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"One size fits all"? Challenges of ethnic categorisation when implementing non-territorial autonomy

📋 Summary

In recent decades a number of states, especially in Central and Eastern Europe, have established systems of non-territorial autonomy (NTA) for ethnic minority populations living within their borders. According to the original understanding of NTA propounded by the Austrian politicians Karl Renner and Otto Bauer at the start of the 20th century, a community of persons professing a shared ethnicity sets up institutions with the power to decide upon matters relating to the preservation of their particular identity. The NTA approach has been criticised for presuming the existence of stable and clearly-defined ethnic categories within a society, since contemporary theoretical approaches usually regard ethnicity as something that is diffuse, contingent and shifting. At the same time, few could deny that rights claims based on ethnicity (including claims for autonomy) remain highly salient in many contexts. If these claims are to be addressed in practical terms, some form of ethnic categorisation is required. The question remains, however, of how to define the boundaries of an ethnic minority community. One issue particular to NTA has been its use of ethnic registration as a basis for electing institutions of minority self-government and defining entitlements under NTA. This Policy Brief considers how this system has been applied in a number of contexts both historically and in the contemporary era, analysing some of the common issues and challenges that have arisen and advancing recommendations on how they might be addressed.

Recommendations

▶ NTA should not be considered as a 'one size fits all' approach for accommodating the diverse claims of minorities within multi-ethnic states. The implications of NTA can vary widely depending on the ethnic group and the societal context in question.

▶ It is therefore important to reflect on the pros and cons of NTA in particular cases by identifying the nature of the minority claims, the entitlements autonomy offers to individuals and the potential risks associated with the use of those entitlements.

▶ The particularities of different ethnic groups should also be taken into account when establishing principles for categorisation and drawing up ethnic registers; open and flexible arrangements may be appropriate in some cases, but other cases may call for more tightly-defined criteria.

▶ NTA appears to be a workable approach in the case of minority communities whose main aim is to promote their particular ethno-cultural or linguistic identity; where other issues (e.g. socio-economic exclusion) are the main concern, NTA appears less appropriate.

Introduction

Non-territorial autonomy (NTA) is a form of self-government established in the name of a group of individuals, which is mainly implemented to address the needs of different ethnic groups within multi-ethnic states. Whereas territorially-based arrangements grant autonomy to a particular sub-region of a state, in the case of NTA the carrier of autonomy is a group of people constituted irrespective of where the individuals in question reside within the state.

Two of the most influential theoreticians of NTA were Karl Renner and Otto Bauer, who proposed this model to resolve growing tensions within the multi-ethnic Habsburg Empire at the end of the 19th and the beginning of the 20th century. Under Renner and Bauer's approach, a group of individuals defined on the basis of language or ethnic belonging forms an autonomous body to administer a limited set of affairs, mostly confined to cultural issues relevant for the particular ethnic group, such as schooling and cultural organisations. NTA has been used widely in Central and Eastern Europe both historically and since 1991.[1] It has also been used in a range of other contexts worldwide.[2] The practice of NTA has varied widely, both in terms of the powers of these institutions and the benefits they offer. This ranges from symbolic (e.g. today's Estonia, today's Latvia, today's Russia) to more substantive (inter-war Estonia, today's Serbia) forms of autonomy.

One of the main criticisms of NTA is that it reifies and essentializes ethnicity (i.e. it implies that ethnic groups are somehow concrete, internally homogeneous entities and that people can belong only to one ethnic group). Both the state of the art in scholarship and everyday experience show that ethnicity is not purely primordial or determinant but is often fluid and contextual and is about constructed group boundaries that can shift to greater or lesser degrees depending on the setting (e.g. Tajfel 1974, Okamura 1981, Roccas and Brewer 2002, Jung and Hecht 2004, Brubaker 2004). Practical experience suggests, however, that essentialist or 'groupist' understandings of ethnicity may still have an important role in shaping identities in particular contexts, underpinning strong minority claims to preserve a particular identity through autonomy arrangements. In this sense, one can argue that while ethnicity is a 'category of political practice' (Brubaker 2004), its existence cannot simply be wished away. Rather, ethnicity remains highly salient and something that must be accommodated within the political system of different states.

Since NTA encompasses a community consisting of individuals, the necessary first

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[1]   Since 1991, institutional arrangements described as NTA (or national cultural autonomy) have been adopted in Hungary, Estonia, the Russian Federation, Serbia, Croatia, Slovenia and Montenegro. Reference to cultural autonomy can also be found in minority laws in Latvia and Ukraine.

[2]   Commonly cited examples include the historic Millet system in the Ottoman Empire, Jewish autonomy in the Polish-Lithuanian Commonwealth, arrangements in Brussels Capital Region in Belgium and for Sámi minorities in Norway and Sweden, the Maori people in New Zealand.

step in its implementation is to establish the boundaries of that community. This raises the problem of how to define belonging. The solution has been to categorise people according to ethnicity and draw up registers for purposes of elections, taxation and access to benefits (for instance, eligibility to attend minority schools). Keeping such registries requires an understanding of who are the individuals who form the autonomous group. However, ethnic identity can be defined and interpreted in numerous different ways and these different approaches can cause misunderstandings and conflicts. The actual practice of NTA shows that registration has given rise to a whole range of questions and issues depending on the ethnic group and the society in question.

This Brief sets out some of the policy implications that arise from historical and contemporary experiences of implementing NTA. The main issues it addresses are related to defining ethnic belonging and the registry which is one of the core questions of implementing this autonomy model.

The three narrower questions we analyse in this brief are the following:

▸ How willing are individual members of a minority to register themselves on the basis of ethnicity?

▸ How to define the boundaries of ethnic belonging and NTA membership? For instance, what are the implications of NTA organisations including people who may only have a loose connection to the minority communities?

▸ (Closely bound up with the previous questions) What is at stake? What are the benefits that NTA provides to individuals, how might these affect people's desire for membership, and what implications might this carry for inter-ethnic relations within the wider society?

In the next section we analyse these intertwined questions on the basis of how they have been dealt with in several countries.

Willingness to register

As a model devised in line with democratic principles, NTA operates on free definition of ethnicity by individual citizens and voluntary enrolment on a national register. In some cases (e.g. interwar Estonia, today's Croatia), citizens have been given the option of indicating their ethnicity on an official register administered by the state. These state records then serve as the initial basis for compiling NTA registers. In most cases, however, there are no such official statistics and registers are drawn up on the basis of individual enrolment ahead of elections to NTA bodies.

In some contexts, the readiness of individuals to register in this way has not been an issue.

For example, the Sámi parliaments in today's Norway and Sweden are elected by means of electoral rolls which are compiled according to the following criteria: the voters' identity is self-reported and they must confirm that they, their parents or grandparents have used Sámi as a home language. (Josefsen et al., 2015: 40) Similarly, the Swedish and Finnish cultural self-governments in Estonia are elected on the basis of national registers to which people are added according to their own will and self-reported identity. In either case, significant opposition to such lists or registries has not emerged and the registry-based NTA seems to work well in identifying community members.

In other contexts, however, individuals have been reluctant to register due to a collective memory of past persecution on grounds of ethnicity, or also because of present-day discrimination. It is for this reason that, when the introduction of NTA was first discussed in Hungary at the start of the 1990s, many minority activists (e.g. Roma, but also German) opposed the use of registers. During and after World War II numerous ethnic groups were repressed or deported based on individuals' ethnic affiliation which often even had nothing to do with their personal identity. In some cases for example, entries in church books or membership in organisations became the basis for repressions. With such a historical legacy, the mistrust of ethnicity-based registries is fully understandable.

Membership criteria

Hungary's response to the opposition of minority activists during the early 1990s, was not to use registers at all under its initial NTA law introduced in 1993 (Dobos 2007: 457). Instead, local minority self-governments were elected without ethnicity-based electoral rolls, meaning that anyone who lived within a given municipality was able to vote and stand as a candidate. In the absence of any legal means to control participation, people who lacked any obvious links to the minority community were able to stand in the elections to the minority self-government and gain seats. This meant that the initial form of local-level autonomy for ethnic minorities implemented in Hungary had a hybrid character incorporating elements of both NTA and territorial arrangements. It also left wide scope for the phenomenon that has come to be known as 'ethno-business'. In the context of Hungary, this term came into use in the late 1990s to refer 'to candidates who were elected mostly in the capital and bigger cities, did not know the minority language, culture and traditions, were unknown to the specific community and probably came either from the Hungarian majority or from other minorities' (Dobos 2007: 459). One very obvious further example of this phenomenon was the fact that, in some cases, minority-self-governments were established in areas where, according to census data, no members of the minority community in question actually lived (Vizi 2015: 42, 49).

The initial approach adopted in Hungary raises interesting questions around how to define notions of 'belonging' to a group. For instance, who is to say that particular individuals

living in an area may not have developed a hybrid identity grounded in affinity with an ethnic minority culture alongside their primary Hungarian identification, regardless of what they may have stated in a previous census? Furthermore, if enough members of a given community are ready to vote for a particular candidate, who is to say that the integrity of the process was undermined by "ethno-business"? Nevertheless, the practical operation of this system brought into focus a number of deficiencies and led to calls for clearer criteria defining who could legitimately claim to be a member of a minority community and who could not.

Although some candidates and voters without obvious prior links to minority communities may well have acted in good faith and out of sympathy for the particular minority, in other cases their actions were determined by other motives that did not work for the benefit of those communities and sometimes worked to their actual disadvantage. For example, in one district in Hungary in 2002, the local Hungarian majority elected mainly non-Roma representatives into the Roma self-government, to block Roma candidates who had been in dispute with the local authority (Dobos 2007: 460). This was only one of numerous scandals that carried potentially deleterious effects for inter-ethnic relations and undermined the credibility and legitimacy of Hungary's minority protection system (Dobos 2007: 459-460; Vizi 2015: 42, 49). Consequently, Hungary's original NTA law was amended in 2005 and a registration system introduced.

While the Hungarian case supports arguments in favour of implementing some form of registration as a basis for NTA, many different methods for compiling registers have been used in different contexts and each of these has raised its own issues and challenges. In today's Serbia, the two largest parties of the Hungarian minority argued that the state should compile an initial electoral roll based on the population registry and allow individuals to opt out if they did not wish to be included.[3] This approach was, however, rejected by the Serbian authorities, which claimed that the population registry does not include enough information about individuals' ethnic belonging and also that the OSCE does not recommend the use of such methods. A system of personal, voluntary registration was therefore implemented in this case (Székely 2020: 53).

Voluntary registration has, however, brought its own issues: the official procedure is for an individual to visit the local town hall in person and fill in the appropriate form. Since, in practice, many people do not do this, representatives of minority political parties and NGOs go door-to-door getting people to fill in forms before taking them to the local authority. Since the political activity of the Hungarian minority in Serbia is extensive, this has given individual parties the possibility to influence individuals by means of electoral propaganda and direct pressure to register as voters. (Székely 2020) In this way, NTA

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[3] This approach was used by interwar Estonia in its 1925 NTA law: initial electoral lists for national minority councils were drawn up on the basis of the official state registry of population and made available for public scrutiny, at which point individuals could either opt out by asking to have their names removed, or opt in by applying to change their ethnicity in the official state registry (Smith & Hiden 2012).

may become a vehicle through which parties advance their own particular narrow political agenda rather than a framework representing the full spectrum of views and claims found within the minority population. Indeed, in what can be seen as a further example of 'ethno-business', majority Serbian parties have co-opted people from among minorities who set up NGOs as front organisations in order to gain election to minority national councils and direct them according to the interests of the party.

What is at stake? Benefits of registration for individuals

A system of voluntary registration, then, still leaves open the questions of how to define the boundaries of ethnic group belonging and the extent to which these should be regulated in order to ensure that individuals are not registering for personal reasons that have nothing to do with the official purpose of NTA, which is to support and to nurture the particular minority identity. In this respect, much depends upon the particular societal context, the nature of the minority identity and the claims advanced on its behalf, but also on the actual powers and competences of NTA bodies and the potential benefits that membership can therefore confer to individuals as well as political parties and other organisations.

In interwar Estonia, for instance, ethnicity was a highly formalised category that significantly influenced people's life choices, especially in connection with an ethnicity-based school system. Ethnicity was indicated on identity certificates and, as such, had official meaning. Although according to the constitution, everyone was free to choose their ethnicity, making changes to identity certificates turned out to be a controversial and conflictual process. The escalation of tensions was exacerbated by the popularity of German-language schools. Consequently, numerous individuals hitherto officially registered as ethnic Estonians desired to be included in the national registry of the German Cultural Self-Government in order to send their children to German-language schools where they could benefit from smaller class sizes, better resources etc. The situation did not find any other solution than the abolition of the freedom to choose one's ethnicity in 1934 under authoritarian power.

The powers that an autonomy body has and the resources it has to advance its goals defines if it is mainly symbolic (or cultural) or more substantive (political). This in turn is related to the question of the implications that registration holds for relations between different ethnic groups (majority and minority) in particular contexts. In both the historical Estonian and today's Hungarian case, minorities advocating NTA have typically had a strong identity and/or active elite who have political ambitions. In such cases, the absence of clear regulations defining ethnic belonging can be a source of political contention.

The stakes are, however, different where cultural autonomy has only symbolic value. This can be seen in the case of Estonia's 1993 re-established cultural autonomy law,

which, compared to its interwar predecessor, provides for a far more symbolic variant of NTA. Although today's law has broad aims (for instance, allowing the establishment of schools to cater for the respective minority), in reality it is used to protect the cultural heritage of small minorities that have almost completely vanished due to assimilation and/ or emigration. Thus far, only Estonia's Swedish and Finnish minorities have established cultural self-governments under this law. There are no legal restrictions to being included in the national registries of these self-governments, but the communities themselves can set their own criteria. Thus, the Finnish Self-Government uses more essentialist criteria by inviting applications from the people who could claim ethnic Finnish ancestry. The Swedish Self-Government, however, welcomes people who wish to support the efforts of the Swedish minority to preserve their language, culture and national self-awareness. This model of cultural autonomy works well for small ethnic groups in Estonia with weak and multiple identities. However, it was never intended to cater to the needs of the country's much larger and more politically mobilised Russian-speaking minority, whose leaders have indeed mostly rejected the NTA model (Smith 2020).

Based on the examples above, it can be said that when implementing NTA, there can hardly be universal methods of ethnic categorisation and setting boundaries that would work in any conditions. As the Hungarian case also shows among other things, if the aim of NTA is to protect minority languages and cultures then such autonomy is not beneficial for those minorities such as the Roma whose major problems relate instead to social and economic marginalisation. (Molnar Sansum, Dobos 2020: 252) The same is true for other cases as well. It turns out that in practice it is not always completely avoidable to use essentialist criteria when setting the boundaries.

Policy implications

Both the original concept and the practical experience of NTA illustrate an enduring tension that exists between collective ('groupist') identity and rights claims on the one hand, and the more complex and multifaceted nature of individual identity on the other. There is no obvious way of resolving this tension, and experience of NTA shows that all forms of ethnic-based politics entail some degree of what is generally called 'ethnobusiness'.

Against this background, some scholars and policymakers claim that it is misguided to talk about the rights of (allegedly) coherent 'ethnic groups' with clear boundaries between them. Instead, they argue, it would be better to devise more flexible arrangements for the accommodation of diversity, by focusing not on ethnicity, but rather (for instance) on everyday use of language within complex multiethnic societies. In the interwar period, for instance, the Minorities Section of the League of Nations cited arrangements in 1920s Latvia as an example of good practice. At that time, Latvia did operate a system of autonomous minority schooling. However, there was no official state registry of ethnicity

and schooling arrangements were determined on the basis of parents declaring which language was most usually spoken at home. According to the Minorities Section, this system was preferable to the Estonian NTA system based on registers, which was more likely to entrench ethnic group boundaries within society. This is indeed one of a number of possible alternatives to NTA that have been applied in Central and Eastern Europe. From 2012-2018, for instance, Ukraine adopted a model of administrative decentralisation which allowed local municipalities to give an ethnic minority language official status alongside Ukrainian if census figures showed that the relevant minority exceeded 10 percent of the local population. In interwar Estonia and today's Serbia, this 'threshold principle' was applied alongside a system of NTA as part of a hybrid model intended to cater for both territorially concentrated and territorially dispersed minority groups.

Yet, while more flexible arrangements may work in some contexts, claims for ethnically-based autonomy (self-government) remain highly salient to politics in regions like Central and Eastern Europe where (for historical reasons) ethnic identities and boundaries have been strongly institutionalised. Indeed, NTA was originally devised by Renner and Bauer precisely in response to the heightened nationalist disputes that arose within the context of the late Habsburg Empire. In this context, they argued that granting autonomy to 'communities of persons' was a far better option than territorial autonomy, since the latter was likely to reinforce claims to exclusive 'ownership' of territories by particular ethnic groups as well as generating movements for secession from a Habsburg state that Renner and Bauer wished to preserve and reform along democratic, federalist lines. A similar understanding of NTA as a 'less destabilising' generalised alternative to territorial autonomy can be found in discussions of post-Cold War Central and Eastern Europe, especially in the immediate aftermath of the violent secessionist conflicts in former Yugoslavia (Roshwald 2007; Coakley 2016). This juxtaposition of NTA and TA has, however, been criticised by other authors (see especially Kymlicka 2007), who warn against "prescribing uniform solutions for diverse needs" (Purger 2012, 2).

By the same token, scholars and practitioners should be wary of adopting a similar 'one-size-fits-all' approach in the analysis of NTA (Pap 2015). This Policy Brief has shown that even in cases like today's Hungary, where minority populations are generally small in size and territorially dispersed by settlement, different approaches may be required depending on the minority. The cases analysed have demonstrated that implementing NTA depends largely on the societal and cultural context where it is being implemented. In implementing NTA, different forms of registration can be suitable in different contexts. It largely depends on whether the ethnic minority in question is numerically small and weak or a viable community whose interests are not only limited to cultural affairs but also include political questions. In the latter case, a different approach may be needed, as a system of registration that is too 'open' can cause more problems than it solves. Authorities should therefore give careful attention to these issues when considering whether and how to introduce NTA.

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