

## CONSTITUTIONS IN MULTIETHNIC REALITY\*

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### 1. Introduction

Ethnic pluralism is the reality of the contemporary world: at least a minimal level of ethnic plurality exists even in countries that have been traditionally perceived as ethnically homogenous. I doubt that a totally ethnic homogenous nation-state has ever really existed.<sup>1</sup> Nevertheless, the concept of ethnic homogeneity was a powerful force that helped build common collective identity in the territory of a certain state; it has been an important element of political ideologies that unified and mobilized population of nation-states - often connected with nationalism and used by nationalist movements and politicians.<sup>2</sup> (E.g. GELLNER, 1983: 1) The myth of (ethnic) homogeneity was born; furthermore, it was and still is believed to be true. Constitutions and political systems of almost all modern nation-states have been built and are still based on this myth; they pay little attention to the regulation of ethnic relations and protection of ethnic minorities.<sup>3</sup>

On the other hand, the contemporary world is being torn apart by ethnic conflict.<sup>4</sup> Constitutions of many nation-states that failed to recognize and/or deal successfully

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<sup>1</sup> France is often cited as a typical example of the homogenous »(one)nation-state«; but in reality it is an internally diverse multi-ethnic society. Ethnic plurality of its population (especially if immigrant population is included) is substantial; this was - even more - so in the period of creation of French »nation-state« and nation (ethno-nation). (E.g. FOUGEYROLLAS, 1968)

<sup>2</sup> As the political ideology and principle, nationalism demands that members of a certain nation have »the political duty... to the polity which encompasses and represents... (this) nation.« This political duty »overrides all other public obligations, and in extreme cases (such as wars) all other obligations of whatever kind.« In this context, nationalism is the most demanding form of ethnic or group identification. (HOBBSAWM, 1990: 9) Nationalism, by definition, is exclusive and/or hegemonist, and is usually hostile to others. Being based on the idea of national unity, nationalism is incompatible with pluralism and democracy. Nationalism demands that every member of a nation fights for »national interests« and generally sees other interests - that may differ from »officially« proclaimed »national interests« - as undesirable; individuals, groups and political parties who advocate other interests are often called »national traitors« and nationalist movements try to eliminate them, if only they feel strong enough.

<sup>3</sup> Moreover, children in schools are still taught this myth and mass-media are presenting it to their audience in almost all countries in the world. Even in the cases, where ethnic plurality is recognized constitutionally and legally and this fact is accepted by the official politics and politicians they see the existing ethnic plurality more a problem than a normal situation or even a comparative advantage.

<sup>4</sup> The war in Bosnia-Hercegovina and recent massacres in Rwanda are the most visible cases of ethnic conflict in media in June of 1994, but they are just a tip of the iceberg. The list of countries that experienced more or less violent ethnic conflict in the recent past includes among others: some other parts of the territory of the former Yugoslavia and Soviet Union, Sri Lanka, Northern Ireland, Iraq, India, Tibet, Nicaragua, Honduras, East Timor, etc.

with the existing ethnic pluralism have contributed to the problem: These constitutions did not provide for procedures, mechanisms and institutions that could have effectively prevented, managed and/or solved escalating conflict.

This article examines the nature of the contemporary nation-states and their constitutions with regard to ethnic relations. The main questions in this context are: Do the existing constitutions of the contemporary nation-states correspond to ethnically plural and asymmetrical reality? If not, what can be done to improve them?

## 2. The Concept of the Nation-state: Myth and Reality

The concept of the nation-state has been shaped simultaneously with the process of formation of modern (ethno)nations<sup>5</sup> in the very specific historical development in Europe from sixteenth and seventeenth century on.<sup>6</sup> It was in this context that the state acquired its ethnic identity and content, and became the nation-state;<sup>7</sup> the state is understood as a specific mean or even the only mechanism that can realize certain national interests of nations as specific ethnic communities.<sup>8</sup> The majority of modern states were established and are still perceived as nation-states of certain nations - one could say »one-nation-states«. Nowadays the international community can, therefore still, be defined as the international community of nation-states. (More see, e.g.: DEUTCH, 1970: 22-24; MACARTNEY, 1934: 192-211; SETON-WATSON, 1977)

In this context it is interesting to note that international law does not define states in their ethnic dimension. (E.g. OPPENHEIM/LAUTERPACHT, 1948; STARKE, 1989) The classic and also generally accepted legal definition of states as persons of international law is provided by the Article I of The Montevideo Convention on Rights and Duties of States of 1933; it reads: »The State as a person of international law should possess the following qualifications: a) permanent population; b) defined territory; c) government; and d) capacity to enter into relations with other states.«

<sup>5</sup> A **nation** or **ethno-nation** is »a stable, historically developed community of people with a territory, (specific) economic life, distinctive culture, and language in common«. (Webster's New Universal Unabridged Dictionary. Deluxe Second Edition. Dorset & Baber, USA, 1983: p. 1196.) The existence of a specific »national identity« shall be added to a definition: the consciousness and will of an individual shall exist to be a member of a certain nation, and an individual shall be recognized by other members of such an ethnic community as its member. (E.g. SCHLESINGER, 1987) The emergence of modern nations as specific ethnic communities was often conditioned on the existence of nation-states, and sometimes *vice versa*. (See e.g. GELLNER, 1983: 6-7, 53-58)

<sup>6</sup> The main turning point in the process of formation of modern states from the perspective of the international community and relations was the (Peace) Treaty of Westphalia of 1648 which laid foundations of the status of states in the international community and principles of relations among them

<sup>7</sup> The fact that the process of formation of modern nation-states in Europe went hand in hand with the process of formation of modern European nations has produced and still is reflected in a terminological problem in some languages. The same term »nation« is used to describe a **specific ethnic community** as was mentioned afore (Footnote 5) and a **state** as specific social organization and structure. In order to avoid misunderstandings in this article, the term »nation« is used only in the context of ethnic community.

<sup>8</sup> It is important to note that a state is not just a form of organization of a society, but as Max Weber pointed out, a state is (above all) an agency within society which possesses a monopoly over legitimate violence. (e.g. WEBER, 1922 and 1989) On the other hand, a modern state in European tradition of the twentieth century became also a service of its citizens that shall provide certain social infrastructure and assure realization of certain needs (e.g. education, social security, health care and service, etc.).

Although the notion and concept of a »one-nation-state« could be considered unrealistic and even obscure in the plural ethnic reality of the modern world, nothing indicates the possible abolition of this concept in the near future. There has been a certain evolution in the concept and practice of existing nation-states especially with regard to protection of minorities and democratization, if we compared them to the classic model and historical practice. But the very notion that the nation-state should be primarily a tool to realize certain national interests of a dominant (ethno)nation, often at the expense of other distinct communities in a state hasn't been seriously challenged and/or substantially changed. (MANN, ed., 1990) Such a notion and the rather romantic understanding of the concept and principle of state sovereignty play an important role in politics as well - especially in the formulation of »national policies.« (E.g. SETON-WATSON, 1977) The importance of ethnic factors and elements in politics should not be underestimated; among others, the afore mentioned practice could effect and even block processes of integration at the international level.

From the perspective of ethnic conflicts, a modern nation-state could be observed as a generator of nationalism in some states. (GELLNER, 1983: 3-5; HOBBSBAWM, 1990: 9-12) This has to do with the already mentioned fact that the ethnic composition of population is to a certain extent plural in all existing states, although they are mostly still perceived as »one-nation-states«. Such a concept of the »one-nation-nation« state could generate conflicts between ethnic communities that dominate the state and ethnic groups that don't want to accept such domination. Distinct ethnic communities that are unhappy with arrangements within the existing states often seek a solution in the secession and creation of nation-states of their own.<sup>9</sup>

### 3. Modern Constitutions

Practically all states in the contemporary world officially claim that they are **constitutional democracies**. (E.g. ELSTER, SLAGSTAD, eds., 1988; GREENBERG, KATZ, OLIVIERO, WHEATLEY, eds., 1993) Their constitutions define the structure and functioning of their political systems. Constitutions proclaim some basic legal and political principles that lay foundations and determine the nature of a certain society. Constitutions regulate relations between citizens and their states (governments); they determine and guarantee human rights and liberties, and should provide for their realization. (BETH, 1962: 2-20; BOBBIO, 1987: 138-156; KELSEN, 1945, and 1951: 272-276)

The constitution is a set of rules: It is a legal document, more precisely, the basic law (norm) on which the whole legal and political system of a certain state is built. Hierarchically, it is the highest norm in a legal pyramid. Usually, constitutions are

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<sup>9</sup> This is conditioned by the fact that also minorities in the existing states perceive the »(one)nation-state« as the only proper tool to realize national interests of a dominant (ethno)nation - in this case their own interest. (e.g. KELLAS, 1991; STAVENHAGEN, 1990) It is frightening that although they are deprived distinct communities in the existing states, their nationalist policy usually treat (possible) future ethnic minorities in their state as a problem and does not pay much attention to the future status and protection of these minorities.

written documents<sup>10</sup> adopted in a special procedure by parliaments (legislative bodies), special constitutional conventions or by the popular vote in the constitutional referendum.<sup>11</sup>

Constitutions differ from country to country, and these differences are often substantial. Additionally, the nature, content and interpretation of a certain constitution are changing with time in the context of specific historic circumstances and development; these changes may be formal by adoption of amendments or a new constitution, but often they are just consequences of a new legal and/or political interpretation of the existing text in a new social and political situation. If the constitutions were initially mostly the act (law) of the state and government, they have been becoming more and more the act (law) of people focussed on human rights, liberties and democratic participation of people.

One should not forget that constitutions are political and ideological documents.<sup>12</sup> The act of adoption and proclamation of a new constitution is an important political event in the history of every country: it is the result of different political processes and usually of certain political compromises in a certain historical epoch. Every constitution expresses and promotes, at least to some extent, the prevailing ideology in a certain society at the time of its creation; it contains certain political views and ideals of its creators. There is a mutual influence because every constitution is conditioned by contemporary social and political processes and situations; however, after its adoption a constitution, in many ways, influences and conditions these processes.

### 3.1. Constitutional Presumptions, Principles and Goals

Every constitution is based on a set of common presumptions which are generally accepted in a certain society as unquestionable given facts - postulates. Although these presumptions are often understood and presented as absolute and eternal, in reality they are constantly changing. Also, they are a product of a certain time influenced by a specific history, culture, level of social and economic development, political processes, institutions, political and social ideologies and social situation in a certain society.

Some **basic constitutional presumptions** that are universally accepted in all democratic constitutions include (among others) the notion of the existence of:

<sup>10</sup> But not every state has its written constitution: such exceptions are United Kingdom (due to the specific historic development of British constitutionalism) and Israel (because of theological/religious and ideological reasons). Both states, though, have their hierarchically built legal system based on some basic constitutional norms that among others define their political system, democratic institutions and procedures of decision-making. In both states there were (and still are) numerous initiatives to prepare and adopt a new written constitution which so far have failed to assure sufficient political and public support.

<sup>11</sup> In the U. K. there are no special procedures provided for the adoption of a document of a constitutional nature: due to the nature of the British constitution the parliament can adopt such a document in a regular legislative procedure. On the other hand, the constitutional referendum as the final act of the adoption of a new constitution or constitutional amendments - which is in some countries obligatory (e.g. Switzerland) - is usually combined with the special constitutional procedure in the parliament or constitutional convention.

<sup>12</sup> These two dimensions of constitutions are usually not even mentioned in official documents, media and (official or recommended) textbooks used in schools to teach and indoctrinate pupils and students about the constitution and political system of a certain country.

(i) a state, usually perceived as »(one)nation-state«;<sup>13</sup>

(ii) **sovereignty**, especially in its internal dimension as **sovereignty of a sovereign**.<sup>14</sup> Modern democratic constitutions define the **people (citizens) as a sovereign**. (HINSLEY, 1986: 126-157) Constitutions presume also **sovereignty of a state** or external dimension of sovereignty which means the actual capability of a government to control the territory and population of a state, to enter into international relations with other states, to conclude and realize international agreements (treaties), and to comply with international law; the status of states as persons of international law defines their (formally equal) position in the international community.<sup>15</sup> In this context, sovereignty of a state is often understood simply as its independence; (AKEHURST, 1984: 15-16; OPPENHEIM/LAUTERPACHT, 1948: 113-120)

(iii) **democracy**, which is functioning in practice;<sup>16</sup>

(iv) **human rights**. In this context, it is often presumed that the very proclamation and regulation of Human Rights by the constitution assure also their realization;

(v) a coherent, logical and hierarchical **legal system** with the constitution as the top of the pyramid; (KELSEN, 1970)

(vi) a **political system as a coherent, homogenous and symmetrical structure**, parts (segments) of which are at least similar if not the same (TARLTON, 1965; ŽAGAR, 1990 and 1992); etc.

These presumptions are the basis for the formulation of constitutional principles and goals that actually determine the nature, intentions and ideology of a certain constitution. Basic **constitutional principles** are guidelines for the interpretation of the constitutional/legal system and for the functioning of the political system and its institutions. On the other hand, following constitutional principles, **constitutional goals** define desired and expected results and outcomes of the functioning of the system. A few **constitutional principles and goals** that are accepted by almost all democratic constitutions in the world include (among others):

(i) **the principle of sovereignty of the people** which is the basis of modern democratic political systems;

<sup>13</sup> Constitutions often recall the historical foundation (creation) of a certain state, but speaking of the very existence of the state I refer especially to the following elements of the state: defined territory and its borders, population, political system and government that controls effectively the territory and population. Based on the concept of the nation-state, constitutions may stress a specific »ethnic nature/dimension« of a certain state and its political system; such a state is often defined constitutionally as the state of the dominant nation. (e.g. SETON-WATSON, 1977)

<sup>14</sup> **Sovereignty of a sovereign** can be described as a **supreme and absolute power and/or authority of final decision** by the ruler who is »recognized both as competent to decide and as able to enforce the decision.« (CRICK, 1972: 77)

<sup>15</sup> The official recognition of the existence of the state by other states is usually considered one of preconditions for its full international legal personality. (e.g. DUGARD, 1987; OPPENHEIM/LAUTERPACHT, 1948; STARKE, 1989)

<sup>16</sup> This term is used in different ways and can have several different meanings. In this context, the term »**democracy**« can indicate: (i) a social ideal and goal; (ii) a (social and political) ideology and policy; (iii) an ideal theoretical system (set of institutions); (iv) philosophical, theoretical, moral, political, etc. principles of organization of society; (v) in the practice existing social and political system(s) - polyarchy (DAHL, 1971: 1-14); (vi) a specific process of (social, political) decision-making - regulated with and based on defined and stable formal rules, procedures (rules of the game); (vii) the basic social contract based on broad social consensus; etc. (e.g. BOBBIO, 1987; DAHL, 1989; LIJPHART, 1977, 1984; SARTORI, 1987)

(ii) **democracy**, which is usually defined as both the principle and goal.<sup>17</sup> As the constitutional principle it determines the nature of political system, designs its structure and democratic procedures, and provides guidelines for their functioning. In this context it is often described as majoritarian democracy, but modern democracy would be better defined as **limited majority rule**. The rule of (simple) majority is in democratic constitutions limited by democratic procedures, limited terms, human rights, rights and protection of minorities, and different systems of checks and balances, etc. (LIJPHART, 1984; SARTORI, 1986; VANHANEN, 1990) The constitutional goal deriving from this principle is to assure functioning of the democratic system and to protect the democratic nature of a certain political system and society. An important precondition in this context is the »institutionalization of democratic institutions and procedures« in the constitutional/legal system; it defines the framework of modern democracy, assures the stability of the political system and functioning of democratic institutions in a long term; (BARBER, 1984: 117-311)

(iii) **the rule of law** (Rechtstaat) as a central principle that assures coherence and functioning of constitutional/legal systems in the modern world. The internal coherence of the legal system is assured by its hierarchical structure based on the principle that lower legal norms should comply with higher ones, and that all legal norms should be in compliance with the constitution. The principle of the rule of law assumes also that the political system, all its institutions, legal persons and individuals follow and apply all relevant legal provisions. One of the main goals of modern constitutions is to assure the realization and functioning of constitutional/legal systems in practice. In this context, different mechanisms are being developed to prevent any violation of legal and constitutional provisions by states and their institutions; every political system, its institutions, and every public and state agency are bound and limited in their functioning by the constitution and legal regulation. To prevent violations of legal provisions by individuals and legal persons different institutions, such as the judicial system, public prosecution and police (repressive mechanisms), have been developed. Modern constitutional/legal systems carefully and precisely regulate and limit competencies, procedures and functioning of these institutions to assure and protect rights of individuals, groups and legal persons. (KELSEN, 1945 and 1970)

(iv) **Human Rights** are often described as the basis of modern democracy and the central issue (content) of democratic constitutions.<sup>18</sup> The functioning of the political

<sup>17</sup> In this context, I underline that democracy became the prevailing political ideology that influenced constitutions in the last two centuries: even those constitutions and regimes, that were and/or are considered undemocratic by most scholars and the common public opinion, usually proclaimed themselves democratic ones. Societies and political systems are constantly changing, and there are no permanent and absolute yardsticks to measure democracy: What was considered to be democratic a few decades ago may be considered undemocratic by today's standards. On the other hand, in contemporary world even the most totalitarian and authoritarian regimes have adopted a few democratic provisions and features that a century or few decades ago seemed to be to radical and unrealistic in the most democratic countries of the time. (DAHL, 1989; LIJPHART, 1984; SARTORI, 1986; VANHANEN, 1990)

<sup>18</sup> Modern constitutional history can be observed as the process of growth and development of human rights in the last two centuries; among the most important dimensions of this process have been the inclusion of new categories of people (including certain communities and groups) as subjects of human rights, development and expansion of already existing ones, and the introduction of several new rights. (BLAUSTEIN, SIGLER, ed., 1988) Traditional personal, civil and political rights have been supplemented with the development of economic, social and cultural ones; collective human rights have been added to traditional individual ones (although some still reject

system in a way that assures realization of all constitutional human rights is a central principle; in this context, constitutions usually proclaim principles of universality (universal nature) of human rights, and equality before law. Appropriate regulation, realization and protection of human rights can also be defined the main constitutional goals. The situation of human rights is considered an important indicator of the level of development of democracy in a certain society;

(v) **a state as a service of its citizens** is a relatively new concept and constitutional principle, based on democratic principles and ideology. Although this principle is universally accepted, there are several different interpretations of its content. The understanding of this principle in a certain country (state) conditions the formulation of specific goals. There is a general agreement in interpreting this principle that the people should freely elect their representatives, and thereby influence and control the political system. In the past, the state was used by the ruling elite as an instrument to control and subdue its people.<sup>19</sup> The development of democracy should have assured democratic control of the people over the state.<sup>20</sup> Constitutional/legal systems have provided numerous institutions and procedural rules that should assure the realization of legally recognized interests of the people - especially citizens of a certain state. A state is expected also to perform other functions for the benefit of its citizens. Traditionally, a state has provided defense of a country, maintenance of law and order, functioning of financial and economic system, and the basic infrastructure of economy and life (e.g. irrigation, roads, bridges, ports, etc.). In the process of development some new important functions of a state have been added regarding the basic infrastructure (e.g. railways, airports, other communication systems, energy supply, etc.), labor regulation and protection (labor law), education, health, medical and social care, housing, protection of environment, etc. Sometimes governments of modern states provide these functions directly, but often they are involved only indirectly by the adoption of necessary legislation (regulation) and assuring (additional) finances.<sup>21</sup> The objectives, nature and extent of these functions and activities of a state are very different from country to country, but they always demand a certain level of involvement of a state in the redistribution of wealth to assure at least a minimal level of services for those who wouldn't be able to afford them otherwise. These functions and services of a state are usually referred to as a concept of the welfare state which differs substantially from country to country;<sup>22</sup> (E.g. GOULD, 1993; HANSEN, ed., 1993; KOLBERG, ed.,

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the concept and even very existence of collective rights, e.g. MACHAN, 1989). The process of development of human rights is also a result of a constant interweaving of (internal) constitutional development in individual countries (states) with development in international law. (GIBSON, 1991; *Human Rights in International Law: Basic texts*, 1992; LUTZ, HANNUM, BURKE, eds., 1989)

1992; MISHRA, 1990) etc.

Derived from the concept of the »(one)nation-state«, these basic constitutional presumptions, principles and goals basically ignore the existence of ethnic pluralism. If the multi-ethnic nature of a certain society is taken into consideration, it is usually perceived as a problem rather than a normal situation. Nevertheless, several elements of these constitutional presumptions, principles and goals might provide a basis in the process of transformation of present political systems that will take into account the multi-ethnic and multicultural nature of modern societies.

### 3.2. Pluralism: Conflict and Cooperation

Conflicts are normal phenomena in every plural society; the very existence of different interests conditions conflicts. If we observed a certain society from political perspective, different interests and conflicts of these interests enable political mobilization and pluralism; different political ideologies try to present a coherent approach (policy) in solving social problems that takes into account specific interests of their followers and supporters. On this basis, political parties in democratic countries are searching for a majority support of voters that would enable them to realize their electoral promises and policy.

Democratic political systems should provide (social) infrastructure and channels for the expression, coordination, harmonization and realization of different politically expressed and organized interests. Political systems should be viewed as mechanisms for the management and resolution of all conflicts deriving from the existence of different interests. In this context it might seem surprising that the fear of conflict is one of the most powerful factors in the contemporary politics, but the universally accepted concept of the »(one)nation-state« provides a specific perspective. Based on this concept political systems are designed as homogenous, symmetrical, coherent, and usually hierarchical systems that should provide mechanisms and rules for a democratic decision-making process understood as the »system of simple majority rule«. <sup>23</sup> In this context, conflicts and even the possibility of conflicts are seen as very dangerous destructive forces in a society that can destroy its political system.

Especially politicians from dominant nations often prefer to perceive their countries as ethnically homogenous »(one)nation-states« of titular nations. From their perspective the very existence of ethnic pluralism in a certain society is a severe problem. They see ethnic pluralism as an obstacle in building a viable and effective »political majority«. Namely, ethnic pluralism can contribute to the additional fragmentation of a certain electorate; ethnicity might be used as a powerful basis for political mobilization

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handicapped, etc. Although it was traditionally often rejected in the context of american individualism, demands for health care reform and some other proposals to introduce different elements of the welfare state (known mostly from Europe) are being expressed and supported also in the U.S.

<sup>23</sup> In such a system all decisions would be made by a majority without taking into account interests of the opposition. The opposition would be made marginal and powerless regardless of its size, without any possibility to challenge the majority. It is often forgotten that certain limitations of a »simple majority rule« are necessary to prevent the abuse of »democratic institutions and procedures« for the introduction of dictatorship. These limitations should provide at least the basic protection of minorities and protect the opposition from the (sometimes even psychical) elimination by a majority that once won elections. (BOBBIO, 1989)

and it is often used in politics.<sup>24</sup> Furthermore, these politicians fear ethnic pluralism, because they see it as a source of possible ethnic conflicts in a certain society. (HOROWITZ, 1985; MONTEVILLE, ed., 1990) This fear has been further increased by recent disintegration of some states because of ethnic conflict.<sup>25</sup>

The existence of pluralism is a necessary precondition of democracy; the existence of pluralism is inevitably also a source of conflicts at the same time. The concept of enforced monolithism and unity is incompatible with pluralism and democracy. Conflicts, on the other hand, are a common phenomena in democracy; it is the function of political systems to manage and resolve these conflicts in a democratic way, and especially to prevent their escalation into violent conflicts. It was the concept of the ethnically homogenous »(one)nation-state« based on myths of homogeneity and majority that conditioned the negative perception of social conflicts; all potentially positive and creative dimensions of conflicts have been neglected, and all negative and potentially destructive dimensions of social conflicts have been stressed. Social conflicts have been declared undesirable, dangerous and destructive, and we all were taught to fear them. Political systems have not developed adequate mechanisms for the management and resolution of potential social conflicts; nothing has been done to use the stimuli, and creative and constructive dimensions of social conflict in improving and developing of political systems and their segments. The ideological basis of most present democratic political systems has been the ideology of competition and individualism rather than the ideology of inclusion and cooperation. This is reflected in the existing socialization and education of people. Cooperation is being underestimated, although cooperation can often enable better results than individual competition; several problems cannot even be solved without cooperation. Nevertheless, political systems have not developed adequate procedures and instruments for the cooperation on specific projects and formation of temporary (non-party) »issue coalitions«.

Some tend to forget that no majority shall have an unlimited power in a democratic system in order to preserve and protect democracy in a long term; there have to be democratic mechanisms and procedures to challenge a certain majority. Different limitations of a simple majority rule were introduced to prevent abuse of democratic principles and institutions. Constitutional/legal systems usually define which important decisions have to be made or changed, only if a certain qualified majority exists in order to protect some basic interests of minorities and opposition. Protection of minorities, their participation in decision-making, and the required level of consensus about some central issues could be considered to be important yard-sticks of the devel-

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<sup>24</sup> Especially the role of nationalism should be stressed in this context, which is (as already mentioned) incompatible with plural democracy. It is not unusual that some politicians of the dominant ethnic group following their own nationalist policy deny or want to abolish the very existence of ethnic pluralism in a certain society. At the same time, the existence and fear or hatred of »others« is used to mobilize followers and to enforce monolithism and ethnic union within their ethnic group; those individuals and associations within their own group who question or refuse to defend and promote »national interests« formulated by a nationalist movement or government are declared national traitors and risk expulsion. (e.g. GELLNER, 1983; HOBBSBAWM, 1990; KELLAS, 1991; SETON-WATSON, 1977)

<sup>25</sup> The dismantling of the former Soviet Union and Yugoslavia, and the division of the former Czechoslovakia are these recent cases; the developments in the former Soviet Union and Yugoslavia have shown how violent a process of dismantling of a state could be.

opment of democracy in a certain modern society. (SARTORI, 1987: 24-25, 30-31) Regardless of that, it is often still believed that the protection of distinct communities, special (collective) rights of minorities, and some other limitations of a »simple majority rule« are unnecessary complications in everyday life and political systems.

### **<sup>26</sup>3.2.1. How are Modern Constitutions Equipped to deal with Multi-Cultural and Ethnically Plural Reality?**

Constitutions of modern states are generally following presented presumptions and principles. Constitutions often do not recognize the existence of ethnic pluralism in respective countries; sometimes they even explicitly deny its existence. Although most constitutions officially define their country as the state of its citizens, these states are usually perceived as ethnically homogenous »(one)nation-states« of dominant nations. Their constitutional/legal systems are built as symmetrical, coherent and hierarchical systems; their symmetrical political systems usually do not reflect regional and other differences, and asymmetries that exist in practice in every country. Even if constitutions of some states recognize the existence of ethnic pluralism and/or their official policy declares the principle of protection of minorities, the concretion and realization of these declarations are often missing.<sup>27</sup>

The reality usually differs substantially from the mentioned presumptions and constitutionally proclaimed principles and goals used as the basis for constitutions of »(one)nation-states«. The absence of constitutionally defined and regulated mechanisms and procedures for the management and resolution of ethnic conflicts is sometimes replaced by the existence of traditional mechanisms and customs that are providing the infrastructure for ethnic co-existence and cooperation in a certain society; different ethnic groups and distinct communities in a certain environment know and use these traditional mechanisms and customs, although they are usually not codified and legally regulated.<sup>28</sup> A dangerous problem may appear if such traditional mechanisms

<sup>26</sup> Such an opinion is usually advocated by nationalists, xenophobes and (neo)fascists, but with the growing economic and social problems in different countries it is becoming more and more appealing to the broader public. Foreigners and »others« are an easy target, a scape-goat that can be blamed for every problem; fear and hatred of foreigners and »all others« (different) is successfully used for the political mobilization of members of a certain ethnic group. (E.g. STROSS, 1992; VEEN, LEPSZY, MNICH, 1993)

<sup>27</sup> To confirm this, one should analyze the text (actual provisions) of different constitutions in the existing collections of the current and past constitutions of countries (states) in the world, such as: *Constitutions of the Countries of the World: A series of updated texts, constitutional chronologies and annotated bibliographies (Cumulative supplement since 1971)*, Edited by: Albert P. BLAUSTEIN, Gisbert H. FLANZ; Oceana Publications; Dobbs Ferry, NY 1971 on; *Constitutions of the Countries of the World: Historic Constitutions (Since 1971)*, Edited by: Albert P. BLAUSTEIN, Gisbert H. FLANZ; Oceana Publications; Dobbs Ferry, NY 1971 on; BLAUSTEIN, SIGLER, eds., 1988; etc.

<sup>28</sup> Such traditional mechanisms and customs in ethnically plural societies often prevented ethnic conflict or at least escalation of violent ethnic conflict (or larger proportions) for a long period of time. By defining rules of acceptable behavior they provided for (peaceful) co-existence and cooperation of distinct ethnic communities in a certain territory. These rules defined channels and ways of communication, nature of relations and exchange, code of behavior, mechanisms and procedures for the management of conflicts, mechanisms for prevention of violations and punishment for violation of these rules; they often defined also territorial or social boundaries of distinct communities and their position in a society. Although many traditional mechanisms for regulation of ethnic relations could not be considered democratic by today's standards, they were usually rather successful and

and procedures of ethnic co-existence and cooperation, and management of ethnic conflict have been destroyed by the introduction and functioning of constitutional/legal and political systems that have not replaced them by adequate new mechanisms of ethnic co-existence, cooperation and management of ethnic conflict.

We could conclude that modern constitutions are usually not equipped well for dealing with multi-cultural and multi-ethnic reality. Nevertheless, different constitutions have developed and introduced some (elements of) concepts and mechanisms of protection of ethnic minorities, special rights of minorities and distinct communities, autonomy of regions and local communities (regional and local government and self-management), political participation of minorities, and some other limitations a »simple majority rule« that can be useful in transforming of the existing constitutions of »(one)nation-states« into constitutions of ethnically plural states. This might be especially important if we took into consideration the role that the introduction and functioning of constitutional/legal systems have had in changing different societies, especially in the development and/or transformation of institutions and processes.<sup>29</sup>

### 3.2.2. Regulation of Ethnic Relations: Different Regimes (Arrangements) of Protection

Constitutions seldom recognize the existence of ethnic pluralism very, but even when they do they tend to establish different legal regimes (arrangements) and status for different types of distinct ethnic communities. It is rather unusual that a state would be constitutionally defined as a multi-national state, and that different ethnic communities would be proclaimed as having an equal ethnic basis of this state;<sup>30</sup> in such a case, a constitution has to provide for mechanisms and rules that assure equal status and protection of such ethnic communities.<sup>31</sup>

Following developments in international law,<sup>32</sup> some constitutions recognize the existence of ethnic minorities and provide certain special minority rights.<sup>33</sup> Special rights of ethnic minorities should assure the existence and development of ethnic minorities, their distinct language, culture and identity, establishment and functioning of their own associations and organizations, and their participation in the process of de-

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effective because their development reflected a specific culture and situation in a certain environment. (E.g. BARTH, ed., 1969; HOROWITZ, 1985)

<sup>29</sup> As mentioned, constitutions are influenced by the time and social situation in which they are created; but in turn, after their introduction they also influence and change social situation.

<sup>30</sup> As this is the case with e.g. the Constitution of the Swiss Confederation and Belgium, and constitutions of the former Yugoslav federation (e.g. The Constitution of the Socialist Federative Republic of Yugoslavia of 1974).

<sup>31</sup> This includes issues such as equality of languages, scripts, adequate representation in institutions of political systems which can assured by proportional representation and/or minimal quotas, etc.

<sup>32</sup> The Peace Treaties of Westphalia of 1648 marked the beginning of modern development of rights of religious and ethnic minorities: these treaties introduced the principle of freedom of conscience and religion and the obligation of states to grant toleration and self-government to distinct (Catholic or Protestant) religious communities. (BARON, 1985: 3)

<sup>33</sup> In the view of some critics, (special) rights of minorities should be abolished. They think that these special rights create unacceptable legal discrimination, and thereby constitute a violation of the principle of »absolute (formal) equality of everybody before law«. (MACHAN, 1989)

cision-making within the political system.<sup>34</sup> If we compared international law with constitutions and national legislation, concepts of protection of minorities in international documents are often more elaborated, and international standards of protection of minorities are higher than standards in constitutions and/or national legislation of most modern nation-states. (E.g. BARON, 1985; BROLMANN, LEFEBER, ZIECK, eds., 1992; THORNBERRY, 1990; WHITAKER, ed., 1984) The reluctance of governments of modern states that at least subconsciously still perceive their countries as ethnically homogenous »one-nation-states«, has often slowed or even blocked further development of the protection and rights of minorities in international law. Due to the reluctance and opposition of some states, it is rather unlikely that already existing international standards of protection of minorities will be translated into national legislation of these states anytime soon.

In accordance with international law, constitutions guarantee only specific status and protection of traditional ethnic or national minorities. Article 1 of the proposal for the Additional Protocol to the European Convention on Human Rights for the Protection of Human Rights and Fundamental Freedoms, concerning National Minorities and their Members defines a national minority as »a group of persons in a state who (a) reside on the territory of that state and are citizens thereof, (b) maintain long standing, firm and lasting ties with that state, (c) display distinctive ethnic, cultural, religious or linguistic characteristics, (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state, (e) are motivated by a concern to preserve their culture, their traditions, their religion or their language.«<sup>35</sup> (Report on an additional protocol on the rights of minorities to the European Convention on Human Rights, 1993: 4-5) Rights of minorities are often still perceived as individual rights of members of certain distinct ethnic communities, although the concept of collective rights has become more acceptable. In this context, constitutions and most international documents provide mostly for protection and rights of persons (individuals) belonging to ethnic minorities.<sup>36</sup> There are only a few international documents and constitutions that explicitly define rights of minorities

<sup>34</sup> Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities (A/RES/47/135) urges states to »protect the existence and national or ethnic, cultural and religious identity of minorities within their respective territories« and »encourage conditions for the promotion of that identity« by the adoption of »appropriate legislative and other measures«. (Article 1) Members of »national or ethnic, religious and linguistic minorities« should »have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and public, freely and without interference or any form of discrimination«; they should »have the right to participate effectively in cultural, religious, social, economic and public life. «Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or regions in which they live, in a manner not incompatible with national legislation.« They »have the right to establish and maintain their own associations.« They should also »have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other states to whom they are related by national or ethnic, religious or linguistic ties.« (Article 2)

<sup>35</sup> See also: PETRI, 1977: 89-104.

<sup>36</sup> E.g. Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities (A/RES/47/135) adopted by the General Assembly of the United Nations on December 18th, 1992 defines rights of persons belonging to minorities mostly as individual rights, although it stresses that »(p)ersons belonging to minorities may exercise their rights, including those set forth with the present Declaration, individually as well as in community with other members of their group, without any discrimination.« (Article 3/1.)

also as collective rights of these distinct ethnic communities.<sup>37</sup>

If at least a few constitutions and legal systems provide different arrangements and mechanisms of protection and participation of traditional ethnic minorities (e.g. PALLEY 1982: 6-19), there is practically no protection for (new) immigrants and immigrant communities. These immigrants came to countries of their current residence relatively recently, although in some case two, three or more generations ago; they are usually not citizens of a country of their current residence, and therefore do not have rights based on citizenship of this country.<sup>38</sup> As individuals immigrants without a citizenship have a legal status of aliens or resident aliens, and they enjoy basic human rights that belong to any person regardless of citizenship; as distinct communities their existence is legally not recognized at all. There are a few developments in different international documents (e.g. EC/EU, ILO) and law that are establishing at least some basic protection and social security of migrant workers. Although there is a belief that a protection similar to that of traditional ethnic/national minorities should be provided for immigrants and immigrant communities as new ethnic minorities, it is very unlikely that such a development is possible soon due to objections of most nation-states.<sup>39</sup>

### 3.2.3. Ethnicity and Citizenship

Citizenship or nationality, as some call it, is a special and sometimes the only (legal) link between a sovereign state and its citizens - individuals who live, usually permanently, in a territory of a certain state and possess a special guaranteed legal status. Citizenship can be defined as »the legal status of membership of the collectivity of individuals whose acts, decisions, and policy are vouchsafed through the legal concept of the state representing those individuals.« (STARKE, 1989: 340) It is the national legislation of a certain states that defines and regulates citizenship of this state;<sup>40</sup> citizenship, its legal regulation and policy of citizenship of a certain states, is usually an important and ardent political issue that can polarize (or, sometimes, homogenize) national political scene in a certain historical moment. Citizenship legislation of a certain state determines the criteria and procedure how an individual becomes a citizen

<sup>37</sup> E.g. the Constitution of the Republic of Slovenia (of 1991) defines the rights of traditional ethnic minorities as collective and individual rights of autochthonous ethnic communities and their members. (E.g. Article 65) It is interesting to mention, that the Constitution of the Republic of Slovenia (of 1991) on the initiative of representatives of ethnic minorities in the Constitutional Commission replaced the term »ethnic/national minority« with the term »autochthonous ethnic communities« to avoid the possible negative connotations of the term »minority«.

<sup>38</sup> This means that they do not have rights of citizens and especially political rights; thereby, they are basically excluded from political life. They can get these rights only if they become citizens of a country of their residence, which in some cases is extremely difficult

<sup>39</sup> See e.g.: Community and Ethnic Relations in Europe: Final Report of the Community Relations Project of the Council of Europe, Council of Europe / Conseil de l'Europe, MG-CR(91) 1 final E.

<sup>40</sup> International law mostly deals with different problems and conflicts of national citizenship laws, and cases when a certain person does not have his or her citizenship (e.g. double or multiple citizenship, statelessness, disputed citizenship of married women). Citizenship establishes a link between a person and a state which is permanent, even in a case when this person no longer lives in the territory of this state; in such a case, international law and national legislations establish rights and responsibilities of a person and state (e.g. entitlement for diplomatic protection abroad, etc.). (STARKE, 1989: 341-347)

of the state; citizenship laws define the nature and content of this (legal) status, relation and link between the citizen and the state, and the rights and obligations of the citizen and the state.<sup>41</sup> (e.g. BRUBAKER, ed., 1989; MEEHAN, 1993)

The concept of citizenship as such is often perceived as ethnically neutral in theory; citizenship belongs or, at least, should belong to all the people who live in a territory of a certain state and/or who qualify for it on the basis of general conditions.<sup>42</sup> On the other hand, ethnicity or, more precisely, belonging to a certain ethnicity (ethnic origin, blood-link) is often an important criterion in acquiring of citizenship in present practice of states.<sup>43</sup> Such a practice is a reflection of the already presented concept of the (one)nation-state, and of the role that ethnicity plays in the current politics in the world.

In the context of ethnic relations in ethnically plural modern societies, citizenship plays an important role. Although rights and protection of aliens have been increasing in the process of development of human rights both at the level of international law and national legislation, several rights and especially (political) participation in the decision-making process within political system are still reserved only for citizens of a certain state. The protection of ethnic minorities is provided only for members of traditional ethnic/national minorities; the very definition of these minorities stresses that their members are citizens of the state in which territory they live. As mentioned, many think that these rights and protection belong only to individuals who belong to these traditional ethnic minorities, and deny the very existence of any kind of collective rights and protection.

Although their families may live in a certain country for several generations, immigrants can usually acquire citizenship of the state where they permanently reside only with naturalization. The procedure of naturalization is often rather complicated, and quite often immigrants are unable to fulfill required preconditions.<sup>44</sup> If an immigrant became a citizen, he or she as an individual acquires usually all rights that the consti-

<sup>41</sup> In view of some citizenship is understood as a special contract between a certain state and its citizens that determines on the one hand obligations and duties of the state in relation to citizens and on the other hand rights and duties of individual citizens in the relation to the state.

<sup>42</sup> Usually, a child, although he or she was born abroad, can be or become a citizen of a certain state if his or her parents were citizens of this country in the time of the child's birth; in some cases it is sufficient if at least one of the parent was a citizen of this country.

<sup>43</sup> E.g. Croatia, Estonia, Germany, Ireland, Lithuania, Slovenia, etc. have national legislation that provide for ethnic Croats, Estonians, Germans, Irish, Lithuanians, Slovenes, etc., if they were born abroad and were citizens of a foreign country, a simplified procedure for acquiring respective citizenship (in comparison with regular procedure for naturalization); in this context, some national legislations accept and allow dual citizenship, and even in such cases provide for immediate acquiring of citizenship (e.g. Ireland, Lithuania, etc.).

<sup>44</sup> National legislation often requires that a person who wants to become a naturalized citizen of a certain state resides permanently in its territory for a certain period of time (usually from 1 to 10 years), has a job or sources of support, does not violate its laws, etc. The procedure of naturalization requires that the applicant has come to a certain, legally determined age. Often, a special test is required in which the applicant has to prove the knowledge and command of the official language, history, constitutional/legal and political system of the country, etc. (E.g. BRUBAKER, ed., 1989) The required level of test-scores and preconditions might be in some cases very high, so that it is practically impossible or at least very difficult for an applicant to become a citizen (e.g. Lithuania, Estonia, etc.). In some cases, national legislation does not only provide a long period of uninterrupted permanent residence in the territory of the state, but knows also surveillance of applicants by the immigration authorities after the request for naturalization is made to find out whether applicants are well assimilated in their environment and fit to become citizens (e.g. Switzerland).

tution and legislation of a certain state provide and guarantee to the citizens. As mentioned, states do not recognize officially the existence of distinct immigrant communities and do not provide any special mechanisms of protection of these communities and their members; the fact that an individual becomes a citizen changes nothing in this context. Nevertheless, immigrants with citizenship have all political rights; they can participate in the political process, and try to influence decisions important for the preservation and development of the distinct identity, culture and life of their immigrant communities.<sup>45</sup>

#### 4. Conclusion: Dimensions of Ethnic Policy

The myth of the »one-nation-state« and its ethnically homogenous population influenced also ethnic policy of states. As mentioned, states often denied the very existence of ethnic pluralism within their population; several states did not recognize even the existence of traditional ethnic minorities. In this context, the ethnic policy of states was traditionally viewed simply as minority policy; on the other hand, the absence of official ethnic policy or policy of ethnic homogeneity, was the ethnic policy of states that refused to recognize the very existence of traditional minorities in their territory.<sup>46</sup>

The context of ethnic policy has changed substantially in this century: ethnic diversity of population and the consciousness about the existence of ethnic and cultural diversity in modern societies have increased dramatically. The more integrated and interwoven international community, economic interdependence and international trade, technological progress and better transportation, developed communication, etc. are a few factors of such a change. On the one hand, these factors contributed and are still contributing to increased internal and international migrations that are changing ethnic structure of population both in the emigration and immigration societies. On the other hand, the knowledge and consciousness of the traditionally existing regional, ethnic and cultural diversity have strengthened in societies that were usually perceived ethnically and homogenous. All this influences and slowly also changes also the ethnic policy of states; although states still often refuse to recognize the existence of ethnic pluralism officially, their ethnic policy addresses some issues of ethnic and cultural diversity. The mentioning of multi-cultural reality and proclamation of »multi-culturalism«<sup>47</sup> have become popular in some political circles especially in the West, although this has provoked fierce reactions of advocates of the traditional concept of

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<sup>45</sup> In case of some international integrations, there are some attempts to create a special legal regime for citizens of members states who live in other member states; in this context, they should have the right to participate in local elections and in elections of their local/regional representatives at the level of the international integration (e.g. European Union). (E.g. MEEHAN, 1993)

<sup>46</sup> As mentioned, there were only a few multi-national states that officially recognized ethnic plurality of their population and declared different distinct ethnic communities constitutive or titular nations of these states. In these cases, their ethnic policy would include the regulation and management of ethnic relations among those ethnic communities as its central issues.

<sup>47</sup> With the exception of Canada that adopted a number of political documents, and legally regulated several issues of multi-culturalism, most states do not officially define what this concept actually means. In several cases, changes and developments in language of politicians are not reflected and translated into official ethnic policy, legislation and practice.

ethnically homogenous nation-states.

There is no doubt, that in the time of intensified international migrations issues of immigration, and in some countries also issues of emigration are becoming central issues of ethnic policy of modern states. Changes in the ethnic structure of population caused by processes of migration are taking proportions that could simply not be ignored by ethnic policy.<sup>48</sup> Ethnic policy will have to formulate new approaches, concepts and ideologies of ethnic relations, and new legislation will have to be developed that will correspond to a new, more dynamic changing ethnic reality.

Ethnic policy of every state is a relatively independent segment of global national policy, and there are also several external factors that can condition it. From the perspective of its formulation, application and consequences one should take into consideration different internal and external (international) dimensions of the ethnic policy of a certain state.

#### **4.1. The Influence of the International Community and International Law**

As mentioned, international law plays an important role in the historical development of rights of ethnic minorities. Several recent developments and increased standards of protection of minorities have yet to be translated from international law into national legislation of states. Due to the reluctance of some important states, it is likely that the pressure of the international community to introduce the highest existing international standards of protection of minorities in national legislation will be used rather seldom and selectively.

In the context of attention paid to human rights and protection of minorities at the level of the international community and regardless of passivity and opposition of some states, »a rather comprehensive set of instruments to protect minority rights seems to have been constructed or, at least, seems to be under construction by the international community« which includes »the developments in the thinking about the legitimacy of intervention by the international community in the case of gross and systematic violation of human rights.« (KOCH, 1993: 3) These developments will influence constitutions and national legislation of states at least in a long run, and hopefully contribute to better situation of ethnic minorities in the future.

It may be expected, that the »intervention by the international community in the case of gross and systematic violation of human rights« will be at least in some cases used also in the future. The decision to apply the collective »humanitarian« intervention should be in every case made by the UN in accordance with the Charter; such a solution »must be applied equally and respect the principle of proportionality.« There might be a possibility that »an obligation of international community to intervene when human rights are grossly and systematically violated« could be developed in international law. (KOCH, 1993: 3, 4)

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<sup>48</sup> These changes are obviously irreversible, and have already changed and replaced traditional culture and ways of life in different environments. The changing situation is a challenge to governments that will have to manage the new situations; this includes the danger of different conflicts and instability that usually accompanied major cultural and social changes in different societies in history.

With regard to the protection of immigrants and distinct immigrant communities that in many ways resemble traditional ethnic minorities, the situation seems to be less optimistic. The existing international standards and level of their protection are rather low, and states are rather reluctant to implement even these standards. (E.g. COSTA-LASCOUX, 1990) It is rather unlikely that some standards and solutions in the protection of traditional ethnic minorities will be applied to protect immigrants and their communities; taking into account some recent developments, practice of states, and growing xenophobia in several countries one might fear that the situation and protection of immigrants in these countries might even worsen.

The international community, media and especially international public can play an important role in promoting rights of minorities and new approaches in ethnic policy of states. There is a need to inform people about multi-ethnic and multi-cultural nature of modern societies; to overcome the fear of ethnic plurality all advantages and possible problems of increasing ethnic diversity should be presented. Media and international public are especially important factors of the promotion of the concept and ideology of cooperation that seem to be the basis of good ethnic relations in ethnically plural environment.

Reactions and protests of international public against violations of rights of ethnic minorities and immigrants can be a powerful factor in the process of formulation of ethnic policy of a state. Public pressure for the collective international humanitarian intervention in the case of gross and systematic violation of human rights might at least in some cases deter a government from such a practice.

The protection of minority rights and good ethnic relations are generally accepted as an important element and prerequisite of modern democracy. On the other hand, the existing model and concept of the »(one)nation-state« seems to ignore such a conclusion; there has been no or very little change in the concept of political system of nation-states that is still based on abstract theoretical models built on the presumption of the symmetrical, ethnically homogenous and harmonious society.

In the context of growing ethnic diversity in most environments, there is obviously a need for a new model of the state, ethnically speaking as neutral a »body politic« as possible. Such a state should recognize and promote the existence of ethnic and cultural pluralism. Its political system should be built on the principles of inclusion, tolerance, cooperation, and recognition of ethnic, cultural and social plurality and diversity of its population. A political system should recognize the possibility of different conflicts, and provide channels for expression, coordination and realization of different specific interests. This political system should provide mechanisms for the protection and participation of distinct communities; it should develop also different institutions, mechanisms and procedures for the prevention and management of possible conflicts (including ethnic conflicts), and offer different peaceful and democratic means and ways for resolution of existing conflicts.

To assure functioning of such a system people have to be informed about the multi-ethnic and multi-cultural structure and nature of their society. They have to know as much of different cultures as possible, and especially they should be taught to acknowledge and respect differences. It is important to create channels and ways of communication and cooperation among different distinct communities that will take into account cultural differences and a specific nature of every individual culture. This in-

cludes the creation of informal mechanisms for the management and resolution of conflicts.

I would argue that the ideology of such a system should be human rights, cooperation and democracy, but it has to take into account also different content and nature of these concepts in different cultures present in a certain society; it has to find the common and universal elements of these cultures, and build on consensus and compromise to prevent even the feeling and fear of inequality and domination.

It is almost impossible that such developments will happen soon taking into consideration the present situation and developments in the world. On the other hand, it is this situation that urgently requires development of alternative concepts that will be able to manage ethnically plural reality and assure some social stability necessary for the future democratic development. That is, why I offer a few elements of such an alternative concept in this conclusion.

At the same time, I would suggest that the immediate strategy could be the pressure on governments to implement at least mechanisms and standards for the protection of ethnic minorities and regulation of ethnic relations that already exist in national legislation of different states. Governments should be pressed to sign and ratify international documents that regulate the protection of ethnic minorities and immigrants, to translate them into national legislation, and to increase national standards of their protection at least to the level of international standards. There is a need to change also the education and political socialization of citizens to at least recognize the existence of ethnic and cultural pluralism in a certain state; it is in this context that the importance of good ethnic relations and cooperation need to be promoted.

#### References:

**Michael AKEHURST**, *A MODERN INTRODUCTION TO INTERNATIONAL LAW* (1984), Fifth Edition; George Allen and Unwin; London, Boston, Sydney 1984.

**Benjamin R. BARBER**, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984), University of California Press, Berkeley, Los Angeles, London 1984.

**Salo W. BARON**, *ETHNIC MINORITY RIGHTS: SOME OLDER AND NEWER TRENDS* (1985), The tenth Sacks Lecture delivered on 26th May 1983; Oxford Center for Postgraduate Hebrew Studies; Oxford, England, 1985.

**Frederick BARTH**, (ed.), *ETHNIC GROUPS AND BOUNDARIES* (1969), Universitetsforlaget; Oslo / Little & Brown; Boston 1969.

**Loren P. BETH**, *POLITICS, THE CONSTITUTION AND THE SUPREME COURT: AN INTRODUCTION TO THE STUDY OF CONSTITUTIONAL LAW* (1962), Harper & Row Publishers; New York, Evanston, London 1962.

**Albert P. BLAUSTEIN, Jay A. SIGLER**, ed., *CONSTITUTIONS THAT MADE HISTORY* (1988), Edited, compiled and introduction by: **A. P. BLAUSTEIN, J. A. SIGLER**; Paragon House Publishers; New York 1988.

**Norberto BOBBIO**, - *DEMOCRACY AND DICTATORSHIP: THE NATURE AND LIMITS OF STATE POWER* (1989), Polity Press; Oxford 1989.

- THE FUTURE OF DEMOCRACY: A DEFENSE OF THE RULES OF THE GAME (1987), Polity Press; Oxford 1987.

**Catherine BROLMANN, Rene LEFEBER, Marjoleine ZIECK, eds., PEOPLES AND MINORITIES IN INTERNATIONAL LAW** (1992), M. Nijhoff; Dordrecht, Boston 1992.

**William Rogers BRUBAKER, ed., IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA** (1989), University Press of America; Lenham, MD, Washington, D.C. 1989.

**Jacqueline COSTA-LASCOUX, »ANTI-DISCRIMINATION LEGISLATION: BELGIUM, FRANCE, NETHERLANDS, COMMITTEE OF EXPERTS ON COMMUNITY RELATIONS«** (1990), (MG-CR (90) 2), (Report prepared by Jacqueline COSTA-LASCOUX), Council of Europe / Conseil de l'Europe, Strasbourg 9 January 1990.

**Bernard CRICK, »SOVEREIGNTY«** (1972) - in *International Encyclopedia of the Social Sciences*, Vol. 15; David L. SILLS, (ed.); The Macmillan Company & The Free Press, New York; Collier-Macmillan Publishers, London; Manufactured in the USA, Reprint edition 1972 (C 1968), pp. 77-82.

**Robert A. DAHL,**

- DEMOCRACY AND ITS CRITICS (1989), Yale University Press; New Haven & London 1989.

- POLYARCHY: PARTICIPATION AND OPPOSITION (1971), Yale University Press; New Haven, London 1971.

**Karl W. DEUTSCH, POLITICAL COMMUNITY AT THE INTERNATIONAL LEVEL: PROBLEMS OF DEFINITION AND MEASUREMENT** (1970), Archon Books; USA 1970.

**John DUGARD, Recognition and the United Nations** (1987), Hersch Lauterpacht Memorial Lectures; University of Cambridge, Research Centre for International Law, Grotius Publications Limited; Cambridge 1987.

**John ELSTER, Rune SLAGSTAD, (eds.), CONSTITUTIONALISM AND DEMOCRACY** (1988), Cambridge University Press; Cambridge, New York 1988. (Published in collaboration with Maison des sciences de l'homme, Paris.)

**Pierre FOUGEYROLLAS, POUR UNE FRANCE FEDERALE - VERS L'UNITE EUROPEENNE PAR LA REVOLUTION REGIONALE** (1968), Mediations, Editions Denoel; Paris 1968.

**Ernest GELLNER** (1983), **NATIONS AND NATIONALISM** (1983), Cornell University Press; Ithaca & London.

**Douglas GREENBERG, Stanley N. KATZ, Melanie Beth OLIVIERO, Steven C. WHEATLEY, (eds.), CONSTITUTIONALISM AND DEMOCRACY: Transitions in the Contemporary World (The American Council of Learned Studies Comparative Constitutionalism Papers)** (1993), Oxford University Press; New York, Oxford 1993.

**John S. GIBSON, INTERNATIONAL ORGANIZATIONS, CONSTITUTIONAL LAW, AND HUMAN RIGHTS** (1991), Praeger; New York 1991.

**Arthur GOULD**, CAPITALIST WELFARE SYSTEMS: A Comparison of Japan, Britain and Sweden (1993), Longman; London, New York 1993.

**Erik Jorgen HANSEN, ed.**, WELFARE TRENDS IN THE SCANDINAVIAN COUNTRIES (1993), M.E. Sharpe; Armonk, N.Y. 1993.

**F. H. HINSLEY**, SOVEREIGNTY (1986), 2nd edition, Cambridge University Press; Cambridge 1986.

**Eric J. HOBBSAWM**, NATIONS AND NATIONALISM SINCE 1789: Programme, Myth, Reality (1990), Cambridge University Press; Cambridge, London, New York, New Rochelle, Melbourne, Sydney 1990.

**Donald L. HOROWITZ**, ETHNIC GROUPS IN CONFLICT (1985), University of California Press; Berkeley, Los Angeles, London 1985.

**Human Rights in International Law: Basic texts** (1992), Compiled by the Directorate of Human Rights, Council of Europe; Council of Europe Press; Strasbourg 1992.

**James. G. KELLAS**, THE POLITICS OF NATIONALISM AND ETHNICITY (1991), Macmillan; London 1991.

**Hans KELSEN**,  
 - GENERAL THEORY OF LAW AND STATE (1945), Translated by Anders Wedberg; Harvard University Press; Cambridge, Mass. 1945.  
 - OPŠTA TEORIJA PRAVA I DRŽAVE (General Theory of Law and State) (1951), Izdanje »Arhiva za pravne i društvene nauke«; Beograd 1951.  
 - PURE THEORY OF LAW (1970), Translation from the Second (Revised and Enlarged) German Edition (Reine Rechtslehre) by Max KNIGHT; University of California Press; Berkeley, Los Angeles, London 1970.

**Koen KOCH**, »NOT A DEUS EX MACHINA, BUT A BARON VON MUNCHHAUSEN: SOME THOUGHTS ABOUT THE INSTRUMENTS OF THE INTERNATIONAL COMMUNITY AND FORMS OF INTERVENTION IN THE FIELD OF MINORITY RIGHTS PROTECTION« (1993), Paper for the 12th Annual Conference of the Institute for EasWest Studies »Minority Rights and Responsibilities: Challenges in a New Europe«; Lake Bled, Slovenia, May 21-23, 1993.

**Jon Eivind KOLBERG, ed.**, THE STUDY OF WELFARE STATE REGIMES (1992), M. E. Sharpe; New York 1992.

**Arend LIJPHART**, DEMOCRACIES: PATTERNS OF MAJORITARIAN AND CONSENSUS GOVERNMENT IN TWENTY-ONE COUNTRIES (1984), Yale University Press; New Haven, London 1984.

**Ellen L. LUTZ, Hurst ANNUM, Kathryn J. BURKE, eds.**, NEW DIRECTIONS IN HUMAN RIGHTS (1989), University of Pennsylvania Press; Philadelphia 1989.

**C. A. MACARTNEY**, NATIONAL STATES AND NATIONAL MINORITIES (1934), Oxford University Press; Humprey Milford; London 1934.

**Tibor R. MACHAN**, *INDIVIDUALS AND THEIR RIGHTS* (1989), Open Court; La Salle, Illinois 1989.

**Michael MANN, ed.**, *THE RISE AND DECLINE OF THE NATION STATE* (1990), Basil Blackwell; Oxford, Cambridge (Mass.) 1990.

**Elizabeth M. MEEHAN**, *CITIZENSHIP AND THE EUROPEAN COMMUNITY* (1993), Sage Publications; London, Newbury Park, Calif. 1993.

**Ramesh MISHRA**, *THE WELFARE STATE IN CAPITALIST SOCIETY: POLICIES OF RETRENCHMENT AND MAINTENANCE IN EUROPE, NORTH AMERICA AND AUSTRALIA* (1990), Harvester Wheatsheaf, New York, London 1990.

**Joseph V. MONTEVILLE (ed.)**, *CONFLICT AND PEACEMAKING IN MULTIETHNIC SOCIETIES* (1990), Lexington Books; Lexington, Toronto 1990.

**L(assa Francis Lawrence)**. **OPPENHEIM**, *INTERNATIONAL LAW: A TREATISE* (1948), Vol. I: Peace; 7<sup>th</sup> edition edited by: **H(ersch)**. **LAUTERPACHT**; Longmans, Green and Co.; London, New York, Toronto 1948.

**Claire PALLEY**, *CONSTITUTIONAL LAW AND MINORITIES* (1982/1978), Report No. 36, Minority Right Group; London 1982 (First published in April 1978, reprinted in 1979 and 1982.)

**Ernest PETRIC**, *MEDNARODNOPRAVNO VARSTVO NARODNIH MANJŠIN* (The Protection of Ethnic Minorities by the International Law) (1977), Založba Obzorja; Maribor 1977.

»REPORT ON AN ADDITIONAL PROTOCOL ON THE RIGHTS OF MINORITIES TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS« (1993), Rapporteur: Mr. Worms, France Socialist; Parliamentary Assembly, Council of Europe: ADOC 6742. 1403-15/1/93-2-E, 19 January 1993.

**Philip SCHLESINGER**, »ON NATIONAL IDENTITY: SOME CONCEPTIONS AND MISCONCEPTIONS CRITICIZED.« (1987), *Social Science Information/Information sur les sciences sociales* (London, Paris), Vol. 26, No. 2, 1987, pp. 219-264.

**Hough SETON-WATSON**, *NATIONS AND STATES* (1977), Methuen; London; or Westview Press; Boulder, Colorado 1977.

**J. G. STARKE**, *INTRODUCTION TO INTERNATIONAL LAW* (1989), 10<sup>th</sup> edition; Butterworths; London 1989.

**Rudolfo STAVENHAGEN**, *THE ETHNIC QUESTION: CONFLICTS, DEVELOPMENT, AND HUMAN RIGHTS* (1990), United Nations University Press; Tokyo, Hong Kong 1990.

**Richard STROSS**, *POLITICS AGAINST DEMOCRACY: RIGHT-WING EXTREMISM IN WEST GERMANY* (1992), Translated from German by Lindsay BATSON; Berg; New York 1992.

**Charles D. TARLTON**, »SYMMETRY AND ASYMMETRY AS ELEMENTS OF FEDERALISM: A THEORETICAL SPECULATION« (1965), *The Journal of Politics*, Vol. 27, No. 4., November 1965; pp. 861-874.

**Patrick THORBERRY**, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES (1990), Clarendon Press; Oxford, England / Oxford University Press; New York 1990.

**Tatu VANHANEN**, THE PROCESS OF DEMOCRATIZATION: A COMPARATIVE STUDY OF 147 STATES, 1980-88 (1990), Crane Russak; New York, Bristol, Washington, London 1990.

**Hans-Joachim VEEN**, **Norbert LEPSZY**, **Peter MNICH**, THE REPUBLIKANER PARTY IN GERMANY: RIGHT-WING MENACE OR PROTEST CATCHCALL? (1993), The Washington Papers 162; Foreword by Karl H. Cerny; Praeger, Westport, Conn. 1993

- THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM (1989), translated by Talcott Parsons; introduction by Anthony Giddens; Unwin Paperbacks; London 1989.

- WIRTSCHAFT UND GESELLSCHAFT (1922), bearbeitet von Max Weber; J. C. B. Mohr / P. Siebeck; Tübingen 1922.

**Ben WHITAKER**, ed., MINORITIES: A QUESTION OF HUMAN RIGHTS? (1984), Pergamon Press; Oxford, New York, Toronto, Sydney, Paris, Frankfurt 1984.

**Mitja ŽAGAR**, - »THE MODEL OF ASYMMETRICAL DECISION-MAKING AS A MEAN OF PROTECTION AND OF ASSURING EQUAL RIGHTS FOR ETHNIC MINORITIES IN MULTI-ETHNIC (ETHNICALLY PLURAL) SOCIETIES« (1992), The Journal of Ethno-Development, Vol. 1, No. 1, Detroit, March 1992, pp. 91-102.

- SODOBNI FEDERALIZEM S POSEBNIM POUĐARKOM NA ASIMETRIČNI FEDERACIJI V VEČNACIONALNIH DRČAVAH, Doktorska disertacija (Modern Federalism and Elements of Asymmetrical Federation in Multi-Ethnic States; Ph.D. Dissertation) (1990), Univerza Edvarda Kardelja v Ljubljani, Pravna fakulteta, Ljubljana, junija 1990.

### **Povzetek**

#### *Ustave v večnarodnostni resničnosti*

*Članek analizira teoretični koncept (eno)nacionalne-države in mit o etnični homogenosti, na katerem temeljijo ustave sodobnih držav. Pri tem navaja in opredeljuje nekatere ustavne domneve (presumpcije) in načela, iz katerih sodobne ustave izhajajo. Te domneve in načela se pogosto razlikujejo od družbene stvarnosti, ki je pluralna in zato vsaj do določene mere nujno tudi konfliktna; družbeni pluralizem je nujni pogoj za demokracijo in hkrati tudi vir konfliktov. Zaradi strahu pred konflikti pa ustave pogosto omejujejo tudi družbeni pluralizem, čeprav s tem hkrati ogrožajo tudi demokracijo kot eno temeljnih ustavnih domnev in načel. Tako ustave večinoma ne upoštevajo pluralne etnične realnosti ter zato ne ponujajo ustreznih možnosti in mehanizmov za urejanje medetničnih odnosov, za zaščito etničnih manjšin ter za upravljanje in razreševanje etničnih konfliktov. Standardi in praksa, ki se v posameznih državah na teh področjih uveljavljajo, so v veliki meri pogojeni z razvojem mednarodnega prava in naravo mednarodnih odnosov. Nedvomno je potrebno razviti in dograditi obstoječe mehanizme in standarde urejanja medetničnih odnosov in zaščite manjšin, vsaj dolgoročno pa bi bilo potrebno preobraziti tudi koncept in naravo sedanjih nacionalnih držav tako, da bosta ustrezala etnično pluralni strukturi in naravi njihovega prebivalstva.*