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Peace Agreements as International Legal Acts Protecting National Minorities: The Scope Ratione Personae

Abstract: The issue of the protection of national minorities is regulated by acts of international law, frequently arising from international agreements that have been concluded to end armed conflicts or to regulate directly their consequences. Peace treaties concluded between states are governed by the rules set out in the Vienna Convention on the Law of Treaties. More and more peace agreements are, however, concluded by non-state actors. As indicated in Article 3 of the Convention, it cannot be excluded that these too would be international agreements, having effects in the sphere of international law. Such acts are concluded, inter alia, by insurgents or belligerents. In some cases, agreements ending non-international armed conflicts are concluded by domestic entities that are not subjects of international law. Such acts may reflect solutions that have been adopted as standards in international practice and in the provisions of international law. These do not necessarily have to be legally binding standards. They can also be framework solutions, including measures relating to the protection of national minorities, which are formulated and offered as proposals for specific regulations.
Keywords: international agreements, national minorities, peace agreements

Introduction

Ethnic conflict has been a major source of insecurity in the world since time immemorial. This salutary fact was recognised in the preamble of the first universal

document on the protection of minorities. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that 'the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live'.[1] Similarly, the Framework Convention for the Protection of National Minorities provides that 'the protection of national minorities is essential to stability, democratic security and peace in this continent'.[2] Consequently, the inclusion of general human rights protections and references to minority rights in peace agreements and post-conflict constitutions is common today.

The purpose of this article is to analyse selected peace agreements with regard to provisions concerning national minorities. Such provisions – similar to provisions concerning refugees, migration and citizenship – are usually included in a part of a peace treaty regarding the population. Particular focus will, however, be placed on provisions concerning national minorities. Selected peace agreements will be analysed in this respect in order to make possible an assessment of the position of national minorities when such agreements are concluded. Additionally, the possibility of peace agreements being concluded by national minorities will be the subject of a legal analysis.

The aforementioned objectives will be achieved mainly by using two methods: legal dogmatic and comparative. The first method is used to discuss the provisions of peace treaties in respect to the protection of national minorities. The comparative method is used to compare the position of national minorities in peace treaties concluded after the end of the First World War and treaties concluded at the end of the twentieth century.

1. Definition of a Peace Treaty

International law does not contain a legal definition of a peace treaty. There are, however, numerous proposed definitions in legal writings. Not all of them, however, are precise and they do raise doubts. *Wielka encyklopedia prawa* [*The Great Encyclopaedia of Law*], published at the beginning of the 21st century, defines peace treaties as 'agreements ending a state of war between states, [to] regulate relations related to the restoration of peace and liquidation of the consequences of war'.[3]

1 Preamble of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/RES/47/135), 3 February 1992.

2 Preamble of the Framework Convention for the Protection of National Minorities, done at Strasbourg, 1 February 1995.

3 D. Bugajski, Traktaty pokoju, (in:) B. Hołyst, R. Hauser (eds.), Wielka encyklopedia prawa, J. Symonides, D. Pyć (eds.), Prawo międzynarodowe publiczne, vol. IV, Warsaw 2014, p. 508.

This definition is defective in that it focuses solely on states as being parties that are entitled to enter into international agreements of this kind.

L. Vinjamuriand and A. Boesenecker define a peace agreement more broadly, as a 'formalised legal agreement between two or more hostile parties – either two states, or between a state and an armed belligerent group (sub-state or non-state) – that formally ends a war or armed conflict and sets forth terms that all parties are obliged to obey in the future'.[4] According to C. Bell, peace agreements are 'documents produced after discussion with some or all of a conflict's protagonists with a view to ending violent military conflict'.[5] In this case, the proposed definition encompasses both actual agreements, as well as other documents, such as resolutions of the UN Security Council, the aim of which is to end armed conflicts.

The definition proposed by R. Rybicki would seem to be the most pertinent. In his opinion, 'a peace agreement (peace treaty) is an international agreement concluded between hitherto warring parties, the purpose of which is to end the armed conflict in a final and permanent manner, establish peace and to restore normal relations between them'.[6] Two elements of this definition are significant from the point of view of international law. First of all, it recognises that not only states but also other subjects of international law, including entities with limited legal subjectivity (such as insurgents or belligerents), may be parties to a peace agreement. Secondly, a peace agreement is a source of international law, whether or not it was concluded between states alone or between states and other subjects of international law, or only between other subjects of international law. In this case, the issue of the legal force of such agreements has been addressed in Article 3 of the Vienna Convention on the Law of Treaties. This establishes that the fact that the Convention itself does not apply to international agreements concluded between states and other subjects of international law or between such other subjects of international law, shall not affect the legal force of such agreements and the application to them of any of the rules set forth in the Convention to which they would be subject under international law independently of the Convention.[7] Such a solution is, undoubtedly, useful for the assessment of the legal status of peace agreements, as practice in recent decades confirms that international conflicts conducted by states alone are in a decided minority. Conflicts involving states and other entities without a clear legal and international status are much more frequent.

4 L. Vinjamuri, A. Boesenecker, Accountability and Peace Agreements Mapping Trends from 1980 to 2006, Geneva 2007, p. 6.

5 C. Bell, On the Law of Peace. Peace Agreements and the Lex Pacificatoria, Oxford 2008, p. 53.

6 R. Rybicki, Porozumienia pokojowe po 1945 roku z perspektywy prawa międzynarodowego, Warsaw 2019, unpublished doctoral dissertation, p. 44.

7 Article 3 of the Vienna Convention on the Law of Treaties, signed on 23 May 1969 (1155 U.N.T.S. 331, 8 I.L.M. 679).

Over the centuries, the catalogue of entities subject to international law has been gradually expanded. When assessing the capacity to enter into peace treaties, insurgents and belligerents merit particular attention as being entities of a limited legal personality. The subjectivity of these groups in each case is, of course, dependent on their being acknowledged as insurgents or belligerents in the international arena.[8] In turn, when analysing the situation of national minorities, it is worth noting that at no stage in the development of international law have they been regarded as a subject of international law, which in consequence is tantamount to denying them the capacity to enter into peace agreements. In practice, however, certain changes in the position of national minorities may be observed in this respect.

For the purposes of this article, firstly, the terms 'peace agreement' and 'peace treaty' are used interchangeably. Secondly, the term 'national minorities' covers both minorities included in peace treaties signed after the First World War and ethnic minorities referred to by the authors of international legal instruments when referring to their protection within the universal system.

2. Entities Concluding Peace Agreements

The position of national minorities on the international scene has changed significantly over the last century, which is reflected in the provisions of the peace treaties discussed below. An increased interest in national minorities, together with the development of the international system for their protection, can be observed after the end of the First World War. Peace treaties undoubtedly played a significant role in this regard. G. Janusz observes that three solutions were taken into consideration when the treaty-based system of protection of national minorities was being established. First of all, the peace treaties signed by Austria, Bulgaria, Hungary and Turkey[9] provided for special protection clauses for minorities. Secondly, protection of national minorities was ensured in the form of separate treaties on the protection of minorities, which were annexed to the peace treaties proper. An example of such a treaty is the so-called Little Treaty of Versailles,[10] which was imposed on Poland

8 W. Góralczyk, S. Sawicki, Prawo międzynarodowe publiczne w zarysie, 16th ed., Warsaw 2015, p. 136.

9 Treaty of Peace between the Allied and Associated Powers and Austria; Protocol, Declaration and Special Declaration (St. Germain-en-Laye, 10 September 1919); Treaty of Peace between the Allied and Associated Powers and Bulgaria and Protocol and Declaration signed at Neuilly-sur-Seine, 27 November 1919; Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration, signed at Trianon, 4 June 1920; Treaty of Peace with Turkey signed at Lausanne, 24 July 1923.

10 Minorities Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles, 28 June 1919.

on 28 June 1919.[11] Thirdly, the submission of declarations confirming the respect of the rights of national minorities was provided for in the case of states interested in acceding to the League of Nations. Such declarations were made by Finland on 27 June 1921 and Latvia on 7 July 1923.[12]

Particular attention should be given to the first solution, namely protection clauses contained in peace treaties. The first two peace treaties concluded with Austria and Bulgaria regulated the issue of protection of national minorities in a virtually identical way. Each of these treaties contained separate chapters entitled 'Protection of Minorities'. The authors of the agreements did not, however, use the concept of a national minority in any of them. Three concepts were used in the treaties concluded in Saint-Germain-en-Laye and in Neuilly-sur-Seine: all residents of Austria/Bulgaria, and citizens of Austria/Bulgaria belonging to racial, religious or linguistic minorities. The material scope of protection of minorities under both these treaties was identical. The rights guaranteed to minorities included: the prohibition of discrimination, recognition of civil and political equality, linguistic rights, the right to education in the mother tongue, the right to freedom of association, support for the activities of minorities of an educational, religious or charitable purpose out of public funds, and rights regarding citizenship. The prohibition of adopting internal regulations by the Austrian or Bulgarian authorities contrary to the provisions of Chapter V of the Treaty of Peace with Austria and Chapter IV of the Treaty of Peace with Bulgaria, respectively, is also one of the significant provisions. The possibility to place treaty obligations under the guarantee of the League of Nations was also secured and, in the event of a national dispute, the jurisdiction of the Permanent Court of International Justice was recognised.

The issue of the protection of minorities was regulated in a similar manner in the Treaty of Peace with Hungary. The lack of provisions concerning support for the activities of minorities out of public funds should be noted as a difference between them. It turn, the right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments was guaranteed.[13]

11 The League of Nations viewed the discontented minority groups in Poland and Czechoslovakia as a 'threat to peace and stability', thus forced these states to sign minority protection treaties with the Allied Powers. According to the Permanent Court of International Justice, these treaties focused, on the one hand, on achieving equality between minorities and other nationals of the state, and on the other hand, on ensuring for the minority groups suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics, for the overall objective of ensuring a peaceful and amicable coexistence and cooperation of minorities with other nationals. Minority Schools in Albania, Advisory Opinion, 1935 P.C.I.J. (ser. A/B), No. 64 (6 Apr.), paras. 48–51.

12 G. Janusz, Ochrona praw mniejszości narodowych w Europie, Lublin 2011, p. 260.

13 Article 58(5) of the Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration, signed at Trianon, 4 June 1920.

In turn, as regards the third category of persons subject to protection, the authors of the Treaty of Peace with Turkey applied a completely different concept from that used in the three preceding peace agreements. This time, only those citizens of Turkey belonging to non-Muslim minorities were regarded as a minority. In consequence, the application of the religious criterion, instead of the nationality criterion, contributed to Kurds, Circassians and Azerbaijanis not being recognised as minorities. The material scope of the definition of 'minority' under discussion was also modified. The treaty guaranteed full protection to churches, synagogues, cemeteries and other religious establishments of non-Muslim minorities. With regard to the above-mentioned minorities, the Turkish government also undertook to take, as concerns family law or personal status, measures to enable these matters to be dealt with in accordance with the customs of those minorities. The scope and principles in regulating these customs were to be assessed by special Commissions composed of representatives of the Turkish government and of representatives of each of the minorities concerned in equal number.[14]

The scope *ratione personae* for this type of treaty was limited exclusively to the states. In the last thirty years, peace agreements in classical inter-state conflicts have been a minority. More and more conflicts have an internal dimension. Consequently, peace agreements are also signed by non-state parties. In such situations, a question arises as to what legal status, if any, such agreements have. According to the Vienna Convention, international agreements between states and other subjects of international law or between such other subjects of international law can be legally binding international agreements. Norms of customary law apply to such agreements. It is worth adding that the authors of the above-mentioned convention, whilst using the concept of subjects in international law when determining the legal force of treaties, did not present its conceptual scope. Peace treaties should, therefore, be assessed on a case-by-case basis taking into consideration the solutions adopted in international law concerning subjectivity under international law.[15]

C. Bell notes that among the entities that most frequently sign such treaties are three main groups that potentially could become subjects of international law, namely

14 Article 42 of the Treaty of Peace with Turkey, signed at Lausanne, 24 July 1923.

15 K. Karski, Zasięg podmiotowy Konwencji wiedeńskiej o prawie traktatów, (in:) Z. Galicki, T. Kamiński, K. Myszona-Kostrzewa (eds.), 40 latminęło: Praktyka i perspektywy Konwencjiwiedeńskiej o prawie traktatów, Warsaw 2009, pp. 53–88; K. Karski, The International Legal Status of the Sovereign Military Hospitaller Order of St. John of Jerusalem of Rhodes and of Malta, "International Community Law Review" 2021, vol. 14, no. 1, pp. 19–32. See also: T. Kamiński, K. Karski, Effective Application of the Rule on Fundamental Change of Circumstances to Treaties Contravening the 1997 Polish Constitution, "International Community Law Review" 2015, vol. 17, no. 1, pp. 68–94.

armed opposition groups, indigenous peoples and political and military leaders of minority groups with secessionist claims in autonomous areas.[16]

In many peace agreements signed by armed opposition groups, the non-state signatories were 'subjects of international law' – based on the recognition of such groups under international law. Examples of such agreements are: the agreement between the government of Angola and União Nacional para a Independência Total de Angola (UNITA) from 1994[17]; the agreement between the government of Burundi and armed opposition groups and political parties from 2000[18]; the agreement between the government of Guatemala and Unidad Revolucionaria Nacional Guatemalteca (URNG) from 1996[19]; the agreements between the Israeli government and the Palestine Liberation Organization (PLO) since 1993[20]; the agreement between the government of Mozambique and RENAMO from 1992[21]; the agreement between the government of Rwanda and the Rwandese Patriotic Front from 1993[22]; and the agreement between the government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF) from 1999[23].

It is worth noting that the above-mentioned agreements do not contain provisions concerning protection of the rights of national minorities. They establish or confirm mechanisms for demilitarisation and demobilisation, elections and legal and human rights institutions and create a new constitutional structure addressing issues of governance.

16 C. Bell, Peace Agreements: Their Nature and Legal Status, "American Journal of International Law" 2008, vol. 100, no. 2, p. 380.

17 Lusaka Protocol, 15 November 1994, Angola – União Nacional para a Independência Total de Angola (UNITA), UN Doc. S/1994/1441, available at: https://reliefweb.int/report/angola/lusaka-protocol-introduction-1994 (31.03.2021).

18 Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/BI_000828_Arusha%20Peace%20and%20Reconciliation%20Agreement%20for%20Burundi.pdf (31.03.2021).

19 Agreement on a Firm and Lasting Peace, 29 December 1996, Guat.-Unidad Revolucionaria Nacional Guatemalteca (URNG), UN Doc. A/51/796, S/1997/114, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/GT_961229_AgreementOnFirmAndLastingPeace.pdf (31.03.2021).

20 Israel-Palestine peace agreements, 1993–present, available at: https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Declaration%20of%20Principles%20-%20Main%20Points.aspx (31.03.2021).

21 General Peace Agreement for Mozambique, 4 October 1992, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/MZ_921004_MozambiqueGeneralPeaceAgreement.pdf.

22 Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, signed on 4 August 1993, available at: https://peacemaker.un.org/rwanda-peaceagreementrpf93 (31.03.2021).

23 Peace Agreement between the Government of Sierra Leone and the RUF (Lomé Peace Agreement), signed on 7 July 1999, available at: https://peacemaker.un.org/sierraleone-lome-agreement99 (31.03.2021).

It should be stressed, however, that by allowing that the insurgents or warring party meet the conditions for recognition under international law, the scope *ratione personae* of peace treaties is extended.

Indigenous peoples are the second group of subjects who sign peace agreements and can arguably claim to be 'subjects of international law'. Various agreements have been signed with or on behalf of indigenous groups. Some of these concern situations involving armed violence, as part of what was commonly accepted as a peace process.[24] For example, agreements were signed between the Chiapas people (through the Zapatista National Liberation Army (EZLN)) and the Mexican government,[25] between Bangladesh and the indigenous peoples of the Chittagong Hills Tract[26] and between the Guatemalan government and Unidad Revolucionaria Nacional Guatemalteca concerning indigenous groups.[27]

An examination of treaty practice between states and indigenous peoples living within them shows that the treaties either fall under national law or are considered to be of a *sui generis* nature. They are not, however, regulated by international law.[28]

Of most interest is the situation of the third of the above-mentioned groups, namely national minorities, which therefore merits more detailed consideration.

3. Do National Minorities Conclude 'Peace Agreements'?

International agreements and declarations which regulate the protection of the rights of national minorities do not contain a definition of 'national minority'. States have, therefore, broad powers with regard to recognising a given group as a national minority and determining their rights. Abuses of the rights of minorities or failing to offer them state protection are often the reason for ethnic conflict. Some of these conflicts may end with the signing of a peace agreement with national minorities.

In international law, the attribution of legal personality involves the capacity to perform legal acts in the international area. The capacity to make international agreements/treaties as well as the capacity to make claims for breaches of international

24 C. Bell, Peace Agreements …, *op. cit*., pp. 381–382. See also: A. Tahvanainen, The Treaty-Making Capacity of Indigenous Peoples, "International Journal on Minority and Group Rights" 2005, vol. 12, no. 4, pp. 397–420.

25 Actions and Measures for Chiapas Joint Commitments and Proposals from the State and Federal Governments, and the EZLN, available at: https://www.peaceagreements.org/wview/214/Actions%20and%20Measures%20for%20Chiapas%20Joint%20Commitments%20and%20Proposals%20from%20the%20State%20and%20Federal%20Governments,%20and%20the%20EZLN (31.03.2021).

26 Chittagong Hill Tracts Peace Accord, signed on 2 December 1997, available at: https://www.satp.org/document/paper-acts-and-oridinances/chittagong-hill-tracts-treaty-1997 (31.03.2021).

27 Agreement on Identity and Rights of Indigenous Peoples signed on 31 March 1995, available at: http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/guat12.pdf (31.03.2021).

28 A. Tahvanainen, The Treaty-Making …, *op. cit*., p. 418.

law, to enjoy the privileges and immunities from national jurisdictions, and to be a member in an international organisation helps to determine the international subjectivity of the entity.[29]

National minorities have not been attributed legal personality in international law. According to Article 1 of the Framework Convention for the Protection of National Minorities, 'the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights'. The Convention guarantees persons belonging to national minorities the possibility of exercising the rights arising therefrom individually or in community with others.[30] The authors of the Convention often use the term 'national minority' but when indicating specific rights, they define them as rights of persons belonging to a minority and not of a minority understood as a group.

Modern international law recognises two collective human rights of minorities: the right to physical existence and the right to preserve a separate identity.[31] Unlike indigenous peoples, minorities do not exercise the right to self-determination in terms of external recognition. This seems obvious at least for two reasons. First, the right to self-determination of national minorities has not been guaranteed in any of the international documents concerning the protection of these minorities. Secondly, according to the United Nations Charter and the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, the right to self-determination belongs to 'peoples' and not to 'minorities'.[32] However, the internal self-determination of national minorities is widely accepted in the international legal discourse. For example, A. Cassese wrote that the right to internal self-determination meant, inter alia, that ethnic, racial or religious minority groups within a state have a right not to be oppressed by the central government.[33] M. Seymour, analysing internal self-determination and secession, goes further by stating, 'unilateral secession can be justified in the case of colonies, oppressed peoples and when the state does not secure internal self-determination for its internal minorities'.[34]

29 T. Kamiński, K. Karski, Treaty-making capacity of components of federal states from the perspective of the works of the UN International Law Commission, "Polish Review of International and European Law" 2016, vol. 5, no. 2, pp. 9–43.

30 Article 3 of the Framework Convention for the Protection of National Minorities, signed on 1 February 1995 (ETS 157), available at: https://rm.coe.int/16800c10cf (31.03.2021).

31 D. Ike, Ethnic Groups and the Right to Self-Determination, "Nigerian Law Journal" 2018, vol. 21, no. 2, pp. 331–332.

32 See: P. von Chamier-Cieminski, A Look at the Evolution of the Right to Self-determination in International Law, "Białostockie Studia Prawnicze" 2012, vol. 25, no. 3, pp. 117–132.

33 A. Cassese, Political Self-Determination: Old Concepts and New Developments, (in:) A. Cassese (ed.), UN Law: Fundamental Rights, Two Topics in International Law, Alphen aan den Rijn 1979.

34 M. Seymour, Internal self-determination and secession, January 2013, https://www.researchgate.net/publication/292030160_Internal_self-determination_and_secession (31.03.2021).

This means that even though minorities may, in certain cases, have a legitimate claim to being a separate people, nevertheless the scope of the status of national minorities as subjects of international law is similar to that attributed to individuals,[35] and not to national minorities per se.

Nevertheless, C. Bell states that political and military leaders of minority groups with secessionist claims in autonomous areas can sign peace agreements and have some basis for claiming the status of subjects of international law. As examples of these agreements, she offers those concluded between Georgia and Abkhazia[36], Moldova and Transnistria[37], parties on the island of Bougainville and Papua New Guinea[38], and Russia and Chechnya[39].

None of the above-mentioned agreements confirms the subjectivity of the secessionist groups that are parties to these agreements, although some of them confirmed the selected rights of these groups on the international arena. For example, according to the peace agreement between Moldova and Transnistria, the latter had the right to establish unilaterally and maintain international contacts in the economic, scientific-technical and cultural spheres, and in other spheres by agreement of the parties.[40] However, entities such as Transnistria, Abkhazia or South Ossetia are described as 'de facto territorial regimes' and their independence aspirations are largely recognised by the science of international law as groundless.[41]

35 In the doctrine of international law, the issue of the international legal subjectivity of an individual is debatable. The status of individuals as subjects of international law is closely connected with the development of individual complaints procedures and with the criminal responsibility of individuals under international law. K. Karski, Osoba prawna prawa wewnętrznego jako podmiot prawa międzynarodowego, Warsaw 2009, pp. 215–267.

36 The full texts of the Georgia–Abkhazia agreements are available at: https://peacemaker.un.org/document-search?field_paregion_tid=All&field_paconflict_tid=All&field_pacountry_tid=Georgia&keys= (31.03.2021).

37 Memorandum on the Bases for Normalization of Relations between the Republic of Moldova and Transnistria (The Moscow Agreement), 8 May 1997, available at: https://peacemaker.un.org/moldova-moscowagreement97 (31.03.2021).

38 Lincoln Agreement on Peace Security and Development on Bougainville, 23 January 1998; Bougainville Peace Agreement, 30 August 2001, both available at: https://peacemaker.un.org/document-search?field_paregion_tid=All&field_paconflict_tid=All&field_pacountry_tid=Papua%20New%20Guinea&keys= (31.03.2021).

39 Russian–Chechen Truce Agreement: Principles for Determining the Fundamentals of Relations between the Russian Federation and the Chechen Republic, 25 August 1996, available at: https://peacemaker.un.org/document-search?field_paregion_tid=All&field_paconflict_tid=All&field_pacountry_tid=Russian%20Federation&keys= (31.03.2021).

40 Para. 3 of the Memorandum on the Bases for Normalization of Relations between the Republic of Moldova and Transnistria.

41 M. Perkowski, Koncepcja 'non-state actors' a umiędzynarodowienie regionów, "Białostockie Studia Prawnicze" 2012, vol. 2, p. 100.

In addition to the above-mentioned agreements, the Ohrid Framework Agreement (OFA) and the Arusha Peace and Reconciliation Agreement for Burundi merit special attention. They were signed by national minorities, albeit indirectly.

The Ohrid Framework Agreement put an end to the armed conflict between the ethnic Albanian National Liberation Army (NLA) and the armed forces of the Republic of Macedonia in 2001. In fact, the agreement was signed by representatives of the two biggest ethnic Macedonian parties (the Internal Macedonian Revolutionary Organisation–Democratic Party of National Unity (VMRO-DPMNE) and the Social-Democratic Union of Macedonia (SDSM)), the two biggest ethnic Albanian parties (the Democratic Party of Albanians (DPA) and the ethnic Albanian Party of Democratic Prosperity (PDP)), as well as the President of the Republic of Macedonia. It was also witnessed by the special representatives of the USA and the EU.[42] Due to the use of violent methods by the NLA and its illegal status, no NLA representatives received an invitation to the negotiations. The Macedonian negotiators recognised that a political solution to the problem could be achieved by negotiating with the legitimately elected representatives and political parties of the Albanians in Macedonia.[43] The Ohrid Framework Agreement introduced provisions for special procedures in parliament, decentralisation, non-discrimination, just and equitable representation, use of languages and the protection of the identity and culture of the communities in the country, in particular the Albanian community. The Macedonian parliament ratified the agreement on 16 November 2001. As part of the OFA, Macedonia amended its constitution and enacted a series of laws in the years following the agreement.

The second agreement, the Arusha Peace and Reconciliation Agreement for Burundi, also known as the Arusha Accords, was signed on 28 August 2000 and ended 12 years of civil war and a cycle of massacres. After long and difficult negotiations, the agreement was signed by the government of Burundi, the National Assembly, the coalition of seven Hutu parties (also known as the G7) and the coalition of ten Tutsi parties (also known as the G10).[44] Other rebel groups, such as the CNDD-FDD and the Palipehutu-FNL, were not among the signatories. It is noteworthy that the peace agreement was unable to secure an immediate ceasefire as a result of the absence of these groups.

42 Framework Agreement concluded at Ohrid, Macedonia, and signed at Skopje, Macedonia, on 13 August 2001, available at: https://www.refworld.org/pdfid/3fbcdf7c8.pdf (31.03.2021).

43 See: D. Marolov, Understanding the Ohrid Framework Agreement, (in:) S.P. Ramet, O. Listhaug, A. Simkus (eds.), Civic and Uncivic Values in Macedonia, London 2013, pp. 134–154.

44 The agreement signing ceremony was attended by, among others, Nelson Mandela, US President Bill Clinton, UN Secretary General Kofi Annan, OAU Secretary General Salim Ahmed Salim, French Cooperation Minister Charles Josselin (also acting as the EU representative) and the presidents of the Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, Tanzania, Togo, Uganda and Zambia.

The Arusha Accords consists of five protocols, five annexes and two appendices. The document is largely focused on minority protection organised through the political and military representation of minority groups. Additionally, agreement introduced insulation against military coup d'états by introducing, inter alia, the gradual correction of ethnic imbalances in the composition of the defence and security forces.[45]

Generally, in the literature on the subject, it is accepted that the Arusha Accords, similarly to the Ohrid Framework Agreement, can be described as a political agreement.[46] Both agreements can be defined as negotiated, written and publicly available accords between two or more parties that seek to end political violence within a state through institutional reform.[47] The two agreements fulfil the requirements contained in the proposed definition: that they were signed as a result of negotiations and are publicly available in the Peace Agreements Database of the UN Peacemaker support tool. Nevertheless, this is not a definitive statement. Certain provisions of peace agreements contain elements resembling international treaties. For example, according to Article 6 of the Arusha Accords, the French text, being the original, was deposited with the Secretary-General of the United Nations, the Secretary-General of the Organization of African Unity and the Government of Burundi, and certified true copies thereof were transmitted by the government of Burundi to all the parties thereto. In practice, the issue of the application of international or constitutional law to agreements of this kind remains highly debatable.

Conclusions

States usually focus their attention on the protection of national minorities as a consequence of armed conflict. Frequently, the first obligations in this respect appear already in the treaties ending the hostilities. At the beginning of the last century, agreements of this kind were concluded between states that were parties to armed conflict, and their provisions concerned linguistic, religious or cultural issues. The incorporation into peace treaties of provisions concerning the protection of minorities was not an obligation on the parties but a matter of their goodwill, as a universal treaty or customary norm imposing the obligation to protect national minorities did not exist in international law, let alone in peace agreements.

45 See: K.P. Apuuli, The Arusha Peace and Reconciliation Agreement (2000) and the Current Political Crisis in Burundi, "Insight on Africa" 2017, vol. 10, no. 1, pp. 54–72, available at: https://journals.sagepub.com/doi/full/10.1177/0975087817738659 (31.03.2021).

46 S. Vandeginste, Burundi's crisis and the Arusha Peace and Reconciliation Agreement: Which way forward?, "Analysis and Policy Brief", no. 17, December 2015.

47 G. Fontana, A. Kartsonaki, N.S. Neudorfer, D. Walsh, S. Wolff, C. Yakinthou, The Dataset of Political Agreements in Internal Conflicts (PAIC), Conflict Management and Peace Science, 21 August 2020, available at: https://doi.org/10.1177/0738894220944123 (31.03.2021).

It is certainly the case that peace treaties concluded between states should be qualified as international treaties, constituting a source of international law. However, since the 1990s the number of interstate conflicts, especially ethnically motivated ones, has increased considerably. They also frequently end with the signing of peace agreements. In such cases, however, questions arise as to the legal status of agreements concluded by the state on the one hand and by non-state actors (e.g. insurgents, belligerents) on the other. If these non-state actors satisfy the requirements laid down in international law and are recognised as subjects of international law, then pursuant to Article 3 Vienna Convention on the Law of Treaties, it cannot be ruled out that peace agreements concluded, inter alia, by non-state actors could be international agreements.

The peace treaties analysed within this category significantly differ, as regards the protection of national minorities, from peace treaties concluded only between states. For example, treaties concluded after the First World War contained separate chapters setting out the rights of minorities and the related obligations of the states being parties thereto. In turn, peace agreements concluded with, among others, non-state actors very rarely refer to issues related to the protection of national minorities, focusing mainly on actions aimed at ending the conflict.

The minorities whose rights have been set out in the Ohrid Framework Agreement (OFA) and the Arusha Peace and Reconciliation Agreement for Burundi have found themselves in a very advantageous position. These political agreements were signed by a number of domestic actors and international co-signatories. Unlike most peace agreements, they were not signed by the parties to the conflict but only by parliamentary parties, and their key contents were implemented through constitutional reform rather than by coming into force directly. Due to the lack of international legal subjectivity, minorities cannot be a party to legally binding peace treaties, and it does not seem possible that states will change their position in this respect in the near future. Perceiving national minorities as posing a threat to state integrity and stability, in the best case they will undertake the obligation to protect the rights of persons belonging to a minority and not of a minority understood as a group.

The above-mentioned agreements would, therefore, seem to offer the only effective solution when attempting to end ethnic conflict. This way both sides can achieve their objective: the national minority receives guarantees regarding the increased protection of its rights, and the state maintains its territorial integrity and stability. Whilst the status of national minorities has not changed, from the point of view of international law, in practice one may risk the statement that during the last century, as far as the conclusion of peace agreements is concerned, national minorities are not only the *ratione materiae* of such regulations but also (albeit in an indirect way) the subject (*ratione personae*) thereof. It should be noted, however, that agreements of this type do not form sources of international law.

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