French don't like the Būrqā: Laicit , National Identity and Religious Freedom' (2012) 61 *International and Comparative Law Quarterly* 613; Evans, 'Neutrality in and after *Lautsi v. Italy*' in Temperman (ed.), *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in Public School Classroom* (Dordrecht: Martinus Nijhoff, 2012); McGoldrick, 'Religion in the European Public Square and in European Public Life - Crucifixes in the Classroom?' (2011) 11 *Human Rights Law Review* 451; McGoldrick, 'Accommodating Muslims in Europe: From Adopting Sharia Law to Religiously Based Opt Outs from Generally Applicable Laws (2009) 9 *Human Rights Law Review* 603; McGoldrick, 'Religion and Legal Spaces: In Gods We Trust; In Churches We Trust, But Need To Verify' (2012) 12 *Human Rights Law Review* 759; Evans, 'From Cartoons to Crucifixes: Current Controversies Concerning the Freedom of Religion and the Freedom of Expression Before the European Court of Human Rights' (2010-2011) 26 *Journal of Law & Religion* 345; Evans, 'The 'Islamic Headscarf' in the European Court of Human Rights' (2006) 7 *Melbourne Journal of International Law* 52.

⁵¹ *SAS v France*, Application no. 43835/11, Judgment of 1 July 2014, para. 7.

⁵² For example, see *Ors ũs ũ v. Croatia*, App. No. 15766/03 Eur. Ct. H.R. (2010), para. 67. Also see M Paz, 'Critique of the International Language Rights regime' 54 (2013) *Harvard International Law Journal* 157.

Integration, according to the document, prevents the separation of minorities 'into parallel and unconnected societies' which poses a considerable risk to the viability and stability of any multi-ethnic State' so integration 'can play a crucial role in preventing tensions from escalating into conflict and is also a prerequisite for building an equitable society'.⁵³

Using integration to restrict minority rights

The discussion so far revealed how positive integration policies are viewed by both scholars and human rights bodies, as a vehicle for social cohesion, non-discrimination and personal fulfilment. However, discussions on integration taking place between the international human rights bodies and States in the international arena reveal a rather different story. They reveal the use of integration as a vehicle to restrict rather than implement minority rights.

More often than not, the integration discussion starts by the States: A quick glance of the State Reports to the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) reveals how many European states have included integration when referring to their anti-discrimination policies: In 2015, Estonia proudly presented its Integration Policy 2014-2020.⁵⁴ Austria discussed its 2010 'National Action Plan for Integration' and the creation of the Integration Advisory Committee in 2010.⁵⁵ Lichtenstein mentioned the 'integration concept' adopted in December 2010 and its 'integration agreement' to third county nationals;⁵⁶ Latvia discussed the 'National Identity and Society Integration Guidelines 2012-2018'; Bulgaria mentioned the Framework Program for Integration of Minorities, while Georgia referred to the 2009-2014 Action Plan on National Minorities Integration through Multilingual Education, a National Concept for Tolerance and Civil Integration together with an Action Plan and a Committee to implement it.⁵⁷ Indeed, new national positions on integration seem to spring up continuously: in 2007 Portugal established the High Commission for Integration and Intercultural Dialogue;⁵⁸ and Ireland established a new Office of the Minister for Integration;⁵⁹ Denmark has a Minister for Integration; Romania a Deputy Prime Minister responsible for

⁵³ The Ljubljana Guidelines, p. 3.

⁵⁴ UN Doc. CERD/C/EST/Co/10-11 of 23 September 2014, para. 3(a).

⁵⁵ UN Doc. CERD/C/LIE/CO/4-6 of 31 August 2012, para 6.

⁵⁶ Ibid, para 12.

⁵⁷ UN Doc. CERD/C/GEO/CO/4-5 of 20 September 2011, para. 5a and 5b.

⁵⁸ Report of the Working Group on Universal Periodic Review, Portugal, UN Doc. A/HRC/13/10 of 4 January 2010, para. 26

⁵⁹ *Migration Nation: Statement on Integration Strategy and Diversity Management*, <http://www.integration.ie/website/omi/omiwebv6.nsf/page/omi-publications-en>, p. 17.

Education, Cultural and European Integration and the UK a Committee for Integration and Cohesion. In their reports States note that for them, 'the promotion of integration of foreigners is a key concern'.⁶⁰

Reading the statements of states in the various human rights bodies, one can identify the following ways in which integration dilutes the rights of minorities:

a. Integration is an excuse for assimilationist policies

Reading the state statements on anti-discrimination policies, one has the feeling that integration is at times used to promote policies that 'gently' assimilate members of minorities. Reports to human rights bodies never refer to assimilation as such; emphasis may be put on 'promoting the state identity' and 'respecting the values of the state'. State policies that unnecessarily restrict the right of members of minorities to speak their own language for party elections⁶¹ or their right of associations to promote minority languages⁶² cannot result but to the extinction of minority languages and the assimilation of members of minorities. For example, confusing is the 2010 report by Estonia to CERD: although the state accepted the two-way element of integration and the need to protect minority languages and cultures, it perceived the aim of its integration policy to be 'to achieve a situation where all permanent inhabitants in Estonia, regardless of their ethnic origin, feel secure, know the state language, share the values enshrined in the Constitution' and 'to strengthen the common state identity of Estonia and develop common understanding of the state among permanent residents of Estonia based on the constitutional values of Estonia as a democratic state governed by the rule of law, as well as on valuing Estonian citizenship and appreciating the contribution of every person to the development of society, while accepting cultural differences'. Although the state says that 'the cornerstone of integration policy is the need to encourage ethnic minorities to participate more actively in social and political life', its specific aims reveal a real emphasis on spreading the Estonian language and Estonian education.⁶³ CERD commented that 'while noting with appreciation the vision of the Estonian Integration Strategy, the Committee is concerned that the strong emphasis on the Estonian language in the objectives and implementation of the Strategy may run counter to the overall goal of the strategy by contributing to resentment among those who feel discriminated against, especially because of the punitive elements in the language regime. (art. 5).'⁶⁴ In 2015, CERD specifically highlighted how in the context of its integration policy, Estonia included punitive elements with regards to the use of the Russian language, took specific and continuing measures to discourage the use of the

⁶⁰ Lichtenstein Report, supra n 63, para. 4.

⁶¹ *Şukran Aydın and Others v. Turkey*, supra n 32.

⁶² *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, Application 20641/05, Judgment of 25 September 2012.

⁶³ CERD/C/EST/8-9 of 23 September 2010, paras. 37- 40.

⁶⁴ *Ibid.*, para. 13.

Russian language, restricted the use of Russian in public services, even though almost half of the citizens of the state belonged to the Russian minority and prevented self-identification by prohibiting the use of Russian patronyms etc. The Committee specifically made the link between the 'integration policy' of the state and the negative consequences for minority rights by asking the state to report on the consequences of the Integration Strategy in the next report.⁶⁵

Academics have discussed how some integrationist policies promote a mono-cultural understanding of the state, a homogenous unit, promoting a single identity.⁶⁶ For this reason, some prefer the notion of accommodation to that of integration, a choice of terminology currently also favoured by the European Union.⁶⁷ Certainly, integration policies need to be constantly evaluated and the right to self-identification always respected.⁶⁸

Article 5.2 of the Framework Convention on National Minorities is clear that Member states must 'refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.' Prohibition of assimilation is also based on article 27 ICCPR that recognises the rights of persons belonging to minorities to have their culture and practice their religion; and article 1 CERD in the definition of racial discrimination. Such prohibition also applies to non-citizens: CERD has clarified that the distinction between citizens and non-citizens should not be interpreted as retracting the states obligations under ICCPR.⁶⁹ The UN Working Group on Minorities has stated that 'in some cases, positive measures of integration (but not assimilation) can best serve the protection of minorities'.⁷⁰ In 2005, the Working Group discussed the limits between integration and assimilation to an extent and stated that 'Integration differs from assimilation in that while it develops and maintains a common domain where equal treatment and a common rule of law prevail, it also allows for pluralism. The areas of pluralism covered by the Declaration are culture, language and religion.'⁷¹

In a recent discussion on minorities, the UN Independent Expert on Minorities made the distinction between the two concepts, noting that assimilationist policies 'impeded the identity and unique characteristics, cultures

⁶⁵ UN Doc. CERD/C/EST/Co/10-11 of 23 September 2014, para. 9.

⁶⁶ R Race, *Multiculturalism and Education* (London: Continuum Publishers, 2011), 19.

⁶⁷ McGarry, O'Leary and Simeon, 'Integration or Accommodation? The enduring debate in conflict regulation' in Choudhry (ed.) *Constitutional Design for Divided Societies: Integration or Accommodation* (Oxford University Press, 2008), 41.

⁶⁸ CERD Concluding observations to the report of Moldova, UN Doc. CERD/C/MDA/CO/8-9, para. 8.

⁶⁹ CERD General Recommendation 11 (1993), para 3 and CERD General Recommendation 30 (2004).

⁷⁰ UN Doc. E/CN.4/Sub.2/AC.5/2005/2 of 4 April 2005

⁷¹ UN Doc. E/CN.4/Sub.2/AC.5/2005/2 of 4 April 2005, para. 22.

and traditions of minorities, and were contrary to the Declaration as well as to other human rights standards'.⁷² Also, the Special Rapporteur on Cultural Rights has noted in his report:

[N]otwithstanding the diversity of views with regard to multiculturalism, it is crucial that cultural diversity is not denied or suppressed through coercive assimilationist policies and measures. The Special Rapporteur concurs with his predecessors that even well-intentioned assimilationist policies can be in contradiction with international human rights law and exacerbate the problem of marginalization and invisibility of discriminated ethnic groups.⁷³

This is encouraging, especially as some states do discuss integration in similar terms: for example, the UK has stated that

integration in the United Kingdom is not about assimilation into a single homogenous culture. The Government is committed to building a fundamentally inclusive and cohesive society by creating a sense of inclusion and shared British identity, defined by common opportunities and mutual expectations on all citizens to contribute to society and respect others. This approach does not just apply to minority communities. Without widespread social participation and valuing of all local cultures, we acknowledge that those from majority communities can also feel excluded or left behind by social change.⁷⁴

Hopefully, many more states will follow such understanding of the concept; even more so, European states will apply the concept in this spirit.

b. Integration as a one-way approach

Closely related to assimilationist uses of integration is the pattern of viewing integration in a one-way approach, ie. the perception that integration entails solely obligations by the migrant to learn the national values, the national language and the national society's 'way of life'.

Clarity in this respect has not been helped by the original ambiguity in EU documents: although the (2004) Common Basic Principles for Immigrant Integration Policy in Europe refer to a two way approach, this approach seems to become rather muddled by the emphasis on 'fitting' the immigrants into the national society. Minority language rights are not mentioned and immigrants' values are respected as long as they conform to the state's principles. Indeed, the explanatory notes of the document maintain that 'the practice of

⁷² Report of the High Commissioner on the outcome of the panel discussion to commemorate the twentieth anniversary of the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. A/HRC/20/6, para. 22.

⁷³ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, UN Doc. A/HRC/20/33 (2012), para. 25.

⁷⁴ CERD UK report, para 2.

diverse cultures and religions (...) must be safeguarded, *unless practices conflict with other inviolable European rights or with national law.*' (emphasis added) Mitsilegas notes: "The emphasis on adherence to the common 'EU' values- notwithstanding the broad character and contested nature of these values- by Member States may seem as leaning towards an assimilationist model of integration."⁷⁵ Such earlier EU discussions though are in contrast to current directions of the European Commission viewing integration.⁷⁶ More recent discussions of integration at the EU reveal a deeper understanding of the mutuality inherent in the concept of integration.

The case-law of the European Court of Human Rights seems also to adopt a one-way approach to integration. In determining whether a migrant may be expelled from the state or not, the Court has put the onus of integration firmly on the terrain of the migrant. As mentioned above, in *Uner*,⁷⁷ *Boultif*⁷⁸ and *Slivenko*,⁷⁹ the Court looked more closely at several issues to establish the level of integration of the migrant, including the acquisition of nationality, links to the country of nationality; language; and labour market integration. In the above criteria the focus lies solely on how the individual adopts the host state's characteristics/ values. Even though in *Uner* the Court decided that integration does not mean a rejection of the country of origin or its language, there seems to be an implied commendation when the immigrant has relinquished the identity of his country of origin. Also, the case-law does not point to any obligation that the State may have in integrating the applicant, such as providing the socio-economic conditions that would facilitate his integration; neither does it discuss whether the immigrant has contributed to the society he lives in. Although this gap may be partly due to the context that the Court is discussing integration, i.e. the possible integration of the individual,⁸⁰ nevertheless the underlying assumptions about integration seem rather at odds with the mutuality element.

In addition to international bodies, some European states have also implemented integration in a similar way. In 2015, CERD noted in respect to the Netherlands approach to integration:

The current policy on integration has shifted the primary responsibility for integration from the State to migrant communities. This approach puts migrants in particularly vulnerable situations at risk of receiving

⁷⁵ Mitsilegas, *supra* n 25, 35.

⁷⁶ European Commission, Communication on Immigration, Integration and Employment, COM(2003)336, Brussels, 3 June 2003.

⁷⁷ Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (2010) 12 *European Journal of Migration and Law* 23 at 29.

⁷⁸ Thym, 'Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?' (2008) 57 *International and Comparative Law Quarterly* 92.

⁷⁹ *Slivenko v Latvia*, Application No. 48321/99, Judgment of 9 October 2003.

⁸⁰ *Ibid.*, 36.

insufficient attention and support, leaves them vulnerable to social exclusion, and hampers their integration and the full enjoyment of rights.⁸¹

Usually, the shift of responsibility from the state to the migrants is more subtle: In its 2012 report to the Advisory Committee of the FCNM, Switzerland stated that

The aim of integration policy is to enable migrants to participate in economic, social and cultural life in the same way as the Swiss. (...) Efforts to promote integration which are aimed at giving migrants *a stronger sense of responsibility* and supporting them in developing their personal capabilities go hand-in-hand with an anti-discrimination policy'.⁸² (emphasis added)

Switzerland implies that the burden of integration falls mainly with the migrants ('sense of responsibility'), that rights are linked to duties, and that obligations that Switzerland has are mainly negative ones, ie to prevent discrimination towards the migrants. This indeed seems a one-sided approach to the concept. Switzerland may focus on anti-discrimination policies but the human rights standards go into much more depth regarding the state's obligations in creating and maintaining a pluralist society.

Indeed, international instruments emphasise the importance of a dual approach when it comes to minority language rights, education rights and cultural rights that goes much further than the traditionally understood anti-discrimination measures:⁸³ the member of the minority should be given the opportunity to learn the national language as much as her own language; to have access to her own culture as much as to the national culture.⁸⁴ The UN *Declaration on Minorities* stresses the need for mutual knowledge and understanding between minorities and the majority within the state (article 4.4); the *Framework Convention for the Protection of National Minorities* refers to 'a pluralist and genuinely democratic society' as the model to be achieved and emphasizes 'a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment of each society'. The Advisory Committee to the FCNM has noted that the society of the former Yugoslav Republic of Macedonia 'remains polarised along ethnic lines, with the principal national groups living without significant interaction with each other'. The Committee urged for inter-ethnic dialog in all aspects of life and measures to promote tolerance, mutual

⁸¹ CERD/C/NLD/CO/19-21 of 28 August 2015, para. 21(a).

⁸² Third Report submitted by Switzerland pursuant to article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2012)001, Strasburg, 26 January 2012, p. 15.

⁸³ Henrard, *supra* n 52, 344.

⁸⁴ Article 13 of the International Covenant on Economic, Social and Cultural Rights, article 29.1.c of the Convention on the Rights of the Child talk among other provisions about such interaction.

understanding and respect and inter-cultural dialogue.⁸⁵ The OSCE *Copenhagen Document* also re-asserts the importance of the spirit of tolerance and intercultural dialogue, mutual respect and understanding that should exist among the minorities and the majority.⁸⁶

Especially on language, the European Court of Human Rights has insisted that the need for intensive language education of minority children cannot be used as an excuse for segregation: in *Orsus and Others v. Croatia*, the Court held that the segregation of Roma children because of their poor knowledge of the national language was also a violation of their human rights.⁸⁷ These cases confirm the 2001 observation of the Court in *Chapman* that 'there could be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (...), not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community'.⁸⁸

In addition to the duality discussed above, measures to improve the socio-economic situation of minorities are also central in any integration policy. Actually, Joppke has noted recently that 'the core cause of European integration problems may in fact be socioeconomic in nature rather than religious. Poverty and exclusion above all fuel the politicization of cultural differences- and should be the core of integration policy solutions...'⁸⁹ Yet, State obligations to improve minorities' socio-economic rights as an element of integration have been rather ignored. For example, although the Czech report to CERD maintained that the 2008–2010 Czech National Action Plan for Social Inclusion aimed at addressing the situation of socially excluded Roma and promoted their integration through measures that included socio-economic rights such as 'a wide range of measures in the field of social services, education, programmes to promote employment and programmes to promote the prevention of socially pathological phenomena',⁹⁰ when commenting on 'the Concept for the Integration of Foreign Nationals', a policy adopted annually to support 'activities geared

⁸⁵ Resolution CM/ResCNM(2012)13 on the implementation of the Framework Convention on the Protection of National Minorities by the "former Yugoslav Republic of Macedonia", adopted by the Committee of Ministers on 4 July 2012.

⁸⁶ Article 6.1 of the 1994 Council of Europe *Framework Convention for the Protection of National Minorities* and paragraph 36 of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (1990).

⁸⁷ Application no. 15766/03, Judgement of 16 March 2010.

⁸⁸ *Chapman v. the UK*, Application 27238/95, Judgment of 18 January 2001, para. 93.

⁸⁹ C Joppke, 'The role of the state in cultural integration: Trends, challenges and ways ahead (Migration Policy Institute, 2012), p. 1.

⁹⁰ CERD, para. 32

towards the integration of foreigners in the Czech Republic', the state only referred to projects on 'the multicultural education of children and young people; support for the teaching of Czech as a foreign language; studies on the education of migrating foreign nationals; and the organization of seminars to educate foreign nationals'.⁹¹ Socio-economic measures were completely sidelined.

In 2008, the Commentary of the Advisory Committee to the FCNM linked the effective participation of minorities to their socio-economic situation. The Committee emphasised that 'specific social and economic measures are often required for persons belonging to disadvantaged minority groups to ensure their effective equality'.⁹² Similarly to socio-economic measures, the need for active participation of minorities in the decision-making as an essential element of integration policies is also side-lined by states; yet, the Ljubljana Guidelines expressly link the integration of minorities to measures 'facilitating inclusive processes of governance that include all members of the population'.⁹³ The UN *Declaration on Minorities* urges states to ensure that members of minorities participate *effectively* in decisions at the national and, where appropriate, regional level.⁹⁴

Monitoring bodies often comment on the low level of participation of migrants and minorities in the public life. The Advisory Committee to the FCNM often refers to the need for consultation and participation of minorities in legislative and policy developments.⁹⁵ CERD also comments on the need for effective participation of minorities.⁹⁶ In its concluding observations to Georgia, the Committee asked that 'efforts be made to ensure greater political representation and participation of members of minority groups, especially the Azeri and Armenian communities, in public life' and explicitly invited the State party 'to engage in dialogue with these groups and civil society to facilitate their integration'.⁹⁷ Lichtenstein's 2012 statement to CERD explaining its approach to integration was puzzling: the delegation maintained that 'integration is understood

⁹¹ CERD, para 95.

⁹² ACFC/31DOC(2008)001, page 5.

⁹³ Guideline 2 of the (2012) OSCE Ljubljana Guidelines. Also see The Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999, Recommendation 2.

⁹⁴ Article 2.3 of the UN *Declaration on Minorities*.

⁹⁵ Resolution CM/ResCNM(2012)22 on the implementation of the Framework Convention on the Protection of National Minorities by the United Kingdom, adopted by the Committee of Ministers on 12 December 2012; also the Russian Federation (2013)

⁹⁶ For example, CERD/C/EST/CO/8-9 (2010), para. 14.

⁹⁷ UN Doc. CERD/C/GEO/CO/4-5 (2011), para. 15.

as a reciprocal process which expects mutual respect and accommodation both of the host community and of migrants, based on the principle of “demanding and promoting”.⁹⁸

The treatment of minorities as equal partners in the society allow them to contribute to the evolution of the national identity. Expecting members of cultural groups to accept the dominant ‘way of life’, a phrase often repeated, translates to excluding them from taking part in the shaping of this society, excluding them from taking active part and even changing and bringing new values to the national identity. In this respect, Belgium’s policy to require non-citizens who wish to vote to sign a declaration to the effect that they undertake to withhold the Constitution, the laws of Belgium and the European Convention of Human Rights was rightly criticised by the European Committee against Racism and Intolerance (ECRI) criticised Belgium in 2014. Such an obligation was ‘hurtful and [seen] as a brake on the exercise of the right to vote’.⁹⁹ Allowing minorities to also shape the future of the society in which they live is really essential. The Ljubljana Guiding Principles on Integration have stressed that the process of integration ‘can lead to changes in majority and minority cultures. This is why the HCNM prefers to speak about the integration of multi-ethnic societies rather than integration of a minority group into a particular society’.¹⁰⁰

c. Integration as an obstacle to the naturalisation of immigrants

Integration is also used as the ground on which restrictions to immigration and citizenship are pursued. Several scholars have discussed the tightening of the immigration and citizenship rules in European states in the post-9/11 context.¹⁰¹ Groenendijk discusses how the Netherlands, Germany and Austria pushed hard for clauses in the Family Reunification Directive (2003/86/EC) and the Directive on the Status of Long-Term Resident Nationals of Third Countries (2003/109/EC) that legitimised the use of integration policies as a vehicle to further restrict admission to migrants and exclude them from securing residence status.¹⁰² Both directives now include a few clauses where ‘integration measures or conditions are formulated as a prerequisite for admission to the country or for acquisition of a more secure residence status, rather than as measures supporting integration once admitted’.¹⁰³ In addition, the association of integration with the control

⁹⁸ CERD, Reports submitted by State parties under article 9, Liechtenstein, UN Doc. CERD/C/LIE/4-6 (2012), para. 4.

⁹⁹ ECRI Report on Belgium, adopted on 4 December 2013, published on 25 February 20105, para. 96.

¹⁰⁰ The (2012) OSCE Ljubljana Guidelines, p. 4.

¹⁰¹ Bleich 2010, Vertovec and Wessendorf 2010.

¹⁰² Groenendijk, 'Pre-departure integration strategies in the European Union, Integration or Immigration policy?' (2011) 13 *European Journal of Migration and Law* 1 at 5.

¹⁰³ Ibid.

of immigration is evidenced in the moves of integration policies in many states from Ministries of Culture or Social Affairs to Ministries.¹⁰⁴ Such further restrictions to admission have pushed Zizek to argue that the governing centre is sliding towards the agenda of the extreme right on matters of immigration and citizenship.¹⁰⁵

Although states have the right to set conditions to the admission of third country nationals, at the same time they have to respect international standards on minorities. However, integration becomes the main ground on the basis of which minority rights are shrinking in several European states. Emerson notes that EU states moved towards linking rights to obligations or conditions entitled 'integration conditions'.¹⁰⁶ For example, France has linked the French (2007) Act No. 2007-1631 on the control of immigration, integration and asylum which includes 'an assessment of [the foreigners'] knowledge of the French language and the values of the Republic to its integration policy. Migrants will 'need a certificate attesting to the fact that they have attended the training in order to obtain a long-stay visa.'¹⁰⁷ Wright argues that the emphasis on language skills has 'a very nineteenth century feel' as it indicates the 'the desire of elites in the nation state to promote unifying monolingualism rather than "divisive" multilingualism'.¹⁰⁸ Such integrationist policies lean 'towards the assimilationist direction'.¹⁰⁹ Human rights bodies have also been quite mindful of this. The UN has expressed its 'concern at measures which (...) treat irregular migration as a criminal, rather than an administrative offence'.¹¹⁰ CERD has urged Denmark 'to ensure that integration policies do not restrict the cultural rights of persons belonging to national or ethnic minorities in a disproportionate manner'.¹¹¹ Again in 2010 the Committee commented that the recently introduced 100 point system which aimed 'at establishing a direct link between integration and obtaining a residence permit' violated the rights of immigrants.¹¹²

¹⁰⁴ Groenendijk, supra n 102, 2.

¹⁰⁵ S Zizek, 'Liberal multiculturalism masks an old barbarism with a human face', *The Guardian*, 3 October 2010.

¹⁰⁶ Emerson, 'Summary and Conclusions' in Emerson (ed.), *Interculturalism, Europe and Its Muslims, In Search of Sound Societal Models* (Centre for European Policy Studies, Brussels, 2011), 1 at 14.

¹⁰⁷ CERD France report, UN Doc CERD/C/FRA/17-19 (2010), para. 63.

¹⁰⁸ Wright, 'Citizenship Tests in Europe – Editorial Introduction' (2008) 10 *International Journal on Multicultural Societies* 1, www.unesco.org/shs/ijms/vol10/issue1/intro.

¹⁰⁹ Emerson, as above, p. 15.

¹¹⁰ Resolution adopted by the General Assembly on 19 December 2011 on 'the protection of migrants', UN Doc. A/RES/66/172 (2012).

¹¹¹ CERD Denmark Report, CERD/C/DEN/CO/17 (2006), para. 22.

¹¹² CERD Concluding observations on Denmark, UN Doc. CERD/C/DNK/CO/18-19 (2010), para. 12.

But even the emphasis of integration policies on acquiring the citizenship of the host state may be problematic.¹¹³ In *Boultif*¹¹⁴ and in *Slivenko*,¹¹⁵ the European Court of Human Rights clearly established the acquisition of the State Party's nationality as a factor in determining one's integration to the national society is a dangerous tactic.¹¹⁶ However, this gives nationality a weight that does not coincide with its omission from the concept (and rights) of individuals belonging to minorities in international law.¹¹⁷ Although of some relevance some decades ago, gradually, the state's nationality has become irrelevant in deciding whether an individual is a member of a minority or not and hence, whether he can benefit from the minority protection that international law recognises. As immigrants fall in the minority rights protection, linking nationality with rights contradicts current standards of minority rights. One may suggest that the link that the Court established between the individual's nationality and his possible expulsion from the state must be seen in the light of the question the Court attempts to answer, i.e. whether integration is so complete that it can *prevent* the state's right to expel the individual, in other words an exception to the exception, and a rather different context from minority rights which focus on the rights that the state has to give to individuals belonging to such groups. Still, the approach of some judges that long-term immigrants –whether nationals or not of the state- should be assumed to be so integrated that they should not be deported but for the most extreme of situations seems to me closer to current human rights standards. For example the minority opinion in *Uner* argued that “foreign nationals – in any case those who, like Mr Üner, have been residing legally in a country – should be granted the same fair treatment and a legal status as close as possible to that accorded to nationals”.¹¹⁸

Integration cannot be used as the round on which immigration and citizenship rules are tightened. If this is the case, then integration is not a vehicle to social inclusion and social cohesion as proclaimed, but it has a direct link to the weakening of the rights of migrants and minorities within European states.

d. Integration as a way to deny real equality

¹¹³ *Mitsilegas*, supra n 25, 39.

¹¹⁴ Thym, ‘Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?’ (2008) 57 *International and Comparative Law Quarterly* 92.

¹¹⁵ *Slivenko v Latvia*, Application No. 48321/99, Judgment of 9 October 2003.

¹¹⁶ *Boughanemi v France* (1996) 22 EHRR 228; *Kaya v Germany* Application no. 31753/02, Judgement of 28 September 2007, para. 64.

¹¹⁷ *Murphy*, supra n 38, 34.

¹¹⁸ Joint dissenting opinion of Judges Costa, Zupancic and Turmen, ECourtHR, *Üner v. the Netherlands*, Application no. 46410/99, Judgment delivered on 18 October 2006, para. 5.

States have also used integration to justify measures that actually promote discrimination. In its recent observations to Cyprus, the UN Human Rights Committee expressed its concerns 'about reports that demanding Greek language proficiency tests serve as de facto barriers to the integration of minority communities in the civil service.'¹¹⁹ The 2015 ECRI Report on Austria has criticised the 2015 Islam Act which was adopted as a tool for integration,¹²⁰ but contains several discriminatory restrictions to freedom of religion: 'ECRI recommends that the authorities ensure, in view of the sustainable integration of important parts of the population, that any restriction and differential treatment with regard to practice of Islam is in line with the European Court of Human Rights case law.'¹²¹ Similar patterns have been identified in Estonia: ECRI has noted that 'With regard to integration, Russian-speaking citizens and people of undetermined citizenship have not been sufficiently consulted on the implementation of the Language Act, in particular concerning the acquisition of citizenship.' This act has been put forward as part of the integration policy of the state. 'This legislation could result in indirect discrimination with regard

¹¹⁹ Human Rights Committee, Report on Cyprus, UN Doc. CCPR/C/CYP/CO/4 of 30 April 2015, para. 23.

¹²⁰ Expert Council for Integration, 'Foreword by the Federal Minister for Europe, Integration and Foreign Affairs' *Integration Report 2015* (Austrian Ministry of Foreign Affairs, 2015) at http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Integrationsbericht_2015/Integrationreport_2015_EN.pdf.

¹²¹ ECRI Report on Austria (fifth monitoring cycle) adopted on 16 June 2015, CRI(2015)34, para 70.

to access to employment for persons whose mother tongue is not Estonian'.¹²²

Another related issue is that the discussion of discrimination as an element of integration seems to be rather focused on its negative aspect rather than on positive measures.¹²³ 'Treating minorities as everybody else in the state' has been used as an excuse not to pursue positive measures for the promotion and protection of minority rights. France has been quite vocal on this issue, repeatedly stating that it 'does not recognize the existence within its territory of minorities with a legal status as such, and takes the view that the application of human rights to all of a State's citizens, on the basis of equality and non-discrimination, normally provides them with the full and complete protection to which they are entitled, whatever their situation'.¹²⁴

Selectively viewing non-discrimination as negative protection is not in tune with current human rights standards. At the European level, both the EU Race Directive and the Employment Directive both allow states to introduce such measures.¹²⁵ The Council of Europe has been implying positive measures for minorities since 2001 through the 'special consideration standard', established in *Chapman v the United Kingdom*.¹²⁶ At the universal level, although Article 27 ICCPR does not make the option of positive measures clear, in General Comment 23, the Human Rights Committee has made clear that tolerance and non-discrimination are not adequate measures to fulfil Article 27.¹²⁷ In discussions on state reports, the HRC has repeatedly insisted on stressing this option to the states. For example, the Committee has urged Austria and the Czech Republic to take positive measures with respect to the Roma.¹²⁸ The Declaration on Minorities, seen as an interpretative tool of article 27 ICCPR also allows for positive measures for minorities: Article 1 specifically mentions that

¹²² ECRI Report on Estonia (fifth monitoring cycle) adopted in 16 June 2015, CRI(2015)36, p. 9.

¹²³ Henrard, *supra* n 52, 345.

¹²⁴ CERD Report of France, UN Doc. CERD/C/FRA/18-19 (2009), para. 9.

¹²⁵ Ahmed, *The impact of EU law on minority rights*, (Oxford: Hart, 2011) 92.

¹²⁶ *Chapman v the United Kingdom*. See A Morawa, 'The special consideration standard as a modern tool for advancing the rights of minorities' in T Agarín and M Brosi (eds), *Minority Integration: Debating ethnic diversity in Eastern Europe* (Amsterdam: Rodopi, 2009), 53-79.

¹²⁷ *Article 27: Rights of Minorities*, General Comment No. 23, UN Doc. CCPR/C/21/Rev.1/Add.5 (1994).

¹²⁸ Concluding Observations of the Human Rights Committee: Austria, Human Rights Committee, UN Doc. CCPR/C/AUT/CO/4 (2007), para 21; Concluding Observations of the Human Rights Committee: Czech Republic, UN Human Rights Committee, UN Doc. CCPR/C/CZE/CO/2 (2007), paras 16-17.

states must protect the existence and identity of minorities and shall take all appropriate “measures to achieve those ends.” States insist that as the instruments above interpret existing binding provisions, it is up to the states’ discretion to use positive protection. Yet, ICERD, a legally binding convention, very clearly discusses special measures “to ensure the adequate development and protection of certain racial groups and individuals belonging to them.” Of special importance is the comment of CERD about the objection of France to positive measures. Although members of the Committee acknowledged the republican tradition in France, they expressed their doubts about “whether an anti-racist strategy could succeed if the State did not address the particular features of a community in addition to the universality of citizenship.”¹²⁹ Even more tellingly, the Committee has published General Recommendation No 32 ‘on the meaning and scope of positive measures’ clarifying that the Convention requires de facto equality, which in turn often entails special measures for members of minorities.¹³⁰ The Advisory Committee to the FCNM has also pushed the United Kingdom to adopt ‘comprehensive legislation on the Irish language in Northern Ireland’ and stated that ‘more could be done to promote the use of this language in the public sphere’.¹³¹ Even clearer was the Committee in its comments on Sweden, when commenting on the new Discrimination Act:

This Act also does not expressly provide for the possibility of adopting special measures in all relevant fields of daily life of persons belonging to national minorities, in particular as regards health and housing, as such measures are still not generally accepted in Sweden, although they are provided for in Article 4, paragraphs 2 and 3 of the Framework Convention.¹³²

The denial of positive protection is often based on the rhetoric of the ‘neutral state’. It derives from the ideal of secularism, the ideal of a state that does not take a position on cultures and remains neutral. Secularism has several levels, but its central idea that a state can be neutral has been questioned.¹³³ Notwithstanding some well-meaning support for secularism,¹³⁴ one cannot neglect its weaknesses: in the face of unequal

¹²⁹ Consideration of Reports, Comments and Information Submitted by State Parties Under Article 9 of the Convention: France, UN Committee on the Elimination of All Forms of Racial Discrimination, UN Doc. CERD/C/SR.1675 (2005), para 54.

¹³⁰ General Recommendation No 32 (2009).

¹³¹ Resolution CM/ResCNM(2012)22 on the implementation of the Framework Convention on the Protection of National Minorities by the United Kingdom, adopted by the Committee of Ministers on 12 December 2012.

¹³² Resolution CM/ResCNM(2013)2 on the implementation of the Framework Convention on the Protection of National Minorities by the Sweden, adopted by the Committee of Ministers on 11 June 2013.

¹³³ Adhar, ‘Is secularism neutral?’ (2013) 26 *Ratio Juris* 404-; Rivers, *The Law of Organized Religions: Between Establishment and Secularism* (Oxford: Oxford University Press, 2010) 332 at 346–7; Modood, ‘Moderate Secularism, Religion as Identity and Respect for Religion’ (2010) 81 *Political Quarterly* 4.

¹³⁴ F. ex.M H Lucas (eds), *The struggle for secularism in Europe and North America: Women from migrant descent facing the rise of fundamentalism*, Dossier 30/31 (Women living under Muslim law, 2014).

opportunities and unequal treatment between the majority and minorities, state neutrality is in effect an affirmation of the way of life, the choices, and the ideas of the dominant group within the state.¹³⁵ The neutral state does not promote justice; rather, it maintains the status quo. Members of minority cultural groups do not have the same opportunities to live and work in their own culture and make their own choices to the same degree as the members of majority cultures. The only way to rectify their disadvantage is by providing them with special rights. Such special rights will put them on equal par with members of the majority and will in effect facilitate their real integration in the society.

e. Integration as a vehicle for the 'Europeanisation' of human rights

Another important way in which integration as currently proclaimed by European states restricts minority rights is by presenting human rights values as solely 'European values'. The Independent Expert on Violence against Women has highlighted this pattern. In his visit to Sweden, he observed that

a large majority [of Swedes] expresses support for diversity, but at the same time often expects the "new Swedes" to quickly adopt the values of Sweden's consensus society. Subtle, unstated prejudices have emerged towards ethnic and religious minorities that are not prepared to readily assimilate, rather than only integrate.¹³⁶

He continued:

On the basis of their concrete experiences of discrimination, many persons belonging to religious or ethnic minorities feel excluded from Swedish society and therefore reject ethical norms that are very often presented to them as "Swedish virtues", which in fact may constitute universal human rights values.¹³⁷

The 'Europeanisation' discourse of human rights maintain and increase the artificial gap between 'us, the Europeans' who represent the noble values of democracy and human rights and 'the others'. Holtz et al. note that "negative representations about the 'others' are the main engine of current efforts to introduce neo-assimilationist policies demanding individual integration efforts, instead of bringing up issues of discrimination—and an avowal towards 'national values'—a tendency... [depicted] in most European countries (...)." ¹³⁸

¹³⁵ Addis, 'Individualism, Communitarianism, and the Rights of Ethnic Minorities' (1992) 67 *Notre Dame Law Review* 615 at 644–45.

¹³⁶ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, Mission to Sweden, UN Doc. A/HRC/4/34/Add.3 of 6 February 2007, para. 16.

¹³⁷ *Ibid*, para. 18

¹³⁸ P Holtz, J Dahinden, W Wagner, 'German Muslims and the 'Integration Debate': Negotiating Identities in the Face of Discrimination' (2013) 47 *Integrative Psychological and Behavioral Science* 231-248.

The argument of 'moral superiority' used to restrict human rights is not new. It has been used against indigenous peoples, whose cultures have been portrayed as 'backwards' hence not worthy of protecting. According to Spivak, the 'white men saving brown women from brown men' script was central to the operation of British colonialism.¹³⁹ Ahmed has discussed how the British colonial authorities in Egypt relied on the rhetoric of women's emancipation for their colonial missions.¹⁴⁰ , Western feminism came to serve as a 'handmaiden' to colonialism in the process.

Nowhere is this distinction more prevailing than in the case of gender inequality. Migrant women in the Netherlands are often portrayed as victims of 'their culture' and that it is for their interest that they should 'adopt western values' and thus, integrate into Dutch society to end their victimization.¹⁴¹ Such assumptions are also dominant in States discussions of integration in human rights fora. In his mission to Sweden, the Independent Expert found that 'some circles have also tried to reframe the issue of gender inequality as an integration problem - a problem re-imported into equal Sweden through immigration from developing countries'.¹⁴² Although one cannot ignore violations of human rights in the name of culture, integration is often used as a vehicle to suppress religious and cultural practices of newcomers which are viewed as illiberal and harmful to women. Stamatopoulou notes that cultural rights may be seen as evoking 'the scary spectrum of group identities and group rights that they fear could threaten the "nation" state and territorial integrity.'¹⁴³

Professor Yakin Ertürk, Special Rapporteur on Violence Against Women, has noted:

[I]dentity politics and cultural relativist paradigms are increasingly employed to constrain in particular the rights of women. Essentialized interpretations of culture are used either to justify violation of women's rights in the name of culture or to categorically condemn cultures "out there" as being inherently primitive and

¹³⁹ GC Spivak, 'Can the Subaltern Speak?' in C Nelson and L Grossberg (eds), *Marxism and the Interpretation of Culture* (London: Macmillan, 1988).

¹⁴⁰ L Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven, CT: Yale University Press.

¹⁴¹ S Bracke, "From 'saving women' to saving gays': Rescue narratives and their dis/continuities' (2012) 19 (2) *European Journal of Women's Studies* 237-252.

¹⁴² Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, Mission to Sweden, UN Doc. A/HRC/4/34/Add.3 (2007), para. 13.

¹⁴³ Stamatopoulou, 'Monitoring Cultural Human Rights: The Claims of Culture on Human Rights and the Response of Cultural Rights' (2012) 34 *Human Rights Quarterly* 1172.

violent towards women. Both variants of cultural essentialism ignore the universal dimensions of patriarchal culture that subordinates, albeit differently, women in all societies and fails to recognize women's active agency in resisting and negotiating culture to improve their terms of existence.¹⁴⁴

Policies using integration as a vehicle to attack minority cultures in essence violate the rights of members of minorities to enjoy their own cultures and religion on an equal par to the majority cultures and are contrary to article 27 ICCPR, ICERD article 5(d)(e) and article 5 of the Framework Convention on National Minorities. The UN Independent Expert on Cultural Rights has urged Austria 'to approach cultural diversity as an invaluable resource for the inclusion of all and to take measures to mainstream cultural diversity and the cultural heritage of the country's diverse populations by, inter alia, incorporating minority cultures and history in all public schooling curricula, media and cultural activities; promoting intercultural competencies in all official institutions; and encouraging competencies in minority languages among civil servants.'¹⁴⁵

This is not to say that there are no cases where illiberal practices violate women's rights.¹⁴⁶ In such cases, international law leans towards the prevalence of women's rights over the right to culture. The UNESCO *Declaration on Cultural Diversity* notes that cultural diversity 'cannot infringe upon human rights guaranteed by international law, nor to limit their scope'.¹⁴⁷ The Commission on the Status of Women emphasised in its statement in 2001 that multicultural approaches could reinforce existing power relations between men and women in marginalised communities; implying that in this case women rights must prevail.¹⁴⁸ In cases of clear violations of women's rights, such rights must prevail.¹⁴⁹ Petrova emphasises the importance of accepting cultural rights but also to link them to the principle of anti-discrimination. Protection of cultural rights without equality, she notes, does not serve the human rights vision.¹⁵⁰ She continues: 'It should not be

¹⁴⁴ Intersections Between Culture and Violence Against Women, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Yakin Ertürk, UN Doc. A/HRC/4/34 (2007), para 68.

¹⁴⁵ 'Report of the independent expert in the field of cultural rights, Farida Shaheed, Addendum, Preliminary note on the mission to Austria (4 – 15 April 2011)', UN Doc. A/HRC/17/38/Add.2, para. 11.

¹⁴⁶ F.ex. see K Bennoune, *Your fatwa does not apply here* (New York: Norton, 2013).

¹⁴⁷ Article 4 of the Declaration.

¹⁴⁸ Commission on the Status of Women, Forty Fifth session, 13th March 2001, 11th Meeting.

¹⁴⁹ See, e.g., Nussbaum, *Sex and Social Justice* (Oxford University Press, 1999) (favouring individual rights, if a choice has to be made); Okin, 'Feminism and Multiculturalism: Some Tensions' (1998) 108 *Ethics* 661; Alexy, 'Individual Rights and Collective Goods' Nino (ed), *The Ethics of Rights* (Oxford: Oxford University Press, 1991), 163.

¹⁵⁰ 'Diverse Cultural Identities: the Challenges of Integrating Cultural Rights in Policies and Practice', Working document submitted by Ms. Dimitrina Petrova, The Equal Rights Trust, in 'Implementing Cultural

acceptable that “culture” is used as a justification of any type of discrimination or other human rights violations. Where cultural practices are based on gender, ethnic or other inequality, cultural rights must be limited by the right to equality.¹⁵¹ In her work, Bennoune emphasises the importance of fighting extremism dressed as culture which violates women's rights.¹⁵²

International law is trying to find the right responses in cases of conflicts between individual rights and cultural/ religious rights of minorities. balance between such conflicting rights. Recent ECourtHR judgments regarding minority cultural practices, including *SAS v Franec*, are not fully in tune with corresponding United Nations discussions. In *Ranjit Singh v. France* and *Bikramjit v. France*, the Human Rights Committee placed a much higher level of scrutiny to the state's restrictions than the ECourtHR in similar cases.¹⁵³ These cases demonstrate that contrary to some voices, the assumption that the rights of religion and culture of members of minorities are bound to always bow before secularism, public order and gender equality, as understood by majorities in European states, is not necessarily true. A pre-determined hierarchy that puts all individual rights above collective rights seems a rather simplistic way of addressing such challenges.¹⁵⁴ In all such cases, the free and informed opinions of the individuals concerned are of paramount importance. Certainly, “family violence and abuse, [including] forced marriage, dowry deaths, [and] acid attacks”¹⁵⁵ as well as honour killings “are incompatible with all religious and cultural values.”¹⁵⁶ However, decisions over other cultural practices of minorities, such as the wearing of the headscarves, may not as clear-cut. States must always be reflective of their own cultural prejudices and stereotypes; interculturalism will contribute to the re-evaluation and revisibility of cultural practices as much as stereotypes.

Rights, Issues at stake and challenges, Seminar organized by the Office of the High Commissioner for Human Rights, in partnership with the International Organization of La Francophonie and UNESCO, in collaboration with the Observatory of diversity and cultural rights, Geneva 1-2 February 2010, 4.

¹⁵¹ *Ibid.*, 9.

¹⁵² K Bennoune, *Your fatwa does not apply here* (New York: Norton, 2013).

¹⁵³ S Berry, ‘Freedom of Religion and Religious Symbols: Same right- different interpretation?’ EJIL: Talk (10 October 2013) in <http://www.ejiltalk.org/freedom-of-religion-and-religious-symbols-same-right-different-interpretation/>.

¹⁵⁴ See Xanthaki *supra* n 55.

¹⁵⁵ *Violence Against Women*, General Recommendation No. 19, Committee on the Elimination of Discrimination against Women, UN Doc. A/47/38 (1992), para 11; also (1993) Declaration on the Elimination of Violence Against Women, UNGA Res. 48/104, UN Doc. A/RES/48/104 (1994).

¹⁵⁶ Working Towards the Elimination of Crimes Against Women and Girls Committed in the *Name of Honour* (2004), UNGA Res. 59/165, UN Doc. A/RES/59/165 (2005)

Conclusions

This paper argued that although integration is widely considered a positive vehicle for the well-being of members of minorities and migrants and the harmonious co-existing of communities, the concept has recently been used in a manner that restricts internationally recognised rights of members of minorities. By using States statements in international law, the article conforms the conclusions of sociologists that the reality of integration is rather different to its positive understanding in abstract. States statements have highlighted how integration is used as a rhetoric that legitimises the restriction of universally accepted standards of minority protection. It has been used as the ground on which assimilationist policies are being pursued, where restrictive citizenship and immigration tests are being justified, and where positive measures that would materialise human rights obligations are being denied to members of minorities. Migrants' cultures are being restricted in the name of the 'common European values' on which integrationist policies insist. Human rights bodies have been helpful in identifying integration rhetoric that weakens human rights protection and to address such patterns. Yet, the article puts forward the argument that the discussion shifts from the unclear and dubious concept of integration back to minority rights. In the meanwhile, attempts to highlight the restrictive and inaccurate usage and more studies that monitor how integration is used and challenge perceptions that limit the contours of international law are important.