# ARTICLE 4. EXISTING REGIMES OF PROTECTION

R. Gwynedd Parry
Senior Lecturer in Law
Swansea University/ Prifysgol Abertawe

**SUMMARY:** 1. Introduction. 2. Interpretation. 2.1. Article 4 and the Human Rights Convention. 2.2 Article 4 and the Rule of Interpretation. 3. Commentary. 4. Conclusion.

*Article 4 – Existing regimes of protection*

*1. Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights.*

*2. The provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.*

## 1. Introduction

The ECRML operates within the context of an expanding body of international jurisprudence with an interest in minority language protection. It also functions in the context of considerable diversity at the domestic level, with the legal relationship between the minority or regional language and the state differing quite considerably from state to state. Because there are now a number of international and domestic instruments which offer protection to speakers of minority languages in various ways, establishing the ECRML's place and role within the jurisprudential firmament is the chief objective of Article 4.

In summary, Article 4 sets out certain principles governing the ECRML's relationship with other legal instruments and international agreements. In doing so, it establishes certain ground rules of interpretation. The main purpose of Article 4 is to affirm the principle of compatibility. It provides reassurance, if reassurance is needed, that the ECRML is a benign instrument which is not in conflict with either international or domestic law, and that it is one which promotes rather than imposes standards. This chapter examines the content of Article 4 and determines to what extent its inclusion was necessary for the ECRML to gain the support of ratifying states.

## 2. Interpretation

### 2.1 Article 4 and the Human Rights Convention.

Article 4, Paragraph 1 contains an explicit declaration of non-derogation from the European Convention on Human Rights. According to the Explanatory Report, this paragraph 'seeks to

exclude the possibility that any of the provisions of the charter might be so interpreted as to detract from the protection accorded thereby to the human rights of individuals'.[1]

This declaration of compatibility is echoed elsewhere in the treaty. The ECRML also declares itself and its mission to be in communion with international human rights jurisprudence in its preamble: 'The right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms'.[2] Why is there a need to declare this principle of compatibility, and is there a genuine potential for the ECRML to be interpreted in a way that contravenes the provisions of the ECHR?

The ECHR governs the relationship between the individual and the state. It is a product of its period in history, a necessary innovation from a time when Europe and the world were recovering from the destruction and human suffering caused by those fascist regimes which had subsumed individual freedom and dignity in the name of extreme collectivist ideologies. The ECHR was thus conceived as part of the international community's rejection of state totalitarianism and was created in order to lay down a series of minimum, fundamental and individual human rights intended to protect all human beings from future oppression. The history of its genesis is the key to understanding why the ECHR has an individualistic emphasis and why it is concerned with fundamental, individual human rights.

It is sometimes assumed that the ECHR has little or no impact on minority language rights. Although the ECHR does not support linguistic freedom in the sense of facilitating language choice, it counters and prevents discrimination or degrading treatment towards individuals who belong to particular linguistic groups.[3] It is thus an important contributor to the maintenance of the rights of linguistic minorities, even if those rights are mostly confined to the private sphere and are essentially a prohibition on discrimination. As one commentator observes, "State measures which have the effect of preventing the use of a minority language in private activities can be in breach of a number of well-established rights in international law", because, "in the private sphere what are involved are in fact the application of basic individual human rights which impact in the arena of language".[4] Accordingly, "Government attempts to regulate the language used in the private sphere ...may run foul of the right to private and family life, freedom of expression, non-discrimination or the rights of persons belonging to a linguistic minority to use their language with other members of their group".[5]

Of course, the ECHR is mainly a preventative instrument concerned with the maintenance of fundamental freedoms and rights, with laying down a bottom line below which states must not fall. The ECRML, on the other hand, is a totally different sort of

[1] See *European Charter for Regional or Minority Languages and Explanatory Report*, (Strasbourg; Council of Europe Publishing, 1993), Explanatory Report, at para. 54.
[2] ECRML, Preamble.
[3] See Sebastian M. Poulter, "The Rights of Ethnic, Religious and Linguistic Minorities", (1997) 3 EHRLR 254
[4] See Fernand de Varennes, "The Linguistic Rights of Minorities in Europe" in S. Trifunovska (ed) *Minority Rights in Europe: European Minorities and Languages* (The Hague: T.M.C. Asser Press, 2001, pp.3-30 at p. 9.
[5] See Fernand de Varennes, "The Linguistic Rights of Minorities in Europe", at p. 9.

instrument. It encourages and promotes positive initiatives and measures for the benefit of minority languages.[6] Its promotion of minority languages is also couched in collective rather than individualistic terms. Whereas the ECHR protects individual speakers of minority languages from human rights infringements, it does not provide active promotion of multilingualism as a social objective. To this extent, the ECHR is a limited instrument. As Kymlicka puts it, "The right to free speech does not tell us what an appropriate language policy is".[7]

The ECRML is, however, more directly focused on the appropriate language policy for European states, albeit in a very particular way. After all, it promotes not merely minority languages, but the indigenous or historical languages of European people, which it seeks to protect in the name of European heritage. The languages of new, migrant peoples, however, do not come under its remit.[8] As is clearly stated in Article 1, the languages that are protected are those which are not 'official languages', which are spoken by a minority, are traditionally used by part of the population of a state, and which are not languages of migrants, dialects or artificially created languages.[9] The ECRML is concerned with 'the historical regional or minority languages of Europe', because, it maintains, they contribute 'to the maintenance and development of Europe's cultural wealth and traditions'.[10] Therefore, its interest in multilingualism does not include new linguistic minorities, such as those minorities of Asian or African origin which are now well-established in most European states. Repeatedly, the emphasis is on the "common heritage", and on the "traditional regional and minority languages".[11]

This distinction between 'old minorities' and 'new minorities' is replicated within the domestic legislation of many of the ratifying states, which have granted civic rights to certain indigenous minority linguistic groups but not to the more recently formed minority linguistic groups. Some observers have questioned whether this differentiation between linguistic groups is undermining the integrity and validity of claims for recognising language rights as fundamental rights, and see it as being contrary to liberal, rights-based principles.[12] More specifically, this selective approach to minority language protection might give the ECRML the appearance of being at odds with the universal emphasis in the ECHR. But it is doubtful

[6] Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995) p 6.
[7] Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights*, pp 2-5.
[8] ECRML, *Explanatory Report*, paras 10 and 15.
[9] ECRML, Article 1:
'The term regional or minority languages means languages that are, i. traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than rest of the State's population, and, ii. different from the official language(s) of that State; it does not include either dialects of the official language(s) of the State or the languages of migrants'.
[10] ECRML, Preamble.
[11] ECRML, *Explanatory Report*, para. 26.
[12] See Robert Dunbar 'Implications of the European Charter for Regional or Minority Languages for British Linguistic Minorities' (2000) 25 ELRev Human Rights Survey 46, at p 50; Tom Cheesman 'Old and New Lesser-Used Languages of Europe: Common Cause?' in Camille C O'Reilly (ed) *Language, Ethnicity and the State, Volume 1* (Basingstoke: Palgrave, 2001), at pp 147-166; P. Keller "Re-thinking Ethnic and Cultural Rights in Europe", 18(1) (1998) *Oxford Journal of Legal Studies*, 18 (1) pp. 29-59; R. Bauboeck, "Cultural Minority Rights for Immigrants", 30 (1) (1996) *International Migration Review*, pp. 203-250.

whether this focus on the historical languages runs counter to ECHR principles. Justifying discrimination or preferential treatment always appears counter-intuitive to notions of universal equality. However, affirmative action or positive discrimination for minority or neglected groups has also been recognised as being justified and necessary in given situations.

This is in order to implement what has been described as the 'equality argument'. It is a position which maintains that where the minority culture is being subjected to an unfair advantage when compared with the dominant culture, the way of rectifying that disadvantage is by the creation of a 'group differentiated right'.[13] In other words, bringing about social equality requires a form of special measures or positive discrimination or affirmative action in favour of the minority group. It has been said that, provided that the group differentiated right does not infringe other basic, individual, human rights and that it is proportional to meet the deficit, then such affirmative action in favour of the minority language group can be justified.[14] Indeed, such affirmative action has been argued to be consistent with basic liberal and more universal principles of individual freedom, namely the freedom to belong to a cultural group, and the right to cultural (and linguistic) self-expression. Group-differentiated rights are therefore argued to be necessary in order to provide a climate whereby the minority culture can function in the way the dominant culture takes for granted.[15]

The ECRML does not offend or contravene the ECHR because it does not restrict or invade the rights of individuals who speak dominant or official languages. Neither does it undermine the rights of those who speak other minority languages which are not protected by it. Fears that it might somehow be in conflict with individual human rights have therefore been unfounded.[16] Its particular emphasis on the promotion of indigenous minority languages does not infringe the universal principles of the ECHR, but builds on those principles so that minority language speakers enjoy a greater equality with speakers of official languages. Instead of representing a divergence from the values of the ECHR, the ECRML is a logical development on the ECHR and enhances its core principles. The difference is that the ECRML marks a shift from an anti-discriminatory, minimalist emphasis to an affirmative and pro-active approach towards linguistic minorities. Indeed, it is arguably a part of a well-established political tradition which has sought to bring about the emancipation of minorities and those marginal groups who were historically excluded from mainstream society.

Therefore, to claim a tension between universal human rights and more particular linguistic rights is arguably a conceptual fallacy. To quote one observer, "the 'linguistic rights' of minorities actually refer to the application of universal human rights and freedoms in specific situations...as part of an evolving, comprehensive framework based on respect for human worth and dignity."[17] Indeed, such a view sees the relatively recent acknowledgement

[13] Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights*, pp 108-116.
[14] See Joshua Castellino 'Affirmative Action for the Protection of Linguistic Rights: An Analysis of International Human Rights; Legal Standards in the context of the Protection of the Irish Language' (2003) 25 (1) Dublin University Law Journal, pp 1-43.
[15] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, at p 126.
[16] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary* (Strasbourg: Council of Europe Publishing, 2005), pp. 83-84.
[17] See Fernand de Varennes, "The Linguistic Rights of Minorities in Europe" at p.4.

of the case for linguistic rights as being an inevitable consequence of the maturing of human rights jurisprudence. To quote:

"It is therefore an often repeated error to assume that the protection of the rights of minorities is somehow inconsistent with or different from 'individual' human rights. On the contrary, by being founded on the recognition of the intrinsic value of the human person's dignity and worth, human rights have gone beyond mere tolerance of human differences: respect of the individual includes valuing human diversity".[18]

Then again, there is a body of scholarship which is sceptical of the very idea of 'human rights' with its universalist perspective and its claim to proclaim self-evident, objective and metaphysical truths about human values.[19] The rights sceptics see it as a creation of a Western, neo-liberal, individualist mindset. Others are sceptical of how ethereal human rights can permeate to the ground level and influence policy in real situations. For some, the maintenance of language rights is more of a bottom-up rather than a top-down process, one which depends more on the socio-political situation of the particular linguistic community than on general, universal and international policy initiatives.[20] This chapter cannot enter into a philosophical assessment of the validity of the notion of 'human rights' or its practical impact. It must proceed on the basis that there is an international consensus in support of human rights instruments as being one of the means of protecting individuals against state oppression. What is important for present purposes is to recognise that there is no conceptual or practical conflict between the ECHR and the ECRML.

Setting aside any conceptual debates, and turning to some hard law, the most significant factor dictating the legal relationship between the two instruments is the fact that the ECHR has legal force whereas the ECRML does not. Although the ECHR creates individual legal rights, which can be enforced through legal processes in the European Court of Human rights, the ECRML does not grant such legal rights and does not provide a means of judicial adjudication or remedy. Therefore, the legal reality does not enable any direct legal conflict between ECHR and the ECRML to arise. On the other hand, it is also possible that, by signing up to the Charter's obligations, states will consequently create laws which then create legal rights for speakers of those languages.[21] This is because states who adopt the Charter's measures, in order for that adoption to be effective, may need to legislate at a domestic level. But it is not the Charter that is the sovereign or authority for the laws created internally by state parties even if those laws were inspired by the Charter's provisions. Therefore, even if some claim of incompatibility with ECHR were to arise, any legal challenge or remedy would have to be sought through domestic court processes and/or the European Court of Human Rights.

[18] See Fernand de Varennes, "The Linguistic Rights of Minorities in Europe" at p. 29.
[19] For a critique of the idea of human rights, see Marie-Benedicte Dembour, *Who believes in Human Rights? Reflections on the European Convention* (Cambridge: Cambridge University Press, 2006).
[20] See Xabier Arzoz, "Language Rights as Legal Norms" 15 (4) European Public Law (2009), pp. 541-574.
[21] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary*, at p 31.

2.2 Article 4 and the Rule of Interpretation.

Article 4, Paragraph 2 provides a rule of interpretation that governs the relationship between the ECRML and existing guarantees or measures in both the international and the domestic context. The explanatory report states:

'Where certain languages or the minorities who practise them already enjoy a status defined in domestic law or under international agreements, the purpose of the charter is clearly not to reduce the rights and guarantees recognised by those provisions. However, the protection afforded by the charter is additional to the rights and guarantees already granted by other instruments'.[22]

Woehrling explains that this is a rule for interpreting the ECRML which is in accordance with the provisions of Article 30.2 of the Treaty of Vienna of 1969.[23] Article 30 of the Treaty of Vienna deals with the difficulties of interpretation and implementation that can arise where there are successive treaties on the same subject or the same subject matter.[24] Article 30.2 provides that when a treaty is drafted so that it contains a provision which makes it 'subject to, or that it is not to be considered incompatible with, an earlier or later treaty, the provisions of that other treaty will prevail.'[25]

The exact wording in Article 4 is 'shall not effect', which, in Woehrling's opinion, must be taken to put into effect the principle in Article 30.2 of the Treaty of Vienna and which effectively means that the ECRML must be interpreted in such a way that it is either compatible with other applicable treaties, or, otherwise, the other treaties take precedence. Therefore, this is a rule of compatibility to prevent conflict with other international treaties. Another effect of Article 4.2 is that it makes it clear that the charter does not interfere or undermine provisions in either domestic law or international law or in other international agreements which affect regional or minority languages. If, for example, a regional or minority language enjoys greater protection than that provided by the ECRML, the ECRML does not seek to interfere with that or undermine it in any way.

The explanatory report goes further, and states:

'For the application of all these undertakings, where competing provisions exist on the same subject the most favourable provisions should be applied to the minorities or languages concerned. Thus the existence of more restrictive provisions in domestic law or under other international undertakings must not be an obstacle to the application of the charter.'[26]

[22] See ECRML, Explanatory Report at para 53.
[23] The Vienna Convention on the Law of Treaties (1969).
[24] For analysis of the 1986 Vienna Convention on the Law of Treaties between states and international organisations, see Catherine Brolmann, The Institutional Veil in Public International Law (Oxford: Hart, 2007), at pp.197-247.
[25] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary*, at p 82.
[26] See ECRML, Explanatory Report at para 53.

A literal interpretation of this latter part of paragraph 53 of the Explanatory Report might support the view that there may be situations whereby the ECRML's provisions take precedence if they are more favourable than the provisions. However, this would be in contradiction to the principle in Art 30.2 Treaty of Vienna. The more viable interpretation of this paragraph, however, is that it encourages the most favourable approach towards the relevant languages, and that it is aspirational rather than prescriptive. This is the interpretation which is compatible with the ECRML's legal status in international law.

## 3. Commentary

Since the end of the Second World War, there has been a proliferation of international treaties and legal instruments concerned to varying degrees and in different ways with the rights and interests of regional and minority languages and of the individuals who speak those languages. On the global stage, the United Nations has, unsurprisingly, taken a leading role in setting standards. The often quoted exemplar, the International Covenant on Civil and Political Rights, article 27, provides that linguistic minorities should not be denied their culture and the right to use their own language.[27] The United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities also supports the rights of minority cultures, although it does not amount to a binding instrument.[28] If we add the draft United Nations Declaration on the Rights of Indigenous Peoples to the mix, we can fairly conclude that the United Nations has had a sustained interest in the rights of minorities, including minority languages.[29]

This chapter cannot provide a guided tour of the international jurisprudence in this field. However, looking at the situation in the round, the common thread and the general emphasis within many of these instruments and their provisions is to declare and uphold the principle of non-interference. They maintain the principle that linguistic minorities should not be prevented from, say, setting up societies, engaging in cultural festivals or publishing literature in their languages.[30] In essence, speakers of minority languages are protected to the extent that they are entitled to enjoy freedom to use their language in the private sphere. Non-interference is, of course, not the same as active promotion of linguistic minorities on the part of the State.

[27] See ICCPR, Article 27. The actual scope of this right is, however, somewhat uncertain

[28] Even so, the United Nations contribution to international human rights law is often regarded as one of its "great accomplishments": see Hurst Herman, "Human Rights" in Christopher C. Joyner (ed), The United Nations and International Law (Cambridge: Cambridge University Press, 1998, pp.130- 154, at p 153.

[29] For a more detailed guide to the range of applicable international instruments, see Fernand de Varennes, "Linguistic Identity and Language Rights" in Marc Weller (ed.), Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies (Oxford: Oxford University Press, 2007), pp. 253-323, at pp. 255-258.

[30] For an interpretation of the scope of ICCPR, Article 27, see Ominayak v. Canada, UN 167/1984, Document A/42/40.

In the context of European Union law, a degree of support for minority language interests can also be discerned.[31] A multicultural entity composed of other multicultural entities, the EU has an important role in providing a vision for a multicultural and multilingual society. As a logical extension on the principle of subsidiarity, the rationale of the EU's policy can be summed up in the words of one particular commentator: "minorities cannot be considered to exist merely on the sufferance of the majority; the ethos of multiculturalism is that of unbiased coexistence".[32] It is the case that European Law has for some time, albeit perhaps tentatively, supported the principle of cultural diversity, particularly Article 151 EC, although there was no specific mention of linguistic diversity in this provision. However, European Law provided limited support for linguistic rights within the notion of European citizenship, particularly following the case of *Re Criminal Proceedings against Horst Otto Bickel and Ulrich Franz*.[33] That case upheld the principle that Article 6 E.C. precludes national rules which confer on its own citizens the right to require that criminal proceedings be conducted in a particular language, without conferring the same right on nationals of other Member States who may be subject to criminal proceedings in the relevant region.

More recent developments potentially herald greater support for linguistic diversity within EU law. The European Charter of Fundamental Rights enshrines the core values of the European Union in a consolidating instrument.[34] The European Union's Reform Treaty (the Lisbon Treaty)[35] provides a legal base for the Charter of Fundamental Rights (provided that member states ratify both).[36] Article 21 of the Charter of Fundamental Rights advances the principle of linguistic rights within the European Union and creates means of redress and appeal in cases of discrimination on the grounds of language or where an individual is a "member of a national minority". Such appeals will go to the European Court of Justice in Luxembourg. Article 21.1 states:

"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

Article 22 states that, "The Union shall respect cultural, religious and linguistic diversity." In addition, Article 3.3 of the Lisbon Treaty itself states that the European Union: "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural

[31] For commentary on the position of linguistic rights in European Law, see Inigo Urrutia and Inaki Lasagabaster, "Language Rights and Community Law" European Integration Online Papers (EIoP) Vol. 12 (2008) No. 4 – http://eiop.or.at/eiop/texte/2008-004a.htm

[32] Niamh Nic Shuibhne, *EC Law and Minority Language Policy: Culture, Citizenship and Fundamental Rights* (London: Kluwer Law International, 2002) , p 55.

[33] (Case C-274/96) ECJ [1999] 1 C.M.L.R. 348

[34] The Charter of Fundamental Rights can be found at: http://europa.eu.int/comm/justice_home/unit/charte/en/charter-equality.html

[35] http://europa.eu/lisbon_treaty/index_en.htm

[36] The United Kingdom and Poland have opted out of the Charter of Fundamental Rights.

heritage is safeguarded and enhanced." Linguistic groups are thus provided with some grounds for redress if they are discriminated against in any European Union legislation. The Charter of Fundamental Rights is intended to complement other international instruments such as the European Convention on Human Rights. A Fundamental Rights Agency (FRA) will be able to monitor and make reports on discrimination, as well as promoting general awareness of minority language issues. The Lisbon Treaty, by giving a binding effect to the Charter of Fundamental Rights, broadens the influence of the European Union in the field of individual rights. It also unequivocally engages the jurisdiction of The European Court of Justice in cases of discrimination.

Of course, it remains to be seen to what extent these recent development will advance the cause of linguistic rights in a positive and practical way in the medium to long term. The emphasis is largely on preventing discrimination rather than on conferring any rights to speakers of minority languages, and in that sense replicates UN activity in this field. The Council of Europe, however, has been the source of more pro-active standards on minority language promotion.

The Council of Europe's Framework Convention for the Protection of National Minorities addresses language rights within the broader context of minority rights.[37] For example, Article 10(1) of the Framework Convention recognises the right to use a minority language in public and private life. Article 14 (1) of the Framework Convention appears to deal with education, but it is couched in very conservative terms. Article 14(1) requires 'the parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language', and Article 14(2) requires parties, as far as possible, in areas where the minority language is spoken, if there is sufficient demand, and within the existing framework of their education systems, to endeavour to provide adequate opportunities for being taught in the minority language.

The difficulty with many of these instruments is that, although they promote worthy sentiments towards minority languages and cultures, they are weak on detail and fail to set out specific measures that need to be undertaken by states in the interests of linguistic minorities.[38] The ECRML is far more detailed and specific that any of these other instruments. It is also flexible in its capacity to take into account the diversity that exists between minority languages within European states.[39] The often repeated criticism of the Charter, in that it gives states too much discretion to apply it according to their own political interests, can also be a virtue in the context of a complex and diverse linguistic landscape that exists within Europe as a whole.[40] The monitoring process, despite its limitations,[41] provides

[37] For an overview of the Framework Convention, see Marc Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford: Oxford University Press, 2005); see also, Steven Wheatley 'The Council of Europe's Framework Convention on National Minorities' (1996) 5 Web JCLI.

[38] For a study of the mechanisms to implement and monitor minority rights, see Rianne M. Letschert, *The Impact of Minority Rights Mechanisms* (The Hague: T. M. C. Asser Press, 2005).

[39] See Robert Dunbar, "Definitely interpreting the European Charter for Regional or Minority Languages: the legal challenges" in Robert Dunbar and Gwynedd Parry eds. *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Strasbourg: Council of Europe Publishing, 2008), pp.37-61, at p 40.

[40] See Robert Dunbar, "Implications of the European Charter for Regional or Minority Languages for British

a mechanism for ensuring a level of public accountability for the implementation of the Charter by party states.[42]

The ECRML's detail and pro-active emphasis marks it out from the other international instruments. Take, for example, the use of a minority language in a court trial. Article 6 of ECHR simply guarantees basic comprehension on the basis of a principle of linguistic necessity. It guarantees the right to use a minority language as part of the basic tenets of a fair trial.[43] Article 6 ECHR provides that a person on trial must be understood and has a right to understand the proceedings. But the right under Article 6 to an interpreter where the defendant does not understand the language of the court is not the same as a right to use the language of choice, or the right to a tribunal who speaks the defendant's language.[44] This principle of necessity has been maintained in other situations where individuals have unsuccessfully sought the support of the ECHR when seeking to use the language of their choice.[45]

Article 10(3) of the Framework Convention for the Protection of National Minorities requires party states to guarantee the right of an individual to be informed in a language that he or she understands, the reasons for his or her arrest and the nature of the accusation, and to be able to defend himself or herself in that language (if necessary, with the assistance of an interpreter). The wording of Article 10 (3) is so similar to that of Article 6 of the ECHR, that it is doubtful that it creates any further right at all, as it appears to promote linguistic comprehension rather than linguistic choice, which is no more than the basic human right protected by Article 6 of the ECHR. Again, as with the ECHR, it is the principle of linguistic necessity which the Framework Convention upholds.

The ECRML, however, goes much further. Article 9 ECRML takes the position from one of linguistic necessity to one of linguistic equality. It requires that subscribing states undertake in respect of those judicial districts in which the population number who use the

---

Linguistic Minorities", (2000) 25 E.L.Rev., Human Rights Survey 46, at p.69

[41] See Tove Skutnabb-Kangas, "Linguistic Diversity, Human Rights and the 'Free' Market", in Kontra, Phillipson, Skutnabb-Kangas and Varady (eds.) *Language: A Right and a Resource* (CEU Press, Budapest, 1999) pp. 187-222, and at pp. 204-206

[42] ECRML, Article 15

[43] See ECHR, Article 6.

[44] This has been made clear in a number of judgments; see, for example *A v. France* (1984) 6 EHRR CD 371. In this case, the applicant was a French citizen who appeared before a military tribunal in Rennes charged with military insubordination. He insisted on answering all the charges put to him in the Breton language, and requested an interpreter be provided. The request was refused because, *inter alia*, he was a fluent French speaker. He was eventually convicted and sentenced to two years' imprisonment. When the matter came before the European Commission of Human Rights, one of the issues was whether the refusal of allowing the applicant to present his case in Breton was a breach of Articles 6(3)(e) and 14 (that is, the right not to be discriminated against on the basis of language) of the Convention. The Commission held the complaint to be inadmissible as the relevant Articles of the Convention only apply where the individual concerned cannot understand or speak the language used in court.

[45] In *Fryske Nasjonale Partij and Others v. Netherlands* (1987) 9 EHRR CD 261, speakers of Frisian complained about the refusal of authorities in the Netherlands to allow them to use the Frisian language when submitting relevant parliamentary election registration documents. The Commission again held that there had been no breach of Convention rights, and there was no right to use the language of one's choice within the articles of the Convention.

minority language justifies it, and according to the situation of the language concerned, to allow speakers of the minority language to use it in court and tribunal hearings (provided that it does not hamper the proper administration of justice).[46] The right to use the minority language in court proceedings applies to defendants, witnesses and all parties. Furthermore, it contains provisions stipulating that states provide that the criminal courts, at the request of one of the parties, shall conduct the proceedings in the minority or regional language[47] and guarantee the accused the right to use his or her minority language.[48] There are similar provisions in the context of civil proceedings[49] and also in the administrative courts.[50] The Charter provides that the use of the minority language is facilitated, if necessary, by the use of interpreters and translation.[51] The key difference is that the provisions of Article 9 are not dependant on the individual not being able to understand the dominant language, but introduces the principle of choice on the basis of equality.

The ECRML, in light of its emphasis and detail, is unlike other international instruments, and this means that there is little likelihood of incompatibility. Of course, in any event, and as has been already stated, it is not part of European Law, and does not grant individual legal rights nor does it create legal obligations. It has no judicial enforcement mechanism in the event of non-compliance. Its important role is in setting out agreed standards which can provide a reference point or benchmark for promoting multilingualism and cultural diversity as a social value.[52] Its effect is that requires party states to undertake measures in the interests of the minority or regional languages within their frontiers, rather than create rights for speakers of those languages. While recognising that minority languages may not enjoy the same status as the official language(s), its objective is to promote the concept of a multilingual society based on principles of respect and harmonious coexistence.[53]

The ECRML is therefore more in the nature of a policy document which provides a set of values, international norms, which guides European states in their policies towards the indigenous minority languages within their boundaries. It provides a shopping list in the form of practical measures that can facilitate minority language protection and promotion. The challenge posed by the Charter's concept of multilingual citizenship is citizenship which promotes political unity without promoting cultural assimilation, one which recognises the value of linguistic diversity as a common value shared by the political community as a whole.

[46] ECRML, Part III, Article 9.
[47] *ibid.*, Article 9, para 1 (a) (i)
[48] *ibid.*, para 1 (a) (ii)
[49] *ibid.*, para 1 (b)
[50] *ibid.*, para 1 (c)
[51] ECRML, Article 1, para (b)
[52] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary*, at pp 19-23.
[53] Ibid, p 33 and pp 36-37.

## 3. Conclusion

The inclusion and wording of Article 4 are indicative of the fact that the authors of the ECRML were anxious to reassure those who were hostile or sceptical towards its creation that it is an essentially benign instrument which respects human rights principles and which observes established principles of international law.

Despite its collective and particular emphasis, which might seem counter to the more individualist emphasis found in most other instruments, it is not intended to undermine or be in conflict with the universal and individual objectives of the ECHR. Neither is it intended to be in conflict with other instruments or legal provisions at either international law or domestic law which apply to minority or regional languages. It explicitly defers authority to these other instruments, by providing this rule of interpretation in Article 4.

# ARTICLE 5. EXISTING OBLIGATIONS

R. Gwynedd Parry
Senior Lecturer in Law
Swansea University/ Prifysgol Abertawe

**SUMMARY:** 1. Introduction. 2. Interpretation. 3. Commentary. 4. Conclusion.

*Article 5 – Existing obligations*

*Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.*

## 1. Introduction

Article 5 provides a further rule for interpreting the ECRML, which is closely related to and complements Article 4. In summary, it prevents any interpretation of the ECRML which conflicts with the Charter of the United Nations. In particular, it prevents the ECRML being used to undermine principles of international law governing national sovereignty or territorial integrity. In this regard, Article 5 makes it clear that the ECRML is not an instrument to undermine the authority of European states by promoting political autonomy for national/linguistic groups or justifying intervention on behalf of those groups by other states or the international community.

## 2. Interpretation

The explanatory report embellishes on the provisions of the article by stating that 'the protection and promotion of regional or minority languages which is the objective of the charter must take place within the framework of national sovereignty and territorial integrity'.[1] The Preamble outlines the overriding purpose and rationale of the Charter in upholding the values of 'inter-culturalism and multilingualism', and proclaims that 'the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity.'[2]

[1] See *European Charter for Regional or Minority Languages and Explanatory Report*, (Strasbourg; Council of Europe Publishing, 1993), Explanatory Report at para 55.
[2] ECRML, Preamble.

Woehrling also comments that Article 5 affirms the ECRML's commitment to a principle of international law as it applies to international treaties, in that "commitments entered into under international agreements can only be changed by a new international agreement between the same parties".[3] He adds that "the charter cannot legally have the effect of calling into question the aims of the Charter of the United Nations (or other agreements concluded with states which are not parties.)".[4]

It is a well-established principle of international law that states should enjoy respect for their sovereignty and territorial integrity. This was the foundation for world peace as declared in the Charter of the United Nations. After all, the overriding objective in setting up the United Nations was:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."[5]

The creation of the United Nations was a key component of the post-World War two reconstruction agenda and at the very heart of the new world order. Its cardinal purpose was to prevent war and aggression and to guarantee the security of all state members. As has been said,

"Most of the fundamental norms, rules and practices of international relations rest on the premise of state sovereignty...non-intervention is the duty correlative to the right of sovereignty. Other states are obliged not to interfere with the internal actions of a sovereign state."[6]

Interference with the domestic jurisdiction of states could thus amount to a breach of article 2(7) of the Charter of the United Nations, and the threat or use of force against the territorial integrity of states could likewise contravene article 2 (4) of the Charter of the United Nations. Article 2 (4) states that:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[7]

[3] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary* (Strasbourg: Council of Europe Publishing, 2005), pp. 85-86.
[4] Ibid.
[5] U N Charter, art. 1 (1).
[6] See Jack Donnelly, "State Sovereignty and International intervention: The Case of Human Rights" in Gene M. Lyons and Michael Mastanduno (eds.), Beyond Westphalia? State Sovereignty and International Intervention (Baltimore: Johns Hopkins University Press, 1995), pp. 115-146, at p. 118.
[7] U N Charter, art 2 (4).

These are the provisions of the United Nations Charter to which Article 5 ECRML refers and upholds. The explanatory report gives further guidance on what exactly Article 5 is seeking to achieve:

'the fact that, by ratifying the charter, a state has entered into undertakings with respect to a regional or minority language may not be used by another state having a special interest in that language or by the users of the language as a pretext for taking any action prejudicial to the sovereignty and territorial integrity of that state'.[8]

Perhaps it this particular passage in the explanatory report which is most instructive in explaining the inclusion and content of Article 5 in the ECRML. It ensures that the ECRML cannot be interpreted in such a way that it gives the authority to a state to interfere in the interests of a linguistic group in another state. For example, in theory, it prevents Sweden from drawing upon the ECRML as a basis for interjecting on behalf of Swedish speakers in Finland, or Germany to intervene on behalf of German speakers in Denmark. The need to declare this injunction, and thus compatibility with the United Nations Charter, may have historical resonances, and may be a response to the inter-war experience of minority protection within international affairs. In the inter-war period (1918-1939), the purported claims of linguistic and national minorities had been manipulated and used, most notably by Germany, to justify military intervention in neighbouring states.[9] The ECRML clearly rejects this form of political manipulation of its objectives and declares its compatibility with the principle of national sovereignty and state integrity. As Woehrling explains, "There is no provision in the charter allowing challenges to territorial boundaries in the states parties\or which seeks to identify distinctive territorial entities which would present a challenge to state integrity".[10]

## 3. Commentary

The ECRML came into existence when the fragmentation of established political order in the Balkans was reaching its climax with the disintegration of Yugoslavia.[11] This may have created wariness in some quarters of a treaty which promoted the rights of linguistic minorities and which might, indirectly and by extension, also promote the cause of national minorities seeking self-determination. The provisions of Article 5 were thus necessary as part of the diplomatic trade-off to provide reassurance that the draftsmen of the ECRML had no

[8] See ECRML, Explanatory Report at para 55.
[9] See Fernand de Varennes, "Linguistic Identity and Language Rights" in Marc Weller (ed.), Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies (Oxford: Oxford University Press, 2007), pp. 253-323, at pp. 254-55.
[10] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary*, p 86.
[11] Much has been written on this subject. See, for example, Branka Magas, *The Destruction of Yugoslavia: Tracking the Break-Up 1980-1992* (London: Verso, 1993); Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War* (London: Penguin, 1992).

such agenda. Consequently, as Woehrling states, "The purpose of Article 5 is primarily to forestall misinterpretation of the charter as a means of creating a right for linguistic groups to satisfaction of separatist claims".[12]

The position at international law on the subject of state sovereignty and territorial integrity is complex and not always easy to determine. Sovereignty as a concept is in itself controversial and has been the subject of much debate as to its meaning. It is acknowledged that the concept of sovereignty is relative, malleable and can mean different things in different contexts.[13] The principle of non-intervention is not absolutely sacrosanct and can be overridden certain circumstances. After all, another important principle within international law is that which recognises the right of peoples to self-determination.[14] Indeed, the United Nations Charter provides that one of the primary purposes of the United Nations is, "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".[15] It is conceded that the right of nations within established states to unilateral secession has been held to be justified only in extreme cases.[16] However, although commentators claim that "self determination cannot be used to further larger territorial claims in defiance of internationally accepted boundaries of sovereign states", it is also acknowledged that "it may be of some use in resolving cases of disputed frontier lines on the basis of the wishes of the inhabitants".[17]

The position is further complicated and rendered uncertain by the fact that, in recent times, there has been steady erosion of the sovereignty and territorial integrity principle due to an escalation in situations where the use of force against sovereign states has either been justified or has not been condemned by the UN.[18] The use of force against terrorism in the name of collective security and international stability has provided disputed legitimacy for military interventions in Iraq and Afghanistan. The emergence of the humanitarian intervention justification for the use of force, particularly following NATO action in Kosovo in 1999, has made the advancement of human rights a potential basis for breaching the state sovereignty principle. This has set a precedent which potentially justifies intervention for the protection of minorities within states, particularly where such interference is necessary to preserve wider stability and where there is some risk of escalation in international conflict in the event of non-action.[19]

---

[12] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary* p. 86.

[13] For a detailed consideration of the significance of the concept of sovereignty within international law, see Dan Sarooshi, *International Organisations and their Exercise of Sovereign Powers* (Oxford: Oxford University Press, 2005).

[14] For further discussion, see Karen Knop, *Diversity and Self-Determinations in International Law* (Cambridge: Cambridge University Press, 2005).

[15] UN Charter, art. 1 (2).

[16] *Reference Re Secession of Quebec* (1998) 161 DLR (4th) 385, 438.

[17] Malcolm Shaw, *International Law 5th edn*, Cambridge University Press, 2003, p. 445.

[18] For reflections on the United Nations' position on the use of force, see John F. Murphy, "Force and Arms" in Christopher C. Joyner (ed), The United Nations and International Law (Cambridge: Cambridge University Press, 1998, pp. 97-130.

[19] See Stephen D. Krasner, "Sovereignty and Intervention" in Gene M. Lyons and Michael Mastanduno (eds.), *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University

These recent conflicts have thereby added to the wariness among states that well-established international law principles have been undermined and that the territorial integrity principle may be less robust than in the past. [20] A lack of clarity and certainty in international law on the right to secession[21] might have also fuelled anxiety that minority language campaigners could use linguistic claims as a pretext for the claims of national self-determination. If language rights are presented as an extension of human rights principles, then the unease and concern that either internal instability or external interference might be consequences of the recognition of such rights at some future point is understandable.

Yet, it is easy to exaggerate these concerns and anxieties. As one commentator has remarked, "...sovereignty remains the central norm in the politics of international human rights. The international community, except in rare circumstances, does not have the right to exercise the power to intervene on behalf of human rights, nor has it been willing to do so."[22] But the need for Article 5 betrays the political sensitivity surrounding the advent of the ECRML. Of course, there is no provision within the ECRML which undermines States or promotes political campaigns for separation. The authors of the ECRML clearly wished to respect states' authority and to reassure that the ECRML has not in any way taken over states' powers to legislate for languages within their territories. It does not in any way derogate or diminish the right of states to legislate for languages within their territories. Indeed, for its provisions to be implemented and for them to acquire legal force, states must create domestic legislation for that purpose. We are thus reassured that ratification of the ECRML does not raise difficult constitutional questions about transfer of powers.

Another way of making the point is to say that Article 5 depoliticises the instrument so that it cannot be interpreted in such a way that it is deemed to grant political power on any group. To quote Woehrling, "none of the charter provisions gives linguistic minorities the right to powers of political decision-making that might challenge public authority in the states parties".[23] Yet, somewhat paradoxically, the need to respect and observe the rights of minority language speakers arguably has an inherent political quality. Indeed, as was pointed out by one commentator, the European Union has "gone as far as to make respect for minority rights one of the 'political criteria' for admissions of new States to the Union".[24] In many states, the political and the linguistic are inextricably linked.[25]

---

Press, 1995), pp. 228-249.

[20] See, generally, Christine Gray, *International Law and the Use of Force* (Oxford: Oxford University Press, 2004), and Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge: Cambridge University Press, 2005).

[21] See Allen Buchanan "The Morality of Secession" in Will Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford: Oxford University Press, 2006), pp. 350-374.

[22] See Jack Donnelly, "State Sovereignty and International intervention: The Case of Human Rights" in Gene M. Lyons and Michael Mastanduno (eds.), Beyond Westphalia? State Sovereignty and International Intervention (Baltimore: Johns Hopkins University Press, 1995), pp. 115-146, at p. 115.

[23] Jean-Marie Woehrling *The European Charter for Regional or Minority Languages: A Critical Commentary*, p. 86

[24] See Fernand de Varennes, "The Linguistic Rights of Minorities in Europe" in S. Trifunovska (ed) *Minority Rights in Europe: European Minorities and Languages* (The Hague: T.M.C. Asser Press, 2001, pp.3-30 at p. 3.

[25] See Janet Muller, "The European Charter for Regional or Minority Languages and the current legislative and policy contexts in the north of Ireland" in Robert Dunbar and Gwynedd Parry eds. *The European Charter for*

At the root of the matter is a fundamental, self-evident truth, which is that many of the languages protected by the charter are, put simply, the languages of nations which were at a point in history incorporated into larger states. The linguistic agenda at a local level can therefore be an aspect of a broader nationalist movement rather than a product of some non-political cultural diversity agenda.[26] In Wales, for example, the language issue has traditionally been driven by groups or individuals who have also promoted a nationalist, political drive for political self-determination.[27] This close nexus between the language revitalisation and political autonomy agendas has, potentially, been detrimental to both the linguistic and political causes, *mutatis mutandis*. The political argument for greater self-determination has sometimes been treated with suspicion by the non-Welsh speaking majority due to fears of hidden linguistic agendas that might eventually lead to their marginalisation as a monoglot linguistic group. Conversely, the language revitalisation agenda has sometimes encountered opposition based on a fear that it might lead to claims for political separation.

Of course, the link between language and nationhood is not always clear or straightforward. Not every linguistic community is harbouring serious ambition for self-governance *as a linguistic group*. In Scotland, for example, there is no political drive for independence on the part of either Gaelic speakers or Scots speakers in an effort to somehow undo the unity of Scotland brought about in the eleventh century. Gaelic speakers and Scots speakers do not regard themselves as nations by virtue of language. The claim of these linguistic communities is for recognition and protection within a larger, multilingual political entity, be that Scotland or the United Kingdom.[28] But there can be no doubt that by looking at Europe as a whole we see that there is a tangible political nexus between language, culture and national identity. [29]

Kymlicka argues that the demands of 'small nations' for greater national and political autonomy, of which cultural and linguistic autonomy is an important aspect, has become acceptable in western Europe, and seen as being compatible with liberal-democratic values and notions of justice. Conversely, however, such nationalist claims are not as sympathetically considered by central and eastern European states, which see secessionist movements as being a threat to state security and a menace to international stability.[30] The

*Regional or Minority Languages: Legal Challenges and Opportunities* (Strasbourg: Council of Europe Publishing, 2008), pp 219- 237.

[26] Will Kymlicka, "Language Policies, National Identities, and Liberal-Democratic Norms", "Language Policies, National Identities, and Liberal-Democratic Norms" in Colin Williams (ed.), *Language and Governance* (Cardiff: University of Wales Press, 2007), pp. 505-15 at pp. 509-15.

[27] The cultural dimension in the story of national reawakening has been the subject of several major historical studies. See, for example, Kenneth O. Morgan, *Rebirth of a Nation, A History of Modern Wales,* Oxford: Oxford University Press, 1981; alternatively see D. Gareth Evans *A History of Wales 1906-2000* (Cardiff: University of Wales Press, 2000).

[28] For some legal-historical perspectives, see Hector MacQueen, "Laws and Languages: Some Historical Notes from Scotland" (2002) 6.2 Electronic Journal of Comparative Law (http://law.kub.nl/ejcl/62/art62-2.html).

[29] For further reflections, see Kristin Henrard, 'The Interrelationship between Individual Human Rights, Minority rights and the Right to Self- Determination and Its Importance for the Adequate Protection of Linguistic Minorities', *The Global Review of Ethnopolitics,* 2001 1 (1), at pp. 41- 48.

[30] See Will Kymlicka, "Justice and security in the accommodation of minority nationalism" in Stephen May,

ECRML's position is that it distances itself from this political hot-potato and promotes multilingualism, but within the unitary state.

The ECRML's agenda is the recognition and promotion of linguistic diversity within European states as being an important and normalised component of European society and of membership of the European political community.[31] The underlying rationale is to promote recognition of equality in diversity.[32] Linguistic minorities are afforded the status, obligations and privileges of full citizenship without sacrificing their linguistic identity. Of course, this vision of "multicultural citizenship" has benefits for the linguistic minority. However, it may also benefit the dominant group and, in particular, may serve the interests of preserving political hegemony and unity. As Kymlicka puts it, having recognised language as one of the key components of national identity,

'…if there is a viable way to promote a sense of solidarity and common purpose in a multinational state, it will involve accommodating, rather than subordinating national identities. People from different national groups will only share an allegiance to the larger polity if they see it as the context within which their national identity is nurtured, rather than subordinated'.[33]

This argument maintains that, instead of promoting political fragmentation along linguistic/national lines, an agenda for linguistic equality supports the concept of multilingual and multinational political entities. Accordingly, the grievance felt by the minority linguistic group, which might develop into an ambition for political autonomy and possible secession, is diffused if the concept of citizenship recognises and protects the linguistic identity of that group.

The linguistic plurality which this concept of citizenship promotes challenges the traditional, one-dimensional and homogenous understanding of state citizenship. It also encourages an approach whereby it is appreciated "that citizenship is not just a legal status, defined by a set of rights and responsibilities, but also an identity, an expression of one's membership in a political community".[34] This is arguably a form of self-determination which is compatible with the maintenance of state sovereignty and territorial integrity. This, as is made clear in Article 5, is the agenda which the ECRML promotes and supports.

---

Tariq Modood and Judith Squires (eds.), Ethnicity, Nationalism and Minority Rights (Cambridge: Cambridge University Press, 2004), pp. 144-175.

[31] Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), pp 174-76.

[32] The approach is summed up by one commentator as follows: 'With the politics of equal dignity, what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is the unique identity of this individual or group, their distinctiveness from everyone else'. See Charles Taylor 'The Politics of Recognition' in Charles Taylor and others (eds) *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), pp 25-73, at p 38.

[33] Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights*, p 189.

[34] Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights*, pp 191-92.

## 4. Conclusion

The ECRML is an instrument which respects the cardinal tenets of international law on sovereignty and territorial integrity. In its task of setting standards and promulgating international norms for the protection of regional or minority languages, it facilitates good practice through constructive dialogue and diplomacy. It advances the notion that promoting linguistic diversity is not incompatible with respecting sovereignty and territorial integrity. Indeed, it is the only international instrument which provides a comprehensive road-map towards the idea of the multinational and multilingual unitary state.

Article 5 is therefore necessary in order to immunise the ECRML from the charge of harbouring a political pretext. It might therefore be regarded as a pre-emptive, anticipatory provision to reassure the sceptics more than a genuine, practical provision that is likely to be the source of dispute or discordance. In this respect, the immunisation strategy has been successful because, of course, no real difficulty has arisen with the interpretation of Article 5 and the ECRML has not been the source of either inter-state dispute or internal political controversy.