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DE-TERRITORIALIZING MINORITY RIGHTS

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DE-TERRITORIALIZING MINORITY RIGHTS: THE APPLICATION OF
NON-TERRITORIAL AUTONOMY FOR DISPERSED MINORITY
COMMUNITIES

A Master's Thesis

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ABSTRACT

DE-TERRITORIALIZING MINORITY RIGHTS: THE APPLICATION OF NON- TERRITORIAL AUTONOMY FOR DISPERSED MINORITY COMMUNITIES

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The traditional understanding of self-determination vis-à-vis territory is problematic in addressing the needs of dispersed and/or migrant populations, and alternative arrangements of self-determination must be examined. The Non-territorial autonomy model has acquired a significant level of attention in the last two decades as an alternative to territoriality. This dissertation examines the prevailing international practice of self-determination through territorial statehood or territorial autonomy in relation to diffused ethno-national communities. It problematizes the conventional understanding of territoriality for not being suitable for dispersed minority communities. It uses the Roma population of Europe as a case study to highlight the shortcomings of the territorial model in solving the self-determination issues faced by dispersed minority communities. The dissertation suggests that non-territorial autonomy model proposed by Karl Renner and Otto Bauer function to de-territorialize minority rights and serve as an alternative solution to the complications faced by dispersed communities. Non-territorial autonomy offers a novel way to interpret and understand the concept of self-determination.

Keywords: Majority-minority conflict, Non-territorial autonomy, Roma, Sovereignty, Territoriality

ÖZET

AZINLIK HAKLARI VE BÖLGELİLEŞTİRİLME: BÖLGESİZ OTONOMİ MODELİNİN DAĞINIK AZINLIKLARA UYGULANMASI

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Bölgesellik üzerine kurulu olan geleneksel özerlik anlayışı dağınık veya göçmen nüfuslarının geleceklerini tayin etme ihtiyaçlarını karşılama konusunda sorunludur; bu nedenden dolayı alternatif otonomi modelleri incelenmelidir. Belirli bir bölgeye ait olmayan özerlik modelleri (Bölgesiz Otonomi) son zamanlarda daha fazla ilgi görmeye başlamıştır. Bu tez bölgeselliğin uluslararası uygulamadaki rolünü ve bunun dağınık azınlıklar üzerindeki etkisini araştırmakta. Bu tez geleneksel bölgesellik üzerine kurulu olan politik sistemi dağınık azınlıklar için uygun olmadığını savunmakta. Avrupa'daki Roma nüfusunu örnek alarak bölgesel modellerinin dağınık azınlıklar için yetersizliklerini ortaya koymaktadır. Bu tez Karl Renner ve Otta Bauer'ın ortaya koyduğu modelin azınlık haklarını bölgelileştirmekten çıkardığını ve azınlıkların karşılaştığı politik sorunlar için uygulanabilir bir alternatif model oluşturduğunu savunmakta. Bölgesiz otonomi modeli özerlik kavramını yorumlamamızda ve anlamamızda yeni bir yol göstermekte.

Anahtar Kelimeler: Bölgesellik, Bölgesiz Otonomi, Çoğunluk-azınlık çatışması, Egemenlik, Romanlar

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CHAPTER 1

INTRODUCTION

During the last fifty years, Western societies have become increasingly multicultural, and have failed to accommodate diverse groups within the democratic structure (Nootens, 2006). A persistent problem in societies is how to organise multi-ethnic and multi-nation states so that majorities and minorities can coexist without alienation of one group or the ensuing ethno-national conflict. This dissertation explores ways to alleviate majority-minority conflicts by proposing and answering two main research questions (1) how does International Relations norms hinder minority self-determination, and (2) to what extent is the non-territorial approach a viable solution for highly dispersed and stateless communities, such as the Roma?

By answering the questions above, this dissertation attempts to theoretically problematize the normative territorial hegemony of International Relations and offers non-territorial autonomy as an unconventional approach to self-determination for non-territorial groups. The purpose here is not to undermine or reject the usefulness of territorial solutions, but it is to uncouple minority self-determination and territoriality. The goal is to show the negative consequences of the uncompromising territorial

approach to minorities and expand the instruments available to different minority groups by setting forth alternatives.

I argue that the prevailing international practice of self-determination through territorial statehood or territorial autonomy is not suited for diffused ethno-national communities, and, as such, it keeps populations that are dispersed across several nations politically subordinated. I further argue that the non-territorial autonomy model proposed by Karl Renner and Otto Bauer function to de-territorialize minority rights and serve as an alternative solution to the complications faced by dispersed communities. Non-territorial autonomy offers a novel way to interpret and understand the concept of a nation. The method of non-territoriality does not require from communities to have a certain homeland, or the aspirations to secure one in order to enjoy autonomy. Non-territorial approaches to autonomy problematize the requirement of territory for the recognition as a nation.

It is important to research alternatives to the current international order of nation-states with its emphasis on territory for several reasons. The practical reality of the number of ethnicities, nations, religions and other non-dominant groups bring the question of the feasibility of the current order into question. Minority consciousness further problematizes the current order due to the conscious desire and efforts by minority communities to take part in national and international politics as equals. The historical conflicts and the current wave of migrations hinder the minority issue a salient subject of study. Nation-states are currently and will be even more radically challenged in the near future from minorities who desire institutional arrangements that allow for the full participation, protection and self-determination that is equal to nations with states. To prevent the conflicts that may arise and the dissemination of states alternative

arrangements that constitute an inclusive organisational structure is a necessity. In this dissertation, I attempt to explore different arrangements that could serve as a starting point to envision alternative arrangements to the current territorial model.

Numerous theories of International Relations challenge the reality of territories.

Constructivist theories envisioned the territorial lines as imaginary spaces that are socially constructed through a historical process with no tangible universal value to it of itself. Postmodern theories investigate how a specific structure of space constitutes power relations and the consequences of this. In this manner, postmodern theorists view territorial nation-states as a specific arrangement that constitute power relations and dominate knowledge on issues of minorities to benefit certain groups. Marxist theories of borders have challenged territory as a tool of the capitalist class to undermine and subjugate the working class to the imperialist ideals of the bourgeoisie.

Critical theories have helped the (re)thinking of borders by emphasizing the process of bordering, re-bordering and de-bordering challenging the space, territory and identity relationships of conventional approaches. Although the above theories and others have problematized the reality of borders, there is a gap in examining borders in relations to dispersed minorities that demand nation status. These theories have challenged the ontology of territory but have lacked to offer alternatives that could go step beyond ontology to a structure that could be of use to deal with minorities. My aim in this dissertation is not to undermine the various theories of International Relations that offer a challenge to territoriality, but it is to help further ground these criticisms by providing a direct challenge to territorialism through the lens of Renner and Bauer's non-territorial model.

The focus point of this dissertation is on the international level, because it is the most appropriate level of analysis for examining the self-determination claim of peoples that are spread across various states. Domestic level of analysis can only capture certain aspects of communities that are distributed across territories. State level investigation can be useful to observe differences and similarities in policy towards dispersed populations, but it will not allow the assessment of groups that demand international recognition as a nation. Therefore, an international perspective allows capturing of the situation of dispersed groups from a macro point of observation. Although dispersed communities are not homogenous in many aspects, their desire to be recognised as individuals coming together to represent one nation shows the necessity for an international analysis regarding their demands for nationhood.

The European approach to national minorities has long been conceptualised in terms of territoriality (Delanty, 1997). This notion of territoriality in dealing with minorities is intrinsically connected to the nation-state model that emerged with the Peace of Westphalia (Nimni, 2005). Within this framework, minority rights have mostly been understood on the basis of the nation-state model. Consequently, the solution to the problem of minorities in Europe has mostly been in terms of territorial autonomy, which is a replication of the elements that are constitutive of the state-territory and jurisdiction system to lower level regional governments (Quer, 2010). Since the Peace of Westphalia, ethnic and national homogeneity has emerged as the essential characteristic of the nation-State model in Europe (Nooten, 2006). Due to this historical experience, which gave rise to the contemporary dominant political understanding of ethno-national uniformity within states, the traditional instrument for minority protection has been linked to specific territorial spaces (Nooten, 2006:36-39).

The territorial model serves as a possible solution when the minority community is concentrated in a certain territory, but communities that are not territorially definable remain unprotected and in many cases are deemed invisible. Europe has mostly turned to multiculturalism and integration policies to deal with the issues of minorities. During the enlargement process the European Union developed minority protection as a criteria for membership. Under the supervision of the European Commission new member states in the 2004 enlargement rapidly worked on getting their minority regimes up to standard to achieve membership. Although the European Union set forth minority criteria for membership it did does not have a coherent minority policy and usually laws for the protection of minorities that included anti-discrimination legislations was enough for membership into the Union.

The intensification of globalisation, immigration and inter-connectedness have all challenged the effectiveness of the nation-state model in dealing with minorities (Quer, 2010:7). Globalisation plays an important role in encouraging minorities to explore new possibilities for autonomy within the changing global order because of the nation-state's weakening control over territory and social integration (Keating, 2001). Keating (2001) argues that the mix of globalisation and improved technology have resulted in the erosion of the nation-state from above, below and laterally. From above, it is being pressured by Supranational and Transnational Institutions; from below, there is pressure from sub-state groups desiring greater control; and laterally, the market erodes the states permanency and superiority (Porter, 2003:53). Dispersed minorities are not immune to these changes and are increasing pressure on the nation-state to realise their rights by reacting to the centuries of dominance by the nation-state model. The multicultural character of Western societies are no longer territorially confined and the expansion of

minority rights claims by dispersed ethno-national and religious communities pose new challenges to the West in general and Europe in particular.

Dispersed minorities are groups that are dispersed in a territory of one or more countries. In these circumstances, the territorial autonomy model is not able to serve as a viable instrument for minority protection or representation. Dispersed minorities need alternative arrangements that will accommodate their socio-political needs. Different forms of non-territorial models of self-determination have to be offered as an alternative solution to those communities where territory is not a constitutive part of the group identity. Non-territorial autonomy, as formulated by Karl Renner and Otto Bauer, offers an answer to dispersed stateless ethno-national groups by providing self-determination through participation and non-territorial autonomy for minority communities without the disruption of states territorial integrity.

The emphasis of the international system on territoriality as the basis of political legitimacy causes stateless communities (such as the Roma) that do not want to establish territorial states to be politically subordinated (Klimova, 2007:407). The international system encourages communities seeking self-determination to claim territorial autonomy, but leaves dispersed communities without a remedy for their needs because territorial independence or autonomy is not suited to them. This inflexible adherence to territoriality in claims of self-determination or autonomy causes dispersed ethno-national groups to become severely alienated from political representation and participation in domestic and international politics (Klimova, 2007).

Today, there are an estimated 10-12 million Roma living dispersed across Europe, and are considered to be one of Europe's largest minority. The Roma have been subjugated to the sovereignty of majority nations and bound to the institutional arrangements that

have disadvantaged them from achieving recognition and protection, at both the national and international level. Although in recent years the Roma have been able to achieve some success, their demands for self-determination remain unfulfilled because they do not fit into the conventional interpretation of self-determination as only exercisable through territoriality (states or their subunits). The Roma community particularly face the territorial problem because of the nature of their socio-cultural organisation as dispersed across borders of various nations. International Relations theories possess a limited normative and a conceptual approach that is able to challenge and offer an alternative to the territorial dilemma for dispersed communities. Although there are non-mainstream theories that challenge the ontology of borders, there is still a significant gap in within International Relations regarding the relationship of territoriality to dispersed minority groups.

The call from the Romani communities for self-determination has until recently been largely ignored by academics. Kymlicka (2000) suggests that the normative theorists have not considered suitable political arrangements for the Roma, instead typically emphasizing sociological issues. Usually, academics opted for the integration approach and thought that the problem could be resolved by integrating the Romani to the majority society (Basra, 2002), which we now see has not been a viable solution. Yet, in recent times (still not explored comprehensively), non-territorial nationhood and various political structures that could allow for non-territorial models have been gaining attention amongst intellectuals such as Rainer Baubock, Genevieve Nootens, Ephraim Nimni and Will Kymlicka. However, none of the scholars mentioned specifically investigate the Romani case. This dissertation explores a possible step forward in filling in this gap by making an effort to disengage the conventional understanding of self-

determination and autonomy as relational to territoriality by examining the Roma as a case study.

This dissertation seeks to examine the territoriality principle in International Relations and how it serves as an obstacle for dispersed minorities. It aims to challenge the normative claim of territoriality as an indispensable part of self-determination and offers an alternative model of self-determination that is decoupled from territoriality. To do this, it employs a qualitative case study research methodology. A case study allows for a more in-depth examination of the subject at hand, one that considers the multiple levels of interaction between cultural, historical, social, political and economic factors that influence individuals and groups. The case study approach enables the researcher to study the interplay of these complexities that cannot be expressed or captured by numerical data.

The population chosen for this research is the Roma communities of Europe. The characteristics of the Roma society do not fit into the conventional minority framework. Being spread across various states and constituting one of the largest minority groups in Europe, but still remain politically subordinated at all levels of political governance, make the Roma an important case of analysis. The plea from the Roma elites in the last several decades to be recognised as a non-territorial population and participate as a legitimate nation in the international governance structures show the significance of reassessing the relationship between territory and self-determination in the twenty-first century.

The conducted analysis for this research has been based on primary and secondary sources. Primary sources include policy documents, declarations and conventions applicable to the Roma population. These documents have been identified and gathered

through the official web pages of the UN, EU World Bank, ECMI and other relevant organisations. The primary sources are utilised to highlight the formal position of international and regional organisations in relation to minority issues in general and the Roma in particular. Primary sources are also examined to illustrate the general position of the Roma elites and to an extent the communities.

An assessment of these sources shows that self-determination is still viewed from a state-centric perspective by states, regional and international organisations. In contrast to the formal perspective, the Roma representatives claim that self-determination need not be connected to a territory and non-territorial nations also have the right to participate at the international level as autonomous nations. Secondary sources engaged are based on literature on the subject from academic journals, books and other important texts in relation to the Roma. These sources are utilised to interpret the primary sources and to engage in a theoretical debate on the issues surrounding minority rights, recognition and participation.

The analysis in this research is primarily based on primary and secondary literature. I analyse the literature on minorities, territoriality, autonomy, self-determination and sovereignty. By analysing these concepts within the International Relations literature I aim to uncover the dominant understanding and critique towards territorial role in minority rights regimes. I then move ahead to investigate the literature on the Roma and the intersection of the above concepts to the Romani case to uncover the relationship between territory and the Roma rights claims. Finally, by using various primary documents and secondary literature on the Roma and self-determination I apply the non-territorial autonomy model to the Romani case. In this sense, this research undertakes a systematic review of the literature on the territory, minority and Romani rights and

follows a theoretical analysis method to analyse the literature. The goal is to understand the concepts mentioned earlier to reach a judgement on key concepts and theories in understanding the current international political context and its relationship to minority right in general and dispersed minority communities in particular. The research also makes a theoretical comparison between territorial autonomy and non-territorial autonomy to reach an understanding of the existent concepts widely used in International Relations and the interlinkage of them to different theories.

This dissertation reasons that Non-territorial Autonomy model is an effective way to protect minorities beyond the nation-state paradigm. It aims to employ NTA model to the international sphere. In an attempt to do this, the study uses legal, sociological, political and historical analyses on the nation-state, multiculturalism, minority rights and other related matters. The aim is to show the unquestioned foundation of territoriality in international relations and offer an alternative vision of self-determination at the international level that is detached from territoriality.

The dissertation comprises of five chapters. The first chapter introduces the dissertation and continues in the second chapter to investigate the conceptual and theoretical debates surrounding minorities, aiming to provide a succinct discussion on territorial and non-territorial autonomy, than moving forward to explain the theoretical problems of territoriality for minorities. Afterwards, the central elements of Karl Renner and Otto Bauer's non-territorial model will be introduced and elaborated on. The discussion will show that the territorial model is incapable of meeting the demand for autonomy by dispersed minorities. Looking at the case of Roma, the chapter will specifically highlight the territorial underpinning of international relations and organisations, and demonstrate how territoriality serves as an obstacle and an instrument of subjugation for the Roma.

Considering the changing nature of the idea of minority throughout history, the third chapter will discuss the evolution and emergence of the concept of minority in the international political context. The chapter will discuss the birth of the nation-state and explore how this has created a framework where territoriality and nationhood has been normalised as indispensable to one another. Explicitly the chapter will look at the consequence of territorial normalisation on the Roma. In addition, the chapter will investigate the condition of the Roma in several European countries to better understand the local situation and context of the Romani peoples. Observing the different domestic policies towards the Roma will demonstrate why an international non-territorial nation status is a desirable one for the Romani community. The final section of this chapter will trace the historical-political evolution for a claim as an international nation by the Roma. This is important to explore because it will show the congruence between contemporary Roma desire to be given the status of a nation and non-territorial autonomy model. Based on the findings in the earlier discussions, the fourth chapter of this dissertation will assess and apply the non-territorial autonomy model to the Romani context. The conclusion is that the territorial dominance and norms in the international domain impede on the Roma struggle to partake in international politics as a recognised equal nation. The non-territorial model presented by Renner and Bauer, offer not only minority communities without a state a possible method to participate in international politics, but also contributes to constructing new ways to envision state/nationhood: one that problematizes and challenges the Westphalia model. In the final chapter the conclusions drawn from the dissertation are discussed.

CHAPTER 2

THEORETICAL FRAMEWORK

2.1 Relevant Concepts

Before moving ahead, it is essential that we address some key concepts that intersect with minority issues. In this section, I examine the concepts of minority, sovereignty, autonomy, self-determination and territory. There are no universally agreed upon definitions of these conceptions. They could be assessed from a national, international, legal, cultural or historical point of view. The aim here is to give an overview of the debates on the definition of these concepts to better understand them in relation to minorities. This section explores the relationship of the above concepts to territory and minority. It shows how territoriality has become an essential characteristic in describing and enforcing these concepts causing minorities to be subordinated to the territorial supremacy existent in political and legal frameworks of national and international bodies.

2.1.1 Minority

Defining minority in general terms is not an easy task, since it requires sociological and historical considerations which naturally imply continuous change over time. In the broadest sense possible, a minority is a group of people that can be identified vis-à-vis the rest of the population with one or more distinctive features (Malloy and Palermo, 2015). However, the number of distinctive features could be infinite: people can belong to a minority because of their gender, religion, age, sexual preference, political view etc. Nevertheless, some attributes of minorities have come to be nearly universally accepted. The elements of numerical inferiority, non-dominant position and/or discrimination have commonly been agreed upon as features of minorities (Packner, 1993; Malloy and Palermo, 2015).

In some circumstances, countries only recognise minorities that are legally entitled with the status of a minority group. For example, since the signing of the Treaty of Lausanne, Turkey legally recognised all non-Muslim (Armenians, Greeks and Jews) groups as ethnic minorities (Akgonul, 2013). However, Muslim groups were not endowed with the minority status. Kurdish population in Turkey, the largest minority approximately making up 15-18 percent of the population has not formally been recognised as a minority group (Akgonul, 2013). In reference to the Roma, the Chapter on “European Perspective” will examine the status of the Roma in various countries. Here it is sufficient to highlight that national governments in certain instances define minorities by proving legal entitlement.

Minorities are also a concern of international law and organisations. Although there is no internationally agreed definition as to which groups constitute a minority, it is often

expressed that the existence of a minority is a question of fact and any definition must include objective and subjective factors (Minority Rights: International Standards and Guidance for Implementation, 2010). Objective factors include the existence of a shared ethnicity, language or religion, while subjective factors refer to the freedom of the individuals to identify themselves as a member of a minority and the perception they have of themselves within the population of a state. Most widely applied definitions of minorities take into consideration objective and subjective elements.

Although a consensus on a definition has not been reached some important definitions have been offered over the years. According to a definition offered in 1977 by Francesco Capotorti, Special Rapporteur of the UN Sub-Commission of Discrimination and Protection of Minorities, a minority is:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Minority Rights: International Standards and Guidance for Implementation, 2010: 2).

The definition above highlights the objective and subjective elements of defining minorities. This definition has been challenged for requiring minorities to be citizens, but in general has been a widely adopted classification. Tsekos (2002) argues that the absence of an agreement on the definition of minorities is not solely due to problems of semantics, but is purposeful in that states are reluctant to grant minority status to groups out of fear of losing sovereignty. The definitional issue, according to Tsekos (2002) is intertwined with the idea that states are the most effective organising framework for law and order and state sovereignty should be prioritised by international institutions.

2.1.2 Autonomy

Autonomy may come in two common forms: territorial or non-territorial. Autonomy for national and ethnic minorities, usually defined as territorial autonomy, may have different forms and degrees. These may include separate political representations, different education programs and different schools in a given territorial space. For non-territorial autonomy, the intent is not on jurisdiction over a spatial area, but it is the exercise of power given by a superior authority to a lower level authority to pursue the general interest of the whole population that is subject to it regardless of spatial location. The important distinction than is between jurisdiction over territory and jurisdiction over a group of people.

The concept of autonomy has its origins in Greek; ‘auto’ meaning ‘oneself’ and ‘nomos’ meaning ‘laws’ (Dinstein, 1981). Therefore, autonomy in its original form refers to one’s rule over oneself according to one’s own rules and regulations. However, the concept of autonomy is used in a wide range of disciplines and can have different meanings according to the context. Osipov (1993:394) argues that autonomy in law and political science refers to the “relative or partial independence of the part with respect to the whole entity.” Furthermore, Lapidoth (1996:31-33) conceives of autonomy as a community’s right to legislate and implement laws according to the demands of its representatives. More specifically, Quer (2010:10) refers to autonomy as a set of differentiated rights that aim to preserve the characteristics which distinguish (a minority) from the majority, and aims to satisfy the special needs of the particular community.

Although the concept of autonomy does not inherently refer to a specific arrangement, it has often been associated with territoriality. John Agnew (1994) argues that International Relations theories fall prey to the “territorial trap” which has come to dominate thought on issues of identity at the state and international level. Agnew (1994:62) claims that politics become possible only on the basis of “territorial affiliation” rather than non-spatial/categorical identities. The ascendancy of territoriality meant that minority rights in general and autonomy in particular came to be practically synonymous with territory.

Within academia and politics the terms autonomy, as mentioned above, are commonly understood in reference to territoriality (Ruggie, 1993), which can be exercised by states or their administrative subunits (federal, local or provincial). Autonomy from this traditional perspective is geographically based and is part of the greater political and judicial entity, but with certain administrative powers given to a geographical region (Cornell, 2002). This notion of autonomy addresses national and ethnic minorities by giving them varying degrees of control over a territory. These may include separate political bodies, systems of political representation, control over education programs amongst other powers, but the salient point is that the exercise of autonomy is pertinent to the territorial boundaries legally or constitutionally set out (Quer, 2010:4; Nieguth, 2009).

2.1.3 Sovereignty

Sovereignty is the basic organising principle of the Westphalian model of state foundation that is still dominant in international practice today. Sovereignty is understood to be the indivisible political authority of a state. Seen from a historical

perspective, sovereignty is linked to the role of sovereigns, who had absolute power.

Today, it is generally agreed that sovereignty is the equality of states as it is endorsed in Article 2 of the UN Charter, it implies that the sovereign right of each state are limited by the sovereign rights of other states (Pentassuglia, 2002:303). In this respect, sovereignty is essentially equated with independence and non-interference; the authority of a state to exercise its powers without any imposition from an external authority. However, international and regional norms and laws have recently imposed certain limitations on independent sovereign states, such as the use of force and specifically the treatment of minorities.

In relation to minorities, the sovereignty of the nation-state prevents the full attainment of rights by groups because the dominant nation that has acquired a state (territory) is the one exercising control over decisions (Camilleri and Falk, 1992). By the 19th century, constitutionally recognised sovereign entities were either isolated citizens or the indivisible state, both of which assumed that the nation-state was a homogenous entity (Porter, 2003:59). Karl Renner called this central-atomist principle, claiming that external sovereignty has ‘far reaching implications for the internal structure of states, and the relationship between state and civil society, as the inhabitants (the atoms) of the nation-state (the central structure) are not homogenous (Porter, 2013: 57). The external norm and the slow entrenchment of sovereignty (gained through territorial control) as the criteria to be recognised as legitimate by the international community hindered the efforts of minorities to be seen as sovereign authorities over areas of concern to them and subjugated them to the sovereignty of majority nations or states (Hannum, 1990). Hannum (1990:16) argues that sovereignty is universally seen as an attribute of statehood, and that only states can be sovereign. The conventional definition of a state is

found in the 1933 Montevideo Convention on Rights and Duties of States, article 1: The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states (Hannum, 1990:17). The classic definition of a state implies that minorities cannot exercise sovereignty because of the territorial principle. Especially, in circumstances where a minority group does not occupy a defined territory they will not by international standards be given a sovereign status to have control over their affairs.

The Roma communities being dispersed across several states and without a defined territory are rendered subordinate to the sovereignty of nations with a territory (Porter, 2003:61). The sovereignty principle becomes ever more important once the desire of the Roma to be considered a nation with equal status at the international level is taken into consideration. The sovereignty convention restricts such claims to be made on the grounds that sovereignty is only exercisable by territorial states. The relationship between Roma claims to international non-territorial nationhood and the principle of sovereignty will be explored further in later chapters. Here, it is sufficient to point out that the sovereignty norm and jurisprudence plays a negative role in minority claims to self-government.

Despite the continuation and dominance of the principle of sovereignty (indivisible, absolute political authority of states), recently there have been challenges to the idea that the state has full comprehensive and exclusive sovereignty (Lapidoth, 1996). The spread of international and transnational actors has resulted in what was once considered to be the preserve of the sovereign state to become confronted and questioned. However, this process is still in its infancy and minorities continue to be denied participation and

sovereignty over linguistic, cultural, legal and administrative issues pertinent to the survival of their distinct communities (Porter, 2003). To this end, the Romani community is struggling to acquire sovereignty which currently is a prerequisite for self-determination and autonomy and the territorial principle being a prerequisite for sovereignty - the non-territorial nature of the Roma are in stark conflict with one another. Self-determination and territoriality will be discussed below to highlight the personal relationship between these concepts.

2.1.4 Self-determination

Self-determination in its most basic form is the capacity of a person or a group to “make its own rule” and conduct their affairs according to how they see fit. Yet, in international norms and laws self-determination is only granted to peoples defined as “whole populations of an internationally recognised territory” (Shaw, 1996: 71). Article 1 of the UN Charter endows “equal rights and self-determination of peoples” (Charter of the United Nations), however, as Higgins (1994) explains, the context of this article is aimed at the right of peoples of one state to be protected from interference from other states. The salience of territory and its protection within the international nation-state system means the realisation of minority rights is secondary to the preservation of territorial integrity (Shaw, 1996). Ascending from this international territorial legal and normative underpinning, self-determination of minority groups are most often viewed as a threat to the continuation of nation-states.

There are two common forms of minority self-determination that is internationally accepted: external and internal. External self-determination refers to the control over a territory by a minority group; and internal self-determination is when a minority gains a

degree of autonomy within an existing state territory. Apart from these two forms of self-determination, all other notions of self-determination are related to the internal governance of independent sovereign nation-states (Porter, 2003). It is territorial protection that guides and shapes the interpretation and evaluation of self-determination. Shaw (1996:122), for example, notes that the UN and regional instruments which constitute the foundation of the development of self-determination also clearly reject the partial or total disruption of national unity or territorial integrity of states. Self-determination creates an atmosphere of fear for national-states due to the fear of secession or disruption of unity internally.

Self-determination of the Roma are left up to the internal goodwill of nation-states. Although there are certain frameworks that aim to provide self-determination for the Roma (see chapter 2), the enactment of these rights are too often ignored by states. The idea that giving self-determination to minorities may decrease the unity of the nation (majority) and lead to the disruption of state territories plays an extraordinary role in shaping European states action towards the Romani community. Ratner (1996:613) claims that territoriality is “entrenched such that any alternative is not feasible without a transformation of the very basis of international law”, otherwise, states actions will continue to disadvantage those populations it sees as a risk to its territorial integrity. Throughout this section, I argued that the concepts of minority, autonomy, sovereignty and self-determination are viewed as questions of territory and security. Nation-states are hesitant to grant minorities rights because of the fear that it may support the division of nation-state’s population and encourage secessionist movements (Henrard, 2000). This practice is reiterated by the international nation-state system and realised through international norms and legal practices. The underlying cause of the failure to provide

the Roma with national and international self-determination is the focus and importance of territoriality in the international nation-state system. The next section will explore territory and territorialism to investigate the relationship between the above concepts and territoriality.

2.1.5 Territory and Territorialism

Territory is the occupation of a geographical space by a group of people. Territory carries significance in relation to a group's identity, history and collective memory, which then becomes a place of value for the inhabitants of that specific area. Territory has always been a constitutive part of human history due to the simple fact that people must occupy and use territorial spaces for survival. It is with the advent of the nation-state system and its implications on minorities that is of concern for this dissertation. During the 19th century, with the rise of nation-state building, it was imagined that territories would be built on the ideal of "One nation - one state" (Keating, 2008). Dijkink and Knippenberg (2001) argue that territoriality is the current mode of social and political organisation that dominates the international system. In this sense, territory becomes an inherent part of the global political order and for those communities that desire sovereignty, territory becomes the central goal to achieve.

The end of the Soviet era and the ensuing ethnic conflicts in the former Yugoslavia, Georgia, Azerbaijan and Moldova were seen as a threat to the stability of Europe (Dembinska *et al*, 2014). Thus, this era saw the emergence of regional standards for dealing with minorities. The salient question was whether the guiding principle regarding minorities should take the form of non-territorial or territorial models. The persistent contradictions between self-determination of peoples and territorial integrity

of states was a reoccurring issue. Minorities that are territorially concentrated opted for territorial autonomy and in some cases demanding secession (Tesser, 2003). For states with large concentration of minorities in certain territories, the devolution of power was the second best option to avoid conflict and separation. Preece (1997:361) argues that territorial accommodation for minorities were dismissed by the UN, and European standards to an extent recognised territorial autonomy, but formulated it in an ambiguous manner as a last resort. The international normative and legal framework causes a clash between minorities attempt to reproduce the nation-state model and the existing states efforts to renounce any form of threat to the territorial and national unity of states (Cornell, 2002).

The cycle of reproducing the nation-state model through attempts to acquire territory lead to major conflicts between groups that occupy the same geographical space.

Minorities who are strong enough and willing to achieve a state or autonomous region of their own are granted self-determination, and those that cannot or who do not desire to do so are left marginalised in the current global order. Rewarding territoriality with self-government, sovereignty or autonomy reinforces territoriality and conflict while marginalising other options for minorities (Csargo, 2007). Wolff (2009) notes that territorial demands from minorities are more common than non-territorial, not due to all these minorities having a special attachment to a specific territory (although that is a factor as well), but because they view the attainment of a territory as equating with the legitimation of their sovereignty or autonomy. Wimmer (2012) suggests that the territorial principle is so strong in societies that nationalists and member of dominant groups within states reject any notions of subnational autonomous regions because of the ingrained ideology of the nation-state.

The international structures emphasis and protection of the nation-state model as the mode of organisation, and the attempted replication of this by minorities reinforces the traditionalist nationalist pursuit of one state-one nation paradigm. By contrast claims for self-government by minorities in existing states challenges the modern territorial nation-state, usually leading to conflict and civil war. Minorities demanding territorial self-governance are viewed as communities engaging in nation-building and are confronted by majority nations who feel threatened by loss of their territorially defined nations. The relationship between nation and territory are constantly reproduced by social, legal and political discourse and practice making the understanding of territory as a defining characteristic of nation-states. Following from this train of thought, territory is a necessary condition of nation-states, sovereignty and external self-determination.

McCorquodale and Pangalandan (2001) elucidate this relationship:

Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state. The development of the national organisation of states during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the state in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations (McCorquodale and Pangalandan, 2001:870).

The traditional international system imagines that the states as one voice speak for all.

Territorial boundaries become the determining factor for identity and usually representing the majority nations.

Territorial practice that is prevalent in the international system limits non-territorial community's ability to self-govern themselves. The Roma who are objectively not defined by a historically specific territory and do not describe themselves as a territorial community remain at a disadvantage within the territorial practices of the international

system. The Roma do not have the desires to create a territorial nation-state in any of the countries where they reside, but are emphasizing that they are an equal nation with right to self-determination internally and externally. Within the contemporary international order they are protected and given rights that are aimed at specific states to carry out. However, the Roma are looking beyond the human rights discourse, and are demanding control over issues pertaining to their nation. For the Roma, territory does not represent their degree of nationhood and they feel oppressed by the dominance of international territorial practice that has become one of the major sources of oppression for them.

2.1.6 Conclusion

To summarise, in this section I attempted to define and contextualise the concepts of minority, autonomy, self-determination, sovereignty and territory. There are no universally agreed definitions of these concepts. They are contingent and in constant evolution as the international political order evolves. The aim here was to highlight the significance of territoriality in the current interpretations of these concepts by states and international organisations. Territoriality intersects with minorities' right to self-determination and sovereignty. The international order advantages territoriality and leaves communities that are not territorially defined or who have a different understanding of territory marginalised in the global governance structures. The Roma, as we see from the discussions above, are a minority who want sovereignty and self-determination at the national, but more importantly international level, but are hindered by the dominance of territoriality in the practice of international relations. The following section will specifically explore territorial autonomy model for minorities and proceed to

explicate the normative and practical problems of territoriality for the Romani community.

2.2 Territorial Autonomy for Minorities

Territorial autonomy is a form of self-determination that aims to preserve the integrity of the state, but at the same time posing as a solution for minority issues. Territorial autonomy provides different jurisdiction to a territory in which the population is ethnically different from the majority and sets the boundaries and limits of that jurisdictional power to ensure the sovereignty and integrity of the whole state (Quer, 2010).

Giving autonomy to minorities through territorial jurisdiction comes from the century old tradition of understanding self-determination in a territorial rationale. It is important to point out that territorial autonomy refers to the whole population residing in a specific geographical boundary, in this sense, territorial autonomy is a set of particular powers over a specific territory (Hannum and Lillich, 1980). More precisely, Ackren (2009:19-21) defines territorial autonomy as:

Geographically defined areas which differs from other sub-regions in a specific country and has received special status with legislative and/or regulatory (administrative) power. The territory needs a jurisdictional base in the form of being enshrined in the constitution or through an autonomy act of its own in order to be regarded as having a special status.

Therefore, territorial autonomy can have various forms of arrangement according to the degree of powers transferred to the territorial autonomous entity through legal or regulatory means. The broad range of territorial autonomies can be divided into federalism, federation, associated states, confederation, home-rule government and other particular forms of autonomy (Ackren, 2009). Some scholars, such as Daniel Elazar

(1987), suggest that territorial autonomy in nature entails a quasi-federal arrangement and it is through this multi-level division of power that autonomy over territory should be understood.

Hooghe and Marks (2003) argue that there are two types of governance in relation to territorial autonomy. “Governance federalism” which refers to the power sharing between limited numbers of governments and usually operates on a few levels; and a second type of governance with multiple levels of governance that operates on numerous territorial scales. The significant point here is that control over territory is seen as the foundational principle in arranging a degree of self-determination within states. The philosophical and practical outlook from the traditional understanding of autonomy is that control over territory is seen as providing fundamental human needs: identity and security. By devolving power to a local, regional or particular territorial area, the state aims to create sub-territorial autonomous units with limited powers that serve to secure the state from secessionist desires of ethnic minorities and/or conflict.

Territorial autonomy as a tool to enhance minority self-determination has been widely defended by national and international actors.

The territorial autonomy proponents point to several advantages that they see as a feasible path for minority self-determination and state integrity. The first important point in advancing territorial autonomous claims for minorities is the importance of land in many ethno-national narratives (Yiftachel, 2002:219). Looking at the Israeli- Palestinian case, Yiftachel argues that territory comes to take on an essential role in the national cultures of minorities who feel a special attachment to a specific land. In this sense, particular geography may play an important role in the collective imagination of minority groups. The strength of the relationship between a minority group and its

attachment to a specific land will be a significant contributor to demands of territorial autonomy (Basto, 2012:14-17). Territorial autonomy follows the logic of the nation-state model, but at the local level. The logic follows that, if minorities are given a level of self-determination in a region with a particular concentration of that minority then this will stabilize the situation and reduce chances of conflict and secession while providing the necessary self-rule to differentiated communities.

To summarize then, literature on territorial autonomy and minority rights converge on the point that territory plays an important role in minority cultures identity, helps reduce conflict and to a great degree assures state integrity and continuity. The major bridging factor between territorial autonomy and minority claims to self-determination is what Ruggie refers to as the “territorial exclusivity” that has slowly emerged since the fifteenth century as a key norm of organization. The dominance and the legitimation of the nation-state system has led to the normalisation of territorial autonomy as the solution to ethno-national minorities. With the fall of the Soviet Union, ethnic conflict has resulted in numerous secessionist movements around the world and in some cases leading to genocide or other severe attempts at ethnic cleansing. This has resulted in the questioning of territorial autonomy’s virtue in solving the problem of minority representation and self-determination. Miszlivets and Jensen (2013:58-60) argue that in order to produce practical and viable solutions for minority governance, a “leap of imagination” away from the supremacy of the nation state-centric paradigm is necessary, otherwise political imagination is limited to the hegemonic contemporary view (territoriality). Nimni (2013:2) further suggests that the nation state-centric view has become hegemonic and any alternative view challenging territoriality is labelled as

utopian. Nevertheless, in recent years non-territorial autonomy has been gaining greater attention in academia and policy circles.

2.2.1 The Normative and Practical Problems of Territoriality

The Romani participation at the international level is restricted to non-governmental consultative status and to the individual Roma holding positions in various European bodies. Thus, at the international level similar to the state level, Roma communities are denied self-determination rights and are subjected to laws that have been created without their participation. The reason behind this is the priority given to territorial sovereignty which concentrates power in the hands of states and privileges nations who have been aggressive enough to achieve a state (Klimova, 2007:405).

The modern aims of the liberal thought is to achieve equality and build mutual respect between individuals and groups, however, the dominant liberal political tradition still keeps stateless people subordinated (Nootens, 2006). Liberal thought often privileges stability over fairness, divides the world into two categories of ethno-national communities, those with a state of their own and those without, who are subordinated to the will of the dominant group (Nootens, 2006). The main problem with this categorisation is that it supports the argument that self-determination and sovereignty are inherently statist, therefore, the wide application of the right of peoples to self-determination is incompatible with the sovereign territorial ideal of the modern state (Klimova, 2007:408).

In practice, this results in the domination of minorities by majorities because it is usually dominant groups within territories that are characterised as the nation that controls a territory. Nimni (2007) argues that universal territorial commitment forces minority

groups who want to exercise self-determination to do so externally and to achieve this they must acquire a sovereign territorial state of their own. Minorities that cannot or do not desire to create a state are left with no choice but to stay politically subordinated to the government of the majority nation, who might, at most provide internal self-determination through some form of self-government.

The case of external self-determination through territorial independence does not provide a suitable solution for Romani communities because they are living on territories of various states and/or in mixed residential areas (Klimova, 2007). This leaves them with only internal self-determination as an option. However, the models currently in practice only allow internal self-determination to be exercised through territorial autonomy - which is not suitable in the case of the Roma. Semb (2005:529-535) notes that if we accept that a normatively acceptable decision-making power ought to be dispersed on the basis of individuals desire to be politically associated with some people rather than with others, as opposed to solely on the basis of residence, territorial autonomy becomes impractical for the Romani communities because of their geographical dispersion.

Although various forms of non-territorial autonomy have recently been introduced in Estonia, Latvia, Croatia and Hungary, their practical success has been limited because of the restricted support allowed by the nation-state that enacted the constitutional provisions on cultural autonomy (Klimova, 2005). Thus, there does not exist any functioning model of non-territorial autonomy that can be of a good example. As a consequence, internal self-determination becomes only possible through territorial arrangements, which although praised by many scholars, cannot be the solution to a

more inclusive and fair application of self-determination for communities that do not follow the territorial commitment.

Besides the problem of universality, not being applicable to dispersed minorities such as the Roma, territorial arrangements do not address the problem of political subordination of minorities (Bowring, 2005). Territorial arrangements function on the premise of numerical dominance of the majority giving them exclusive control over a territorial space. The application of territorial autonomy allows nationwide minorities to become majorities in a specific territorial region, yet new politically subordinated “trapped minorities” are created (Neuberger, 2001; Nimni, 2005; Klimova, 2007). In this respect, territorial arrangements, whether internal territorial autonomy or external secession, always creates new minorities and inclinations for ethnic discrimination which creates a vicious circle of renewed conflict. Nimni (2007) argues that it is this repeated cycle of creating new minorities that is the major weakness of territorial models.

There lies a problematic relationship between minorities who desire self-determination and the territorial principle that restricts their right to self-determination. The Romani communities do not aspire for an ethno-national control over territory, but are explicit in their demands for self-determination in the form of sovereign decision making on issues relevant to them (Klimova, 2007:405-408). However, the non-territorial interpretation the Roma hold of self-determination goes against the conventional understanding of self-determination as territorial autonomy in the practice of international bodies (Nimni, 2007).

Due to this contradicting position, the Roma are finding it difficult to obtain international recognition that they desire. Legitimacy in the current world order is based on ethno-national territorial control, but this is not a remedy for stateless minorities in

general and the Roma in particular. There needs to be an alternative framework that allows non-territorial minorities to participate in institutions that create rules which govern them.

2.3 Non-Territorial Autonomy for Minorities

It is first important to point out that the non-territorial autonomy model does not reject the need or necessity at times of territorial autonomy, but only that territorial autonomy alone is not sufficient in the 21st century for minorities to self-determine their special needs (Alexander, 2007). The non-territorial autonomy model does not refer to a specific political arrangement of national and ethnic communities. It is instead a generic term that refers to diverse practices and theories of minority community empowerment and self-determination that does not consist of exclusive control over territory (Nimni, 2013).

This approach entails challenging the idea that self-determination and national governance can only take place in the form of territorial representation or through a sovereign state. In this respect, non-territorial autonomy seeks to represent a cultural segment of a population regardless of territorial location. Non-territorial autonomy as with territorial autonomy has different and varied forms. The commonality amongst them is that they challenge the hegemony of territoriality and provide modalities of political representation for minorities and territorially dispersed communities (Nimni, 2001).

The most widely known non-territorial autonomy model is the National Cultural Autonomy (NCA) (see section below for details). The NCA model has its origins in the dying years of the Habsburg Empire. Austrian socialists Karl Renner and Otto Bauer,

attempted to transform the empire from a monarchy into a democratic federation of nationalities. At the time, this model was designed to preserve the Habsburg Empire from disintegrating into various nation-states (Hiden and Smith, 2006). The idea was to provide cultural autonomy to communities regardless of their residential location within a multinational state. It was thought at the time that this would save the Habsburg Empire and provide solutions to central Europe where multiple dispersed nationalities coexisted.

Today, the NCA model has been applied in the capital of Belgium. The impossibility of separating two national communities in an urban environment made NCA a viable solution (Nimni, 2013). The intermix presence of Francophone and Flemish communities in Brussels brought forth the idea that an alternative non-territorial solution was needed to reduce and eradicate the possible conflict between these two groups. The arrangement in Brussels provided non-territorial autonomy along linguistics lines and allows for Francophone and Flemish communities to administer their own educational, cultural and language matters (Stroschein, 2015:26). The Belgium model provided 3 territorial units (Flanders, Wallonia and Brussels) and three non-territorial units (Francophone, Flemish and German) (Stroscheing, 2015). The territorial units function to operate issues pertinent to territory such as economic policy, infrastructure and transport. Non-territorial units control matters relating to education, language, culture and healthcare. By providing representation and governance to the linguistic-cultural communities in Belgium the non-territorial autonomy model has pacified what could have led to “disputes between groups in Brussels by removing these issues from the arena of inter-group debate and placing it into the domain of each linguistic community (Stroschein, 2015:27).

In an institutional format, the NCA model proposes for state organization to be made on a two tier system as we see in the Belgium experience. This would entail cultural autonomy to different communities irrespective of their location and the different autonomous bodies would combine to form a single body endowed with legal or collective rights. A similar version of NCA has also been implemented in Hungary, Russia and Estonia. The practical merits of the model are still unknown due to the lack of empirical studies. NCA than concentrates on creating autonomous collectives which join to create a whole, but cultural elements would be legislated by the autonomous collective bodies or representatives.

Another model under non-territorial autonomy is the consociationalism. This model serves as an alternative to the one person one vote system that has so often engendered the tyranny of the majority. Consociationalism is a more top down and elite centered approach in comparison to the NCA and is organized around the principles of grand coalition across cultural communities (Nimni, 2013). This arrangement of minority autonomy would entail mutual veto on matters concerning the minority communities, proportional representation and the segmental autonomy for each community (Nimni, 2013:17).

The aim here is to give minority communities power sharing to make them feel that they are represented partners instead of competing voters across party lines. The consociationalist arrangement aims to keep the integrity of the state by providing an alternative to territorial nationalism and secession desires. This model led to the resolution of the conflict in Northern Ireland by pacifying the different communities in the country. This model provides concrete organizational strategies in dealing with ethno-national communities through democratic power-sharing methods that serve to

make available greater representation and self-determination for minorities and territorially dispersed communities.

The final variant of non-territorial autonomy is the Ottoman Millet System. The Ottoman Empire functioned on what is known as the Millet system. Although the Ottoman Empire was not organized around democratic principles, it still managed to give authority to different minority groups to internally manage themselves. The Millet system vested power and authority in the religious leaders of minority communities and exhibited great tolerance and recognition of the autonomy of minority groups and their way of life (Ninmi, 2013). Walzer (2004:179) claims that the rulers in the Ottoman Empire recognised the value of group autonomy and this has worked well for the effective survival of different groups.

Notwithstanding the absolute monarchical organisation of the Ottoman Empire, Yegen (2009) argues that the Millet system was more “tolerant to minorities than some of the current republican and majoritarian democracies affected by the tyranny of the majority.” This is due to the logic of the Empire, unlike in the nation-state model, the Millet model was not built on policies of assimilation. The Millet system is organized in a way to give minorities extensive rights to exercise their religious, cultural and other needs, but was still subject to the Sultan and had to pay taxes. Ninmi (2013) argues that the Millet system is becoming increasingly recognized in the field of minority studies within academia.

2.4 Karl Renner and Otto Bauer’s Non-Territorial Autonomy Model

The Romani activists and elites claim to be recognised as a uniformed non-territorial nation (discussed in detail in chapter 2) during the middle of the 20th century is a new

idea for the Romani struggle to achieve political representation and participation.

However, non-territorial nationhood is not a new concept; it was originally drafted by the Austrian Marxist statesmen, politician and constitutional jurist Karl Renner. The idea was later adopted by Otto Bauer and developed further into a coherent method of organisational model. Bauer, in his 1907 book titled “The Nationalities Question and Social Democracy” gives insight on issues of minority rights, nationalism and multiculturalism. The original conceptualisation of the concept by Renner was heavily influenced by the German historian Friedrich Meinecke, who is known for his arguments challenging the sovereign nation-state model (Meinecke, 1970). The concept was utilised during the era of the Austria-Hungarian Empire to try and mitigate the dissolution of the empire due to increasing ethno-nationalist sentiments.

The rapid industrialisation during the 20th century in the Austria-Hungarian Empire caused uneven development throughout the Empire increasing the concentration of diverse ethnic and national groups into specific areas (Nimni, 2007). The increase in internal migration created new demographics and the once territorially defined national groups became dispersed across the lands of the Empire. Czech workers left the historic boundaries of Bohemia to settle in the German part of the Kingdom and German industrialists entered Bohemia. The Slovenes, Ukrainians, Romanians and Hungarians all migrated around the Empire into new lands (Porter, 2003). Within Vienna the changes became more visible as national groups infiltrated the predominantly German speaking capital (Nimni, 1999:291). The massive internal migration resulted in new social and political complications for the Empire. In a short period of time, new minorities were created in different territories across the Empire and these minority

groups were all intermixed within the same territories causing various problem for the stability of the Empire (Porter, 2003:62).

The backlash against these new “alien” groups was strong in areas of the empire where large number of outside groups had come into. The multi-ethnic and multi-national environment engendered the future existence of the Austrian- Hungarian Empire (Nimni, 1999). The problem was further exacerbated due to the ascendancy of the nation-state model during the 20th century. Minorities’ treatment and lack of rights could cause the breakdown of the empire by encouraging secession movements. The start of the dismantling of the Ottoman Empire and the independence waves around Eastern Europe could trigger similar movements and jeopardise the integrity of the Austrian-Hungarian Empire. It is within this context; Karl Renner developed the non-territorial national cultural autonomy model. Renner attempted to demonstrate greater sensitivity and find a practical solution to the tensions the Empire was facing to save it from breaking into various nation-states (Nimni, 1999). In this sense, it was the emerging wave of nation-states that was of greatest worry to Renner, by providing non-territorial autonomy to the diverse ethnic and national groups within the Empire, Renner believed the Empire could avoid the dismemberment (Pauley, 1972).

2.4.1 Theoretical Foundation of Non-territorial Autonomy

Non-territorial autonomy does not only challenge the territorial model of autonomy, but it also problematizes the underlying liberal democratic political organisational system that has become the backbone of the nation-state structure. The liberal democratic system is structured on the notion of equal individuals and the emphasis on individual right and liberties (Kymlicka, 1995). Legal instruments are used as the enforcement

mechanism for the protection of individual rights. In relation to the individualist approach, Renner argues that the liberal democratic state is organised around the ‘central atomist principle’. The principle illustrates that in liberal democracies only two political-judicial entities exist: the individual and the sovereign will of the undivided collective. Consequently, this leaves very limited or no room for intermediate actors such as ethnic or national minorities (Renner, 1994:24-28). The dichotomy between the individual and the indivisible collective only allow for political recognition of individuals (atoms) or centralised homogenous nation-states. As Renner rightly points out, the problem arises when diverse groups within one nation-state demand collective political rights and recognition (McCartney, 2000). In these situations, the liberal approach promotes self-determination, which it understands as the right to form a new nation-state by oppressed minorities.

During the period after the First World War, newly created nations demanded a state and in this era this was seen as a viable opportunity taking into consideration the available territory and the concertation of new nations in certain territories. However, the situation today makes it difficult for ethnic or national minorities to acquire a separate nation-state. The limited territory is a physical obstacle, but also the trouble arises from the dispersion of minorities across territories, instead of occupying a uniform territorial boundary. McGarry and O’Leary (1995) note the limitations of the liberal model by exemplifying how the Israeli-Palestinian dispute over land claims turned into prolonged conflict. Both Israeli and Palestinian communities share a specific territorial area and are dispersed amongst each community, making territorial resolutions extremely complicated and inviable. Thus, looking at the contemporary situation, taking into concern the territorial limitations and the dispersion of minorities, the current liberal

propagation of reproducing the nation-state model serves to further cement conflict and create new disputes between groups.

Karl Renner's model of non-territorial national cultural autonomy works to prevent secession, creation of new minorities, and the discrimination towards ethnic and national minorities. The departure point of this model is the recognition of the sovereignty of collectives regardless of their geographical residence. Through constitutional entrenchment, collectives, not individuals, would be given right to self-determination. The model allows complete sovereignty to communities over their political, cultural, social and educational affairs. Collective rights in this sense are uncoupled from territory and the territorial factor becomes irrelevant in the formation and use of right to sovereignty and self-determination (Nimni, 2007). The entity that can be deemed sovereign is not the nation-state (composed of majority nations), but it can be any collective of people that demand the right to govern themselves regardless of their geographical location or dispersion.

In assessing the non-territorial model, Nimni (2007) highlights four advantages over territorial autonomy: (1) non-territorial autonomy supposes the establishment of multinational states, which permits us to do away with the concept of minorities and their protection, which are only relevant in the framework of the nation-state model; (2) unlike territoriality which inherently creates regional majorities and subordinated minorities, non-territorial models allows cooperation between equals because internal difference does not result in the threatening of the majority group for which there is a constitutional guarantee of public space independent of group membership; (3) in the present era where the nation-state model is giving away to innovative governance structures, such as the European Union with its transnational institutions, it is suitable to

think of non-territorial models as a replacement for territorially regarded solutions to protracted ethnic violence and minority rights; (4) given that the number of nations exceed greatly states, non-territorial autonomy presents a strong incentive for the slow integration into multinational states and thus serves to contain separatist movements, minority resentment and stability in the international system (Nimni, 2007:354).

As mentioned above, non-territorial approaches to minorities do not require a certain homeland, nor does it require a community to aspire for one, in order to enjoy autonomy in a particular nation-state. Even further, this model propagates that community as collectives of individuals have the equal right to enjoy autonomy and self-determination regardless of their territorial status. This central element of the non-territorial approach makes this model especially appropriate for dispersed stateless communities and groups that cannot or do not have the desire for a territorial state. As Renner claims, the eradication of territoriality will contribute to better inter-communal relations encouraging coexistence of different minority and majority groups (Renner, 1994). This understanding and approach to diversity is in stark contrast to the dominant liberal nation-state paradigm which fosters territorial solutions to problems of national and ethnic diversity within a given territorial space. Territorial self-determination as understood by the nation-state order functions to de-territorialize minorities by not allowing the disruption of states territorial integrity and at the same time encouraging territorialisation by accepting territory as a means to an end.

The non-territorial autonomy model has commonly been aimed at domestic autonomy within nation-states. The application of non-territorial autonomy to the international sphere is understudied and very limited in the literature. This research helps to explore this idea and build the way forward for future studies. The theoretical underpinning of

the non-territorial autonomy model may easily be adapted to the international governing structures.

The Romani communities originally aimed to gain autonomy internally, but have in recent years extended their claims to the international sphere. The Charter of Romani Rights calls for a change in the political status of the Roma toward political, social and cultural self-determination as the only way forward in guaranteeing the protection of the civil liberties of the Roma (Alexander, 2007:403). It demands Romani political autonomy not only in the national political structures, but also through the political representation in the international governing assemblies. The Roma request the right to have representation in the European Parliament, the Council of Europe and the United Nations, with full voting rights, and the right to veto any issue concerning the Romani community (Goodwin, 2006:53). In this respect, it is clear that the Roma demand an international non-territorial nation status with the same rights as nations with a state. This issue will be further explored in the discussion chapter in an attempt to apply the non-territorial autonomy to the Romani community.

The major theoretical elements of non-territorial autonomy are the emphasis on collectives rather than individuals. The model challenges and problematizes the conventional nation-state territorial understanding and in a changing international atmosphere foresees non-territoriality as a viable alternative way to organise states. The aim of the theoretical debate here was to show the philosophical foundation of the non-territorial model as laid out by Renner and Bauer. In order to realise this model in practice, certain structural and organisational methods are mentioned by Bauer. The next section explores the practical instruments and arrangements that are necessary for non-territorial autonomy to be put into practice.

2.4.2 Practical Imaginary of Non-territorial Autonomy

The non-territorial autonomy model proposes a two-tier system of government. The first tier would grant non-territorial autonomy to minority groups, and the second tier would be the administrative unity of the multinational state. The existing boundaries of the state would not be altered in any way, it is the internal organisation of the state that would be altered to accommodate diverse groups. To resolve existing tension between groups' nations would be organised as non-territorial public associations with autonomous cultural, education and political rights within the boundaries of a de-nationalised territory (Bauer, 1991). In this way, Renner believed that the concepts of nation and state would be uncoupled from each other, which has been the source of conflict because the political representation of diverse groups and the nation-state are entirely incongruent (Nimni, 1999).

The model necessitates all citizens within the multination state to declare their nationality or group of belonging as separate from their citizenship when they reach the age of voting. The members declaring the same group than form a single national association that becomes a legal entity with sovereignty and self-determination to administer most of the affairs belonging to the group, but certain limitations would be placed. The association would be responsible for the establishment, development and maintenance of educational and cultural institutions, for the preservation of their language, cultural and religious heritage and warranting that the member of their association are treated equally by the judiciary, administration and government of the state (Porter, 2003:66). Consequently, this model of organising the state eliminates

completion between the state apparatus and nations. The state serves as an administrative body to ensure the proper functioning of the associations.

The territorial organisational structure uses residency to identify group rights. In contrast, the foundation of the multinational state would not be defined in terms of a territorial occupation of space, but an association of persons harnessing the more permanent cultural, linguistic or religious bonds that would be the essential characteristics for group rights. By altering the criteria for group rights from residential (territory) to social characteristics the goal is to separate governance (administrative duties) from the protection of national and cultural identities. The protection of ethnic or national identities would be the preserve of the national associations made up of delegates from the same community. The state delegates would be accountable to the entire population through elections, however the national associations would only be accountable to each community they represent through separate polls (Levene, 2000). This would hold the state responsible to the whole population including the mobilised diverse groups but at the same time national associations would be checked on by their constituents based on voluntary association and not territorial residence. Members within a state would have multiple affiliations: to the state and to the national association they belong to producing a harmonious relationship between the state and its members. In the above discussion the ideal non-territorial arrangement has been discussed, but there are relatively few empirical studies on the ways non-territorial autonomy functions in politics, legislation and civil society (Osipov, 2013).

The model has been used most often as an analytical tool within academic circles for normative deliberations and extensively in relation to national structures. The employment of non-territorial autonomy to the international has infrequently been

explored and no real literature exists on the practical implications of this model on international governance structures. The aim in this dissertation will be to explore the non-territorial structural model as it would look when employed to the international context for the Romani communities of Europe. In the proceeding chapter, the evolution of minorities is discussed and narrowing into the context of the Romani.

CHAPTER 3

THE HISTORICAL DEVELOPMENT OF MINORITIES

3.1 International Perspective

This section outlines the major developments relating to minorities from an international perspective. The aim here is to show the progress of the protection of minorities starting from the Peace of Westphalia to the contemporary era. The last section deals with specific international measures explicitly designed for the Roma.

3.1.1 Treaty of Westphalia 1648

The official recognition of the concept of minorities first emerges following signing of the Treaty of Westphalia in 1648 between France and the Holy Roman Empire. The Treaty created sovereign nation-states and for the first time minorities of different religions were able to practice the faith of their choice. Although minority religions within the sovereign boundaries of nations were able to freely exercise their religion, they were not formally recognised as minorities. The Treaty of Osnabruck and the Treaty of Munster, which together made up the Treaty of Westphalia, recognised the equality of Protestant and Catholic sects of Christianity. In the aftermath of the Treaty of

Westphalia, other treaties were signed regarding minority religions and their rights. The Treaty of Olivia signed in 1660 by Poland, Sweden and Finland established agreements about the freedom of religion in situations of land transfers. The 1773 Treaty of Warsaw provided that, “Prussia must guarantee the status of the Uniate religion and of the Protestants, Calvinist and Lutheran (Evans, 1997:57).”

In terms of minorities, this era is characterised by religious identities, however, another salient transformation during the 17th century that significantly impacted the future of minorities is the creation of nation-states. The formation of new sovereign territories and land agreements produced new minorities based on different poles of identities. These new minorities were not given much attention during this time because of the role of religion as the central category of ideology used as the homogenising factor in the creation of the early nation-states.

The treaties in the 17th century and the earlier part of the 18th century set the foundation of the current international practice of territoriality. Sovereignty and the practice of politics was embroiled in the concept of nation-state (Nootens, 2006). To be legitimate in external affairs certain norms were to be successfully achieved. National unified identity and territory became indispensable to one another, and international politics were only legitimised to those nation-states that could build a sovereign and coherent nation with power over a particular territory.

3.1.2 Congress of Vienna 1815

Beginning with the 18th century, the role of religion became less important and nationalism increased in salience. This period is significant due to the alteration of the nation-states cohesion ideology from religion to nationalism. It was during these years

that the protection of minorities witnessed a dramatic increase because of the territorial wars resulting in Diasporas across Europe. Minorities were still mainly characterised by religious faith, but because of territorial secession and conquering, language also became a pole of minority identity (Preece, 1999). The Treaties of Dresden in 1745 and the ending of the Seven Year War with the signing of the Treaties of Hubertusburg and Paris in 1763 all included provisions to do with minorities. Although international agreements continued to be largely religious, as Preece (2005) argues, recognised minorities increasingly became thought of as national minorities.

It was in the 19th century when minorities gained considerable significance. The French Revolution in 1789 and further entrenchment of the Enlightenment ideas in the social sphere weakened the political power of the religious establishment. The gap was filled in by rising national sentiment around Europe and a transition from religious ideology and identity to a realisation of nationhood based, not only on common religion, but shared language, history and culture was born. In this context, minority issues acquired greater attention because nation-states and the international community were now obliged to deal with the minority challenge that was becoming a source of conflict for states in Europe.

The major change in minority protection starts with the Congress of Vienna in 1815. It was the first time that a treaty distinguished between religious and national minority. Macartney (1999) argues that the Congress of Vienna replaced the traditional assimilation policy towards minorities with that of an egalitarian one. For example, Article 1 of the Treaty arranged the partition of Poland among Germany, Russia and Austria, which resulted in a diaspora of Poles in these countries. To deal with this problem, the first Article granted the Polish minorities the right to maintain their

national institutions based on national grounds rather than difference in religion (Preece, 1999:73-79).

3.1.3 Congress of Berlin 1878

The defeat of the Ottoman Empire in 1878 by Russia led to the independence of Serbia, Romania and Bulgaria: while, the Peace Treaty was shaped by Russian interests European powers (Great Britain, Germany and Austrian Empire) requested a more comprehensive arrangement for the Balkans. The negotiations at the Congress consequently led to new borders and denied independence to Macedonia and Bulgaria. As part of the agreement minorities were not to be discriminated against based on religious affiliation.

Taylor (1992) regards the Congress of Berlin as the major breakthrough in the minority development of European history. The Congress insulated many provisions for minority protection; minorities were granted religious freedoms, the right to non-discrimination and the right to hold public office. These were major developments compared to the earlier period in European minority history. For example, Article 4 of the Treaty stated that national minorities in Bulgaria (Turkish, Romanian and Greek) would be heard when drafting the electoral regulations and the Organic Law of Principality – a form of modern constitution (Krasner, 1991:67-169).

Finally, the most important progress regarding minorities came with Article 43 of the Treaty which made recognition and legitimacy of new states dependent on the protection of minorities (Preece, 1999). For instance, the Berlin Treaty tied Serbian sovereignty to the religious rights of Muslim minorities and Romania had to provide civil, political and religious rights to its minorities to gain international legitimacy (Preece, 1999).

As important as the stipulations were in the Congress of Vienna and Berlin, the lack of enforcement mechanisms to secure compliance did not allow for significant change in the situation of minorities. Preece (1999) concludes that the real importance of this period is the replacement of religious guarantees with national formulation of minority rights. It is with the advent of the 20th century that noticeable transformation concerning minority rights and standards were established.

3.1.4 League of Nation 1919-1946

Akermark (1997) notes that the oncoming of the League of Nations marked a new period for minority protection. The League was established at the end of World War I to maintain peace and stability and saw the issue of minorities as part of this greater goal (Akermark, 1999). Measures taken for minorities were designed to deal with the problems arising from land redistributions and border changes caused by the War. President Woodrow Wilson was charged with drafting the Covenant of the League and envisaged minority protection and rights to be included in the draft, Article 6 read:

The League of Nations shall require all new States to bind themselves as a condition precedent to their recognition as independent autonomous States, to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact that is accorded to the racial and national majority of the people (Akermark, 1997:99).

President Wilson foresaw the League of Nations as a monitoring international organisation that would oversee the states compliance with their commitments to minority protections and treatment. The role that President Wilson had in mind for the League was not realised and the Great Powers decided to deal with minorities through bilateral and multilateral agreements instead. Treaties concerning minorities were signed as part of the Paris Peace Conference and the implementation of the treaties were

controlled by the Permanent Court of International Justice. The Permanent Court was obliged to investigate disputes arising from treaties, but did not have power to enforce any treaty; thus it served as a mediator to conflicting parties.

The development of minority protection during this period was directly related to territorial disputes. The post-war agreements shaped minority protection because kin-States aimed to preserve and protect their national minorities that were within the territorial jurisdiction of other nations (Akerman, 1997). For example, the Hungarians aimed to protect their minority in Transylvania and other nations had similar agendas. Minorities without kin-states were not of any major concern during this period.

Minority protection was interpreted in territorial means and stateless minorities were powerless in influencing politics to gain recognition and protection. However, the situation had improved because of the issues of non-discrimination, equal civil rights, and special measures for the protection of religion, language, and culture, although minimally had a positive impact on ethnic and national stateless communities. During this period minority protection was mostly concerned with protecting the rights of certain minorities that were part of newly established states to keep the peace, but a universal understanding and a common definition of minorities was still in its infancy (Kristin, 2003).

The period up to the establishment of the League of Nations, the policy towards the Roma was that of extermination, subjugation and socio-political discrimination. The situation of the Roma improved with the advent of the Leagues of Nations, but the progress was minimal (Kristin, 2003). Minority protection during the era of the League was concerned with specific minorities with kin-states in order to bring peace and stability to Europe. Consequently, the Roma communities did not benefit from the

agreements relating to minorities by the League (Kristin, 2003). The failure of the League of Nations to keep the peace and stability in Europe and the subsequent world war pointed to the disappointing endeavours to protect minorities. The Nazi genocide of the Jewish and Roma population and the growing dissent towards ethnic and national minorities in Europe led to the transformation of the League into the United Nation (UN). The end of World War II and the creation of the United Nations would embark a new era in minority rights and protections in international relations.

3.1.5 The Era of United Nations

The minority protection measures under the League of Nations were terminated; the treaty obligations became null and void after the end of World War II (Lerner, 1991). The establishment of the UN transformed the character of minority protection. The emphasis shifted from minority protection to individual human rights protection regime. Lerner (1991) notes that the principle of non-discrimination came to dominate minority protection discourse and machinery. Whenever the rights of people were restricted on the ground of religion, race, ethnicity, culture or national origin they were protected by the non-discrimination principle. This showed a major shift towards an individual human rights discourse that entailed rights and protection to all individuals regardless of the categorical identity they belong to.

The shift from minority protection to individual protection was partly due to the Nazi atrocities during the War. The atrocities against the Jews and Roma made the community of nations wary of the idea of group rights. Tove Malloy (2005) explains that the misuse of minority protection by the Nazis and the singling out of minority groups were partly blamed for the atrocities of Hitler's regime. To avoid such grouping that

could lead to new conflicts or atrocities a new approach (individual human rights) to minorities within the framework of the non-discrimination principle was created (Lerner, 1991).

A major development was the introduction of the term ‘crimes against humanity;’ this created international law prohibiting enslavement, and other inhumane acts against civilians regardless of domestic legislation (Thornberry, 1991). In the German criminal indictment, the text specifically referred to genocide as ‘extermination of racial and national groups [...] particularly Jews, Poles, Gypsies, and others’ (Thornberry, 1991:65). The legal condemnation of genocide culminated in the UN Genocide Convention and defined ‘any act committed with the intent to destroy in whole or part a particular group’ will be considered as genocide (Thornberry, 1991:71).

The Convention is a noteworthy development in minority protection, but falls short of providing the necessary protection for minorities to flourish. It protects the right of minorities to exist and guarantees their right to physical integrity, however, does not provide measures for groups to improve and cultivate their communities (Thornberry, 1991).

The right to identity is safeguarded by the UN Covenant on Civil and Political Rights.

Article 27 of the Covenant read:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (The UN International Covenant on Civil and Political Right, 1966).

The Article above stipulates individual rights to minorities and aims to protect minority groups from assimilation, but is restrictive in toleration of minorities because no positive rights are mentioned (Kristin, 2003). However, some have interpreted Article 27 to

include positive group rights because for minorities to enjoy their culture, religion and language, special administrative and legislative measures need to be adopted, otherwise the aim would strictly be theoretical without any practical implications (Kristin, 2003; Thornberry, 1991; Capotorti, 1986).

Nevertheless, a consensus on the exact characteristic of the Covenant on Civil Liberties has not been reached. It is still mostly up to states to act and in most cases it has only deterred states from assimilation, but has not been valuable in enforcing states to take positive action to allow social and political group rights.

Lerner (1991) explains that The UNESCO Declaration on Race and Racial Prejudice is the first international instrument which proclaimed the right of both individuals and groups to differ. The Declaration represents a shift from toleration to the celebration of differences (Bhiku, 2002:210). The UNESCO Declaration provides minority groups the right to consider themselves different and be regarded as such without this being used as a pretext for racial or social apartheid (Lerner, 1991). It condemns theories of ethnic, racial and cultural superiority and considers these types of acts as a violation of international law. As progressive as the Declaration was, in the absence of enforcement mechanisms, it was still mostly up to the individual states to show goodwill towards minorities in their territories.

Another major progress for minorities from the international community comes with the UN Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities. This Declaration explicitly mentions that states “shall encourage the condition for the promotion of minorities’ identity (Thornberry, 1993).” Observing the verb “shall”, Henrad (2003) notes that this provision is mandatory. With this

international Declaration minorities have the full right to participate in private and public life individually or as a group.

The above discussion has outlined the general development of minority instruments throughout history. The individual approach to minority protection and rights include the Roma, but I did not elaborate on Roma specific measures. In the next section, I examine the specific measures aimed at the Roma in greater detail to illustrate specifically the measures that have dealt with the Romani communities.

3.1.6 Minority Protection for the Roma

This section offers an overview of standards established for the Roma within the framework of international organisations. The next chapter will specifically look at the Roma in the European context, therefore this section is dedicated to international instruments designed for the Roma.

It is important to highlight that the specific standards dealing with the Roma at the international level have mostly been in terms of soft law. These are recommendations, guiding principles and other directives that are not binding. However, it is still important and relevant to discuss these standards as they have played an important role in the development of the Roma community's progress towards international recognition. In 1992, the Human Rights Committee of the UN adopted the resolution 1992/65 'On the Protection of Roma'. This resolution invited states to take affirmative action to eliminate the widely spread discrimination against the Roma (Tierney, 2000). The Organisation for Security and Cooperation in Europe (OSCE) also specifically mentioned the issues face by the Roma in the Copenhagen Document. Although the Document did not detail the problems the Roma were experiencing, it did note that these

were the result of racial and ethnic hatred that was present in societies and is comparable to Anti-Semitism (Tierney, 2000).

In 2003, the Permanent Council of the OSCE adopted an 'Action Plan on Improving the Situation of the Roma'. The Action Plan aimed to reinforce the efforts of participating states and the OSCE institutions to ensure the equal participation of the Roma in social and political life (Hanesch, 2011). The initiative was based on the existing framework of international human right law, existing commitments and example of best practices from countries in Europe.

The measures included were based on the International Convention on Elimination of All Forms of Racial Discrimination and provides guidelines on the key issues facing the Roma. These include; inclusion policies for national governments, addressing socio-economic issues and enhancing participation in the public and political sphere (Hanesch, 2011). Martin Kovats (2002) argues that the international initiatives are a step forward in the recognition of the problem the Roma face, but with limited financial support and unbinding character they fail to achieve any significant progress for objective laid out by international guidelines or recommendations.

3.1.7 Conclusion

International minority protection and rights has passed through several distinct stages in history. In the early stages minority protections were based on religious freedoms. These treaties were not signed due to genuine concern for humanity, but were mainly concerned with peace and stability of the Holy Roman Empire. Minority protection did not exist at this stage. The Roma during this stage did not benefit from the forms of

religious protection. The policies towards the Roma were that of extermination and assimilation in this period.

Between 1814 and 1919, minority protection entered a new phase with the redrawing of territorial borders and increased nationalism. The minority agenda during this time was concerned with minorities that had a kin-state to advocate on their behalf. Marginalised minorities, such as the Roma, were absent from negotiations and were invisible in minority discourse. The League of Nations provide limited minority protection, but due to the great importance on peace and stability, it was the minority groups that had political power from a kin-state that was on the agenda.

The current measure in international documents grant the Roma the right to non-discrimination, right to profess one's religion and right to political participation.

However, most international standards focus on individual rights as opposed to group rights. The major reason for not granting group right to minorities stems from the concern states have for territorial integrity.

The international community's emphasis on individual rights is founded on the anxiety of territorial disputes that stem from the foundation since the Treaty of Westphalia which related sovereignty, nation and territory as a normative and practical exercise for legitimacy. The historical evolution shows that until recently, minority issues have mostly been of concern when kin-states are worried about their populations abroad, but international measures have not addressed stateless people's right to autonomy and self-determination at the international level. The next chapter will specifically examine the European context in relation to minorities and the Roma.

3.2 European Perspective on Roma

The Roma communities are an estimated minority of 10 to 12 million in Europe (European Commission's Communication, 2012). The situation of the Roma has become an issue of high importance and priority for the European Union policy. A significant number of studies on the condition of the Roma have pointed to the serious exclusion from nearly all spheres of life. The Roma in Europe experience lack of access to fundamental, political and social rights, and are a minority that has been severely discriminated against. A survey conducted by 11 European Union (EU) member states found that the Roma are lacking adequate educational, employment, health and economic rights, and especially in Central and Eastern Europe are excluded from economic, social and political life (The Situation of Roma in 11 Member States: Survey, 2012).

The policies of Europe aimed at the Roma have been particularly focussed on integration and inclusion. The three major institutions concerned with formulating policies towards the Romani community have been the EU, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe (Waters, 2010). The OSCE, one of the leading institutions dealing with minority issues within Europe created the Contact Point of Roma issues. The goal was to deal with human rights and other issues concerning the protection of the Romani communities in Europe (World Bank, 2005). Other such initiatives include Treaties and Conventions developed to combat discrimination against the Romani. In 1995, the Council of Europe established a Committee of Experts on Roma and Travellers as the first advisory committee

responsible for regularly assessing the situation of the Roma in Europe (Measure to Promote the Situation of Roma, 2011).

Furthermore, in 2004, the Council of Europe also established a partnership agreement with the European Roma and Travellers Forum which allows it to have direct contact with the various bodies of the Council of Europe. The forum provides the Roma representatives opportunity to participate and influence issues that directly concern their communities. Later on in 2010, Member States adopted the Strasbourg Declaration on Roma in which they agreed to integrate into their Roma inclusion strategies a list of priorities that will facilitate effective Roma inclusions (Council of Europe High Level Meeting on Roma Strasbourg, 2010). In the most recent case, the Council of Europe issued a “Recommendation on Effective Roma Integration Measures in the Member States” aiming to strengthen the implementation process of the Members national integration strategies (Council Recommendation on Effective Roma Integration Measures in the Member States, 2013). Many other recommendations and initiatives have created to effectively support the Roma inclusion but the lack of enforcement mechanisms and the unbinding character of these initiatives have mostly left it up to states actions. The integration and inclusion policies have been welcomed by the Roma representatives and elites, but the Roma have consistently claims that they need political autonomy to and resources to deal with the issues of their community (Laidler, 2016). Moving away from initiatives and recommendations and looking at legal frameworks of Europe show a limited number of binding instruments dealing with the Roma. The most comprehensive legislation is the Racial and Equality Directive (2000/44/EC), which obliges all EU member states to forbid discrimination on grounds of racial or ethnic origin. Nevertheless, the Directive does not suffice in uplifting the situation of the

Roma, nor has it been effective in the integration process (De Schutter, 2005). Other Directives have addressed employment, family and travel issues, but the implementation has been limited. This is because as long as the government does not engage in discriminatory policies towards the Roma, yet do not take any affirmative action either, than they are not in any seen as unfulfilling the Directives. The consequence of this has been that the policy formulation and implementation has been left up to the discretion of Member States. The governments of particular states can adopt and enforce policies of their choice, but there does not exist legal means to force them to do so (Tsekos, 2008). For the purpose of this research, it is not necessary to outline every directive and recommendation dealing with the Roma.

However, it is critical to outline the general approach Europe has taken towards the dispersed Roma communities of Europe. A World Bank report published in 2005 titled '*Roma in an Expanding Europe*' highlights four different types of policies that were followed by European governments towards the Roma: exclusionary, assimilation, integration and minority rights (Ringold, 2005:14-16). Exclusionary policies seek to exclude and alienate the Roma from the majority society along economic, political, socio-cultural and geographic dimensions (Ringold, 2005).

The exclusion policy has a long history in Europe. The rationale for exclusion has usually based on arguments of racial and nationalist perspectives on the Roma, seeing them as inferior and the "other" within the European society. While policies of exclusion have widely been reject by international law, their legacies continue to be present amongst society and political elites. Exclusion from geography and politics is of serious concern for this research. Ringold (2005) argues the Roma have been displaced from territory on the basis that it belongs to the majority nations, again highlighting the

importance of territory in social relations. Politically, the Roma are excluded from participation by lack of citizenship and discrimination. This limited representation disables the Roma to have a say in political decision regarding their communities. Assimilationist policies aim to eliminate differences between Roma and non-Roma, by forcing the Roma to adopt majority nation's norms, values and behaviours (Ringold, 2005:16). Assimilationist policies stemmed from the fear of the majority nations due to the perceived threat that the Roma caused to the social cohesion of majority population (Barany, 2002). This policy again related to the nation-state models underpinning foundation. The one-nation-one state idea played a factor in majority nation's view that this "alien" population would cause a disruption in the nations (majority) cohesion, and ultimately saw it as a danger to the integrity of the nation-state model.

The advent of the liberal democratic international order in the latter half of the 20th century discredited the exclusionary and assimilationist policies. International law and organisations such as the UN, OSCE and the EU paved the way for an approach to minorities in general and Roma in particular. After the Second World War, the policies in the previous era were viewed as causes of war and rights based approaches came to dominate minority issues (Wippman, 1998). Integration policies aimed at individual's membership into society. These policies were different from assimilationist ones in that they did not coerce individuals to adopt other values, individuals could keep their cultural identity while adopting the dominant societies practices (Ringold, 2005). Critics of integration note that it subsumes minorities to the broader society and undermines the importance of ethnicity, religion, culture or nationality. Wippman (1998) argues that integration works to use soft power to get minorities within a geographic boundary of a given state to adopt the dominant nation's values and practices (in the case of Europe

modern liberal values). Integration policies have been the dominant European and international legal approach to minorities since the late 1970s (Per, 1997). The last policy towards minorities and the one currently being solidified is minority rights policies. With the growing European and international concern for minority rights the shift from individual to the group protection has been the approach. Minority right policies stress the importance of cultural preservation and the protection of minorities through constitutional arrangements. European intergovernmental bodies have taken an affirmative action in the establishment of group protection rights. The result has been the emerging norm labelled the “common European standard” for minority policy grounded in the principle of protection of minority groups (De Witte, 2002).

Although the minority rights framework is a positive leap forward in minority and Roma rights it is only partial due to the fact that it mostly involved protection of minorities. There still exists a tension between Roma self-determination nationally, regionally and internationally and policies of protection. Protectionist minority policies still put the faith in the hands of the nation-state controlled by the dominant nations. The lack of nation-state identity or territorial claims makes Roma a unique minority in Europe. Most minorities in Europe have a kin-state, thus a homeland and a source of some power in their political representation and voice. However, the non-territorial organisation of the Roma limits their ability to influence policies that have a direct impact on them. The adherence to the nation-state paradigm has driven policies from exclusion to minority rights, but the important point is that these policies all involve the nation-state as the central authority. The Roma with minimal political representation and power domestically in European countries again is subjugated to the minority rights framework that has been formulated without their participation.

3.3 Historical-Political Background of the Roma

The Roma constitutes Europe's largest minority group. There are approximately 10-12 million Roma living in Europe today, with vast majority, around 8-10 million, living in Central and Eastern Europe (CEE) (European Commission, 2010). The Roma are a heterogeneous nomadic group with many different identities amongst themselves. Given the widespread dispersion and their existence as small minority communities across many nation-states, the Roma are a particularly difficult group to conceptualise accurately (Kovats, 2001).

Roma communities have been the subject of variety of policies adopted by national and local authorities, ranging from persecution to attempted containment and assimilation (Liegeois and Gheorghe, 1995). Since their arrival in Europe about seven centuries ago, the Roma have been politically, socially, culturally and economically marginalised by the dominant populations in regions where they reside.

The absence of a kin-state disabled the Roma to partake in politics shaping, thus left them out of all spheres of development in Europe from the very beginning. The situation has recently been changing with greater awareness and effort to create a united Roma identity, and demands to be recognised as a legitimate non-territorial nation by the international community (Marushiakova and Popov, 2004). The aim in this chapter is not to find a sociological definition of the Roma identity, it is to sketch a historical-political background of the Roma. For the purpose of this dissertation, it is vital that we understand the political roots of the non-territorial claims to nationhood by the Roma.

3.3.1 During and After the Ottoman Era

The first Roma aspiration for emancipation can be traced back to the 19th century Ottoman era in the Balkans. The Balkan nations were beginning to form their ethnic and national states according to Christian traditions. During this period, the Roma community attempted to repeat the development path of other Balkan nations. This entailed their own church services, system of education and implicitly a desire for a state of their own (Marushiakova and Popov, 2004).

Under the rule of the Ottoman Empire, the Roma had similar status as other nations and for this reason it is not surprising that the development of the Roma community followed a similar trajectory as other nations in the Balkans (Marushiakova and Popov, 2004). With the slow dissolution of the Ottoman Empire, European nations started to subjugate the Roma. The new electoral law of 1901 in Bulgaria took away the electoral rights of Muslim and nomadic Roma. The ban on electoral rights triggered the mobilisation movement of the Roma to protest the discriminatory electoral law, which had previously been guaranteed to them in the constitution of 1879 (Hancock, 1991).

With the fall of the Ottoman Empire, educated Romani elites established various Romani organisations in the Balkans starting in the 1920s. The first Roma organisation was established in Romania in 1926, and soon after was followed by numerous organisations (Marushiakova and Popov, 2004). For example, in 1933 the General Association of the Gypsies in Romania and the General Union of the Roma in Romania were established. In 1935, the Association of Belgrade Gypsies for the Celebration of the Aunt Bibia was formed (Marushiakova and Popov, 2004). Similar organisations followed in Bulgaria and Greece. The goal of these establishments was to challenge the

discriminatory policies of the Balkan countries who were politically and socially subordinating the Roma (Marushiakova and Popov, 2004).

3.3.2 Romanestan: Land for the Roma

A radical change in the development of the Romani community emerged in the first half of the 20th century. The idea of a Romani land that would be called Romanestan emerged amongst the Romani elites (Hancock, 1991). The idea of a homeland for the Roma was first initiated by the Roma Royal dynasty Kweik from Poland, descendants of the Romani slaves from Romania (Jerzy, 1991).

The Kweik dynasty sought to provide a land for all the Roma and efforts to do this simply involved sending delegations to different countries to ask for pieces of territory. For instance, in 1934, Jozef Kweik sent a delegation to the UN asking for territory in Namibia to set up a Roma state (Marushiakova and Popov, 2004: 449). Other attempts included territory demands from India and Ethiopia. The coronation speech by Janudz Kweik illustrates the nationalist ideas of the dynasty:

I shall send a delegate to Mussolini asking him to grant us a piece of land in Abyssinia, where Roma can settle. Our people are weary of having to travel throughout the ages. The time has come for us to cease as nomads; if the Poles will only allow us to send our children to their schools to be educated, we shall soon have our own representatives in the League of Nations (Jerzy, 1991).

Internal disagreements of the Roma and the spread of widespread anti-Roma sentiments in Europe contributed for little to be achieved on the aim of Romanestan. The ideal of a state was never realised, but this development contributed to the Romani demand for special representation in international and European organisations to be voiced explicitly (Crowe and Kolsti, 1991).

3.3.3 Internationalisation of the Romani Movement

The extermination and persecution of the Roma under the Nazi regime marked a silence on the Romani struggle for national unity because of widespread fear of persecution amongst the community. The silence of the Roma continued until 1960 when the World Gypsy Committee was created. The internationalisation of the Romani movement in this epoch marks a significant change because in the previous era it was usually a few elites speaking on behalf of the whole community, in contrast to the post-War period when a more organised and unified Romani movement emerged (Acton, 2000).

The International World Committee (IWC) was the milestone of a more organised Romani national movement. The IWC achieved to get affiliated with more than thirty Romani organisations, from over 20 countries within just a few years (Grattan, 2000:109). In 1971 the IWC held the first World Romani Congress in London. Later on the IWC was reorganised and renamed as the International Romani Union (IRU). The IRU became actively involved in the nation-building process of the Roma community worldwide (Grattan, 2000).

The establishment of IRU marked a new period and a renewed momentum in Romani attempts to be recognised as a nation. This time the ideal of a territorial land for the Romani was discarded and replaced by the concept of a non-territorial nation. The IRU claimed that the: 'the Roma land is everywhere where Roma can be found, because Romanestan is in the hearth of the Roma (Liegeois, 1994:257).'

The IRU established formal relations with UNICEF, Vatican, the US Department of Defense along with many other international and national governments and organisations. The IRU headed many other World Romani Congress meetings and soon became the main organisation for advocating Romani nationhood. The nationalist

tendencies of the Romani movement were explicitly noticeable in the Fifth World Romani Congress held in July 2000, the event was based around the concept of a nation without territory, and soon after the IRU propagated the need to recognise the Roma as a transnational non-territorial nation. The IRU based its argument on challenging the characterisation of a nation as territorial, and advocated that non-territorial nations are also entitled to be equally represented at the international level (Aidan, 2010: 139-145). Furthermore, the IRU demanded that the Roma be represented at the UN and other organisations where nations with territories are represented (Acton and Klimova, 2001). Soon after demands to be recognised as a nation, a document titled the “Declaration of a Roma Nation” was produced. The document was presented to heads of states and international organisations, calling them to recognise the Roma as a nation. The document was short, concise and direct; it called on the world to recognise the Roma as a nation, sharing a common language, culture, history and religion (Acton and Klimova, 2001).

Throughout the document several significant points are made that explicated the view of the Romani elites. First, the document called for a better representation of the Romani nation, which does not have desires to acquire a state or a territory within any states boundaries. Second, it expressed criticism of the concept of nation-state for not being adequate in addressing the needs of stateless transnational nations. Heads of State of several countries and the ex-Secretary General of the UN supported and welcomed the concept of Roma nation. However, the Roma have not been able to achieve validity in the international stage and the nation-state model still holds its dominance on issues of legitimacy in world politics.

3.3.4 Conclusion

The historical political process of the Romani nation-building has not been one directional. In the 19th century, individual efforts by elites to achieve equal status for the Roma in the Balkans were noteworthy. Moving into the 20th century, increased numbers of Romani organisations were established to fight the discriminatory policies of the Balkan nations and this culminated in the dream of a state for the Roma of the world. The Nazi atrocities disrupted and silenced the Romani movements until the early 1960s, when Romani movement mobilised again. The post-War period was characterised by a new era in which the Romani elites formulated ideas of the Roma as a nation without a territory. The creation of the IRU and its active involvement in the construction of the Romani nation concept became the pole of identity which numerous Romani organisations supported. The Fifth World Romani Congress formalised the desire for the Roma to be recognised as equal nations on the world stage. The conception of transnational non-territorial nation of the Roma challenged the nation-state model and envisioned a political organisation model that is decoupled from territoriality.

CHAPTER 4

NON-TERRITORIALIAL AUTONOMY APPLIED TO THE ROMA

This chapter will bring the previous discussions together by applying the non-territorial autonomy model specifically to the Romani case. The first chapter of this study investigated the critical concepts related to minorities. The findings there suggest that International Relations concepts such as sovereignty, self-determination and autonomy have all been traditionally understood from a territorial reference point. The nation-state system that has evolved since the Peace of Westphalia has over the century's normalised territory as the central defining characteristic of international participation in the governing structures. Nations that anticipated and were powerful enough to achieve a territorial state of their own have been privileged in the current global order by attaining self-determination within the global power structures. However, minority groups have either been left to the margins of national policies or instruments within the nation-state system such as antidiscrimination or protection policies which have been the practiced method of solution to their problems. The reproduction of the nation-state system by territorially concentrated minorities has either resulted in new states or conflicts. The strain between nation-states desire to keep their territorial integrity and the rewarding of

territoriality by the international system is a repeated source of conflict and instability. Non-territorial autonomy precisely challenges the interlinkage between sovereignty, self-determination, autonomy and territory. This model does not problematize these concepts in of itself, but contests their organic relationship with territoriality. It sees the sources of conflict rising from the competition over territory, realising that territory does have a value for certain groups it rejects the claim that any one space of territory is naturally connected to a particular nation of peoples.

The non-territorial autonomy model envisions a “nation” understanding that is decoupled from territory. In this respect, it diametrically opposes the nation-state model. As Kristel Porter (2003:60) argues, the nation-state system has always been about territory and any demand of collective rights by minorities whether territorial or non-territorial puts the nation-state in a mode of “territorial over-defensiveness”, where the nation-state (majority nation) feels threatened. These predetermined fixations inhibit appropriate solutions to minorities. Henrard (2000) notes that unless the obsession with territoriality is overcome, feasible “minority conscious remedies” through codes, norms, declarations and policies will only be trapped to the concerns of the nation-state and unachievable.

In the second chapter, we looked at the historical evolution of minorities. Minorities are not a new phenomenon, but it is with the advent of the Peace of Westphalia and the intensification of the nation-state system that the concept emerges within national, regional and international discourse. The historical evolution of minorities’ starts with the territorial wars in Europe and the annexations of lands create minorities all over the continent. For years to come, minority issues become the source of legal, political and military conflict for the region. Today, the minority rights have been greatly advanced to

treat individuals with equality, but the realisation of group rights to self-determination and sovereignty are still vastly ignored and denied. Non-territorial groups have especially been disadvantaged by the territorial hegemony in state and international practices. The Roma as discussed in chapter two have been the subject of persecution in the early years of the nation-state system and progressed slowly to gain the right to protection. However, the stronghold of identifying nations with territory serves as a serious obstacle for Roma. The Roma have in recent year come to understand and build their nation without any attachment to territory and are now demanding equal nation status at all level of governance. This chapter will explore the Roma demand for a nation and proceed to apply the non-territorial autonomy model to the Romani context. It is important to note that the non-territorial autonomy model has rarely been applied and the lack of empirical studies is a limitation in our case. Nonetheless, the aim in this study is to explore possible options in granting dispersed minorities with instruments that could be a useful tool for answering there calls to equal representation and participation.

4.1 “Demand for a Romani Nation”

An important point of departure that has had a tremendous impact on the Romani nation claims is the practical case that the Roma are dispersed within particular states and throughout Europe. This is an important physical factor that has played a significant role in the evolution and the formulation of Romani non-territorial nation claims. In the previous chapter, the historical evolution of the Romani political developments was explored. We see from there that the Romani have gone through various stages in history. The demand for territory was not realised in any serious matter by national, international or Romani communities. This forced the Romani elites and influencers to

the understanding that the Roma are not a suitable community for a territorial based nation (Klimova, 2003). Stemming from this historical experience and the socially dispersed organisation of the Roma, the Romani elites have declared that the Roma consider themselves non-territorial nation and have embraced self-determination as the tool of Romani mobilisation (Alexander, 2005:125). Although there are fragmentations within the different Romani movements, the concept of non-territorial nation is embraced by representatives of all the major Romani political factions (Sobotka, 2003:8).

The demand for self-determination by the Romani is both at the state as well as the international level. At the state level the Romani elites are challenging the internal systemic discrimination towards their communities regarding representation and participation within the political structures of the state. At the international level, the Romani demand to be recognised as a nation equal to all other nations (referring to majority nations with a state) with full rights to participate in the international governing structures (Alexander, 2005). The Romani elites have formulated their demands in non-territorial terms, they are not requesting a territorial state nor a regional autonomous area. The Romani elite are demanding that the predominant understanding of territorial based criteria for participation be lifted to allow the Romani communities spread across the world the right participate in the decision-making processes within national and international governance organisations.

Alexander (2005) explains that the Romani claims to self-determination are strongest at the international level because at the state level significant differences and divisions exist between Romani elites. A group of Romani elites advocate for Romani cultural distinctiveness and others that promote integration (125). This also stems from the

differing policies towards the Roma in different nation-states. The Roma elites in certain countries view the state and the population as harmonious to the Romani advocate for integration, in other instances, the severe out casting and ill treatment of Roma results in the Roma elites separating their communities by propagating for cultural distinctiveness. As mentioned earlier these differences become decreased at the international level where the Romani elites have nearly become uniform in demanding non-territorial nation status (Sobotka, 2007).

There does not exist a comprehensive document outlining the particular structure of Romani non-territorial self-determination claims. However, a look at the conference presentation by Sean Nazerali the former political advisor of the President of International Romani Union gives an understanding of the sort of ideas envisioned by the Romani elites (Alexander, 2005). The views expressed by Nazerali reflect the perspective among the leading figures of the IRU. According to Nazerali (2001:135), the Roma are demanding a “territoryless state” that consists of a governmental structure and a population, but not referring to any specific territorial space. The envisioned state would sovereign and autonomous and would communicate and cooperate with a variety of institutions a multiple levels such as national, regional and international institutions and organisations. The arrangement of this sort of a state without a territorial component would be enacted through special agreements and treaties ranging from nation governments to international organisations. This would allow the Romani communities to regulate certain matters for all their members regardless of their territorial location. This would entitle the Romani to the equal status at nations with a territorial state providing the Romani communities all the political and legal opportunities currently not available to them due to their stateless and nationless status (Nazerali, 2001). Nazerali

(2001) claims that giving this status to the Romani would allow the right for the Romani to initiate legal proceedings through petitions to the European Court of Justice of the UN.

Throughout the presentation, Nazerali (2001) does not only concentrate on the Romani, but also believes this restructuring would be the engine for creating an international system where social and cultural marginalisation would be decreased. Nazerali (2001) summarises the various benefits granting the Roma a non-territorial nation status would have on the international system. It would pressure the international community to create standing army for the UN and other international arrangement aimed to protect the individual not the state, develop an understanding of transnational justice beyond the nation-state paradigm, develop new transnational systems for tax collection and develop transnational electoral processes. Finally, the most important benefit Nazerali (2001:135) points to is the transformation of the international consciousness from competition to one where cooperation amongst and between cultures regarding issues of security, environment and other salient global issues would institutionalise into the social, legal and normative frameworks of international politics. The demand for a Romani nation, Nazerali optimistically envisions will lead to other non-territorial nations to emerge and slowly the nation-state model will disintegrate to be replaced by nations-without-states. The next section, specifically explores the IRU and its congruence with Renner and Bauer's non-territorial model.

4.2 International Romani Union and the Non-territorial Autonomy Model

The failure of the Roma to achieve a territorial autonomous land and the failure of rights based policies led to the development of a new movement. The transnational movement

of the Romani community headed by the International Romani Union (IRU) declared that the Romani are a non-territorial nation equal to all other nations. The claim of non-territorial nation was the outcome of a World Romani meeting that was hosted in the 1990s in Italy (Marushiakova and Popov, 2004). The mastermind behind the Romani non-territorial nation declaration was the activist Paolo Pietrosanti, who later on went on to become the IRU representative to the UN. Pietrosanti along with two other Romani activists published several articles explaining the idea of Romani non-territorial nationhood (Pietrosanti, 1994; Ionna, 2014). In the initial stages the idea of a non-territorial Romani nation was neglected and not welcomed, even from the Romani activists.

The disdain with the concept turned around in the year 2000 when the ‘Declaration of a Roma Nation’ was drafted at the World Romani Congress and officially endorsed by the IRU (Emil, 2000). Proceeding this stage was the efforts of the Romani activists to disseminate the idea and aim to materialize the concept. Renner and Bauer acknowledge that the non-territorial autonomy model is particularly suitable for dispersed stateless communities or ones that do not have a desire to have a state of their own (Nimni, 1999). The nature of the Roma as a dispersed stateless community with no aspiration to acquire a state makes the Roma communities of Europe extremely suitable for this model. Renner and Bauer criticised the liberal democratic nation-state structure due to its inability to offer viable solutions to stateless minorities. In opposition to this structure, Renner and Bauer advocated for an organisational model where a minority could enjoy autonomy within what they called “multination state” regardless issues of residence, homeland or territory of the community (Nimni, 1999). To realise this goal, the authors proposed that each national or ethnic community would have to form its own “national

corporation”, which would be the source of character for that specific nation in internal and external relations.

The idea and role of “National Corporation” has been taken up by the IRU in the Romani context. The IRU since its foundation has been the Romani Corporation leading and representing the Roma nation in the national and international political structures. The IRU has at different instances represented the Roma nation at domestic and international governmental organisations. The IRU signed a Memorandum of Understanding and cooperation with the Czech government, met with government representatives of Bulgaria, the former Yugoslavia, Italy, Romani and Macedonia (Marushiakova and Popov, 2004). In most of the countries just named, the IRU also opened offices to build cooperation and relationship across Europe as the Romani nation’s corporation. The work of the IRU was not limited to national meetings, it has also met with the UN, EU and the Council of Europe to show the willingness of the Romani nation to coexist and develop further relationships with other nations. The actions of the IRU are in striking congruence with Renner and Bauer’s illustration of how a national corporation should function.

Furthermore, the explication by the IRU that the Romani nation is non-territorial, only linked by common historical roots, culture, language and origin, and demanding to be recognised as such without the need for a territory. These efforts by the IRU reinforce the non-territorial autonomy model which imagined national corporations to exist within the existing boundaries and build institutions parallel to the other nations and build political relationships through delegates at the different local and international bodies. Renner and Bauer note that their model of non-territorial autonomy rests on the personality principle, which is that the membership into a national community strictly

lies in the voluntary association of individuals (Nimni, 2007). The IRU hold up the same principle and in an article published by the IRU advisor, it is clearly noted that the membership into the non-territorial Romani nation is voluntary and based on the concept of the personality principle (Alexander, 2007).

It is clear that there are significant similarities between the IRU perception of Romani non-territorial nationhood and the non-territorial autonomy model of Renner and Bauer. The IRU's attempts to bring into discourse and practise the model of non-territoriality will have a significant impact not only on the Roma community but on other minorities struggling to achieve sovereignty and political representation at the national and international governing structures. The IRU has initiated the first real step in bringing to life an understanding of nationhood that is detached from territory and has been successful to an extent in developing its recognition as the representative of the Roma nation at the international level. It is still too early to understand the exact trajectory of this movement and the impact it will have on minority regimes, but it is an important leap forward for the Romani community and other dispersed stateless minorities.

4.3 National Application of Non-territorial Model

Non-territorial autonomy has in recent years been adopted by a number of countries such as Hungary, Latvia, Croatia and Russia (Eide, 1998), but the autonomy provided has mostly been limited to cultural matters and has not extended to other areas of concern. In relation to the Roma, only in the Russian Federation and Hungary have they been able to establish some level of self-government, and the results have been minimal (Alexander, 2005). In Hungary, the 1993 Law on National Minorities established and the 2011 Nationalities Rights Law reaffirmed the system of self-governments for 13 officially

recognised minorities (Osipov, 2013). However, the Romani self-government's powers are limited to consent rights over education, language and culture, but in practice the consent is usually forced upon the population and has no real value in providing the Romani community any sense of self-government.

Another often cited problem with domestic non-territorial autonomy model in Hungary is the voting procedures. For example, in Hungary the voting rights for the non-territorial self-government was universal until 2005 allowing non-Roma to participate in the elections which sometimes resulted in the deliberate manipulation of elections to bring to power a government favoured candidate (Rainer, 2001). Although the election procedure has recently been changes, the status of non-territorial autonomy in relation to the Roma have not improved. The widely spread social and state discrimination along with exclusion from social and political institutions make it very hard for the Romani to develop the non-territorial model further. It becomes a consultative body with representatives usually subordinate to the desires of the nation-state (majority population).

In the Russian federation, the importance and status given to non-territorial autonomy initially took the form of simple consultative rights as those given to regular NGOs (Alexander, 2005:134). Since then, the Russian Federation model of non-territorial autonomy has been cited as a good example in practice (Kymlicka, 2001:67, Ghai, 2005:41, Osipov, 2013:10). This is because the Russian Federation has moved away from the consultative approach to adopting legislation on national cultural autonomy. The term has been introduced in various national and local laws and has to an extent been practiced through normative acts (Osipov, 2004:118). In 1996, the Russian Federation adopted the Federal Law on National Cultural Autonomy as the foundational

document that would outline other related policies. With the enactment of this piece of legislation, a general principle where by individuals may pursue institutional platforms to collectively pursue their rights in relation to their ethnic origin, education, culture and language. Another structure introduced with this decree is the establishment of non-governmental organisations representing different ethnicities. The number of such organisations has reached over 800 throughout the Federation (Osipov, 2013:12). The Roma population in Russia are still under severe social and state discrimination (Discrimination against visual minorities, Roma, migrants and indigenous peoples: Russia's record before the United Nations, 2013), the non-territorial models employed are not inclusive of the Roma, again we see here the territorial hegemony because the laws in the federation are mostly aimed at minorities with kin-states. The objective is not to provide a non-territorial autonomy model as envisaged by Renner and Bauer, but it is to satisfy minorities that could otherwise become problematic for the territorial integrity of the Russian Federation.

Another non-territorial model often cited is “cultural autonomy” model of Estonia. This resembles largely the Russian model by providing for the establishment of non-governmental associations to function within the state. The first 1925 Estonian Law on Cultural Autonomy went a step further by stipulating that the minority self-governments had certain rights over their cultural, educational and welfare with a guaranteed share of public funding (Osipov, 2013:11). The law allowed for cultural associations to request from the state self-governance where they would be allowed to create a registrar of persons belonging to the particular minority and have jurisdiction over the registered individuals in areas mentioned above. However, in 1993 the law was changed and the practical implications has been minimal because the national associations are not

considered legal persons, therefore cannot establish institutions, hold property, make any legally binding agreements and the public funding provided in 1925 is no longer a guarantee.

Aside from the weakness of the 1993 law, the use of the law has been limited, as in the case of Russia, to minorities with some level of power. Although the Romani community in Estonia is low in number, estimated at 1000-2000 (The European Union and Roma – Factsheet Estonia, 2014), the discrimination is relatively high and the policy chosen for the Roma has been integration and anti-discrimination. The idea of non-territorial models reserved for other minorities with competency to fight for their self-determination. For example, the only two minorities that have been able to establish non-territorial self-governments have been the Finns and Swedes with support and pressure from home states. Similar version of non-territorial models has been adopted in Slovenia, Croatia and Latvia. However, this legislation is either limited in scope or are aimed at minorities with kin-states to satisfy the particular groups to avoid conflict. The Romani communities lacking a kin-state support and political power are either ignored within the discussion of state level non-territorial autonomy or are severely discriminated against in their claims of self-government subjugated to the territorial factor.

In national structures of non-territorial autonomy the dominance of the nation-state arrangements become problematic for the Roma minorities in different countries. Local governments (in reference to Hungary) do not take seriously the opinions and views of the non-territorial autonomous representatives and usually power remains in the hand of the central government (nation-state). The consultative role of Roma self-government in national structures is often symbolic in nature without any real decision-making power

(Alexander, 2005). The typical approach by national governments is to provide enough rights to Roma minorities to have a voice, but the practical implications of these rights are minimal if any.

4.4 International Application of Non-territorial Autonomy

International instruments that refer to non-territorial autonomy are few and usually in the domain of legally not binding or soft law which however does have agenda setting and regulation powers (Osipov, 2011). Before moving forward to examine the international application of non-territorial autonomy to the Romani, it is important we outline the major international instruments that mention non-territorial autonomy. The non-territorial autonomy provisions most often are cited by the OSCE which is the least likely organisation to have power to be an international standard-setter (Osipov, 2011:398). The first undertaking pertaining to non-territorial autonomy took place in Geneva in 1991 with the Meeting of Experts on National Minorities which outlined that states have achieved positive outcome by providing minorities with advisory and decision-making bodies, elected bodies and assemblies of national minorities, local, autonomous and self-administration, financial and technical assistance to those minorities wishing to establish and maintain their own educational, cultural, linguistic or religious institutions, organisations and associations (Meeting of Experts with National Minorities, 1991).

The OSCE summit in Istanbul in 1999 reaffirmed the conclusions in the 1991 meeting on various conceptions of autonomy. In 2008, non-territorial autonomy was mentioned again in the adopted framework of Commentary of the Advisory Committee on the Framework Convention for the Protection of National Minorities on the Effective

Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs. It was stressed that cultural autonomy arrangement should be delegated to persons belonging to national minorities in the sphere of culture and education and this would bring about greater participation of minorities in the social sphere (Osipov, 2011). Other documents referring to non-territorial self-government relate to Indigenous Populations. The UN Declaration on the Rights of Indigenous Peoples also acknowledges particular groups as units that may exercise self-rule with being territorially defined (United Nation Declaration of the Rights of Indigenous Peoples, 2007). In Europe, several agreements point to the right of minorities to self-govern their affairs in the area of educational and cultural institutions. Other mentions of non-territorial autonomy can briefly be found in CoE, International Labour Organisations (ILO) and other regional documents. For the purpose of this research, it is not needed to name every document where non-territoriality is mentioned, but it is important for us to make an assessment of the outcomes of these mentions and calculate the implications of them.

Osipov (2011:401-403) argues that the mention of non-territorial autonomy in both hard and soft law are “declaratory in form and the content are far from being directly instrumentalised”. The wording of non-territorial autonomy in nearly all of the international documents are open for interpretation and do not entail any distinct form of self-governance and no provisions are placed that oblige states to support and facilitate such arrangements (Osipov, 2011). The international instruments use the language of non-territorial autonomy, but with the underlying dominance of the nation-state system. The documents adhere to the independence of nation-states and do not in any way form

a binding agreement for states to take responsibility in carrying out non-territorial arrangements.

In relation to the Roma, there are no specific documents mentioning the Roma as a non-territorial nation with rights to autonomy or sovereignty. However, increasingly the European discourse has been viewing the Romani communities as not only national minorities in various countries, but a transnational European entity (Alexander, 2007). This is evident in the various documents adopted by European institutions regarding Roma specific issues. There are also informal international working groups that bring together various bodies of European and international institutions to discuss Romani concerns. Currently, there is a drive in Europe to create Roma specific legislations and proposals for European Parliamentary resolutions to formally recognise the Roma as a transnational European entity (Hirvaskoski, 2005). Although the Roma are experiencing a limited but increasing participation in the decision-making processes of European organisations, it is not what the Romani elites are requesting. The Romani activists are not satisfied with advisory roles and are demanding self-determination to determine and shape European politics (Alexander, 2007)

Renner and Bauer referred to the non-territorial model within the context of the Austrian – Hungarian Empire, but we can infer this to the international sphere of today's world since the approach would not drastically differ. We can look at the EU as the starting point to examine what Romani non-territorial nation would entail. Montserrat Guibernau (1999: 153-157) explains that the nation-state is losing its territory as a point of relevance in relation to political, cultural, social and economic life and with the steady decrease in the relevance of territory nation-states will become nations without states because of the increasing surrendering of their sovereignty to a EU parliament or

government. The size of the Romani across Europe and the uniformity within the Roma elites at the international level make the possibility of an Romani nation claims much more stronger than national level demands where the numbers and the homogeneity is far less (Alexander, 2005:132). Referring to Renner and Bauer's non-territorial model, Nimni (1999) argues that it allows for non-state actors to become players in international relations (295), the Romani elites desire to be non-state player in international relations could with the slow emergence of transnational and international organisations become possible. The next section (discussion) will bring together all the themes that have been discussed in this dissertation to build the links between the major arguments I have attempted to put forth.

CHAPTER 5

CONCLUSIONS

This dissertation has argued that within the current assembly of the nation-state system granting collective rights to minorities are subject to severe limitations. One of the major factors preventing the realisation of minority rights is the rigid adherence to the notion of nation-state sovereignty and territorial integrity. Attempts to reform and revolutionise the nation-state system with its emphasis on territory does not seem likely in the near future. However, systems of sovereignty could be constructed parallel to the nation-state authority. The example of the IRU shows us that it is possible to develop alternative systems of autonomy within the context of the current global political order. Keating (2008) argues that the nation-state system is merely one way of organising the polity and it is important to explore new ways of organising the state. Although the possibilities of non-territorial models are problematic in some aspects, it provides the guiding principle for the idea to refine and rethink the state (Keating, 2008).

Nootens (2005:52) argues that the “process of territorialisation which accompanied state building and framed the spatial dimension of citizenship” has become the central

structuring conceptual and normative political category for minority rights. In this respect, we see that the notions of minority, autonomy, sovereignty and self-determination (see chapter 1) are interlinked with the ideal of territorialism. Nootens (2005:53) further clarifies this argument by pointing out that the current model of the state is characterised by the sovereign territorial ideal which became increasingly prevalent starting with the Westphalia Treaties and culminating in the 19th century nationalist movements. The territorial ideal over time crowded out any alternative conceptions of power, as Agnew (1999:513-514) points out, “the tight connection between sovereignty and territory that has underwritten the conceptual bonding of political power to statehood”. This territorial ownership within this historical evolution came to dominate categories of thinking about minority issues. Solutions came to be rigidly viewed in terms of territorial security and integrity giving way to majority-minority conflicts around the world. However, Nootens (2005) notes that the social organisation of a nation and the territorial boundaries of the constitutional arrangements of states are contingent and subject to change, which has been the case historically. In viewing the historical development of minorities, it is visible that the change in minorities’ condition is due to territorial and national border changes. The dominance of the nation-state system for the last several centuries is not a predetermination of future political organisations, for example, Nootens (2005) argues that there are historical alternatives to the territorial sovereign nation-state structure.

The territorial sovereign nation-state system has a direct impact on minority demands for self-determination and autonomy. The language of human rights widely adopted by states is underpinned by the sovereign territorial ideal and the monopoly of state power over all. This forces minorities to be considered secondary to the security of the state.

Kymlicka and Straehle (1999) describe the nation state construction process as one of minority destroying even if the individuals' rights and liberties are respected. This system of nation-state then creates the destruction of minorities because any notion of self-determination, sovereignty or autonomy by minority group is viewed by states as a threat to their uniformity and the international organisation being a club of states reinforces this paradigm by basing all concept of relevance to political organisation around territoriality. It is through this critique of the territorial principle that Renner and Bauer's model functions on.

I have explored and put forth ways in which the international system is characterised by the territorial nation-state system. As Agnew (1999) argues, the territorial principle has become the central category of analysis to view politics from. To turn to the Roma case, we see that being without a territory the Roma are deemed to the desires of the majority nations with states. The concepts the Roma use such as self-determination, sovereignty and autonomy are ingrained in the current order with territoriality, hence the employment of such concepts hinders the Roma struggle to become a non-territorial nation. The viability of non-territorial autonomy for the Romani demand to be recognised as an equal nation by the international community does not seem likely in the near future. Although there is an increasing pressure on the nation-state system, the likelihood of it dismantling anytime soon is improbable. This study finds that the major obstacle in the way of the Romani desire to be a non-territorial nation partaking in international politics is the territorial foundation that has been entrenched over the centuries. As we have investigated all the important concepts to do with self-governance we notice that the reoccurring theme is territoriality. Non-territorial autonomy serves for now as a theoretical challenge to the territorial dominance of international relations, but

the practical implications and the employment of this model within the national sphere is much more likely than the international one.

Within the limited literature concerning non-territorial autonomy, there are certain limitations of Renner and Bauer's model that need to be carefully considered. Nootens (2005) argues that the non-territorial models conceive society as made of perfectly sealed contiguous national groups, not taking into consideration the links and bonds amongst individuals. Identities of individuals are not uniformly based around the idea of nation and people may belong to a plural networks of identities cutting across the boundaries of nations. The collective model of organisation brings into question how the balance between communal belonging and individual participation in the political life of the state can be arranged without deepening polarization between communities (Nootens, 2005). Nimni (1999) in his reading Renner and Bauer's conceptualisation of non-territorial organisation of a multination states claims that the relationship between the individual and the collective is not identified and must be clarified. Stemming from the lack of balance between the individual and the collective the voluntary registration system foreseen by the model becomes to some extent problematic. Registration is a necessary part of the model to ensure the legitimacy of self-government and for the practical purpose of arrangements such as institutions needed, financial support and other such purposes. The problem arises when some people identify with more than one group or do not want to declare an identity. Voluntarily association becomes a limitation of the model when looked at the context of today where people increasingly identify with several categories of identity. Finally and maybe the most important objection to non-territorial autonomy and specifically to Renner and Bauer's vision of it is what Baubock (2002:10) labels as the "institutional environment". Within the structure of the

liberal democratic territorial autonomy arrangement minorities are far more likely to opt for territorial based solution because it offers strong incentives to strengthen their communities and establish a home base (Baubock, 2002).

Aside from the general limitations of the model mentioned above, some specific limits arise when we look specifically at the Roma case. Alexander (2005) sketches several problems of non-territorial model for the Roma. First, the assumption that equal power could be given to all nationalities within a multination state is not realistic and applicable. Renner and Bauer assumed that by creating national associations no single nationality would be able to oppress minorities because the association made up of totality of the minority would respond by oppressing the oppressor minority (Alexander, 2005:128). The Roma currently do not possess the political, nor the organisational power to protect and secure their wellbeing in the way envisioned by non-territorial autonomy. The second challenge in relation to the Roma relates to the registration problem mentioned above. Registration of the Roma is problematic because the centuries of stigma, persecution and discrimination attached to the Romani identity the Roma are hesitant to declare in a systematic manner their identity (Project on Ethnic Relations, 2000). Finally, the non-territorial autonomy model as with other minority models usually deal with cultural and linguistic issues. But the Romani community being demobilised on issues of education and language are not primarily aiming to achieve Romani schools or cultural institutions. This is again has a legacy in policies of the past and the Roma fear being singled out. Alexander (2005:128-129) argues that the major concern for the Romani masses is to have their individual economic and social rights before moving ahead to discuss cultural or language issues. The non-territorial autonomy needs a certain level of economic and social development within the minority

community (Nimni, 1999), however, it does not address the immediate concerns of most Roma communities which are economic status and social rights (Alexander, 2005:129). Notwithstanding the limitations of non-territorial autonomy mentioned above, the model is still useful because it contends that the territorial ideal is not capable of providing viable solutions to dispersed minorities. Instead within the territorial framework the inclination leans towards assimilation and results in power politics further marginalising and ignoring minority rights to self-determination. Even though the non-territorial autonomy model has its limitations (as with any model) “the challenge it poses to the conjunction between state-nation-sovereignty-territory alone is helpful in further and expanding the debate on minority rights. Nootens (2005:58) claims that a fair treatment of minorities equal to nations with states requires that we “overstep the territorialist epistemology which underlies the modern state”. The non-territorial autonomy model serves the theoretical purpose to create a debate on the sustainability of the territorial nation-state system in the future of the global governance structures and offers a starting point to envision a different arrangement that is more inclusive and fair.

The research question that guided this dissertation is how does International Relations norms hinder minority self-determination? The discussions in the chapters above suggest that the territorial dominance of international politics plays a significant role in limiting the right of Roma to a fair and equal treatment within nation-states and in the international community. Nimni (2005:238-240) argues the cotemporary order has taken the nation-state as given and the absolute and indivisible attribute attached to nation provides the territorial state with a basis of legitimacy and usually “convert the nation into the official ethnicity of the state”. In this manner, the territorial ideal does not “eliminate national conflicts, the national territorial state produces and heightens them

(Renner in Nimni, 2005:240). Territoriality functions as a destabilising force in national and international politics but the strict adherence to it is the result of the normalisation of territory as an indispensable part of nation's identities and legitimacy of sovereignty.

The non-territorial autonomy model in contrast provides a counter argument to the territorial nation-state system. Nimni (2005:239-240) argues that this is done by "deconstructing sovereignty into various components and defining parallel partially sovereign non-territorial communities" that are arranged in the form of public associations with constitutional provisions protecting their legal existence and rights.

The two tier system proposed by non-territorial autonomy would operate theoretically by multiple voting structures. One set of voting would be for the state-level to determine the representative in charge of economic, transportation and other administrative matters, while the other voting would be based on electing representative for each individual community (nation) that would be in responsible for cultural, educational and other matter directly related to the particular community.

The two tier system would decrease one groups having full powers over all matter related to a country and in this way would replace the one nation-one state ideal with that of a multination state without any dominance of one community over another. This would follow the transformation of the understanding of citizenship. In the current nation-state model citizenship rights render all nationals of a country equal in theory, but the practical reality of the dominant groups influence over power actually creates a disparity between citizens. The aim is inclusiveness but the current citizenship models does not bring equality instead functioning to limit non-dominant groups. Non-territorial autonomy structure entails a different understanding of citizenship: one that moves away from dominant national citizenship to a more equal citizenship that is not to a nation-

state but to an administrative state unit. This dissertation points this problematic relationship of citizenship and implies that in the near future a new citizenship understanding will be necessary. The nation-state citizenship understanding will not be able to provide the growing minority request for self-determination.

In the twenty-first century the dominance of the nation-state system continues to dominate normative and practical understanding of politics. Nimni (2005:250-251) refers to the nation-state as a “premodern creature that adapted to the conditions of modernity that is based on the premise that it is necessary to associate territorial state sovereignty with a national community”. The two are never perfectly aligned minorities that are not able or do not desire for a territorial state are caught in a predicament that has been responsible for countless acts of violence, discrimination and marginalisation. Learning from the experiences of the past, it is imperative that alternative solutions are put forward to allow for the collective rights of minorities. Above I have concluded that the major norm hindering Romani self-determination is the territorial nation-state paradigm that is ingrained within the current political order, so than, to what extent is the non-territorial autonomy a viable alternative?

Non-territorial autonomy from the Romani elite centered perspective is a nearly perfect alternative, but does have its challenges. Even if the Romani elites and activist have taken up the language of non-territorial autonomy at both local and international level, I suggest that more needs to be done to improve the economic and social situation of the Romani communities before a comprehensive non-territorial nation status could be of serious significance within the Romani masses. I have in this dissertation attempted to fill in a theoretical gap by applying the non-territorial autonomy model to the international sphere for the Romani which has been significantly understudied within

International Relations, however, future studies need to focus on empirical models that investigate how this could be possible. More studies need to focus on exploring non-territorial autonomy and the Romani masses to explicate from the viewpoint of the Romani what non-territorial autonomy means to them and if it is a desire that is widely accepted by the Romani communities around the world. Finally, the major challenge facing the non-territorial autonomy model is to adapt to the current situations of the world where minority issues are becoming prevalent within states and international governance bodies. In this dissertation, I have undertaken an explorative study to understand the theoretical insights of non-territorial autonomy for minorities. Future study needs to focus on descriptive and explanatory research to better understand the territoriality and alternatives. Empirical study of the Roma and the Romani population's perspective on non-territorial autonomy could be investigated to better grasp the needs of minority communities that are dispersed. Furthermore, comparative analysis between a dispersed minority and territorially concentrated minority could give insight on whether dispersed minorities and concentrated minorities have commonalities in relations to self-determination.

The central claim of this thesis has been that territorial dominance of national and international politics hinders certain communities subordinate in the current system. Groups that are numerically dominant and powerful have been able to acquire territory and exercise political freewill through self-determination at the international and national level. I believe as the consciousness of minorities' increases with the changing political, social and historical context, minority protection or marginal participation will not be enough to decrease conflict and provide regimes that are fair, equal and democratic. To minimise the minority-majority conflict that may arise in the future, we

need to start building alternatives to the current international order. Non-territorial autonomy is one out of many alternatives that serves this goal.

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