Chapter IX

Inclusion and Exclusion. The Difference in the Notion of ‘National’ in the Framework of Minority Rights Regimes

by Maurice D. Voyame∗

“*I would dare to say that I know a minority when I see one*”

Max van der Stoel, OSCE High Commissioner on National Minorities, 1994.

1 Conceptualisation

Kurds in Iraq, Turkey, Syria and Iran; Copts in Egypt, Arab Palestinians in Israel, Christian throughout the Middle East, Jews throughout the world, Muslims in India, Tamils in Sri Lanka, Sami in Norway, Germans in Poland and other Eastern European States; Roma mainly all over Europe, Serbs in

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Bosnia, Corse in France, Russians in the Baltic States, Adjarians in Georgia, the list of entities that must be regarded, can be regarded or want to be regarded as minorities is endless, and the question which rights persons belonging to one of these entities possess, moreover if the individual or the group shall be regarded as legal holder of the particular set of rights and if they need special treatment and protection, if and how they can be peacefully accommodated in the state on which’s territory they live, has become one major issue of our time.

This article strives to enlighten one particular aspect, namely the notion of the term ‘national’ within the concept of minority rights and protection regimes. Hence a meticulous analysis of one part of the logos or terminology side in the minority concept shall be provided. Although the term or rather the notion of the term ‘national’ shall be examined, it is indispensable to draw some general observation on what minority rights in general entail following a short clarification of the used terminology. The overview will also quickly grasp some argumentative lines concerning the question if the rights granted in contemporary concepts of minority protection are purely individual or group rights and which areas the rights comprise. Secondly the duty question shall be elaborated, which mainly asks if the minority rights regime imposes a positive duty on the state to take action or if it merely demands non-intervention from the state. Finally the general overview peaks in the introduction of the different minority rights systems and regimes this article is concerned with.

To conclude this conceptualisation a pre-emphasis on the use of certain terminology is necessary, which might appear confusing at this early stage of the survey but will organically develop its legitimacy during the following chapters. The terms ‘citizens’ or ‘citizenship’ will be used when referring to the fact that a person or a group of persons, who jointly constitute a minority, are holders of legal rights granted to them by virtue of their possession of the citizenship (nationality) of the state they live in.1 If the author examines a protection regime or document which uses the term ‘national’ in the meaning

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1See EIDE, A.: “Citizenship and International Human Rights Law. Status, Evolution, and Challenges”, in: BUTENSCHON, N.A. / DAVIS, U. / HASSASSIAN, M. (eds.): Citizenship and the State in the Middle East. Approaches and Applications, Syracuse 2000, pp. 88-123, p. 104. Eide argues that the term Citizenship is the more appropriate since the emergence of Human Rights Law after WW II (p. 96) and shows that in International Human Rights Law “it can be assumed that the word national is synonymous with citizen unless there is clear evidence to the contrary”.