

THE REALISATION OF NATIONAL MINORITY RIGHTS

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I INTRODUCTION

The failure of nation-states around the world to adequately realise the rights of their national minorities has and will continue to create extensive national and international political instability. The recognition, protection and promotion of such national minority rights is necessary to avoid the continued threat to international security and pervasive humanitarian crises. With a focus on Eastern Europe, this article aims to highlight why the adequate realisation of minority rights has not taken place. In so doing, it identifies the territorial integrity of the nation-state and desire for cultural autonomy of the national minority as the key issues to be reconciled. In an attempt to point the way forward and realise national minority rights, the article will then examine Karl Renner's national-cultural autonomy theory which was advocated as a possible solution to the national minority problems as they existed at the time of the collapse of the Austro-Hungarian Empire and the ascendancy of the nation-state. Given that at the start of the 21st century the nation-state is no longer viewed as a permanent fixture of the political system nor as the unquestioned holder of ultimate authority, a re-evaluation of national-cultural autonomy is necessary to see if it may provide a resolution, or at least an alternative means of conceptualising, the current minority situation within Eastern Europe. Ultimately, this article will move beyond the existing literature and provide a model based on realistic compromise between key stakeholders to realise practically the rights of national minorities within Eastern Europe and hopefully throughout the world.

Ethno-cultural diversity has been with us a long time. History shows that the divisions it creates have initiated violent conflicts and protracted discrimination around the world. It is 'learning to live with the public expression and

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institutionalization of ethno-cultural diversity'¹ through the realisation of minority rights that is necessary in order to live peacefully with such diversity and to alleviate the vulnerability of minority cultures to majority decisions. This realisation is of fundamental importance as cultural degradation can be irreversible. For the purposes of securing substantive equality of citizens it would be necessary to realise minority rights to provide external protections, such that minorities have the same opportunities as majorities to live and work within their own cultures. If a nation-state² does not realise minority rights and attacks a minority's sense of distinct nationhood, it may promote disloyalty and create or increase the desire for secession.³ Thus, the realisation of minority rights benefits the majority and the minority. This article aims to contribute to the debate as to how a resolution of this 'nationalities question'⁴ may be found.

A *The Current Increase In Attention*

The attention afforded to minority rights' realisation has increased over the past decade. Much of the rationale for this stems from the historical events of the late 20th century which have provided the impetus for national minorities to assert themselves more confidently. The end of communism in Eastern Europe in 1989 and the collapse of the Soviet Union in 1991 freed many national minorities whose cultural identities had been largely denied. In many cases, the nation-states that replaced Soviet rule have failed to incorporate adequate minority rights, often with the limited rights enjoyed by national minorities under Soviet rule being revoked.⁵ However, these sub-statal interests are no longer content to allow the nation-state to dictate the terms of their relationship. Rather, as the civil war in the former Yugoslavia indicates, a crack has developed in the centuries-old franchise of the state as national minorities threaten to alter the 'reigning form of political organisation in the world today'.⁶ These events are not limited to Europe. Today, nearly all nation-states are multi-ethnic and there is every indication that they will

¹ Will Kymlicka, 'Western Political Theory and Ethnic Relations' in Will Kymlicka and Magda Opalski (eds), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (2001) 1.

² The terms 'nation' and 'nation-state' have generated a voluminous literature beyond the scope of this article. Instead, the following working definitions apply. A 'nation' is a continually evolving community of culture with ancient origins in collective myth and memory, which are perpetually reinterpreted to fit the contemporary social and political context. Tim Nieguth, 'Beyond Dichotomy: Concepts of the Nation and the Distribution of Membership' (1999) 5(2) *Nations and Nationalism* 158-60. A 'nation-state' is a particular geo-historic construct in which state sovereignty is vested and which adopts the ethnicity, cultural, legal and institutional practices of the dominant majority. In this article, the term 'nation-state' is used, as it is the conventional description for the international system's subdivisions.

³ Kymlicka, above n 1, 26.

⁴ Karl Renner, 'State and Nation' in Ephraim Nimni (ed), *National Autonomy* (2003) 1.

⁵ Kymlicka, above n 1, 62. For example Georgia revoked the territorial autonomy of Abkhazia and Ossetia and Azerbaijan revoked that of Ngorno-Karabakh.

⁶ Vello Pettai, 'Applying Kymlicka's Models to Estonia and Latvia' in Will Kymlicka and Magda Opalski (eds), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (2001) 62.

remain so for some time with tensions between their national minorities as a direct result.

Globalisation encourages national minorities to explore new possibilities for autonomy within the emerging global order because of the nation-state's decreased control over territorial and social integration.⁷ The increased porosity of nation-state borders and improved technology transfers have resulted in a 'three-directional erosion of the nation-state from above, from below, and laterally'.⁸ From above, it is being transformed institutionally by the rise of Transnational Institutions (TNIs); from below, there is pressure from sub-state groups for the nation-state to relinquish some of its responsibilities into their control; and laterally, the market erodes its permanency and superiority. The increased pressure to realise minority rights should be viewed in the context of and as a response to the centuries old model of state nation-building.⁹

The resurgence of ethnic conflict that has resulted from these events has 'created a surprising sense of urgency and willingness to address minority issues'.¹⁰ It is necessary to resolve these tensions to ensure stability within nation-states and the international community. In one count, there were more than 2,500 national minorities around the world who desired some form of autonomy within and/or outside of the nation-state.¹¹ Consequently, the realisation of minority rights must not only protect minorities, but must also preserve state sovereignty and territorial integrity. These latter principles take priority over self-determination¹² under international law. The reconciliation of divergent objectives is imperative to resolving tension between minorities and majorities in the state-centred world we live in.

The exhaustive number of national minorities pursuing the realisation of their rights prohibits discussion of their multifarious situations. This article will focus, where it can, on the realisation of minority rights in Eastern Europe to understand and propose a resolution to this complex and widespread failure to effect national minority rights. The Eastern European context is ideally suited to a critical examination of the realisation of minority rights as it contains many national minorities who have lived in the region for various time periods, disadvantaged and devoid of rights which would recognise, protect and promote their separate

⁷ Michael Keating, *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (2001) 1.

⁸ Michael Keating, 'So Many Nations, So Few States: Territory and Nationalism in the Global Era' in Alain Gagnon and James Tully (eds), *Multinational Democracies* (2001) 55.

⁹ Kymlicka, above n 1, 50.

¹⁰ Hurst Hannum, 'Contemporary Developments in the International Protection of the Rights of Minorities' (1991) 66 *Notre Dame Law Review* 1431, 1439-40.

¹¹ Vojislav Stanovčić, 'Problems and Options in Institutionalizing Ethnic Relations' (1992) 13(4) *International Political Science Review* 359-79, 361.

¹² Joel Krieger (ed), *The Oxford Companion to Politics of the World* (2001) 760-61. Self-determination may be defined as the 'right of cohesive national groups to choose their own form of political organization, free of external domination'.

identities. In addition, it was in Eastern Europe after World War I that the principle of self-determination was first applied to dismantle the German and Austro-Hungarian Empires. Unlike other regions, Europe led by its TNIs, namely the United Nations (UN), European Union (EU), Organisation for Security and Cooperation in Europe (OSCE) and Council of Europe (COE), has attempted to resolve these tensions by codifying minority rights.¹³

II FOUNDATIONS OF NATIONAL MINORITY RIGHTS

Much of the difficulty in determining the most effective way to realise the rights of national minorities stems from the lack of consensus regarding who constitutes a national minority and what their rights are. A detailed discussion of the academic debate surrounding the definitions of 'national minority', 'minority rights' and what constitutes 'adequate realisation' of minority rights is beyond the scope of this article. Consequently, a series of working definitions have been developed.

A *What Is A National Minority?*

There is no universally accepted definition of a national minority because of the diverse situations in which such minorities exist. However, from the multifarious definitions posited by TNIs, academics and minorities themselves, it is possible to discern objective and subjective criteria which may characterise a national minority. The objective criterion is the empirical presence of a distinct societal culture in the form of a common language, religion and ethnicity. The subjective criterion requires that the national minority think of themselves as collectively possessing a separate identity that they wish to preserve.¹⁴

Kymlicka distinguishes between 'national minorities', which he defines as 'distinct and potentially self-governing societies incorporated into a larger state', and ethnic minorities, which are 'immigrants who have left their national community to enter another society'.¹⁵ In Europe, the distinction between these minorities and thus the determination of their minority rights is further complicated by the reality that, 'just about every ethnic and national group can be considered either immigrants or natives' depending on what the cut-off date is and who is doing the defining.¹⁶ Kymlicka controversially claims the key difference between national minorities and ethnic minorities is that whilst both are culturally distinct from the majority in the nation-state in which they reside, ethnic minorities do not have a subjective desire

¹³ Extensive and detailed analyses of attempts at codification have developed. Please see the works of Jennifer Preece and Will Kymlicka.

¹⁴ Will Kymlicka quoted in Marlies Galenkamp, 'The Rationale of Minority Rights: Wishes Rather than Needs?' in Juha Rääkkä (ed), *Do We Need Minority Rights? Conceptual Issues* (1996) 42, 52.

¹⁵ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995) 19.

¹⁶ Keating, above n 7, 42. Unfortunately, the scope of this thesis does not provide for a detailed analysis of indigenous rights, though it is worth bearing in mind that many of the conclusions drawn in this thesis concerning the realisation of national minority rights have relevance to the quest for recognition of indigenous rights too.

to preserve their distinct cultures because their desire for integration into the larger society is greater.¹⁷ National minorities meanwhile ‘have certain politically significant characteristics in common with contemporary sovereign states - nationhood and historic ties to particular territories’¹⁸ which mean they have a stronger claim to a form of self-government or autonomy than ethnic minorities.

National minorities and ethnic minorities also differ in the historical way they have faced ethno-political power. Ethnic minorities, generally speaking, ‘seek and yet are denied individual assimilation into the larger society and therefore require anti-discrimination guarantees and equal civil liberties’.¹⁹ However national minorities, generally speaking, ‘want to preserve their distinct national identities and yet often must struggle against unsolicited policies of assimilation ... [which means they require] special rights to minority education, language usage, and cultural freedoms’²⁰ in addition to anti-discrimination guarantees and equal civil liberties. In view of this, it could be argued that national minorities have greater potential for collective mobilisation of political resources and a greater claim to ethno-cultural justice than ethnic minorities.

Indigenous groups are treated separately under recent developments in international law, despite their similarity to national minorities. The legitimacy of their desire for predominantly cultural autonomy is similar to that of national minorities. Indigenous groups however are less likely to concede some form of territorial autonomy than national minorities as their connection to the land (for spiritual and traditional lifestyle purposes) is often greater

In this article, a ‘national minority’ is defined as a group that shares common cultural characteristics, not dominant within a particular nation-state, which wants to maintain its distinct identity independent of the majority. Also, the membership of the group and its historical relationship to the territory of the State is clearly established.²¹ This distinguishes national minorities from ethnic minorities whose historical relationship to the territory is not so well established.²² Whilst recognising the similarities between ethnic and national minorities when addressing minority rights issues, this article will be restricted to an analysis of national minority rights.²³ The EU has recently acknowledged the potential impact on Europe of an increasing number of third country immigrants. This in turn increases the complexity of the realisation of minority rights as its application may one day include a more expansive group of minorities because, ‘it is possible, in theory, for

¹⁷ Will Kymlicka, ‘Introduction’ in Will Kymlicka (ed), *The Rights of Minority Cultures* (1995) 10-26. See Bhikhu Parekh and Montserrat Guibernau for the criticism of this argument.

¹⁸ Jennifer Preece, *National Minorities and the European Nation-States System* (1998) 10.

¹⁹ Ibid 19.

²⁰ Ibid 19-20.

²¹ Preece, above n 18, 28.

²² Keating, above n 7, 44.

²³ European Commission and Eurostat, *The Social Situation in the European Union 2002: In Brief* (2002) 14-15 <http://europa.eu.int/comm/employment_social/news/2002/jun/soc_situation_en.htm> at 31 July 2002.

immigrants to become national minorities if they settle together and acquire self-governing powers'.²⁴

B *What Are National Minority Rights?*

There are two commonly identified reasons why national minorities need special rights. First, special rights are necessary to enable national minorities to realise permanent, substantive equality. Second, they are necessary to maintain cultural membership, which informs their identity, and influences all decisions made by national minorities. The Permanent Court of International Justice Advisory Opinion regarding minority schools in Albania²⁵ was the first to identify that the realisation of minority rights requires a double approach. A prohibition of discrimination should be introduced to establish formal equality, followed by special measures to enable national minorities to preserve and develop their own distinct identities to achieve substantive equality. This double approach serves to reinforce two essential minority rights.²⁶ First, it aims to protect the physical integrity and identity of the national minority. Second, it aims to ensure the effective participation of the national minority in political and economic decision-making.

Consequently, in this article, the expression 'minority rights' refers to the basic freedom of national minorities to retain their own culture and identity, protected from the discrimination of majority groups or other minorities. The tools used to achieve this goal and particular freedoms needed by each national minority may vary depending on their circumstances.

C *What Does It Mean To 'Realise' Minority Rights?*

Minority rights tend to solidify cultural identities as they ensure national minorities have the freedom to be different from the majority and have the means to maintain this difference. For this reason minority rights should be adequately realised in some meaningful way. Jasudowicz argues this realisation takes the form of 'recognition, protection and promotion'²⁷ of the rights granted to minorities. The most obvious, and arguably most important, form of recognition is the granting of legal status to a national minority by the nation-state in which they reside. However, 'recognition' also includes recognition, by the majority, of the minority's cultural traditions and recognition of autonomous forms of government for minorities. 'Protection' must enable national minorities to freely pursue their interests and ideals. According to the Chairperson-Rapporteur of the UN Working Group on Minorities, minority protection consists of four elements: protection of the national

²⁴ Kymlicka, above n 15, 15.

²⁵ *Minority Schools in Albania (Advisory Opinion)* [1935] PCIJ No 64.

²⁶ Hurst Hannum, 'Minorities, Indigenous Peoples and Self-Determination' in Louis Henkin and John Hargrove (eds), *Human Rights: An Agenda for the Next Century* (1994) 8.

²⁷ Tadeusz Jasudowicz, 'Some Legal Aspects of the Protection of Minority Rights in Europe' in Arie Bloed and Wilco de Jonge (eds), *Legal Aspects of a New European Infrastructure* (1992) 110.

minority's physical existence; non-exclusion from political, economic and social activities within the nation-state; freedom from discrimination by the majority; and freedom from pressure to assimilate into the majority culture and lose all or part of their distinct cultural identity.²⁸ Additionally, Parker claims the obligation of 'promotion' 'would include both compensatory justice such as affirmative action and also facilitation of equal opportunity and enjoyment towards the maximization of freedom and dignity',²⁹ such as special education, language and self-government laws. It is this 'specific performance', the actual protection and promotion of minority rights, that complements the 'general obligation of forbearance'³⁰ or recognition, to realise minority rights for the long-term.

How minority rights realisation is implemented will differ between national minorities given the distinct and specific situations faced by each. Yet, despite these differences in application, the principles and objectives remain identical as '[n]onrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being'.³¹ Mere recognition of the disadvantaged position of national minorities is insufficient for the realisation of their rights. There is also the need to protect and promote the specific rights required by national minorities to ensure they can maintain their own cultural identity independently of the majority.

Not all national minorities experience difficulties in their relationship with the majority in their geographic area, nor is it correct to assume that groups are only satisfied when they constitute the majority within a nation-state. The scope of minority rights is contextual. Thus, a mechanism which works to realise the rights of one national minority will not necessarily work to realise the rights of another.³²

D The Divisibility Of Sovereignty And Minority Rights

One of the principle assumptions, the longevity of which prevents adequate realisation of minority rights, is the absolute sovereignty of the nation-state.³³ By the 19th century, the only constitutionally recognised sovereign entities were either the isolated citizen or the indivisible state, both of which assumed that the nation-state was homogenous. Renner called this the central-atomist principle. Under the central-atomist principle, sovereignty has 'far-reaching implications for the internal

²⁸ Office of the High Commissioner for Human Rights, *Note on the Sixth Session of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights* 22-26 May 2000, 1 <<http://www.unhcr.ch/html/menu2/10/c/minor/minornote.htm>> at 3 July 2002.

²⁹ Ibid.

³⁰ Ibid 155.

³¹ Charles Taylor, 'The Politics of Recognition' in Amy Gutman (ed), *Multiculturalism: Examining the Politics of Recognition* (1994) 25.

³² Kymlicka, above n 1, 69.

³³ For an historical appraisal of the concept of sovereignty, see Joseph Camilleri and Jim Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (1992).

structure of states, and the relationship between the state and civil society³⁴ as the inhabitants (the 'atoms') of the nation-state (the 'central' structure) are not homogenous.

Despite sovereignty's link to the idea of indivisible, absolute political authority, sovereignty remains a relative notion that may change with circumstances such as changes in the international system. Today the number of examples of divisible or pooled sovereignty³⁵ indicate the 'demise of the idea that the state has full comprehensive, and exclusive sovereignty'.³⁶ Particularly in Europe, the attempts to build a network of institutions above and parallel to the nation-state is proceeding swiftly and powerful nation-states have readily pooled their sovereignty within these TNIs. In Eastern Europe, the newly-democratic nation-states are queuing to do the same.³⁷

Yet, whilst nation-states appear ready to pool their sovereignty, they are not ready to split their sovereignty into different competencies which are then negotiated into parallel spheres of government between citizens of the same nation-state. The growth of subnational, international and transnational actors has resulted in 'what was once assumed to be the preserve of the sovereign state ... now [being] seen as contested territory'.³⁸ However, national minorities continue to be denied participation in this 'contest' and thus sovereignty over administrative, legal and cultural issues most pertinent to the survival of their distinct cultures. Much of the reason for this denial may be understood by examining the related concept of territorial integrity and the nation-state's fear of national minority secession.

E Territorial Integrity And Minority Rights

Territoriality is a fundamental tenet of sovereign statehood. The validity of existing internationally recognised nation-states is unquestioned and is reflected in provisions in international treaties and documents protecting the territorial integrity of nation-states³⁹ and the inviolability and stability of international borders.⁴⁰

³⁴ Ibid 237.

³⁵ Recent developments in international law, human rights, the rise of TNIs and the increased claims from minority groups would indicate that nation-state sovereignty is divisible.

³⁶ Ruth Lapidot, *Autonomy: Flexible Solutions to Ethnic Conflicts* (1997) 46.

³⁷ Croatia provides an example of this haste and incongruity. Their desire to join the EU will force them to relinquish aspects of their sovereignty which they gained through ethnic cleansing activities in the early 1990s.

³⁸ Camilleri and Falk, above n 33, 253.

³⁹ See, *Conference on Security and Cooperation in Europe - Declaration on Principles Guiding Relations between Participating States*, s 1(a) principle IV (adopted 1 August 1975), <<http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm>> at 11 June 2002.

⁴⁰ See, *Temple of Preah Vihear (Cambodia v Thailand) (Merits)* [1962] ICJ Rep 6; *Territorial Dispute (Libyan Arab Jamahiriya v Chad)* [1994] ICJ Rep 6, 45; *Charter of the United Nations*, 26 June 1945 (entered into force 24/10/45), art2(4) <<http://www.unhchr.ch/html/menu3/b/ch-cont.htm>> at 12 June 2002; *UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States*, UN GA Res 2625 UNGAOR 25th sess, 1883rd meeting supp 28 principle 5 UN Doc

Consequently, tension arises between the rights of national minorities to self-determination and political independence versus the rights of existing states to territorial integrity and political control over all the peoples within their jurisdiction and the order and stability of the nation-states system itself.

The importance of territory and its protection within the nation-state system means the realisation of minority rights remains secondary to the maintenance of territorial integrity.⁴¹ Self-determination may not be used as a legal tool to dismantle existing nation-states. As regards both the independence of former colonies and the break-up of federal states, the pre-existing colonial or administrative borders are, at least in the view of some jurists, sacrosanct except to the extent that they may be varied consensually by treaty. This is called *uti possidetis juris*:

The principle of *uti possidetis juris* developed as an attempt to obviate territorial disputes by fixing the territorial heritage of new States at the moment of independence and converting existing lines into internationally recognised borders, and can thus be seen as a specific legal package, anchored in space and time, with crucial legitimating functions. It is also closely related to the principle of ... territorial integrity.⁴²

Under international law, this realisation of minority rights is commonly equated to the principle of self-determination. There are two internationally recognised forms of self-determination: external self-determination, in which a particular minority gains territorial control of a particular area of land; and internal self-determination, in which a minority gains recognition and limited autonomy within the existing state. This is usually cultural recognition.

In all other contexts, self-determination is a principle that relates only to the internal governance of independent nation-states.⁴³ The UN and regional instruments which 'constitut[e] the foundation of the development of self-determination also oppos[e] the partial or total disruption of the national unity and territorial integrity

A/8028 (1970) <<http://www.hku.edu/law/conlawhk/conlaw/outline/Outline4/2625.htm>> at 12 June 2002; *Conference on Security and Cooperation in Europe*, Above n 39, s 1(a) principle III <<http://www.osce.org/docs/English/1990-1999/summits/helfa75e.htm>> at 11 June 2002.

⁴¹ Malcolm Shaw, 'The Heritage of States: The Principle of *Uti Possidetis Juris* today' (1996) 67 *British Yearbook of International Law* 75, 123-24.

⁴² Ibid 76.

⁴³ Ibid 124.

of States'.⁴⁴ Yet regardless of how nation-state borders are drawn or redrawn, entrapped minorities will always remain, preventing complete resolution.⁴⁵

In establishing borders of new nation-states, *uti posseditis juris*⁴⁶ may actually further disadvantage national minorities, leaving them unclear of their status and allowing nation-state leaders to avoid engaging with the complex issue of territorial adjustments.⁴⁷ By focusing on territoriality, *uti possidetis juris* fails to consider 'personal attributes'⁴⁸ such as ethnicity, religion or historic ties which are often of equal importance to the national minority's identity. Thus *uti possidetis juris* reinforces the belief of nation-states and national minorities that the only way to achieve long-term realisation of rights is through gaining territorial control. Ratner argues this ultimately denies national minorities dignity and realisation of their rights because it 'assumes that any benefits to internal self-determination from changes in borders are always outweighed by the risk of conflict'.⁴⁹ Whilst the principle of territorial integrity is entrenched such that 'any alternative ... is simply not feasible'⁵⁰ without altering the very basis of international law, if the goal of self-determination is 'to enable ... groups to realize their...rights, then the complexity of the territorial element cannot be wished away'.⁵¹

F Territorial Over-Defensiveness: Hampering Minority Rights

Throughout this article, it is argued that one of the main reasons for the failure of the nation-state to realise adequately minority rights is their focus on the nationalities question as one of territory and security. Nation-states are reluctant to grant more than very minimal rights to minorities fearing it may reinforce division among the nation-state's population and encourage the creation of secessionist

⁴⁴ Ibid 121. See, *UN Declaration on the Granting of Independence to Colonial Countries and Peoples*, GA Res 1514 (XV), UN GAOR, 15th sess, 947th plen mtg, UN Doc A/4684 (1961); *UN Declaration on Principles of International Law concerning Friendly Relations*, GA Res 2625, UN GAOR, 25th sess, 1883rd plen mtg, UN Doc A/8028 (1970). Note also that the UN has adopted resolutions reaffirming the territorial integrity of States and criticising secessionist activities, see SC Res, 169 (1961), 716 (1991). *Conference on Security and Cooperation in Europe*, above n 39, s 1(a) principle VIII also reaffirms the territorial integrity of states.

⁴⁵ Preece, above n 18, 37. This is called the 'double minority problem'. If territorial autonomy is granted to one national minority, there may be further national minorities within that area which will remain disadvantaged.

⁴⁶ The *Frontier Dispute (Burkina Faso v Mali)* [1986] ICJ 554 confirmed *uti possidetis juris* as a general principle of international law. The Arbitration Commission established by the International Conference on Yugoslavia (Badinter Commission) held that *uti possidetis juris* applied to non-colonial cases also, though the opinion of this Commission does not carry the weight of the International Court and has drawn much criticism.

⁴⁷ Steven Ratner, 'Drawing a Better Line: *Uti Possidetis* and the Borders of New States' (1996) 90 *American Journal of International Law* 590, 591.

⁴⁸ Shaw, above n 41, 123.

⁴⁹ Ratner, above n 47, 612.

⁵⁰ Ibid 616.

⁵¹ Ibid 623.

movements and territorial fragmentation of the nation-state.⁵² These fixations prevent appropriate ‘minority conscious remedies’⁵³ as codes, declarations and policies largely reflect state concerns.⁵⁴ This fear is based on the need to preserve nation-state sovereignty, particularly in the face of globalisation and more demanding sub-state groups.

III NATIONAL-CULTURAL AUTONOMY: A SOLUTION TO THE REALISATION OF MINORITY RIGHTS?

The underlying cause of the failure to realise adequately minority rights is, I shall argue, the territorial focus of the nation-state and many national minorities. To realise and sustain minority rights, it is necessary to reconcile the nation-state’s fear of losing its territorial integrity with a nation-state system that recognises territorial control as the basis of legitimacy. The territorial focus of the nation-state system encourages national minorities to pursue territorial autonomy as they feel they have no other option for realisation of their rights. Renner attempted to resolve this very tension between the nation-state and national minorities over a century ago, when it threatened to cause the collapse of the Austro-Hungarian Empire.

A *The Formation Of National-Cultural Autonomy Model*

Karl Renner, an Austrian constitutional jurist, developed the national-cultural autonomy model in 1902 in an attempt to alleviate the tensions between the national minorities and majorities within Austria-Hungary. At the time, rapid industrialisation had encouraged much internal migration that dramatically reduced the territorial concentration of many national groups within Austria-Hungary. Czech workers left the historic boundaries of Bohemia for the German part of the Empire and German industrialists entered Bohemia. The Slovenes and Ukrainians acted similarly within the Austrian part of the Empire as did the Serbs and Romanians within the Hungarian part. Within Vienna itself, the changes were even more apparent as national groups infiltrated the predominantly German-speaking capital. The backlash against these ‘alien’ groups was strong. However the multi-ethnic environment which developed engendered a cultural and intellectual renaissance which encouraged a re-assessment of the difficult questions of minority rights. Against this backdrop, Renner developed the national-cultural autonomy model which attempted to demonstrate greater sensitivity and provide concrete answers to these tensions.⁵⁵

⁵² Kirstin Henrard, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination* (2000) 221.

⁵³ Tibor Várady, ‘Collective Minority Rights and Problems in their Legal Protection: The Example of Yugoslavia’ (1992) 6 *East European Politics and Societies* 260, 271.

⁵⁴ Miriam Aukerman, ‘Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context’ (2000) 22 *Human Rights Quarterly* 1011, 1024-7.

⁵⁵ Ephraim Nimni, ‘Nationalist Multiculturalism in Late Imperial Austria as a Critique of Contemporary Liberalism: The Case of Bauer and Renner’ (1999) 4 *Journal of Political Ideologies* 289, 294.

The commencement of the 20th century was a period of ascendancy for the nation-state. The ideology of the nation-state and ideal of a monocultural nation-state were paramount. At the commencement of the 21st century, the tensions surrounding national minorities' interactions with the majority's nation-state structure prevails, but the nation-state's unquestioned existence does not. It is therefore necessary to assess the practical implementation of this theory to determine if it has any value for the resolution of the increasing number and complexity of minority rights disputes today.

B *Renner's National-Cultural Autonomy Model*

The national-cultural autonomy model prescribes a two-tier system of government, which grants non-territorial autonomy to national groups (including national minorities) while maintaining the administrative unity of the multi-nation state. In this way, it maintains the current boundaries of the nation-state whilst redefining the internal divisions between national groups, granting these groups a form of political recognition which will better protect their rights. Renner believed the only way to resolve existing tensions was to organise the nations into non-territorial public associations with autonomous cultural rights within a de-nationalised territorial state. In this way Renner divorced the 'nation' and the 'state', realising that 'at the very least in theory, the idea of the nation-state and the political representation of ethnic diversity are diametrically opposed'.⁵⁶

The model requires all citizens to declare their nationality, as distinct from their citizenship, when they reach voting age. These members then form part of a single national association, which has legal personality, sovereignty and competency to administer all national-cultural affairs. For example, national associations would be responsible for the establishment, maintenance and development of educational and cultural institutions, for the preservation of their linguistic, cultural and religious heritage and for ensuring members are not disadvantaged in their contact with the judiciary, administration or government of the state. In this way the competencies of the nation and the state are distinct, eliminating competition between them.

The shortcomings of the predominant territorial principle, which uses residential factors to underwrite group rights, caused Renner to focus on the personality principle as the underlying rationale for the model. The personality principle 'constitutes the nation not as a territorial corporation, but as an association of persons'.⁵⁷ In this way it harnesses the more permanent cultural, linguistic or religious bonds to underwrite group rights as these relate to much deeper feelings of solidarity and commitment. The aim was to separate the question of governance from the protection of national and cultural identities. Governance was the preserve of the nation-state, whilst national identity protection was the preserve of the national associations: the nation-state apparatus would be accountable to the entire

⁵⁶ Ibid 292.

⁵⁷ Otto Bauer, *The Question of Nationalities and Social Democracy* (1991) 285.

enfranchised populace through nation-state elections, and the various national associations would be accountable to each national community through their own elections.⁵⁸ With tolerance of multiple affiliations, it was hoped national identity could be a benign influence.⁵⁹

The model also aimed to circumvent what Renner termed the ‘central-atomist principle’ on which the liberal democratic state was organised. In liberal democracies, there are two recognised politico-juridical entities - the individual and the sovereign will of the undivided collective. Consequently, there was no place for intermediate interlocutors such as national minorities, which existed within the nation-state. It was this central-atomist principle that transformed the otherwise harmless desire for each nation to express its specificity and develop its culture into a struggle against the nation-state and against other national groups for the fulfilment of their cultural needs.⁶⁰ This is because there was no scope for political recognition beyond existence as an individual ‘atom’ or as a homogenous ‘centralised’ nation-state. Therefore, Renner expanded the categories of constitutionally recognised entities to include a third category of intermediate units called national associations.

C Is The National-Cultural Autonomy Model Of Minority Rights In Nation-States Workable Today?

The tendency of the nation-state to dominate national minorities is such an ingrained norm of the nation-state system that the ability of national-cultural autonomy to overcome nation-states’ territorial over-defensiveness may be limited in practice. The national-cultural autonomy model acknowledges that the realisation of minority rights is inherently more complex than simply achieving territorial control. It allows nation-states to retain their territorial integrity and national minorities to realise their national identities and rights through a flexible system controlled by the national minority. However, national minorities may not be satisfied with such cultural autonomy, for as Bauböck argues:

national minorities ... whose markers of collective identity are a regional language or a tradition of distinct legal and political institutions will often be unable to maintain these without territorial autonomy.⁶¹

The nation-state’s territorial control will continue to impede the realisation of minority rights under national-cultural autonomy. A single behaviour code and penalties controlled by the nation-state is necessary, and will continue to treat

⁵⁸ Mark Levene, ‘The Limits of Tolerance: Nation-State Building and What it Means for Minority Groups’ (2000) 34 *Patterns of Prejudice* 19, 26.

⁵⁹ Ephraim Nimni, ‘Introduction for the English Reading Audience’ in Otto Bauer, *The Question of Nationalities and Social Democracy* (1991) xlv.

⁶⁰ Bauer, above n 57, 227.

⁶¹ Rainer Bauböck, ‘Territorial or Cultural Autonomy for National Minorities?’ (Vienna: Österreichische Akademie der Wissenschaften Forschungsstelle für Institutionellen Wandel und Europäische Integration, 2001) 11.

people as individuals.⁶² It is also likely that the cultural autonomy granted will have a territorial aspect. Where the members of a national group are more concentrated, it is likely cultural services, facilities and resources provided by the national association will be more focused, creating a type of 'capital city' for the national group. This may compromise the attempted separation of state and nation and fuel fears of secession.⁶³

National-cultural autonomy encourages dialogue essential to a long-term cooperative solution to minority rights realisation. By clearly delimiting the powers and scope of the national minority and nation-state, the public sphere is secured and formalised. If nation-states did transfer control of cultural affairs to national associations, 'it is unlikely that the central government will completely relinquish all responsibility for a particular function'.⁶⁴ Even if nation-states did agree to transfer complete cultural control, it is likely the transfer could be easily reversed by the nation-state passing a law or constitutional amendment reinforcing the belief that such measures are temporary. Evidence from newly-independent nation-states in Eastern Europe over the past decade suggests such circumvention is likely.⁶⁵

Many national minorities today extend across nation-state borders and/or are highly dispersed within the nation-state. Renner sought to resolve the tensions between national groups within a single multi-nation-state.

D How Satisfactory Is The National-Cultural Autonomy Model Of Minority Rights For National Minorities Today?

Whilst national-cultural autonomy does provide a loose form of political recognition, it leaves the national minority as a sub-state, intermediate-sovereign category without international representation to give it a more respected and vocal position internationally. This is because the legitimacy of the nation-state system is premised on territorial integrity. National-cultural autonomy provides autonomy for those groups for whom their own separate nation-state is not an option. However, this recognition is based on the notion that the most pertinent and controversial issues faced by national minorities are recognition of their language, education and cultural rights in the public domain.⁶⁶ Whilst these issues are of great importance, they are not the only issues of concern. Simply deferring control of cultural affairs to the national association arguably amounts to recognition, but does not equate to either protection or promotion.

⁶² Uri Ra'anani, 'Nation and State: Order out of Chaos' in Uri Ra'anani et al (eds), *State and Nation in Multi-Ethnic Societies: The Breakup of Multinational States* (1991) 30.

⁶³ Nimni, above n 59, xviii.

⁶⁴ Vernon Bogdanor, 'Forms of Autonomy and the Protection of Minorities' (1997) 126(2) *Daedalus* 65, 73.

⁶⁵ See Kymlicka and Opalski, above, n 6.

⁶⁶ Nimni, above n 55, 298.

It is often difficult for a national minority's association to protect and promote its members' rights without the support of the nation-state, as they lack the skills and resources to effectively implement their programs. National minorities are usually numerically inferior and relatively poor which means they may be unable to siphon sufficient resources from their members for the complex resource and service provision required. This may result in their reliance 'upon the centre for finances, (ensuring) power again comes to be reconcentrated at the centre'.⁶⁷ Under the model, individuals are free to choose their national association once they reach voting age. It is possible to choose the national association providing the best services and/or more affordable taxes rather than the national association to which one belongs by birth or descent.⁶⁸ Making national associations responsible and accountable⁶⁹ for their actions may also be difficult as, given the 'permanent unfixity of relations of causality between national existence, national identity and national character',⁷⁰ it is unclear to whom exactly they should be accountable.

Contrary to its intention, geographically dispersed minorities are most likely to be disadvantaged. They must either attend schools run by the majority where their cultural traditions are ignored, or rely on their own national association to support them in an area where there may not be the numerical threshold to deliver the services required by the area's small and disparate members.⁷¹ Even if schools were provided by their national associations 'what they learn in these separate schools will be of little cultural value in their local environment'.⁷² This will increase the division between and within national minorities and majorities because:

each community will try to create a monocultural environment in which its members learn *about* the other cultures rather than a multicultural one in which there is direct *exchange* between the different groups.⁷³

Additionally, voluntary membership only works if members do not fear direct and/or indirect discrimination on the grounds of their membership.⁷⁴ If they fear discrimination, they will not become members. National-cultural autonomy assumes all members of a minority are equally committed to the realisation of their cultural identities and that culture is static,⁷⁵ as 'such constructions do not allow space for internal power conflicts and interest differences within the minority collectivity'.⁷⁶ It is unclear what will happen when a new national minority

⁶⁷ Bogdanor, above n 64, 69.

⁶⁸ Though the nationalist tensions in the former Yugoslavia indicate this is not automatically the case.

⁶⁹ Bogdanor, above n 64, 84.

⁷⁰ Nimni, above n 55, 305.

⁷¹ Bauböck, above n 61, 17-18.

⁷² Ibid 18.

⁷³ Ibid.

⁷⁴ Bogdanor, above n 64, 84.

⁷⁵ Nira Yuval-Davis, 'Ethnicity, Gender Relations and Multiculturalism' in Pnina Werbner and Tariq Modood (eds), *Debating Cultural Hybridity: Multi-Cultural Identities and the Politics of Anti-Racism* (1997) 200.

⁷⁶ Ibid.

inevitably develops, as national associations factionalise and immigration increases the number of national groups.⁷⁷ However, voluntary membership does attempt to address the stereotypes associated with national minorities as it avoids the categories of minorities and majorities and ultimately the need for a specific minority protection regime at all.⁷⁸

Ultimately under national-cultural autonomy, despite the division of the concept of sovereignty into territorial and cultural competencies and their allocation to the nation-state and national associations respectively, the nation-state retains territorial control and therefore remains the only voice heard in the international sphere. This preference is likely to continue as nation-states draw together to defend themselves against shifts in their internal and external power balances. Limited forms of national-cultural autonomy have been introduced recently in Estonia, Russia and Hungary. Despite its good intentions and theoretical success, implementation of national-cultural autonomy requires benevolence from the nation-state for its practical success.⁷⁹

IV PRINCIPLES FOR IMPLEMENTING THE RENNER MODEL

The variety of national minorities and minority situations within Eastern Europe mean there cannot be one solution to the realisation of minority rights. Some national minorities are able to live in relative harmony within the nation-state system when most of the members feel their rights are already realised adequately. However, it remains that there are many entrenched, often violent conflicts between nation-states and their national minorities for which an adequate solution is yet to be found. The national-cultural autonomy theory, whilst imperfect and unable to resolve all problems, provides a valuable insight into an alternative means of conceptualising the tensions between nation-states and national minorities and what it means to adequately realise minority rights.

A series of principles for arbitration develop from an understanding of the national-cultural autonomy theory. These principles move beyond the existing literature and may be adapted to provide a practical way forward from the complexities of minority rights' realisation. These principles have been extrapolated from the preceding analysis on the basis that the way to move from the imperfect solutions presented is to implement a practical solution that will substantially allay the fears of both parties. In so doing, it is necessary to focus on what each party *needs*, and require both to make concessions to achieve adequate realisation of those needs. For the national minority, they must concede their desire for their own nation-state in return for the freedom to preserve their own distinct culture. For the nation-state, they must concede that sovereignty is divisible and grant legal and administrative

⁷⁷ The number of national associations could be endless, something which the EU has recently highlighted as a problem. Eurostat and European Commission, above n 23, 14-15.

⁷⁸ Nimni, above n 55, 298.

⁷⁹ Bauer, above n 57, 287.

rights to the national minority in return for the national minority's allegiance to the nation-state and assurance that no moves toward secession will be made.

The first principle in the negotiating process is *an assurance from the national minority that they are not seeking to secede from the nation-state*. This is necessary to overcome the preoccupation of the nation-state with maintaining its territorial integrity and absolute sovereignty that cause the nation-state to perceive the nationalities question as one of security. Not only is the nation-state not required by international law to grant territorial autonomy to national minorities, but to grant such autonomy would not automatically protect cultural rights such as language, customs and education, which are arguably more important to the preservation of collective identities. By conceding the territory issue, the national minority succeeds in removing the main reason the nation-state refuses to realise adequately minority rights: the fear that any rights granted will lead ultimately to the national minority's secession. These fears are particularly acute in Eastern Europe where borders have a bloodied history and kin-state involvement is a regular occurrence. Making this concession initially recognises the nation-state holds much of the power and, with borders settled, opens the way for the nation-state to make significant concessions on issues important to the national minority.⁸⁰

Second, *the nation-state must acknowledge that the national minority is entitled to maintain its distinct cultural identity*. By recognising the existence of the national minority's distinct cultural identity and its right to maintain that identity, the nation-state is protecting the physical integrity and identity of the national minority, providing the basis for formal and substantive equality. This principle reflects the importance of maintaining the national minority's distinct cultural identity, and fulfils the need for the national minority to feel their entitlements are long-term rather than temporary. This principle attempts to reverse the negative effects of state nation-building, during which the nation-state actively destroys the distinctive cultural identity of the national minority in order to construct a homogenous nation-state identity. This principle ensures that if national-cultural autonomy was implemented, it would work because the minority would not fear direct or indirect discrimination.

The third principle, that *the national minority commits itself publicly to allegiance to the nation-state in which they reside and that the nation-state commits itself to publicly acknowledge the freedom of the national minority to maintain its identity and to protect the national minority from discrimination*, must be maintained for reasons similar to the first two principles. However, this principle is specifically directed to decreasing the interference from the national minority's kin-state, which is a particularly strong feature in Eastern Europe. It also gives concrete assurance to the national minority that their differences are respected and protected in the long-term.

⁸⁰ Keating, above n 7, 154.

The fourth principle, that *the nation-state acknowledges that the law must respect the freedom of the national minority to maintain its identity though without imposing an obligation on the nation-state to expend its resources to assist the national minority*, focuses on protecting and promoting the rights of the national minority. Whilst the national minority must concede they will not receive financial assistance from the nation-state, the freedom to determine those rights which are relevant to their situation and thereby exact greater ownership over the process should not be underestimated. This prevents the application of blanket minority rights which are not specific to the particular needs and situation faced by the national minority. This principle provides not only legal support for the national minority, but also influence over administration as the national minority may choose how to preserve its cultural identity.⁸¹ According to Renner,

proportional representation, minority representation and curial voting are incomplete forms of realizing the basic idea. For they realize it merely through the electoral and procedural rules of the representative bodies. In this way, they guarantee the nation[al minority] a legal influence only over legislation, not over administration ..., and this guarantee is itself an inadequate one.⁸²

Thus, the national minority may determine the best way to realise its rights, implementing a national-cultural autonomy scheme if it chooses. This principle also allows for the fluidity of culture and change in the most appropriate means to preserve the national minority's identity over time.

The final principle is required to provide legal influence to supplement the administrative influence granted to the national minority under the fourth principle by fulfilling national minorities' demand for inclusion.⁸³ This principle gives the national minority influence over legislation, particularly that concerning the rights of national minorities, by *granting minorities guaranteed seats in the Upper House of Review such that they have a more meaningful and effective voice in the creation and application of political policy and legislation*. This principle aims to ensure the effective participation of the national minority in the decision making process of the nation-state, particularly those laws which have an impact on the recognition, protection and promotion of the distinct culture of the national minority. Their inclusion in the House of Review ensures national minorities avoid the less-effective consultative fora that exist more for public relations purposes.⁸⁴ The

⁸¹ Max van der Stoel (OSCE HCNM 1992-2001) argued mere representation was not enough to realise adequately minority rights: See Max Van der Stoel, 'Building a Solid Foundation: Minority Rights and their Implementation' (Paper presented at the International Conference on Challenges of the Minority Policy in Croatia Today, Zagreb, 5 April 2001) 6 <http://www.osce.org/hcnm/documents/speeches/2001/hcnmspeech_2001_3.pdf> at 12 October 2002.

⁸² Renner, above n 4, 1.

⁸³ Ephraim Nimni, 'Polynational States: Liberal, Illiberal or Post-Liberal?' (1997) 13 *The ASEAN Bulletin* 3, 10.

⁸⁴ Such as the Roundtable initiative established to improve the chances that Estonia would become part of the EU, rather than a commitment to improving the situation of its national minorities.

national minority is then able to exert greater ownership over pertinent issues such as citizenship, language and education laws rather than having these laws imposed on them with little meaningful consultation, as currently occurs in Estonia. Thus the legislation passed is more specific to the particular needs and situation faced by each national minority.

This final principle also means national minorities will be less vulnerable to the claw-back attempts of the nation-state as they are in closer consultation with the majority, ensuring that their needs are more readily identified. This is necessary as there is clearly a link between governance and the protection of cultural identity. The principle aims to establish a link between representation in the narrow sense of legislative office holding and broader representation incorporating the minority's 'concerns and interests in the calculations of politicians belonging to a variety of groups'.⁸⁵ It establishes the possibility of dividing sovereign competencies between the majority and national minority, as under the national-cultural autonomy model, which would enable recognition, protection and promotion of the rights of individual national minorities in the long-term.

The implementation of these principles will therefore vary depending on the particular interests at stake, given the diversity of influences that impact on each minority situation. However, their purpose remains to increase the capacity of national minorities to participate in and direct decisions which affect them.⁸⁶ Whilst 'nationality conflicts (are) a form of politics to be negotiated continually, rather than ... a problem to be resolved once and for all',⁸⁷ it is hoped that these principles may provide a practical way forward from the complexities of minority rights' realisation.

V CONCLUSION

The geo-political developments which characterised the end of the 20th century have resulted in an increasing number of national minorities who require recognition, protection and promotion of their rights so they may retain and foster their unique cultures and identities. However as the preceding analysis indicates, such realisation is far from simple. The complexity of the nationalities question demands attention to alleviate both humanitarian and international security threats and simultaneously prevents any universally applicable resolution. Ultimately, the problem stems from the failure of the state and nation to coincide. Any solution involves challenging the assumptions on which the nation-state system is premised. However, as Renner wrote over a century ago, the greatest challenge is establishing and maintaining the goal. It is this clear goal of the realisation of minority rights that must be achieved

⁸⁵ Jonathan Stein, 'National Minorities and Political Developments in Post-Communist Europe' in Jonathan Stein (ed), *Politics of National Minority Participation in Post-Communist Europe: State Building, Democracy and Ethnic Mobilisation* (2000) 11.

⁸⁶ Van der Stoel, above n 81, 3.

⁸⁷ Keating, above n 7, 3.

through the model that develops from concessions made by both the nation-state and national minority.

A *The Complexity Of The Nationalities Question*

Whilst there are many national minorities who desire realisation of their rights to formal and substantive equality so they may retain and foster their unique cultures and identities, there is an enormous diversity of situations and influences which impact on each national minority. Thus, finding a universal solution would prove virtually impossible. These multifarious situations are further complicated by the reality that 'nations are created, reinvented and transformed all the time'.⁸⁸ Thus, even if there was a single model solution, it would lose its effectiveness over time. Consequently, each situation must be considered in its own right. This is why the model, which aims to achieve compromise between parties on key issues, has been proposed to initiate this process of situation-specific resolution.

Recognition, protection and promotion of minority rights is more than symbolism, as it alters the inherent social, economic and political relations of power between the majority and minorities.⁸⁹ Nieguth argues that 'institutions and culture cannot meaningfully be separated. Instead, they are mutually interdependent'.⁹⁰ Consequently, everything the nation-state does has significant cultural implications and a direct impact on the self-expression of national minorities. No matter whether the nation-state imposes standards which limit the autonomy of the national minority and potentially curtails the range of cultural traditions transmitted between generations, or whether the nation-state fails to intervene at all, subjecting the minority to the whim of the majority, 'these biases perpetuate existing power inequalities and socio-economic disparities among groups'.⁹¹

This recognition and accommodation of national minorities is possible if the existing structures of privilege are recognised and the norm of a uniform nation-state is set aside.⁹²

B *Challenging The System*

This article has argued that within the current constructs of the nation-state system, attempts to realise the collective rights of national minorities are subject to severe constraints. Attempts to reform the system and move away from the territorial focus

⁸⁸ Keating, above n 8, 44.

⁸⁹ James Tully, 'Introduction' in Alain-G Gagnon and James Tully (eds), *Multinational Democracies* (2001) 15.

⁹⁰ Tim Nieguth, 'Privilege or Recognition? The Myth of State Neutrality' (1999) 2 *CRISPP* 112, 120.

⁹¹ Ibid 122.

⁹² James Tully, 'Justice and Stability in Multinational Democracies' in Alain-G Gagnon and James Tully (eds), *Multinational Democracies* (2001) 35.

of the nation-state, by means of national-cultural autonomy initiatives,⁹³ also fail to circumvent these dominant entrenched assumptions.

One of the principal assumptions whose longevity prevents realisation of minority rights is the absolutist notion of nation-state sovereignty. It is possible however, to have certain competencies outside of and parallel to this sovereignty. National-cultural autonomy deconstructs sovereignty into different competencies that are then negotiated into parallel spheres of government. The assumption that the nation-state is the only means to guarantee one's rights is 'undermined by the increasing separation of rights from the state and the construction of new spaces of democratic discourse'.⁹⁴ There is a need for 'forms of asymmetrical government [to be] ... refurbished'.⁹⁵ The 'task must be to sustain and encourage [new spaces of democratic discourse] at multiple levels, corresponding to the multiple levels of functional government'.⁹⁶ Thus it may be possible to recognise sub-statal interests as stronger international players and recognise a form of self-determination for national minorities that does not require the creation of their own territorial nation-state. National-cultural autonomy attempts to realise minority rights by establishing a multi-nation-state. Yet the practical implementation of such transformations is far from straight-forward.

The principles proposed provide a starting point which aims to move forward from the imperfect solutions proposed to-date and realise minority rights that are particular to the specific minority situation faced. Each principle aims to achieve a meaningful and long-term solution through negotiating a compromise over the key issues of the sovereign rights of the nation-state and cultural rights of the national minority. In this way the tensions that exist between national minorities and their majority counterparts may be reduced, if not completely overcome.

The implementation of these principles requires each side to compromise and pursue only those needs most pertinent to the expression of their cultural identities or nation-state sovereignty and territorial integrity. Whilst resolution will never completely satisfy all stakeholders, a solution that satisfies more than the current nation-state system does is possible with a cooperative and flexible approach which realises that 'the nation-state as we have known it ... is merely one way of organizing the polity'.⁹⁷ The national-cultural autonomy model provides such a guide for refining the idea of the state itself, and the principles outlined provide the practical impetus for negotiation and compromise between nation-states and their national minorities. Whilst too complicated to resolve in any final sense, the realisation of minority rights can be managed assuming there is some level of

⁹³ Such as those in Estonia, Russia and Hungary.

⁹⁴ This is reflected in the growing reality that the nation-state is no longer the only subject of international law. See Keating, above n 8, 56, 64.

⁹⁵ Ibid. See Ferrán Requejo 'Diferencias Nacionales y Federalismo Asymétrico' *Claves de Razon Practica* (1996) 59, 24-37.

⁹⁶ Ibid.

⁹⁷ Ibid 2.

goodwill.⁹⁸ Not only do we understand and see Renner's goal, but we now have the ability to take the first steps towards it.

⁹⁸ Kymlicka, above n 1, 193.