

# **DEFINING MINORITY MEMBERSHIP: NATION BUILDING AS A POLITICAL PROCESS**

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## ABSTRACT

**THESIS:** Defining Minority Membership: Nation Building as a Political Process

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In the international field there has been research done on the implementation of minority protection and rights, however, this thesis focuses on the characteristics that Hungary and Romania use to identify minority membership. Though there is a lack of universal agreement on the definition of a national minority, through the states minorities' legislation one can see the characteristic they hold essential for minority membership. These thesis focuses on the legal sector of minority membership as it show a strong relationship between the legal and the political field. It examines in detail through the examination of Hungary and Romania by providing examples from legal documents.

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# TABLE OF CONTENTS

ABSTRACT	I
ACKNOWLEDGEMENTS	II
TABLE OF CONTENTS	III
CHAPTER 1: INTRODUCTION	1
CHAPTER 2: THEORETICAL BACKGROUND	6
2.1 NATIONALITY QUESTION IN EUROPE	6
2.2 SELF DETERMINATION AND THE INTERNATIONAL ROLE	12
CHAPTER 3: HISTORICAL BACKGROUND	17
3.1 DRAWING THE BORDERS: HUNGARY AND ROMANIA	17
3.2 FRAMEWORK CONVENTION	20
3.3 LEGAL RECOGNITION OF MINORITIES	24
CHAPTER 4: HUNGARY AND THE MINORITIES	26
4.1 HUNGARIAN STATUS LAW	26
4.2 LEGAL FRAMEWORK AND THE MINORITY ACT IN HUNGARY	30
4.3 DEFINING MINORITY MEMBERSHIP IN HUNGARY	33
4.4 BASIS OF MINORITY MEMBERSHIP: WHO ARE LEFT OUT?	35
CHAPTER 5: ROMANIA AND THE MINORITIES	38
5.1 DRAFT LAW ON THE STATUE OF NATIONAL MINORITIES LIVING IN ROMANIA	38
5.2 DEFINING MINORITY MEMBERSHIP IN ROMANIA	40
5.3 BASIS OF MINORITY MEMBERSHIP: WHO ARE LEFT OUT?	42
5.4 LEGAL INSTRUMENTS	46
CHAPTER 6: CONCLUSION	48
REFERENCES	52

## CHAPTER 1: INTRODUCTION

One important issue that has gained attention both internationally and domestically is the legal recognition of minorities. Minority recognition is based on how the state defines minority membership and also the political role it plays. There are minorities that are not recognized by the state because they do not hold characteristics the states finds key in order to be a national minority. However, when minorities are recognized they can receive special rights and protection. The state defines minority through two main aspects, legally and politically. The legal and political sectors play a crucial role for the protection of minorities and their rights because the use of certain tools and instruments by the state to identify minority in their territory. Because there are a high number of minorities the legal recognition is vital improvement in the practical situations. Without looking at how governments legally define minorities and the tools they use to implement we cannot fully understand the importance of the role.

The minority question is linked to and holds a strong relationship with the legal and political realm of a society. It has been a focus in the politics of Eastern Europe for many decades. Especially after the fall of communism (1989) minority rights was a focus for development for many states. With the past ethnic tension and the border changes in the past century there has been a focus on minorities both internationally and domestically. Protecting minorities in this region requires an important role from the legal and political sectors. Minorities cannot gain rights nor be recognized without the state and the instruments they use. This issue has been a central focus to the political elites in Europe especially after the fall of communism.

Protection, recognition, and respecting minorities is included in many provisions at the international level. Organizations such as the United Nations, UNESCO, World Bank, European

Union and the Council of Europe have focused their attention on the minority situation in Eastern Europe (Kymlicka 2007). International organizations are continuing to observe states and their ‘behavior’<sup>1</sup> towards minorities. They found it crucial to intervene by using legal documents in which states will comply. With the increase of attention on minorities, many European organizations such as the European Union have documents that specifically focus on preservation of ethnic minorities. The goal of the international community is to protect and preserve ethnic minorities and they do this through having states ratify treaties that are legally binding.

The international community uses the documents as political and economic incentives for the other party. For example, the European Union holds the minority issue as a requirement for EU membership. States are obligated to comply with the provisions that the EU sets. It was through the international community where minority rights and protection was created. Ethnic conflict and extreme discrimination towards certain ethnic groups they found that it was a critical step to somehow provide security.<sup>2</sup> International organizations increased the pressure on states to implement the provisions and develop appropriate practice. However, one difficulty that the international community could not include in the legal documents was the universal definition of what constitutes a minority.

Though many legal and non legal documents stated to ‘respect’ and ‘protect’ national minorities it was very difficult for the international community to find a definition that all states agreed with. Therefore, legal documents focus on the general idea of a protecting and preserving minorities. For example, in the International Covenant on Civil and Political Rights, Article 27, states that ‘in those states in which ethnic, religious or linguistic minorities exist, person

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<sup>1</sup> The way that states devise and implement ways to recognize and protect minorities in practice and in legislation.

<sup>2</sup> Legally binding security.

belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language’<sup>3</sup>. This document claims that minorities ‘shall not be denied the right’ but does not hold any definition to what ‘national minority’ is. In many other international documents, definition of ‘national minority’ does not exist. Rather it states certain characteristics of ethnic minorities, such as, cultural, religious, linguistic, or common territory (Wright 1996). Regardless of the lack of definition, these documents are important for minorities because states are bound to the provisions and essentially do hold power. Regardless of the difficulty in defining national minorities many scholars examine the difficulty in defining the term.

In the article, *National Minorities: A Case Study in International Protection*, Mary Gardiner Jones explains the difficulty of defining minority with the diverse number of ethnic minorities. Not only do different ethnic groups have diverse characteristics but within ethnic minorities groups also tend to vary.

It is difficult to formulate a definition of a minority which would cover these diverse groups. It is obvious that such a definition cannot be based on a classification of minority groups in terms of their origin, the political organization of the host state, the degree of desired assimilation or the relative economic and culture superiority of the minority and majority. A common definition describes the term minority as refereeing to ‘groups of persons who differ in race’ (Jones 1949: 602).

Even with the lack of defining a minority, states are expected to recognize those minorities that live in their territory. Recognizing minorities is crucial for states Europe because they hold ground when it comes to acquiring rights. For example, prior to joining the European Union states are obligated to undergo certain measures to protect minorities in their states. When Romania joined the European Union, 2007, they were obligated through legal and political provisions to find solutions for many social and private sectors including availability of minority

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<sup>3</sup> International Covenant on Civil and Political Rights Document

language education. Without adequate requirements that were under the EU standards entry was not an option.

There is also a political relationship between the state and the organization. This increases the pressure to comply with the standards. It is important to emphasize the relationship that the legal and political system have with the protection of minorities. These international documents are political agreements between the state and organization. These documents are important but what is critical is the state's how the states define minority membership. Through legislations one can distinguish the characteristics they use in order to define minorities. These can dramatically affect how minorities are being treated and whether or not they receive rights.

As mentioned before there are no international legal documents that define what a national minority is. Defining a minority is left to the state because of the difficulty in universally finding a definition. The legal document, both international and domestic, reflects the 'formal' way of 'protecting' minorities. Though there are legal documents that encourage the protection of minorities, one problem that arises is the subjective element of defining a minority membership. Because states are left to recognize only national minorities within their territory, this poses the problem of 'one does not exist if another does not identify'.<sup>4</sup> States are therefore determining what minorities exist and also who is included in these minorities.

In sum, the concept of minority membership is problematic because the legal framework identifies minorities according to their categories. States are defining who is a minority and who is not. The membership requirements may not be legally clear but may have effect in practice, depending on the minority group. If states are left to define and identify minorities then what minorities are being left out and not provided rights? Legal provisions are helpful to protect

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<sup>4</sup> A minority in a state cannot hold the national minority status without the states recognition as a national minority. A minorities status is dependent on how the state.



minorities but what happens when minorities do not fall into the categories of the state? Do minorities exist even if the state does not formally recognize them? The legal documents are used in order to recognize minorities but there are political incentives for the state as well.

In this thesis, the main focus is directed on the legal and political notion of defining minority membership in Hungary and Romania. The legal documents that are used to protect minorities play a dual role. One is to recognize and protect minorities and the second is the political incentives involved. I will examine how the legal and political role of defining and plays out in Hungary and Romania. This thesis allows me to examine how the political and legal sector plays a role in the development of minority rights; however, I argue that it is through legislation system of a state that one can identify the characteristics that the state holds important for minority membership. I argue the notion that the states use the legislation as a political tool and a way to nation build. The instruments they use are ways in which the state can nation build through a political process.

This thesis is divided into six chapters, the first and last being the introduction and conclusion; the second chapter discusses the theoretical aspect of minority rights. It will discuss the nationality question in Europe and provide some theoretical debate on minority rights. The third chapter discusses the historical background on minority rights and outlines the legal framework for the protection of minorities. It also incorporates the role that the international community plays and how self-determination is intertwined with minority rights. Chapter four and five will focus on Hungary's and Romania's minority situation. These chapters outline the tools they use in order to identify minorities and argue some problems with minority membership.

## CHAPTER 2: THEORETICAL BACKGROUND

In this chapter I focus on the theoretical background of minority rights and membership. First, I begin by discussing the nationality question in Europe, specifically in Eastern Europe and the role that identity and ethnicity plays in the protection of national and ethnic minorities. Second, continue by examining how the legal and political sector recognizes minorities.

### 2.1 NATIONALITY QUESTION IN EUROPE

The nationality question is important to inspect when discussing national and ethnic minorities. According to Roger Brubaker the national question refers to ‘the ‘proper relation between the imagined community of the nation and the territorial organization of the state, or the polity’ (2006). Especially in Eastern Europe the history of the region since the beginning of the 20<sup>th</sup> century has influenced the relationship between the state and ethnicity. With the constant changes of borders in the beginning and mid 20<sup>th</sup> century, nationality became a movement that is inseparable from the political structure. The nationality movements soon became rather problematic because of the ethnic intermixing and national conflict (Brubaker 2006). The intermixing of populations shaped the geography and politics for today’s minority situation. Nationality became a tool that was used in order to make the political and social sector.

According to Rogers Brubaker in his book, *Nationalism Reframed: Nationhood and the national question in the New Europe*, national minority is a political stance a ‘family of related yet mutually competing stances, not a static ethno-demographic condition (1996). The nationalism question is based on the political action of the state in order to address the concerns of the elite. He claims the notion that the nationalizing state is ‘conceived by their dominant elites’ with ethnicity and nationhood as part of the political process (1996). He argues that

nationalizing and national minorities are a political stance rather than a 'group' of individuals (1996). These are elements in the state that are constantly overlapping and influencing each other. Ethnicity is rather used as a tool for political process in order to nationalize the group of people on a particular territory. The nationality question is deeply rooted in the political segment and therefore cannot be separated from the minority situation.

Three elements are characteristics of this political stance, or family of stances 1) the public claim to membership of an ethno cultural nation different from the numerically or politically dominant ethno cultural nation 2) the demand for state recognition of this distinct ethno cultural nationality and 3) the assertion, on the basis of this ethno cultural nationality, of certain collective cultural or political rights (Brubaker 1996: 60).

The nationality question and the political sector hold a strong relationship; however, after the changing of borders in the beginning of the 20<sup>th</sup> century nation building states became a priority for the political elites. With the changing of borders many minorities became majorities and vice versa. This change had a dramatic impact on both the relationship between the state and the people. The complexity of the nationality question only increased and intensified with time. Because of the historical context of this region, nation building became an important factor.

Part of the nation building process that influenced the nationality question is the fall of communism. The transformation from a communist regime to a democratic society brought new perspectives into the political system. This new perspective focused on the recognition of individual and collective rights. Governmental systems began to change the system according to the majority ethnic identity. The national or ethnic identification played a dominant role in the articulation of interests and the design of institutions and policies (Mostov 1994). The minority questions became increasingly important with the changing of borders, nation building, and the fall of communism because many minorities were excluded in the process.

Sfikas and Williams in the book, *Ethnicity and Nationalism in East Central Europe and the Balkans*, argues that nationalism was a tool that the political sector used in order build a national identity (1999). These minorities were deeply affected by the rise of nationalism, before the fall of communism in countries there were many ethnic conflicts between dominant nationality groups and the minorities. There were high numbers of minorities in every country, for example in Hungary there were many Germans, Slovaks, Romanians and Romas, in Poland there were Germans and Ukrainians, in Bulgaria there were Serbian, Croatian, Turks, Romanians, Albanians, Hungarians and many more (Sfikas and Williams 1999). After 1989, the focus became on the transition into a democratic society but with a continuation on nation building. Sfikas and Williams claim that after the collapse 'nationalism moved into the centre stage of politics' (1999).

After fall of communism, there was a focus on the transition to a democratic society. For the transition it was crucial for the policies on minority protection to change. Even after 1989, ethnicity and the state were closely linked together. Julie Mostov, in her article *Democracy and the Politics of National Identity*, discusses the importance of ethnic identity in the political system. She argues that institutions undergoing transitions are affected by the relationship they hold with ethnicity and identity. Because states like Romania and Hungary are not homogenous the minorities can negatively be affected if they are not protected.

Democracy requires that political participation and government offices be open to all citizens without distinction, that all citizens be similarly afforded the rights and protections associated with political liberty and equal citizenship, that restrictions on citizenship be minimal, consistent, and impartial, and that social choices be made through public decision process that support and promote the equality and independence of citizens. Choices may not be dictated by particular persons or groups independently of the preferences of others (Mostov 1994: 9).

The nation building process in Eastern Europe focused on the relationship between the ethnic identity of individuals and the state. However, this became problematic because one nationality is the center focus of the state. If multinational societies are excluded then a number of situations can occur, migration, discrimination, ethnic conflict, etc. This relationship between nationality and the state brought the question of how to protect minorities. Because there are no homogenous states it becomes difficult to address a multinational state as one identity.

Because of the relationship between the state and ethnicity, nationality became interlinked with the political system. The ethnic identity of the political system slowly became influential in the state apparatus. It was in the interest of the political system to identify and express the interest of the national dominant group (Mostov 1994).

In the article by Mostov, she claims that the political system is a reflection of the dominant ethnicity in a state (1994). Through the administering of citizenship, policies, legal sector, and organizations one can see how identity and politics are intertwined (Mostov 1994). Because the interest of the state is based on the needs and wants of the dominant ethnicity the political system is a tool used to strengthen the nation state (Mostov 1994). Mostov also claims that the policies within a state are constructed based on a shared vision from the system and of the people. One interesting element Mostov claims is the use of citizenship as a tool to recognize minorities.

The nation refers to a community of people with a range of ties such as common language, religion, history and territory or 'homeland', shared cultural practices, values, historical myths, and loyalties. In many of the countries of Eastern Europe and the former Soviet Union, national identity involves recognition of the above ties, shared culture, and loyalties as well as ties of descent or ethnic origin. There is a significant overlapping of the notions of ethnic and national identity (Mostov 1994: 13).

Another author that discusses how citizenship is a tool used by the state in order to ‘provide’ members with a collective identity is Jo Shaw. Shaw argues that citizenship provides full membership into a community by giving social and political rights (2007). Citizens must pose certain elements in order to become members of the state. Citizenship offers a legal identity for each member. The paper documents give members a ‘nationality’ both as a collective and as an individual. Shaw claims that it is a ‘badge of personhood’ that provides equality (2007). This ‘badge of personhood’ is a legal recognition by the state. The state only gives rights to citizens but it can be problematic for individuals, like many Roma in Romania who do not have citizenship. Shaw argues that citizenship can also be a tool that is used to exclude certain groups of people (2007). Citizenship is viewed as a loyalty and formal agreement between the state and its members. As mention before, it can be problematic because many people living in a territory are excluded. As the state uses citizenship to nation build other ethnic minorities can be excluded in the process.

The administering of citizenship is an indicator of how the politics and identity are intertwined. This is very important for the protection of minorities because minorities who are not citizens of a state are not legally recognized and therefore do not receive rights.

With the relationship between the state and national identity what role do minorities play in the nationality question? Because of the large number of minorities in Eastern Europe, the rise of nationalism only increased the attention on minorities. Typically when the state’s interests are geared toward the majority, minorities can be excluded from the group and they do not have the opportunity to practice their culture. Minorities do not have the opportunity to preserve their culture and continue their practices. When minorities are given rights and are recognized as part of the state, it is only then can minorities be a member of the state.

Thomas Musgrave, in his article, *Self-Determination and National Minorities*, argues that there can be conflict with the majority and the minority of the population when minorities receive rights (1994). These rights, language, social, and education rights, of national minorities can be viewed as attacks on the dominant culture (Mostov 1994). Mostov argues that privileges given to minorities can also be viewed as a strain on the national budget or lessen the political power of the majority (1994). The refusal to recognize ethnic minorities can be based on the majority's fear of the minority's power within the state (Mostov 1994). Regardless, one important factor is the role that the political system plays when discussing minority rights.

Martyn Rady, in his article *Minority Rights and Self-Determination in Contemporary Eastern Europe*, claims that there is a strong relationship between the state and ethnicity (1993). He argues that policies are based on the politics of the time period. Prior to the increase in minority rights, policies were more focused on the 'one nation' aspect. These policies did not focus on minorities rather on discriminatory notions. The rights of minorities were less developed in the past and Rady claims that ethnic conflict has also shaped international organizations attention on protection of minorities (1993)

The reawakening of ethnic tension in Eastern Europe precipitated a change in the approach of the international community towards minority rights. Following the collapse of the international communist order in 1989, the Conference on Security and Cooperation in Europe became increasingly concerned with European minority affairs. The regulation of ethnic conflict was thus speedily taken up as an unofficial 'fourth basket' in the Helsinki process (Rady 1993: 720).

The international community expanded and increased their attention for the protection of minorities. The main goal for the international community was based on peacemaking between the states. Because of the rise of nationalism, governments did not focus on minority protection rather states were focused on homogeneity. It was from the international community that called governments to protect their ethnic minorities and also encouraged to promote different

identities. Organizations like the OSCE, The Council of Europe and the European Union established legal provisions that transformed the future of the legal provisions for minorities. These international organizations have played a critical component in the legal recognition of minorities.

## 2.2 SELF DETERMINATION AND THE INTERNATIONAL ROLE

The self determination model is the idea where the protection of minorities rose. National minorities in the new nation states were separated from the ‘national majority’ (Musgrave 1997). The minorities were excluded and were not entitled to be part of a ‘separate nation’ (Musgrave 1997). Rather many people were defined along certain characteristics that led to discrimination and hate. The theory of self-determination, according to Musgrave, is the theory where a ‘nation comprised all those who share the same linguistic and cultural attributes’, however, many minorities did not fall into the categories of ‘one nation’ (1997). He claims that from the self-determination model national minorities rose and established their rights as minorities. Because minorities were excluded from the ‘national model’ the main focus was on the ethnic majority. This exclusion soon became to cause ethnic tension.

Many minorities have suffered a great deal due to the lack of protection. It was important for the international community to intervene. Protection of minorities is a critical component of democratic governance, especially in countries that are undergoing transitions from communism (Ram 2003). For this reason the International community is crucial with intervening in protecting minorities. For example, in Romania there are two million ethnic Hungarians. There are also a large number of Romas and Germans and Romania needs to have legal provisions in order to protect the minorities. These legal documents that protect the minorities are essential in order for



Romania's proper transition into the European Union (2007). The strengthening between Hungary and Romania is another positive aspect of the treaties (Ram 2003).

Through the legal documents, the international community puts pressure on the country to increase minority protection and also encourages good relations. Prior to joining the European Union in 2007, Romania was obligated to submit reports on the steps they are taking in order to protect their minorities. The EU expects countries like Romania to develop their legislation in order to give minority's protection and rights. However, the international community does not define what rights to give but does pressure countries to develop the system to provide protection. These requirements and expectations from the European Union strongly influence the domestic reform process. The steps that are taken are rather small, however, producing effect in the long run. Especially with countries that are going through a governmental transition. The international community focuses on minority and human protection as a priority for EU membership.

The protection of human rights and minorities has been identified as a precondition for EU membership by the Maastricht Treaty, the Copenhagen criteria, the European Agreements, the Common Foreign and Security Policy, and the Amsterdam Treaty. Moreover, the protection of human rights is the basis for membership and a primary focus of activities and conventions of the Council of Europe, and organization that all EU candidates must first join (Ram 2003: 33).

These are important steps that the international community takes because it produces changes in domestic institutions. Non-Government Organizations also play an important role in promoting and respecting national minorities. These documents also have legal effects, for example, the Amsterdam Treaty in 1997 article 13 give the EU a 'legal basis for taking action to combat discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age, or sexual orientation' (Ram 2003). The EU also expects the member states to join the Council of

Europe and also to comply with the conventions on human rights and protection of minorities (Ram 2003).

Strengthening and enforcing minority protection envisioned under new EU-mandated institutions as well as improving public attitudes towards minorities through information and education will be critical to the sustained and improved protection of minorities across Europe (Ram 2003: 52).

Because of the Balkan Wars in 1991, there were a high number of refugees, killings, violence, and separation. The international community, UN, CSCE and the EU became involved (Fink 2000). There were new international legislations and documents which gave ethnic minority's legal protection.

In 1995, the Framework Convention for the Protection of National Minorities was ratified in order to protect national minorities and create unity between member states of the Council of Europe. Article 27 of the International Covenant on Civil and Political Rights also focuses on the protection of ethnic, religious, or linguistic minorities. It states that 'persons belonging to minorities shall not be denied the right to enjoy their own culture or language'. This article recognized and established the rights of minority groups. The Charter of Fundamental Rights of the European Union claimed the right to 'respect cultural, religious, and linguistic diversity'.

Another tool that is used for to preserve minorities is the European Charter for Regional or Minority Languages, it states that the main purpose of the charter is to 'protect and respect heritage and tradition practices of minorities'. This is a legal document that changed the language rights of many minorities.

The document of the Copenhagen meeting of the Conference on the Human dimension on the CSCE claims that member states should 'recognize' national minorities and there is an important role of the government to national minorities. This document emphasizes that national

minorities have the right to exercise their human rights and fundamental freedoms. This document is not legally binding, however, does encourage and pressure member states to protect and promote national minorities. The international community has established these documents in order to protect and promote the future existence of national minorities.

War memories receded, practical problems mounted and the UN, faced with rapid decolonization movements, plunged into minority and refugee questions in the former colonial world. The 1955 Austrian peace treaty contained specific provisions regarding its Slovene and Croat minorities. In December 1960, the UNESCO Convention against Discrimination urged member governments to permit minority schools which taught in minority languages. In December 1966, the UN Covenant on Civil and Political Rights, in carefully guarded language included a condemnation of the denial of rights to 'ethnic, religious or linguistic' minorities (Fink 2000: 396)

These are some treaties that the international community ratified for language rights.

There are many documents that focus on the preservation of ethnic minorities. In sum the European Union has impacted and influenced the domestic policy and politics of member states on many different levels. As mentioned before the international community and the European Union have important roles with countries such as Romania and Hungary. Some would argue that they violate the sovereignty of the state. Especially with the minority question, EU has affected the institutions and policy making through direct and indirect ways. A country must undergo changes in order to comply with the standards and regulations. These are vital in order for national minorities to receive protection. With regard to the historical tensions that have occurred, regulations on human rights and minority protection only have positive benefits.

Minority protection deeply relies on the government and the political party, if the domestic government does not protect them the international community intervenes to increase protection. Through the international community and the European Union states legislations and political systems became stronger in the field of minority protection. For example, in Romania

minorities (Roma) have special rights of representation in Parliament and have a standing committee on human rights and minority rights (Ram 2003). Prior to these international legal documents the Roma population could not and did not represent their community. These steps that are taken of the states, like Romania, through the European Union are crucial in order to protect minorities like Roma. International Organizations may take small steps to implement encourage minority protection, but regardless progress is being made to protect and preserve national minorities.

## CHAPTER 3: HISTORICAL BACKGROUND

In this chapter I will focus on the historical background of Hungary and Romania. When discussing minority protection and rights it is important to outline the historical influence on the region. Without knowing the history of the border changes one cannot evaluate the minority debate. This chapter centers on three main parts, the first discuss the border changes of Hungary and Romania, the second part examines self determination of minorities within the two countries and finally present the international role of minorities in this region by using treaties and show how it has influenced the change on minority protection.

### 3.1 DRAWING THE BORDERS: HUNGARY AND ROMANIA

With the recent changes of borders focusing on the late nineteenth century and early twentieth century Hungary and Romania there has been an increase in the protection of minorities. The new borders that were drawn shifted the perspective on the situation. With the large number of Hungarians in Romania and Romanians in Hungary, as well as many other minorities, there is more effort put domestically and internationally in order to preserve and protect ethnic minorities.

The collapse of the Habsburg Empire in the First World War there was a sharp decrease in Hungarian rule (Brubaker 1996). Especially after the signing of the Trianon Treaty the Hungarian population dramatically decreased in the borders of Hungary. The territories of Hungary changed and soon became parts of other countries (Brubaker 1997). Now many Hungarians were minorities in other countries, Romania, Slovakia, Serbia, Croatia, and Austria (Brubaker 1997).

Several of the largest minority groups, such as the Germans and the Hungarians had been members of the ruling class prior to the creation of the minority states. They were accustomed to privilege and elevated social standing, and found it very difficult to accept their new status as national minorities in alien states, governed by peoples whom they considered culturally and intellectually inferior to themselves (Musgrave 1997:56).

About 70% of the population was non Hungarian, however over 3 million Magyars became national minorities in neighboring nation-states (Brubaker 1997). The new minorities in the other countries found it difficult to be part of a minority when previously they were the majority. This also influenced the large masses of migration. However, those that did not migrate found it difficult to transition into a minority (Brubaker 1997). Ethnic tensions rose in the new territories and become intense.

The Trianon Treaty played an important role in Hungarian history, especially the Transylvania region from the Hungarian perspective, because it has been seen as unfair and illegitimate. Looking at the treaty from a Hungarian viewpoint, territories that had been part of Hungary for centuries had been cut away by force and forcibly incorporated in neighboring countries (Hupchick and Cox 2001).

The Trianon Treaty looked quite different from the Romanian point of view. From the Romanian perspective Transylvania was populated by a majority of ethnic Romanian people. The collapse of the Austria-Hungary Empire in World War I led to the reunion of a Romanian population with a Romanian nation from the Romanian point of view. This union incorporated into Romania, large number of ethnic Romanians who had been living under Hungarian rule along with minority populations of Hungarian and Germans (Hupchick and Cox 2001). From the Romania perspective the unification of the country was an advantage to Romania. With large minority populations now living in Romania, Romania's government focused on politically and socially unifying Romania into as one nation. This was part of the nation building process.

The Treaty of Trianon validated both acquisitions. The Romanians then implemented programs that would weaken the minorities in their newly enlarged state and strengthen themselves. Non Romanian governing institutions were eliminated and minority officials were systematically weeded out of their posts. Public schools became tools for Romanianizing the minorities, while minority church and private schools were either seized by the government or closed on the most specious of pretexts. Beatings and imprisonments of non-Romanians became commonplace (Boia 2001: 45).

The attempt to nationalize ethnic groups was not new in Transylvania. Romanians living in Transylvania supported the Treaty and the new border for a number of reasons. At least one of these reasons was related to the treatment of Romanians by the Hungarian government when Transylvania had been part of that nation. There are many Romanian people living in Transylvania and scholars argue that these Romanians were put through a process called Magyarization. Magyarization is term used to indicate how the Hungarians would impose the culture on other ethnicities other than their own. These ethnic problems began to increase and it is only evident that international organizations focused bettering the situation.

Since World War I there have been many treaties signed throughout Europe in an effort to promote peace in highly diverse regions (Fink 2000). There was a large danger to minorities across Europe with the changes of the borders and through the rise of political chaos the international community intervened.

According to Carole Fink in, *Minority Rights as and International Question*, in the early 20<sup>th</sup> century the focus on minority protection was less then self-determination (2000). Rather it was after the Second World War and the Yugoslav Wars that the protection of minorities was introduced and placed into legal documents (Fink 2000). The first minority treaty, the treaty of Versailles was signed by Poland in 1919, due to the creation of new territories in Europe (Musgrave 1997). This treaty served as a model for the other treaties and formed the basis of the minority's regime (Musgrave 1997). This focus on the protection of minorities was to ensure

rights to minorities within territories whatever the ethnic status was diverse (Musgrave 1997). This treaty was a legal tool that states were able to use. For example, there were special provisions with respect to Jews and Muslims. Their main focus was to ensure minority equal treatment.

With the increase of ethnic conflict arising in Europe throughout the 20<sup>th</sup> century there was a need for international institutions to step in, including the OSCE, United Nations, COE and the European Union. Without help and pressure from the international community states would not have adopted legal provisions to protect minorities. For example Article 14 of the 1950 European Convention on Human Rights condemned discrimination on the basis of ‘race, colour, language, religion or association with a national minority’. There was a need for the international community to intervene because of the escalation of conflict. For example, many Jews and Romas were extremely discriminated against and did not have any rights. There were many minorities, including Jews and Romas, which were expelled from their countries of origin.

### 3.2 FRAMEWORK CONVENTION

There are many treaties that focus on the protection of minorities. The Framework Convention for the Protection of National minorities is a document ratified in 1995.<sup>5</sup> The aim of the Council of Europe is to ‘achieve greater unity between its members for the purpose of safeguarding and realizing the ideal and principles which are their common heritage’.<sup>6</sup> This document has been signed by twenty two member’s states of the Council of Europe<sup>7</sup>. Article 7

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<sup>5</sup> Framework Convention for the Protection of National Minorities, Strasbourg, 1995, Adopted by the Council of Europe.

<sup>6</sup> Meijknecht, Minority Protection Standards and Reality: Implementation of Council of Europe Standards in Slovakia, Romania and Bulgaria, 2004.

<sup>7</sup> Framework Convention for the Protection of National Minorities, Strasbourg, 1995 Adopted by the Council of Europe.



of the document states ‘Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion’. Each state within the Council of Europe is to respect the rights of national minorities. Though the document uses the word ‘respect’, according to Article 25 the states are also expected to submit a report on the measures taken to respect national minorities. This document is an instrument that the international community uses in order to place pressure on states to protect national minorities.

The Framework Convention for the Protection of National Minorities is a method by the Council of Europe in order to recognize and protect minorities because of the historical dilemmas in Europe. It is a legally binding document devoted to protecting minorities<sup>8</sup>. In order for minorities to be protected and recognized it is important that within Europe there is a norm<sup>9</sup> set. This requires the member States to co-operate with the Council of Europe and hold a stable political relationship. Within the Framework Convention there are committees of experts who responsible for reviewing case reports on States of how they are implementing the legal standards within minority communities. They review the steps and the policies and provide feedback in order for the states to comply with the legal provisions.

The International Covenant on Civil and Political Rights is another International document that was ratified in December 1966. The document commits to the agreement between states and the United Nations General Assembly to respect and protect civil and political rights.<sup>10</sup> Article 27 of the ICCPR states ‘in those states in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right, in community with the

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<sup>8</sup> Framework Convention for the Protection of National Minorities, Explanatory Report, Strasbourg, 1995, Adopted by the Council of Europe.

<sup>9</sup> ‘Norm’ is used in the context of formal legal norm within the International Community.

<sup>10</sup> International Covenant on Civil and Political Rights (ICCPR), Office of the High Commissioner for Human Rights.

other members of their group, to enjoy their own culture'<sup>11</sup>. States that have signed this article are obligated to follow the provisions set by the United Nations. This is an important criterion for both the state and the International Community. Not only does it enhance the relationship between the two parties but also focuses on the legal protection of minorities. Minorities have the formal right to enjoy their own culture.

Another International Document is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities<sup>12</sup>. This document focuses on promoting and encouraging respect for national minorities<sup>13</sup>. This document was inspired by the provisions of article 27 of the ICCPR. This document emphasizes the rights of persons belonging to a minority as a framework based on the rule of law<sup>14</sup>. This is a formal document in order for minority rights and protection to be a priority for the International Community. Though it is not a legally binding document it does place pressure on the states to provide rights for minorities. This with the other documents plays an important role in the International Community to protect minorities.

The European Charter for Regional or Minority Languages is a more specific document that focuses on the protection of minority languages. The Council of Europe's aim is to protect and preserve minority languages and promote democracy and diversity. Ratified in 1992 and is legally binding for states to respect language rights for minorities. Because of diverse languages that are spoken throughout Europe and the rise of Nationalism the protection of minority languages is an important strive for the Council of Europe.

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<sup>11</sup> International Covenant on Civil and Political Rights (ICCPR), Office of the High Commissioner for Human Rights.

<sup>12</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, <http://www.un-documents.net/a47r135.htm>

<sup>13</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, <http://www.un-documents.net/a47r135.htm>

<sup>14</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, <http://www.un-documents.net/a47r135.htm>

One of the ideas underlying the Languages Charter is that ‘the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe’s cultural wealth and traditions’. Further the Charter stresses ‘the value of Interculturalism and multilingualism’ (Meijknecht 2004: 120).

This treaty covers a number of different areas where minority languages should be protected and preserved. These areas are the following, education, judicial authorities, administrative and public services, in the media, cultural activities and facilities and within economic and social life. The areas are outlined within the Charter where minority languages are protected<sup>15</sup>. For example, in Romania there are regions where street signs are printed in both Hungarian and Romanian. Because this region has a historical significance, Romania is legally obligated to protect the Hungarian culture.

These treaties play an important part in the international community, however, one main goal for the documents is to have members states enforce minority rights and preserve ethnic cultures. These treaties were developed at the international level where they can be influential. Though they do not have a universal definition of a minority, but these documents legally binds member states to implement ways to protect their minorities. The use of the term ‘ethnic, religious, and linguistic’ provides the general concept of what a minority should entail. These documents can be very beneficial for the state.

This chapter outlined the international treaties that are used in Central and Eastern Europe. The treaties are legally binding for member states and can be an important step for countries like Hungary and Romania. Through the legal system states define certain characteristics that minorities need to poses in order to become a member. Hungary and Romania, through the legal documents, outlines the characteristics they find important to identify

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<sup>15</sup> European Charter for Regional or Minority Languages, Strasbourg, Council of Europe, 1992.

minorities. In the next chapter I will focus on minority membership in Hungary and show what tools they employ.

### 3.3 LEGAL RECOGNITION OF MINORITIES

The legal sector is very important when discussing the situation with minorities because legal documents provide minorities protection and gives them rights. Protection and preservation of cultures are two main reasons which minority rights became part of the international organization and slowly intertwined into the political area as well (Musgrave 1997). At the Paris Peace Conference in 1919 there was an attempt to resolve the ethnic problem in Europe by reconstructing the political legal framework for the protection of minorities and also to satisfy the nationalist's agenda (Musgrave 1997). However, to find a middle ground for the rise of nationalism and minority protection is difficult. For example, in Poland and Romania there were special treaties that contained information regarding the respect to Jews. The treaties granting legal protection for minorities in many countries like Romania, Poland and Germany where discrimination on minorities were extremely high.

In Eastern Europe one of the goals for minority rights and protection was to protect and 'preserve distinct societies' (Aukerman 2000). One way to preserve these distinct societies is to have legal documents that states are legally bound to. These legal documents are important for the future of minorities because it was a framework that was established. However, many governments in this region are quiet hesitant to have an internationally binding document and may not always accept the standards.

There are also political incentives for both the international community and the state if these legally binding documents are signed. By signing these documents they were displaying an

underlying norm that they will oblige by. There are political and social incentives of the legally binding documents but the crucial point is minority protection.

The measure of the international community and the legal sector to protect minorities falls short in one category, which is the definition of ‘minority’ (Aukerman 2000). Though there is a consensus that minorities in Eastern Europe should be protected and given rights, there is no universal definition for minority. International documents avoid the discussion of defining minority, but do address the issue at both international and domestic level.

## CHAPTER 4: HUNGARY AND THE MINORITIES

This Chapter focuses on Hungary and minority situation in the legislation system. The main purpose is to examine the legal aspect of minorities in Hungary and discuss the implications of minority membership. Minority membership is solely determined on the international and domestic legal documents and can dramatically impact daily lives. This chapter is outlined in four main parts, first study the Hungarian Status Law and how Hungary defines being an ethnic identity, second sub section centers on the factors that influence minority membership in the legal perspective. Finally inspect both the positive and negative aspects of the legal instruments that are used for membership.

### 4.1 HUNGARIAN STATUS LAW

In Hungary there are many minorities of other ethnic origin. Some of them include Roma, Jews, Bulgarian, Greek, Croatian, Polish, German, Serbian, Slovakian, and Romanian<sup>16</sup>. Nonetheless, there are thirteen recognized minorities in Hungary. These minorities are scattered all over the state and are not general in one area. Unlike Romania, where majority of their minorities reside in Transylvania (Meijknecht 2004). Though there are many minorities in Hungary one important aspect to examine is the Hungarian status law and how Hungary identified ethnic identity.

The Hungarian Status law focuses on the Hungarian minorities in other countries; but, the importance to discussing the Status Law is that it indicates how Hungary defines ethnic identity and the characteristics that are important to be a member of a minority. The Status Law focuses

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<sup>16</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No. 3/2000.

on Hungarian minorities but through the document one can indicate the characteristics that are important to identity.

In 2001 the Hungarian Parliament passes the Status Law which provided benefits to Hungarians in the surrounding countries, for example, Romania, Slovakia, Austria, Serbia, etc.<sup>17</sup> The large Hungarian minority population in the other countries left Hungary feeling responsible to take care of their fellow Hungarians. One of the only criteria being an ethnic Hungarian is origin. Origin is much more complex and detailed than simply having Hungarian relatives, Hungary held strict criteria in order to qualify for the Status Law.

Though it did not define who is an ethnic Hungarian but did focus on some attributes that Hungarians from outside the Hungary border should have. For example, language played a very important part of ethnic identity. Hungary finds mother tongue to be a crucial factor. Another factor that influenced being a Hungarian is being part of a Hungarian organization abroad. Though Hungary felt the need to 'take' care of their minorities in other countries, this raised the debate of whether or not Hungary was violating the sovereignty of other countries. It also affected the relationship between the other countries because the law indicated that the other countries were not protecting their minorities. The law led to an international debate and the tensions rose between Hungary and her neighbors.

The Status law was legislation designed to achieve a new nation building across state borders through the issuance of Hungarian Certificates and the provision of benefits and services to Hungarians abroad. The Hungarian lawmakers insisted that they had drafted it with due regard to the need for legal and diplomatic harmony with international norms. In reality, however, the relationship with the EU and the neighboring countries developed in the opposite way. The diplomatic frictions and conflicts explicitly emerged as early as in March 2001, when the first reading started in the Hungarian Parliament (Kantor et al 2004:31).

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<sup>17</sup> Z. Kantor, *The Hungarian Status Law: Nation Building and/or Minority Protection* (Japan 2004).

Part of the problem that Hungary faced with the Status Law was the violation of sovereignty. Hungary does not have control over the residents of other countries. Romania and Slovakia raised criticism against the idea of the Status Law and also expressed their concern for what conflict it could bring (Kantor 2004). However, Hungary argued that they were protecting the “lost” Hungarians after the year 1919. The Hungarian Status Law was based on kin-state and not territory. This raised two issues of how a nation can be defined and also how to define a Hungarian? Is the nation defined based on territory or kin states? Though this idea differs from the present idea but it brought the question of identity.

Who is a Hungarian? How can you define a Hungarian? Would it be territorial or kin based? The Status Law focused on the Hungarians living in other countries; however, they did not define who is a Hungarian, name, family, village, etc. One reason that Hungary enacted this law was because they felt an obligation to “protect” the Hungarians in other countries because of the history of the region. Prior to 1919 Hungary was comprised of a larger territory and with the redefining of the borders now there is a large population of Hungarian minorities in the surrounding countries.

The goal of the Status Law was to offer benefits exclusively to Hungarian minorities. However, one question was raised was, who defines whether one is Hungarian or not. For example, if a Roma who lives in a Hungarian village in Romania identify themselves as Hungarians would Hungary identify him/her as a Roma or Hungarian? What criteria’s and under whose criteria’s would they follow?

There were many problems to this Law, 1) Hungary violating the sovereignty of the surrounding nations and 2) was the problem that the Status Law did not address the issues with minorities living with in Hungary. These are problematic because it raises the question of how



one defines a nation. The minorities in Hungary are part of the nation and they are within the territory of the country. Who is Hungarian, someone who lives in Hungary or someone who is Hungarian ethnically or culturally? Is a Hungarian in Romania a Hungarian or Romanian? If a Hungarian in Romania claim they are Hungarian, would that denounce their identity as a Romanian? Another concern would be for those who are Germans, Jews and Romas in the neighboring countries who declare themselves Hungarian but ‘authority’ or Hungary do not find them as such (Kantor 2004). Should one identify them according to the nation that they reside in? There are many questions to identifying a Hungarians, especially with the historical aspect of the region. As mentioned before, there are many gray areas when defining identity. According to whose standards does identity apply? I argue that in this context, the identity element is subjective.

The Status Law defined certain criteria’s in order to be considered a Hungarian by their terms: registered at a Hungarian organization, registered at a Hungarian church and registered as a Hungarian on the states citizenship roll.<sup>18</sup> These criteria’s do not address some problems that come with Hungarian identity, territory, etc. The Status Law is closely linked to the kin element and the territorial element (Kantor 2004).

Ethnic kin-states are typically those states which border or are close to the region and are inhabited by co-nationals with whom kin minorities share and maintain strong ethno cultural and ethno-religious bonds. Additionally, these co-nationals of nearby states must be a homeland society (as opposed to a Diaspora community) for the state to be classified as an ethnic kin-state. If the co-nationals are a numerical majority and control the kin-state, then the kin in the neighboring states may come to regard the kin-state as their mother state (Ieda 2006 pg 304).

The Hungarian status law plays an important role because it was a way for Hungary to build their nation state based on ethnicity. This is problematic when discussing the minority

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<sup>18</sup> Z. Kantor *The Hungarian Status Law: Nation Building and/or Minority Protection* (Japan 2004).

situation in Hungary because Hungary is focusing more on minorities outside of Hungary rather than living inside. How was Hungary focusing on the minorities in other countries and ‘ignoring’ the minorities within their own? In the Status Law it stated that Hungarians in surrounding countries would receive the same benefits as citizens.<sup>19</sup> However, the problem is that minorities living in Hungary do not receive benefits. The Status Law did not consider the factor of minorities living within the territory and that they are also individuals that make up Hungary.

## 4.2 LEGAL FRAMEWORK AND THE MINORITY ACT IN HUNGARY

This section will explain the legal framework in Hungary. The Minority Act in Hungary defines what a minority is and characteristics they pose. The Minority Act in Hungary states that ‘all groups of people who have lived in the territory of the Republic of Hungary for at least one century, who represent a numerical minority in the country’s population, whose members are Hungarian citizens, who are distinguished from the rest of the population by their own languages, cultures and traditions, who demonstrate a sense of belonging together that is aimed at preserving all of these and at expressing and protecting the interest of their historical communities’.<sup>20</sup> This Act states that language, culture and traditions are important to poses in order to be minority<sup>21</sup>.

According to the minority policy in Hungary, they design regulations to protect and improve the minority situation<sup>22</sup>. Hungary ‘pays particular attention to the assertion of national

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<sup>19</sup> Kantor, Zoltan et al, The Hungarian Status Law: Nation Building and/or Minority Protection, Slavic Research Center, Hokkaido University, 2004.

<sup>20</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No.3/2000.

<sup>21</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

<sup>22</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No.3/2000.

and ethnic minority rights that is values the cultural diversity’.<sup>23</sup> The Office for National and ethnic Minorities established in 1990 which assesses the situation of the national and ethnic minorities in Hungary. They work on reports and assess how minority rights. However, the Office for National and ethnic Minorities follow a legal framework from the Constitution.

The Constitution of the Republic of Hungary states that minorities are an important part of the state.<sup>24</sup> Minorities in Hungary have the right to ‘collective participation in public life, the nurturing of their own cultures, the widespread use of their native languages, education in their native tongue and the right to use their names in their own language’.<sup>25</sup> Within the legal documents Hungary is very adamant in pursuing the appropriate measures for minority rights and protection.

According to Article 68 of the Constitution of the Republic of Hungary, national and ethnic minorities living in Hungary share the power of the people and are state-creating factors. This basic law ensures their representation and collective participation in public life, and makes it possible for them to establish local and national self-governing bodies. Act LXXVII: 1993 on the rights of national and ethnic minorities- referred to herein as the Minority Law- is one of the laws that provide detailed regulations (Toth 2005: 201).

The goal of the law was to create institutional foundation for minority existence (Toth 2005). With the joining of the Council of Europe and the European Union, these laws were created to protect minorities and also used in order to maintain the good relations between the states. Ratifying the provisions were pre requisites to joining the EU (Crowley 2001). Minority protection in Hungary was a task by the government in order to create institutional foundation

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<sup>23</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No.3/2000.

<sup>24</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No.3/2000.

<sup>25</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No.3/2000.

for minority existence. However, this was more of a legal document in order to formally recognize minorities.

The Minority Act Law is important when discussing minority membership in Hungary. Internationally and domestically there is no definition of minority, however, each states holds characteristics that are central for being part of a national or ethnic minority. Regardless of the lack of definition of minority, these laws that outlines important characteristics indicates how the state uses them as a political tool and how they nation build within their country.

The Minority Law listed that each individual has the right to ‘freely identify’ with a minority.<sup>26</sup> These thirteen minorities were able to establish organization, practice culture, tradition and hold social and political institutions and organizations. Though minorities are able to establish organization, practice culture, etc, one problem that many minorities face is the problem of becoming a member of a minority. Laws are formulated by individuals who are part of the majority and they establish the characteristics in order to become part of the minority. What requirements do they have to poses in order to hold membership? Are these laws subjective in the characteristics criteria?

The Minority Act is important for the Roma minority in Hungary because it is a legal establishment that provides the Roma community the opportunity to sustain their culture through establishing their own educational institutions<sup>27</sup>. They have the legal authority to uphold institutions and also to establish political parties. According to the Minority Act they are also involved and allowed seats in the parliament.<sup>28</sup> These are important steps that international and domestic legal documents in order to preserve ethnic identity. However, I would like to argue

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<sup>26</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

<sup>27</sup> As well as many other private and public sectors.

<sup>28</sup> Fact Sheets on Hungary, Ministry of Foreign Affairs Budapest, The National and ethnic minorities in Hungary, No.3/2000.

that for the Roma population this is the only option they have because of the severe social discrimination they face.

### 4.3 DEFINING MINORITY MEMBERSHIP IN HUNGARY

According to the Minorities Act a ‘minority’ is defined in the law. But this Minorities Act only applies for ‘recognized’ minorities and not refugees, immigrants, foreign citizens or stateless persons.<sup>29</sup> There are thirteen official minorities in Hungary (Goncz and Gesko 1997). The Roma community is the country’s largest minority population out of the thirteen. The Roma minority in Hungary are an exception because of the harsh discrimination they have and currently face. Many people in Hungary and other countries deny their distinct cultural identity; rather they use it as a negative stereotype against the Roma population (Goncz and Gesko 1997).

According to the 1990 census, with a population of little more than ten million there are a total of 232,751 persons belonging to a minority affiliation, and about 137,000 stated that their native language was one of the national or ethnic minority languages<sup>30</sup>. The census that was conducted in 2001 showed an increase of persons belonging to a minority. In the census taken in 2001, four questions were asked regarding nationality and ethnic minority identity, 1) which nationality do you feel you belong to, 2) which nationality’s culture values and traditions do you connect with, 3) what language is your native language, and finally 4) what language do you generally use with family/friends.<sup>31</sup> These questions are indicators of how Hungary views minority and the majority, two out of the four questions are based on language. Though it may seem transparent that one would use language as a characteristic, from the information it seems

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<sup>29</sup> Monitoring the EU Accession Process: Minority Protection, Country Profiles, Open Society Institute, 2001.

<sup>30</sup> National and ethnic minorities in Hungary, Office for National and Ethnic Minorities, Budapest, Hungary, June 2005.

<sup>31</sup> National and ethnic minorities in Hungary, Office for National and Ethnic Minorities, Budapest, Hungary, June 2005.

that Hungary places languages<sup>32</sup> as a top criteria. Other countries like Romania do not use the language element as much as Hungary.

Act LXXVII of 1993 on the Rights of National and Ethnic Minorities states that ‘the mother tongue, the intellectual and material culture, the historical traditions of the national and ethnic minorities who are Hungarian citizens and live in Hungary’<sup>33</sup>, the language characteristic is states as one of the most important criteria’s.

Another important element that Hungary uses in order to be a member of a national minority is citizenship. Citizenship is crucial in order for minorities to get rights and protection. One problem that the Roma minority in Hungary faces is the lack of legal recognition from citizenship. Citizenship, it is a formal tool that is used in order to get rights from the states. Without citizenships, members of a state do not have access to some resources. Social rights of citizenship provides important elements for individuals, for example, access to health care, ability to move, welfare benefits, education, public services and membership of a community (Shaw 2007). As Yasemin Nuhoglu Soysal argues it is the ‘material realization of individual rights and privileges that is organized by the state’ (1994). Individuals who are citizens can hold and enjoy rights from the state only through paper documentation.

The third characteristic that was important in Article 1(2) of the Act LXXVII of 1993 was the territorial component of being a minority. According to the Minority Law, a national and ethnic minority is ‘every national group that has been native on the territory of the Republic of Hungary’. Though Hungary finds the territorial component significant, the state essentially decides how long a minority should stay in order to be a national minority. But what happens when certain minority groups fall out of the characteristics?

<sup>32</sup> When the term ‘language’ is used I am indicated mother tongue. The language that individuals first learned and use it with family and friends.

<sup>33</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, November 2005.

#### 4.4 BASIS OF MINORITY MEMBERSHIP: WHO ARE LEFT OUT?

This section discusses what characteristics Hungary identifies in order to be part of a minority. Though many times the characteristics for minority membership are not clear, it can be visible through the Hungarian Status Law. One important aspect of identifying the characteristics of minority membership is the problem of exclusion. Hungary recognizes national minorities in legal documents but there are minorities who do not fall into the category. Rather they are placed into the 'other' category. They are left of the main nation minority list because Hungary does not categorize them as such. This is problematic when one examines the consistency between the international legal treaties and how they are implemented in practice. One ethnic group that has discriminated against is the Roma population.

Another group are subject to the problem of subjective identity are the Roma's. They have been subjected to racial discrimination that has affected their daily life situations. In many parts of Hungary the Roma community is constantly forced to live outside from the rest of the community. According to the 1993 Minorities Act, minorities have the right to develop institutions and to self govern.<sup>34</sup> Treaties are legally protecting the Roma population, both internationally and domestically, they continue to face racial discrimination. They face discrimination in every public sector, education, employment, and through the criminal justice system.<sup>35</sup> There are also many NGO's that focus on the Roma situation in Hungary and Europe, however, it is continues to be difficult for them.

The problem continues to be based on defining minority membership. Regardless of how many Roma identify them, Hungarian or Romania, others continues to classify them as Roma.

<sup>34</sup> Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, November 2005.

<sup>35</sup> Monitoring the EU Accession Process: Minority Protection, Country Reports, Open Society Institute: EU Accession Monitoring Program, 2001.

Even in the education system many Roma children are separated into different classrooms with lower teaching standards and without qualified teachers.<sup>36</sup> It continues to be a repeating problem; if the Roma children are not properly educated they will not be able to find employment in the future as adults.

Even though the Minority Act protects and gives them rights, the Hungarian system does not provide effective solutions in order to eliminate dilemmas like these. According to the ‘Monitoring the EU Accession Process: Minority Protection’ by the Open Society Institute, Hungary is not applying any effective legal solutions in order to change the situation nor is the state willing to act on the condition.<sup>37</sup> The international treaties that were signed focus on the protection and preservation of national minorities; however, Hungary does not have any effective solutions for the Romas.

The Roma population in Hungary continues to face problems with discrimination because of their racial categorization by the state and society. For the Roma population race is a factor that affects minority membership. They can identify with the majority of the population or the ‘national identity’ but regardless the basis for minority membership is racial element.

I argue that in the case of Hungary, the Roma population is defined by the racial characteristic rather than self identification that is stated in the international documents. The census that Hungary uses in order to identify the population focuses on political incentives such as having a good relationship with the international community. States are expected to recognize minorities and eliminate discrimination but in practice the states aim overrides it.

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<sup>36</sup> Monitoring the EU Accession Process: Minority Protection, Country Reports, Open Society Institute: EU Accession Monitoring Program, 2001.

<sup>37</sup> Monitoring the EU Accession Process: Minority Protection, Country Reports, Open Society Institute: EU Accession Monitoring Program, 2001.



The next section will examine how Romania defines minority membership and look at the legislation on minorities defines minority's membership and also examine the tools that are used in order to identify minorities.

## CHAPTER 5: ROMANIA AND THE MINORITIES

This Chapter examines the minority situation in Romania. Because of the large number of minorities that live in Romania and also the recent accession into the European Union it is important to examine the legal instruments that are used to identify and protect minorities. For the inclusion into the European Union, Romania was obligated to incorporate minority protection and rights into their legislation system. Because of the recent changes in the political system it is important to examine and compare the situation with Hungary.

This chapter is divided into four main parts, the first part study the Draft Law on the Statue of National Minorities living in Romania, the second section argues how minorities face the problem with inclusion and exclusion, the third outlines the legal instruments that are used in order to implement minority rights and the final part will focus on defining minority membership in Romania by using legal documents.

### 5.1 DRAFT LAW ON THE STATUE OF NATIONAL MINORITIES LIVING IN ROMANIA

The Draft Law on the Statue of National Minorities living in Romania is a document containing 78 Articles pertaining to the laws on minorities. According to Article 3 of the Draft Law claims what they mean by national minority. ‘By national minority we understand any community of Romanian citizens, living on the territory of Romania from the moment the modern Romanian state was established, that is numerically inferior to the majority population, with its specific ethnic identity expressed by culture, language or religion, and who wishes to

preserve, express and promote its identity'.<sup>38</sup> There are characteristics that minorities need to poses in order for the state to recognize them, citizen, numerically inferior, 'specific' ethnic identity, culture, language, or religion. These characteristics are, however, subjective because one, not all individuals such as Roma hold citizenship and two what constitutes 'specific' ethnic identity, and three there are many minorities who are different ethnic identity, language and religion but continue not to be recognized as a national minority.

Article 7(1) also states that the state "encourages" the spirit of tolerance and the intercultural dialogue' with respect to minorities. This article uses the term 'encourages' regarding individuals of ethnic cultural, linguistic, or religious identity. However, this term is rather flimsy because the state encourages tolerance, however, within society the Roma community are continued to be discriminated against that affect their everyday lives.

The Law on Public Administration enacted in April 2001 allows the Roma minority to use their own language in public administration settings, this gives the Roma minority the right to use their own language but the problem is the lack of established facilities in public settings. Though the law gives the Roma community to use their language in public administration, it is very difficult for this law to be implemented in practice because of the high number of discrimination in society. The Roma in Romania face a lot of discrimination in every field. Though there are laws on protection from discrimination and laws providing rights for the community, they continue to face hardship. Many times Roma do not identify them Roma but the society categorizes them according to the racial characteristic.

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<sup>38</sup> Draft Law on the Statue of National Minorities living in Romania, Art 3.

## 5.2 DEFINING MINORITY MEMBERSHIP IN ROMANIA

Minority rights in multiethnic states like Romania has continued to change with the application and joining of the European Union. The International community plays an important role in the proper transition of Romania. In particular, minority rights and protection has been a focus of Romanian legislation. The EU has played a crucial role in the democratic transition and the political and economic influence (Ram 2003). With the proper democratic transition focuses on human rights and minority rights and are critical components. Romania's obligations and expectations from the EU impacts the development of 'national institutions and civil society, the process and character of domestic debate, the timing and the content of certain domestic legislation, and the evolution of minority rights' (Ram 2003). Though it is clear that the EU effects the implementation of minority rights and protection, how Romania defines minority membership can make or break the minority situation in practice.

In Article 3(1) of the Framework Convention on the National Minorities 'every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice'.<sup>39</sup> However, it is not a subjective choice to be part of a minority. For example, with a Hungarian group of Roma in Romania they do not necessarily qualify for the Hungarian minority rather the Roma group. What characteristics qualify someone to be Hungarian? One indicator of ethnicity is language, however, a Roma that lives in a Hungarian community with kin that dates back to Hungarian continue to be Roma rather than Hungarian. The states determine which groups or individuals qualify for the status and membership of a minority (Meijknecht 2004).

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<sup>39</sup> Framework Convention for the Protection of National Minorities, Strasbourg, 1995, Adopted by the Council of Europe.

Another example is the Csango<sup>40</sup> minority in Romania. According to the 1992 census, people who were categorized as ‘other nationalities’ where people who declared themselves as Csango (Meijknecht 2004). Since they are not recognized as a separate minority group they are labeled as ‘other’. Romania does not mention the characteristics that minorities need to hold rather the state automatically placed Csango in the ‘other’ category (Meijknecht 2004). Regardless of whether minorities can freely choose to be in a minority, if the state does not recognize them then to do ‘not exist’. According to the Government of Romania, all persons belonging to a minority have the free choice to declare their membership; however, Romania influences the existence of a minority (Meijknecht 2004).

Article 3 of the Framework Convention does not contain a definition of what a minority is rather it states ‘every person belong to a national minority shall have the right to freely choose’<sup>41</sup>. International legal documents lack the definition of minority and the criteria’s to be a member of a minority is continuing to be a problem for the Roma population. The Roma population falls into a category which can cause problems when it comes to gaining

The protection of minorities many times refers to the protection of cultural identity (Meijknecht 2004). National minorities are identified typically by the religion, language, traditions and cultural heritage (Meijknecht 2004). Many International legal documents discuss the protection of cultural identity, for example, Article 27 of the Universal Declaration of Human Rights, Article 15 of the International Convention on Economic, Social and Cultural Rights and the non legal UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Meijknecht 2004). These documents discuss minority rights

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<sup>40</sup> Csango’s are an ethnic group of people who live in Romania. I am referring to a group of individuals that reside in the county of Bacau. There are many Csango communities all around Transylvania and Bacau County. There are many definitions as to what constitutes Csango and also the historical aspects of where they derived from.

<sup>41</sup> Framework Convention for the Protection of National Minorities, Strasbourg, 1995, Adopted by the Council of Europe.

and protection more specifically towards the cultural aspect. However, the question is raised of what do cultures need to contain in order to be recognized?

Romania, in the past has made several legal attempts to protect minorities by ratifying international documents addressing racial and ethnic discrimination as well as the Framework Convention for the Protection of National Minorities.<sup>42</sup> Other treaties have been made for the strengthening of the relationship between Hungary (1996) and Ukraine (1997). These international documents are tools that Romania uses in order to protect its national minorities<sup>43</sup>. I argue the notion that these documents are also tools used in order to strengthen the relationship between member states.

### 5.3 BASIS OF MINORITY MEMBERSHIP: WHO ARE LEFT OUT?

The previous section discussed minority membership in Romania and the international legal documents that implement the protection of minorities. In this sub section I will focus more of minority membership and the problems associated with it. Because of the state influence in minorities recognition there is a problem with people falling out of the categories that the state outlines. Whether minorities are recognized or not being a member of the minority is subjective according to the states standards. Roger Brubaker claims that ‘ethnic category membership is often understood, experienced, and represented as a matter of degree’ (2006).

Category membership can be marked or qualified in all kinds of ways. Honorific distinctions-of authenticity, antiquity, purity, or intensity-can be claimed for oneself or bestowed upon others. A person can be characterized as a true Hungarian; a real Romanian; a pure Hungarian; a Romanian, Romanian; ‘very’ Hungarians; a genuine Romanian; a ‘big’ Hungarian; a passionate Romanian (Brubaker 2006:).

<sup>42</sup> Open Society Institute: EU Accession Monitoring program, Monitoring the EU Accession Process: Minority Protection, Country Reports, 2001.

<sup>43</sup> Open Society Institute: EU Accession Monitoring program, Monitoring the EU Accession Process: Minority Protection, Country Reports, 2001.

Within categories there are different levels that can affect whether you fall into a minority. Citizenship also influence whether or not someone falls into the category of a national minority. To be able to receive rights and protection one has to hold citizenship. For example, there are a large number of minorities in Romania that do not hold a citizenship. Especially in regions in Romania, there are a large number of minorities that do not fall into the ethnic categories of Hungarian, Romanian, and Roma.

Ethnic minorities in Romania constitute around 10% of the population (Topidi 2006). The largest minority group is the Hungarians (6.6 % of the total population) and then follows the Roma (2.5%) and the Germans with the Ukrainians (0.3% each) according to the Romanian census conducted in 2002<sup>44</sup>. Romania identifies the Hungarians and the Germans as national minorities for historical reason and the Roma minority as preserving their cultural identity<sup>45</sup>. For these minorities the historical aspect influences many laws that have been enacted in order to preserve the culture, for example, the language laws on the use of Hungarian language in education, administration, media, etc in areas of Transylvania, Romania.

In order to establish the number of minorities in Romania, a population census is conducted. Every ten years a census is conducted in order to determine the number of inhabitants and the different number of ethnicities. Each citizen is required to identify what ethnicity they feel they belong to. Still, the census has positive and negative consequences to it. For example, Roma prefer not to identify themselves as Roma but rather than Hungarian or Romanian (Meijknecht 2004).

Under Article 90 of the Romanian Public Administration Law of 2001, if a national or ethnic minority makes up over 20% of the population of a given

<sup>44</sup> Romanian National Institute of Statistics, 2002, [www.insse.ro/RPL2002INS/vol5/graphics/gr12.htm](http://www.insse.ro/RPL2002INS/vol5/graphics/gr12.htm)

<sup>45</sup> The International legal documents that Romania signed are agreements to recognize and preserve the cultural identity of minorities. The Roma minority are part of the agreement with the European Union to protect the Roma ethnic group.

administrative unit, they have the right to street signs, schools, and official proceedings in their own language. The 1992 census figures showed that 23% of Cluj's population was composed of ethnic Hungarians (Meijknecht 2004: 22).

The mayor of Cluj argued again that Hungarians make up 23% of the population, he states that the Roma in the community who are from Hungarian descent and they are claiming they are Hungarian but in reality they are Roma (Meijknecht 2004). According to the author Anna K. Meijknecht in, *Minority Protection Standards and Reality*, census takers went to households and 'threatened' to verify their claim (2004). In many cases when a census is taken there are political incentives or ways in which the political system uses the census for their benefit.

The situation of the Roma population in Romania has been extremely difficult and international organizations like the European Commission and other EU bodies have stressed the importance of developing ways to address the situation.<sup>46</sup> One improvement of the Romanian government was enacting the anti-discrimination legislation in November of 2000.<sup>47</sup> This was an important step taken by the government in order to address the situation, however, the Roma in Romania still have been a target for discrimination. Romania's legal framework for the protection of minorities have improved throughout the past couple of years, they have ratified international documents and also have signed bilateral treaties with Hungary and Ukraine. Romania has used a number of tools in order to identify the minorities on their territory.

The census is used in order for individuals to choose their ethnicity, however, many Roma either do not wish to identify as such or do not find themselves as Roma, rather a Hungarian or Romanian. As mentioned before, the Csango population is categorized as the 'other' therefore they are not recognize nor do they have the option to identify themselves as

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<sup>46</sup> Monitoring the EU Accession Process: Minority Protection, Country Reports, Open Society Institute, 2001.

<sup>47</sup> Monitoring the EU Accession Process: Minority Protection, Country Reports, Open Society Institute, 2001.



being part of a National Minority. The Government of Romania confirmed those people who declare themselves as Csango are part of the 'other' category because Romania does not qualify them as a national minority (Meijknecht 2004). According to the government claimed that in the next census they will include Csango as a separate minority (Meijknecht 2004). However, they were not included in the 2002 census. Minorities in Romania have the right to freely choose, as mentioned in the Framework Convention, but they have the right to freely choose for the list given to them by the Romanian state.

The Roma population is affected in many ways. Many Romanians and Hungarians have a rather negative image of the Roma (Meijknecht 2004). Many people in Romania identify the Roma with characteristics such as, dirty, thieves, low education, and unemployed (Meijknecht 2004). These are characteristics that are typically used in order to identify Romas, regardless of how the Roma identify themselves others identify them as Roma. There are many negative stereotypes of the Roma community both from the social level to the political level.

In the Framework Convention, it states that 'the Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities', however many Roma communities do not have equal access to education. Because of the high segregation of Roma communities, many children do not attend school nor receive special schooling if they are needed (Meijknecht 2004). If they are attending schools then they are grouped into separate classes, which are poorly maintained, overcrowded, and teachers lack educational qualifications. The lack of education can have a detrimental effect to the population in the future. Though there are legal documents both internationally and domestically, many minorities are not recognized by the state, like the Csango population, or do not have equal rights/access/protection from the state like other minorities. Though Hungarians and Romas are

both a large national minorities, they do not receive the same rights and benefits from the state as they legally should.

The legal documents that protect national minorities, in many cases, are only used as a tool in order to strengthen the relationship between other countries. Many times, in Romania, there is a gap between what the legal documents state and what happens in practice. One of the main problems that the Roma population faces in Romania, and many other countries, is the discrimination of Roma by other citizens in daily life (Meijknecht 2004). Discrimination has affected the life of Roma people in every aspect. They are faced with many challenges that are unlike the challenges that other minorities face, they are seen and treated like no other minorities. Though there are many legal international standards for the protection of minority rights they are not properly implemented and discrimination has blocked any further development with the protection of minorities.

## 5.4 LEGAL INSTRUMENTS

This section argues both the positive and negative aspects of how these legal instruments are used. Defining minority membership in Romania is the used through legal documents. The documents and tools (census, minority laws, etc) are used for purposes that will benefit both parties. There are many legal instruments that are used, as mentioned before; the Framework Convention, Universal Declaration of Human Rights, ICCPR, etc are all used for political benefits. There are many negative aspects of the treaties and international legal documents because they do place pressure on member states for implementation.

Citizenship, as mentioned before, is a political tool used by the state in order to nation build. The lack of documentation is one out of the many problems the Roma community

encounters. The lack of citizenship or any identification documents prevents them from accessing any rights that are ‘promised’ to them in the legislation. According to Romania Draft Law on the Statue of National Minorities, Roma are provided public goods and services, rights with education, welfare benefits, health services, public housing and many other rights. With the lack of citizenship many Romas are not able to acquire these benefits. Though there has been concern from the international community on the Roma community and receiving rights but there has been little progress with the unregistered Roma’s.<sup>48</sup>

The positive aspect of the legal treaties that are use to protect and give minority rights is the improvement of the minority situation. With ratifying the legal treaties on minority protection many documents include the monitoring process of the treaties. Because of the past and present negative stereotype and discrimination that Roma face both in public and private sectors, these developments within the legal treaties is a progress in the right direction. It is very difficult to eliminate all forms of discrimination in practice but the improvements at the political and legal level change slowly produce changes in the future.

In sum the legal instruments that are used are not fully effective and can have consequences for minorities. The tools are used as political incentives to strengthen the relationship between parties and the pressure to ratify the documents. According to the Romanian Constitution it guarantees the right for minorities to identify with their ethnic identity. Ethnic minorities who live on the territorial boundaries in Romania have the right, however, many times the Roma face difficulty identifying with anything but Roma. Many legal provisions are significant; however, in practice they are not enforced. We are able to tell the lack of cohesion through state reports which indicate how the state is implementing the legal provisions.

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<sup>48</sup> Monitoring the EU Accession Process: Minority Protection, Country Reports, Open Society Institute, 2001.

## CHAPTER 6: CONCLUSION

Before considering the importance of the examination of defining minority membership in Romania and Hungary, it is important to outline the basic information which was presented in this thesis. This thesis has identified a number of issues with the minority situation in Eastern Europe and focused on both the legal and the social situations of minority rights. As mentioned in the previous chapters, the importance and the significant role that the legal and political sector play in minority membership. Minority membership is deeply influence and is geared towards the politics of the nation state. One major problem here is the political effect on defining minority membership. I argue that the process to recognize national minorities is a way for the state to nation build through the political process. Because homogenizing a state is not the aim of the European community and the international community, I argue that the state must nation build through another way. None the less, it is important to have legal provisions in order to protect minorities, but many minorities face the inconsistency between the legal and practical situations in daily life.

This thesis examined and identified some important characteristics that Hungary and Romania use to define minority membership. Many studies have done how states protect minorities but few have examined how states define minority membership. Thus, this thesis has contributed to both the field of research and also contributed to development minority rights and protection in the future.

Hungary and Romania outlined the important characteristics in identity through the Hungarian Status Law and the Draft Law on National Minorities. These two main documents were used in order to model the relationship between the legal and political sector. One important notion that many international and domestic documents outlined is the preservation

and protection of national minorities because of their distinct culture features. There is no doubt that there are differences of cultures, traditions, and ethnicities, however, these differences cannot be placed into neat categories, therefore making it difficult to define what a minority is.

This thesis began with the theoretical background of the protection of minority rights in Eastern Europe and it discusses the developments of the nationality question, self determination, and the role that the international community played in the legal sector. These are important to identify as a process of development the field of minority rights. However, I argue that many international documents are tools that are used for strengthening of the political relationship between states. A tool, for example, the bilateral treaty that was signed between Hungary and Romania in order to have better relations was a political incentive rather than the focus on minorities.

I argue that from the political relationship that states build through the treaties, they also identify certain characteristics that they find important to recognize minorities. Without the legal recognition of minorities they do not technically exist. As we mentioned the Csango population in Romania do not 'exist' as a separate national minority rather in the 'other' category. Or the Roma population in both Hungary and Romania lack formal documentation which gives them social benefits. The Roma population are considerably different because of the discrimination the Roma face regardless these ethnic minorities are either not fully recognized or are recognized and the subjective element of identity affects how they receive rights. I argue that many societies do not view the Roma community as a national minority and would rather consider the Csango as a national minority. From the countless documents on the 'respect cultural, religious, and linguistic diversity' it shows that regardless of what the documents indicate, the state controls who is a minority and also who are members of that minority.

One interesting piece that I found is important to identify again is the legal definition of minority membership that Hungary uses to recognize minorities. Unlike international documents, minority is defined in Hungarian law. According to a country report conducted by the Open Society Institute it stated that ‘upon petition’ minorities have the option to be recognized. I argue that this statement shows the strong relationship between minority legislation and the political sector. I argue that in this example it shows the discretion of defining minority membership and nation building.

In Romania, I argue that they use territory as a way to nation build. The Draft law on the Statue of National Minorities identifies the ‘territory’ component as a significant way to identify minorities. They use the argument, within the territorial boundaries of Romania they can be recognized, however, one problem arises is the lack of legal recognition of the Roma population. With the joining of the EU and the pressure from other international organizations, Romania was obligated to comprise minority legislation. Though they have legal documentation of minority membership, in practice many Roma’s are left out. Romas do not have legal identification and the state therefore does not recognize ‘stateless’ individuals.

In this thesis I have outlined a number of arguments by various scholars on the notion of the strong relationship between the state and ethnicity. However, I have argued that the examples from Hungary and Romania show the way that states define minority membership through the legislation and also those distinct factors that they base it on. These are important to address when discussing how minorities in Hungary and Romania are given rights and protected because many instances these tools are a way for the state to nation build. I argue that there are both positive and negative aspects of the international and domestic legal documents on minority rights and protection but in general it is a political process that many states undergo. The

question of how states will further develop their minority situation is for further research and development for the continuation of minority rights.

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