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**FROM TSARIST EMPIRE TO LEAGUE OF NATIONS
AND FROM USSR TO EU: TWO ERAS IN THE
CONSTRUCTION OF BALTIC STATE SOVEREIGNTY**

Thesis submitted by Dirk Crols to obtain the degree of Doctor of Philosophy (PhD).

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ABSTRACT

This thesis examines how the three Baltic countries constructed their internal and external sovereign statehood in the interwar period and the post Cold War era. Twice in one century, Estonia, Latvia and Lithuania were namely confronted with strongly divided multiethnic societies, requiring a bold and wide-ranging ethnic policy. In 1918 all three Baltic countries promised their minorities cultural autonomy. Whereas Estonian and Latvian politicians were deeply influenced by the theories of Karl Renner and Otto Bauer, the Lithuanians fell back on the historic Jewish self-government in the Polish-Lithuanian Commonwealth. Many politicians were convinced that the principle of equality of nationalities was one of the cornerstones of the new international order, embodied by the League of Nations. The minority protection system of the League was, however, not established to serve humanitarian aims. It only sought to ensure international peace. The League's minority rights catalogue was shaped by the Western European conception of the nation state of which cultural autonomy was not a part. Next to this, the minority protection system of the League created an institutionalisation of inequality between East and West. This lack of a general minority protection system was one of many discussion points in the negotiations of the Estonian and Latvian minority declarations. Although Lithuania signed a much more detailed minority declaration, its internal political situation rapidly deteriorated. Estonia, on the other hand, established full cultural autonomy with corporations of public law. Although a wide-ranging school autonomy was already established in 1919, Latvia never established cultural self-government. The Second World War and the subsequent Soviet occupation led to the replacement of the small historically rooted minority groups by large groups of Russian-speaking settlers. The restoration in 1991 of the pre 1940 political community meant that these groups were deprived of political rights. In trying to cope with this situation, Estonia and Latvia focused much more on linguistic integration than on collective rights. Early attempts to pursue a decolonisation policy, as proposed by some leading Estonian and Latvian policymakers, were blocked by the 'official Europe' which followed a policy analogous to the League of Nations. Only when the policy of normative pressure of the High Commissioner on National Minorities was supported by the European Union's conditionality policy, some modifications to the restorationist policies were made.

TABLE OF CONTENTS

INTRODUCTION	6-12
--------------	------

PART ONE: THE BALTIC STATES IN THE INTERWAR PERIOD	13-146
----------------------------------------------------	--------

Chapter one: The creation of independent Baltic states in the period 1917-1920

The Russian revolution of 1905 as a turning point	13-14
The theories of Karl Renner and Otto Bauer	15-19
The long-standing corporate-style autonomy for the Germans and Jews in the western borderlands of the Russian Empire	19-23
The outbreak of the First World War and the Russian revolutions of March and October 1917	23-25
Estonia	25-31
Latvia	32-39
Lithuania	39-44

Chapter two: The League's vision of statehood and minority rights

The League of Nations and sovereignty	45-49
The League's minority protection system	49-62

Chapter three: The Baltic minority declarations and Westphalian sovereignty

The entrance of the Baltic states into the League of Nations	63-65
The Lithuanian minority declaration	66-69

The history of the adoption of the Latvian minority declaration	70-78
The history of the adoption of the Estonian minority declaration	78-84
Analysis of the arguments put forward in the negotiations and evaluation of the Estonian and Latvian minority declarations	85-88
The Estonian and Latvian 'independence declarations': to guarantee or not to guarantee?	89-91
The minority petitions	91-99
Lithuania and the concept of absolute sovereignty	99-104

Chapter four: The practical operation of personal autonomy in the Baltic states

The evolution of Jewish autonomy in Lithuania	105-113
The practical operation of cultural autonomy in Estonia	113-132
The practical operation of personal autonomy in Latvia	133-146

PART TWO: FROM USSR TO EU: NEW MINORITIES ON THE INTERNATIONAL CHESSBOARD

147-242

Chapter five: The restoration of Baltic statehood

The disappearance of the old minorities	149-150
The emergence of new minorities	150-153
The restorationist principle	153-155
EC, CoE and the restoration of Baltic statehood	155-157
Restoration of the political community	157-162
Cultural autonomy and other issues of domestic sovereignty in Estonia	162-167
Cultural autonomy and other issues of domestic sovereignty in Latvia	167-171
Cultural autonomy in Lithuania	171-173

Chapter six: IGOs and the minority rights in the Baltic states

The CoE and minority rights	176-178
The OSCE and minority rights	178-180
The EC/EU and human rights clauses in international agreements	181-182
The Trade and Co-operation agreements and the Baltic clause	182-185
The EP and the TCAs	185-190
The establishment of OSCE-missions in Estonia and Latvia and the HCNM	190-194
The question of the Aliens law in Estonia	194-198
The CoE and the Latvian Citizenship law	198-203
The Free Trade Agreements and the Bulgarian clause	203-205
The Baltic states and the Stability Pact	205-208
The European agreements	208-211
European institutions vis-à-vis restorationist policy in the period 1995-1997	211-213

Chapter seven: Estonia and Latvia in the EU accession process and the role of the OSCE

The European Commission's opinions of July 1997 and the Luxembourg European Council of December 1997	214-218
The system of the Accession partnerships	218-221
The EU and Latvian sovereignty	221-232
The EU and Estonian sovereignty	232-239
The Copenhagen European Council of 12-13 December 2002	239-241
CONCLUSION	242-253
BIBLIOGRAPHY	254-291
ANNEX: Lithuanian minority declaration	292-294

INTRODUCTION

Research questions

Twice in the past 100 years (from 1918-1940 and since 1991), representatives of Estonia, Latvia and Lithuania have faced the challenge of constructing independent state institutions and national identities on the basis of societies that are (deeply) multiethnic in character and of negotiating a place within the institutional architecture of a 'New Europe'. This thesis examines how these three nations have tackled the construction of sovereign statehood during these two eras, with particular reference to the provisions made for national minorities.

There are two levels to this analysis. The first examines issues of domestic sovereignty, that is to say how the Baltic states organised and regulated the relationship between state and constituent national groups. The second level looks at their relationship with the principal European International Organisations of the day (the League of Nations and the European Union respectively), and assesses what implications this had for their Westphalian sovereignty. The thesis will compare and contrast the approach taken by the three nations during each of the two eras, and will also look at issues of continuity and change between the two eras.

Sovereignty has indeed both an internal and an external dimension (Keating (2003:194)). Sovereignty is the assumption that a government of a state is both supreme and independent. It means "*a State's general independence from and legal impermeability in relation to foreign powers, and the State's exclusive jurisdiction and supremacy of governmental powers over the State's territory and inhabitants*" (Steinberger (1987:404)).

The famous legal scholar Oppenheim taught that the sovereignty of a state comprises territorial authority over all persons and things within its borders territory (territorial authority), authority over its citizens at home and abroad (personal authority) and independence from any external authority (Oppenheim (1905:101)).

Regarding insiders, sovereignty is disclosed by the supremacy of a governing authority over everybody who lives in its territorial jurisdiction and is subject to its laws and politics.

Internal sovereignty is a fundamental authority relation within states between rulers and ruled which is usually defined by a state's constitution (Jackson (1999:11)). Domestic sovereignty then has to do with the organisation of public authority within a state. For example, public authority may be concentrated in the hands of one individual or divided among different institutions. There can be federal or unitary structures (Krasner (1999: 11)).

In my thesis, I examine the role of minorities as collective entities in the public authority structures of Estonia, Latvia and Lithuania. More specifically, I examine whether and what kind of autonomy Estonia, Latvia and Lithuania established for their minorities and highlight the differences between them, both in the inter-war period and in the contemporary era.

External or Westphalian sovereignty is a fundamental authority relation between states which is defined by international law (Jackson:11). Westphalian sovereignty refers to the exclusion of external actors from the domestic authority structures of a state (Krasner (1999:20-25)).

When the way in which a state treats persons (either individuals or groups) within its boundaries is challenged by other states or by an international organisation, the Westphalian sovereignty of this state is violated (Krasner (1995:233)).

In my thesis, I examine the relationship between the Baltic countries with the League of Nations with regard to their earlier minority policies and compare it with the interaction that Estonia and Latvia had with the contemporary European institutions in this field.

As I will demonstrate in several parts of my work, domestic and Westphalian sovereignty are of course inextricably intertwined both in the inter-war period and today.

As well as presenting many commonalities, a comparison of the two eras also makes for an interesting exercise in contrasts as far as the Baltic case is concerned. For example, in the inter-war period, all three countries adopted legislation based on the principle of non-territorial cultural autonomy. One key goal of the thesis is to examine why these laws were adopted in the Baltic context (especially given the deep residual tensions between Estonians, Latvians and Germans, and fear that Germany might seek to foment irredentism in the Baltic states), the character they had, the reactions of minorities to them and, last but not least, their implications for the sovereignty of the state. The Baltic governments of the 1920s, and

certainly Estonia, could argue with some justification that their own provisions went far beyond the rather minimalist framework for minority protection established by the League of Nations. Indeed, the Estonian law on cultural autonomy was seized upon by minority lobbyists who saw it as a model for a European-wide guarantee of minority rights. However, the dominant (Western European) forces within the League refused to countenance this principle, seeing this as undermining the sanctity of the unitary and sovereign nation-state.

The Baltic states that were restored to being in 1991 after 50 years of Soviet occupation faced a radically changed situation as far as the minorities question was concerned. Against the background of large-scale Soviet-era immigration by Russians and other Russian-speaking elements, Estonia and Latvia in particular adopted state-building strategies that have been regarded as the epitome of 'nationalising' statehood. The decision by these countries to exclude the large, Soviet-era settler population from the right to automatic citizenship elicited huge political and academic attention internationally. For many, it raises the question of how these two recent EU entrants have been able to reconcile this citizenship policy with the EU Copenhagen criteria relating to democracy and respect for and protection of minorities. What does this fact tell us about the minority policies of the EU and other European and Euro-Atlantic international organisations, and how do these policies differ from those adopted by the League of Nations in an earlier era? These and other questions are addressed by the thesis.

There is already a quite considerable body of literature on the Baltic national question that deals separately with each of the two eras.

On the cultural and school autonomy of inter-war Estonia and Latvia, one can first of all cite the important study of Michael Garleff (*Deutschbaltische Politik zwischen den Weltkriegen. Die parlamentarische Tätigkeit der deutsch-baltischen Parteien in Lettland und Estland*, 1976). Eugen Maddison (*Die nationalen Minderheiten Estlands und ihre Rechte*, 1931) provides an essentially legal analysis of the Estonian Law on cultural autonomy and its implementation by the German and Jewish minority. In his work *Minderheitenpolitik in Estland. Rechtsentwicklung und Rechtswirklichkeit 1918-1995* (1996), Cornelius Hasselblatt discusses the Estonian minority policy in the inter-war period in detail. The studies of Brandenburg (*Die Rechtsstellung der deutschen Minderheit in Lettland*, 1932) and Engelmann (*Das Recht der nationalen Minderheiten in Lettland*, 1930) are (short) legal studies about the

system of school autonomy in Latvia. The issue of cultural autonomy in Lithuania is thoroughly examined by Liekis in a recent doctoral study (*"A state within a state?" Jewish autonomy in Lithuania 1918-1925*, 2003).

There is a sizeable amount of literature on the minority protection system of the League of Nations. The impact of the League's system on the sovereignty of the states concerned is analysed in an excellent way by T.H. Bagley (*General principles and problems in the international protection of minorities*, 1950) and C.A. Macartney (*National states and national minorities*, 1934). The history of the negotiations of the Estonian and Latvian minority declarations and some legal issues is extensively treated by Louis Villecourt (*La protection des minorités dans les pays baltiques et la Société des Nations*, 1925).

Numerous authors have treated the citizenship and language issues in contemporary Estonia and Latvia. From a legal point of view, Andreas Graudin provides the best comparison of the different systems with regard to minority protection in the three countries (*Die Stellung der nationalen Minderheiten in den Verfassungen der baltischen Staaten und ihre einfachgesetzliche Umsetzung*, 1997).

The volume of literature on the activities of contemporary European institutions in the field of minority protection is equally abundant. An excellent summary is given by Gaetano Pentassuglia (*Minorities in International Law. An Introductory Study* (2002)). Several works cover the relationship between European institutions and the Baltic states. In my view, both the influence from contemporary European institutions on the ethnic policies of Estonia and Latvia and the mutual interaction between these organisations is best explained by Judith Kelley (*The power of norms and incentives. Ethnic politics in Europe*, 2004). David Galbreath provides a more descriptive study (*Nation-building and minority politics in post-socialist states. Interests, influence and identities in Estonia and Latvia*,)

Thus far, few authors have, however, undertaken the kind of comprehensive and detailed comparative analysis of the three Baltic countries that is attempted here while the English language literature on the inter-war period at least remains comparatively sparse. Most significantly of all, there is still no systematic comparison of the two eras of Baltic independence that looks at issues of statehood and sovereignty. In her interesting work *National Minorities and the European Nation-States System* (1998), Jennifer Jackson Preece

has explored the interplay between sovereignty, statehood and minority protection. Her study, however, does not contain much specific detail on the Baltic states and only goes so far as 1995, thus leaving out the crucial endgame of EU enlargement. Rogers Brubaker's *Nationalism Reframed* (1996) offers a useful framework for comparative analysis of the relationship between states, national minorities and 'external national homelands'. However, there are many criticisms that can be levelled at Brubaker. One relates to its essentialism and assumption of perennial instability and conflict in Central and Eastern Europe (this certainly does not capture the Baltic experience of the 1920s, for instance). More important is Brubaker's complete disregard of the role played by external international organisations, which in both eras have constituted a crucial 'fourth pillar' to the nexus linking states, minorities and external homelands. This thesis will help to provide a fuller appreciation of this role.

In filling these several gaps in the literature, the thesis draws primarily upon an extensive review of relevant secondary literature in several languages. Next to this, debates in the Council of the League of Nations and in the European Parliament are analysed by way of original material. The thesis also brings to bear significant new empirical material, most notably a series of interviews with political actors, academics and with representatives of the European Commission and the European Parliament who had dealings with the three countries.

Structure

In the first chapter of Part One (*The creation of independent Baltic states 1917-1920*), I examine the internal and international circumstances of the creation of the Baltic states in the period 1917-1920, and try to explain why they adopted their distinctive approach in trying to solve their nationality problem. The central question in this chapter is: what were the internal and international factors influencing the Baltic states' distinctive thinking on domestic sovereignty?

In the second chapter (*The League's vision on statehood and minority rights*), I examine the vision of the Great Powers on statehood and minority rights. The League of Nations was an

association of states dominated by a few Western Great Powers. Their view shaped and dominated the League's minority protection system. The central question is thus whether the Great Powers had the same view as the Baltic states on domestic sovereignty. Did they also consider cultural or personal autonomy as the most advisable solution for the nationalities question?

In chapter three (*The minority declarations and Westphalian sovereignty*), I analyse the terms of the entry of the Baltic states into the League of Nations and the nature of the minority declarations. During the long negotiations of the Estonian and Latvian minority declarations of 1923, very interesting issues regarding minority protection and sovereignty were raised by the Estonian and Latvian representative. The central question and issue in this chapter is the impact of these declarations on the Westphalian sovereignty of the Baltic states.

In chapter four (*The practical operation of personal autonomy in the Baltic states*), I examine why cultural autonomy was eventually adopted in Estonia and wide-ranging school autonomy retained in Latvia. Central in this chapter is of course the analysis of what was distinctive about these laws with regard to domestic sovereignty. What ramifications did these laws carry for the states concerned in political terms? Did these laws create 'states within states' or did they actually make an important contribution to the emergence of an integrated state community? I also discuss the evolution of the implementation of the promised autonomy in Lithuania.

In chapter five (*The restoration of Baltic statehood*) (Part Two), I examine the implications of the process of state-building in the Baltic states after the end of the Soviet occupation for minority rights and the institutional position of minorities in the public authority structure of these states. Are cultural autonomy or school autonomy still relevant solutions for the *de facto* binational states of Estonia and Latvia? What mechanisms did the Estonian, Latvian and Lithuanian state introduce to try to solve this entirely new nationalities issue?

In chapter six (*IGOs and minority rights*), I discuss the nature of the three different European institutions (EU, OSCE and CE), their general thinking on minority rights and their specific view on the Baltic issue, drawing explicit comparisons and contrasts with the League of Nations and the inter-war period. Central question is of course: what are the differences and

similarities between the approaches of the contemporary institutions with the earlier position of the League of Nations?

Chapter seven is a case study of the relationship of Estonia and Latvia with the EU, the OSCE and the CE in the field of language and citizenship policy. What was the precise impact of these organisations on the mentioned policies of these countries?

In the conclusion, I recap the main issues and arguments and draw out the main similarities and contrasts between the two eras.

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PART ONE: THE BALTIC STATES IN THE INTERWAR PERIOD

Chapter one: The creation of independent Baltic states in the period 1917-1920.

The Russian revolution of 1905 as a turning point

As Georg Ruttenberg observes, the road to the independence of Estonia, Latvia and Lithuania was marked by three crucial stages. These were the 1904-1905 revolution, the beginning of the First World War in 1914 and the Russian revolutions of February and October 1917 (Ruttenberg (1928:3)).

Before the revolution of 1904-1905, the Estonian, Latvian and Lithuanian national movements were primarily directed towards the protection of culture and language (White (1994:21-25)). In the nineteenth century, the Estonian, Latvian and Lithuanian languages were peasant languages. Social mobility and education always meant the adoption of German (Estonia and Latvia) or Polish (Lithuania). The national movements challenged this old relation between language and social estate and tried to make education possible in the Estonian, Latvian and Lithuanian language. These languages were also to be considered as national languages.

According to this early national discourse, a nation which could express itself in its own national language and have the possibility of getting education in that language was sovereign (Lehti (1999:63)). As Marko Lehti notes, as late as the beginning of the twentieth century, a nation was being defined in Estonia mainly as a cultural unit, or was understood as cultural individuality. In 1904, the largest political party in Latvia, the Social Democrats, stated that national self-determination implied that each national group should have the right to maintain its own culture and that the language of each national group should be used in schools, local administrative institutions and local courts (Lehti:64).

The Russian revolution of 1905, however, proved to be a real turning-point. The national movements altered their cultural demands and demanded for the first time self-government,

next to social and cultural reforms. Thus, their demands became political in nature (Ruttenberg:3-4; White:30). Separatism was, however, still absent. National self-determination implied for these national movements that the Baltic administrative divisions were reformed according to ethnic borders and that these national units were given autonomy (Lehti:65).

With these demands, the national movements in the Baltic were completely in line with the demands of the other minority nations in the Russian empire. Roshwald observes that the dominant modes of political thought among nationally conscious minority intellectuals closely reflected the thinking among the Russian oppositional intelligentsia. The left of center Constitutional Democratic Party (Kadets) stated that it was absolutely essential that ethnic minorities were actively included in the future civic development of multinational Russia. Next to the revocation of discriminatory and repressive legislation against groups as the Jews, the Kadets pleaded for the granting of cultural autonomy to all non-Russian nationalities and regional self-rule for Poland and Finland. Russia's largest left-wing populist movement, the Socialist Revolutionary Party even endorsed the principle of political as well as cultural autonomy for all the major ethnic groups. The Russian Social Democratic Workers Party (or Social Democrats) adhered to a more rigidly Marxist, internationalist understanding of class struggle. It understood, however, that paying lip-service to the principle of national self-determination did have some revolutionary potential (Roshwald (2001:50-51)). The Kadets and the Socialist Revolutionary Party were strongly influenced by the views of the Austro-marxists Karl Renner and Otto Bauer.

The theories of Renner and Bauer also had a very strong appeal to the representatives of the minority nations. One of the central challenges for these groups was namely the reconciliation of the particular with the universal, the synthesis of ethno-cultural identity with internationalist solidarity. Many representatives of these ethnic minorities realised that they would fail to mobilise their ethnic group for the internationalist cause, unless they appealed to particularist sentiments. This tension was resolved by the combination of socialism with nationalism. *"By bringing about true economic and political equality among human beings, socialist revolution would also bring about equality among ethnic groups. (...) By the same token, asserting one's own (exploited and oppressed) ethnic group's particular rights and interests could only serve to advance the cause of socialist revolution for the empire as a whole."* (Roshwald:55).

The theories of Karl Renner and Otto Bauer

The concept of cultural autonomy, in its advanced form, was devised on the Austrian territory at the turn of the twentieth century. There were several explanations for this. First, the Dual Monarchy had a total population of fifty-three million people, made up of more than fifteen different national groups. Second, contrary to the multiethnic Russian empire, in the Dual Monarchy there prevailed a relative freedom of thought.

The basic idea of cultural autonomy had already been incorporated in the Austrian Constitution. Contrary to the Hungarian Constitution, in which the subject of the law was the individual, the Austrian Constitution namely recognised a community as a collective legal entity (Galantai (1992:48-49)). Article 19 stated: "*All the races of the state shall have equal rights, and each race shall have the inviolable right of maintaining and cultivating its nationality and language. The state recognises the equality of the various languages in the schools, public offices, and in public life. In the countries populated by several races, the instruction of public instruction shall be so organised that each race may receive the necessary instruction in its own language, without being obliged to learn a second language.*". Oliver Zimmer observes that a number of crucial questions remained unanswered: What constituted a nation? What did national equality mean in practice? And finally, who was responsible for the implementation and enforcement of these rights (Zimmer (2003:56-57)).

The Austrian socialists were the first to study in depth the relationship between the social and national questions. The socialist movement in the Dual Monarchy was namely deeply affected by the national divisions. It was threatened by ethnic and national disintegration. For example, Czech socialists resented the high profile of the Germans within the party and demanded the establishment of their own trade union commission. Therefore, the socialist leadership was forced to tackle the national question.

The resolution of this issue was done first within the framework of the Socialist Party, and subsequently by proposals that attempted to maintain the unity of the Austrian state while giving maximum institutional, political, and cultural recognition to national and ethnic diversity (Nimni (2000)).

In 1897, a biennial congress of the party was held in the Wimberg hotel in Vienna. Following Czech demands, the party decided to transform itself into a federative organisation of six national parties (Ukranian, Czech, Polish, German, Italian and Slovene) with a common executive committee (Nimni; Meissner (2001:137)). At their party congress in the Moravian city of Brno (Brünn) at 24-29 September 1899, the Austrian socialists urged the transformation of the Austro-Hungarian monarchy into a democratic *Nationalitätenbundesstaat*. Their 'nationalities program' (*Nationalitätenprogramm*) foresaw self-governing bodies of public law (*Selbstverwaltungskörper*) for each nation. The legislation of these bodies would be implemented by 'chambers of nationalities' (*Nationalitätenkammern*) (Sandner (2002:3)). The general thesis of the Austrian socialists was that the inequality and the lack of freedom of the different nations hindered the social and political freedom and equality of all individuals. The slowly emerging industrialisation in many places of the empire indeed required considerable displacement of the workers from their traditional homesteads. Workers in search for jobs could not benefit from freedom if language formed the basis of territorial borders, when the available jobs were found in other territories. Culture and territory should therefore be independent from each other (Eide (1998:266-267)).

The theories of Karl Renner (1870) and Otto Bauer (1880-1938) must be seen and understood against this historical and political background.

Karl Renner, a Moravian lawyer, tried to create a balance of power between national communities and central state institutions. Renner's central idea was to reorganise the Austro-Hungarian empire into a democratic, federal state based on a dual principle, namely a territorial and a cultural principle. Renner saw a nation as a cultural community (*Kultur-gemeinschaft*). According to him, nation and state are different concepts and do not necessarily overlap. While a culture creates a nation, it does not create a state. Renner regretted that, unlike the churches, nations did not exist as legal entities within the Dual Monarchy. He rejected the atomic-centralist doctrine according to which subjects related to the state as isolated individuals. Instead he adopted a collective-federalist view according to which the individual was a member of a nation. Only through his membership of the nation was the individual subjected to the state. Thus, the nation stands between the individual and the state. This internal organisation and building up of the different nations (*kulturautonome Nationalitäten*) was decided on the basis of population density. Renner proposed to divide the Austro-Hungarian empire into a number of provinces corresponding as closely as possible to

ethnic boundaries, within which the dominant national groups would take precedence over the others in matters of language. Co-nationals in a local diocese or constituency would form a national commune, i.e. a corporation governed by public and private law with the right to issue decrees and raise taxes, and endowed with funds of its own. A certain number of communes linked by territory and culture would form a national district with corresponding corporate rights. The sum total of these national districts would then constitute the nation, which would also be a body governed by public and private law. The state constituted by the sum of the various nations would then be a *Nationalitätenbundesstaat*.

In Renner's view, nations were established as public law corporations on the basis of a nationality register in which individuals declare their affiliation. Renner derived the 'personality principle' from the work of the leading German historian Friedrich Meinecke. This principle referred to the widest personal choice of its members to partake in a particular national association (Nimni).

These nations were then represented at the state level in separate national councils, elected on the basis of this register. These councils had the power to legislate in matters of cultural policy and education and to tax their co-nationals in order to finance separate schools, universities, theatres and museums (*Kulturautonomie*). On the other hand, the state maintained its authority in economic and social affairs and in the field of internal and external security.

The nationality register served as a means of creating new territorial administrative units. In a mononational unit, the language of the majority was the only language of public institutions, but the (linguistic) minority had the right to legal aid from its national council. In binational units, public institutions were bilingual and the regional councils of each nation had to agree on policy decisions concerning both communities (Bauböck (2001:29)). Minorities in a certain unit could organise themselves as national associations of individuals enjoying 'extra-territorial personal cultural autonomy'. This idea had already been put forward in 1899 at the Brno Congress by a Slovene, Kristian Etbin. In 1918, Renner, having become the first Chancellor of the Austrian Republic, instructed the lawyer Hans Kelsen to draw up a constitution based on these principles. However, the project was never followed up (Plasseraud (5/2000)).

To summarise: in Renner's view, autonomous institutions based on the cultural identity of individuals were to be established. These cultural institutions would form a separate branch of state power, supplementing the territorial organisation of the state. Within the territorial borders of the federal state, there would be two sets of boundaries, one territorial and one cultural. The units organised according to the ethnic principle would deal exclusively with national-cultural matters. The rest would be dealt with by authorities of territorially organised units. Such territorial units would comprise persons from different cultural communities. Any given cultural community would have members in several of the territorial units. Cultural identity would thus be independent of territorial residence. The different ethnic groups would have full representation in their territorial government and form a federal advisory council to the Chancellor. Cultural autonomy freed from territorial boundaries was intended to strengthen the conditions for the maintenance of personal identity, particularly in the field of language and would allow free movement of the workers.

Renner's definition of nations on strictly linguistic grounds was rejected by the sociologist **Otto Bauer**. In his work *The nationalities question and social democracy* (1907), Otto Bauer defined the nation as "*the totality of men bound together through a common destiny into a community of character*". All those who share national educational and national cultural values, whose character is shaped by the destiny of the nation which determines the content of these values, constitute the nation (Bauer (1995:183)). In Bauer's view, the development of the nation reflects the history of the mode of production. In the period of 'primitive communism' and nomadic agriculture, there was a unitary nation as a community of descent. After the transition to settled agriculture and the development of private property, the old nation was divided into the common culture of the ruling classes on one side, and the peasants and the small farmers on the other. The latter were confined to narrow local regions produced by the disintegration of the old nation. With the development of the capitalist mode of social production, the working classes were still excluded. They were still not fully incorporated in the developing system of education. Gradually this growing education system would integrate and unite all the popular masses and local groups into a national whole, in the unitary socialist nation (Bauer:184-185). With the concept 'cultural-national autonomy', Bauer advocated an 'extraterritorial' constitution of the nation. Autonomy would not be granted to a Czech Republic on the basis that Czechs comprise the majority nation residing in a specific region of the Austro-Hungarian empire. Rather, autonomy would be granted to individual Czechs irrespective of territory, no matter which area of the Habsburg empire they

might inhabit. This in turn required that Czechs, Serbs, Germans, Magyars, etc., insofar as they were scattered throughout the empire, be administratively organised into separate 'nations', which would then form components of the Habsburg state. Membership of a nation was for Bauer not essentially connected with territory; it functioned as the essential component of an individual's identity (Lewis (8/9/2000)).

Bauer demanded the transformation of the Austro-Hungarian Empire into a two-track democratic federation of territories and ethnic groups, the latter under the principle of personal autonomy. An essential aspect of Bauer's model was that the ethnic groups, which instituted the cultural autonomy in each place, should have an independent power of income taxation to cover the costs of their education and other institutions, in addition to a proportional part of the other taxes. National minorities were to be organised into corporate bodies with autonomous rights to handle their 'ethno-national' affairs (Eide:267-268).

As indicated above, the theories of Renner and Bauer shaped the thoughts of many democratic parties and movements in the Russian empire. They also had an enormous influence on the representatives of the national movements in the Baltic states (Meissner (2001:138-139); Aun (1951:17-18)).

The long-standing corporate-style autonomy for the Germans and Jews in the western borderlands of the Russian Empire

The arrival of the ideas and theories described above must be seen within the context of long-standing corporate-style autonomy for the Germans in the western borderlands of the Russian Empire and the far-reaching autonomy enjoyed by the Jews in the Polish-Lithuanian Commonwealth.

The Germans in Estonia and Latvia

In 1920, Germans in Latvia only formed 3.2 per cent (45,315 people) of a total population of 1,408,081. In Estonia, they only formed 1.66 per cent (18,319 people) of a total population of 1,107,059 in 1922 (Royal Institute of International Affairs (1938:30-38); Hiden and Salmon (1991:46); Junghann (1932:41-46)).

Sheer numbers alone however do not give an accurate picture. For seven hundred years, the Baltic Germans ruled over the native population as colonisers and dominated the political, cultural and economic life of Estonia and Latvia. Together with a land-owning German aristocracy, a German merchant class flourished in the main cities. The indigenous populations were subjected as serfs and did not participate in all these developments.

After the collapse of the German knights, first Sweden (1561-1721), and then Russia (after the Great Northern War (1700-1721)) became the rulers. Although the Swedes restricted the political privileges of the German landowners, they did not alter their economic power (Van Den Heuvel (1997:609)). The Russian Tsar Peter the Great reconfirmed the privileges of the German landowners and merchants (Thea (1995:31)).

In the Tsarist Empire, Lithuania remained under the influence of a Polonised aristocracy while the Germans continued to rule over Estonia, Livonia and Courland as a proxy for the Tsars (Hiden and Salmon:13). From Peter the Great until Alexander III, the Russian Tsars fully respected the political and cultural particularities of the Baltic provinces and the privileges of the Baltic Germans (Von zur Mühlen (1994:65-88)). From a cultural point of view, this had enormous consequences. Estonia and Latvia remained a part of the German cultural space and the world of protestantism (Interview with Jüri Jegorov, former Professor of History of Law, University of Tartu, Tartu, July 1996).

The Baltic German nobility (or *Ritterschaften*) ruled over the area independently. German was the language of education, justice and administration (Von Staden (1993:654); Hiden and Salmon:14). In theory, the Russian administration exercised control over the Baltic Germans through the governors. In practice, it never interfered (Seton-Watson (1954:32)). After the creation of the German empire in 1870, the Tsar began to mistrust the loyalty of the Baltic Germans (Thea:32). When he acceded to the throne in 1881, Tsar Alexander III did not confirm the privileges given to the Germans in 1721. Thereafter, Russian was introduced as the compulsory language of government and administration. The Russians controlled the local police and justice and became the administrators (Hiden and Salmon:15; Seton-Watson (1954:144)). After the spread of the revolutionary ideas in the beginning of the twentieth century, the Tsar and the Baltic Germans again joined forces. In return for the preservation of the existing social and political order, many privileges were restored. Many German educational institutions were reopened. Some German landowners

were even allowed by the Russians to buy additional land and to populate these estates with German farmers from other parts of the Russian Empire (Seton-Watson (1954:273-274)).

The Jews in Lithuania

Because of the growing menace of Ivan the Terrible, the Grand Duchy of Lithuania formally united with the Kingdom of Poland in 1569 with the Treaty of Lublin (Van Den Heuvel (1986:13)). In this Polish-Lithuanian Commonwealth, the Jewish community enjoyed a unique and far-reaching autonomy.

In the fourteenth century, most Jewish communities had yet to develop. Even the largest among them numbered no more than a few dozen families. Therefore, there was no need for them to have advanced communal autonomy institutions (Cygielman (1997:20)). During the first quarter of the sixteenth century, the Jewish communities in Poland (mainly Krakow, Poznan and the smaller communities in their environs) were strengthened by continuous Jewish emigration from Moravia, Bohemia, Germany and Austria. This significantly accelerated their demographic, economic and social development. In the 1640s, the number of Jews in Poland-Lithuania approached 600,000 (Cygielman:8).

As Cygielman observes, the considerable number of the Jewish population in the Polish-Lithuanian Commonwealth, the importance of this community in the economic life of the country, next to the distinctive character of the Jewish society, were the ideal conditions for the crystallisation and the development of autonomous administrative units with their electoral methods and decision-making procedures (Cygielman:31).

The local governments of the Jewish communities in Lithuania, Poland and Russia were called '*Kahal*', meaning 'assembly' or 'community'. This term denoted both the community and the autonomous communal administration, the two concepts being identical (in 'Council of Four Lands', '*Kahal*'). At the head of the communities stood the elected aldermen, the *parnasim* (community leaders), *tovei ha'ir* (leading citizens) or *Kesherim* (those considered worthy). These aldermen dealt with day-to-day affairs, represented the community before the authorities, prepared the annual budget, collected taxes, and preserved public order.

The judicial system of the community created the normative foundations that regulated Jewish public life in every field. It consisted of several sub-systems. The first was made up of a group or groups of *dayyanim* (Jewish judges), operating within the framework of the traditional Jewish law based on the rulings of *Halachic* (Jewish law) authorities. The second sub-system consisted of leaders of the *kahal* who dealt with problems which the *Halacha* was unable to solve, like for example problems arising in relations between Jewish individuals and the Jewish public bodies, and the state or the church etc. The third sub-system was working in collaboration with both the *parnasim* and the rabbis, handling problems whose solution required a broad consensus of opinion among the many public sectors such as ritual slaughter, ransoming of prisoners, financial support for pilgrims etc (Cygielman:36).

The central institution of the Jewish self-government was the Council of Lithuania which operated on four levels (Greenbaum (1995:71-73)).

First, it dealt with the gentile authorities. More specifically, it collected all sorts of taxes, protected Jewish economic rights and defended Jews against the blood libel, accusations of desecration of the host and other calumnies.

Second, the Council functioned as an arbiter in disagreements and disputes within the Jewish community.

Third, it administered Jewish public works, buildings and courts, and appointed rabbis, judges, teachers and community functionaries. The Council was also responsible for *yeshivot* and *hadarim* (schools for young boys), printing and purchase of books, and the welfare of underfinanced schools. The Jewish school system was not completely autonomous. The Czacki-draft (1788-1791) aimed at the attribution of school autonomy to the Jews. Because of the dismemberment of the Polish state, this draft remained dead letter (Veiter (1938:207)). Fourth, the Council monitored the religious, moral and ethical behaviour of Lithuanian Jews in all areas of life: synagogue, business, family affairs, even relations between neighbours.

To enforce its ordinances and rulings, the Council invoked excommunication, which was decreed at the fairs and announced in the synagogues.

The chief officials of the Council were the head of the council (*parnas*) and the presiding officer at the assemblies, who were responsible for both internal and external affairs. The second level of the hierarchy was occupied by the trustee, who handled financial matters and acted as both treasurer and chief secretary. There was also an interceder, a governmental

lobbyist (*shtadlan*). He defended Jewish interests vis-à-vis the government, the royal court, and the *Sejm* (Greenbaum:54).

The Lithuanian Council continued to exist officially until it was dissolved by the *Sejm* and the king in 1764. Unofficially, it continued to meet until the first partition of Poland in 1772.

Cygielman argues that the system of Jewish autonomy was not merely exceptional because of the powers, granted to the Jewish self-government, but primarily because of the fact that Lithuanian and Polish authorities accepted and ratified the validity of a judicial system, not known to them, both in nature and in substance. The Jews were indeed exempted from subordination to the municipal authorities, the church and the legal systems of the nobles (various tribunals, representatives' gatherings) (Cygielman:14-15).

Under Russian rule, restrictions on Jewish self-government increased, until finally in the 1840s self-government for Jewish townfolk was abolished (Rowell, Criskaite and Rudis (2002:31)).

Liekis argues that although the scheme of the Lithuanian Zionists (the main proponents and supporters of Jewish non-territorial autonomy in Lithuania) corresponded closely to that of the Austrian socialists, they proceeded mainly on the basis of this earlier system of Jewish autonomy. In fact, they sought to use these 'old resources' to create a revived autonomous structure. Very important to note is that the writings of people in charge of autonomist ideology and its implementation in Lithuania were completely devoid of reference to 'socialist inventions' (Liekis (2003:97)).

The outbreak of the First World War and the Russian revolutions of March and October 1917

The outbreak of the First World War created the international and internal conditions for the independence of the Baltic states. In February 1917, the Russian Tsar Nicholas II abdicated and the provisional government took power in Russia. Although the constitutional cementing force of the Russian empire ceased to exist, there was still no separatist movement in the

Baltic provinces. The Baltic peoples only demanded self-government within the framework of a federative republican Russia (Bilmanis (1946:132)).

In April 1917, the newly established Russian provisional government granted Estonia the *Zemstvo* self-government which had already existed in Russia since 1864.

The Latvians applied for a similar kind of autonomy in the following month but the provisional government rejected this. First, half of ethnic Latvia was occupied by Germany. Second, the provisional government would no longer approve the founding of new units because this would weaken Russia too much (Lehti:79-80).

The national movements in Estonia and Latvia were not satisfied with a limited form of self-government. In this regard, Olavi Arens notes that the provisional government did not fully understand the new force of nationalism. It dealt with the demands of the national movements not in a framework of nationality policy, but in an older limited framework of local self-government (Arens (1978:21)).

The All-Latvian political conference, which assembled in Riga on 30 July 1917, demanded that all districts inhabited by a majority of Latvians be united in an autonomous Latvian state (within a democratic and federal Russian republic) whose form should be decided by a freely-elected Constituent Assembly (Ruttenberg:8). The same demands were voiced in Estonia and in German-occupied Lithuania (Bilmanis (1946:132-133)).

At the end of September 1917, the Estonians, Latvians and Lithuanians - together with representatives of other minority nations - took part in a conference in Kiev. During this conference, it was argued that the minority nations, which made up half of the inhabitants of Russia, had to take the fate of Russia into their own hands. The representatives demanded the recognition of freedom and sovereignty to all minority nations. Only then could a new Russia be established according to the federal principle (Lehti:80). The Kiev Congress decided that each people had a right of national and personal autonomy. This would convert the different nations into political and legal corporations. According to the Congress resolutions, the different minorities in Russia were also to be allowed to use their own language in their contact with governmental and local official institutions (Aun:17-18). The Russian provisional government however refused to meet these demands.

Only after the Bolsheviks seized power in October 1917 and after it was clear that Russia could no longer fend off an unavoidable German occupation of entire Estonia and Latvia, the former strategy of autonomy was abandoned. The Estonians and Latvians simply had no alternative (Lehti:89). The struggle for autonomy was no longer an internal question of Russia. Raising this struggle at the international level - through the declarations of independence - was necessary (Lehti:86).

How did the Baltic political leaders construct their new states in the very first years of independence? What role did they envisage for the minorities in their public authority structures?

Estonia

The founding documents

On 19 February 1918, a Salvation Committee was established. The decision to establish this committee only mentioned 'Estonia' and not the 'Estonian people' in an ethnical sense (Maddison (1928:417)). On 24 February 1918, on the eve of the German occupation, this committee proclaimed the independence of Estonia. Together with a formal constitutional programme, a provisional government under the premiership of Konstantin Päts was created. Also the Manifesto of 24 February 1918 was addressed to "*all the peoples of Estonia*". The Estonian political leadership enacted the principle of equality of all *Estonian citizens* (my emphasis) before the law, irrespective of their ethnicity. It further promised minority groups cultural autonomy. Under the heading 'For all nationalities in Estonia' it was stated: "*National minorities living within the state boundaries - Russians, Germans, Swedes, Jews and other nationalities are guaranteed with their rights to cultural autonomy*". The Salvation Committee also foresaw a German, a Swedish and a Russian minister in the government. When the provisional government met again on 11 November 1918, it informed "*all the peoples of Estonia*" of this meeting. On 16 November 1918, it informed "*all the citizens of the free state of Estonia*" that the Constituent Assembly would define the rights of the national minorities. In order to prevent national tensions, the government also announced immediate minority protection measures and also indicated that it would protect the minority languages in the courts and establish schools on a national basis (Maddison (1930:3-4)).

Minority ministries were further created within the provisional government of 1918. One Baltic German (Koch), one Russian (Sorokin) and one Swede (Pöhl) were given a post.

Why did the Estonian leaders adopt this very liberal approach towards minorities and include the principle of cultural autonomy into the founding documents of their state?

Evidently, the provisional government strongly needed the support from all (minority) groups to win the fight against Soviet Russia and the Bolsheviks (Alenius (2003); Alenius (2004:35); Smith D J (2005:217)). There were, however, also more fundamental reasons.

The Estonians wanted to show the outside world that they were a civilised democratic nation and that their state was ready for recognition. In the immediate aftermath of the First World War, liberal and democratic ideas and minority rights were consistent with the then European spirit and, as such, with the quest of many states for recognition of their statehood (Smith D J (2005:216-217)). In 1917 the Association for a Durable Peace issued a draft international treaty on the rights of national minorities, calling for civil and political equality, control over educational and religious institutions, proportional representation in government and supervision of the measures by an international commission (Housden (2005:230)). Various Jewish groups were very active in demanding cultural autonomy. Cultural autonomy was most of all popularised by the influential German Professor Rudolf Laun, who presented a memorandum on this subject to the 1919 League Conference in Bern and the St.-Germain conference. He elaborated his Draft on a Treaty on the International Protection of Minorities on the basis of the *Nationalitätenprogramm* of the Austrian socialists (Aun:55). The lawyer translated their theories into concrete proposals. Articles 17 and 18 of the draft treated the question of national autonomy (*nationale Autonomie*) while articles 11 til 16 were about the national register. In cases where a national minority existed in a municipality or other administrative entity, persons belonging to that minority could enrol themselves in a national register. All the enrolled persons would then constitute a public corporation (*Nationalgemeinde*). This corporation was authorised to possess and administer its own properties; to establish schools and other educational institutions, in which pupils would be instructed in their mother tongue by teachers appointed by the *Nationalgemeinde*; to create its own cultural organisations; to hold public meetings and (cultural) events and to establish its own social, economic, consumer organisations and theatres and museums. To fulfil all these needs and objectives, it could levy direct taxes. In cases where an enrolled person would not pay voluntarily, the *Nationalgemeinde* would be authorised to execute the payment by way of

coercive measures (Draft on an international treaty regarding the protection of minorities, in: Bordihn (1921:68-78)). Against this background, many of Estonia's leaders genuinely believed that equality of national groups was the axiom of a new era in international relations, an era in which the boundaries between the domestic and external spheres would be blurred (Alenius (2003:331)).

In line with this, like other democratic parties in Russia, the Estonian politicians were strongly influenced by the ideas of the Austrian socialists, and more specifically by the theories of Karl Renner and Otto Bauer. The concept of cultural autonomy was thus very familiar to the Estonians. For example, Karl Eenpalu, termed by Kari Alenius as one of the true fathers of the cultural autonomy law, expressed support for the basic premises of autonomy in his 1918 work *Oiguslik Rük* (Smith D J (2005:216)). All parties, but predominantly the left and socialist parties, stressed the need for future minority protection and integration (Hasselblatt C (1996:30-31); Hasselblatt C (1996:40)). The Estonian elite agreed that the Estonians could not construct their state by way of brute force, without listening to the demands of the minorities. From their own experience, the Estonians knew very well what it was to be an oppressed minority. They knew that the minority question needed a solution and were convinced that the only solution was a peaceful and democratic one (Brüggemann (1996:20); Alenius (2003); Alenius (2004:34); Hasselblatt C (1996:39-40)).

The Estonians' policy towards the minorities was most tolerant in the first months of independence. As the political and military position of the Estonian government grew stronger, the Estonians' need to accommodate the minorities diminished (Alenius (2004:35)). This change became obvious in the late spring of 1919, when the Constituent Assembly started its work.

Koch, Pöhl and Sorokin were relieved from their posts when the temporary Constitution of 4 June 1919 established so-called People's Secretariats. From then onwards, all Estonian government seats were held by ethnic Estonians (Von Rauch (1974:137)). These Secretaries were employed as heads of departments in the Ministry of Education and constituted for a long time the only representation of the minorities in the government. They were empowered to act within all the matters that affected their minority group (Garleff (1976:15)).

In line with the earlier documents, the Provisional Constitution of 4 June 1919 (text in: Graham (1928: 271 and 653-659)) declared Estonia as "*an independent democratic Republic*" (article 1) in which the supreme power belongs to 'the people': "*The Constituent Assembly elected by the people exercises this power in the name of the nation.*". Although the Estonian language was the state language, the use of a minority language was permitted in the contact with local governments in those areas where the minority constituted a majority. Further, citizens belonging to 'local ethnic minorities' were given the right to present their requests to the organs of the central administration in their own language, provided they did so in writing. The use of the language of ethnic minorities before the courts and before the local organs of the central authority was to be determined by a special law. Germans, Swedes and Latvians were considered as local ethnic minorities (article 3). The Provisional Constitution also enacted the principle of equality of all Estonian citizens (article 4).

The Constitution of 15 June 1920

Eugen Maddison argues that all these documents showed that the Estonian leadership did not intend to create a state exclusively for the Estonians. It wanted to transform the 'territory of Estonia' into an independent democratic state, in which there was room for both the Estonians and the minorities (Maddison (1928:418)). However, contrary to the promises made in 1918, the Provisional Constitution did not guarantee the right to cultural autonomy. It merely stated that "*cultural departments will be established within the authority of the Ministry of Education to protect the interests of local national minorities*". The Estonians were afraid that autonomy for minorities would endanger the sovereignty of their young state (Alenius (2004:36)).

In the Constituent Assembly, the German faction had affirmed its support for an independent Estonia. However, it had also demanded guarantees for its survival. In an extraordinary declaration of 29 August 1919, German deputy Max Bock demanded autonomy in cultural, religious and educational affairs, guarantees for the use of the German language both before official institutions as well as in the media, all personal liberties, equality between all Estonian citizens, also with regard to the free admission to the public office and the freedom of property (Garleff (1976:16)). The fact that cultural autonomy was not included in the Provisional Constitution was strongly criticised by Russian, Swedish and German deputies

and other politicians. The Germans declared that the promises to establish cultural departments for the minorities were only a 'travesty' of the promised cultural autonomy (Alenius (2004:36)).

Naturally, German demands for autonomy resounded even more loudly after the enactment of the expropriation law of 10 October 1919. The victory over the *Landeswehr* and the implementation of the land reform signified a military, political and economic triumph over the former German masters. After these events, the Estonians no longer needed a new settling of accounts with the Germans (Alenius (2004:37)). The conservative representatives and the deputies of the centre strove for a compensation for the German minority in the form of cultural autonomy. Next to this, the external situation of the young state was still very precarious. Estonia was still not recognised by the Western powers, let alone admitted into the League of Nations (Vasara (1995:481)).

On 28 May 1920, the *Asutav Kogu* treated the constitutional draft in a first reading. In this first draft, minorities were only given the right to establish associations to protect their cultural interests. The adoption of this draft would have implied the dissolution of the People's Secretariats. The German deputy Koch rejected the draft because the right to establish associations was already part of the general civil rights. The Germans strove for a cultural autonomy with the right of self-taxation (Vasara:482).

The majority of the Estonian politicians were prepared to enact the principle of cultural autonomy in the Constitution. On the other hand, they were opposed to self-taxation because that would create, in their view, a "*state within a state*". In this regard, representative Lui Olesk argued that there is a centrifugal tendency within each community and that it was not in the interest of the Estonian state to strengthen this tendency. The leading Estonian newspaper, the *Päewaleht* strongly rejected self-taxation because this would create very powerful entities within Estonia, with which the Estonian state had to reckon (Vasara:483).

The definite text of article 21 of the Constitution provided that the members of minorities had the right to establish autonomous institutions for the preservation and development of their national culture and welfare, so far as it was compatible with the interests of the state (Graham (1928:678)). Thus, the right of self-taxation, in fact a necessary condition for an effective cultural autonomy, was not included. Both the wording ("*members of minority*

nationalities") of the provision and its insertion into the section of the fundamental rights of Estonian citizens made it clear that not the minority as a group but the members of the minority were entitled to cultural autonomy (Erler (1931:278)). The provision could be qualified as a guarantee of establishment of cultural autonomy (*Einrichtungsgarantie*) (Schmidt (1993:15)).

In its third reading, this article was only adopted with 21 votes to 20 and with 50 abstentions (Garleff (1976:102)). On the one hand, the Baltic German drafts helped to ensure that cultural autonomy was enshrined as a principle in the Constitution (Hiden (1987:51)). On the other hand, given the majority-minority proportions in the Constituent Assembly (116 against 4), it was clear that the enactment of the concept of cultural autonomy in the Constitution was an act of accommodation from the Estonians, a compensation for the earlier radical agrarian reforms (Hasselblatt C (1996:41)). In the parliamentary debate, Konstantin Päts, the later president, revealed himself as a strong advocate of self-government for minorities. Because minorities develop their own culture and support their own educational and social institutions, they fulfil, in his view, important *tasks of the state* (my emphasis) (Maddison (1930:14-15)). In Graham's view, the extension of this cultural protection was 'most noteworthy': "*It (the Estonian Constitution) recognizes that the sole way to disarm minor nationalities and not make them irreconcilable adversaries of an existing political regime is to grant them the maximum cultural autonomous compatible with the existence of the state*" (Graham (1928:295)).

The Constitution did also contain other provisions that were favourable for minorities. Article 1 of the Constitution of 15 June 1920 (discussion and text in: Graham (1928:292-305 and 675-686)) described Estonia as "*an independent autonomous republic in which the power of the state is in hands of the people*", that is to say, the whole population of Estonia (Maddison (1928:420)).

The second section of the Constitution dealt with the fundamental rights of the Estonian citizens, declaring all *citizens* (my emphasis) equal before the law and outlawing any public privileges or prejudices derived from birth, religion, sex, rank or nationality, as well as titles, decorations or class divisions (article 6). Eugen Maddison argues that the outlawing of public privileges also showed that Estonia was not a genuine nation state (Maddison (1928:420)). Although Estonian was the state language (article 5), minorities were guaranteed education in their mother tongue (article 12). Further, in those parts of the country where the majority of

the inhabitants belonged to a minority, the 'working language' in the local self-government institutions might be the language of that minority. On the other hand, the local self-government institutions in which the language of the minority was used, had to use the state language in their contact with state institutions and with other local self-government institutions where the language of that minority was not used (article 22). Citizens of German, Russian and Swedish ethnicity had the right to address themselves to the state institutions in their own language, provided they did so in writing. A special law would regulate the use of the language of these citizens in court, as also in the institutions of self-government (article 22).

Article 20 provided that every Estonian citizen was free to determine his or her membership of a nation. This was the enactment of the *personal principle*, which was central to Renner's and Bauer's thinking on the national question. This principle implies that each individual is free to determine his or her own national membership (Smith D J (2004)).

As mentioned above, the drafters of the Constitution were strongly influenced by the views of Professor Rudolf Laun. The articles 12, 20, 21, 22 and 23 of the Estonian Constitution were almost identical with the articles 38 (12), 3 (20), 17-18 (21) and 32-33 (23) of the famous draft of Rudolf Laun (Aun:55; Bordihn:68-78).

In general, the Estonian Constitution was very democratic. Next to the extensive section of basic rights, it provided for popular referendum along Swiss *Eidgenossenschaft* lines. The Estonian parliament was supreme and the government was in fact a permanent parliamentary commission. The head of government (*Riigivanem*) had no veto right over parliament, which could only be dissolved by way of popular referendum (Smith D J (2002:14); Hope (1994:49); Graham (1928:293)).

On 7 May 1920, the Constituent Assembly also adopted a Law on the public primary schools, allowing for primary school education to be carried out in the child's mother tongue (Maddison (1930:6)).

Latvia

The Council of State versus the Baltic Germans

For several years, Latvia was divided into two parts. Courland, and later Riga, were occupied by the German armies, while the greater part of Livonia and Latgale remained under Russian domination. In 1917, a political bloc was formed in Riga by the political parties and societies. In Livonia and Latgale, the Latvian National Council was formed at the same time. Both organisations supported the independence of Latvia.

Less than a week after the armistice of 11 November 1918 had silenced the guns in the west, the Latvian National Council and the Riga bloc met in Riga to form the Latvian Council of State.

On 17 November 1918, the Council of State issued the so-called Political Platform, a kind of government programme (Mintz (1927:110; Plettner (1927:95)). This document promised the convocation of a constituent assembly, to be elected by the Latvian citizens of both sexes on the basis of general, equal, direct, secret and proportional vote. Pending the convocation of this assembly, legislative powers were to be exercised by the Council of State, to which the provisional government, as the executive, was responsible. The Platform also assured minorities of equal political rights and respect for their cultural identity. More specifically, national minorities were to be represented in proportion to their number in the Constituent Assembly and in the legislative institutions. All national minorities taking part in the State Council would also take part in the provisional government. Third, the cultural and national rights of 'national groups' were to be guaranteed by the fundamental laws (Graham (1928:688-690)). On the following day, on 18 November 1918, the Council of State proclaimed the independence of the State of Latvia at a ceremonial meeting. In his speech, Prime minister Karlis Ulmanis confirmed the future participation of the minorities in the institutions of the state (Dribins:280). This participation was considered as a simple application of the principle of proportionality, a principle inherent to the new democratic state. The Latvians offered the minorities political power commensurate with their numerical and electoral strength.

Reactions from the outside world played evidently a role for the very vulnerable Latvian entity, in great need of international recognition. Like in Estonia, also many Latvian politicians, however, strongly believed that a multi-ethnic solution would offer the only guarantee of their state's future viability (Hiden (2004:42)). On 14 November 1918, Mikelis Walters, the representative of the Latvian Farmers Union, published in the *Baltische Zeitung* the article 'The nation of Latvia', in which he called upon the Baltic Germans to unite with the Latvian national forces and to strive together for a Latvian state. On 16 November 1918, the lawyer Karlis Ducmanis argued in the influential news paper *Janunakas Zinas* ('The Latvian Nation') that a Latvian state had to be established by the ethnic Latvians but that on the other hand, the state nation had to be multi-ethnic (Dribins (1996:279)).

The Baltic German National Committee (*Baltische Deutsche Nationalausschuss*) however rejected the principle of proportionality. It wanted special treatment for the German-speaking population of Latvia. This institution was established in the beginning of November 1918. It was not a new political party, but an umbrella organisation, a binding element between the existing parties and other organisations. As an "*expression of the political will*" of the Baltic Germans, it united the *Ritterschaften*, both *Rigasche Gilden*, the Baltic German Teacher's Association, the *Rigasche Deutsche Städtische Beamtenverband* and the German *Baltenbund*, the *Demokratische Partei*, the *National-Liberale Partei* and the Progressive Party (*Fortschrittliche Partei*) (Garleff (1976:20-21)). Already on a meeting of the common *Landesrat* of Livonia, Estonia, Riga and Ösel of 6 November 1918, the Baltic German aristocracy and the civil elite had pronounced themselves in favour of a unitary Baltic state (Estonia and Latvia) in which the German language would remain the dominant language. This state would join the German empire. On 9 November 1918, a kind of German government (*Regentschaftsrat*) had met in the castle of Riga. This group rejected the democratic Latvian state controlled by the majority nation. They held on to the old feudal order in which they were the privileged group. During the negotiations between the National Committee and the Council of State (22-24 November 1918), the Baltic German representatives refused to recognise the Political Platform and the proclamation of the Latvian state. They argued that the national minorities had not been involved in the elaboration of these documents. As a condition for full co-operation, they demanded that all parties which supported the provisional government in maintaining the internal order and the external security, could send representatives to the Council of State. They pleaded for a better reflection of the cultural and economic position of the Baltic German minority in this Council,

demanding 15 of the 100 seats. Furthermore, they asked the enactment of the following rights in the Constitution: political amnesty for the past, protection of property, autonomy for schools and churches, protection of minority languages, certainly the historic German language. The Latvian representatives replied that only those parties which fully recognised the Political Platform had a right of representation in the Council of State. The number of German representatives had to be commensurate with the share of the German community in the total population. The functions of state controller and two ministerial deputies (one in the Ministry of Education) were foreseen for the German minority. The Latvians saw in the German demands an attempt to create a kind of bicameral system - one chamber for the Latvians and one for the minorities - after which they could change the composition of the government (Garleff (1976:22)).

The policy of the National Committee made future reconciliation much more difficult. Many Baltic Germans however rejected this policy and supported a state, controlled by the majority nation. One of them was **Paul Schiemann**, who can be considered as one of the most important theorists of the minorities movement between the two world wars. In the summer of 1919, he re-established the German Balt Democratic Party as its president and became editor-in-chief of the *Rigasche Rundschau* (the most widely read German newspaper in Eastern Europe) in August 1919. Between 1920 and 1925, he sat in the Riga City Council and was a member of the Constitutional Assembly. Next to this, he was also the chairman of the 'German Party' in the Latvian parliament, the *Saeima*. Actually, that party was the Committee of German-Balt parties (*Ausschuss der deutschbaltischen Parteien*) in the *Saeima*. Due to their excellent co-operation and Schiemann's extraordinary leadership, the Latvians even called it 'Schiemann's Party'. The *Rigasche Rundschau* became the organ of that party. From 1925, as the representative of the German minorities in Europe, he was the vice-president of the Minorities Congress in Geneva. There he was regarded as the leading minority-theorist, possessing an extraordinary influence. Schiemann believed that the Baltic Germans could only survive as a cultural community if they co-operated with the other minority groups and the Latvian majority nation to construct and to consolidate a new Latvian democratic state (Hiden (1999:218)). The Baltic Germans had to acknowledge the essentially Latvian nature of the newly independent state. On the other hand, the rights of the Baltic Germans, as well as the other minorities in Latvia, had to be fully respected. Schiemann tried to persuade the Latvians to embrace the concept of cultural autonomy. This implied that minorities could constitute themselves as public law corporations. These

corporations would then manage the educational and cultural affairs of the minority concerned. The Latvian state would fund these activities to a level commensurate with a minority's percentage of the total population (Hiden (1999:220)). Paul Schiemann also prompted the European Minorities Congress to endorse 'cultural autonomy' as its European-wide goal.

Central to Schiemann's thinking on the relationship between nation and state was the parallel that he drew between religious and cultural freedom of choice (Schiemann (1927:25-27)). In his opening speech to the Minorities Congress at Geneva in 1925, Schiemann reflected on the Thirty Years War of the sixteenth century. The principle that the ruler decided religion (*cuius regio, eius religio*) had led to religious wars. After these wars, states relinquished the choice of confession to their citizens. A few centuries later, peace was again threatened by the principle of *cuius regio, eius natio*, namely the imposition of a national state culture (Bathelt). This constituted a menace for the choice of national origin by an individual. Thus, in Schiemann's view, belonging to a nation was directly comparable with belonging to a religion. The idea of a *cuius regio eius natio* had to be rejected in order to abolish the idea of national state culture. Just like religion, membership of a nation was a purely private affair. The state had no right to interfere. It had to become 'anational' (Hiden (1999:224)). Paul Schiemann qualified the nation (*Volksgemeinschaft*) as a 'spiritual community', 'a community of sense and feelings' (*Gemeinschaft rein geistiger Art*), which can never have the same powers as the state, which is the 'territorial community of fact', a community of facts' (*territoriale Tatsachengemeinschaft*) (Schiemann:31-32; Bathelt). The 'rational state' was a state which confined itself to the tasks and the management of the general economic well being and the security of its citizens. In Schiemann's view, the state had no right to interfere in the cultural life of its minorities (Hiden (1999:223)). Matters of the national community and the state community must be necessarily distinguished from each other. This applied both to the majority nations and the minority groups. Also the cultural needs of the majority nations would no longer be fulfilled by the state but only by the national community. The state would become 'anational'. Schiemann was thus consistent when he argued that the construction of the 'anational state' was also possible for cultural homogenous states (Grundmann (1977:344-345)). In order to ensure free development of cultural life, cultural autonomy should be guaranteed. Just as it was normal for citizens to combine their obligations to their faith with those to their states, citizens had obligations to both the national

community of which they were a member and towards the state as a whole. The nations and the state itself functioned next to another as equal entities, each with other tasks.

On 30 November 1918, the Progressive Party announced its acceptance of the Political Platform and the other Latvian conditions. Already on 2 December 1918, five representatives of this party took part in the meeting of the Council of State. The following day, three Baltic German politicians became member of the Latvian government. Baron Von Rosenberg became state controller, Von Klot Enghardtshof became deputy of the Minister for Trade and Industry and Karl Keller became deputy of the Minister of Education. Whereas the *Deutsche Baltenbund*, the *Deutsche Volksbund in Kurland* and the *National-Liberale Partei* remained unwilling to participate in the Latvian institutions, the Progressive Party started separate negotiations with the Council of State. Also the *Jungbaltenbund in Lettland* assured the Latvian government unconditional support. In December 1918, the *Deutsch-Baltische Demokratische Partei* separated from the National Committee. One has to note that these groupings only had a few supporters. They mainly represented the liberal-democratic and left wing democratic tendency within the Baltic German minority.

Because of the advance of the Bolshevik troops, the government was evacuated from Riga in the beginning of January 1919. In February 1919, the Baltic German representatives in Liepaja again formulated their demands, which were practically the same as those of November 1918. In fourteen points they demanded the complete and full protection of private property, the equal treatment of the Latvian and German language in all administrative domains and in the courts of law, cultural autonomy and the formation of a civil service, consisting of the representatives of all the minorities. By this, the Baltic Germans tried to create a binational - Latvian and German - republic. The Germans were supported by the other minorities (Dribins:284; Garleff (1976:24)).

On 16 April 1919, a military putsch led by Baron Hans Von Manteuffel drove the Ulmanis government from power. The military putchists tried to create a binational state. The official Baltic German-Latvian government of Niedra was in reality a Baltic German dictatorship, supported by a few Latvians. At the battle of Cesis (19-22 June 1919), the Germans were defeated by the Estonian army of General Johan Laidoner. The Great Powers forced Ulmanis to take up representatives of all minorities, including the Germans, in the Council of State. In the coalition government, the Baltic Germans Edwin Magnus and Robert Erhardt became

respectively Minister of Justice and Minister of Finance. The Jewish lawyer Mintz became state controller. The Great Powers questioned the ability of the Latvian politicians to build up a viable state. The Latvian people were seen as an unreliable proletarian mass. In short, the Baltic Germans were expected to provide for law and order (Dribins:286; Garleff (1976:23-25)). The Latvian military victory against the German-Russian army of Bermond-Avalov in October and November 1919 strengthened Latvian nationalism. In the beginning of December 1919, Edwin Magnus was removed from his function. Robert Erhardt was permitted to stay until March 1920 (Garleff (1976:28)).

The draft on cultural autonomy from the Jewish Union

In December 1918, a nationalities commission was set up by the Latvians to implement the national and cultural rights, promised in the Political Platform. This commission had to discuss a draft on general cultural autonomy, submitted by the Jewish Union. This Jewish proposal was based on the theories of Karl Renner and went out from a complete separation between the cultural and other tasks of the state (Hiden (2004:53)). The fairly detailed proposal of the Jewish Council was not supported by the German faction because of tactical considerations. Paul Schiemann advised his community to show above all its solidarity with the Latvian co-citizens and its loyalty to the Latvian state. He did not find it expedient to support proposals for autonomous minority organisations in the newly established vulnerable state. On the other hand, he proposed to the Latvians to adopt German and Russian as second languages. Schiemann was right. The Jewish draft was never adopted. The Latvian Education minister Kaspersons resisted it because it would create a 'state within a state' (Hiden (2004:54)). Whereas the first attempt to establish a general cultural autonomy failed, school autonomy was adopted in the same year.

The adoption of the Law on school autonomy

From the very beginning, the Baltic German leaders considered the establishment of a German educational system as their main task. The starting point was the Political Platform of 17 November 1918 and the promise from Prime minister Ulmanis of 19 November 1918 to attach a Baltic German deputy to the Education minister (Garleff (1976:83)). On the basis of

the Political Platform, the German minority strove for a special law on school autonomy. The National Committee ordered the German Balt Teacher's Association (*Deutsch-Baltische Lehrerverband*) to elaborate a document. The draft of Friedrich Demme of April 1918 departed from a system of territorial autonomy. As part of the German empire, the Baltic states would have their own Education ministry and civil service. The second draft of the Teacher's Association of November 1918 rested on the principle of personal autonomy. This proposal granted a Baltic German *Nationalrat* considerable competences and its own civil service. On 3 December 1918, Karl Keller was appointed as deputy of the Education minister and head of the future German educational system.

After the Bolshevik occupation from 3 January until 22 May 1919, Ulmanis promised on 15 July 1919 to look after the cultural needs of the minorities. In this way, the earlier promise was confirmed. On the same day, the new chairman of the Teacher's Association Wulffius submitted new proposals to Ulmanis. After this preparatory phase, the proposal took a definitive shape. In the beginning of August 1919, a detailed German draft was presented to the Education ministry. According to this proposal, an autonomous German educational system would be led and supervised by a Baltic German deputy minister. This person would fall directly under the Education minister but on the other hand receive his tasks from the generally elected *Nationalrat*. The deputy would only be answerable to the *Nationalrat* and the government (Garleff (1976:85)). The proposal, however, ran up against Latvian resistance. According to the Latvian press, the *Nationalrat* practically acquired state powers. The Latvians regarded the *Nationalrat* and the former National Committee as similar organisations. Many Latvian politicians were also not familiar with the concept of cultural autonomy. In any case, for the Latvian Education minister Kaspersons, the conception of autonomy in the German proposal went too far.

On 20 August 1919, the Latvian government established a special working group for this question, consisting of the Ministers of education, internal affairs, finance, justice, trade and the state controller. The minorities were represented by Justice minister Magnus, Finance minister Erhardt and the Jewish state controller Mintz. The task of the working group was to reconcile the German proposal with the demands of the other minorities and to elaborate further proposals. The Jewish and Russian proposals proved to be decisive. According to the *Rigasche Rundschau*, the proposal of Education minister Kaspersons resembled the self-government in Tsarist Russia. It was rejected by the representatives of all minorities (Garleff

(1976:86)). On the other hand, the minorities disagreed regarding the proposal of the government to elaborate a general minority law instead of a special law for the German minority. On 22 August 1919, the government submitted a proposal for a general minority law to the Education ministry and the Council of State (Garleff (1976:87)). The *Rigasche Rundschau* considered the proposal of the government as a compromise between Education minister Kaspersons and the minority representatives. The former Baltic German proposal had been modified on certain fundamental issues. The institution of the *Nationalrat* was dropped (Garleff (1976:88)). After the discussion of the draft in the relevant commission, the Law on School Autonomy (LSA) was approved by the Council of State on 8 December 1919, together with the Education law.

In line with Wolfgang Wachtsmuth, Michael Garleff argues that the main reason to enact the law was that the Latvians strove for membership of the League of Nations and were therefore subjected to the linked condition of minority protection (Garleff (1976:90)). Wachtsmuth also claims that the Latvians were concerned to discourage the *Landeswehr* from taking part in the abortive attack on Riga that General Bermond-Avalov's White Russian and renegade troupes launched in October. On the other hand, John Hiden observes that this episode actually provoked fresh anti-German hostility and was thus scarcely helpful to the negotiations over schooling. As mentioned above, in this period of rising self-confidence the German ministers were removed by Ulmanis. This clearly indicated the readiness of the Latvian government to contemplate a multinational future despite the conflict with the Baltic Germans (Hiden (2004:56)).

Lithuania

The origin of the system of Jewish autonomy in inter-war Lithuania lay in the period of the emergence of Lithuania as an independent state. To anticipate the consequences of the Russian February revolution and to weaken Polish influence in the region, the Germans made concessions to Lithuanian demands for self-determination. With the permission of the German occupants, the Lithuanian national movement met in Vilnius at 18-22 September 1917. The resolutions of the Vilnius Conference began the process which led to Lithuanian independence. The delegates called for an independent state within ethnographic boundaries, a guarantee of the cultural rights of the minorities, and the election of a constituent assembly.

A National Council or *Taryba* of 20 persons was chosen as the executive body (Lane (2002:4)).

On 16 February 1918, the Lithuanian *Taryba* published its Declaration of Independence. On 15 October 1918, Prince Max Von Baden, German Chancellor, announced that countries occupied by Germany had the right to self-government. On 20 October 1918, the Lithuanian representatives received permission to take over the administration of their country and by 2 November 1918, a provisional constitution had been adopted. The *Taryba* became the State Council with legislative powers, and a three-man Presidency led by Antanas Smetona was established. A Constituent Assembly would elaborate a permanent Constitution (Lane:5-6).

It was only on 27 November 1918 that six Belarussians were admitted into the *Taryba* (Liekis:74). After the Lithuanians had promised to implement Jewish autonomy, the Jews also agreed to enter the *Taryba* for the 'genuine representation' of the peoples of Lithuania. Three Jewish politicians received positions in the cabinet of Voldemaras: Simon Rosenbaum became deputy Minister for foreign affairs, Nachman Rachmilevich, deputy Minister of trade and industry and Jacob Wygodski, Minister for Jewish affairs (Liekis:78).

The Lithuanians were far from comfortable with these concessions. However, they had no choice. As they sought to counter Polish pretensions, the loyalty of the Jewish and Belarussian minorities was of immense importance for them (Dohrn (2004:158)).

For the *Taryba*, it was indeed imperative to reject the claim of the Poles that it represented only ethnic Lithuanians, and to get an additional argument against Poland in the struggle over eastern borderlands as the true representative of a 'historical Lithuania' (Liekis:20-21).

Therefore, the Lithuanians already committed themselves at the Paris Peace Conference to give the Jewish community far-reaching rights. The so-called Paris Declaration of 5 August 1919 reinvigorated the autonomy movement.

By way of this declaration, the Lithuanian delegation committed itself to give the Jews the same civil and political rights as the other Lithuanian citizens. They would have a proportional representation in all legislative bodies and take fully part in the governmental and judicial institutions. A special Ministry for Jewish affairs would be created. The Jews were given the right to use their own language in public assemblies, in the press, in theatres,

in the schools, in the courts and in the relations with the government. On the other hand, the Lithuanian language was recognised as the state language. All public authorities - with the exception of the autonomous minority organisation - would be obliged to correspond only in Lithuanian. The learning of the Lithuanian language was obligatory in all primary and higher-grade schools and Jewish schools. The right of the Jews to observe the Sabbath would not be in any way restricted. However, this exempted in no way the Jews from such obligations which were binding upon all Lithuanian citizens for reasons of military service, national defence or the preservation of public order. Rabbis were assured the same legal status as clergymen of other religions. Furthermore, the Jews were promised complete autonomy in their internal affairs such as religion, education, charity, social assistance, and generally in the sphere of spiritual culture. The limits of the jurisdiction of national autonomy would be fixed by laws and guaranteed by constitutional laws. The institutions of Jewish national autonomy would be the local communities and the communal union. The procedure for establishing communities and their union, and the forms of their representation would be fixed by a specific law. The bodies of Jewish autonomy would be territorial communities and their councils. These bodies were considered to be government bodies and they would have the right to issue the laws, binding on their co-nationals. They would have the right to tax their members to cover their expenses. These Jewish communities would have the rights of a juridical body. They would also have the right to accept donations and gifts from people and their estates, and receive subsidies from the state, if similar subsidies were given to other national groups. The subsidies would have to be distributed among all national groups (Liekis:124-126; Wintgens (1930:276-277)). Besides from representation in the national governing bodies, a superordinate council for the Jewish community and a national council (*Natzional Rath*) were to be created as the major supervisory institutions for the various agencies of autonomy. The councils were empowered to issue ordinances binding upon both Jews and governmental agencies (Greenbaum:231).

This declaration, which was sent to the Committee of the Jewish delegations, served mainly as propaganda and also achieved this objective. It immediately raised Lithuania's popularity at the conference (Liekis:126-127).

Meanwhile, the organisation of the office of the Minister of Jewish affairs had begun on 2 June 1919. On 23 June 1919, the government ratified the draft of a 'Provisional Law to support the Minister for Jewish Affairs'. This draft considered the Jewish minister to be the

official representative of the Jewish people in the government. The ministry was to prepare all laws regarding Jews. Its main task would be to implement Jewish personal autonomy, and later to supervise its functioning and mediate between the institutions of the government and the Jewish self-government (Liekis:118-119).

The Jewish ministry indeed concentrated its activities on the foundation of a superstructure for the Jewish *kehillot*. On 6 July 1919, the Jewish ministry informed the Jewish National Council that it would be empowered to handle all cultural affairs and to levy taxes. Although this had not yet been enacted into law, the Jewish faction in the *Seimas* hoped that the forthcoming nationwide elections for Jewish Community Councils, scheduled for 3 October 1919, would force the government to incorporate this right, as well as the principle of proportional representation, into the Constitution. On 2 October 1919, the Slezevicius government resigned and a new government headed by Galvanauskas took office without the participation of the Social Democrats and the Populists. The Nationalists received 38 delegates out of a total of 78 in the *Seimas*, the elected legislature that replaced the unelected *Taryba*. The two minorities' ministers (Jewish and Belarussian) were invited to join the new government (Greenbaum:233).

78 communities had already been founded by the time the First Congress of *kehillot* took place in Kaunas in January 1920. 134 delegates, representing 74 communities, participated in this congress (Liekis:128-129). In one of the Congress resolutions, the Congress of Jewish communities (or Jewish National Assembly) was first confirmed as the supreme Jewish body in Lithuania. This congress would elect a Jewish National Council of 34 persons, which in turn could elect an Executive Committee. This resolution also stipulated that the Minister of Jewish affairs had to co-operate closely with the National Council, which would have the right of legislative initiative and the right of veto. Third, the Jewish National Council would select a candidate for the post of Minister of Jewish affairs in the government. This minister would be accountable to the Congress and had to provide it with reports of his activities. Fourth, the Jewish Congress would be obliged by the Minister for Jewish affairs to present to the government a draft of a new law regarding confirmation of the council and of the Jewish National Council, and to set the parameters for the functions and the competency of the Congress and the Jewish National Council. Fifth, it was stated that the chairman of the Jewish National Council could not be at the same time a member of the government (Liekis:130). A National Council was indeed elected. On this occasion, Prime minister

Galvanauskas and Foreign minister Voldemaras affirmed their support for Jewish autonomy (Liekis:XI).

On 10 January 1920, the representatives of the Jewish minority joined the Lithuanian Council of State and the President issued a declaration on national autonomy (Liekis:XI).

On the same day, the government adopted a Provisional Law on Taxation of Jewish citizens. This law stipulated that all Jews residing in a separate area, make up a local Jewish community (*kehilla*). Each community takes care of its religious matters, charity, social assistance, schools, and all matters of spiritual character, and has the right to elect the councils (*vaads*) of the communities (*kehillot*). The Jews of a certain area could form a community by combining population with their nearest localities if their numbers were small. The Minister without portfolio for Jewish affairs would issue regulations for elections and confirm and register the councils elected according to these regulations. The councils approved by this ministry had the right to tax Jewish citizens with special taxes for community needs. The amount of system of collection of taxes would be determined by every council (*vaad*) and had to be approved by the ministry. The amount of special taxes taken from a citizen in a particular year may not be larger than the combined amount of state and municipal taxes. These taxes had to be collected according to the rules of tax collection, and were to be paid into the State Treasury by the communities. The state taxes were to be paid before the community taxes (Liekis:131-132; Greenbaum:236-237).

This provisional law formed the underlying basis of the system of Jewish autonomy. It created the conditions under which the community councils, as the most important instruments of that autonomy, might function. Next to this, the Jewish ministry and his office were after the law officially responsible for the management of the entire apparatus of Jewish self-government (Greenbaum:237).

On 29 March 1920, the Minister without portfolio for Jewish affairs issued detailed instructions for the implementation of the provisional law (Liekis:133-135). On 20 May 1920, an ordinance to implement the provisional *kehillot* law was passed. It defined the *kehilla* as a legal entity empowered to impose taxes, issue bylaws in matters of religion, education and social welfare, and register births, marriages and divorces. Community Council elections were to be conducted democratically, according to the principle of

proportional representation. Every citizen registered as a Jew in public documents was deemed a member of the *kehilla*. To dissociate oneself from the Jewish community, one had to undergo religious conversion or prove that the registration in the personal register was inaccurate (Greenbaum:238). Along with this ordinance, two statements were gazetted in *Vyriaustybes Zinios* (Government News, Nr. 32). First, the Lithuanian Prime minister stated that the *kehillot* law had been enacted, not because it was in Lithuania's interest but because the Jews themselves had requested it. The law was amendable only in accordance with the community's wishes. The second statement was made by the Minister for Jewish affairs. It limited the number of Jewish communities in any given locality to one and designated the Community Council as the legal representative of the local Jewish population. The statement also affirmed that the *kehilla* was the historic form of Jewish national life (Greenbaum:239).

It is truly remarkable that by 1920 various provisions for minorities had been inserted into the founding documents of the Baltic states and that a full-fledged system of school autonomy had been adopted in Latvia. This was perhaps especially so in Estonia and Latvia given the bitter animosity that still clouded Estonians and Latvians' relations with the Baltic Germans. As far as the representatives of the titular majority is concerned, these measures were adopted out of a combination of principle and expediency. Once the land laws had settled accounts with the Baltic nobility and secured the basis for Estonian and Latvian predominance within the state, there was recognition of the need to accommodate German interests. From the German side, two trends were still at work. A conservative fraction found it hard to come to terms with the loss of its dominant position, but there was also a dedicated liberal grouping (e.g. Paul Schiemann in Latvia) which made a big contribution to realising the early minority provisions. The tension between the two factions would remain apparent during the 1920s when the Baltic Germans and other minorities still faced an uphill struggle to implement the constitutional provisions and build their own autonomous institutions (see chapter four). In the immediate term, the Baltic states still faced the task of gaining recognition from the League of Nations and the Western powers. The Baltic governments had enacted their minority policies at least partly in the belief that a new international order based on equality of nationalities was in the making. However, as the next chapter shows, the provisions made in the founding documents of the Baltic states and in certain laws actually went way beyond the very basic framework which the League ultimately adopted in relation to this question.

Chapter two: The League's vision of statehood and minority rights.

The League of Nations and sovereignty

The basic idea behind the League of Nations was that in place of military and political blocs and power-based hegemony, all countries should work with one another. The League was a wide-reaching international organisation, set up to reach various global goals and to preserve international peace.

The way in which the Peace Conference was directed by the Great Powers caused great dissatisfaction among many European and non-European states. It became clear that many states would not enter into an organisation which did not respect the legal equality and sovereignty of the states. In such case, the Covenant would only be 'accepted' by the states which were forced to sign the peace and minority treaties of which the Covenant formed a part. The drafters of the Covenant therefore created an organisation which combined the realities of international politics – the unavoidable privileged position of the Great Powers – with the respect of the equality and sovereignty of all member states (Korowicz (1961:91-100)).

The Assembly was envisaged as a periodic conference of all members and this on the model of the successive Peace Conferences of Den Haag of 1899 and 1907. The Assembly was the plenary representative organ in which – in line with the doctrine of the equality of states – every member had an equal voice. It had the following powers: the admission of new members by two-thirds majority vote, the selection of the non-permanent members of the Council and the approval of increases of the membership of that body, the approval of any appointment to the office of Secretary-General after the original appointment, the advising of reconsideration of treaties that had become inapplicable and the consideration of international conditions which might endanger the peace. The Assembly was also endowed with a general capacity to deal “*with any matter within the sphere of action of the League or affecting the peace of the world*”. Moreover, each member of the League had the right to bring to the attention of either the Assembly or the Council any circumstances whatsoever threatening peace or good understanding. The Council could also, and at the request of any party made

within 14 days, was obliged to, remit any dispute referred to it to the Assembly, whereupon that body stood in the place of the Council.

In practice, the Assembly emerged as something more prominent than had been expected. To begin with, it decided at once to meet annually. The Assembly also slowly arrogated to itself exclusive power to decide how the expenses of the League should be borne by the members. It further assumed a competence at least to discuss matters in which the Council had powers of decision, such as the formulation of disarmament plans and the control of the mandates system. Last but not least, the Assembly inaugurated the practice of conducting an annual debate, in which the proceedings of the Council and the general political scene were reviewed (Parry (1987:195-196)).

While the Assembly was essentially the Conference of the members of the League, the Council could be described as the Executive of the League (Oppenheim (1951:347-349)). It was a limited organ where in deference to their power and interests, the Great Powers had a preferential position, at least in the sense that they were permanent members of that organ. The intention of the drafters was to make the Council the successor to the earlier meetings between the Great Powers, of the Conferences of Ambassadors in which the Great Powers, and they alone, took the important political decisions. The Anglo-American suggestion of an exclusively Great Power Council was however unacceptable to the small and medium powers, who were backed by France and Italy (Sharp (1991:56)). The compromise was that the Council would consist of permanent members – the ‘principal Allied and Associated Powers’ – and non-permanent members, who were freely elected by the Assembly. Finally, the number of non-permanent members was eleven in 1936.

Like the Assembly, the Council could deal at its meetings with “*any matter within the sphere of action of the League or affecting the peace of the world*” which was not by the Covenant expressly reserved for the sphere of action of the Assembly. The Covenant had thus established a parallel authority of Council and Assembly to deal with any subject within the field of competence of the League. According to Jean Siotis, the only explanation for this is “*partly (...) the recognition of the need for public debate on issues of general concern, and partly (...) the need for greater efficiency in settling specific disputes and other matters requiring action via a body of limited composition – in which the Great Powers would have had a more decisive voice*” (Siotis (1983:23)).

Despite the rule of parallel authority, the Covenant gave the Council the key role relative to the settlement of disputes and collective security matters. It was also charged with the formulation of armament reduction plans, with the surveillance of the administration of the mandates and with the aid of the international bureaux. In addition to the functions resulting from the Covenant itself, the Council was charged with a very important task, directly connected with the peace settlement after the First World War, namely the international guarantee of the 'minority clauses'.

Decisions at any meeting of the Assembly or of the Council required in principle the agreement of all members of the League represented at the meeting. The unanimity rule was one of the most fundamental organisational principles of the League and a natural consequence of the respect for state equality and the sovereignty of its member states. In principle, the majority vote was only applied to matters of procedure (Andrassy (1937:692); Schücking and Wehberg (1931:507-522)).

The fact that the more important Council was a limited organ, did not violate the principle of legal equality and sovereignty of the member states of the League. As mentioned above, first of all the Council functioned on the basis of equality of its members. The non-permanent members had an equal vote and because of the unanimity rule, nothing could be decided against their will. Second, article 4, paragraph 5 of the Covenant provided that any member of the League not represented in the Council, was invited to send a representative to sit as a member of any meeting of the Council during the consideration of matters specially affecting the interests of that member. Walters emphasises that this provision was a concession to the mistrust felt by the neutral countries and small(er) states for the Great Powers (Walters (1952:46)).

Further, article 15, paragraph 8 of the Covenant protected the member states of the League against an intervention by the League in their internal affairs in connection with an international dispute. This provision stated: "*If a dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.*".

Korowicz argues that the term 'domestic jurisdiction' does not mean anything else than "*the term sovereignty in the sense of the supreme power of the state over its territory and inhabitants in the framework of international law binding upon that state*". In theory, this provision could be seen as a considerable restriction of the sovereignty of the member states. The Council namely decided exclusively whether or not a certain dispute arose out of a matter which by international law was solely within the domestic jurisdiction of that state. In practice, states which claimed their domestic jurisdiction in disputes before the Council were not overruled by the Council, *except* (my emphasis) in specific matters regarding the international protection of minorities (Korowicz (1959:157-164)).

The ultimate embodiment of sovereignty was enacted in the articles 1, paragraph 3 and 26 of the Covenant, according to which a member state could freely withdraw from the League (Andrassy:680-682).

Brierly correctly describes the League as "*an association of independent but co-operating states, (whose) institutions were intended as means for making it as easy as possible for these states to work together. The members retained their sovereignty but they had all agreed to do and not to do certain things in the exercise of their sovereign rights. Thus, the Covenant did not contain even the beginnings of a system of international government in the strict sense of the word.*" (Brierly (1955:103)). The principle of state equality was safeguarded in the two main institutions of the League. Both in the Council and in the Assembly, decisions were taken unanimously and, accordingly, had to conform with the interests of all the states concerned (Brial (2001:52)).

As Paul Reuters notes, the institutional structure of the League did not enable the Great Powers to manipulate and steer international affairs autonomously (Reuters (1967:236)). It became however increasingly clear that the League did not replace the earlier system of international relations and the policy of balance of power. The international system became characterised by parallel institutions and relations. France had no confidence in the collective security system and built up its own cordon sanitaire against Germany, thereby continuing the old alliance system of the nineteenth century. The matter of the German reparation payments was mediated by the United States, who remained outside the League. Important boundary arrangements were made by the Great Powers at the Conference of Locarno (1925), completely outside the League's framework (Van Ginneken (1999:39-40)). Important

international questions were discussed and decided both inside and outside the League and the Council was but one among several parallel channels of relations between the Great Powers.

The League's minority protection system

The institutionalisation of the inequality between East and West

Although the Allied Powers had announced that national self-determination would be the guiding principle of the Peace Conference of Paris, it was only applied when and where it was politically convenient to do so and chiefly where it was to the disadvantage of the Central Powers (Claude (1955:12); Zacher (2001:219)). The *number* of minorities in Central and Eastern Europe was reduced by one-half. Whereas one-half of the population of Eastern Europe were 'minorities' in 1914, only one-quarter were in 1919. Almost 30 million people were still members of minorities (Pearson (1983:136)). However, the *problem* of minorities *itself* was at the same time exacerbated by the triumph of nationalism and the only partial application of the principle of self-determination. About a third of Rumania's population, 35 per cent of Czechoslovakia's population and 30 per cent of Poland's population consisted of minorities. Next to the Jews, the Poles of German Upper Silesia and the Macedonians, who continued to be minorities in states dominated by other ethnic groups, more than seven million Germans, almost three million Hungarians and more than one million Bulgarians were newly created minorities. As Jennifer Jackson Preece observes, these Germans and Hungarians were members of the former imperial ruling elites. In the successor states of the Dual Monarchy, they resented their loss of power and privilege to their former mostly Slav subjects. On the other hand, these Slav people now found large numbers of their former masters handed over to them, and the temptation to act vengefully was strong (Jackson Preece (1998a:68)).

Some way had to be found which would prohibit national minorities from seeking union with their respective nation-states, but which would nevertheless affirm that complete cultural development of such groups was still possible. Also the corresponding kin-states – the states where minority groups formed the majority – would then not be provoked to interfere in the internal affairs of other states. The idea was that if the linguistic, cultural and religious attributes of national minorities were adequately protected, their union with their respective

nation-state would no longer be necessary (Musgrave (1997:38-39)). Thus, minority protection was an attempt to reconcile certain minorities with the fact that their claim to self-determination was not satisfied (Henrard (2000:4); Seton-Watson (1946:269)). It was a supplement for those cases where self-determination was deemed either not possible or not desirable (Musgrave:40). Minority protection would safeguard both the domestic tranquility and stability of the newly independent states and the international peace. The minority protection system thus pursued not a humanitarian but a purely political aim (Fenet (1995:87)).

The Committee on New States and the Protection of Minorities returned to the tradition of the nineteenth century and drafted a series of treaties, linking the recognition of the new and enlarged states to an obligation to protect minorities. Five Minorities Treaties were concluded in 1919-1920 between Poland, Czechoslovakia, Rumania, Yugoslavia and Greece, respectively, on the one hand, and the 'Principal Allied and Associated Powers' on the other hand. In the Peace Treaties with Austria, Hungary, Bulgaria and Turkey, special chapters concerning minority protection were inserted. The system of the League further consisted of two treaties (German-Polish Convention on Upper Silesia of 15 May 1922 (Part III) and the Convention concerning the Memel territory between the Principal Allied and Associated Powers and Lithuania of 8 May 1924) and declarations made by Albania, Estonia, Finland, Latvia, Lithuania and Iraq to the Council.

The stimulus for the establishment of this minority protection system came from the activity of Jewish organisations. Jozsef Galantai observes that given the circumstances, effective representation of minority rights at the Peace Conference, actively involving the minorities themselves, was not possible in any other way. Many ethnic groups had become majority nations under the new arrangement and enjoyed the status of 'winners'. They were no longer interested in the protection of minorities. As for the new minorities, they were either regarded as 'enemies' (the Germans, Hungarians, Bulgarians and Turks) not even represented at the Conference, or suffered the consequences of being associated with revolutionary Russia (the Russians, Belarussians, and Ukranians). Thus, for many minorities of Eastern Europe, the Jewish organisations meant the only prospect of representation at the Conference.

Sizeable Jewish communities could be found in Poland, the eastern part of Czechoslovakia and in Rumania. The organisations representing these communities were able to send

delegates to Paris. These organisations and the American Jewish Committee formed a joint group, called the '*Comité des delegations Juives*'. In early April 1919, this committee established contact with Miller, the minorities expert in the United States delegation. This contact provided the 'channel' through which the *Comité's* requests and programme could effectively be communicated to the Conference. Although the *Comité* initially served to represent those Jewish communities of Eastern Europe which possessed separate characteristics, it soon came to speak out for the protection of all the region's national minorities (Galantai (1992:42-43); Bagley (1950:72-73)). When it was clear that Wilson's proposal to insert minority provisions into the League Covenant was politically impracticable, the *Comité* pressed for the inclusion of Jewish rights in the territorial treaties.

The delegations of the states, facing the prospect of having their minorities placed under international guarantee, strongly objected. The representatives of Rumania, Poland and Yugoslavia not only protested against the imposition of these obligations but also stressed that international minority protection would split rather than unify their state. Further, they complained that the fact that minority obligations applied only to certain states relegated them to second-class status (the argument of non-reciprocity and the equality principle) and that this constituted an unwarranted infringement of their sovereignty. The Yugoslav delegation (Trumbic and Pasic) repeatedly proposed to extend the minority protection system to all former areas of the Austria-Hungarian empire, including Italy (Sandor-Szalay (2001:22)). The president of the Peace Conference, the Frenchman Clemenceau, responded that there was no intention of humiliating countries or encroaching on the sovereign rights of the newly independent states. He argued that the minority protection system of the League was a neutral and objective system which fundamentally corrected the earlier situation when the guarantee lay with the Great Powers individually or in concert, wherein room was left for intervention for political ends. Bratianu, the Rumanian representative, said the League system was fiction: only the Great Powers were treaty parties and they alone controlled the minority protection system in the new states (Viefhaus (1960:191)). The Great Powers brushed aside these objections. They made it very clear that their authority to enforce minority obligations, if necessary, was evident and indisputable.

The official explanation of the historical, political, economic and social justification for the minorities system was given in the famous 'Clemenceau letter' (according to the American Miller, the letter was drafted by the Briton Headlam-Morley (Bagley:74)) which accompanied

the delivery of the Polish minority treaty. The letter stated that: *“It has for long been the established procedure of the public law of Europe that, when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received its most explicit sanction when, at the last great assembly of European powers – the Congress of Berlin – the sovereignty and independence of Serbia, Montenegro and Rumania were recognised ... The Principal Allied and Associated Powers are of the opinion that they would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition.”*. Furthermore, the fundamental difference with the earlier system was underlined (De Azcarete (1945:165-167)).

Macartney strongly criticised this explanation. If the minorities treaties were a general principle of public law in Europe, why then had the Great Powers not asked for minority guarantees when Italy was constituted, when Germany took Alsace and Lorraine or when Norway separated from Sweden? Also the Great Powers would then have to exempt Austria, Hungary, Bulgaria and Turkey from such guarantees, since these were not new states. Belgium (which had acquired the German territories of Eupen and Malmédy), Italy (which had acquired South Tyrol and Slovene territories), France and Denmark (which respectively had regained Alsace, Lorraine and Schleswig) were all exempted from international minority guarantees. Macartney uses the geographical term ‘Western Europe’ (*“ (...) evading the whole issue of inequality; since the Powers were not attempting to apply that ‘established procedure’ to themselves, nor to Western Europe at all”*) (Macartney (1934:288-290)). This was indeed the heart of the matter: the international protection system of the League constituted an *“institutionalisation of inequality between East and West”* (Burgess (1998:51)). Macartney, Bagley and many others defended this ‘inequality’ because of the ‘special quality’ of Eastern Europe. In their view, the minority protection system of the League was specifically designed to meet a minority problem that only existed in Eastern and not in Western Europe. In Macartney’s words: *“The primary purpose of the Minorities Treaties – insurance against international friction – did not arise at all in the case of old-established states in which a feeling of political nationality already existed. The minorities in the new States and transferred territories were in a quite peculiar position.”* (Macartney (1934:190)).

Also a contemporary historian like Marc Mazower argues that this argument of ‘special quality’ had some truth: “*it was easier for Welsh or Catalan children to make careers in the professions or the civil service than it was, say, for Ukrainians in Poland or Hungarians in Rumania where hatreds were more recent. Breton children might suffer at school; they did not have their homes and villages burned down. Thus the minorities treaties were a way of educating less civilised nations in international deportment*” (Mazower (1999:56-57)).

The last sentence – and more specifically the passage “*educating less civilised nations in international deportment*” is questionable. The assimilation policy of Germany before the war was for example notorious (Michailovitch (1933:91-92); Musgrave:10).

Louis Le Fur is very critical towards the argument of moral deficiency. If it is really a matter of civilisation, the Frenchman wonders, why do the so-called old states not give a good example? The Jews in France are refused the same treatment as the Jews in Rumania or in Poland. Le Fur notes that a few years before the war, Breton preachers were suspended for preaching in Breton, despite the fact that many children only understood that language. And if the protection of minorities would already create political problems in such politically united countries, he wonders, what would then be the consequences of such protection in countries which were not yet politically unified and which had many more minorities? (Le Fur (1931:423)).

The fundamental dilemma – actually it was more a kind of a paradox – of this minority protection system was that while the treaties were established and imposed in order to meet specific problems of a specific region, the guarantor was a universal organisation, which was based upon the principles of sovereignty and equality of its member states (Bartsch (1993:43); Bagley:97-98). This painful argument was nicely formulated by Colonel Beck of Poland, when he justified his practical denunciation of the Polish minority treaty in the fourth plenary meeting of the 15th Assembly on 13 September 1934: “*The paradoxical situation of an exceptional regime grafted on to the League organisation, which derives its political justification from its very universality and from the democratic principle of equality at public law, cannot last without doing irreparable harm to the moral foundations upon which the League was erected in 1919.*” (Bagley:99-101).

The stipulations in the treaties

The stipulations in these international instruments pursued a double aim, namely the prohibition of discrimination of citizens belonging to racial, religious and linguistic minorities and the protection of the separate characteristics of those minorities (Permanent Court of International Justice (1935:17)).

Each treaty contained in the first place a general provision, ensuring the full and complete protection of life, liberty and free exercise of religion or belief for all inhabitants of a state without distinction as to citizenship, religion, ethnic origin or language. According to Tore Modeen, this general human right established a minimum standard, also accorded to aliens in a state (Modeen (1969:54)). The treaties further guaranteed citizens belonging to minorities, equal civil and political rights, equality before the law and an equal right of admission to public functions and other professions. Citizens belonging to minorities also had an equal right to establish, manage and control charitable, religious and social institutions, and schools and other educational institutions at their own expense and the right to use their own language and to practise their own religion freely within them. Signatory states could not restrict the use of any minority language in private intercourse, in commerce, in religion, in the press, or in publications or public meetings of any kind (Jackson Preece (1998a:75). Next to these provisions, guaranteeing negative equality, the treaties also ensured positive equality. First, the treaty-bound states agreed to provide to minorities adequate facilities for the use of their own language before the courts. Second, in towns and districts with a considerable proportion of citizens whose mother tongue was not the official language, adequate facilities were to be provided to ensure that in the primary schools, instructions would be given to the children in their own language. In such towns or districts, the state also had to provide minority citizens with an equitable share in the enjoyment and application of sums, provided out of municipal or other budgets for educational, religious, or charitable purposes (Thornberry (1991:42-43)).

Each of the treaties also contained stipulations regulating the acquisition of citizenship (Sibert (1951:497-498)). The aim of these citizenship clauses was to protect individuals against denationalisation and to ensure respect for the elementary rights of populations inhabiting the territories allocated to the new states. By granting citizenship automatically to foreigners absorbed into the new states, the treaties ensured that these people enjoyed the civil, cultural and political rights of the treaties (Wolfrum (1993:157)). This was coupled with the right of

such people to opt for another citizenship. In such a case, people were obliged to transfer their home, within a period of twelve months, to the state for whose citizenship they had opted.

The international guarantee and sovereignty: to guarantee or not to guarantee?

To ensure the observance of the minority clauses, the treaties and declarations foresaw both an internal and an international guarantee.

Internally, the obligated state recognised the principal clauses as ‘fundamental laws’ and undertook that no law, regulation or official action would conflict or interfere with them. The only real guarantee, however, was the international guarantee. By virtue of the international guarantee, the signatory countries agreed that the stipulations concerned constituted obligations of international concern and were placed under the guarantee of the League of Nations. The minority provisions could not be modified without the assent of the majority of the members of the **Council** of the League. Any member of the Council further had the right to bring to the attention of the Council any infraction or any danger of infraction and could thereupon take such action or give such directions it deemed proper.

The second organ charged with the international guarantee was the **Permanent Court of International Justice**. “*Any difference of opinion as to questions of law or fact arising out of these articles*” could be brought before the court by any single member of the Council, even without the consent of the state concerned (this consent was automatically granted in the guarantee clause), without any agreement with the other members of the Council or any previous consideration by the Council, and without any preliminary diplomatic negotiations between the parties. Moreover, unlike international justice, where a state must claim violation of its rights or those of its nationals, minorities cases could be brought on behalf of a third party (the minorities) even if the intervening state had no legal interest of its own. The argument was that the Council members would be acting in the general interests of international peace (Korowicz:113-120)). In case of a judgment in such a contentious procedure, the matter would be settled immediately by the Council. The Court could also give advisory opinions upon any dispute or question referred to it by the Council or by the Assembly. These opinions became then the basis of further negotiations between the Council

and the state concerned. Thus, neither the Council as such, the minorities themselves nor the minorities states had recourse to the Court for a decision in contentious proceedings. On the other hand, only the Council as such could ask for advisory opinions.

Also the **Assembly** had certain powers in the field of minority protection. This was namely clearly a matter within the sphere of action of the League, affecting the peace of the world (article 3, paragraph 3 of the Covenant of the League). While the Council had the exclusive power in individual petition procedures, the Assembly could evaluate the efficiency and activity of the general procedures, discuss fundamental questions regarding minority protection – like the question of the mutual obligations and duties of states and their minorities and proposals for a generalisation of the system – and take organisational measures. Each year, the Assembly discussed the minority question in its plenary session on the basis of the yearly activity report of the League (Burton (1941:220-225); Göppert (1938:586)).

The treaties and declarations did not prescribe the procedure to be followed in the execution of the guarantee of the League. The Council therefore established a minority protection procedure, adopted by way of several resolutions in the period between 1920 and 1929 (Caportorti: 22-23). As a result of these successive resolutions, the minority protection procedure could be summarised as follows (Veatch (1983:369-383); De Azcarate:191-200; Jackson Preece (1998a:82-83)). The Minorities Section of the League's Secretariat received, from any source – be it a state, an organisation, or minority group – petitions alleging the mistreatment of minorities and then determined the receivability. When a petition had been found receivable, it was sent to the government complained against, which could then make observations within two months. The petition and the government's observations were then communicated simultaneously to each member of the Council for purely informational purposes, and to the Committee of Three. A Committee of Three consisted of the President of the Council and two members appointed by him. Through the creation of this organ, no member of the Council could ever be placed in the delicate position of having to take the initiative in accusing a government before the Council of a violation of its minority obligations. Through 'collectivising' the initiative and placing the responsibility for it conjointly on three members of the Council, the way was open for the actual treatment of minority questions by the League. The Minority Committee studied the problem with the assistance of the Minorities Section, and either dismissed the charge as an unfounded

complaint, or on the other hand, decided that the evidence merited an examination by the Council as a whole, or secured remedial action through informal negotiation with the accused state. In the great majority of the cases, the Committee began a dialogue with the government concerned, seeking additional information, and also often trying to obtain from the government agreement to reverse policies or actions, or to pay compensation for damages done. Unofficial minutes of the Minorities Committee meetings for the years 1923-1932 indicate that only 35 per cent of the complaints were disposed of by a decision of the Committee at its first meeting not to pursue the matter further (Veatch:375). Altogether, only fourteen minorities questions were referred to the Council by minorities committees, out of a total of about 325 taken up by the committees (Bagley:89-90). In the case that the Minority Committee decided that the problem had to be dealt with by the Council, the Council examined the complaint in conjunction with a representative of the state concerned which took a seat at the Council (according to article 4, paragraph 5 of the Covenant). Since the Council could not reach a decision without a concurring vote from the state, it was forced to achieve a settlement through compromise.

Although the relationship between the states concerned and their minorities was internationalised by the international guarantee and thus was no longer a purely domestic affair, the minority protection procedure itself was essentially a political procedure, in which state sovereignty was scrupulously respected and safeguarded.

The minorities did not possess *locus standi* before the Council. Petitions submitted on their behalf, whether by individual minority members, minority organisations, or interested states, did not have the effect of making either the minority or the particular petitioner party to the proceedings before the Council. A petition merely brought to the attention of the Council certain information concerning the treatment of a minority. It was for the Council to decide whether or not to pursue the matter. Minorities were not permitted to appear before the Council or the Permanent Court of International Justice. The League namely wanted to avoid confrontation between states and their minorities. Granting *locus standi* to the minorities, it was thought, would create the appearance of a state within a state, and would only exacerbate the minorities states' sense of grievance regarding their sovereignty (Musgrave:45). Once he had submitted his petition, the petitioner was left wholly out of the procedure.

The minorities committees were instituted to determine which cases merited being placed on the Council agenda. Typically, at such committee meetings, the Director of the Minorities Section recommended a specific course of action to the committee, for example that it close

consideration of the case, request additional information from the government, or suggest certain actions to the government. If the committee agreed with the recommendations, as it usually did, it then authorised the Minorities Section to write on its behalf to the government concerned or to discuss the problem unofficially with the government's Geneva representative, to obtain additional information or policy statements. As a result of these discussions, some mutually acceptable solution to the problem would eventually evolve. Either the government would accept the Committee's view of which actions were necessary, or the Committee, advised by the Minorities Section, would agree to settle for something less than initially seemed desirable because the government would go no further. Respect for state sovereignty was even more accentuated when the question came before the full Council. To avoid any indication that the petitionaries were parties in a case against the state concerned, the petitioner was not invited to take part in the discussions in the Council. The Council's powers were in theory quite extensive. These powers were, however, fundamentally altered by the right of the state concerned to sit as a member of the Council, with the right to vote, and by the unanimity rule. Since there was no possibility of adapting a decision which was unacceptable to that state, the process before the Council was one of negotiation and pressure, and aimed at finding some mutually satisfactory solution, just as it had been at the committee stage. In these negotiations and settlements, the Council not only occupied itself largely with extra-legal considerations but also limited its considerations largely to the government's side only. Whenever it did settle a question, it couched its resolution in the most conciliatory terms and only rarely provided for any supervision of the execution of the settlement.

Bagley defends this system, by arguing that the world of the League of Nations was a world of sovereign states, concerned about their independence. The League was in no way a supranational authority. The international minority protection system, the argument went on, had to adjust itself to the limits imposed by this political reality and pursue a policy of "limited objectives". In his view, *"The minorities' interests were better protected by the friendly Council-government co-operation, which led to voluntary and sincere compromise concessions on the part of the governments, than by more perfect judicially imposed solutions which would create bad feeling and resentment on the part of the government and probably for that reason not even be carried out. There was no authority, moreover, which could prevent the government from taking subsequent steps of reprisal against the minorities, which might in the long run cause them far more misery and suffering than that involved in the original complaint."* (Bagley:108).

Minority rights and sovereignty: the repudiation of the concept of collectivity

Regarding the nature of the rights in the treaties, minorities themselves were not recognised as collective entities, as groups possessing legal personality (Bokatola (1992:50)). The state representatives in Paris considered that the recognition of minorities *per se* would have violated the concept of state sovereignty ('a state within a state') (Claude:20). Most of the treaty provisions contained individual rights, given specifically to members of minorities. These were not group rights, given to minorities as groups or legal persons (Rouland, Pierre-Caps and Poumarede (1996:191)).

Evidently, the treaty drafters in Paris could not totally neglect the 'group dimension' of the minority problem.

Certain treaties and declarations contained references to agencies of minority communities. For example, the Polish Minority Treaty stipulated that educational committees appointed locally by Jewish communities not only provided for the distribution of the proportional share of public funds allocated to Jewish schools but also for the organisation and management of these schools (article 10 of the Polish minority treaty, repeated by article 7 of the Lithuanian minority declaration). But even by granting rights like the right to establish institutions and the right to receive sums provided out of public funds, the treaties only envisaged "*the arithmetical sum of minority citizens and not the unity constituted by their collectivity*" (Friedman (1927:133-134)).

Real exceptions to the repudiation of the concept of collectivity were the provisions concerning proportional representation of minorities in elective bodies contained in the treaties concluded in Sièvres with Greece, Armenia and especially Turkey (Mandelstam (1925:436)). Also certain minorities were given autonomy. The Szeklers and Saxons in Transylvania and the Vlachs of Pindus in Greece were given local autonomy in religious and educational matters. Also the Ruthenians in Czechoslovakia were guaranteed, at least in theory, a far-reaching autonomy (Jackson Preece (1998a:76-78)). In fact, Czechoslovakia wrote this autonomy in its constitution but ensured that this system was never implemented (Laponce (1960:40)). The treaty of Sièvres with Turkey contained far-reaching provisions regarding territorial autonomy for those regions dominated by 'the Kurdish component' and for Smyrna (Mandelstam:438-439). These were cases of territorial autonomy. Several

stipulations of treaties and declarations, aiming at the protection of Christian and Muslim communities, were expressions of personal autonomy. The Greek treaty, the treaty with the Kingdom of Serbs, Croats and Slovenes and the Albanian declaration provided that family law applicable to Muslims had to be in accordance with traditional Muslim usage. These states were further obliged to ensure the protection of mosques, cemeteries, and other Muslim establishments. Jennifer Jackson Preece notes that Muslims in fact formed a substantial majority (70 per cent) of Albania's population. No special provisions were however made for Christian communities (20 per cent Orthodox Christian and 10 per cent Roman Catholic) which were genuine minorities. She speculates that those responsible for the Albanian minority declaration were ignorant of the exact demographic composition of this country (Jackson Preece (1998a:77-78). The treaty concluded with Turkey in Sièvres enabled the Greek and Armenian patriarchates to become real political communities (Mandelstam:440). The Treaty of Sièvres was imposed by the Allied powers on the Turkish sultan. It was replaced by the Treaty of Lausanne, which guaranteed, again in theory, the non-Muslim communities in Turkey the same rights as those enjoyed by Muslims in Greece and Yugoslavia. The earlier political element in the system of autonomy was however eliminated (Mandelstam:442).

A last expression of the 'group dimension' was that minority groups could authorise associations to exercise the right of petition (Sibert:498). Already on 12 November 1921, the question of the German minority in Poland was brought under the attention of the League by the German association for the protection of minorities in Poland. As this right of petition did however not confer *locus standi* on the petitioner, it cannot be said that it amounted to a recognition of group rights (Musgrave:44).

In general, provisions concerning personal or cultural autonomy were very rare exceptions. Macartney terms the linguistic and scholastic provisions of the treaties as 'very weak' (Macartney (1934:282). The committee which had drafted the treaties, consisted mainly of members of western majority nations (Galantai:46). These took of course as their model the minorities of which they had personal experience, such as the Welsh or the non-nationalist West-European Jews. Most of the Western minorities in 1919 were small communities, economically, politically and socially less advanced than the majorities with whom they lived. According to Macartney, these people did not strive for a strongly differentiated, self-contained national existence. They naturally and willingly adopted the language and mentality of the majorities. The (Western) treaty drafters therefore considered it sufficient

that the language of the (Eastern) minorities was tolerated in their private life and that their children received their first instruction in a language which they understood and from which they could profit.

The Western states departed from the principle that “*a single national culture should prevail in each state, and that the members of minorities should be as fully subject to the will of the political majority as members of the national majority were also subject to it. Any idea of giving the members of minorities such a special organisation as would at all emancipate them from the general control of the state was repugnant to them. The minorities must not be allowed to become a ‘State within a State’ (...)* The principle of ‘cultural autonomy’ (...) seemed to them dangerous, as creating such an external rival to the one legitimate authority of the state. Their own states had long since forgotten the medieval conceptions which recognised the national community as an intermediate link between the individual and the state, and they did not think any such link necessary, or indeed, desirable. (...) Their whole work reveals the modern political conception under which the state exercises exclusive and direct control over the individuals composing it; no such intermediate organisation as the national community was recognised to exist.” (Macartney:283).

Illustrative for this Western European attitude towards cultural autonomy was the memorandum of the British Foreign Office of 26 February 1929 in response to the demands of the European Nationalities Congress. In this document, the British Foreign Office argued that it had not been the aim of the minority treaties to create “*autonomous and alien political communities in the new states*” whereby the minorities in these states would “*remain permanently aloof from and hostile to the new states to which they were assigned*”. Such a situation would be created by a European-wide introduction and implementation of cultural autonomy, modelled on the Estonian Law on Cultural Autonomy (Bamberger-Stemmann (2000:353-354)).

In general, the Allied Powers went out from the concept of the indivisible state nation as it was formulated by the French philosopher Jean-Jacques Rousseau. The nation consisted of the community of all the citizens of the sovereign state. Only when all groups equally participated with the majority nation in the central state institutions, a strong national and democratic state could be built (Schot (1988:18-19)).

In sum, the League's system established the primacy of the West over the East. First, minority supervision was not to have universal force, it was only to be directed towards the East. Moreover, the Western model of the unitary nation-state was now hailed as a panacea for the national question in Central and Eastern Europe. This was the system within which the Baltic states would struggle to make their voices heard. It is to this struggle that we now turn.

Chapter three: The Baltic minority declarations and Westphalian sovereignty

The entrance of the Baltic states into the League of Nations

Lithuania, Estonia and Latvia had proclaimed their independence on respectively 16 February 1918, 24 February 1918 and 18 November 1918 and sent delegations to the Peace Conference in Paris (Ruysen (1923:290-293)). These delegations asked for recognition and urged that their countries be admitted to the future League of Nations (Graham (1933: 9-11 and 51)). The Great Powers, however, hoped for the restoration of a non-Bolshevik – but also democratic and federated Russia. Especially the French wanted a restored Russia capable of resuming payment of the large debt to the French government. The Russian Political Conference, meeting in Paris on 9 March 1919, urged that a *de iure* recognition had to be indefinitely postponed. The definite status of the Baltic states could only be determined after the restoration of a unified, indivisible and conservative Russia. At the same time, the Baltic German Committee in Paris, purporting to represent the minorities in the Baltic states, claimed that ‘agrarian radicalism’ was already undermining the social order in Latvia (Bilmanis (1951:317-318)). The offensive to obtain recognition at the Peace Conference was unsuccessful. Also the subsequent effort to obtain League membership from the Supreme Council of the Allied forces failed (Graham (1933:11)).

After the establishment of the League, the Baltic states again applied for membership. The Estonian government applied for membership, respectively on 19 April and 8 September 1920. Estonia had only been recognised *de iure* by Bolshevik Russia, Finland and the Vatican. Latvia submitted its first request on 14 May 1920 and its second on 26 October 1920. It had only been recognised *de iure* by Bolshevik Russia. Lithuania applied for membership on 12 October 1920. This state had been recognised *de iure* by Bolshevik Russia and Germany (Graham (1933:60-62; Schücking and Wehberg:310-313)).

On 2 December 1920, Subcommittee Va of the Fifth Committee of the Assembly reported on these requests. The report contained a brief factual background and mildly favourable observations regarding governmental stability, constitutional features, international intentions and armaments. On the other hand, it was doubted whether states not recognised *de iure* by

the members of the League, could be admitted into this organisation (Report of Subcommittee Va, 233).

In the Fifth Committee, which had taken up the report on 4 December 1920 and discussed it in its sixth and seventh session on 4 and 9 December 1920, speakers like Benes (Czechoslovakia), Lord Robert Cecil (South Africa), Van Karnebeek (the Netherlands) and Rowell (Canada) referred to the unstable situation of these countries, resulting from the proximity of Soviet Russia. But also the dangers of an outright refusal were underlined (Actes de la première Assemblée, 185-189). In the compromise that the Subcommittee Va had to find, the proposal of Benes was accepted. The Czech had already in the earlier meeting of the Fifth Committee proposed to allow Estonia, Latvia and Lithuania to participate in some of the technical organisations of the League in case of non-admission. The motion of Van Karnebeek – formalising the view of Benes – was accepted by the Fifth Committee on 9 December 1920 (Actes de la première Assemblée, Séances des Commissions, 238-240). The Committee advised the Assembly to inform the Baltic states that they – together with Armenia and Georgia – could not be admitted at once into the League but could be permitted to appoint delegates to the technical organisations of the League, and this on the ground “*that the circumstances (were) such as to preclude the Assembly from arriving at a definite decision*”.

The recommendation of the Committee was endorsed by the First Assembly in its session of 16 December 1920. The admission requests were rejected but Estonia, Latvia and Lithuania were permitted to participate in the work of the technical organisations of the League. Some delegates argued that it was impossible for the League (members) to guarantee the territorial integrity of these states against a possible attack from the Soviet state. Exemplary is a fragment of the speech of the Swedish delegate Branting: “*Further, at this moment when the general situation is so confused, when neither Esthonia, Latvia nor Lithuania have as yet been recognised by any of the Great Powers, it would be, for those states which desire to fulfill their engagements, a risk which we could not lightly incur, to admit into the League of Nations states, which by their geographical situation are unfortunately open to attacks from a power whose intentions no one can measure, a power which perhaps one day will be transformed into a conquering power menacing the freedom of Europe.*” (League of Nations (1920:622)). On the other hand, the representatives of Colombia, Italy, Paraguay, Persia and

Portugal argued that it was actually the task of the League to defend these states against a possible Soviet invasion.

Neither the lack of *de iure* recognition nor the possibility of a Soviet attack were however the real reasons of the refusal to admit the Baltic states into the League.

Rita Peters argues that the real issue lay in the uncertain future of Russia. Great Powers like the United States and France still hoped for a restored Russia to re-emerge. In the meantime, all decisions regarding the territories of the (former) Russian empire had to be held in abeyance. The American Secretary of State, Robert Lansing, observed that Woodrow Wilson's policy regarding the Russian empire reduced the self-determination principle to a "*mere phrase*" (Peters (1983:130)). Also Lilita Zemite indicates that the complete uncertainty of what was going to happen in Russia, and, by extension, in the entire region, was the main reason why the great majority of states was not eager to admit the Baltic states: "*Should the Russian Empire re-emerge, delegates said, the League of Nations would face a number of very difficult problems of having accepted territories from the former empire into its ranks.*" (Zemite (2002:8); in the same sense: Ruttenberg:115; Zile (2001:368)).

In this regard, it was not surprising that the proposal of Lord Robert Cecil in the Subcommittee Va of admitting these states without giving them the collective defence guarantee of article 10, was rejected (Peters (1983:131)).

The Assembly thus left the door open for future membership once the overall situation in Eastern Europe had become clearer.

The situation in the former Russian empire indeed changed. The White Russian army was finally defeated. The Western powers no longer insisted on the indivisibility of Russia. After the recognition by the Supreme Council of the Allied Powers in January 1921, other countries followed suit and in August and September 1921, the Baltic states renewed their admission requests (Schücking and Wehberg:311-313; JO (1921:984-988)). On 22 September 1922, the Assembly of the League voted in favour for their admission (League of Nations (1921:317-320)). That the former argument of non-recognition was only a formal excuse, was proven by the fact that also Lithuania – which was not recognised by the Great Powers – was admitted into the League. Because of the particular problems surrounding the city of Vilnius, the *de iure* recognition of Lithuania was delayed until 26 December 1922 (Meissner (1987:331)).

The Lithuanian minority declaration

The negotiations between Lithuania and the Council soon led to an agreement between the two parties. Consequently, the draft resolution which was proposed by Da Gama – Da Gama had succeeded Da Cunha as rapporteur on minority questions – in his report of 12 May 1922 on the protection of minorities in Lithuania (JO (1922:584-588)), was signed on the same day by the Lithuanian representative Sidzikauskas.

The collaboration – or better, acquiescence – by Lithuania possibly related to the fact that at the same time, the Council also discussed the Polish-Lithuanian border dispute concerning the territory of Vilna. According to Samuel Friedman, the Lithuanian government simply could not risk a new conflict with the Council on the minority issue (Friedman:81).

Like the earlier treaties, the Lithuanian minority declaration was clearly modelled on the Polish minority treaty, containing the same stipulations and the international guarantee.

It is both interesting and revealing to compare the declaration with earlier proposals of the Lithuanian government, the attitude of the Council in that regard and to place it finally in the light of the general minority protection system.

The initial draft submitted to the Council by the Lithuanian government – a draft elaborated by the minister of Jewish affairs, Soloveitchik and the minister of Belarussian affairs, Semachko – went substantially further than the final declaration. The Lithuanian draft contained provisions concerning the right to use minority languages in the parliament and in those institutions in the state, “*where the minorities constituted a considerable proportion of the population*” (article 5). Further, the draft stipulated the right of minority educational establishments to receive a “*proportional part of the sums provided by the state budget*” (article 4) instead of the vague expression ‘equitable part’ as foreseen in the treaties.

These explicit intentions of the Lithuanian government were not only far-reaching regarding individual rights but - even more remarkable - also contrasted fundamentally with the general refusal of the (Western) treaty drafters to insert clauses concerning personal or territorial autonomy in the treaties.

The Council therefore made abstraction of these explicit intentions of the Lithuanian government and settled with much more limited obligations on the part of Lithuania. The only article related to the ‘group dimension’ is article 7 of the declaration (repeating article 10

of the Polish minority treaty). This provision established the right of educational committees appointed by the Jewish communities, to provide for the distribution of funds allocated to Jewish schools and to organise and manage these schools.

This not only illustrated the Council's view on the extent of the international guarantee in general but also reflected the routine procedure - actually a kind of mechanical process - which governed the minority protection system (Friedman:81).

In this regard, reference can be made to the forementioned report of 12 May 1922, in which Da Gama stressed that the declaration should correspond as much as possible to the minority treaties (JO (1922:585)). Da Gama took note of the Lithuanian declaration, submitted at the Peace Conference, but nevertheless emphasised that the final minority declaration should only contain the same stipulations concerning the protection of Jews as included in the Polish minority treaty (by way of a letter of 30 December 1921, the Committee of Jewish affairs had informed the Council about this declaration). In his report, Da Gama simply recommended to adopt the relevant Polish stipulations, which were then inserted in the articles 7 and 8 of the declaration.

As mentioned above, the Lithuanian declaration was modelled on the Polish minority treaty. Contrary to the views of Erdstein (Erdstein (1932:57) and Mandelstam (Mandelstam:450), they were however not identical. As the short comparison of Herbert Kraus (Kraus (1927:125-126)) already demonstrates, they differed on the acquisition of citizenship. The Polish minority treaty and the other treaties contain detailed stipulations regarding the acquisition of citizenship and the right of option. Exactly these stipulations were however not enacted in the Lithuanian declaration. The only 'citizenship article' (article 3), was only applicable to persons born within Lithuania *subsequent* to the date of the declaration of 12 May 1922. Samuel Friedman argues that this restriction makes the provision 'absurd' because the citizenship question practically only mattered to persons born on Lithuanian territory *before* the date of the declaration (Friedman:118-119). Another fundamental difference was that the declaration did not regulate in any way the acquisition of citizenship and the right of option. It only requested the Lithuanian government to inform the Council of all constitutional and legislative stipulations regarding the acquisition of citizenship.

The omission of the right of option was brought up by Askenazy, the Polish representative in a letter of 10 May 1922. He argued that this right was granted to the Lithuanian people in

Poland and that it therefore should also apply to the Polish population in Lithuania (JO (1922:589)).

At the subsequent meeting of the Council meeting where these observations were discussed, the Lithuanian representatives, Sidzikauskas and Jonynas, replied that the option clause was already included in the peace treaty between Lithuania and Russia and that, consequently, this question could also be treated in the negotiations, leading to a general peace treaty between Lithuania and Poland. Thereupon, the Council closed the discussion, expressing the hope that the two countries would sign such a treaty (JO (1922:524)).

After the signature of the declaration, the Council had decided that its stipulations would be placed under the guarantee of the League from the date of its ratification by the Lithuanian government. In the same resolution of 15 May 1922, the Lithuanian government was also requested to inform the Secretary-General of this ratification (JO (1922:536-537)).

The Lithuanian government however constantly delayed the ratification of this declaration by invoking several reasons like parliamentary recess, the dissolution of the *Seimas* or the fact that it was discussing more urgent matters (Friedman:82; also report of rapporteur Rio Branco, in JO (1923:1373)). Evidently, the representative of Poland, the eternal foe of Lithuania, brought this to the attention of the Council by way of a letter of 3 July 1923, stressing that “*the Lithuanian declaration of 12 May 1922 was not yet ratified and that, consequently, the minority protection in Lithuania was not subjected to any international guarantee*” (JO (1923:923)).

Although the Council insisted on receiving notification of the ratification in order to inform the Fourth Assembly (JO (1923:1269-1270)), the Secretariat did not receive any official information. Finally, on the Council meeting of 11 December 1923, the Lithuanian representative Galvanauskas informed the Council about the Resolution of the *Seimas* ‘concerning the Declaration on the Rights of Racial and Religious Minorities in Lithuania’ of 4 December 1923, according to which “*The Seimas, having been apprised by the Lithuanian declaration concerning the rights of racial and religious minorities, takes note of it and decides that, in view of Article 30 of the Constitution, ratification is unnecessary.*”. Article 30 of the Lithuanian Constitution read as follows: “*The Seimas ratified the following State treaties concluded by the Government: peace treaties, treaties concerning the acquiring, relinquishing or ceding of State territory, commercial treaties with other States, foreign loans, treaties entirely or partially abrogating or modifying existing legislation, treaties imposing obligations upon Lithuanian citizens, treaties involving monopoly rights, direct or*

indirect, or rights of expropriation.”. Galvanauskas stated that the *Seimas* had thus considered that the declaration in question did not fall within the category of those international acts for which the constitutional law requires ratification, and that the Lithuanian government alone was competent to bind Lithuania in the matter (JO (1924:332-333)).

Interesting and relevant to note is that the *Seimas* resolution however was not undisputed. The Jewish, German and Polish members of the *Seimas* and the Social-Democrats strongly objected to the said interpretation of article 30 of the Constitution, which, in their eyes, constituted a violation of the Lithuanian obligations vis-à-vis the League. In the forementioned parliamentary session of 4 December 1923, this powerful group – they possessed half minus two of the total amount of seats – voted in favour of the ratification and accused the government of the intention of taking restrictive measures against minorities in the future (Friedman:84).

The members of the Council did not discuss - let alone criticise – the decision of the *Seimas*. They only took note of the declaration of the Lithuanian representative, in which – together with the communication of the decision of the *Seimas*- the obligations of Lithuania under the declaration of 12 May 1922 were confirmed. A purely formal statement thus sufficed for the Council. Only Lord Robert Cecil observed that all treaties which imposed obligations upon Lithuanian citizens had to be submitted for ratification to the *Seimas*. However, “*since the Lithuanian Government, which had evidently undertaken a serious examination of the question from the point of view of the Lithuanian Constitution, was of opinion that the declaration in question did not require ratification*”, he did not object. This was illustrative for the respect for state sovereignty.

As a result, the Council took note of the communication of the Lithuanian representative and “(agreed) *with the Lithuanian Government to regard this declaration as having come into force, and (decided) that the provisions of this declaration, in so far as they affect persons belonging to racial, religious or linguistic minorities, shall be placed under the guarantee of the League of Nations*” (this discussion in JO (1924:333)).

The history of the adoption of the Latvian minority declaration

Already in the admission request of 1 September 1921, the Latvian foreign minister, Meierovics, underlined that minorities in Latvia already enjoyed the widest educational and religious autonomy and that this was in perfect harmony with the principles, embodied in the minority treaties (JO (1922:984-985)).

On the eve of the Council session of 11 January 1922 – where the question was discussed for the first time – the Latvian representative Walters submitted to the Secretary-General an extensive memorandum regarding minority protection in his country (JO (1922:248-252)). In two following notes of 18 and 20 March 1922, Walters completed his earlier memorandum.

In the first note, Walters made it clear to the Council that his government considered the question of naturalisation as a matter which entirely belonged to the sovereignty of the Latvian state. Issues of naturalisation could therefore not be subjected to the League. The fact that certain treaties – placed under the control of the League – contained stipulations about naturalisation justified no intervention by the League. According to Walters, the League was only an executive organ of the states. Only the states had concluded the relevant treaties. The stipulations of these treaties were not binding for non-signatory countries (JO (1922:479-481)). This note was only a forerunner for the one of 20 March 1922 which constituted a real political and legal attack against the minority protection system of the League in general and, more specifically, the proposals of the Council towards Latvia. Walters emphasised that both the Latvian constitution and the actual governmental policy ensured an absolute equality between the Latvian majority and persons, belonging to minorities. Moreover, through those future measures like the right to create autonomous organisations of public law, these minority groups would acquire a status which went beyond the principle of equal treatment of citizens prescribed. Consequently, Walters concluded that minorities were better protected in Latvia than in most other countries.

Walters further argued that the minority and peace treaties were not genuine international treaties because of the lack of reciprocity. Unilateral declarations would violate even more this fundamental principle. Since there were no universally recognised principles concerning minority protection, these declarations would also violate the principle of generality.

While (the idea of) international co-operation was gaining ground, political realities however necessitated respect for national laws and national jurisdiction. Walters observed that the

Covenant of the League was thoroughly imbued with this respect and expressly limited itself to judging only certain disputes between the members of the League, leaving intact the sovereignty of the states.

Laws regarding the protection of minorities were practically untouched by international regulation and the matter was treated very differently in different countries. Given these circumstances, the argument went on, it would be unjust to impose on certain states, unilaterally and without any reciprocity on the part of other member states, modifications of their domestic law, thereby infringing their sovereignty. Such an imposition would make of such countries half-sovereign states, while the principle of equality of states was one of the pillars of the League.

Since the states retained full liberty in their national legislation under the Covenant and since there were no general principles regarding minority protection, Walters qualified the resolution of the Assembly of 15 December 1920 as a simple request or wish. In his view, the minority question could only be regulated by way of reciprocal international treaties on civil and political rights for minorities or by way of a revision of the Covenant of the League through an amendment of the Assembly. Thereby, the Latvian representative reminded the Council that the argument of reciprocity had already been put forward by the Federal Council of the Helvetic Republic (note of 4 August 1919 with regard to the accession of Switzerland to the League of Nations). On the basis of these arguments, Walters requested that the Council consider henceforth the protection of minorities in Latvia as an internal matter and to formalise this by way of a declaration, as the Council had done before with Finland (JO (1922:481-483)).

The question came up again on 12 May 1922. Because of the submission of a new Latvian memorandum, the complexity of the problem and the absence of the reporter, it was adjourned to the next Council session (Erdstein:58).

In a new memorandum of 11 May 1922 (JO (1922:733)), Walters not only returned to his former arguments but also analysed the stipulations of the most important treaties. The comparison of these treaties with the legislation of his country led him to conclude that the Latvian legislation was at least as far-reaching and liberal as the forementioned treaties. Walters further referred to the Warsaw Convention of 8 March 1922 (this Convention however never entered into force because Finland did not ratify this agreement) and observed that his country would always be willing to conclude a similar reciprocal agreement with

other countries. Latvia could however never be subjected to obligations which were not binding for every member of the League.

On the same session, Da Gama presented a preliminary report to the representatives of Estonia and Latvia. Walters responded to this report - which was neither submitted to the members of the Council nor made public - on 17 and 31 July 1922 and Pusta on 9 August 1922. Because these notes tried to refute the thesis of Da Gama, one has a good insight into the argumentation put forward by the reporter. The arguments of Walters and Pusta did however not alter the views of Da Gama. On 1 September 1922, he produced practically the same report (on Estonia) with only a few modifications (Villecourt (1925:37)).

In his letter of 17 July 1922 (JO (1922:1035-1036)), Walters pointed out a fundamental difference between Latvia and the signatories of the treaties. The latter had been directly affected by the Treaty of Versailles with regard to the legal definition of their frontiers and many other aspects of public law. Latvia, on the other hand, had not only autonomously gained its independence but had also been constituted without external legal influences. The signatory states had accepted articles 86 and 93 of the Treaty of Versailles agreeing “*to embody in a treaty with the Allied Powers such provisions as may be deemed necessary by the said Powers to protect the interests of the inhabitants who differ from the majority of the population in race, language or religion*”. The independence of Latvia, on the other hand, had been unconditionally recognised *de iure* by the Supreme Council of the Allied Powers and afterwards by other countries. Latvia had never signed a minority treaty and could therefore not be subjected to the same obligations as the signatory states. In line with this argument, Walters emphasised that the Assembly – by its resolution of 15 December 1920 – had not formulated an accession condition but only a request. Latvia had accepted this request but this only implied a commitment to approach the Council in order to discuss the protection of minorities and not to accept blindly whatever the Council proposed. In Walters’ view, the recommendation of the Assembly was based on the principle that the rights of the minorities must remain within the jurisdiction of the state concerned. It merely appealed to the goodwill of the state to see that these rights are established. The Assembly did not require the creation of any international or supernational law regarding the protection of minorities and did not authorise the Council to draw up such laws. Pending a universal minority protection system encompassing all countries, Latvia remained entirely sovereign in this matter.

Walters further argued that an internationalisation of a special minority legislation in Latvia could create indirectly for each state a right of intervention in Latvia. Even in the event of the League ceasing to exist, minority rights, declared as obligations of international concern, would – like the right of intervention – continue to exist.

In his subsequent letter of 31 July 1922, Walters argued that the instruction of minorities in their own language is the most objective and pertinent criterion to measure the liberal nature of the minority protection system of a country and submitted in that regard official statistics about the secondary schools in Latvia. He further contended that any further demands upon the Latvian people were apt to weaken the unity of the Latvian state and encourage denationalising influences which the Latvian people would not tolerate (JO (1922:1092-1094)). Meanwhile, Walters had also launched a campaign for generalisation of minority rights in the Assembly.

On 3 July 1922, the report to the Third Assembly on the work of the Council and on the measures taken to execute the decisions of the Assembly was filed. Chapter 9 of this report concerned the protection of minorities. At the fourth plenary meeting on 5 September 1922, Professor Gilbert Murray of South Africa stated that the questions dealt with in sections A, B, C and D of chapter 9 be referred to a Committee of the Assembly with a request to report back (Records of the Third Assembly (1922:37-38)). On the following day, at the fifth plenary meeting Walters made a proposal which enlarged the scope of the preceding one: *“That the questions dealt with in Chapter 9, Sections A, B, C and D of the General Report to the Assembly on the Work of the Council, as well as the general questions arising out of the protection of minorities for all the members of the League of Nations, be referred to a Committee of the Assembly, with the request to report thereon to the Assembly in order that the latter may have the opportunity of expressing its considered view on these questions, and of laying down the main lines for the general protection of minorities in the state members of the League of Nations.”* (Records of the Third Assembly (1922:48)). Both motions were referred to the Sixth Committee, which discussed the minority question at five meetings. The Committee asked both Professor Murray and Walters to take part in its discussions.

Walters asserted that *“the absence of provisions concerning the rights of minorities constituted one of the defects of the Covenant”* and challenged the Committee to *“turn its attention to discovering what were, at present, the positive rights of minorities, and, these*

having been established, ... state them in general terms, having particular regard to principles governing the protection of minorities which might be politically and practically realisable.”. He went on to explain Latvia’s position on the question of the present international law foundations for the protection of minorities and its determination to establish a system of general protection based on reciprocity (“*Without such reciprocity a second class of States could eventually be created, in contradiction to the spirit of the Covenant.*”).

Walters concluded on a mildly defiant note: “*In view of the foregoing considerations, and, further, in view of the fact that the negotiations with the Council are not completed and that the Committee can only discuss the work of the Council and cannot, of course, enter upon the legislative domain reserved in the present case for the sovereignty of the Latvian state, the Latvian delegation declares that, as regards minorities in Latvia, it refuses to regard itself as bound by any decision or opinion which the Committee may express in the matter so long as such opinions or decisions are not founded upon the Covenant of the League of Nations. Subject to this single reservation, the Latvian delegation, which urgently desires a just and universally applicable solution of the minorities question, will assist with all of its resources and all its goodwill in the task of the Committee.*” (Records of the Third Assembly, committee meetings, (1922:11)).

Professor Murray agreed with Walters that an exhaustive discussion of the minorities question was desirable but stressed that Latvia was bound by a formal declaration in this field. He was surprised that Latvia regarded itself free from any engagement until a general conference had been held or the Covenant amended. His own five draft resolutions aimed at the establishment of good relations between minorities and their governments (Report to be presented to the Assembly by the Sixth Committee (A83.1922.I:2)).

During the subsequent discussions in the Sixth Committee, representatives of the states bound by the treaties were generally sliding with Walters’ push for generalisation. On the other hand, the unaffected states preferred Professor Murray’s harmless tinkering with the status quo.

The Finnish delegate proposed that the Assembly should request the Council to appoint a committee to investigate the question of the protection of minorities in general and to submit a report to the next Assembly. This proposal was supported by the Estonian delegate, but was withdrawn owing to the consideration that the resolutions already adopted by the Committee already provided for a searching inquiry by the Council and the Secretariat into minorities

questions, and also that the establishment of a special committee would involve considerable expenses (A83.1922.I:3; Toynbee (1925:213-220)).

The Committee subsequently adopted several declarations. Amongst others it expressed “*the hope that the States which were not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the Treaties and by the regular action of the Council*”.

After some discussion, the Assembly passed all the (five) resolutions on 21 September 1922 (League of Nations (1922:170-186)).

Professor Murray noted that these resolutions – and more specifically the forementioned resolution – represented the farthest the Sixth Committee could go towards generalisation, and that he could only hope that the Great Powers would even be willing to go that far (League of Nations (1922:11-12 and 61)).

Michaïlovitch observed that Estonia and Latvia fully understood the limited bearing (“*platonian value*”) of the resolution, and that they, consequently, did not change their stance in the negotiations (Michaïlovitch:144).

On 26 September 1922, Da Gama submitted to the Council his report on the protection of minorities in Latvia (JO (1922:1419-1424)). In his view, Latvia should sign a declaration “*whose content would as much as possible conform to the Minority Treaties and whose text is identical to the one of the declaration accepted by Lithuania*”, with the exception of the articles 7 and 8 regarding the Jewish population in Lithuania. Da Gama argued that there was no need to treat the question of a general minority protection system. Through the declaration of 14 September 1921, the Latvian government had placed itself in the same position as the signatory states. Only the exact extent and the details regarding the application of the international obligations therefore had to be clarified. That the existing legislation in Latvia corresponded to the principles contained in the treaties was in his view an additional argument to sign such a declaration. It would not pose any problem to insert already existing (national) stipulations in a formal declaration.

Zigurds Zile correctly observes that Da Gama failed to exploit a major chink in Walters’s defence. In his memorandum of 10 May 1922, Walters had namely argued that the draft of

the final constitution was even more liberal than the provisional constitution. Meanwhile, the whole second part of the draft – containing several articles directly addressing the interests of minorities – had, however, been rejected by the Constituent Assembly. The result was that the final constitution was a truncated document, certainly compared to the Estonian constitution of 1920 (Zile (1980:11 and 19)).

Pending an official response of the Latvian government, Walters gave his personal view in a note of 15 November 1922 to Da Gama (JO (1923:111-112)), “*tearing into the supranational pretensions implicit in the articles 1 and 9 of the Draft Declaration*” (Zile (1980:20)), as included in Da Gama’s report. Article 1 of the draft – which recognised the stipulations of the declaration as fundamental laws of Latvia – in Walters’ view clearly constituted a violation of the Latvian constitution which subjected each new fundamental law to a defined procedure, prescribing, among other things, a discussion in three readings and the acceptance by a majority of at least two thirds of the members of the Latvian parliament. The international guarantee stipulated in article 9 of the draft restricted even more the powers of the sovereign Latvian people to establish and to modify its constitution. Walters argued that a second supreme organ next to the Latvian people was created, an organ not foreseen by the constitution. Procedural arguments, again strongly related to the issue of sovereignty, thus complemented the former discussion regarding the principles of the minority protection system of the League. Walters also wrote that his own observations were not meant to encroach in any way upon the decision which the Latvian government might take as a result of Da Gama’s report. This was a veiled threat that, if badgered, Latvia would withdraw from the search for an acceptable compromise.

In a cable of 22 January 1923, Meierovics informed the Secretary-General of the League that the then Latvian government had resigned and that, consequently, no decision regarding Da Gama’s draft declaration could be taken. He asked the Council to put off the further discussion of matter of minorities in Latvia until a new government had been formed. Da Gama placed this request before the Council on 30 January 1923, and the Council postponed the examination of this question to the next session (JO (1923:277-278)). While the negotiations had resumed after the formation of the successor government, they had failed to produce anything substantial by the April meeting of the Council. In March 1923, Walters suggested to the Minorities Section that the question of the interpretation of the Assembly

resolution of 15 December 1920 be submitted to the Permanent Court of International Justice (Peters (1988:288)).

Meanwhile, the representative of Great Britain, Lord Balfour, had proposed to bring the case of Estonia before the Assembly in the event of an agreement not being reached. This had a considerable influence on the negotiations with Latvia which evidently recoiled from having its 'case' also being brought before the Assembly.

At the meeting of the Council held on 7 July 1923, Walters made the following statement:

“Considering that the regulation of the question of minorities in Latvia must take into account the constitution and sovereign rights of the Latvian State, as well as of its social necessities, and in view of the fact, as I have already explained to the Council in my various memoranda, that Latvia has of its own free will taken adequate measures to protect its minorities, and further, in view of the fact that different aspects of the question of protection of the minorities in Latvia are still being examined by the Latvian Government, I have the honour to propose that the negotiations between the Latvian Government and the Council of the League should now be terminated. The Council will, nevertheless, have the right to take up the question anew and to reopen the negotiations if the situation of the minorities in Latvia does not appear to it to correspond to the general principles laid down in the various so-called Minorities Treaties. The Latvian Government can on its side also demand that negotiations should be reopened. I further propose that those petitions which may from this date be addressed to the League of Nations concerning the situation of persons belonging to racial, linguistic or religious minorities in Latvia be transmitted to the Latvian Government for its observations. It is obvious that the Secretariat of the League of Nations will be careful to put aside those petitions who come from anonymous or unauthenticated sources, or which are couched in violent language. Petitions which are recognised as being admissible, together with such observations as the Latvian Government may desire to prevent, will be communicated for information by the Secretary-General to the Members of the Council. The Latvian Government accepts in principle from this date the obligations to furnish the Council with any information which it may desire, should one of its Members bring before it any question relating to the situation of persons belonging to racial, linguistic or religious minorities in Latvia.

In case of a difference of opinion on questions of law or of fact concerning the present declaration, the Latvian Government reserves the right to ask that differences of opinion be

referred to the Permanent Court of International Justice for an advisory opinion. It should be clearly understood that the Council will also have the right to ask for the question to be referred to the Court.” (League of Nations (1927:32)).

As Walters reserved the proposal for the approval of this government, the Council adopted on 7 July 1923 the following resolution:

“The Council of the League of Nations takes note of the declaration made by the representative of Latvia and is ready to accept the proposals contained therein, provided that the Latvian Government informs it before the next session of the Council that it approves the declaration of its representative.

The Secretary-General shall communicate this decision to the Assembly of the League of Nations for its information.” (JO (1923:933)).

In a telegram of 28 July 1923, the Latvian government declared that it approved the statement made by its representative Walters. Thereupon, the Council adopted on 1 September 1923 the following resolution: *“The Council of the League of Nations takes note of the approval of the Latvian government of the declaration made by the Latvian representative to the Council on 7 July 1923 regarding the protection of minorities in that country.”* (JO (1923:1275)).

The history of the adoption of the Estonian minority declaration

The Estonian representative, Pusta, also started the actual negotiations with an informative note regarding the minority protection in his country. He emphasised that already shortly after its independence, Estonia had freely established a minority protection system without external conditions. The Estonian delegation had therefore spontaneously accepted the resolution of 15 December 1920. Consequently, Estonia did not need to be subjected to special minority obligations (JO (1922:483-485)).

In response to Da Gama’s preliminary report of May 1922, Pusta underlined that the resolution of 15 December 1920 constituted nothing more than a request to the states concerned to take all the necessary measures to ensure the protection of minorities in their countries. In that regard, Estonia differed from other countries because the number of persons

belonging to minorities was very limited and their protection already assured when the resolution was formulated. Thus, it was sufficient as in the case of Finland that the Council took note of the Estonian legislation, all the more so because the constitutional guarantees in Estonia went further than those of the minority and peace treaties.

Pusta argued further that those treaties were either imposed on defeated powers or constituted the charter of recognition of new or territorially enlarged states (like Rumania and the State of Serbia, Croatia and Slovenia). Estonia, on the other hand, had gained its independence without external aid. Afterwards, the Great Powers had neither fixed its boundaries nor linked its recognition with certain conditions.

Pusta also observed that Estonia had freely adopted constitutional minority guarantees. A declaration placing the Estonian constitution under the guarantee of the League, could, in his view, not be approved without the consultation of the Estonian people. The Estonian constitution namely recognised only “*general principles of international law which were universally recognised*” as part of the Estonian legal order, and such principles did not yet exist in the field of minority protection.

Pusta continued with a critical discussion of several articles of the proposed declaration. Article 1 of the declaration required the recognition of its stipulations as fundamental laws of Estonia. The acceptance of that provision required, in Pusta’s view, a revision of the Constitution. This could only be done by way of a plebiscite and not through a mere declaration of the government. The Estonian representative further stressed that article 6 of the declaration – which, in his view, foresaw financial assistance to religious minority organisations – violated the constitutional principle of separation between church and state. According to this principle, the state could never provide such institutions with financial assistance (JO (1922:1235-1236)).

In his report of 1 September 1922, reporter Da Gama argued that the declaration of 13 September 1921 implied an acceptance by Estonia to adopt stipulations in conformity with those of the peace and minority treaties. Since Albania and Lithuania had also committed themselves to similar obligations as the signatory states, Da Gama insisted that Estonia should also sign a declaration “*whose content had to conform as much as possible to the forementioned treaties*” and whose text had to be identical to the one earlier signed by Lithuania (with the exception of the articles 7 and 8 regarding the Jewish population in Lithuania) (JO (1922:1231-1234)). In order to enable the Council members to take note of Da

Gama's report and the argumentation of Pusta, the question was adjourned to a next session (JO (1922:1174)).

The discussion was launched again at a private Council session of 20 September 1922. In a new report (JO (1922:1237-1238)), Da Gama again argued that the Estonian declaration of 13 September 1921 was meant to define the international obligations of Estonia in the field of minority protection, and not to conclude whether the internal legislation of Estonia provided an adequate treatment for minorities. In his view, the said declaration was clearly connected with the minority treaties because it referred to the resolution of the Assembly of 15 December 1920, which expressly had mentioned these treaties. The Estonian government had thereby agreed to apply the principles of these treaties and it was on that basis that the negotiations had to be pursued. To Pusta's observations regarding the relationship between the Estonian constitution and the international guarantee, Da Gama replied that only the stipulations of the declaration, and not the Estonian constitution, would be placed under the League's guarantee. With regard to Pusta's reference to Finland, Da Gama replied that Finland had not signed a similar declaration as Estonia had done on 13 September 1921 and also that it was not perceived as a new state. Moreover, Finland had accepted the League's guarantee for the minorities living on the Aland Islands. To Pusta's observations that the acceptance of the declaration required a plebiscite, Da Gama simply replied that the Council would welcome all suggestions made by the Estonian government in order to ensure the compliance of the declaration with the Estonian constitution. With regard to the principle of separation between church and state, Da Gama stated that the relevant provision (article 6) did not foresee any financial assistance to minority institutions, with the exception of the case where such funds were provided for institutions of the population in general.

At the private Council meeting, Pusta reiterated that the resolution of 15 December 1920 formulated only a request and did not institute an obligation. He reminded the members of the Council of the discussions in the Fifth Committee of the First Assembly. During these discussions, Lord Robert Cecil had argued that a distinction had to be made between states born out of the dismemberment of the Austrian-Hungarian empire and states – like Estonia – which had acquired their independence without external aid. The Estonian representative again underlined the similarity between the Estonian and the Finnish situation and claimed for his country the same legal régime. More specifically, he insisted that the Council would take

note of the Estonian legislation and conclude that it was in accordance with the resolution of 15 December 1920.

At the Council session of 2 February 1923, Rapporteur Da Gama admitted that the stipulations of the Estonian constitution were far more liberal and detailed than the minority treaties. He therefore envisaged the possibility that the Council might subscribe to the view of the Estonian representative and “*take note of the stipulations contained in the Estonian constitution, chapter II, articles 6 to 26, to the extent where the stipulations of these articles affect persons belonging to racial, religious or linguistic minorities*”. On the other hand, he insisted that it was necessary to define the legal extent and nature of such a declaration and to ensure that the relevant guarantees were permanently assured. That is why in his view, the League had to be given the right of intervention in the case that modification proposals would prejudice minorities (JO (1923:379-382)).

Pusta agreed that in the event of a deterioration of the situation of the minorities, the Council should have the right to take up the question again. On the other hand, he strongly opposed a declaration which would give the Council an outward intervention right in case of an infringement of the minority protection clauses (JO (1923:382-383) and JO (1923:233-234)).

The scholar Mair noted that this argument was not logical. Pusta admitted the possibility of intervention by the League, with no treaty or declaration to justify it, in the same breath with the refusal to grant the same right by a formal declaration. Moreover, as also rapporteur Da Gama observed (JO (1923:380)), this would give the Council no power to act if the Estonian Constitution was not modified but merely disregarded (Mair (1928:54)).

At this session, the British representative Lord Balfour, the Secretary-General and Colban, Director of the Minorities Section, stressed that Estonia and Finland were different cases. Rapporteur Adatci observed that a special treatment of Estonia would discriminate the treaty states and create a dangerous precedent. The Council President noted that the present situation would put the Council in a very difficult situation in case of a petition. The Council was obliged not to accept such petitions in order not to violate ‘the national dignity’ of Estonia. In case the Council would accept such a petition, the Estonian government would reject it because it violated its national sovereignty. Consequently, he demanded to refer this fundamental question to the Assembly. The discussion was indeed closed by the proposal of

Lord Balfour, to refer the question to the Assembly, in case that the Estonian government and the reporter should not arrive at an agreement (JO (1923:233-234)).

As mentioned above, this proposal led to a breakthrough in the negotiations between the Council and Latvia. The resulting agreement in its turn influenced the negotiations between the Council and Estonia. As a result of the resolution of 2 February 1923, which was confirmed by the Council in July 1923 (JO (1923:881)), the question was enscribed on the last session of the Council, just before it would be treated in the Assembly.

Just before the discussion in the Council on 31 August 1923, Pusta explained for the last time his government's view on the obligations of Estonia vis-à-vis the League and the kind of agreement that had to be reached.

In his view, the adherence to the demand of the Assembly of 15 December 1920 through the declaration of 13 September 1921 solely obliged Estonia to take the necessary measures to ensure the application of the general principles embedded in the minority treaties and to reach an agreement with the Council on the details of that application.

The Estonian representative noted that the Estonian constitutional and other legal provisions went further than the minority guarantees of the peace and minority treaties. He further argued that Estonia was under no legal obligation to sign a declaration, modelled on the minority treaties. The imposition of national minority guarantees by the Great Powers upon new or territorially enlarged states was state practice and indeed a 'principle of public law'. Such impositions were, however, the exception to the rule. According to Pusta, the basic rule in public international law was that each state freely determines the rights and obligations of minorities. Pusta reminded the members of the Council that Estonia was not born out of any treaty and had acquired its independence without aid of the Great Powers. Consequently, the commitments of Estonia vis-à-vis the League were the same as those of other (non-signatory) states in the light of the resolution of 21 September 1922 in which the Assembly expressed the hope that: "*the states which are not bound by any legal obligation concerning minorities, nevertheless respect in the treatment of their racial, religious or linguistic minorities, at least, the same degree of justice and tolerance as required by the treaties and actions of the Council*" (article 4).

Given a possible treatment of the question by the Assembly, the Estonian government was however anxious to reach an agreement. Although in the last part of his memorandum (JO (1923:1361-1373)), Pusta again underlined the similarity between Estonia and Finland, he

also admitted that there was a difference given the declaration of 13 September 1921. That is why the Estonian government finally was willing to reserve the League of Nations the right to take up the question in the event of a deterioration of the situation of the minorities in Estonia.

At the Council session of 31 August 1923, a procedure was established whereby Pusta together with the new rapporteur De Rio-Branco, and the representatives of France, Great-Britain and Sweden, would examine whether the propositions in the memorandum of 28 August 1923 could not be modelled on the declaration made by the Latvian government on 17 July 1923 (JO (1923:1269)).

As a result of these discussions, on 18 September 1923, rapporteur De Rio Branco made the following statement:

“In conformity with the decision taken at the meeting of the Council on August 31st, the Estonian representative considered, in collaboration with certain members of the Council, viz., the representatives of France, British Empire, Sweden and the reporter, the proposals contained in the memorandum of the Estonian representative dated August 28th, 1923. Following upon these observations, Mr. Pusta asked his government for fresh instructions. Later I again discussed the question with Mr. Pusta, and I now have the honour to submit to you the following draft resolution, to which will be annexed a declaration which Mr. Pusta proposes to make before the Council.

The resolution reads as follows:

- I. The Council of the League of Nations notes the information on the status of racial, linguistic and religious minorities in Estonia, which has been furnished by the Estonian representative in his report of August 28th, 1923, in accordance with which the protection of minorities is at present guaranteed under the Estonian Constitution in a manner which conforms to the general principle governing the protection of minorities.*
- II. The Council will be entitled to consider afresh the status of minorities in Estonia, should the latter cease to enforce those general principles, according to the recommendations of the Assembly of the League of Nations, dated December 15th, 1920. For this purpose the Council may request the Estonian Government to supply it with the information which it may require on any question regarding the conditions of persons belonging to racial, linguistic or religious minorities which may be submitted to it by one of its Members.*

III. *In the event of any difference of opinion on questions of law or of fact in regard to this resolution, such difference of opinion may be referred to the Permanent Court of International Justice for an advisory opinion.*

IV. *This resolution shall be communicated for the information of the Assembly.”*

Pusta made the following declaration:

“I have the honour, on behalf of my Government, to accept the text of the resolution, submitted to the Council, regarding the protection of minorities in Estonia.

It is understood that the Council will not ask the Estonian Government for information regarding the conditions of persons belonging to racial, linguistic or religious minorities, unless the question has been submitted to the Council by one of its Members.

Furthermore, the Estonian Government desires to make it clear that any information forwarded to the League of Nations must, in the first instance, be communicated to it by the Secretariat, except in the case of any communication couched in violent terms or emanating from an anonymous or unauthenticated source (especially if there is reason to suppose that these communications come from a country other than Estonia). In such cases they must simply be disregarded by the Secretariat. Only those communications which are recognised as acceptable, together with any observations which the Estonian Government may consider it desirable to make, will be forwarded for the information of the Members of the Council. In addition, it must be clearly understood that this Declaration forms, together with the resolution submitted to the Council, an indivisible whole which must not, however, be regarded as constituting a Minorities Treaty.”

Illustratively, this declaration – which accepted the rapporteur’s resolution – stressed the rights and prerogatives of the Estonian government more than those of the Council.

Thereupon, De Rio Branco proposed the Council to adopt this resolution, to take note of the declaration of Pusta and to accept the proposals contained therein. The rapporteur’s proposals were adopted and the negotiations finally closed (JO (1923:1311-1312)).

Analysis of the arguments put forward in the negotiations and evaluation of the Estonian and Latvian minority declarations

1. On the one hand, both Pusta and Walters maintained that their countries had to be subjected to the same international legal régime as Finland because of their putatively similar situation. On the other hand, they also continuously stressed that their countries differed fundamentally from the treaty states.

On the request of Lord Robert Cecil, the Finnish representative, Enckell, had declared in a letter that the stipulations concerning the religious, racial and linguistic minorities in Finland conformed to the principles of the minority treaties. He also committed himself to intervene before his government in the event that "*the Council, after a thorough examination of the relevant Finnish laws, would conclude that these laws differed from the forementioned principles*" (Erdstein:53).

The rapporteur of the Fifth Committee concluded that Finland had fulfilled all the necessary conditions. Already on 20 November 1920, the Secretary-General informed the Finnish representative on the admission of his country into the League. He notified the Finnish representative of the request of the Assembly and asked him whether he wanted to present observations in that regard. By way of an oral declaration, the Finnish representative committed himself before the Assembly to modify, if necessary, the laws concerning minority protection.

After its admission into the League of Nations, Finland had to inform the Council about the treatment of its minorities and this in the light of the Assembly resolution. The commitments of Finland in the field of minority protection were related to the territorial rights for the inhabitants of the Aland Islands and the protection of Finnish citizens belonging to minorities in Finland. On 16 and 28 June 1921, Enckell submitted to the Secretary-General a memorandum and several documents on the constitutional and legislative protection of minorities in his country. The Council charged the representative of Great-Britain, Fischer, with the study of these documents. In his report, Fischer concluded that the Finnish laws were in accordance with the relevant stipulations of the treaties and further proposed "*to take note of the informations that had been submitted to him about the situation of the minorities in Finland*". The proposed resolution of Fischer was adopted by the Council without discussion

at its session of 2 October 1921 and a report on that matter was presented to the Second Assembly. With regard to the Aland Islands, Finland signed a detailed agreement through which the inhabitants were granted territorial autonomy. This regulation was adopted by the Council on 27 June 1921 (JO (1921:1165-1165)).

Leaving aside the régime of the Aland Islands – which was indeed placed under the international guarantee of the League – Finland thus maintained a wide-ranging independence in the field of minority protection. There was neither question of minority stipulations nor of an international guarantee.

The members of the Council namely considered Finland as a special case, as an ‘old friend’ whom they could trust. Finland simply was not perceived by the Great Powers as a new (unpredictable) state. This argument was for example used by rapporteur Da Gama in his report on Estonia, submitted to the Council in its session of 20 September 1922: “ (...) *Il faut aussi se rappeler que la Finlande n’était pas un état nouveau.*” (JO (1922:1237)).

But, on the other hand, Poland was not a new state either. Thus, in the light of what is explained above, it could well be argued that Finland was treated differently because it is a Northern European and not an Eastern European state.

2. The representatives of the Great Powers observed that the policy of minority protection went back to the Congress of Berlin (JO (1923:1269)) and that all the new states had to be treated equally. In their view, an exceptional treatment of the Baltic states would create a dangerous precedent (JO (1923:233)).

Walters and Pusta replied that their states were not born out of the peace and minority treaties and that they had acquired their independence without external help. Pusta stressed that in contrast with the ‘treaty states’, which had been forced to insert minority clauses in their constitutions, Estonia had freely adopted a constitution with far-reaching minority clauses. The two representatives further emphasised that their states were unconditionally recognised *de iure* by the Supreme Council of the Allied Forces, long after their establishment as new states, and long after their frontiers had been fixed.

These were indeed strong arguments. As Macartney notes, this unconditional recognition contradicted the famous Clemenceau letter (Macartney:288). In this regard, in the earlier

debates in the Fifth Committee, the Canadian representative Rowell qualified the motion of Lord Robert Cecil as an additional barrier to membership. In his view, the Great Powers had to refuse to recognise the Baltic states until they had given minority guarantees: “*Why could not the Powers decline to give recognition de iure to the new Governments until those Governments entered into some such obligations as those referred to in the motion.*” (Actes de la première Assemblée, séances des commissions:203). This is also Samuel Friedman’s view (Friedman:72).

3. Very important was the interpretation of the resolution of the Assembly of 15 December 1920 and their declarations of 13 and 14 September 1921.

In the negotiations, the rapporteurs noted that the representatives of the Baltic states had signed declarations. By this, they had accepted the resolution of the Assembly of 15 December 1920 and had placed themselves in the same position as the treaty states.

Evidently, these declarations constituted international obligations for the Baltic states. In the reports of the Fifth Committee on the admission of the Baltic states, each of the five admission conditions were discussed. With regard to the last condition, namely the question with regard to the acts and declarations of the government concerned with regard to its international obligations, reference was made to the resolution of 15 December 1920 and to the resolutions of 13 and 14 September 1921 (League of Nations (1921:334-340)). The strict observation or promise of observation of the resolution of 15 December 1920 was thus undeniably an admission condition.

Crucially, therefore, is the extent of the international obligations of Estonia and Latvia, resulting from the declarations of 13 and 14 September 1921: “*The Estonian/Latvian/Lithuanian Government declares its willing adhesion to the request expressed by the Assembly of the League of Nations on December 15th, 1920, and is prepared to enter into negotiations with the Council of the League of Nations for the purpose of determining the scope and details of the application of its international obligations for the Protection of Minorities.*”.

According to the rapporteurs and the Secretariat, the declarations obliged Estonia and Latvia to adopt the minority clauses contained in the treaties. On the other hand, Walters and Pusta

maintained that their countries were only obliged to enter into negotiations with the Council in order to discuss the protection of minorities in their countries and to search together for an agreement.

As Villecourt indicates, a literal reading of these declarations supports the thesis of Pusta and Walters (Villecourt:100). According to the latter, there were no general international obligations in the field of minority protection. Furthermore, the minority stipulations in the treaties were only binding for the signatory states. This thesis is sustained by Alfred Verdross. In his view, the minority protection system never became a part of general public international law, because only the treaty states were obliged to give their minorities certain rights (Verdross (1955:479)).

In connection with this, the Estonian and Latvian representative pleaded for a general minority protection system that would encompass all countries. They made it very clear that, pending such a régime, they remained entirely sovereign in this matter. This argument of the equality of the states was a very strong argument from a legal point of view. This was probably the most decisive argument with which Pusta and Walters rebuffed the Council (this plea was also sustained by Mandelstam:452). Therefore, I cannot agree with Henn-Jüri Uibopuu who writes that, when the Baltic states applied for membership of the League, they were asked to make provisions for the protection of minorities contained in the Treaties of 1919-1920: *“They subsequently adopted the required declarations, which guaranteed the presence of representatives of minorities in their legislative bodies. Estonia and Lithuania incorporated the relevant provisions in their Constitutions.”* (Uibopuu (1992:109)).

Contrary to Lithuania, Estonia and Latvia refused to accept the proposed declarations with the therein contained minority stipulations of the treaties. Estonia – which had already established an elaborated constitutional protection system – and Latvia contended with success that they had already established an adequate internal minority protection system, that there was no universal minority protection system, and that pending such régime, they remained sovereign in the matter. The League acquiesced in the interpretation of Estonia and Latvia and, formally, just as much met their demands as the other way round.

The Estonian and Latvian 'independence declarations': to guarantee or not to guarantee?

As Ito observed, political pre-occupations and long negotiations indeed produced a formula which satisfied the League of Nations, without hurting the sensitivities of Estonia and Latvia (Ito (1931:34)). In Zemite's words, the Estonian and Latvian minority declarations were in fact 'independence declarations', in which the principles for protecting minority rights were enacted (Zemite:45).

Formally, Estonia and Latvia obtained an entirely unique legal position in the minority protection system of the League. Contrary to the Lithuanian declaration and the minority treaties, their obligations were not concretised in explicit stipulations. The declarations also carefully avoided the term 'guarantee'. Whereas under the minority treaties, the Council had the explicit right to "*take such action and give such direction as it may deem proper and effective in the circumstances*" (article 12 Polish Minority Treaty (Thornberry:402)), it did not have this right under the Estonian and Latvian minority declaration (Aun:45). In this regard, one can also point to the Albanian declaration, under which the Council had the right to give binding directives to the Albanian government (article 45 of the Albanian declaration (Kressner (1933: 21 and 86-88)). Moreover, unlike the treaty states, Estonia and Latvia were not subjected to the compulsory jurisdiction of the Permanent Court of International Justice. As mentioned above, the Permanent Court was empowered by the treaties to give a compulsory award if a dispute was referred to it. Under the Estonian and Latvian declaration, it could only give an advisory opinion (Aun:46: Wolff (1941:10)).

According to Ito, the Estonian and Latvian declaration started from a certain presumption, namely that the treatment of minorities in their countries conformed to the general principles of the minority treaties. On the basis of this presumption, Estonia and Latvia assumed the international obligation not to modify this actual situation in a way that was detrimental to their minorities. From the very beginning of their existence as states, Estonia and Latvia freely pursued a policy which aimed at the protection of minorities. Through their declaration, Estonia and Latvia committed themselves internationally to continue these policies (Ito:34-35). Ito referred to a similar case, namely the Kingdom of the Netherlands of 1814-1815. This kingdom was established by the Great Powers as a buffer against France. The Eight Articles of 1814, regarding the unification of Belgium and Holland, contained

political and economic clauses (Mabille (1997:70-73)). Like the 'Baltic case', the agreement of 21 July 1814 with Holland imposed an internationalisation of the already existing constitutional guarantees. The Constitution of Holland already contained stipulations with regard to the prohibition of discrimination on the basis of religion. Article 2 of the treaty stipulated: "*Nothing shall be changed in the articles of this constitution, which assures to all religions equal protection and privileges and guarantees the admission of all citizens, whatever their religious convictions, to all public posts and offices.*". The treaty thus froze some of the articles of the anterior constitution (Laponce: 27 and 39; Fouques Duparc (1922:82)).

However, contrary to the agreement of 1814, the Estonian and Latvian declaration did in fact contain an international guarantee. In the case that these countries, in the view of the Council, would cease to ensure adequate minority protection (in the case of Estonia: "*... cease to enforce those general principles*"; in the case of Latvia: "*... does not appear to correspond to the general principles laid down in the various so-called Minority Treaties*"), the Council had the right "*to consider afresh*" (in the case of Estonia) or "*to take up the question anew and to reopen the negotiations*" (in the case of Latvia). These rights put the Council in exactly the same position which it held as guarantor of the treaties. The paragraphs referring to petitions simply accepted the procedure which had by that time been adopted by the Council (Mair:56). Although Estonia and Latvia had formally succeeded in preserving their sovereignty, they nevertheless had acceded to the right of minorities to petition the League (Peters (1988:290)). In the League's system, these declarations had the same purpose as the treaties. Since the treaties had inspired the declarations, the enforcement of these declarations was identical to the way the treaties were executed (Moskov (1936:33)).

Although the declarations did not contain any concrete minority stipulations, Estonia and Latvia were obliged to respect the 'general principles' laid down in the minority treaties. These 'general principles' were summarised by Pusta in his memorandum of 28 August 1923, namely the full and complete protection of life and liberty without distinction as to birth, nationality, language, race or religion, the acquisition of citizenship of the state concerned, the liberty of conscience, the free use of the mother tongue and the equality before the law (JO (1923: 1311 and 1363)). According to Wolff, these 'general principles' imply that a state may not hinder its minorities in the exercise of their specific activities and interests (freedom of education, language and property) and may not discriminate minority groups (principle of

equality). A state is legally obliged to facilitate the use of minority languages in courts, to enable minorities to establish, administer and control their own educational, social and religious institutions and to make possible that minorities are taught in their mother tongue in the primary schools (Wolff:9-10).

The former director of the Minorities Section of the League's Secretariat, Pablo De Azcarate, notes that while the wording of the Estonian and Latvian declaration differed completely from the treaties and other declarations, in practice the result was the same (De Azcarate:95).

The minority petitions, sent in by Baltic barons, did, however, not result in any change of the ethnic policy of the Baltic states, let alone that they had an impact on their state order.

The minority petitions

The land reforms in the Baltic states

As Macartney notes, the political revolutions in the Baltic states inevitably had to be completed by a national-social one, involving first and foremost the dispossession of the 'alien' landlords (Macartney (1962:152)). All three states were mainly agricultural. Agriculture provided employment for 79 per cent of the Lithuanians, 66,2 per cent of the Latvians, and 58,58 per cent of the Estonian population (Von Rauch (1974:80)). In Estonia and Latvia, the land was owned by Germans, in Lithuania mostly by Poles.

In 1918 Estonia, the German landlords (less than two per cent of the population) owned 58 per cent of all land. The 1419 manors of the Germans had an average area of 2,113 hectares, compared with 20-30 hectares for a farmer's property (Yakemtchouk (1990:32)). Two thirds of the rural population (some half million people) owned no land. In Latvia, 3,161,000 hectares of a total area of 6,570,000 hectares (48,1 per cent) were owned by the German landlords (1338 manors). In Lithuania, 40 per cent in the shape of entailed estates (*majorats*) were acquired by 450 mainly Polish and Russian noble families, but also by a few Germans, French and Italians as a result of service to the Tsar (Hope:48). In general, some three thousand individuals possessed land of more than 100 hectares, that is to say 26 per cent of

the area, while some 150,000 families (almost 20 per cent of the rural population) possessed an average area of less than 3 hectares (Yakemtchouk (1990:33)).

Under the Estonian expropriation law of 10 October 1919, 1,065 estates (96,6 per cent of all the estates in the country) were expropriated, together with their farms and summer villas. Although the vast majority of these properties belonged to Baltic Germans, also 57 Estonians were affected by this law. The expropriation was carried out over a two-year period, the question of compensation being left over for settlement at a later date. A law of 1 March 1926 fixed the level of compensation at 3 Estonian crowns per hectare, which was about 3 per cent of the real value of the estates. No compensation was given in respect of forest land. Instead of compensating the expropriated owners in cash, the state in most cases issued debenture bonds. These owners were later authorised to apply for the restitution of up to 50 hectares of land (Von Rauch (1974:88-89); in German: Von Rauch (1990:81)).

Under the Latvian expropriation law of 16 September 1920, 1,300 estate owners were dispossessed. Contrary to the Estonians, the Latvians however decided that these owners should be allowed to retain up to 50 hectares, together with an appropriate amount of stock and equipment, for their private use. Although no less than 1,887 persons benefited from this concession, the amount of land involved was only 1,7 per cent of the total confiscated. In 1924, the Latvian parliament decided by 50 votes to 35 that no compensation would be paid to the former estate owners (Von Rauch (1974:90); Von Rauch (1990:82)).

Initially, the Lithuanians intended to expropriate the Russian lands and to reduce the economic predominance of the other – chiefly Polish – estate owners by fixing 80 hectares as the maximum permitted size for any private holding. Due to the moderating influence of the Christian Democrats, the expropriation law of 29 March 1922 was less draconian than its Estonian and Latvian counterparts. The Russian lands and forests were still taken over by the state. On the other hand, the non-Russian estate owners gained a great deal, because the maximum size for private agricultural holdings was to fixed at 150, and not 80, hectares. In addition, the state paid a small compensation (Von Rauch (1974:90-91); Von Rauch (1990:83)).

There were several motivations for these drastic agrarian reforms.

First, there was the social motivation, namely the objective to redistribute the land on an equitable basis. The previously landless peasants were provided with small properties of their own, and the gross discrepancy between the German landlords and this Estonian class was

removed. The second motivation was of social-political nature, namely the immunisation of the rural proletariat against the Soviet propaganda. The only effective way of combating the social and economic policies, advocated by the Soviets, was to expropriate all agricultural land and to redistribute it in the form of smallholdings to the indigenous peasants. The third motivation was of nationalist-political nature, namely to end the political and economic dominance of the 'alien' landlords. It was argued that, unless they were dispossessed, these landlords would undermine the independence of these states (Von Rauch (1974:87-88); Von Rauch (1990:80-81)). In August 1919, Aleksander Veiler, a representative of the Estonian Labour Party, stated: "*When you want to slaughter an animal you start by breaking the backbone. The manors have been the backbone of the barons.*" (Alenius (2004:36)).

These laws had indeed the effect of placing the titular majorities in safe control of their respective states (Macartney (1962:181)).

Land reform also constituted a social revolution in these countries. In the words of Nicholas Hope, it "*dispossessed an ethnically different landed aristocracy, and turned almost overnight a feudal peasantry into 'classless' nations of propertied small farmers*" (Hope:47). For example, in Latvia, the figure of 38,8 per cent landowners and 61,2 per cent landless in 1897 was turned around by the census of 1925 to 70,9 per cent with land and 29,1 per cent without. This helps to explain why an active Latvian Communist Party mustered a mere six to seven per cent in the national elections of 1928 (Hope:48).

The creation of smallholder farms indeed strengthened parliamentary republicanism and created a widespread aversion to communism.

The minority petitions

1. Already on 13 November 1920, a petition on behalf of the German landowners of Kurland and the '*Kurländisch-Piltenschen Ritterschaft*' was submitted to the Council of the League by Baron Alphons Heyking. In this petition, Heyking explained that the abolition of the Corporations of Nobles of Latvia as a result of the law of 29 June 1920 had the express purpose of enabling the Latvian state to appropriate the property belonging to that corporation. Heyking also pointed at the effects of the Latvian Agrarian Reform Law on the German minority. In his reply of 22 December 1920, the Secretary-General, Sir Eric

Drummond, referred to the Assembly resolution of 15 December 1920 (Von Truhart (1931:50-51); Heyking (1920:5)).

In February 1921, Heyking presented a further petition to the League on behalf of the Baltic barons in Estonia and Latvia. It referred to the Assembly resolution of 15 December 1920. The petitioners argued that Estonia and Latvia could only be admitted to the League when they respected several legal principles, and requested the establishment of a permanent minority commission of the League (Grundmann:279).

Vahur Made argues that Alphonse Heyking treated the issue of landownership in ethnic terms rather than in terms of individual property. Heyking considered landownership as something typical for the German minority. It was ‘their traditional way of living’ (Interview with Dr. Vahur Made, Estonian School of Diplomacy, Tallinn, 8 February 2005).

Next to Baron Alphonse Heyking, also Lord Robert Cecil intervened on behalf of the German landowning class in Estonia which, in his view, was being “*badly treated as a result of the mistaken agrarian policy of the Estonian government*” (Peters (1988:292).

These petitions did not result in any answer from the League.

2. In April 1925, W. Baron Fircks and Von Vegesack, two members of the Latvian parliament, petitioned the League because of the promulgation of the agrarian reform law in the previous year.

In their petition, the two Baltic Germans explained that 2,700,000 hectares – formerly possessed by persons belonging to the German minority – were expropriated without compensation. In their view, the agrarian reform law clearly discriminated against the German minority. Only their lands (noble lands) were expropriated, while the lands of the Latvian majority (peasant lands) were not affected. The minority representatives were excluded from the Central Agrarian Committee. The petitioners thus raised issues like the discriminatory taking of property, ethnicity-based exclusion from the benefits of the reform and denial of fair compensation for the property taken from them. Accordingly, the Baltic Germans accused the Latvian government of violating the principle of equality before the law, as embodied in the Polish and other minority treaties.

Since the Latvian declaration of 7 July 1923 stipulated that the issue of minority treatment could be reopened, the petitioners requested a consideration of their case by the League. They asked the Council to request the Permanent Court of International Justice for an advisory opinion on the agrarian law and the different actions of the Latvian government (Petition of 6 April 1925 (C.675.1925.I)).

The bulk of the response of the Latvian government consisted of a detailed analysis of the Agrarian Reform law and other closely related laws and a factual assessment of how these laws were implemented.

The Latvian government argued that the land reform was not discriminatory and that it ensured domestic stability. Latvia was an agrarian country and it was therefore essential that the former feudal system of the *latifundia* – enormous estates owned by a few landlords – was abolished and that their lands were distributed among people who possessed nothing and small peasants. The contemporary Latvian government and the civilian organisation (*l'organisation bourgeois*) of the state could only be sustained if Latvia possessed a strong land-owning peasant class (C.675.1925.I:8). Like in other countries of Central and Eastern Europe, an agrarian reform in Latvia was a prerequisite for a stable organisation of the state. Land reform was absolutely necessary to counter communist influences and to keep the Soviet Union at bay (C.675.1925.I:18). The Latvian government further argued that every state had the right to pursue a certain social-economic policy, even if certain ethnic groups were affected more than others by this policy. Considerations and reasons of public order, social necessity, economic development or internal stability not only allowed but also required a state to regulate and organise the crucial trade and industry sector, traditionally dominated by members of minorities (C.675.1925.I:36-37).

The Latvian government emphasised that members of minorities had the right to challenge government acts before the Supreme Court. An intervention by the League of Nations in judicial decisions would violate the sovereignty of the Latvian state and undermine the authority of its courts of law, which was one of the fundamental pillars of a state. The League had no authority to reverse judicial decisions with regard to the interpretation of the law or the assessment of the facts (C.675.1925.I:18-19). The Latvian government concluded that the land reform in Latvia was completely in accordance with Latvia's international obligations. More specifically, it served a social purpose, as encribed in the minority declaration. The establishment and preservation of social peace in Latvia was also in the minorities' interest.

The petition together with the Latvian observations, was examined by a Committee of Three. This organ subsequently requested the Latvian government to explore the possibility of financial compensation (letter of Colban of 15 March 1925).

In his reply, the Latvian representative, Duzmans, began by repeating the former arguments of his government. Every state has the right to adopt its own legislation, even if certain laws affect members of certain minority groups more than the majority nation. Duzmans further asserted that there were no national or ethnic conflicts in Latvia. He warned that any international intervention would not only disturb the national and social peace in his country but also create a real minority problem that did not exist before. In his view, many so-called minority conflicts originated from the uneasy relationship between the domain of international law and the domain of the exclusive competence of the national legislator. The question of the financial compensation as a result of the agrarian reform was a matter which belonged to the exclusive competence of the Latvian law-maker. It had nothing to do with the international protection of minorities (Memorandum of Duzmans (1926: 12 and 17)).

On 8 June 1926, the Committee of Three concluded its examination of the question without recommending any action by the Council (Von Truhart:51; Grundmann:282).

3. A similar petition was submitted to the League in May 1926 by E. Von Bodisco and C. Baron Schilling on behalf of the landlords in Estonia. On 4 December 1926, the Estonian government submitted observations along the lines of the arguments used by the Latvian government. It explained that it had the right to confiscate the land that had historically been seized by the 13th century Germanic conquests. The agrarian reform was a social and economic necessity. It would lead to an enduring social peace between the former landless Estonian majority nation and the German landlords (Thiele (1999:81)). A procedural argument was also used. The Estonian government namely argued that the petitioners should first have brought their case before the highest Estonian court on the legal basis that their constitutional rights had been violated. Thus, it was possible for the Committee of Three to advise the petitioners to use the domestic legal procedures without having to explore the case and to reply to the observations of the Estonian government (Grundmann:283). Nevertheless, the Committee of Three took a decision on the material issues of the case. According to it, the petitioners had not proved that the land reform were specifically aimed at a certain ethnic

minority. A whole group of landowners had been affected, irrespective of their national origin (Grundmann:284). So, the case was not referred to the Council (Von Truhart:50).

The similar fate of these minority petitions was not exceptional. In fact, with regard to petitions against agrarian reform legislation, it was the rule. De Azcarate observed: *“Admittedly, it was obvious that in all these countries agrarian reform operated to the detriment of minorities (...) and in favour of the majority. This, however, was not necessarily the result of a policy of minority persecution on the part of the respective governments (...), but rather of the composition of the population in those territories, where, for historic reasons which cannot be detailed here, large estates had been concentrated in the hands of ‘nations’ dominant up to the time of the 1919 treaties, while the mass of peasants consisted of the populations of the dominated ‘nations’. (...) If it had been conceded that agrarian reform in Central European countries, since it generally expropriated the holdings of members of national minorities and divided the land among members of the majority, was contrary to the clause of the Minorities Treaties guaranteeing equality before the law, the absurd and inadmissible conclusion would have been reached that all agrarian reform was impossible under the treaties, although in reality there was not the slightest doubt that such reform was one of the keys to the economic and social consolidation of these countries.”* (De Azcarate:62-63).

T.H. Bagley argues along the same lines: *“In addition, to propose that they (the minorities states) be forced thereby to rescind acts and laws in the face of the complaints of a minor segment of their own populations could hardly be justified. Agrarian reform carried out by Roumania, for instance, inevitably hurt the large landholders more than the small peasants, but the fact that the Hungarian minority constituted the greater part of the large landholders did not imply that, because of the terms of the minority treaty, this reform should be made impossible.”* (Bagley:72-73).

In any case, 1926-1927 was the last year that a petition was directed towards Estonia and Latvia. The Foreign Ministers of Estonia and Germany met in Geneva and reached an agreement. German Foreign minister, Gustav Stresemann, made it clear that he would no longer support the Baltic Germans. The German minority was considered too small and too weak. There were more important German groups in other parts of Central and Eastern Europe (Interview with Dr. Vahur Made, Estonian School of Diplomacy, Tallinn, 8 February 2005; also: Made (2002:30)).

4. As Rita Putins Peters observes, it is ironic that Lithuania, which had signed the detailed declaration, had the most acrimonious confrontations with the Council over minority issues. Besides issues arising from land reform, the petitions against Lithuania also contained other important claims (Peters (1983:132)).

On 10 December 1921, the Polish government complained about the treatment of Poles in Poniewesh and in 1922 about the treatment of Polish prisoners in Kovno (Von Truhart:106).

On 10 June 1925, the Joint Jewish Committee petitioned the League concerning the general situation of minority protection, linked to a Polish minority complaint (Von Truhart:87).

In 1924 and 1925 there were a series of petitions and communications from the Committee of exiled Poles. The Council addressed these as a single case for examination by a Committee of Three. In this interesting case, not only questions of language rights, cultural autonomy and the nationality choice of persons were raised, but also, and foremost, the right of petition. The Polish petitioners namely asserted that Polish deputies in the Lithuanian Parliament were charged of high treason because they had petitioned the League in 1921. The Lithuanian representative Zanius replied that the charge had not been brought because of the petition but because the deputies had sent abroad declarations "*which they knew to be false and fictitious*". The British representative Chamberlain expressed his concern. In the view of Uden, the Swedish representative, the Lithuanian interpretation would render the right of petition illusory. After many requests for information, which Lithuania supplied sparingly, and after several meetings of the Council with inconclusive exchanges between its members and Lithuania, reporter De Mello-Franco simply advised the Council to take note of the information, furnished by the Lithuanian government. In his view, the "*Council should rely upon the wisdom of the Lithuanian Government and should express the hope*" that it will dissipate any apprehension "*which may still exist among the minorities in the country ...*" (JO (1925: 484-487, 581-590, 865-877, 1339-1341; Secrétariat de la Société des Nations:61-64). On 2 November 1927, twenty-one Ukrainians whose homes and land had been expropriated, petitioned the League on the grounds that they had been deprived of their property solely because they belonged to a minority. Lithuania contested the receivability of the petition and refused to submit information. According to the Lithuanian government, a minority "*must belong to the country ... by origin*", and "*must be sufficiently numerous to constitute an*

appreciable percentage of the country's population" in order to be eligible for protection by the League. The Council reporter rejected Lithuania's claims, on the grounds that no such criterion was found in its minority declaration and the Council found the petition receivable (JO (1928: 888-893, 957 and 1493)).

In September 1930, the German government asserted that Lithuania violated the autonomy of the Memel territory. But after an exchange of written communications and some clarifications, the discussion was closed (JO (1930: 1516-1517, 1522-1525 and 1618-1640)).

Lithuania and the concept of absolute sovereignty

Besides its uncooperative stance with regard to minority petitions, Lithuania also attacked the procedure on which the minority protection by the League was based. Before examining this, I first discuss the proposals made by Lithuania in 1925 on the generalisation of the League's minority protection system.

The Lithuanian proposals for a generalisation

In the plenary Assembly session of 14 September 1925, the Lithuanian representative, Galvanauskas, again took up the generalisation issue. He namely proposed to create a special commission, charged with the preparation of a draft general convention binding all the member states of the League and fixing their rights and duties towards minorities. In his speech before the Assembly, Galvanauskas attacked the minority protection system of the League. In his view, this system violated the sovereignty of certain states. Galvanauskas agreed with the principle of minority protection and with the international guarantee but only if all members of the League were subjected to that control. He asserted that: "*there would be no moral unity between the League members so long as the sovereignty of some states were limited by a higher interest, while the freedom of others was unlimited*". The Lithuanian representative referred to the Assembly resolution of 21 September 1922 but stressed that public opinion demanded much more than a simple declaration. Public opinion, as he saw it, demanded that the whole international community would be subjected to the same rights and

duties. In that regard, the Conference of the Interparliamentary Union of 1923 had elaborated a declaration containing general principles and had called for a general convention between all the states of the League on the basis of these principles (Société des Nations, (1931:62-64)).

The proposal of Galvanauskas was referred to the Sixth Committee where it was discussed on 16 September 1925 (JO (1925:12-21)). The Lithuanian delegate repeated his arguments. The League members were divided into two groups. There were states which had certain obligations and states whose freedom of action was unlimited. Public opinion clearly demanded the establishment of rules for all League members without distinction. Further, the contemporary definition of a minority was too vague and needed clarification. This would be one of the first tasks of the Committee.

Predictably, the British, French and Belgian representatives rejected the proposal, while the Rumanian delegate supported it. The Frenchman De Jouvenel stated that there were no minorities in his country and that the Lithuanian proposal would create artificial minorities. He agreed with the need for a good definition but pointed to the dangers which a general convention would entail. If every state was obliged to sign such a convention, they all would be tempted to hamper an effective minority protection. In his view, it was crucial to have independent states as guarantors of minority obligations. Lord Robert Cecil stressed that the extension of the system to the whole world would inevitably lead to its collapse. He underlined that the special status of the Central and East European states entirely resulted from their special situation.

In line with the argumentation of French jurist Louis Le Fur, Galvanauskas argued that, from a legal point of view, there were religious minorities in France who deserved protection. If France was indeed a liberal country, as De Jouvenel stated, it should have no problems in signing a minority protection convention.

Given these fundamentally different points of view, the Czechoslovak representative Benes proposed a compromise. The Committee would namely advise the Assembly to send the relevant Committee debates to the Council.

Galvanauskas agreed and dropped his proposal. However, he regretted that all the states were not yet ripe for such a general convention. He stressed again that not only states were treated differently; also some minorities were better protected than others.

With regard to the definition of a minority, Galvanauskas argued that a distinction had to be drawn between immigrants and persons who by force of a treaty had been transferred into another state. Giving a revealing insight into the Lithuanian view on sovereignty, Galvanauskas explicitly rejected the proposal of the Hungarian Count Apponyi, which aimed at giving minorities legal personality. This was unacceptable for the Lithuanian representative because it would disorganise the whole international community. He stressed that international public law only recognised states as legal persons (JO (1925:21-22)). Following the Committee's proposal, the debates were sent by the Assembly to the Council (Société des Nations (1931:64-70)), which took note of the relevant discussions in its session of 9 December 1925 (Société des Nations (1931:39-47)).

Lithuania and the reform of the minority protection system

In 1929, Canada, followed by Germany, proposed several changes in the minority protection procedure with the aim of making the system more effective and transparent. Like the other members of the League, the Baltic states were invited to present their views on this matter. All three were opposed to the proposals of the Canadian Danduran and the German Stresemann. But, contrary to the *ad hoc* group of Czechoslovakia, Greece, Poland, Rumania and Yugoslavia which submitted identical texts, the Baltic states did not formulate a joint response.

The Estonian representative Lattik argued that the negotiations of the Estonian minority declaration had already revealed that the Estonian constitution provided more extensive minority protection and more rights than the minority treaties. This was recognised in the Council resolution of 17 September 1923. Meanwhile, the argument went on, the protection of minorities had even been improved by the adoption of the Law on Cultural Autonomy of 12 February 1925. In view of its liberal policy towards minorities, the Estonian government asserted that it "*could not contemplate accepting obligations which would prejudice the arrangements made in 1923 unless the intention is to frame a general statute for the protection of minorities*" (Société des Nations (1931:198-199)).

The Latvian government considered the existing procedure flexible and efficient and declared that it “(did) *not see any necessity for introducing modifications in the system (either) in substance or procedure*” (Société des Nations (1931:208)).

The Lithuanian government however adopted a completely different view. According to Voldemaras, Lithuania was only subjected to the obligations of its minority declaration of 12 May 1922. Any supplementary obligations required the consent of the Lithuanian government. The Council intended to pursue separate negotiations with the different countries to obtain their consent for the decision made. Voldemaras argued that this procedure violated the Covenant because it allowed the Council to act as a contracting party and therefore as a legal person. In such a case, the Council would constitute a superstate. The Lithuanian representative contended that in all matters affecting the members of the League, these states were temporary members of the Council. Voldemaras thus considered that it was the right and even duty of Lithuania to be represented at the Council table.

The Council replied that it was dealing with questions of ‘general character’. Article four, paragraph five, invoked by Voldemaras, provided only for states to participate in Council deliberations when questions of direct concern to them were being considered. The matter was referred to a Committee of Jurists.

This Committee agreed with the Council. It explained that the proposals of Canada and Germany aimed to change the minority protection procedure, more specifically with regard to the examination of the petitions. Such Council decisions had a general character and regulated the functioning of the League of Nations in a specific area. These were not decisions which ‘specifically affected’ a member of the League, in the sense of article four, paragraph five, of the Covenant. Lithuania therefore did not have the right to be represented at the Council table. The Committee concluded that the proposals of Canada and Germany required a consent between the Council and the ‘minorities states’. After the Council had taken a decision, this decision thus had to be communicated and accepted by all the states concerned.

The Lithuanian representative Zanius rejected this thesis. He asserted that only an individual state, and not other states or even the Council, was authorised to determine its specific interests. The Council could only take note of the statement of the state concerned, that its interests were especially affected. As Georg Andrassy notes, this thesis clearly reflected a

view of absolute sovereignty (Andrassy:690). Moreover, Zanius contended that the minority clause in the treaties and declarations did not give the Council the power to determine autonomously the procedure without the collaboration of the states concerned. The Lithuanian observed that this thesis was also partly shared by the jurists who had stated in their report that a revision of the procedure required the participation of all the states affected. However, the Committee had, incorrectly, not deduced from this a right for every state to be represented at the Council table when its interests were affected. The interpretation of the Council president and the Committee of Jurists implied that a state had only two choices, either to accept or to refuse a decision. This was a highly uncomfortable situation for states which wanted to co-operate with the Council.

While the Council president replied in legal terms to Zanius (interpretation of term 'particular' of article 4, paragraph 5 of the Covenant), the British representative Sir Austen Chamberlain asserted that an acceptance of the Lithuanian thesis would completely undermine the authority of the Council and would make it impossible for the Council to function properly. In his view, the Council did not only have the right but also the duty to determine in each case whether the particular interests of a certain state were affected (Société des Nations (1931: 208-210 and 214-220).

In the so-called 'Russian case', the Lithuanian government used similar arguments.

In August 1928, a petition was submitted by 34 persons of Russian origin whose lands had been confiscated. Again the Lithuanian government refused to furnish any information either at the request of the Secretary-General or the Committee of Three.

In this case, the Lithuanian government rejected the whole minority procedure as elaborated by the successive resolutions.

According to Voldemaras, Lithuania was namely not obliged to furnish information because the Council had not been seized on the initiative of one of its members as required by article 9 of the declaration.

The Lithuanian representative contended that only a Council member was authorised to 'accuse' the Lithuanian state. In this regard, he cited a report of a Committee of Jurists of 1926 which stated that: "*the Council had not been seized by a plaint from public or private persons, not having the particular responsibility which rested upon states and governments as an exercise of their sovereignty*". Lithuania, the argument went on, was only subjected to the

obligations of the unilateral declaration of May 1922 and could not in any way be bound by an earlier resolution, like the one of 25 October 1920.

As mentioned above, without the successive resolutions and the institution of the Committee of Three, petitions probably would never have been considered. The Lithuanian attack on these committees was therefore an outright rejection of the whole minority protection system of the League.

The Japanese representative Adatci was charged to write a report on the matter. He repeated the arguments that were used by the Committee of Jurists in 1929. The establishment of the Committees of Three was part of the category of decisions that the Council could take alone. Lithuania had implicitly accepted these committees and their activities from the moment that it co-operated with them. Afterwards, the Lithuanian government had also explicitly given its consent through its approval of a draft resolution of 22 September 1925, submitted by the Sixth Committee to the Assembly (Société des Nations (1931:221-228); JO (1929: 1031, 1262-1263, 1472-1474, 1681-1682); JO (1930: 102 and 179-185)).

Whereas Lithuania signed a minority declaration, modelled on the earlier treaties, Estonia and Latvia engaged in tough negotiations with the League. The 'institutional inequality' between East and West was the main weakness of the League's minority protection system and this was also brought forward by the negotiators of Estonia and Latvia. In the end, the Estonian and Latvian minority declarations were the perfect compromise. Formally, these declarations were a diplomatic triumph for the two new nations. But in fact, these declarations committed Estonia and Latvia to the same obligations imposed on the original treaty states. But like in the other countries, the petitions sent in by the Baltic Germans did not result in any fundamental changes to the made decisions by these governments, let alone to their state orders. Declining external pressure in the field of minority rights had already become increasingly apparent over the early years of the 1920s. Minority rights were slipping down the League agenda, and in the Baltic this fact was readily seized upon by those political forces seeking to deny minorities the right to cultural autonomy. Conversely, the task of those who remained wedded to the autonomy principle was made all the more difficult as debates on this theme reached their decisive phase during the early to mid-1920s.

Chapter four: The practical operation of personal autonomy in the Baltic states.

The evolution of Jewish autonomy in Lithuania

The structure of the initial system of Jewish autonomy

As explained above, characteristic for the Jewish autonomy was its construction from the bottom to the top, that is to say from the separate Jewish communities to the Assembly of Jewish Councils, and then to the National Council and the Ministry of Jewish affairs. This system strongly reflected the system of Jewish autonomy in the Polish-Lithuanian Commonwealth, which was also based on the separate communities, the *kahal* (Mintz:103).

The basis, the basic entity of the whole Jewish autonomy was the local, territorially based *kehilla* and not the organised minority (as a public corporation) like in Estonia. Every citizen, registered as a Jew in the register of births, marriages in deaths in a given area, was an obligatory member of the local *kehilla*. To dissociate oneself from the Jewish community, one had to undergo religious conversion or prove that the registration in the personal register was inaccurate. Thus, there was no need for a national register to determine who belonged to the Jewish minority. This so-called 'negative option principle' was also better adapted to the specific position of the Jewish minority and its relationship with other groups of the state population (Erler:301; Mintz:103).

The equalisation between 'religion' and 'nationality' resulted from the strong domination of the 'national Jewish minority concept' by the 'Israeli-religious minority concept'. In Estonia and Latvia, there were Jews who had opted for the Russian or German cultural community because of historical experiences. There were also Jews who belonged to the majority nation. The Lithuanian government, on the other hand, realised an obligatory equalisation between the 'religious Jews' and the 'national Jews'. This originated from the system of personal autonomy in the Polish-Lithuanian Commonwealth. In exchange for the levy of taxes, the Jews not only possessed cultural autonomy but also certain other typical state prerogatives. This system not only ensured a strong community feeling among the Jews but also separated them from other population groups. It ensured that a Lithuanian Jew maintained his or her own religion and would not convert into another religion. Thus, for the Lithuanian Jew, the

idea of a change of nationality was linked with a change of religion and vice versa (Erler:300). For example, in 1923 the Jews made up 7,58 per cent of the population (153,743 people) by nationality and 7,65 per cent (155,125 people) by religion (Liekis:82).

The Jewish communities (*kehilla*) were public agencies. They were legal entities with the power to impose taxes, and issue by-laws in matters of religion, education and social assistance. They could also register births, marriages and divorces.

The Community Council, the decision-making body of the *kehilla*, was elected according to the principle of proportional representation. The Council managed the register of births, marriages and deaths, drew up the yearly municipal budget and had a certain taxation right. The Council appointed the executive organ and composed the educational and taxation committees. The educational committees consisted of representatives of the Community Council, the teaching staff and the parents. They were the organisers of the Jewish school system and handled the financial and social matters of the educational institutions. Moritz Mintz termed these communities as the actual institutions of the Jewish school autonomy (Mintz:104). Important to note is that the Jewish schools were under the supervision of the Ministry of Education, not the Ministry of Jewish affairs (Greenbaum:250).

The Assembly of Jewish Councils consisted of representatives of the different Jewish communities and the National Council. It had the same competences as the Jewish Councils with the proviso that the interests of all the communities were affected. The Assembly elected the National Council (Mintz:104-105).

The National Council was the highest institution of Jewish autonomy between the separate assemblies. It was competent for all matters related to the Jewish autonomy (religion, welfare, education and other cultural affairs). The National Council was the actual representative body of the Jewish community. More specifically, it presented bills regarding Jewish affairs to the government and the Assembly, carried out the decisions of the Assembly and fixed its budget. To cover its expenses, it could appeal to these communities. Within the National Council, there were different sections. The decisions of the National Council were prepared and implemented by an executive committee (Mintz:105).

The Ministry without portfolio for Jewish affairs was appointed by the Lithuanian government upon recommendation by the Assembly of Jewish Councils. His task was to defend the Jewish interests within the government and to function as a kind of link between the Jewish community and the Lithuanian government. According to a statement of the Lithuanian prime minister Galvanauskas, the Jewish ministry had to reconcile the interests of the Jews as minority with their position as Lithuanian citizens (Mintz:106). The function and position of the minister were equivocal. On the one hand, he was a member of the Lithuanian government. On the other hand, he was the hierarchical head of the Jewish self-government. He had to defend the Jewish interests in the government and, at the same time, supervise the Jewish self-government. Next to his participation in the activity of the central government, he had to protect the specific Jewish rights. In the Jewish self-government, he could convene the National Council and participate in all meetings of that institution. Thus, one can claim that this institution completely encapsulated the system of Jewish self-government in the Lithuanian state (Mintz:105).

On the other hand, this ministry was not part of the system of Jewish national autonomy. It was a part of the government, of the cabinet of ministers. This cabinet was supported by a majority in the parliament. The presence in the cabinet of any 'alien' element not linked to the political majority was excluded. The representatives of the Jewish self-government did not represent any parliamentary faction and did not participate in the cabinet. This was the very logic of the functioning of a parliamentary democracy. Consequently, Liekis criticises these Jewish politicians of the Jewish National Council who wanted the institution of the ministry to become part of the Jewish national autonomy: *"Such a demand might have been logical in a medieval corporate federation. In a modern representative democracy, however, where the construction of the state was based upon the principle of territorial representation of the entire nation, the demands peculiar to such a corporate federation were clearly misplaced."* (Liekis:103). Because of its equivocal position, the Jewish ministry was contested from its very establishment, both in Jewish and in Lithuanian circles.

The evolution of the system of Jewish self-government in Lithuania

The foregoing chapter referred to the Lithuanian refusal to ratify the minority declaration. This completely reflected the deteriorating situation for the minorities in Lithuania after the elections for a Constituent Assembly in April 1920.

Representatives of national minorities made up 8,1 per cent of all elected Assembly members. The first session of the Assembly took place on 17 April 1920. The new government of Kazys Grinius was based on a consensus between the Peasants-Populists bloc and the Christian Democrats alliance. Dr. Soloveichik again became the Minister without portfolio for Jewish affairs (Liekis:145-148).

From the beginning, the atmosphere in the *Seimas* already proved to be much less favourable for the Jewish minority. The institution of the Jewish ministry was for example strongly attacked by several deputies (Liekis:148).

After a proposal to the government for strengthening the legal basis of Jewish autonomy had failed (Liekis:149-151), the Jewish faction in the Constituent Assembly tried to incorporate Jewish autonomy in the new Constitution. The implementation of the Jewish draft would have meant an 'autonomisation' on a personal basis for the larger minorities in Lithuania. Under the draft, only minorities which made up 5 per cent or more of the whole population would qualify for autonomy. This meant that only the Jews and the Poles qualified for the proposed rights.

The proposal consisted of seven paragraphs.

First, every citizen would have a right to claim membership of any national group in any registration document or correspondence of a civil nature (article 77).

Second, there would be censuses of the citizens of each national group (the national cadasters) (article 78). Upon request, every citizen would have his or her name added to the list added to the list of any national minority. A person who was already listed would have the right to withdraw from any list by announcing it to the administrative body.

Third, all the citizens registered in the national cadaster would make up the National Union, which would have the right to govern its internal affairs autonomously: its public education at all levels, charity, mutual assistance, and the fulfilment of all national cultural aspects in general (article 79).

Fourth, the National Union, consisting of not less than five per cent of all citizens living in Lithuania, would have the right to have a representative in the government, a minister for their particular affairs. The relationship between these ministers and the administrative agencies of the National Union would be defined by a separate law (article 80).

Fifth, the National Union could ask the government and the municipalities to provide funds from the budget proportional to the membership share. The distribution of these funds and their collection by national autonomy agencies would be defined in a separate law (article 81). Sixth, the agencies of national autonomy would have the right to tax members of the National Union with additional taxes for national union operations according to respective laws (article 82).

Seventh, the relevant national groups would have the right to freely use their language in the government and municipalities and to freely write applications and requests to all government offices (article 83) (Liekis:152-153).

The discussions of the constitution's chapter on national minorities began on 5 April 1922.

All the proposals aiming at 'constitutional autonomism', however, failed. Article 80 was regarded as discriminating against less numerous national groups. Again, the institution of the Minister without portfolio for Jewish affairs was strongly criticised. That the minister was legally bound to the Jewish National Council seemed dubious to several *Seimas* members. Although it was not part of the constitutional and parliamentary order of Lithuania, the Jewish National Council would, under the proposal, be able to influence the government. Liekis observes that, in general, the Jews' desire to 'separate' themselves institutionally caused much stronger resentment (Liekis:154).

The final text of the Constitution of 6 August 1922 reduced the rights of minorities to two articles in a special title.

Article 73 provided that: "*National minorities that make up a considerable share of the citizenry have the autonomous right to organise within their jurisdiction the affairs of their national culture: public education, charity, mutual assistance, and to elect representative agencies for these functions.*".

Article 74 continued by stating that: "*The national minorities mentioned in article 73 have the right to tax their members for support of their national culture if this support is not provided by common state and municipal institutions, and to use a proportional amount of the money provided by the State and municipalities for education and charity.*".

Like the Estonian and Latvian Constitution, the Lithuanian Constitution vested sovereignty in 'the people'. Article 1, sentence two, stated: "*The sovereign government of the State shall be vested in the people.*" (Graham (1928:720-735)). The Constitution further provided that all Lithuanian citizens were equal before the law and banned any privileges or restrictions on the basis of race or national origin (article 10: "*All citizens of Lithuania, men or women, are equal before the law. No special privileges can be given to, nor shall the rights of citizens be restricted because of race, creed or nationality.*").

The reference to later legislation implied that the 'cultural autonomy', implied in article 73, could only be considered as a promise, as a kind of general 'skeleton provision' (Garleff (1990:91)), that needed implementation legislation. Only the minorities, constituted as legal entities, were entitled to cultural autonomy (Erler:299).

In addition to their proposals in the Constituent Assembly, the Jews tried to legalise and strengthen by all means possible the Jewish institutions established in 1919 and 1920. Dr. Soloveichik attempted to persuade the Prime Minister's office to pass a law on the establishment of a Jewish ministry. This law would replace the post of Minister without portfolio for Jewish affairs simply with a Minister for Jewish affairs. The minister's office would be formally converted into a ministry. All agreements, property, and liabilities would be transferred to the new institution. The government however not only rejected this draft, but also the draft of a separate law on the Jewish National Union (Liekis:156).

It was clear that the Lithuanian government was turning away from its earlier promises. In this regard, it is important to note that the context of 1922 was completely different from that of 1918-1920. First, the earlier Lithuanian concessions to the Jews were linked to the pro-Lithuanian stand of the Lithuanian Jews in the territorial dispute with Poland regarding the city of Vilnius. In 1920, Poland had namely occupied and annexed Vilnius. This was recognised by the Conference of Ambassadors in 1923. Second, Lithuania had entered into the League of Nations and was subsequently recognised *de iure* by a majority of states (Liekis:157-159).

In the following years, the existing Jewish institutions received a final blow.

On 21 December 1923, the *Seimas* deleted from the state budget the funding of the Jewish ministry. The *Seimas* also forbade Jewish deputies to deliver speeches in Yiddish

(Greenbaum:49). On 2 January 1924, Simon Rosenbaum resigned in protest. The Christian Democrat government, formed on 24 June 1924 by Antanas Tumeas, did not have a Minister for Jewish affairs. The files of the Jewish ministry were taken over by the Jewish faction in the *Seimas*. All property and inventory of the ministry was taken over by a special commission formed by the government on 24 November 1924 (Liekis:190).

At the Jewish National Assembly in November 1923, a Jewish National Council was formed. After the abolition of the Jewish ministry, all pro-autonomy Jewish politicians aimed to legalise this council. The Jewish National Council sent a proposal to Prime minister Tumenas. However, the Christian Democrats strongly opposed.

Meanwhile, the whole institution of Jewish autonomy was falling apart. The *Agudah*, which actually controlled the management of religious property, ignored the secular *kehillot*, while the largest portion of income was received through religious channels. As a result, the income of the institution of Jewish autonomy started to drop substantially. Moreover, in 1924 the police no longer helped to ensure the payment of taxes (Liekis:191). According to Liekis, the legalisation remained, nevertheless, a viable option: "*Autonomy, supported by administrative means and imposed by the state, could have survived.*" (Liekis:193).

Given the Christian Democrats' domination, a legalisation of the Jewish National Council was, however, no longer possible.

A congress of Jewish representatives in local governments took place on 12-15 January 1925. The 70 representatives approved a political resolution which protested against the government's closure of Jewish institutions and the lack of respect for Jewish political interests and aspirations (Liekis:195).

In 1925, Jewish national personal autonomy was definitely ended. After the *Seimas* majority had rejected on 1 March 1925 an initiative from the Jewish faction to legalise the *kehillot*, it passed on 31 March 1925, by a vote of 24 to 19, the Law on the Jewish National Communities. This law was drafted by the Christian Democrats and approved by the government. It provided first that Lithuanian citizens of Jewish nationality make up the national Jewish communities. These communities would oversee cultural affairs, public education, charity, and mutual assistance. The Jews of any locality were able to establish one or more communities for these purposes. The members of every community would elect a community council. Second, those Lithuanian citizens of Jewish origin who had the right to participate in the elections of the local government, could become members of the local

Jewish communities. Third, the local Jewish community would keep a list of its community members. Fourth, the participation of Lithuanian citizens of Jewish nationality in the communities was not obligatory. Every member of the Jewish community could refuse to participate. After such refusal, this person was no longer considered as a member. Fifth, local Jewish communities were given the right to tax their members for the mentioned purposes. The amount of these taxes could however not exceed the amount of state taxes paid that year. The community collected these taxes from community members for the community treasury. The Interior minister approved the manner and level of this taxation. Sixth, the local Jewish communities had the right to call congresses of their representatives. The congress would elect the Central Council, which guided the work of the communities. The Central Council was elected for one year. Seventh, the Jewish communities and their Central Council had the rights of juridical persons. Eighth, the Interior ministry would issue the rules and regulations for the implementation of the law. The Provisional Law on the Right of the Jewish communities to tax Jewish inhabitants was no longer valid (Liekis:196-197).

Thus, the law of 1925 replaced the earlier law of 10 January 1920. In short, Jews were allowed to organise national societies in their places of residence and designate those societies 'communities' (*kehillot*). Several communities could be located in each locality. Fifty Jewish people could voluntarily make a community. Those communities could have inter-communal congresses, which had the right to elect their own central councils. The only difference between these 'Jewish national communities' and other societies organised freely by citizens was the term 'community'. The *kehillot* came under the jurisdiction of the Interior ministry (Greenbaum:252; Friedman:180). The Jews were no longer obliged to belong to a community. It was no longer an obligation to define oneself as a Jew and to belong to the Jewish community. This was in Liekis' view the most important consequence of the new law (Liekis:198). The law abolished the Jewish national personal autonomy. National autonomy namely provided that people of a certain category (Jews) would be incorporated into communal settings. All these communities would then unite as corporate federations through the congresses of communities. A single Central Council would stand above. To formulate it in Liekis' words: "*Thus, Jewish communities became just like all other organisations network in Lithuania, instead of the centralised and obligatory organisation that encompassed all aspects of life, like a corporate body in the Middle Ages.*" (Liekis:197).

The election for these new communities in February 1926 was however boycotted. Despite efforts from the Interior ministry, not a single national community - in the sense of the law of 1925 - was established (Friedman:180). As a result, the Interior minister issued supplementary instructions for the liquidation of the existing *kehillot* (Liekis:199; Robinson (1943:229)). At the Minorities Conference in Riga in 1926, the representatives of Lithuania therefore concluded that the situation in their country was the worst of the three Baltic states.

The Christian Democrats lost the elections of 8-9 May 1926 and a new government of Populists and Social Democrats was formed. The Jewish faction in the parliament demanded the immediate abolition of all laws, undermining Jewish autonomy, the urgent implementation of the articles 73 and 74 of the Constitution with legislation on autonomous educational, charitable, and mutual assistance functions of the Jewish communities, as well as the establishment of local and central institutions and the fulfillment of the promises given by the Lithuanian government in its 1922 declaration (Liekis:202-203).

On 17 December 1926, the Nationalists and Christian Democrats staged a coup d'état. Voldemaras became Prime Minister, while the president of the Lithuanian Nationalist Union, Antanas Smetona, became President. On 12 April 1927, Smetona dissolved the *Seimas* (Liekis:209).

The 1938 Constitution entirely eliminated the earlier minority provisions. The only provision which indirectly dealt with minorities, was article 3, granting religious congregations the status of juridical persons within defined limits (Robinson:229-230).

The practical operation of cultural autonomy in Estonia

The evolution of the internal political situation in Estonia

The Social Democrats and the Estonian People's Party of Jaan Tonisson suffered a defeat in the elections of January 1921. The subsequent government of Konstantin Päts (Peasant Union) consisted of members of the Peasant Union, the Labour Party, the Estonian People's Party and a small Christian party. It was a weak and unstable government. Parties disagreed

on many issues. Depending on the proposal, a party belonged to the government or opposition. In short, these were not the ideal circumstances for the establishment of cultural autonomy (Vasara:485).

Already in the beginning of 1921, the German deputies (*deutschbaltische Partei*) tried to establish cultural autonomy by way of a unilateral declaration. The Germans declared that they wanted to implement the constitution and regulate their cultural life through their own laws. The Estonian government replied that constitutional articles and principles could only be implemented by way of legislation, which was the sole right of the Estonian Parliament (Angelus (1951:14)). Furthermore, it observed that the effective implementation of article 21 of the Constitution required an exact definition of autonomy and the constitution of minorities as legal persons (Garleff (1976:106)). Indeed, according to the critics of this first draft, the declaration exceeded the borders of cultural life. It was so vaguely formulated as to leave the real scope of autonomy entirely open to question (Smith D J (2005:219)).

As a response to these observations, the minorities deputies jointly introduced a bill in the *Riigikogu*. The bill was defended in the plenary session and in the commissions primarily by the Baltic German delegates "*on behalf of all minority parliamentary parties*" (Garleff (1978:90)). It was sent to the Commission of General Affairs which in principle agreed with the need of a quick establishment of cultural autonomy. On 12 December 1921, the Labour Party, the Social Democrats and the German representative, Max Bock, adopted the bill in a first reading (Garleff (1976:106)). In March 1922, the draft was sent to a subcommission. Under the presidency of Jaakson of the Estonian People's Party, this commission decided not to elaborate a definitive detailed law on autonomy yet but instead to work out a provisional skeleton law for the time being. This draft would be elaborated by Jaakson, Interior minister Eenpalu (independent, later on Peasant Union) and Anderkopp (Labour Party) (Garleff (1976:107)).

The Päts government fell in November 1922 and was replaced by a new government under the leadership of Juhan Kukk of the Labour Party.

The Kukk government presented its own amendments to the 'Cultural Autonomy Commission'. It proposed to determine the amount of resources given to the self-government according to the proportion of the particular minority that actually supported the introduction of autonomy. This proposal led to a fundamental disagreement over how to relate to those minority citizens who did not desire autonomy. In Max Bock's view, this suggestion destroyed the foundations of autonomy. It was inconceivable to him that some German

schools would belong to the cultural self-government and others not. Bock was supported by Sorokin, Päts and Anderkopp. The solution was found by applying a 50 % threshold. If a majority of the particular minority supported cultural autonomy, then it could be installed, and all existing and future minority institutions would come under its control. Division of material and human resources between institutions belonging to autonomy and those outside would have been a severe blow to this scheme, especially from the point of view of numerically small minorities whose resources were already limited. Division would have led to competition between the two sets of institutions and could even have led to the formation of two antagonistic camps. In line with Karl Renner, Konstantin Päts declared that national origin was a basic element of every person. Each individual had to declare which group he or she wished to belong to. The choice was free. Neutrality was, however, not an option. Minority education and minority rights were only open to those who declared themselves as belonging to a particular minority. This implied the need to register all the members of a minority and to vote on the establishment of cultural autonomy. If a majority of a group voted against, then minority rights would be limited to those provisions, laid out in the constitution. If there was a majority for cultural minority, all the members of the cultural self-government would be subject to the terms of autonomy and beholden to the institutions established. Anyone not consenting to these terms, would relinquish their membership of the minority and be considered a member of the majority (Estonian) nation (Alenius (2003:325-328)). The Commission of General Affairs unanimously adopted the bill on the provisional cultural and social self-government. In name of the minority fractions, Max Bock praised the work of the commission. On the other hand, he regretted that the draft had not enacted a compulsory national register. In his view, membership of the cultural self-government had to be obligatory after the declaration (Garleff (1976:107)).

In March 1923, the bill was passed to the Parliament for a first reading. It was discussed in two sessions of 6 and 8 March 1923.

The majority of the left and the centre was very suspicious towards the proposed law, while the right was more prepared to meet the demands of the minorities. Both advocates and opponents of the law referred to international developments and influences. For example, according to Karl Ast of the Labour Party, it was clear that minority rights were not an issue for the League of Nations and the Great Powers. Therefore, the Estonian parliament did not need to adopt a law that threatened the integrity of the Estonian state (Alenius (2003:329)). Deputy Palwadre of the Social Democrats, on the other hand, stated that the *Riigikogu* had to

resist the powerful lobby of the Baltic Barons abroad (Vasara:488). The Estonian press noted that there was no international pressure to introduce autonomy and that Estonia was already regarded as one of the most advanced countries in this regard. Foreign minister Hellat clashed with former Foreign minister Piip over the exact implications of the Estonian admission request to the League of Nations. Contrary to Piip, who argued that the minority provisions of the Constitution would suffice, Hellat stressed that the Estonian admission request implied an obligation to enact the law. He emphasised the need to counter the legal attacks of Baron Alphons Heyking (Vasara:490-491).

Several Estonian speakers like Mihkel Martna and Karl Ast referred to the German and Russian repression of the past. Ast argued that by way of cultural autonomy, the Germans would build a Trojan horse. Also the Russians could not be trusted (Vasara:488). Although it had supported the skeleton law in the Commission, the Estonian People's Party of Jaan Tonisson joined the opponents of the law. In fact, Tonisson and his party proved to be the main opponents of the law. The change in Tonisson's attitude towards the minorities was very striking. In 1919, he had shown great sympathy with the demands of the minorities. Four years later, he was amongst the fiercest opponents of autonomy. In the debates, Alex De Vries compared Tonisson with Bobrikov, the former Russian General Governor in Finland. Probable reasons for this dramatic change in attitude were a shift in the international climate, developments such as the *Landeswehr* war and the constant criticism from the minorities of the Estonian elite (Alenius (2003:333)). According to Tonisson, the Germans were trying to create a German colony and would misuse the law to the detriment of the Estonian state. The Estonians had to resist foreign pressure (Alenius (2003:330-331); Vasara:489).

Generally, minority representatives emphatically rejected the claims that the objective of the law was to isolate minorities from the rest of the society. The aim of the law was simply to defend the cultural rights of the minorities. Max Bock denied the charge that the law would create privileges for the German minority and create a 'state within a state'. He reminded the Social Democrats of the ideas of their ideological allies Karl Renner and Otto Bauer and of the position of their party fellow members in the commission (Garleff (1976:108)). In an extraordinary joint declaration, the minority delegates condemned the intention of the People's Party and of some Social Democrats "*to stoke the national contrasts in long speeches, the purpose of which is to delay the bill*" (Garleff (1976:109)). Besides the minority representatives, also Konstantin Päts, Eenpalu, Anderkopp and Foreign minister Hellat pleaded for the establishment of cultural autonomy.

The government was aware that the opponents of the law were in majority. Interior minister Eenpalu ruled that the draft should be returned to the commission and then submitted to the new *Riigikogu*. General Laidoner was the only representative of the Peasant Union who wanted to adopt the draft in a second reading. As Estonian representative to the League, he was fully aware of the external value of the law (Garleff (1976:109)).

In July 1923, German and Russian representatives submitted a new joint draft, which was almost identical with the earlier proposals. Also, church matters were now included in the self-government proposals.

The final phase of the adoption of the Law on cultural autonomy of 1925

In October 1923, the Estonian People's Party tabled an entirely new bill, based on the principle that the institutions of autonomy would be under the control of local authorities without any central coordinating authority. The Estonian People's Party and the Social Democrats argued that decentralisation would place decision-making power in the hands of those to whom autonomy was most applicable. On 19 July 1923, Tonisson had stated that minority members could not be granted privileges because this would violate the Constitution. On 30 November 1923, the Päts government presented its own bill, which the commission with a great majority adopted as the new point of departure. For the first time in the history of the Parliament, Social Democrats and the Peasant Union agreed (Garleff (1976:109-110)).

But the Estonian People's Party continued to oppose the law. After Tonisson had warned that he would submit the law to a referendum, it became very clear that without support of the Estonian People's Party, the law would not be adopted. The law would not have survived a referendum (Vasara:493).

A decisive breakthrough occurred on 18 March 1924 between Tonisson, Hasselblatt, Pantenius and Ammende. Tonisson dropped demands for decentralisation in return for assurances that autonomy would only relate to cultural affairs and would not be used as a political vehicle. The Germans also agreed that some measure of decision-making would be delegated to the local level, especially with regard to the organisation of schools. Further, members of the

Cultural Council would be elected according to the wishes of the local voters (Garleff (1976:110); Alenius (2003:335-336); Vasara:494).

On the basis of this agreement, a new draft was submitted by Werner Hasselblatt. It was approved at a first reading on 6 June 1924. However, a second reading on 14 June 1924 failed because there was not a sufficient quorum. In the months that followed, the parliamentary majority proved reluctant to hasten the bill through a second and third reading. Further discussion was delayed until the autumn (Vasara:496-497).

The Communist putsch of 1 December 1924 forced the final breakthrough. The putsch was thwarted but showed the necessity of future national cohesion to preserve the young Estonian republic (Smith D J (2002:16); Von Rauch (1976:141)). The law would consolidate the Estonian state because it would turn the members of a very small but still influential minority into loyal citizens (Hasselblatt C (1996:50)). The minority government of Akel was replaced by the Jaakson government, in which both the centre, the Peasant Union and the Social Democrats participated. The government and the minorities made use of the events to solve their differences (Vasara:497). In January 1925, *Riigivanem* Jaakson and Interior minister Eenpalu told the German deputies that a rapid establishment of cultural autonomy was in the general interest of the country. Accordingly, the government treated the draft as 'an urgent matter'. After welfare had been removed from the competence of the cultural self-government, the bill was adopted in a second reading on 27 and 28 January 1925 (Garleff (1976:111)). On 5 February 1925, it was adopted in a third and final reading.

Why did the *Riigikogu* grant the minorities cultural autonomy? First, minorities constituted a relatively small number of the total population (12 per cent). Second, the law separated politics and culture and ensured that the government remained in control. Third, a failure to implement article 21 of the Constitution would have weakened the international image of Estonia. As mentioned above, the Estonians wanted a peaceful and democratic solution for the minority question. One must also mention the persistent efforts of the German deputies (Vasara:498-500). Although the Germans indeed played a key role, the law would however never have been adopted without the support and backing of several leading Estonian politicians like Konstantin Päts, Karl Eenpalu and Anderkopp. Kari Alenius has certainly a point when he terms them as the 'true fathers' of the law (Alenius (2003:335)).

The Law on Cultural autonomy for minorities of 1925

A law for 'strong minorities'

The Law on the Cultural Autonomy of the Ethnic Minorities of 12 February 1925 (LCA) (German translation in: Kraus:191-208) was a provisional skeleton law, containing the general principles and lines of action regarding cultural autonomy. In the explanation of the law, the Estonian legislator termed the law as an unique experiment which no state in the world had ever applied. Some practical experience was therefore necessary before the enactment of a detailed and definitive law (Kraus:201). Karl Aun argues that, historically speaking, this is incorrect. He refers to the Jewish autonomy in the Polish-Lithuanian Commonwealth, the (temporary) Minority Law of 1918 in Ukraine and the national registers in Austria, for example in Moravia (1905). On the other hand, he agrees that, between the two world wars, the Estonian Republic was the only country which adopted and developed the idea of a personal minority alliance as a public corporation (Aun:58).

The law was concretised by two governmental decrees: the Governmental Decree on the organisation of cultural autonomy of the ethnic minorities of 8 June 1925 and the Governmental decree on the keeping of national registers of 8 June 1925.

The law and the two decrees were an implementation of article 21 of the Constitution. The Manifesto of 24 February 1918 promised all the minorities cultural autonomy. Although the wording of article 21 of the Constitution did not exclude certain minority groups (“*The members of minority nationalities ...*”), the Constitutional Assembly considered ‘national minorities’ those having strong historical ties with the country (Maddison (1930:10)). As mentioned above, article 23 of the Constitution guaranteed only citizens of German, Russian and Swedish origin the right to address themselves to the state’s central institutions in their own language.

The many conditions and the whole system of the CLA made it clear that cultural autonomy was not intended for every minority group but only for the so-called ‘strong minorities’, having both the ‘will’ and the ‘ability’ to express, maintain and develop their culture (Kraus:199).

Under article 8 of the law, the Germans, Swedes and Russians as well as any other minority totalling more than three thousand persons in the entire state were legally entitled to cultural self-government. They could constitute themselves as public corporations.

The assessment of the necessary number of members of a minority (three thousand) as well as the actual exercise of the right of cultural self-government depended on the voluntary registration of the mentioned groups in a national register and the subsequent participation of these persons in the election of the institutions of self-government.

The procedure for obtaining cultural autonomy and the membership of cultural self-government

If a minority – through its parliamentary representatives or cultural organisations – wanted to establish cultural self-government (article 16), a minority electoral list (*Wahlregister*) – consisting of the Estonian minority citizens qualified to vote – was drawn up, on the basis of the already existing data and declarations of citizens about their ethnicity (article 17).

Each registered citizen had the right to ask for his or her removal from the minority electoral list within two months after the publication of this list. Citizens who had not done this, were automatically enrolled in the national register (article 18). Thus, the first minority electoral list constituted the basis of the first national register (Kraus:207).

If less than half of the citizens qualified to vote in the last census enrolled in the national register, no further steps were taken and no new application by the minority could be made for three years (article 19). Otherwise, the next step was to hold elections for a Cultural Council, the convocation of which required the votes of at least half of the people in the register (article 25). Subsequently, at least two-thirds of the members of the Cultural Council had to opt for cultural autonomy. Otherwise, the Cultural Council was dissolved and no new application could be made for three years (article 27).

Membership of the cultural self-government was determined by the national register. This register constituted the pillar of the cultural self-government (Kiminich (1985:192-193)). Only those Estonian citizens, belonging to a certain minority and registered in the national register, were members of the cultural self-government. Following Renner's and Bauer's 'personal principle' and its subsequent enshrinement in the Estonian Constitution of 1920, registration was done by way of an individual and voluntary declaration. Adherence to the cultural self-government was voluntary and left to the person's own discretion. As Karl Aun

observes, it is important to distinguish the membership of a certain nation from the membership of the cultural self-government (of that nation). Not the membership of the public corporation determined the membership of a nation of a certain individual. Instead, membership of a national group, expressed and shown by a free and voluntary declaration, was the condition for membership of the cultural self-government (Aun:57-58).

The Cultural Council was obliged to terminate its activities when the total number of its members dropped under 3,000, according to the data in the national register or when the total number of people on this register dropped below 50 per cent of the total number of citizens of that ethnic group, as indicated in the last census (article 15). In such case, the Germans, Swedes and Russians remained national minorities in the sense of the law but they were no longer organised in a cultural self-government. Other ethnic groups would no longer be national minorities in the legal sense but converted into minorities in a sociological sense. There were thus three categories of minorities in Estonia: first, minorities in the purely sociological sense, second, national minorities entitled to cultural autonomy (according to the law) and third, those national minorities belonging to a cultural self-government (Plettner (1927:100-101)).

As soon as a certain minority had established its own cultural self-government, the Estonian state and the local governments were no longer obliged to establish separate minority schools in their educational system for those minority members who did not belong to the cultural self-government. As Erler notes, the constitutional right of minority members to education in their mother tongue, was fully covered by the LCA, regardless of the fact that not all members of a certain minority belonged to the cultural self-government of that minority (Erler:288). That the Estonian government was no longer obligated to organise minority schools for these people was not only fully justifiable but also in accordance with the constitutional principle of equality (article 6, first sentence of the Constitution: “*All Estonian citizens are equal in the eyes of the law.*”). The principle of equality of treatment of all citizens namely only implied and required that citizens belonging to a minority group and having both the will and the capacity to maintain and develop their own cultural life, possessed the same means for achieving this as the majority nation. The preservation of the culture of the majority nation was already fully assured by the organs of the state (Kraus:199).

One can indeed argue with Erler that by operation of the LCA, the Estonian state offered people belonging to a minority the necessary means to maintain and foster their own culture. One can assume that those minority members who preferred not to register, did not feel the same need to enjoy education in their mother tongue in minority schools as the members of the cultural self-government. The Estonian state was therefore under no legal obligation to offer those people special education in their mother tongue, outside the cultural self-government (Erler:288-289).

The organisation of cultural self-government

The autonomous minority institutions were corporations of public law. Their organisation, competences and relationship with the state were modelled on those of the (territorial) self-government institutions of the districts. Because of their structure, their greater elasticity and territorial range, these were more appropriate for the organisation of the cultural self-government than for example the self-government of the towns (Kraus:202). All the laws and decrees regulating these self-government institutions were also applicable on the institutions of cultural self-government (article 1). While the organisation of cultural self-government reflected the one of the self-government of the districts, there was of course one fundamental distinction. While the local self-governments were territorially based institutions, cultural self-government was based on the principle of personal autonomy. The ‘district’ of cultural self-government was the whole territory of the state, encompassing all the scattered communities.

The actual subject and the central decision-making body of the cultural self-government was the **Cultural Council**. Although the law itself termed the cultural self-government as an organ of cultural autonomy, cultural self-government actually only referred to the total group of members of the cultural self-government and to the organisation as such. That the Cultural Council was the actual subject of cultural autonomy resulted from article 27 of the law which stated that at least two-thirds of the Cultural Council had to opt for cultural autonomy (Veiter:112-113)). This institution, with not less than twenty and not more than sixty members (article 22 of the law and article 13 of the governmental decree on the organisation of cultural autonomy), was elected by all registered members (article 11 of the law). Georg Brunner terms this institution as “*the democratically elected parliamentary quorum*” of the cultural

self-government (Brunner (1996:138)). The Cultural Council was elected for three years (article 13 of the decree) but could be dissolved earlier by decision of the government (article 14 of the law)

The Cultural Council decided upon the creation and liquidation of the cultural self-government, issued binding regulations within the powers of the cultural self-government, adopted the budget, imposed the taxes upon the members, instituted the cultural curatoria if such were needed, and gave general directions to and supervised the activities of the cultural self-government. The office of a councillor was an honorary one, but the expenses incurred on behalf of its office were refunded. The Cultural Council convened once a year for an ordinary session.

The Cultural Council appointed the members of the executive organ, the **Cultural Government**, the President and his assistants (article 45 of the decree). The members of the Cultural Government had a honorary position. The Cultural Government further consisted of permanent appointed public servants, with a Secretary as their head (articles 48-54 of the decree).

Although the Cultural Council was the decision-making body, the Cultural Government had considerable power in the agenda-setting and in the preparation of the work of the Council. The Cultural Council could only decide a matter which was not foreseen in the agenda with the permission of the Cultural Government. In this way, the Cultural Government with its administrative routine and expertise, was always well informed about the strategies of the Cultural Council. The executive organ could either stimulate or block certain initiatives of the Council (articles 26-27 of the decree; Erler:287). The Cultural Government represented the cultural self-government in its dealings with the Estonian government, with the other self-governing institutions in Estonia, with private persons, and in the courts (Angelus:28). It managed the properties, operated or supervised the schools and other cultural activities of the cultural self-government, and employed the personnel. When the Cultural Council was dissolved, the Cultural Government discharged the functions of the Cultural Council until the new councillors were elected (Eide:254).

Although the LCA was strongly influenced by Rudolf Laun's views, there were also some important distinctions. In Laun's draft, cultural self-government was constructed from the bottom to the top, that is to say from the smallest administrative units to the bigger ones. In

Estonia, on the other hand, cultural self-government was elaborated by the (central) Cultural Council (Aun:58). There was, however, a considerable participation from the local level.

Since the cultural self-government would encompass the members of a certain minority on the whole territory of Estonia, some Estonian politicians namely feared that a strong centralisation would be to the detriment of the cultural life of specific local groups of that minority. The Estonian representatives Tonisson and Jaakson had proposed an extensive decentralisation to tackle this problem. The General Affairs Commission elaborated a compromise (Kraus:204-205). While the system of personal autonomy remained the basis of the cultural self-government, the interests of local groups were better protected. First, the elections to the Cultural Council were held in territorial constituencies (articles 23-24 of the law). By this, the Cultural Council was converted into an assembly of local representatives (Angelus:27) and a tie was forged between the centre and the local groups. Second, local boards of curators were created to settle local issues and to take local decisions.

Thus, **cultural curatoria** could be created for attending to the local affairs of the minority. The members of such a Curatorium were appointed by the Cultural Council from the local members of the self-government. These were honorary members. The functionaries of the Curatorium were proposed by the president of the Curatorium and appointed by the Cultural Government. Written accounts of the meetings of these curatoria had to reach the Cultural Government within two weeks after the meeting concerned. The curatoria had to send their budget and an overview of their activities to the Cultural Government within a certain period, fixed by the Cultural Council. The Curatoria kept their own local national registers in their areas (Angelus:28; Eide:254).

In areas where a certain national minority constituted a local majority, it enjoyed territorial self-government. Such territorial self-government could however harm the interests of the Estonians as a local minority, for example regarding their educational needs. That is why the government was empowered by the law to institute a personal cultural autonomy for the Estonians in those areas (Kraus: 198-199 and 208). As Theodor Veiter argues, this was no defence mechanism of the Estonian state against cultural autonomy as a system but simply a correction of a lacune in the system of territorial self-government (Veiter:114).

On the competences and financial means

Once the Cultural Council had opted for cultural self-government, the institutions of cultural self-government had the right to form, administer and support the public and private educational institutions of the minority concerned. The institutions of cultural self-government further operated and supervised theatres, libraries, museums and other institutes, which preserved and promoted the culture, language and customs of the minority concerned. The institutions of cultural self-government were completely autonomous in these affairs and assumed full responsibility (Erler:289).

For educational and cultural purposes, the Cultural Council had the right to issue regulations which had binding force upon the members of the cultural self-government. For the same purposes, the Cultural Council could impose taxes upon the members of the cultural self-government (Uibopuu (1996:254)). As a legal person, the cultural self-government as an organisation could acquire, own and alienate property and perform any kind of legal transaction. It could sue and be sued in the courts.

Minority education was and is of course of central importance for the cultivation of the group identity. It was the pillar of the cultural self-government. In the schools, the minority language was taught. Through the system of minority education, the pupils were familiarised with the minority culture, values and history. Already in 1919, there were special minority sections in the Estonian Ministry of Education. The directors of these sections were appointed by the government upon recommendation of the minorities (Veiter:113).

The main purpose of cultural self-government was the support and extension of a minority educational system. This was for example reflected in the distribution of the funds by the Estonian government to the German minority: approximately 80 per cent of the subsidies went to the German educational system (Hasselblatt C (1996:54-55); Hasselblatt C (1996:44-45)). All the educational institutions in the mother tongue of the minority were integrated in the cultural self-government. They were transferred from the administration of the districts and the state to the administration of the cultural self-government. For the members of the minority concerned, the school administration of the towns and districts was replaced by the administration of the cultural self-government. The unitary organisation and management of the minority schools was the main asset of the cultural self-government. For example, before the establishment of the German cultural self-government, all German schools fell under the

different municipalities which often pursued different policies regarding certain important matters. The cultural self-government pursued the same policy towards all the German schools and could resolve all matters with global solution. It could create new schools or move away old ones, where they were not longer necessary (Angelus:13). The school inspectors and the school councils of the cultural self-government had the same legal authority and the same legal position vis-à-vis the Ministry of Education as the school inspectors and councils of the organisations of local self-government (Kraus:203; Angelus:25).

Another important distinction with Laun's draft as well as with the original legislative proposal was that the law did not contain provisions on social welfare. This was foreseen in a later (special) legislation.

The cultural self-government had five sources of income. The Estonian government provided subsidies for elementary and secondary education and expenditures. The state and the local self-governments further supported the cultural development of the minorities. The expenditures for compulsory elementary education were paid exclusively by the state and local self-governments. Subsidies for secondary schools were proportional to the number of their students. Cultural self-government also included the right to draw the financial means for cultural purposes from the common public funds which were equally distributed among the entire population (Eide:255). The Cultural Council could also impose public taxes upon the members of the cultural self-government and accept gifts, collections, donations and endowments. (article 6). These 'cultural taxes' were calculated on the basis of the general income tax. More specifically, the taxpayers, belonging to the cultural self-government, were taxed on the basis of the general income tax that they had paid the previous year (Angelus:26-27). The determination and levy of the cultural taxes had to be requested at the Ministry of Finance and Education. The Estonian government had to agree with the request (Kraus:194).

The issue of domestic sovereignty

The basic assumption of the Estonian legislator was that only a nation itself is aware of its cultural needs and the way to fulfil them (Kraus:199). The Estonian state carefully left room for every 'strong' (culturally conscious) minority to organise and maintain its own culture.

The Estonians went out from the central premise that the state is not the same thing as the nation (Hampden Jackson (1941:163)). The Estonian approach towards the minorities question was a differentiation between state and nation on a functional basis (Kirch (1995:12)). The inherent nature of cultural self-government in interwar Estonia is that the Estonian state indeed attempted to separate culture and politics. To achieve this purpose, the state delegated its decision-making power in cultural and educational questions to special institutions of a certain nation (Gerber (1927:50-51)). After this delegation, the cultural self-government became responsible for the organisation of the cultural and educational questions (Guttman (1931:19)). But by establishing cultural self-government, the Estonian state did not renounce its ultimate legal authority in cultural and educational questions. It remained the highest authority of the members of the cultural self-government (Veiter:78). As Paul Schiemann notes, there was only one sovereign power on the territory of the state and the *Volksgemeinschaft* had to recognise the precedence of the state, also in its 'own areas' (Schiemann:35).

Since cultural self-government was a kind of self-government, it was by definition subjected to the control of the state. The law carefully fixed the boundaries of cultural self-government. The cultural self-governments were only entitled to fulfil the cultural needs of their national group. In case they exceeded their competences, the state had the right to dissolve the Cultural Council and to organise new elections (Angelus:15). Both the start and termination of the activities of the cultural self-government required a decision from the government. The levying of public taxes, the elaboration of a public school system, the electoral regulations for the first Cultural Council all required governmental approval. The Estonian government was represented in the committee for the elections of the Cultural Council (the candidate for the chairmanship of this committee had to be approved by the government). It also fixed, on request of this election committee, the total number of the members of the Cultural Council. The law also explicitly subjected the minorities to a duty of loyalty. The state could suspend decisions from the Cultural Council, provided that it brought the case before the highest administrative court, which could then decide after a contradictory procedure (Hasselblatt W (1948:35)). The final aim of this policy was to win the loyalty from all minorities towards the Estonian state, to unite all citizens in their common affairs, and to create a home country for all citizens (Kirch:12). In this regard, Eugen Maddison observes that Estonia was not a real nation state but a state in which all residing nations were united in the "*people of Estonia*" (Maddison (1928:416)).

The German and Jewish cultural self-government

Only six weeks after the enactment of the law, on 11 April 1925, the German deputies and the German People's Secretary informed the Estonians about the desire of the German minority to establish a cultural self-government. At the end of May 1925, an electoral register was established. When this register was closed, it encompassed 97 per cent of all the Germans, counted in the census of 1922. The participation in the elections of 3-5 October 1925 was 67 per cent. At its opening session on 1 November 1925, the German Cultural Council unanimously decided to establish a cultural self-government. It also fixed the general framework of the internal organisation of the cultural self-government (these provisional regulations were replaced by the definitive regulations of 17-18 March and 16 May 1929). On 4 November 1925, the Estonian government decreed the opening of the cultural self-government. At its first regular session of 8 November 1925, the Cultural Council appointed the members of the Cultural Government. The Cultural Government consisted of a president, a vice-president and four members. Vice-president of the *Verband deutscher Vereine in Estland*, Harry Koch, was appointed as president.

The German Cultural Council consisted of 41 members. From its members, the Council put together five specialised committees: a General Affairs Committee, a Committee of Finance, a Committee for Legal Affairs, an Education Committee and a Committee for the National Register.

The Cultural Government consisted of the National Register Office, the Office for Culture, the Education Office and the Finance Office and a Committee for Sports and Youth (Maddison (1930:31); Hasselblatt C (1996:44)).

While the National Register Office had to complete the national register, the Finance Office was given the task of settling all financial questions. More specifically, it had to prepare the budget of the cultural self-government and elaborate a tax regulation. This regulation was approved at the second session of the first Cultural Council in March 1926 (Mintz (1927:130-131)).

The Office of Culture was competent for all other cultural issues. It was divided into three subsections: the section for higher education, the section for general education issues and the section for scientific organisations and museums. The latter had to organise the co-operation

between German scientific organisations, elaborate an inventory and maintain and develop its collections, libraries and museums (Mintz:130).

The Education Office was the most important office of the cultural self-government. It was in charge of the administration of the German-speaking educational system. Next to the head of the office, the Education Office consisted of the *Schulrat*, the secretary and the pedagogical *Bildungskonseil*.

In general, the objectives were a unified school system (encompassing both the private and public schools), free elementary education, education in the mother tongue for each German child, a more efficient use of the means given by local authorities, the support of public schools with cheaper tuition fees and the increased salaries for teachers. On 25 and 26 March 1928, President Koch announced that these objectives were almost completely met (Erler:293).

By 1930, the German cultural self-government had compiled a register of 13,998 Germans. It had taken over the management of about a quarter of the 25 German-language schools which catered for 3,456 pupils. Steps were taken to implement a standard curriculum throughout German schools (Housden (2004:233)).

Why did the German minority have such an interest in cultural autonomy?

As Martyn Housden observes, there were several factors like the fear of persecution, relatively low numbers and a geographical distribution which made it impossible for them to control local administrations in the provinces. The most important element was, however, that cultural autonomy strongly related to the historical experiences and to the élite sense of identity of the Baltic Germans in Estonia (Housden (2005:234)). Werner Hasselblatt, whom is depicted by some as the father of the law, regarded cultural autonomy as a means for preserving distinctive historical experiences of the Baltic German community, which he saw as superior to the native population. Cultural autonomy worked in any case with disproportionate effectiveness for the German minority (Housden (2004:238-239 and 243-244; also: Garleff (1983:113-132)).

From the spring of 1925, the Jewish minority also tried to obtain cultural autonomy. The request was formulated on 19 October 1925 and the elections to the Cultural Council were held in May 1926. The election participation was 71 per cent. On 6 June 1926, the Jewish Cultural Council unanimously decided to establish cultural autonomy. The Estonian government took note of this decision on 16 June 1926.

In its first regular session on 20 June 1926, the Jewish Cultural Council appointed the members of the Cultural Government and endorsed the regulations of the cultural self-government. On 17 October 1926, an Office for Culture, a National Register Office, an Education Office and an Economy Office were established within the Cultural Government (Maddison (1930:33)). Yiddish was the administrative language while Yiddish and Hebrew were the languages in the Jewish schools.

Only the Germans and the Jews, both living in scattered settlements, decided to establish a cultural self-government. The traditional argument goes that for the Swedes, settling in compact form, and the Russians, who were less conscious of identity, the possibilities of general communal self-government sufficed. In districts where minorities made up 50 per cent or more of the population, the Constitution namely provided for state-funded education in the language of the minority concerned. In different municipal government, these groups constituted a majority and a cultural self-government would bring them no added value (Maddison (1930:34); Brunner:137; Alenius (2003)). David Smith and Rein Ruutsoo suggest also other explanations like the inability of the Russians to organise and their weak cultural organisation (Smith D J (2001:9-10); Ruutsoo (1995:563-564)).

The Russian theorist Mikhail Kurchinskii strongly pleaded for cultural self-government. As a member of the centre-right Russian National Union, Kurchinskii was elected in 1926 to the *Riigikogu* where he headed the Russian faction. In 1927, Kurchinskii was one of the first Russian delegates to attend the Congress of European Minorities (Smith D J (1999:458)). In his view, only a cultural self-government could provide an adequate guarantee of the national rights and the cultural development of the Russian minority. He argued that under the existing system of municipal schooling, the Russians only had a limited autonomy in terms of staff selection and the content and development of the curriculum (Smith D J (1999:461)). With regard to the difficult material circumstances of the Russians and the huge sum (320,000 kroons) spent annually by the German Cultural Council, Kurchinskii noted that 65 per cent of

the Germans' expenditure came from the state and local government subsidies, and only 75,000 kroons from the community itself. He argued that 91,000 Russians could easily collect the same sum as 18,000 Germans. Moreover, the territorially dispersed German minority was obliged to maintain more primary and secondary schools than the Russians. With regard to the rural poverty among the Russians, Kurchinskii suggested that cultural autonomy taxes be raised on a progressive basis. The (wealthier) towns would bear a proportionately larger share of the cost (Smith D J (1999:462)).

Evolution of the cultural self-government

At the European Minorities Congress of 1931, the Estonians Eugen Maddison (Maddison held an important civil service post in the Ministry of Internal Affairs) and the President of the Estonian Socialist Party, Mihkel Martna, explained that the system of cultural autonomy had led to a better co-operation and understanding between the Estonian nation and the minorities. The earlier objections proved to be unfounded (Grundmann:350-351; Garleff (1990:101)). The integrative function of cultural autonomy was appreciated by the Estonians. Cultural self-government also exempted the state from the extensive duty to develop an educational system for the minorities (Garleff (1994:499)). According to Simon Dubnow and Jacob Robinson, the autonomy in Estonia was "*the most consistent one*" (Lapidoth (1997:222)).

The Constitution of 1933 left the provisions of Constitution of 1920 regarding the fundamental rights and freedoms unchanged. Whereas the Constitution of 1920 was a 'radical democratic' Constitution, the Constitution of 1933 already contained some features of an authoritarian regime. More and more Estonian politicians warned that cultural autonomy amounted to "*a state within a state*". The Estonian government announced the reform of cultural self-government in order to prevent 'alien bodies' in the Estonian state (Aun:70-71).

The decree of the *Riigivanem* of 29 October 1934 restricted the freedom of choice of national origin. It stipulated that each person, who personally or whose father or grandfather (on father's line) had been listed in municipality on the country, was of Estonian origin, unless he or she could prove to belong to another nation (Angelus:21-22; Hasselblatt C (1996:70); Aun: 71).

The administrative reform of 1934 limited the rights of all self-governments, including those of the cultural self-government. The language law of October 1934 and the language regulation of 3 January 1935 aimed at Estonianisation. On the other hand, minority languages were not removed. On the contrary, the right to use a minority language was explicitly permitted (Hasselblatt C (1996:69)).

While the Constitution of 1920 had stated that every Estonian citizen had the right to choose his or her national origin, the Constitution of 1937 stipulated that every Estonian citizen only had the right to preserve his or her national origin. This restriction of the freedom of choice of national origin was not contested. The Germans feared for example that too many Estonians would enrol in their national register in order to visit the schools of the German cultural self-government (Hasselblatt C (1996:67)). The right to receive education in the mother tongue was not guaranteed in the Constitution anymore, but would be regulated by law. Also the right of Estonian citizens of German, Swedish or Russian origin to communicate with the administration in their mother tongue was abolished. On the other hand, minority citizens retained a constitutional right to establish institutions of self-government. In these localities where they constituted a majority, they could continue to use their mother tongue in relation to the local governments (Hasselblatt C (1996:67-68)).

After the introduction of the system of proportional representation, only the larger, compact Russian minority was able to send representatives to the First Chamber. The Constitution of 1937 however granted the German and Jewish cultural self-governments a common seat in the Second Chamber of the Estonian parliament (Veiter:116; Hasselblatt C (1996:68)). Helmuth Weiss, the vice-president of the German cultural self-government, was the first common representative. In 1937, the state president unilaterally appointed the Jewish representative Gutkin, after the German and Jewish minorities failed to reach an agreement on a common representation (Garleff (1990:102-103)).

Apart from the restriction of the freedom of nationality choice, the cultural self-governments and the national-personal principle continued to exist in authoritarian Estonia. The concept of cultural autonomy remained anchored in Estonian public law. Evidently, the basic principles were weakened (Aun:70-72; Veiter:116).

The practical operation of personal autonomy in Latvia

The school autonomy in Latvia

The organisation of school autonomy in Latvia

The basic principle of the legislation was the principle of general, free and compulsory education in ones' native language. The children of each nation were entitled to education in their mother tongue. The school-aged children (6-16) (article 33 LEI), belonging to a minority, had a right to be taught in the language of their family (article 39 LEI prescribed compulsory education in the language of the family; in all the compulsory schools, instruction had to be given in the pupil's family language). The family language was the language, as declared by the parents, at the registration of the child (subjective criterion) and in which the child could express her or his thoughts (objective criterion) (article 40 LEI). The law foresaw neither a control of the communication by the parents of the family language nor on the expression possibilities of the child. Because it was not possible the challenge the parents' communication, they autonomously decided over the instruction language and the subsequent integration of their child into a certain minority group. This was all the more important because there was no nationality register in Latvia (Laserson (1931:413); Mintz:112).

The right to be taught in one's own language, on the one hand, implied that a minority had the right to demand instruction in its own language from the state. On the other hand, it meant that a minority was entitled to organise its own educational system (Brandenburg:17-18). The Latvian legislation provided both opportunities.

The state and local authorities had to establish for each nation the number of compulsory schools necessary for the education of the children of that nation. Minorities were entitled to require the establishment of a separate class if at least thirty pupils of a certain minority were enrolled (article 41 LEI; according to Engelmann, this was intended for the children, living in the country (Engelmann:21)). To safeguard this right, the law provided for a representative of each minority on the school board (article 58 LEI). A group of pupils, which was too small in number (less than 30) to demand a particular minority class, could enjoy private education in its own language or go to a school with another education language (article 41 LEI).

Furthermore, each minority was entitled to establish its own school for its school-aged children. According to article 3 of the LSA, legal entities and natural persons of a minority could establish and maintain schools, in which instruction was provided in the mother tongue of the minority concerned. When a minority wanted to organise compulsory education, it needed permission from the Latvian Education minister. According to article 2 of the LEI, also legal entities and natural persons were entitled to set up educational institutions provided they received permission from the Education minister. Read together with article 3 of the LSA, this provision also encompassed minority groups.

The programmes of the minority schools had to be on the same level as those of the Latvian schools (article 4 and 14 of the LSA). The Latvian language, history and geography were an obligatory part of the curriculum of the minority schools (Engelmann:22). In principle, the minorities autonomously composed their education programme but this programme needed approval from the Education minister. The minorities were entitled to choose their own teachers. To assure proper educational standards, the law required that these teachers received the same pedagogical and scientific training as Latvian teachers.

The LSA instituted an autonomous educational system for the minorities. It guaranteed the minorities school autonomy.

The whole school system of a minority was directed and administered by one of the special minorities sections of the Minorities Department established within the Ministry of Education (article 6, first sentence LSA). The Minorities Department of the Ministry of education consisted of a Russian, German, Jewish, Polish and White Russian section, each administering their respective school system. These sections could be considered as “*small education ministries*” (Laserson:410). The section was headed by a director of education who fell directly under and was only answerable to the Education minister (article 6, second sentence LSA). The director of education represented his minority group in all cultural questions and could participate in an advisory capacity in the sessions of the Council of Ministers whenever cultural questions were discussed (article 7 LSA).

Awaiting the foreseen statutory representation of the minorities, the director of education was appointed by the Council of Ministers upon recommendation of the parliamentary representatives of the minority (article 8 LSA). Also the other functionaries of the minorities section were appointed by the Education minister (Brandenburg:19) upon recommendation of the minority (article 9 LSA).

Although he was put forward by the minority, the director of education was not answerable to the minority. He was a civil servant who was only answerable to the Latvian state. He was appointed and dismissed by way of a decision of the Council of Ministers (Brandenburg:18). In case of a motion of no-confidence, the Council of Ministers was only obliged to give an official reason for the appointment. It could not be forced to dismiss the director (Brandenburg:18-19).

Each minorities section had a Council of Schools, consisting of the director of education, the leading officials of the subdivisions, three representatives from the teaching staff and three minority representatives (article 10 LSA). This Council was convened by the director whenever necessary and in any case four times a year. It also convened upon request of four of its members (article 11 LSA). According to the law, the Council of Schools could only advise on the opening, restructuring and closing of schools, as well as on the employment and dismissal of officials and teachers. It could make proposals and demand their discussion (article 13 LSA). The Council advised on the base of the proposals of the director (article 12 LSA). The law did not determine which institution actually decided. By way of two ministerial circulars of respectively 11 February 1922 and 15 September 1923 – on the initiative of the Baltic Germans (Engelmann:34) - the Council of Schools acquired the right of decision. Such ministerial decisions, however, did not provide the minorities with the necessary legal security. Such circulars could namely be abolished by later ministerial decisions without a parliamentary debate, let alone decision.

The individual schools were run by school conferences, consisting of the school director, a School Council and a Pedagogic Council (article 15 LSA together with 28-31 LEI). Next to the general administrative tasks, the school conference could recommend the appointment of teachers. The teacher was then appointed by the Education minister or the municipal school administration.

The Latvian state delegated its right of supervision to the inspectors of the obligatory schools. By way of a decision of the Education minister of 28 May 1927, the school administrations acquired the right to appoint their own inspectors. By this, the control right by the general state inspectors was limited to a control on the obligatory instruction of the Latvian language (Veiter:132).

Financial provisions

There was a fundamental distinction between the compulsory and the other schools. Since the compulsory schools taught the obligatory minimum programme required in Latvia, they were supported by the Latvian state to a maximum (Engelmann:21). Specifically with regard to the minorities, the state and municipal institutions were legally obliged to support those compulsory schools of which the establishment was required by the law (article 41 LEI). They were also subsidised to a maximum. The compulsory schools which were established by a minority without the imperative need in the sense of the law, had to be supported by the minority itself (Brandenburg:21).

The programme of other schools went beyond the obligatory minimum curriculum. For that reason, these schools were not subsidised to a maximum. The state and the municipalities were obliged to support minority schools commensurate with their share in the state population (article 2 LSA).

The issue of domestic sovereignty

Moritz Mintz and Max Laserson argued that the minorities in Latvia constituted public corporations. In their view, the minorities were legal entities, enjoying a collective right to have their own school system. In a recent publication, also Ruth Lapidoth terms these minorities as 'collective entities', having the right to have their own schools (Lapidoth:95). Mintz stressed that the law spoke of the "*schools of minorities*" and argued that an autonomous school system with its own institutions presupposed a minority constituted as a legal corporation. In his view, this was explicitly confirmed by the law itself, which foresaw a "*statutory representation of the national minorities*" (Mintz:113). Laserson qualified the national minority as a subject, enjoying the right to have national autonomy. Like Mintz, he referred to the legal terminology (*Schulen der Minderheitennationalitäten*). The school system belonged to the minorities as 'entities of public law' being part of the Latvian state nation. The whole organisation of the school system was a reflection of the minority group as such. Only as an entity of public law could the minority be considered as an organised component of the Latvian state nation in the sense of the Political Platform. In Laserson's view, the institutions of the school autonomy were not educational institutions but institutions of the minority itself (Laserson:410-412).

This thesis was rejected by other authors.

Both Engelmann and Brandenburg argued that the minorities in Latvia were not corporations of public law because they had never acquired such legal personality. The aim of the proposals of minority representatives was exactly to convert minorities into corporations of public law. Engelmann described the minorities in Latvia as “*sociological collectivities*”. Both lawyers weakened Mintz’ argument that the parliamentary representatives were in fact minority institutions. In their view, each member of the *Saeima* was in the first place representative of the “*whole people*”. Engelmann further indicated that the later article 14 of the Constitution explicitly enacted the representation of the “*whole nation*” by each member of the Parliament (Engelmann:16; Brandenburg:19).

Theodor Veiter qualified the role of the parliamentary representatives of minority parties in the system of school autonomy even as a violation of constitutional law. This could namely lead to a politicisation of the objectives of the nations (Veiter:133-134). Contrary to Estonia, the minorities in Latvia could not constitute themselves into public corporations to which the state then delegated competences. By way of their parliamentary representatives, the minority groups only made recommendations for certain appointments. The minorities only participated in the administration of the state education. They were not subjects of school autonomy. The only subjects of school autonomy were the administrations of the school system, namely the director of education and the different civil servants. The statutes of the Ministry of education of 1929 explicitly provided for each minority a school administration (article 22 of the statutes of the Education ministry provided a school administration for the Russian, Jewish, Polish and Belorussian minority). Veiter underlined that the director of education and his civil servants were not institutions of an autonomous organisation but pure institutions of the state. The law did not transfer competences. The school administrations only implemented the agenda and the tasks of the Education ministry (Veiter:130 and 133).

The school autonomy for the minorities in Latvia was indeed not a full autonomy. Werner Hasselblatt perfectly summarises the whole system as “*the division of the state administration in national-cultural departments or sections*” (Hasselblatt W (1948:34)). In this regard, Michael Garleff observes that the 'school autonomy' in Latvia was administered by a special department *within* the Education ministry. It was not directed by a public corporation (Garleff (1990:98); also: Veiter:130-134).

Much more than the public corporations in Estonia, the school administrations of the minorities in Latvia depended on the ever changing general political situation and governments. In right-wing governments, the German minority and the Jewish representatives of the '*Agudat Israel*' were able to influence the school administration. In left-wing governments, the Zionists and radical Russians gained the upper hand (Garleff (1990:98)). Samuel Friedman notes that on one occasion, there was a serious conflict between the Jewish minority and the officials of the Jewish department. The officials intended to russify the Jewish schools, while the Jewish minority itself stressed that the Jewish pupils had to be instructed in Hebrew or Yiddish. In case of a possible conflict between the minorities and the government, it was possible, in his view, that a minority department was composed of people loyal to the government (Friedman:166).

Cultural autonomy in Latvia

Important to note is that contrary to the Estonian Constitution, the Latvian Constitution did not contain an 'autonomy guarantee'.

The Latvian rump constitution of 15 February 1922

On 17 and 18 April 1920, elections to the Constitutional Convention were held. In the balloting, in which nearly 85 per cent of the electorate took part, 24 political parties and voter groups fielded candidates. 152 delegates were chosen. Most votes went to the Social Democratic Workers Party (52 seats) and the Latvian Agrarian Union (26 seats). Several political parties representing the largest minorities (Germans, Jews and Russians) gained at least one seat in the Convention (Zile (1999:312)).

The Constitutional Convention opened on 1 May 1920 with a three-prolonged mandate: to act on urgent legislative bills, to work out a comprehensive agrarian reform, and to debate and adopt a constitution.

Before turning to its principal task, the Convention issued a brief Declaration governing the State of Latvia on 27 May 1920. On 1 June 1920, it passed a set of provisional regulations on the structure of the Latvian state. The declaration consisted of two short sentences: "I.

Latvia is an independent Republic based on the principles of a democratic country. 2. The sovereign power of the Latvian State belongs to the Latvian people.". The evident purpose of this declaration was merely to reinforce the 18 November 1918 proclamation which had been backed by a gathering less representative than the Constitutional Convention (Zile (1999:313)). The provisional regulations restated the principles announced in the Political Platform in greater detail (Graham (1928:694-695)).

The Convention chose a twenty-six-member Constitutional Committee. This Committee divided itself into two subcommittees, one to work on the state structure (Part One), the other on individual rights and freedoms (Part two).

With the help of the Social Democrats, Paul Schiemann and other minority representatives managed to enshrine two 'minority articles' in the draft of the Constitution (Garleff (1990:92)). On 7 February 1922, the Constitutional Committee approved the two articles. Article 115 guaranteed persons belonging to minorities the right to use their own language and foresaw a future legislation regarding the use of languages in the state institutions and the judiciary. Article 116 stated that minorities could establish their own public corporations to handle their national and cultural affairs. A special law would determine the entitled subjects and regulate the institutional structure and competences of that corporation (Mintz:110). As Gert Engelmann notes, these articles provided the basis for a cultural autonomy, modelled on that of Estonia (Engelmann:16).

The final text of the whole Part Two, containing the individual rights and freedoms and the two 'minority articles', was however rejected in a third reading on 5 April 1922 because of the abstention of the Social Democrats and the representatives of Latgale. These political groups did not reject the autonomy for minorities but were opposed to other parts of the chapter. The Social Democrats did not want to accept limitations on the right to strike, while the Catholic representatives of Latgale fulminated against the separation between church and state. The latter also strove for territorial autonomy for Latgale (Silde (1990:65)).

On the one hand, the Latvian Constitution (Graham (1928:338-343 and 695-705); also: Zile (1999:314-316)) vested the sovereign power of the Latvian state in "*the people*" (article 2: "*The sovereign power of the Latvian State shall be vested in the people.*"). Sovereign was not the 'Latvian nation', 'the ethnic Latvian people' but the whole population of Latvia, the whole state nation including the minorities (Von Stryck-Helmet (1928:53)). The Constitution placed

persons belonging to minorities on an equal footing with the members of the majority nation (article 82: "*All citizens shall be equal before the law and the Courts of Justice.*"). Minority members had the same civil and political rights as the Latvians. In this way, they could actively participate in the public life of the Latvian state (Engelmann:17).

On the other hand, it did not contain a list of individual rights and freedoms like the Estonian Constitution and also no guarantee that the promise of autonomy would be held. This is why Paul Schiemann termed the Latvian Constitution as a 'rump constitution' (Hiden (2004:84); Dribins:291).

The attempts to establish cultural autonomy

After the rejection of the Jewish draft by minister Kaspersons, the discussion regarding cultural autonomy had been postponed to the spring of 1921.

By June 1921, the Committee of German Balt parties had formed an 'autonomy commission' which elaborated some legislative proposals. This commission contacted German minorities in other countries and other minorities in Latvia. In particular, the co-operation with the Baltic Germans in Estonia and the discussions with the Jewish representatives (above all Mintz) proved to be fruitful.

Only the first draft strove for a general minority autonomy. On 8 June 1921, this proposal was converted into a particular bill specifically relating to the German community in Latvia. On Schiemann's explicit advice, the draft excluded minority social welfare needs (except where state or municipal provision was poor) in order not to offend the Latvians (Hiden (2004:83)). The German minority did not want to act together with the other minorities; it wanted to maintain a free hand in the development of the bill and in the choice of options. However, the Germans internally disagreed over the exact content of the proposal. The Progressive Party (*Fortschrittliche Partei*) and the Manufacturers' Association (*Fabrikantenverein*) rejected the foreseen obligatory taxes. They feared for a flight of capital, resulting in a demographic decline of the German minority. The Progressive Party also considered the obligatory national register as a restriction of the free will. But finally, it sided with the other German parties to avoid a fragmentation of the German minority. On 25 March 1922, Paul Schiemann submitted the bill to President Caskste, requesting the consideration of the draft by the Constituent Assembly.

The German attempts to push through the bill failed. Because of both internal and external reasons, the second draft was postponed until the end of 1923. On the one hand, the minorities only had a weak influence on the then Latvian government. On the other hand, the Baltic Germans wanted to await the result of the negotiations in Geneva regarding the Latvian minority declaration. After the approval of the declaration in September 1923, the Germans hoped for more concessions, all the more so because five minority representatives were members of the then coalition government. On 15 September 1923, the German faction proposed in the Public Law Commission the 'Legislative project concerning the national cultural autonomy for the German national community and the use of the German language in Latvia' (Hiden (2004:100)). According to Schiemann and the Baltic German faction, each minority had to be granted its own autonomy law in order to develop autonomously its individual and unique culture.

Also the other minorities submitted bills. These drafts were modelled on the German bill to ensure that the Baltic Germans received no preferential treatment (Hiden (2004:103)). Because of the particular confessional, cultural and ecclesiastical interests and features of the Russian and Jewish minority (Mintz:116; Erler:296), these bills differed from each other on some issues. The drafts had in general a similar structure. The first chapter treated the organisation of the minority, the second regulated the school system and the third pertained to the use of the minority language.

In the German bill, all the Latvian citizens of German origin were obligatory members of the German community, which was a public corporation. An indication in the identification card determined who belonged to the German minority. Initially, the Estonian system of a national register was foreseen (Veiter:223). An individual had a free choice of nationality and this indication could thus be changed. The actual subject and most important institution of the autonomy was the *Nationalrat*. This was the central organ, consisting of 58 members. It assembled at least once a year in Riga. The 12 *Bezirksräte* had legal personality. Both institutions were composed by way of general elections.

The German bill provided that the German minority would autonomously administer its cultural affairs, school system and welfare. It foresaw only a limited financial autonomy. Eventually, self-taxation was dropped. The sources of income consisted of government subsidies, fund-raising and the management of own funds. Further, the draft summed up a few individual language rights like the free use of language in private and public life.

Actually, the chief objective of the draft was the legal anchoring of the different existing regulations. The institutions of the German school system would thus further exist as institutions within the Latvian Education ministry. Evidently, this moderated the officially pursued aim of the draft, namely cultural autonomy (Veiter:224; Erler:297; Plettner:97).

The internal opposition within the German camp increased. Both the left (*Rigasche Nachrichten*) and the right (under leadership of Professor Sokolowski) opposed the obligatory national register and the taxation right. According to Professor Sokolowski, autonomy would erect a 'dividing wall' between Latvians and Germans (Hiden (2004:101)).

This in turn strengthened the argument of the Latvian opponants of the law that German autonomy would create a 'state within a state'. Schiemann dropped the national register and the right of taxation and agreed not to consider the *Nationalrat* as a public corporation. On 19 February 1925, the transformed bill was unanimously adopted by the Public Law commission (Hiden (2004:102)).

The bill however met strong resistance in the Education commission. The leader of the Latvian nationalists, Skalbe, started a sharp debate which was continued in the public sphere. In the turbulent months of March and April 1925, Karl Keller offered his dismissal as head of the German school administration which he withdrew afterwards. On 28 April 1925, Paul Schiemann announced before the *Seniorenkonvent* the withdrawal of the bill because of the "demagogic environment". The German faction hoped for its adoption by the following parliament.

Karl Keller indicated some official reasons for the withdrawal of the bill. First, it was necessary to collect and evaluate first some practical experiences of the *Deutsch-Baltische Arbeitszentrale*. Second, he argued that the most important cultural interests were already protected by the existing institutions of school autonomy. Third, Keller explained that the Education commission had been charged with the elaboration of a general education law. The Baltic Germans would first await the impact of this law on the school autonomy.

Schiemann did not end his fight for autonomy and pleaded for a general minorities law. This was resisted by Baron Fircks and Karl Keller who emphasised the historical position of the Baltic Germans. They did not want to be put on the same par as the Russians and the Jews.

Fircks argued that an implementation of cultural autonomy was no longer necessary, given the school legislation, the *Herder-Institut* and the future Education law.

It was only in 1930 that Baron Fircks agreed with a skeleton law, modelled on the Estonian example. The pressing financial situation namely required an obligatory taxation. However, the German group remained divided on the question whether a general law or a special law had to be framed.

The unofficial Baltic German Cultural authority in Latvia

Although a formal full cultural autonomy was never introduced in Latvia, there was an unofficial Baltic German Cultural authority.

The administration of the German school system already started its activities from 1 January 1920, first under Dr. Karl Keller, then under Wolfgang Wachsmuth. The statutes of the Education ministry provided that the administration “*treated all the educational and cultural matters of its people and ensured the education and the schools*” (Von Hehn (1982:11)). The administration was supported by the Teachers’ Union, directed by Friedrich von Samson. This institution reformed the whole of the educational programme for Baltic German schools, and made up any deficit in the funds provided by the Latvian state or the local authorities (Von Rauch (1976:144)).

In 1923, this association merged with all the other Baltic German cultural associations in Latvia to form the Centre for Baltic German Work (*Zentrale deutsch-baltischer Arbeit*) (Von Rauch (1976:144)). This organisation was formally a department of the Committee of German Balt parties. Its purpose was to co-ordinate the activities of all its member associations and institutions (Von Hehn:12). The Centre was established as a result of the failure to integrate minority rights in the Constitution (the articles 115 and 116), and proved all the more necessary when the bill on autonomy was rejected (Brandenburg:14). In 1926, the Centre introduced a system of voluntary taxation (*Selbstbesteuerung*), whereby all Baltic Germans living in Latvia were asked to contribute a regular monthly tithe of between 0.5 and 3 per cent of their income (Von Rauch (1976:144)). This system of voluntary taxation replaced the earlier system of half-yearly fund-raising for educational and social purposes. In the workshops and pharmacies, subscription lists were laid. Germans were visited in their

homes to give a certain amount. Evidently, this system could not compensate the rising expenditures. The Centre was never able to work with a fixed budget because the receipts depended upon the good will of the donors (Boettcher (1928:546)).

In the system of self-taxation, every working German assessed his financial contribution on the basis of the directives of the Taxation Committee (*Selbstbesteuerungskommission*). There was no tax-free income but the family composition and needs were taken into account. According to Wilhelm von Rudiger, self-taxation was the “*litmus test*” to see whether someone really wanted to belong to the German community (Von Hehn:13).

The Centre was fundamentally reorganised. From an umbrella organisation of institutions, it became “*an organisation of tax-payers*”. All persons who joined the system of voluntary taxation, were united in work communities (*Arbeitsgemeinschaften*), of which the umbrella organisation was the Centre for Baltic German Work. The ultimate aim was to unite all Germans in one organisation. For this reason, the Centre was transformed into the Baltic German National Community (*die deutsch-baltische Volksgemeinschaft*) in 1928. This organisation was a completely representative body which was built up from local work communities. They sent their representatives to an elective diet (*Delegiertentag*), which met twice a year in Riga. The elective diet then chose an executive organ (*Hauptvorstand*) which met at least once a month. The German Members of Parliament were by definition members of this executive organ.

Gradually, a custom arose according to which the German faction in the *Saeima* submitted its recommendation for the appointment of the director of education to the *Delegiertentag*. By this, the outside world would know that the German minority, the *Volksgemeinschaft*, was a very knit organisation, consisting of all the Germans (Brandenburg:15).

In 1930, the *Volksgemeinschaft* established special offices (*Amtern*) for different areas, namely the Cultural Office (*Amt für Kulturhilfe*), the Welfare Office (*das Fürsorgeamt*), the Youth Office (*das Jugendamt*), the Country Office (*das Landamt*) and the Office for Employment Advice (*Berufsberatungsamt*) (Brandenburg:14; Von Hehn:13).

Georg Von Rauch noted that although the German minority was not constituted as a public corporation, the private Baltic German National Community fulfilled the same functions as the Baltic German cultural authorities in Estonia (Von Rauch (1976:144)).

Evolution of the school and cultural autonomy

When the law was adopted, not all sides were satisfied with it. The Social Democrats considered that school autonomy alone would not solve the minority problem and pleaded for a special law on national-cultural autonomy. On the other hand, the Right felt that the minorities had been given too many rights and privileges. They only welcomed the fact that the funds for the minority schools would be distributed according to the proportion of inhabitants, rather than the number of children, of a certain national group. The minorities welcomed the law. For example, the Jewish activist Mikhaeli declared: "*This law, unique and unprecedented at the time, was an outstanding achievement by Latvian statesmen who, at the historical moment of setting up their state, succeeded in rising above the ancient quarrels between nationalities and ingrained hatreds of Russia and Germany, and surmounted the fears expressed in many quarters about the danger of cultural autonomy to Latvian sovereignty.*" (Saleniece and Kuznetsovs (1998:243)). The system of school autonomy was first attacked by a decree of Education minister Gailits. He proposed to eliminate the minorities' inspectorate, relegate minority education chiefs to lower salary grades, and enforce the use of Latvian in the conduct of all school administration. After a fight by Schiemann and others, a compromise was reached in late March 1923. Private assurances were given to the German fraction that Latvian inspectors would only gather information, and not issue directives. This arrangement permitted German inspectors to continue in a semi-official capacity, no longer as civil servants but as 'school councillors' of the Baltic German Parent's Association. The inception of a new Meierovics administration on 26 June 1923, and Latvia's preparations to sign a minority declaration only brought marginal improvement in the bargaining position of the minorities. Only after Meierovics' own precarious cabinet was replaced by one under Voldemar Zamuels in January 1924 could the Russian and Jewish representatives in the new government secure a firm agreement not to enforce the decree (Hiden (2004:90-91)).

Nine years after the law had been passed, the leader of the German minority Schiemann wrote: "*unlike the majority of new states, Latvia has recognised the need to develop the culture of its national minorities, passing a law (...) which gave us the right to organise our own education*". The representatives of the Polish, Russian, Belarussian and Jewish minorities agreed (Saleniece and Kuznetsovs (1998:242-243)).

As from December 1931, the Latvian government, under leadership of the Social Democrat Skujenieks, tried to cut back the school administrations of the minorities. The Latvian Education minister Kenins strove for the integration of the minority schools in the general Latvian school administration. Furthermore, he aimed at the removal of the minority inspectors (Kressner:54-55). Kenins unilaterally revised the curriculum in the Baltic German schools and reduced their grants. Eventually, this educational policy was repudiated by a majority of Latvian politicians and this led to an overthrow of the Skujenieks administration in February 1933 (Von Rauch (1974:145); Garleff (1990:99)). In the last months before the coup d'état of 1934, the German representatives in the Education commission tried to extract the school administrations of the minorities from the Latvian state apparatus and transform them into public corporations, modelled on the Estonian example (Garleff (1990:102)). After the coup d'état in May 1934, the autonomous school administrations of the minorities were disbanded. Also the language laws, administrative restrictions and introduction of Latvian programmes strongly harmed the minorities and their educational institutions. Since the legislative institutions no longer existed, they could no longer rely on their parliamentary representatives. The cultural needs of the German minority were henceforth ensured by the '*Volksgemeinschaft*'. The president of that organisation was *de facto* recognised by the Latvian leaders as the representative of the German community (Garleff (1990:102)).

What did the successful implementation of cultural autonomy in Estonia and Latvia actually prove? By the end of the 1920s, the Nationalities Congress, as well as statements by the likes of Martna, implied that fears of a state within a state had been unfounded, and that this system had led to a more integrated state community. The experience of the 1930s would tend to go against this view. However, one has to look at the unfavourable international situation and the fact that the factors disruptive to Baltic democracy and statehood came from outside rather than from within. For most residents of the Baltic countries, both titular and non-titular, the experience of the 1930s would be deemed far preferable to what ensued after 1940, and the inter-war period correspondingly remained a key coordinate when it came to constructing new states after 1991.

PART TWO: FROM USSR TO EU: NEW MINORITIES ON THE INTERNATIONAL CHESSBOARD

In 1940-41 and again from 1944 the Baltic states were absorbed into the USSR and in practical terms were transformed into Soviet republics. Among other things, the period 1940-1991 saw a dramatic change in the demographic profile of these republics, as historically rooted minority groups such as the Germans and Jews all but disappeared, and the Russian-speaking share of the population - especially in Estonia and Latvia - grew exponentially as a result of large-scale inward migration. In the case of Estonia and Latvia this prompted existential fears amongst the titular nationality. The national movements that later emerged in these republics during the 1980s therefore regarded the restoration of nation-statehood not merely as a question of sovereignty, but as a question of securing the long-term survival of titular language and culture. The 1980s independence movements were buoyed by collective memories of inter-war independence as well as by memories of the forcible incorporation of 1940. Their guiding principle became the concept of legal continuity, which held that the 1940 incorporation was illegal under international law and that Estonia, Latvia and Lithuania therefore remained *de jure* independent states throughout the period 1940-1991. The USA and most of the states of the European Union upheld this principle, and in the autumn of 1991 they simply restored diplomatic links with the Baltic states rather than granting recognition to new, post-Soviet states.

This legal continuity concept carried profound implications for the subsequent development of these countries. Geopolitically (and legally) speaking it ensured that the Baltics were not categorised as former Soviet republics, but rather bracketed with the likes of Poland and Hungary as part of a Central and East European grouping deemed eligible for eventual membership of the EU (in a way that, say, Ukraine, Belarus and Moldova were not). In terms of domestic sovereignty, the legal continuity principle carried profound implications for the large Russian-speaking populations in Estonia and Latvia. Here, the legal restoration of independence gave further impetus to those more radically-minded political forces who viewed state and nation-building through the prism of decolonisation. These insisted that if Soviet-era immigrants and their descendents were to be entitled to any citizenship rights at all, this could only be done on the basis of a process of naturalisation requiring applicants to demonstrate knowledge of the Estonian or Latvian language. If the entire Russian-speaking

population were to gain citizenship and full political rights without any preconditions, it was argued, they would use this influence to press for continued close economic and political links with Russia and the CIS, and would insist that Russian be made a second official state language, thereby perpetuating the bi-lingual state order of the Soviet period and the threat to Estonian and Latvian which this entailed. Depictions of the Russian-speaking population as a 'fifth column' appeared all the more plausible at a time when former units of the Soviet Army - now under the control of Russia - still remained stationed on the territory of the three Baltic states.

The subsequent decision by Estonia and Latvia to apply the legal continuity principle to the sphere of citizenship and give automatic citizenship rights only to citizens of the inter-war republics and their descendants resulted in the disenfranchisement - at least temporarily - of much of the Russian-speaking population living in these states. This approach met with a furious response from neighbouring Russia and has elicited a high degree of attention - not to say controversy - amongst academics and political observers in the West. Chapter five examines the approach to state and nation-building adopted by the three states and, in particular, evaluates the systems created in Estonia and Latvia. It argues that the impetus towards legal restorationism was counterbalanced by recognition of post-Soviet realities, meaning that the states created fell far short of the ideals propagated by more radically-minded nationalists. Accommodation of the realities bequeathed by Soviet rule was necessary in order to ensure social stability and continued economic development in Estonia and Latvia, yet it was also essential for realising the two countries' primary long-term foreign policy goal of securing integration with international organisations, most notably the EU and NATO. As will be discussed in Chapter Six, these organisations may have endorsed the principle of legal continuity, but considerations of promoting economic and political stability in the region meant that they were not about to sanction either calls for the physical decolonisation of Estonia and Latvia or for the permanent political marginalisation of up to one third of the population.

Chapter five: The restoration of Baltic statehood.

The disappearance of the old minorities

A secret protocol to the Molotov-Von Ribbentrop Pact of 23 August 1939, actually the very essence of the non-aggression treaty between Nazi-Germany and the USSR, assigned Estonia, Finland and Latvia to the Soviet sphere. A supplementary protocol to the agreement, signed on 28 September 1939, also assigned Lithuania to the Soviet sphere (Smith D J (2002a:23 and 31)). On the same day, Molotov and Von Ribbentrop also signed a secret protocol regarding German emigration from territories within the Soviet sphere of influence.

In October 1939, the Third Reich called for all Germans living in the Soviet sphere of Eastern Europe to relocate to Germany. Tens of thousands of Germans left the Baltic states (Adamson:2; Latvian Institute:8; Van Den Heuvel (1986:69)).

After they had been forced by Stalin to sign mutual assistance pacts, the three Baltic countries were occupied by the Soviet Union in June 1940. The Soviet system was rapidly imposed on Estonia, Latvia and Lithuania. Their earlier state structures were dismantled. The Soviets especially targeted persons belonging to the political, economic and cultural elites of the three countries.

In the period between July 1940 and June 1941, tens of thousands of Estonians, Latvians and Lithuanians were murdered by the Soviets or deported to Siberia (Smith D J (2002a:34); Pabriks and Purs (2002:27); Jubulis (2001:45); Van Den Heuvel (1986:84); Estonia Today, April 2004). Most of the remaining Germans fled the Baltic states.

The launch of operation 'Barbarossa' on 21 June 1941 and the subsequent Nazi occupation of the Baltic states set the stage for the mass murder of the Jews in Estonia, Latvia and Lithuania (Smith D J (2002a:35); Lane (2002:55 and 58); Lithuania. Facts and figures (1999:108)).

With the retreating German army in 1944, between 70,000 and 80,000 Estonians emigrated to the West. Estimates of wartime losses in Estonia stand at 25 per cent or 282,000 people, either dead, fled abroad or deported. It is estimated that Estonia lost 18 per cent of its population between 1939 and 1944 (Smith D J (2002a:xxi)). Estonia lost in any case most of its 'old' minority citizens. The coastal Swedes (some 7,500) escaped to Sweden in 1943-1944

in conformity with a German-Swedish treaty. In 1935, Latvia contained 1,905,000 people, of whom 77 per cent, or 1,467,000 were Latvians. By 1945 Latvia had lost an estimated 600,000 people or 30 per cent of its population (Dreifelds (1996: 143-144 and 146)). Fearful of Soviet repression, 120,000 Latvians fled the country in the final stages of the war (Pabriks and Purs:31-32).

At the time of the second and definitive incorporation of the Baltic states into the Soviet Union, minorities constituted about 10 per cent of the total population of these countries (Mezs, Bunkse and Rasa (1994:12)).

Just before the final occupation by the Red Army, Estonia was a very homogenous country where Estonian-speakers constituted 97.3 per cent of a total population of no more than 800,000 (Vetik (1993:273)). The population of Estonia was 93 per cent ethnically Estonian (Smith D J (2002a:38)). Latvians constituted 83 per cent of a population of some 1,300,000.

The emergence of new minorities

As a result of the definitive incorporation of the Baltic countries in the Soviet Union, the ethnic structure of especially Estonia and Latvia was altered dramatically.

Immediately after the reoccupation by the Red Army, arrests and executions resumed. In the period between 1945 and 1959, some 19,000 Estonians were executed. Between 25-29 March 1949 approximately 21,000 Estonians and 42,133 Latvians were deported. In 1948 and 1949, about 200,000 persons were deported from the Baltic states (Budryte (2005:42)). According to Mezs, Bunkse and Rasa, altogether some 119,000 people were deported in the Baltic countries in March 1949, mostly farmers and their families (Mezs, Bunkse and Rasa:12).

It is estimated that in Lithuania the mass deportations alone between 1944 and 1949 totalled some 350,000 people. This figure does not include the tens of thousands who were deported from Lithuanian prisons after secret trials. In late 1944, there were around 30,000 deportees, in August/September 1945, an estimated 60,000; in February 1946, perhaps 40,000; in late 1947, 70,000; in March 1949, 40,000 and in the summer of 1949, another 40,000. Altogether,

at least ten per cent of the Lithuanian population was forcibly transferred to other parts of the Soviet Union (Lane:62).

Together with the decrease of the native population, the number of ethnic Russians and Russian-speakers rose dramatically. The influx of Russian and Russian-speaking immigrants had several causes. The massive immigration was intended to establish Soviet control, to rebuild the economies of the Baltic states and to start a massive industrialisation (Gray (1996:77)). Many immigrants were industrial workers, sent in to start the forced large-scale industrialisation or to rebuild existing devastated industries. Many of them replaced the native people killed earlier by the Soviets and the Nazis. An extensive industrial development created workplaces and would at the same time tie these countries to the Soviet economy. Next to the massive industrialisation in general, the reconstruction and expansion of Estonian oil shale mines and power stations was needed to supply the Leningrad areas with electricity, oil shale gas and articles of basic consumption. Other large groups were the apparatchiks. They would Sovietise civilian government and the military and build and staff the new military bases. The Soviets namely encountered difficulties in finding loyal cadres to fill positions in the administrative apparatus. Therefore, they massively positioned trustworthy cadres from elsewhere in the Soviet Union. Many of the cadres sent to Estonia and Latvia were ethnic Estonians and Latvians who had grown up in the Soviet Union and only spoke Russian (Jubulis:46). In general, Moscow's policy was to mix nations in order to strengthen control over the peripheral regions.

Already by 1950, the percentage of Estonians in Estonia had dropped from a pre-war 92 per cent to 76 per cent. The situation in Latvia was even more threatening to the native population. The percentage of Latvians in Latvia dropped from about 83 per cent in 1945 to only 60 per cent in 1953 (Gray:78). At least 200,000 Russians and persons of other nationalities immigrated into Latvia from 1944 to 1953. More than 213,000 non-Estonians came to Estonia in the period 1945 to 1953. From 1944 to 1959, at least 150,000 Russian speakers immigrated to Lithuania (Budryte:43).

Between 1959 and 1970, the number of Russians, Ukrainians and Belorussians in Latvia rose sharply with 32 per cent, compared with a growth of 3 per cent for the Latvians. Thereafter, the three Slavic peoples grew more slowly, namely with 17 per cent between 1970 and 1979 and with 11.8 per cent between 1979 and 1989. However, the Latvians grew with only 0.2 per cent in the former period and 3.3 per cent in the latter, hence their proportion in the

population continued to decline. In the 1989 Soviet census, the three Slavic peoples accounted for 41.9 per cent of the total population, compared with 10.2 per cent in 1935. Latvians, by contrast, constituted only 52 per cent (1,387,800) of a population of 2,666,600 (Dreifelds:146-147).

In 1970, the number of non-Estonians was 430,000; in 1979 it was 520,000. During the Soviet occupation, the number of non-Estonians increased 26-fold, namely from 23,000 to 602,000. At the same time, the number of Estonians decreased from about 1,000,000 in 1940 to 965,000 (61.3 per cent) in 1989 (Vetik:273-274).

On the other hand, the population structure of Lithuania was not fundamentally altered. The Soviet authorities tried to break the massive resistance of the Lithuanian peasants and the strong military resistance movement (Brotherhood of the forest) by way of a total war and massive deportations. But in proportion to the total population, immigration was much larger in Estonia and Latvia than in Lithuania. Lithuania had always been a predominantly agrarian economy. Compared to Estonia and Latvia (oil shale, metal manufacture), it had a less developed existing industrial base. Again in contrast to protestant Estonia and Latvia, catholic Lithuania had a high birth rate. After the war, there was a relatively low level of investment. The resistance war and the consequential slow rate of economic growth ensured that immigration would not fill the gap, left by the population losses. The relatively high rate of natural increase fulfilled this function (Lane:73-74). There was also another important difference. Lithuanians joined the Communist Party in much greater numbers than the more reluctant Estonians and Latvians. In 1945, 31.8 per cent of the party members in Lithuania consisted of Lithuanians, in 1959 55.7 per cent and in 1973 69.1 per cent. In the late 1980s Latvians still accounted for only 39 per cent of the membership of the Latvian communist party. In 1952, 56 per cent of the members and candidate members of the Central Committee of the Lithuanian Communist Party were Lithuanian and in 1971 even 78 per cent. Similar shifts occurred in the Lithuanian Politbureau (Van Den Heuvel (1986:110)). Many Lithuanians understood that joining the communist party would help to protect their national identity and foster their national interests. In this regard, the popular Lithuanian communist leader Antanas Snieckus played a crucial role. Because of their influence in the communist party, the Lithuanians were able to ward off most of the industrialisation and the subsequent immigration (Mezs, Bunkse and Rasa:13). Also important to note is that industry in Lithuania was decentralised, in the sense that there was a sufficient pool of local workers in most

provincial towns and cities to reduce the need of imported Slavic labourers (Alpine (1998:363)).

The result of this was that at the end of the Soviet occupation, ethnic Lithuanians constituted 80 per cent of the total population of Lithuania. On the other hand, the composition of the minority population had been changed radically. The Jews (1989: 0.34 per cent) and Germans (1989: 0.06 per cent) had been replaced by large Slavic groups. The Russians had become the largest minority in Lithuania with 8.5 per cent in 1989 (figures in: Lithuanian society). The growth of the Polish minority with 3 per cent (7 per cent of the total population in 1989) is due to the integration of the Vilna region in 1940, which before had belonged to Poland (Brunner (1996:41)).

The massive immigration of Russians and Russian-speakers not only altered the population structure of these countries but also led to the replacement of the native languages by the Russian language in several functional domains (Rannut (1994:198)). As Ozolins observes, Russian became a majorised minority language - a minority language in terms of numbers, but with the power of a majority language - whereas the Baltic languages became minorised majority languages. The immigrants treated the Baltic countries as an extension of the Russian cultural environment. They expected and demanded that the native people spoke to them in Russian. Russian-speaking workers or officials could work using Russian alone. This meant that the natives needed to be able to speak Russian in order to work with the Russian speakers or receive services from them. The obligation to become bilingual was thus solely on the shoulders of the native population, while Russian-speakers could continue to be monolingual. This is termed as a situation or process of asymmetrical bilingualism (Ozolins (1999:10)).

The restorationist principle

Graham Smith (Smith G (1996:132)) and Nils Muiznieks (Muiznieks (1997:379)) argue that the historical memory of the former 20 years of independent statehood and the rejection of the myth of voluntary incorporation into the Soviet Union constituted the most powerful resource for the nationalists. They wanted to restore their 'historic homeland'. So, when at Christmas eve in 1989, the People's Congress of the USSR rejected the secret protocol of the Molotov-Ribbentrop Pact, declaring it illegal and invalid from the moment of its signature

(Koskenniemi and Lehto:190), this meant for the Estonians, Latvians and Lithuanians that the Soviet parliament officially recognised their right to reclaim their interwar independence (Lauristin and Vihalemm (1997:87)). Kristina Spohr Readman, however, claims that there was no direct link made between the pact and the forced annexation of the Baltic states. Moscow disconnected the two issues and refused the right of the Baltic republics to reclaim their lost independence (Spohr Readman (2004:22)).

In any case, in line with the foregoing, the thesis of state continuity was put forward by Lithuania, Estonia and Latvia in their declarations of independence on respectively 11 March 1990, 30 March and 4 May 1990. In these declarations, the countries claimed to be identical to the states that had existed on their territory until 1940. The Resolution on the State Status of Estonia announced that the existence of the Republic of Estonia *de iure* was never suspended because its territory had been illegally occupied since 1940. The Declaration on the Renewal of the Independence of the Republic of Latvia announced that the authority of the 1922 Constitution was reintroduced in the entire territory of Latvia. The Act on the Restoration of the Lithuanian State pronounced that the Lithuanian government took full control over its territory once more in the history of the state. Contrary to the Estonian and Latvian declaration, it included no transitional period during which independence would be negotiated with the Soviet Union (Koskenniemi and Lehto (1992:191)). During the coup d'état attempt in the USSR in August 1991, the parliaments of Estonia and Latvia, following Lithuania, declared that their interwar independence had been restored. In its Resolution on the national independence of Estonia, the Estonian Supreme Council reaffirmed the legal continuity of the Estonian Republic as a subject of international law and called for the restoration of pre-1940 diplomatic links on this basis. The Constitutional Law on the Republic of Latvia's status as a state of 21 August 1991 provided that Latvia is an independent, democratic republic in which "*sovereign power belongs to the people of Latvia and its sovereign status is determined by the Republic of Latvia Constitution of 15 February 1922*" (Ziemele (1998:252-253)). Restorationism was thus the basis of state-building in the Baltic states. After they had freed themselves from illegal Soviet rule, the three nations reclaimed their 'historical political homeland'.

Richard Visek criticises this thesis as a 'legal fiction'. In his view, the Baltic states had lost the traditional criteria used to determine statehood: a permanent population, a defined territory, a government and a capacity to enter into relations with other states. Most

importantly, the independence of action of these states was non-existing in reality. He therefore argues that the independence of Estonia, Latvia and Lithuania is not a restoration of sovereignty to existing states but the succession from the USSR of new successor states (Visek (1997:327-329)). Also Martti Koskenniemi and Marja Lehto emphasise that the thesis of continuity is a legal fiction in the 'Baltic case' (Koskenniemi and Lehto:197).

On the other hand, Lauri Mälksoo argues that according to public international law, a state can temporarily continue to exist both in the cases of *occupatio bellica* and *occupatio quasi-bellica*, notwithstanding the annexation accomplished by the occupant. Crucial in deciding the 'Baltic case' is the fact that in the years following the adoption of the Kellogg-Briand Pact, the annexation of a conquered territory became illegal under international law. The Soviet annexation lacked any legal basis (in detail: Meissner (1956); Meissner (1998)), and did not therefore add any further legal title to the occupying power, or *per se* cause the extinction of the Baltic states. These states continued to exist on the basis of the principle *ex injuria ius non oritur* (Mälksoo (2000:307-308)).

EC, CoE and the restoration of Baltic statehood

Most of the Western European countries had always considered the annexation of the Baltic states into the Soviet Union as illegal and thus never recognised it (Klabbers and others (2000: 48, 50 and 52); Yakemtchouk (1991:267-274)). For example, on 28 January 1987, the Parliamentary Assembly (PACE) of the Council of Europe (CoE) stated that the incorporation of the three Baltic states into the Soviet Union continued to be a manifest violation of the rights of peoples to self-determination and underlined that this illegal incorporation had never been recognised by the great majority of European states and by numerous other countries of the international community (Doc. 5567, Resolution of 28 January 1987). In 1979, the European Parliament (EP) voiced support for demands that the Baltic case be examined within the committee for decolonisation of the United Nations (Smith D J (2003:4)). As Mälksoo observes, this policy of non-recognition was very important. In borderline cases of *occupatio quasi-bellica* when the occupant is capable of establishing its power for a considerable time, and indeed even annexes the conquered territory, the reaction of the international community is indeed crucial: "*The final approval of the legal concept of restoration of the independence that followed 51 years of non-recognition policy (that was*

most distinctively articulated by the U.S.A.), was a conditio sine qua non for the continuity to become effective in legal practice." (Mälksoo:313-314).

In spite of this non-recognition policy, the Western countries reacted very cautiously - were even averse to - the independence declarations of the Baltic states. They were namely reluctant to undermine the position of Gorbachev. The letter of 26 July 1990 from the French president François Mitterrand and the German chancellor Helmut Kohl to the Lithuanian president, asking him to suspend the independence declaration of his country, perfectly illustrates this attitude (Kherad (1992:859-860)). This attitude made the Baltic states fear that *"the long-standing support of the West for legal continuity would be compromised and their fate categorised as an internal affair of the Soviet Union"* (Smith D J (2002:157)).

After the bloody events of early 1991, however, the balance between Gorbachev and the Baltic states increasingly leaned towards the latter. After the August coup and in line with their former non-recognition policy of the Soviet occupation of the Baltic states, the European Community (EC) and its member states accepted the Baltic thesis of legal continuity. On 27 August 1991, the foreign ministers of the EC member states issued an extraordinary declaration, warmly welcoming the restoration of sovereignty and independence of the Baltic states which they had lost in 1940 (*"The Community and its member states warmly welcomed the restoration of the sovereignty and independence of the Baltic states which they had lost in 1940. ... It is now time, after more than fifty years, that those states resume their rightful place among the nations of Europe."*) (Bull. EC 7-8/1991, 1.4.23; European Foreign Policy Bulletin Database, Nr. 91/251). On 30 August 1991, also the Committee of Ministers of the CoE welcomed *"the restoration of the sovereignty and independence of Estonia, Latvia and Lithuania which will enable these states, after more than fifty years, to resume their rightful place in the democratic nations of Europe"* (Declaration (91) 5). Subsequently, most of the Western countries resumed diplomatic relations with the Baltic states, which they considered to have been restrained during occupation (Ziemele:252; Klabbers:96).

The decision of the EU-member states was of course facilitated by the fact that Russia had immediately accepted the Estonian and Latvian declarations of independence. Ukraine followed suit on 26 August 1991. Important to note is that Russia and Ukraine were non-recognised entities and still part of the Soviet Union which refused to recognise the independence of the Baltic states. Thus, the acts of Russia and Ukraine played a very important role. The Estonian international lawyer and former Estonian foreign minister, Rein

Müllerson, notes that the illegality of the incorporation itself was certainly not enough for the recognition of these countries because at that time Estonia, Latvia and Lithuania were still not in control of their territories and the Soviet Union had still not recognised their independence. Even on 27 August 1991, at the session of the Supreme Soviet of the USSR Gorbachev insisted that republics which wanted to secede from the USSR, had to do so in accordance with the Soviet Law on secession passed in 1990. The Soviet Union only recognised the Baltic states on 6 September 1991 after many countries had recognised them. In Müllerson's view, the acts of the EU and its member states were therefore no simple acts of declaration of fact but instead contributed to the achievement of independence (Müllerson (1994:120-121)).

Important to note is that the acceptance by the EC member states of the restoration thesis on the basis of state continuity neatly fitted into the then international political situation. As Roland Rich observes, it was important in August 1991 to distinguish the Baltic states from other former Soviet republics which were also claiming independence: "*In Western capitals around the world there was concern not to give green light to the forces calling for the dismemberment of the USSR because of fears over instability in a nuclear armed superpower.*" (Rich (1993)). Political opportunity was indeed a determining factor in giving the Baltic states a special treatment that could not be invoked by other countries still belonging to the USSR (Verhoeven (1993:13)).

The declaration of 27 August 1991 had far-reaching legal consequences. Through it, the EC and its member states formally agreed with the thesis of the Baltic states that they did not constitute successor states to the former USSR and would therefore be free of such rights and obligations that would be consequential upon succession (Shaw (1997:678)). In the field of citizenship, the acceptance of the restoration thesis by the EC member states implied that "*the West implicitly gave the green light to exclusionary policies vis-à-vis Soviet-era settlers*" (Smith D J (2001:17); Smith D J (1997); in the same sense: Heidenhain (2004:331)).

Restoration of the political community

Because the Baltic nations restored their 'historic homelands', also the membership of these homelands or 'communities of fate' was restored, a membership which is limited to the residents of pre-1940 Estonia and Latvia and their descendants (Smith G (1998:96);

Budryte:8). As the late Estonian president Lennart Meri explained, the memories of past wrongs and yearnings for restitution became constitutive elements of political community building (Budryte:69).

On 15 October 1991, the Latvian Parliament adopted the Resolution on the Renewal of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalisation. This resolution stated that "*the aggregate body of Republic of Latvia citizens, in accordance with the Republic of Latvia 'Law on Citizenship' of August 23, 1919, continues to exist.*". With this resolution, two-thirds of the population of Latvia qualified for immediate citizenship, while one third (approximately 700,000) had to await the law setting the naturalisation procedure. Soviet immigrants were considered as foreigners or stateless persons, who could acquire Latvian citizenship only by fulfilling the designated conditions for naturalisation. The general guidelines for naturalisation required sixteen years' residence, a knowledge of and loyalty to the Latvian Constitution, plus proficiency in the Latvian language on a conversational level. With a few changes, these guidelines were incorporated into a new citizenship which was passed on the first reading in November the same year. This law however did not acquire legal force because it was not adopted in a second and third reading (Kolstoe (1995:124)). Only those who were members of the interwar-state and their descendants had the right to participate in the first elections of the restored state. As a result of this, only 64 per cent of the resident population was eligible to participate in the elections of 5-6 June 1993 (Gelazis (2004:228)).

By Decree of the Supreme Soviet of the Republic of Estonia, the Law on Citizenship of 1938 in the version of 16 June 1940, was put into force on 26 February 1992. Like the Latvian resolution, this law applied the principle of *ius sanguinis*. Only citizens of 1940 Estonia and their direct descendants who wanted to become Estonian citizens had to go through a process of naturalisation. They had to comply with the prerequisite of a two-year residence, be living in the country for a further waiting period of one year after filing their application, give proof of knowledge of Estonian language, swear an oath of allegiance to the Estonian Constitution and have no reason for exclusion (e.g. as members of the armed forces of foreign states, former staff of the Soviet security bodies) (Brunner (1996:42-43)). It was simultaneously decreed that the period when proof of residence became a requirement should begin on 30 March 1990, with the consequence that the earliest moment of naturalisation was 1 April 1993. Consequently, Soviet immigrants were excluded from voting on the constitutional

referendum as well as in the parliamentary and presidential elections of 1992. This affected almost 40 per cent of the population of voting age and almost one third of the population of Estonia.

These decisions were perfectly in line with international public law. Ziemele explains that from a legal point of view, citizenship has a direct relationship to statehood (Ziemele (1997:32)). Under public international law, if a state continues its international legal personality, its citizenship continues along with it. A state is under no obligation to withdraw its citizenship in those situations of transfer of a territory which are inconsistent with international law. An automatic conferral of citizenship on the population of Estonia and Latvia in consequence of the annexation in 1940 would have been unlawful under international public law (Ziemele (1998:256-257)).

From a political and psychological point of view, one can argue that in liberal nation states, nationhood is shaped by shared political experience and that a nation derives its rights and its power from the memory of a previous independence. The independence movements in the Baltic states equated the Soviet past with evil because of the repressions, deportations and russification. Therefore, it was impossible in their view to 'derive rights' from this past. Consequently, the only 'usable' past that was left for these nations was the experience of independent statehood in 1918-1940. The prewar citizens and descendants had a close connection with this past, contrary to most of the post-war immigrants. The latter were, therefore, excluded from this restored political community (Budryte:71).

But this is also the very reason why Estonia and Latvia cannot be accused of attempting to create a mono-ethnic nation-state. The *whole* political community (and their descendants), irrespective of ethnicity, language or culture, of the 'historic state' was namely restored. In Estonia, automatic citizenship was granted to some 80,000 ethnic Russians (Smith D J (1998:303)). In Latvia, nearly 375,000 non-Latvians, including 278,000 Russians (38 % of all Russians) were included in the initial body of citizens. Further, the absolute majority of some ethnic groups, such as Poles (62 %) and Gypsies (90 %) were granted automatic citizenship (Jubulis:110).

The post-war settlers and their descendants had and have to go through a process of naturalisation. This is justified through the so-called 'Baltic loyalty argument'. Post-war

settlers must first demonstrate their loyalty to the Estonian (Latvian) state before getting political rights. The naturalisation process is a means of judging whether these settlers want to break with their Soviet past (Smith D (1998:304)). In this regard, Seraina Gilly (correctly) argues that the acceptance of a state by the majority of its citizens is the most important basis of the stability of that state and its national and cultural identity (Gilly (1995:607)). The citizenship law is not only legitimate from a historical and legal point of view, but also necessary for the stability and tranquility of these states. For example, on 3 March 1991, only 25.5 per cent of the (participating) people in Narva voted for the restoration of Estonian statehood, against an average of 78 per cent (Gilly:610). Also Jennifer Jackson Preece argues that Estonia and Latvia had good reason to fear that granting automatic citizenship to their substantial Russian minorities would compromise their independence: "*Granting citizenship to an ethnic Russian community that was relocated to the Baltic states by Stalin in order to ensure Soviet political control and who received privileges during the Soviet era would be a threat to the national identities and independence of these states.*" (Jackson Preece (1998b)). It was indeed put forward that settlers might use automatic citizenship and political rights to press for the maintenance of close political and economic ties between Estonia and Russia, at a time when Soviet troops were still stationed in Estonia (Latvia). The political representatives of the settlers would then also argue for the establishment of Russian as the second official language before the Estonian or Latvian language had even been fully restored to predominance (Smith D (1998:299)). In this line, the Latvian Supreme Council stated in 1991 that "*only people who identified with the independent state of Latvia and its democratic form of government could be offered citizenship. Thus the requirements for naturalised citizenship reflected this logic by encouraging potential citizens to become integrated into Latvia through residence, acquiring basic Latvian proficiency, acquiring basic knowledge of Latvia's constitution, renouncing competing citizenship, and taking a loyalty oath*" (Sprudz (2001:147)).

In the literature, it is frequently argued that the Lithuanians adopted a relatively liberal policy on naturalising Soviet-era immigrants because they felt that they could accommodate a sizable proportion of non-Lithuanians (around 20 per cent), without sacrificing their sovereignty or native language and culture (Gelazis:228). Even before its declaration of independence from the USSR on 11 March 1990, Lithuania adopted its first citizenship law on 3 November 1989. According to this law, the citizens of inter-war Lithuania as well as their descendants constituted the body of citizens. However, also a so-called 'zero-option' was introduced. This

implied that permanent residents of non-Lithuanian origin (with the exception of personnel in the USSR armed forces and security service) were free to acquire citizenship within a period of two years, irrespective to ethnic origin, language or religion. Nor were there any other requirements than a permanent place of employment or another constant legal source of support. It is estimated that about 90 per cent of the permanent residents opted for citizenship during this period (Council of Europe, Doc. 6787:11).

According to Jubulis, this view of a liberal Lithuanian citizenship policy totally ignores the political context surrounding the passage of the Lithuanian law. It was a citizenship law which was passed by the *communist* government, and which pertained essentially to citizenship in the Lithuanian Soviet Republic, not the independent republic of Lithuania. Therefore, the more inclusive approach should not be interpreted as a sign that the Lithuanian nationalists were more 'civic' as opposed to 'ethnic' nationalists, but rather as a sign that the Lithuanian communists were more nationalistic than the communist governments in Estonia or Latvia in 1989. What mattered in Lithuania in 1989, was not the content of the citizenship law but the very fact of instituting an autonomous citizenship. Citizenship functioned as an anticipatory emblem of sovereignty. Since even this move was rejected in Moscow, it is very doubtful that Lithuania could have passed a more exclusive law in 1989. Furthermore, Lithuania could not afford to take a strict line on the issue of legal continuity because it would have meant giving up territory, including the capital city of Vilnius, which was not part of Lithuania in 1940. Thus, there were several other factors at work besides ethnicity, which contributed to a different approach to the citizenship question in Lithuania, as compared to Latvia and Estonia. The demographic dimension made it easier for the Lithuanians to accept this approach in citizenship, but it did not cause them to choose a more inclusive policy (Jubulis:110-111).

The law of 3 November 1989 was replaced by the Citizenship Law of 5 December 1991 as the two-year period had expired. The persons who obtained citizenship under the first law, were included in the body of citizens as defined in the new law. The 1991 law entitled all citizens and permanent residents of Lithuania before 15 June 1940 and their descendants to become citizens of the newly independent state. It also laid down the criteria for naturalisation of new citizens. Applicants must pass a written and oral examination of the Lithuanian language and the basic provisions of the Constitution, and must have lived in Lithuania for at least ten

years, and have a permanent place of employment or a constant legal source of income (Gelazis:227).

Next to the citizenship laws, the Baltic states also enacted language laws in order to return to the situation which had existed before the Soviet occupation. After the respective core nation language was again made the official language and the Russian language was put in an subordinate position in 1988-1989, further language laws in Latvia (May 1992) and in Estonia (June 1993 and March 1995) completed the process of de-Russification by stipulating that anyone applying for employment in public or private sector organisations needs to prove a command of the state language (Smith G (1998:103)). Again under international public law, governments can take measures to correct a former repressive language policy or to protect the language of the native population (De Varennes (1996: 99 and 246)).

By depriving the Russian settler communities of particular political rights and through state language policies, the Estonians and Latvians secured an institutionally superior position and status for themselves in the political legislature, education, the law courts and in the public administration. In Ruus' words, "*the core institutions of the state - the executive, the legislature and the judiciary - are insulated from minority influence*" (Ruus (2002:31)). The question in the next pages is whether these states granted the large Russian-speaking population certain collective rights in the cultural and other spheres.

Cultural autonomy and other issues of domestic sovereignty in Estonia

The Russian-speaking schools

Despite the laws designed to restore the primacy of Estonian in public life, non-titular nationalities did enjoy continued collective rights relating to the practice of their culture. These included first of all the retention of the network of Russian-language primary and secondary schools inherited from the Soviet era.

Without going into detail, it is indeed important to note that publicly-funded education in the Russian language continued to be available from kinder-garten through secondary schools, as

well as in vocational schools. However, this very liberal access to minority education enjoyed by Russian-speakers is set to diminish beginning in 2007. The 1997 Law on Basic and Secondary Schools established that all secondary schools would become 'Estonian language institutions', and that the "*transition to instruction in Estonian shall be started in state and municipal upper secondary schools not later than in the academic year 2007/2008*". An amendment of April 2000, however, allows for schools wherein 60 per cent of the curriculum is taught through Estonian to be considered 'Estonian language institutions'. Schools would have flexibility as regards the remaining 40 per cent of their curriculum. Thus, in practice, from 2007 all secondary level schools would be Estonian language institutions, but some may still offer up to 40 per cent instruction in other languages. This will apply even in areas where Russian speakers form the great majority of residents. Instruction in the mother tongue of minorities remains in force in primary schools (RFE/RL Newline, 5 April 2000). In March 2002, the *Riigikogu* passed a new amendment, according to which full-time Russian language education could continue beyond 2007 where the population so wishes. The deadline for switching at least 60 per cent of the curriculum of upper-secondary schools into the Estonian language is maintained as the rule but exceptions can be granted.

Russian as second working language of local government

Next to this network of Russian-speaking schools, Russian is allowed as a second working language of local government in those areas where Russian-speakers constitute the majority of the population. In those areas, Russian-speakers have the right to receive answers from state and local government authorities and their officials in their native language (article 51 (2) of the Constitution), and authorities may also use Russian for internal communication (article 52 (2) of the Constitution). By this, the Estonian state has tolerated a 'virtual cultural autonomy' in the ethnic enclave of Northeastern Estonia and has extended a high degree of self-governance to local communities. In Budryte's view, this 'ethnic separation' is one of the main reasons why Estonia has managed to maintain a functioning political community (Budryte:9).

The Law on Cultural Autonomy

In Estonia tens of ethnic minority groups joined the movement for independence. By January 1988 a cultural society of Jews in Estonia was founded, and a few weeks later it was followed by a Swedish cultural society. After six months there were already fifteen ethnic cultural associations. In September 1988 the first ethnic minority forum was held, during which complete support for the restitution of Estonia's independence was expressed, along with wishes to preserve the identity and culture of all ethnic groups. On the same occasion a permanent body was elected to represent the political, social and cultural interests of ethnic minorities, the Association of Peoples in Estonia. In 1989, this association proposed the Supreme Soviet Commission for Ethnic Affairs to form a work group that would draft a new law to update the cultural autonomy law of 1925. Considering the drastic changes which had occurred in population and community, the act of 1925 had become obsolete. The new law was prepared successfully and in a relatively short time by the work group that consisted mostly of representatives from the Association of Peoples in Estonia. On 12 June 1993, the act was presented to parliament, and it was passed on 26 October of the same year.

The right to obtain cultural autonomy and to form institutions of cultural self-government is given to the same ethnic groups which this right was given by the law of 1925, and to any other minority totalling more than three thousand persons. The law grants non-citizens the right to participate in cultural autonomy activities, although they may not vote or be elected for the leading organs. An ethnic minority group which is entitled to cultural autonomy can, by direct and uniform elections with a secret vote, elect its own Cultural Council, which constitutes the highest organ of authority. The Cultural Council of an ethnic minority can form regional cultural boards, appoint cultural deputies and found ethnic cultural institutions, schools, social and health care establishments and so on. The cultural autonomy institutions own property and are liable for their financial obligations. Resources originate from specific allocations, partly from the state budget, partly from local budgets, as well as from membership fees and donations from enterprises, organisations and private persons. The resources are used to provide education in the mother tongue, and funds for scholarships and awards for promoting ethnic culture (Estonian Institute, *The Cultural Autonomy of Ethnic Minorities in Estonia*).

On the one hand, one can regard the very introduction of this law as a further indication of the concept of legal continuity and the restorationist model (Smith D J (1998:303); in the same sense: Graudin (1997:105)). The law of 1993 is, however, not a copy of the 1925 law. For example, experts of the Council of Europe criticised the draft because, in their view, the institutions come closer to private associations than to public bodies at variance with the solution of 1925 (Geistlinger (1995:109)). Aarne Veedla, emphasises that the law of 1993 does not permit to establish primary education institutions or schools. A cultural self-government can only establish so-called private Sunday schools, which are financed by the state. These Sunday schools are regulated by the Hobby School Act. If a minority establishes cultural autonomy, it falls under the regulations for Sunday schools (Interview with Aarne Veedla, 8 February 2005). Mr. Veedla claims that Russians are not interested in cultural autonomy because they already have much more rights than cultural autonomy. Russian-language schools are much bigger than the tiny cultural autonomy with its Sunday schools.

Until 2005, no minority in Estonia fully implemented the LCA. Many members of the territorially concentrated Russian minority find that their cultural and educational needs are satisfied by the general state and communal institutions.

The Presidential Roundtable on minorities

A completely other mechanism is the Presidential Roundtable on minorities (PRM). It was established in response to the dangerous political situation which emerged in Estonia in the summer of 1993. In view of local elections in October 1993, political leaders of the Northeast of Estonia, being non-citizens, were barred from running for office. Russians or Russian-speakers make up about 80 per cent of the population of the region. Mayors of Narva and Silamäe threatened to establish a parallel local government. They proclaimed a referendum for local autonomy, immediately declared illegal by the Estonian government. In order to enable between Estonians and Russian-speakers, the President of Estonia, Lennart Meri, established a round table in July 1993.

Its first declaration concerned the planned 'referendum' in Narva and Silamaä. The PRM recommended the postponement of this event until the Supreme Court had reached a decision on the constitutionality of it. Furthermore, the PRM appealed to the Estonian authorities not

to use violence in order to disturb this event and called for more information in Russian on activities of the Estonian government and parliament. At its third session on 12 August 1993, the PRM discussed the first draft of the LCA.

In terms of domestic sovereignty, the PRM is a purely advisory body. It is a standing conference of representatives of ethnic minorities and stateless persons residing in Estonia and of political parties. Its goal is to promote stability, dialogue and mutual understanding between the different population groups (Preamble of the statute of the PRM of 9 September 1993). Initially the PRM was comprised of 5 members of the *Riigikogu*, 5 members of the Representative Assembly, which unites the Russian-speaking population, and 5 representatives of the Union of National Minorities. It elaborates recommendations and proposals for the solution of socio-economic, cultural and legal problems of aliens and stateless persons, the assistance to persons applying for citizenship, for assistance in the learning of Estonian and the preservation of national culture and languages of minority people (article 7 of the statute). The PRM adopts decisions, either by majority voting on procedural questions (article 15 of the statute), or by consensus. The CSCE welcomed the establishment of the PRM. On the other hand, this organisation criticised its composition and suggested that its recommendations put forward to competent state organs, since "*... the Round Table has been devised to ventilate the needs of a larger segment of the population that has no representation in the main legislative organ of the State - the Parliament*" (Uibopuu (1994a:61)).

The PRM played an important role in the resolution of the 1993 crisis. During the next years, the PRM tried to develop this achievement. It elaborated additional recommendations concerning more specific issues and invited observers and experts from different ethnic and social groups of society to attend its meeting. Members of the *Riigikogu* who were also members of the PRM, established a direct link with the parliament. Ministers, including the prime minister, were frequently invited to the sessions and could get direct information about minority opinions and suggestions. Finally, it reached out to the political powers of Estonia (parties, officials and municipalities) (Semjonov (2002:148)).

Gradually, the PRM however began to face problems, which might be considered as typical for advisory bodies. By definition it can not solve a problem. Suspicions became widespread that the PRM only serves a decorative function. According to Aleksei Semjonov, Estonian officials cite at international fora the PRM as a model of a successful mechanism for the

resolution of minority problems, while in Estonian domestic political life, this mechanism remains underused. In his view, both government and parliament accept the PRM's recommendations only occasionally. More frequently they have taken decisions in direct contradiction with the recommendations of the PRM: the (second) Law on Citizenship that tightened the naturalisation procedure, the law on ratification of the Framework Convention on Minority Protection (only citizens are recognised as members of minorities), amendments to the Law on Secondary Education (the end of Russian-language education was postponed but not abolished), the amendments to the Aliens Law (no extension of rights, only cosmetic changes), the amendment of the Citizenship Law in 1998 (children's right to citizenship was slightly extended but in a much lesser degree than the Convention of the Rights of the Child demands). Gradually, less parliamentarians and ministers fully participated in the discussions of the PRM. Semjonov claims that the government has set aside the PRM in the elaboration of the integration policy. No member of the PRM was invited to participate in the elaboration of the document 'The bases of Estonia's integration policy' (Semjonov (1998)). Vello Pettai, professor of political sciences at the University of Tartu, whom I interviewed in Tallinn, recognises this and admits that it would have been better to have involved the PRM. On the other hand, he stresses that the PRM has always been a purely consultative body, which has never been intended as a parallel institution. In his view, the PRM is much more important for smaller minorities. He believes that the present Estonian president is not very interested. Even Lennart Meri's interest was nominal. Much depends on who is running the institution (Interview with Professor Vello Pettai, 8 February 2005, Tallinn).

Cultural autonomy and other issues of domestic sovereignty in Latvia

The Russian-speaking schools

Apart from Latvian-language public schools, ethnic minorities in Latvia can receive state sponsored primary and secondary education in their native language. Russian, Polish, Ukrainian, Estonian, Lithuanian and Jewish public schools exist in Latvia. In 1998 a new law on education was passed. The aim of it is to reform the segregated school system inherited from the Soviet times and faster the integration process. This is to be achieved by improving the Latvian language teaching in the public minority schools where previously all curriculums were taught only in the respective minority languages. In September 2004, the gradual

implementation of this reform was started. The first ones to try out the new bi-lingual education system are the high school pupils starting from the 10th grade in the public minority schools. Primary minority schools will continue to provide education in minority languages. For the high school pupils instead of 3 study subjects that they used to learn in Latvian besides the main curriculum taught in their native language, now 5 study subjects are taught in Latvian.

The Law on the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups

Although the official purpose of the Law on the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups, adopted by the Latvian Supreme Soviet on 18 March 1991, was to guarantee all nationalities and ethnic groups "*the right to cultural autonomy and self-administration of their culture*", the actual text of this law only provides certain individual rights and certain rights of minority associations in the private area. Remarkably is that the stipulations of this law systematically use the terms 'permanent residents', 'nationalities' and 'ethnic groups' (articles 1, 2, 3, 5, 8, 9, 10 and 11 of the law). Under 'national groups', the architects of the law understand groups which have their own statehood outside Latvia, such as, for instance, the Ukrainians, while the term 'ethnic group' refers to those who have no statehood anywhere, such as, for instance, the Roma. In the fall of 1993, the *Saeima* faction of the 'Fatherland and Freedom Party' proposed an amended version of the law. In this version, the right to cultural autonomy would only be granted to Latvian citizens. However, this amendment was rejected by the parliamentary majority (Antane and Tsilevich (1999:76)).

All Latvia's permanent residents have the right to observe their own national traditions, to use their national symbols and to commemorate their national holidays (article 8). Latvia guarantees its permanent residents the right to freely maintain contacts with their fellow countrymen in their historic homeland and in other countries, as well as the right to travel freely from and return to Latvia (article 9). All the permanent residents of Latvia have the right to establish their own national societies, associations and organisations (article 5). Under 'national societies', one can understand co-ordinate organisations which represent the 'national' or 'ethnic group' vis-à-vis the Latvian state, for example by way of a central council.

'Associations' and 'organisations' are more structured institutions which represent the specific interests of national or ethnic groups (Graudin:108). National societies, associations and organisations have the right to use the government mass media, as well as the right to form their own media (article 13, paragraph 1). These cultural societies and organisations also have the right to engage in commercial activities and to enjoy tax privileges (article 14). National and ethnic groups as such have the right to develop freely their own professional and amateur art (article 12). National societies have the right to develop their own educational institutions with their own resources (article 10, paragraph 1). All national and ethnic groups have the right to participate in the activities of the Social Consultative Council on Nationalities of the Latvian parliament and to contribute to the elaboration of Latvian legislation (article 7). Under the law, the Latvian state has several duties. It is the government's responsibility to promote the activity and material provisions of the national societies, organisations and associations (article 5). The government should promote the creation of material conditions for the development of the education, language and culture of the nationalities and ethnic groups, living in Latvia, and allocate financial means for these purposes over the state budget (article 10, paragraph 1). Beate Sybille Pfeil argues that the passage "*should promote*" entails that there is no actual duty for the state (Sybille Pfeil (2002:235)). Also Carmen Schmidt emphasises that this provision does not establish any collective or individual right for the national and ethnic groups (Schmidt (1993:63)).

Thus, the law does not foresee cultural self-government, that is to say public law corporations which autonomously administer cultural affairs. The Latvian state does not delegate educational and cultural questions to national or ethnic groups. The law does not create any concrete mechanisms for the implementation of its principles and goals (Sybille Pfeil:244; Schmidt (1993:58); Schmidt (1999:358)). In short, its significance is limited by its purely declarative nature.

The Social Consultative Council on Nationalities of the Saeima

The Social Consultative Council on Nationalities (SCC) was intended to ensure the participation of all the national and ethnic groups in Latvia in national and ethnic questions and to try to perfect the legislation in this area (nr. 1.2 of the statute, in: Behlke:197-199). It was supposed to channel the minority interests to the highest political level and to be a forum

for dialogue between the different ethnic groups and the state, societal, and religious institutions (nr. 1.4 of the statute). Its task was to contribute to the elaboration of the legislation in national questions, submit proposals regarding cultural, educational, historic and language questions to the permanent committees of the Latvian parliament and to advise all these committees in the forementioned questions (nr. 2.1, 2.2 and 2.3 of the statute). More specifically, the SCC would have the right to steer draft legislation and to submit to the parliament proposals regarding the establishment of a so-called 'People's forum'. Furthermore, it would have been entitled to take part in the preparatory phase of the law-making process and to invite experts in this regard. It would have had the right to request from the state and societal institutions all the necessary information to understand the draft legislation and other proposals (nr. 3.1, 3.2, 3.3, 3.4 and 3.5 of the statute).

According to its statute, the SCC is composed of all the nations and ethnic groups on an equal footing (nr. 4.1 of the statute). The representatives of a national or ethnic group are elected and appointed by (territorial) conferences (nr. 4.2 statute) for a maximum period of five years. Each national or ethnic group has a maximum of three representatives.

In practice, one half of the SCC consists of representatives of 'the people of Latvia', that is to say the Latvian citizenry and the other half of representatives of 'national and ethnic groups' (Graudin:131). The members of the SCC put together a presidentship, consisting of a president and a substitute (nr. 5.1 statute). The president takes part in the plenary sessions of the Latvian parliament where he has an advisory vote (nr. 5.5 statute).

The stipulation in the Latvian Constitution that only 'the people of Latvia' are sovereign is not violated by the considerable competences of the SCC. Firstly, the decisions of the SCC are only of an advisory nature. They are not binding for the *Saeima* or other constitutional organs (nr. 5.3 statute). Carmen Schmidt correctly underlines that this organ does not have full power of co-operation. As its name already indicates, the SCC does not decide together with the Latvian parliament or other constitutional organs (Schmidt (1993:62)). Furthermore, since one half of the members of the SCC are Latvian citizens, the mere composition of the SCC prevents that the will of 'the people' - in the sense of article 2 of the Constitution is neglected (Graudin:132). The activities of the SCC do not amount to an exercise of sovereignty.

The establishment and organisation of the SCC was entrusted to the Committee for human rights and national questions of the Latvian parliament (nr. 4.2 statute).

The SCC however has never been established. The leaders of the Russian ethnic group did namely not agree with its composition. They argued that the maximum of three representatives - for each ethnic or national group - does not reflect the numerical weight of the Russian population in Latvia. They further objected to the lack of any decision-power of the SCC (Behlke:105). The Russian ethnic group thus boycotted the establishment of the SCC, which never took up its activities.

A President's Minority Advisory Council was established in July 1996. It is composed of representatives from eleven minorities and members of the parliamentary committee for human rights. The Association of National Cultural Societies appoints the minority representatives and serves as an umbrella organisation for some twenty national cultural societies. This Council was supposed to meet on a regular basis (every second month) (Hansson (2003:71)). But after a promising start and regular sessions in 1998, it seems that this forum has stopped its activities. The present Latvian president Vaira Vike-Freiberga has not reactivated this institution (Schmidt (2005:38)).

Cultural autonomy in Lithuania

As regards cultural autonomy, it is stated in the Lithuanian Constitution that "*Ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, organisations, charity and mutual assistance. The State shall support ethnic communities.*" (article 45).

Rasa Ragulskyte and Dirk Schröter qualify the first sentence of article 45 as a right of cultural autonomy, thereby arguing that the 'ethnic community' can legally enforce the state to perform (Ragulskyte and Schröter (2002:10)). Andreas Graudin, on the other hand, argues that this stipulation does not guarantee a full cultural self-government (Graudin:58). Also Carmen Schmidt (Schmidt (1993:103)) and Andreas Hollstein (Hollstein (2002:386)) argue that the provisions of the Constitution of 1992 fall behind the rights and guarantees of the Constitution of 1922 with regard to cultural autonomy. Under this constitution, 'national minorities of citizens' had the right to administer autonomously the affairs of their national culture - public education, charity, mutual aid - and also *to elect necessary bodies* (my emphasis) to conduct these affairs (article 73 of the Constitution of 1922). Furthermore, these national minorities

had the right to impose upon their members dues for needs of national culture (article 74 of the Constitution of 1922). Contrary to article 74 of the Constitution - which provided the minorities with the right to a certain share of the budget, provided certain conditions were met - the Constitution of 1992 only enacts according to Carmen Schmidt a principal duty of the state to promote ethnic communities.

Also the rights enumerated in the Law on ethnic minorities of 1989 (ML) are individual and not group rights (Ragulskyte and Schröter:12). Lithuanian citizens, belonging to minorities, have the right to obtain aid from the state to develop their culture and education, to have education in their own language, to have newspapers and other publications and information in their native language, to profess any religion, and to perform religious or folk observances in their native language, to form ethnic cultural organisations, to establish contact with persons of the same ethnic background abroad, to be represented in government bodies at all levels on the basis of universal, equal and direct suffrage, and to hold any post in the bodies of state power or government, as well as in enterprises, institutions or organisations (article 2, second paragraph). Cultural organisations of ethnic minorities also have the right to establish educational and cultural institutions with their own money. The state provides support for the organisations and institutions which serve the educational and cultural purposes of the people (article 7). On the other hand, public committees of ethnic minorities can be established by and under the *Seimas* and the local councils. The composition of these committees is to be co-ordinated with the public organisations of ethnic minorities. The powers of these committees are also defined by the forementioned legislative organs (article 10).

With the adoption of the ML in 1989, a specialised Department of regional problems and national minorities was founded within the government. Within this department, a Council of National Communities was established in 1995. This Council is composed of representatives of 17 national communities, including the Roma, and is charged with co-ordinating the activities of national minority communities, maintaining inter-ethnic relations in Lithuania and overseeing participation in the implementation of state minority policy. The Council has to enable minority representatives to meet political and municipal officials in order to raise social, educational and other issues of importance to their communities, and to participate in drafting and monitoring the implementation of legislation (Minority Protection in Lithuania). In terms of domestic sovereignty, the Council is an advisory organ and does not have any decision-making power (Pan (2002:257)).

Apart from the question of how to qualify the ethnic policies of Estonia and Latvia, a question I try to answer in the final conclusion, the attempts of both Estonia and Latvia to reverse the situation which they correctly saw and see as historically unjust, in any case lead to the interesting question how they were able to reconcile their nationalising policies with their efforts to return to Europe, that is to say the 'official Europe' which was created after the Second World War.

Chapter six: IGOs and the minority rights in the Baltic states.

The disaster that befell Europe during 1933-1945 meant that the entire concept of 'minority rights' became largely discredited in the eyes of those institutions that underpinned the international community of the post-World War Two era. With the end of the Cold War, the collapse of communism and the demise of Yugoslavia and the USSR, however, things changed, as international organisations - like the League of Nations before them - again became preoccupied with the potential for instability and violent ethnic conflict in those areas that had formerly been part of the monolithic socialist bloc.

The new minority rights agenda espoused by the CoE, the OSCE and the EU (and also NATO) meant that if the Baltic states wished to join these organisations, they would be required to defer to their demands of these organisations in this sphere. In this regard, even the staunchest advocates of national sovereignty in the Baltic states could hardly be indifferent to these external actors, which were seen as offering the only sure-fire guarantee of maintaining newly restored statehood in the face of the perceived threat posed by Russia. In this regard, priority was obviously given to NATO and the EU rather than the looser and more all-encompassing structure of the OSCE and CoE. Engagement with the latter organisations was nonetheless vital, in so far as the EU took its cue from them when devising its own standards and demands in the field of minority protection.

Within this context, the Baltic states also had to contend with Russia's efforts to retain its influence over them by posing as defender of the rights of Russian-speakers living in these countries. In doing this, Russia - which itself could hardly be indifferent to maintaining economic ties with the West - chose to exert pressure primarily via the medium of international organisations, rather than meddling directly in the internal political processes of these countries. Here Russia understood that the Baltics - unlike, say, Moldova or Georgia - fell firmly within the Western sphere of interest (cf. the remark in previous chapter about them falling into a different geopolitical/legal category to the other former states of the Soviet Union). As already note in the introduction to this thesis, this means that in the case of the Baltics it is apt to talk not just of a 'triadic nexus' of competing national claims linking the states, their minorities, and Russia, but of a four-way relational nexus incorporating IGOs. The latter simply cannot be disregarded in any discussion of the contemporary minority

question, so crucial has been their role (indeed in this regard it has been difficult to distinguish between the internal and external, between issues of Westphalian and domestic sovereignty).

Within this overall context, this chapter traces the relationship between the Baltic states (especially Estonia and Latvia) and the three key organisations (EU, OSCE, CoE) outlined above. It does so by examining the following issues: the securing of initial trade and co-operation agreements with the European Community, the important interventions by the OSCE and the CoE during the pivotal years of 1993-94, and the subsequent progress towards association agreements with the EC. The analysis demonstrates that the external interventions by these bodies placed considerable limits on the pursuit of restorationist politics in the countries concerned. These interventions nonetheless remained politically controversial. With no firm prospect of EU membership (the number one goal) on the horizon at this time, the titular political elite in both Estonia and Latvia remained reluctant to see the rapid naturalisation of all their non-citizens, lest this tip the political balance towards closer association with Russia. As Chapter Seven will show, it was only in 1997, when rapid EU accession became a definite possibility, and the Union emphasised that fulfilling long-standing OSCE and CoE demands would be required in order to bring this about, that the two states began to take concrete steps to promote faster naturalisation.

The CoE and minority rights

The CoE is an intergovernmental organisation which was founded in the aftermath of the Second World War. Its statutory aim is to achieve greater unity among its members through common action, agreements and debates. The Committee of Ministers (CM) is the CoE's decision-making body, comprising the Foreign affairs ministers of all the member states. The Parliamentary Assembly (PACE) represents the political forces in the member states.

The conditions for membership of this organisation are a pluralistic democracy, the rule of law and respect for human rights. The accession process begins with a request to the Secretary-General of the CoE, who transmits it to the CM for consideration. The latter consults the PACE, which in turn examines whether the candidate fulfils all the necessary requirements. This is done by an on-the-spot-visit by parliamentary committees and also, since the 1990s, by fact-finding missions by eminent jurists. The opinion adopted by the PACE then determines the invitation form of the CM to the state to become a full member.

Within the CoE, a Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was drawn up in 1950. It entered into force in September 1953. In addition to laying down a catalogue of civil and political rights and freedoms, this Convention set up a mechanism for the enforcement of the obligations of the contracting states. Protocol Nr. 11, which came into force on 1 November 1998, replaced the earlier part-time Court and Commission by a single full-time Court. Complaints can be brought against contracting states either by other contracting states or by individuals, groups of individuals or non-governmental organisations.

While the Statute of the CoE does not refer to minorities, the ECHR only mentions minorities expressly in article 14, the non-discrimination clause: "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*".

In the period between 1945-90 most cases before the Strasbourg institutions involving some element of minority rights failed. The Commission and the Court refused to protect minority groups because the ECHR does not speak about minority rights (Gilbert (1999:59)). In 1973,

the Committee of Experts decided that there was no need for a protocol to the ECHR on minority rights (Gilbert:55).

After the fall of the Soviet bloc, the CoE issued a series of measures attempting to provide mechanisms to protect minority rights. An effective measure would have been the proposed Protocol to the ECHR found in Recommendation 1201 of the Parliamentary Assembly of the CE. Not only did it attempt to create a definition, but in addition to the traditional series of rights for the minority group, the Protocol provided in article 11: "*In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status matching the specific historical and territorial situation and in accordance with the domestic legislation of the state.*". This provision acknowledged the right of minority groups to have control over their own affairs.

This proposed Protocol was, however, rejected by the Heads of state and government of the CoE at its Vienna Summit in October 1993. Nevertheless, Parliamentary Assembly Order 484 still requires the Legal Affairs Committee of the CoE to have regard to the draft Protocol when assessing new states for admission. Thus, on the one hand, the CoE was not prepared to create legally justiciable rights for minorities throughout its member states, including an obligation to grant autonomy where appropriate. On the other hand, it still requires that new applicants be assessed on the demands of Recommendation 1201. Central and East European states were treated as more problematic than states in Western Europe. This is a striking resemblance with the policy of the League of Nations (Gilbert:62).

The one general CoE agreement on minority rights is the Framework Convention for the Protection of National Minorities (FCPNM), which was adopted by the Committee of Ministers on 10 November 1994. It was subsequently opened for signature on 1 February 1995 and entered into force three years later. This Convention has been criticised for the absence of a definition of minorities, the vague character of its provisions and, in particular, for its supervisory mechanism. Under this mechanism, state parties to the Convention are bound to submit periodic and *ad hoc* reports to the Committee of Ministers, which will monitor the implementation of the provisions of the Convention. The Committee of Ministers is assisted by an advisory committee composed of independent experts. The European Court

on Human Rights is not involved in the monitoring of the Framework Convention (Oberleitner (1999:71)).

The OSCE and minority rights

From CSCE to OSCE

The Organisation for Security and Co-operation in Europe (OSCE) is a newer name for the the Conference on Security and Co-operation in Europe (CSCE). Its history goes back to the mid-1950s when the Soviet Union proposed a conference to sanctify the post-World War II borders within Europe. In August 1975, a 35-country summit concluded the negotiations with the CSCE Final Act signed at Helsinki. The leaders accepted Europe's post-World War II borders and committed themselves to a variety of conflict-prevention measures, such as refraining from the actual or threatened use of force to settle disputes. They also pledged to develop economic contacts, to promote solutions to environmental and cultural concerns, and to respect human rights. Supervision of the obligations was organised through the "*thorough exchange of views on the implementation of the Final Act*" held at the follow-up meetings and at occasional expert meetings. Review conferences were indeed organised every few years thereafter to advance the Helsinki agenda. The CSCE developed three main functions over time: to facilitate the peaceful settlement of disputes, to encourage disarmament, and, to implement CSBMs (Krupnick (1998:31-32)). Prior to 1990, the protection of national minorities only received a low priority (Chandler (1999:62)).

The collapse of Soviet domination in Eastern Europe was, however, the catalyst for change. Because the CSCE's main task is to prevent conflicts and to ensure international security, protection of national minorities became its main function.

Already the CSCE Copenhagen Document of June 1990 became a landmark in establishing normative standards of minority rights protection. Besides the traditional non-discrimination principles, section four of this document marks the first reference to autonomous administrations (paragraph 35) and the use of mother tongue in dealing with authorities. States were to protect "*the ethnic, cultural, linguistic and religious identity of national minorities on their territory and to create conditions for the promotion of that identity*" (paragraph 33) including provision of instruction in mother tongues and the use of mother

tongues "*wherever possible or necessary*" before public authorities (paragraph 34). Because it was the first endeavour to agree on an all-European standard on the status and rights of minorities, the Copenhagen Document lacks binding legal force (Van Den Berghe (2003:162)).

The 'Charter of Paris for a New Europe', stating that "*the ethnic, cultural, linguistic and religious identity of national minorities (must) be protected and conditions for the promotion of that identity be created*" called for new structures and institutions for the CSCE.

Both the Geneva report of 1991 and the Helsinki document of 1992 were further standard-setting texts with regard to minorities. The Helsinki summit resulted in the appointment of the important High Commissioner on National Minorities (HCNM). The establishment of this institution was a response by the OSCE states to their inability to prevent the ethnic wars in Yugoslavia and the Caucasus. It fitted perfectly into the increased emphasis which the OSCE states were placing on domestic and international conflict prevention and crisis management, and more specifically on contentious minority issues. Accordingly, the HCNM is defined as an instrument of international conflict prevention who will provide 'early warning' and 'early action' at the earliest possible stage with regard to those tensions involving national minority issues which, in his judgment, have the potential to develop into a conflict within the OSCE area which could affect peace, stability or relations between OSCE states. It is indeed very important to note that the HCNM was not intended as a protector of the individual or group rights of persons belonging to national minorities. His task is instead to identify the main causes of a conflict and to elaborate steps to remove these causes (Zaagman (1999:7-8); Kroissenbrunner (1994:113-114)). In December 1992, the post of Secretary General was created and a year later a Permanent Council of member diplomats began to function, marking the real change of the CSCE from mere negotiating framework to substantive IGO (Krupnick:34).

In the meantime the CSCE dispatched officials to several regional trouble spots. Some of these have led to permanent missions that have given persistence assistance where possible. Missions are generally established by the OSCE Senior Council (member foreign ministry political directors) with mandates tailored to the specifics of a particular problem. They are generally composed of officials from national diplomatic corps who receive salaries from their home countries (Krupnick:36). In December 1994 at the Budapest summit, members decided to change the organisation's name to 'OSCE'.

Although the OSCE 'legislation' is non-binding as such, the organisation can, via the Senior Council order action deemed appropriate by the organisation. Another option is the 'human dimension': the organisation receives intergovernmental complaints and acts thereupon in 'crisis situations'. As with other OSCE documents, these opinions are adopted by consensus and thus accepted by all member states of the EU. Much of the work of the OSCE can therefore be said to improving state conduct through policies of standard-setting and assistance (Hansson (2003:67-68)). This policy is very similar to the one adopted by the League of Nations.

Back to the past?

While immediately after the end of the Cold War, the OSCE was keen to pose the minority rights policy in universal terms and to draw a clear distinction between the OSCE approach and the policy of the League of Nations, this attempt failed. The major Western OSCE powers did namely not accept international regulation and intervention in their internal affairs. France and Greece stated that they did not recognise the existence of national minorities, arguing that all citizens had the same rights and duties regardless of ethnicity. Germany forced the exclusion of 'new' minorities, such as migrant workers, to avoid the question of its treatment of the Turkish minority. Also Great Britain did not regard non-indigenous minorities, such as the Asians and African-Caribbeans as members of a minority. On the other hand, the United States insisted that 'indigenous peoples' could not be classified as a minority (Chandler:67). When the HCMN was established, the United Kingdom and Turkey, supported by Spain, insisted that this institution could not intervene in national minority issues where terrorism was involved, effectively taking the Irish, Kurdish and Basque questions off the international agenda. This meant that existing national minority conflicts in the West were excluded while only potential conflict (in the East) became a focus of concern. This reinforced the already existing perception that only minority rights in East Europe had to be regulated on the grounds of security concerns (Chandler:68).

The EC/EU and human rights clauses in international agreements

Events in the former Soviet Union and in Eastern and Central Europe between 1989 and 1991 also prompted the European Community (EC) to reassess its approach to international affairs. The EC first showed its interest in this issue in the negotiation of Trade and Co-operation agreements (TCAs) with CEECs. As early as 1989, the negotiations of the TCA with Bulgaria were suspended because of violations by the authorities of the rights of the Turkish minority. These negotiations were only resumed after the Bulgarian government had produced guarantees concerning the religious and linguistic rights of the Turks and had notified the Community of the envisaged reforms (Van Den Berghe (2003:165)).

On 17 December 1991, in the framework of the European Political Co-operation, the member states of the EC linked the recognition of new states in Central and Eastern Europe and in the Soviet Union to "*guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE*" (Common Declaration of 17 December 1991 laying down "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", Bull. EC 1991-12, 127). As mentioned above, the three most important documents adopted in the context of the CSCE by 1991 were the Helsinki Final Act, the Charter of Paris for a New Europe, and the Copenhagen Document (Van Den Berghe:161).

The first co-operation agreements with Hungary and Poland only vaguely mentioned the need for respect for human rights in their preamble. Even the first Europe Agreements with Hungary, Poland and the Czech and Slovak Federal Republic of 19 December 1991 contained no provision on respect for human rights in the actual agreement (Pollet (1997:292)). This changed in 1991. In a resolution of 28 December 1991, the Council of Ministers stated that henceforth, human rights clauses would be inserted in the actual text of future co-operation agreements (1538th Council meeting, 28 December 1991).

In May 1992, the Council issued a new statement which mandated the inclusion of a human rights clause in the agreements that the Commission was negotiating with countries that were CSCE members. These clauses had to contain references to CSCE documents and to principles of the market economy. These elements were upgraded to 'essential elements' of the agreement and had a suspension mechanism attached (1573rd Council meeting, 11 May

1992, 6326). The reference to 'essential element' was made in order to allow suspension of the agreement in accordance with the rules of the Vienna Convention of the Law of the Treaties (VCLT) (Lannon, Inglis and Haenebalcke (2001:103)). Article 60 of the VCLT enables to suspend the whole or part of the agreement in cases of a 'material breach'. The third paragraph of article 60 of the VCLT states that violation of an essential element could constitute such a 'material breach'.

The Haitian and Yugoslav experiences had confronted the Community and its member states with numerous political and legal problems regarding the immediate unilateral suspension of relations (Kuyper (1993:413-417)). This led the Council in its statement to request the Commission to act in order "*to ensure that agreements to be concluded by the Community contain an appropriate mechanism which is operational in emergencies, including provisions relating to non-fulfilment of obligations*" (Lannon, Inglis and Haenebalcke:104). In a lecture before the European Parliament, Jörg Pipkörn, legal advisor of the European Commission, underlined the causality between the problematical suspension of the agreement with Yugoslavia (November 1991) and the elaboration of the essential and non-execution clauses in May 1992. The coup d'etat in Moscow in August 1991 had further raised the question whether it would have been possible for the EC to suspend or terminate the agreement with the Soviet Union in case the coup had been succesful (Pipkorn (1995:39-40)).

The Trade and co-operation agreements and the Baltic clause

The Trade and co-operation agreements

Immediately after the Declaration of 27 August 1991, the German Foreign minister, Hans-Dietrich Genscher, and his Danish colleague, Elleman-Jensen, proposed to start negotiations of European agreements with the Baltic states as soon as possible (Agence Europe, 1991, Nr. 5553 and 5554). However, the other EC members and the Commission considered this inopportune and pleaded for a more realistic approach. TCAs were seen as a "*strong political signal*" (Agence Europe, 1991, Nr. 5562). The TCAs with the Baltic states, signed on 11 May 1992 (OJ 1992 L 403), followed the blueprint set by the earlier Trade, commercial and economic co-operation agreements with Hungary, Poland, Czechoslovakia, Bulgaria, Rumania and the Soviet Union (Sedelmeier and Wallace (1996:358) and Nuttall:85-86);

Featherstone (1993)). These agreements did not mention the possibility of a membership of the EC at any time in the future. The emphasis was put on gradualism. The preamble stated that the agreements were to be considered as a step towards association agreements as soon as the conditions were fulfilled.

The Baltic clause: a problematic 'sharp sword'

The TCAs concluded with the Baltic states and Albania both contained the so-called '*essential element clause*', introduced in early 1992. Article 1 of the TCA with Estonia stated that: "*Respect for the democratic principles and human rights established by the Helsinki Final Act and the Charter of Paris for a New Europe inspires the domestic and external policies of the Community and Estonia and constitutes an essential element of the present agreement.*". Thus, the application of democratic principles and the respect for human rights was no longer an internal affair that belonged to the sovereignty of the Baltic states but was made "*the subject of common interest*" and "*part of the dialogue between the parties*" (Commission Communication Com (95)216:2). The essential element clause spelled out the conditions of article 60 (3) (b) VCLT and was thus a proper justification for suspension or termination of the TCAs in case of grave human rights violations as well as serious breaches of the democratic process (Riedel and Will (1999:729); Com (95)216:2-3).

Together with the essential element clause, an explicit '*suspension clause*' (or '*non-compliance/non-execution clause*') was introduced in the TCAs with the Baltic states. Since then, this clause is known as the Baltic clause. It allowed the Community to suspend immediately the application of the agreement in whole or in part in case of a serious breach of essential provisions, including of course, in the Commission's view, serious and persistent human rights violations and serious interruptions of the democratic process (Pollet:293). For example, again in the TCA with Estonia, article 21 stated that: "*the parties reserve the right to suspend this agreement in whole or in part with immediate effect if a serious violation occurs of the essential provisions of the present agreement*". Whereas Hoffmeister qualifies this clause as a "*einseitiges Sanktionsinstrument*" (Hoffmeister (1998: 379), Elena Fierro claims that the toughness of the Baltic clause was in direct contradiction with the 1991 landmark resolution, advocating 'high priority' for positive measures. According to this resolution, negative measures would only be taken as a last resort (Fierro (2003:219)).

The 'Baltic clause' was indeed very problematic in the light of public international law. It clashed with the fundamental legal principle *pacta sunt servanda* and bypassed the procedures of article 65 VCLT on suspension, which provide for a period of three months before suspending an agreement. Although the precise prescriptions of article 65 are no customary international law, a reasonable period of notice is certainly required if the suspension of a treaty is being announced (Riedel and Will:729; Kuyper:417 and 420). An immediate suspension was also problematical from a political point of view. It would end all on-going dialogue and would weaken the ability of the Community to apply pressure to redress the situation (Fierro:222).

What was then the reason for inserting such an 'excessive', problematical clause?

The standard view is that it was imposed on the Baltic states by the EC, which was in turn responding to Russia's efforts to internationalise the citizenship issue in Estonia and Latvia. Edwige Tuczny, for example argues that the essential element clause and, even more, the Baltic clause were inserted in the TCAs to appease Russia. In her view, the Baltic clause was not intended to be a general clause. It was a clause, tailor-made to the situation of the Russian minority in the Baltic states (Tuczny (2000:105)).

In reality, it appears that the clause was actually included at the request of the Baltic states themselves. According to Elena Fierro, the Baltic countries and Albania explicitly requested the inclusion of such a clause: *"By the same token that Argentina had demanded the inclusion of human rights references in its agreement with the Community, the Baltic states and Albania wished to go further. They therefore requested the Community to include a clause providing that the agreement could be suspended immediately should they violate human rights. The philosophy was similar to the one of Argentina: such a clause would represent a guarantee to underpin their democratic process. Suspension would be a warning that they were in danger of returning to communist rule, an eventuality that they wanted to prevent. In sum, they wished to affirm their commitment to human rights and the rule of law in unequivocal terms."* (Fierro:221). In this regard, Andrew Moravcsik observes that governments tend to delegate human rights concerns for self-interested reasons; that is, to combat future domestic political uncertainty: *"it is thus not the most powerful or persuasive democracies, but weakly established democracies that favour enforceable (as opposed to*

merely rhetorical) human rights obligations, because such commitments help lock in democratic governance against non-democratic domestic opposition” (Moravcsik (1998)). Both the very short life of this clause (it was only used in the TCAs with Albania, Estonia, Latvia, Lithuania and Slovenia) and the potential legal and political problems that it could have raised, support Fierro's thesis. This argumentation is also supported by Commission official Joris Declerck, who underlines that these clauses were mainly intended to react on democratic setbacks. Human rights of persons belonging to minorities were of course covered by these provisions, but these were not the underlying reasons of these clauses. The Commission wanted to have the guarantee of a functioning democracy with functioning institutions and free and fair elections. Mr. Declerck denies any Russian pressure with regard to the elaboration of these clauses (Interview with Mr. Joris Declerck, 14 January 2003, Brussels).

The EP and the TCAs

In any case, already from 1992 Russia persistently tried to internationalise the minority rights question. High-level Russian officials including President Yeltsin began to accuse Estonia and Latvia of human rights violations. These charges were made in bilateral talks with Western leaders as well as in every international forum that the Baltic states had turned to for support on the troop withdrawal issue, including the United Nations, the CSCE and the Council of the Baltic Sea States. These allegations served several purposes. First, by linking human rights issues and the withdrawal of its troops, Russia sought to delay a comprehensive troop withdrawal. Second, Russia simply tried to block or impede Baltic integration into Western Europe (Peters (1994:624-625)).

Human rights and minority issues could have affected the TCAs with the Baltic states when the European Parliament (EP) delayed its vote over their ratification. While British MEP Gary Titley claimed that the vote on the accord with Estonia was delayed because of concerns over the constitutional referendum, citizenship law, and election law, the EP Secretariat officials stated that the delays were due to 'purely technical' matters (Galbreath D J (2005:265)).

In his report on Estonia on behalf of the Committee on foreign external economic relations, Gary Titley, socialist MEP, indeed strongly criticised the policy of Estonia vis-à-vis its ethnic minorities. Only citizens of the interwar republic and their descendants had been allowed to participate in the referendum of 28 June 1992. In that referendum the Estonians narrowly rejected (by 53 to 47 per cent) the proposal by Savisaar's Centre Party that non-citizens who applied for naturalisation before the elections should be allowed to vote in the presidential and parliamentary elections. Because of the residence requirements for naturalisation (three years from 30 May 1990) of the Law on Citizenship of 26 February 1992, applicants could only receive citizenship at the earliest in May 1993 and could thus not participate in the elections of September 1992. Gary Titley also referred to discriminatory practices in the privatisation process (Titley (1992:7-8)).

In his report on Latvia, Gerd Lemmer of the European People's Party accused Latvia for allegedly marginalising the Russian-speaking population by way of stringent citizenship legislation. In Lemmer's view, the European Community should use its influence to make Latvia respect the Helsinki Act and the Paris Charter with regard to minority rights (Lemmer (1992:8)).

In the subsequent plenary debate, Gary Titley argued that the Estonian Citizenship Law was discriminatory. Its aim was to deny the Russians 'elementary civil rights' and to push them to leave the country. In his view, the Estonians came close to the policy of 'ethnic cleansing' in Yugoslavia. Although Titley was in favour of the TCA with Estonia, he urged the EC to put pressure on Estonia to soften its citizenship law (plenary session of 18 December 1992, in: *Handelingen van het Europees Parlement*, Nr. 3-425:353-354). Further, he told MEPs that even when Estonia was still under Soviet control, most of the Russians had voted in favour of independence, whereas in reality only 25-40 per cent of the non-Estonian population voted for independence in the consultative referendum of 3 March 1991 (Smith D J (2002a:59)).

Lenz of the European People's Party, standing in for Lemmer, simply stated that the Helsinki Act and the Paris Charter contained human rights guarantees. She argued that the EC should contribute to a solution which reconciled humanitarian demands with historical and political facts (Nr. 3-425:354). Also Habsburg of the European People's Party regretted Gary Titley's statements. The Russians in the three Baltic states were, in his words, "*no bona fide minority*". Their presence was a direct consequence of the Russification policy and they should therefore be regarded as occupants. Habsburg admitted that many Russians had voted in favour of the independence of the Baltic states and thus indicated that they wanted to be

part of the respective nations. On the other hand, there were also many Russians who were against this independence (Nr. 3-425:355-356).

The member of the European Commission, Bruce Millan, observed that article 1 of the TCA's included the respect for human rights, including the rights of minorities, adding that the agreements could be suspended in case of a disregard of human rights. On the other hand, the special historical situation of these countries had to be taken into account. The Commission would in any case ensure that these states would take all the necessary measures to ensure their *internal stability* and their *harmonious relations with their neighbour states* (my emphasis) (Nr. 3-425:356-357).

In sum, although the EP approved the TCAs (A3-0363/92 (Estonia); A3-0363/92 (Lithuania) and A3-0359/92 (Latvia), 18 December 1992, in OJ 1992 C 21/546-548), it also adopted a resolution by which it declared itself disturbed by the worsening interethnic tensions in the Baltic states. The EP further considered that the Estonian Citizenship Law and the Latvian Resolution on Citizenship could aggravate the ethnic tensions and could lead to violations of basic minority rights as defined in the Paris Charter, if applied in a restrictive way.

Accordingly, it demanded that the European Commission monitor closely the future internal situation and to react rapidly in the framework of the human rights clauses in the agreements (Resolution A3-0364/92, 18 December 1992, OJ C 21/548-550; this resolution was adopted on the basis of a report of James Moorhouse, Doc. A3-0364/92).

In that way, it responded to some extent to the Russian arguments. However, contrary to Russia, the EP saw no reason to suspend the departure of the Russian troops.

On the contrary, after an EP delegation had visited Latvia in April 1993, concluding that there was no evidence "*for the recent accusations by Russian President Boris Yeltsin and other Russian leaders of massive and grave violations of human rights in Latvia*", the EP requested in a resolution of 23 April 1993 from Russia to take all the necessary measures to accelerate the departure of Russian troops from the territory of the Baltic states. With regard to the situation of the Russian-speaking population, the EP considered that the Baltic states had the right to issue their own citizenship and immigration legislation in accordance with international law, the Final Act of Helsinki and the Universal Declaration of Human Rights. It underlined that the presence of the large Russian-speaking group resulted from a deliberate policy of Sovietisation. Referring to the essential elements clause of the TCAs, it requested that the three countries take all the measures necessary to safeguard the non-discrimination of

Russian-speaking inhabitants according to international law. It considered that persons belonging to national minorities have the right to enjoy, equally and without distinction, the same rights as other *citizens* (my emphasis) and that they have the right to respect and protection of their ethnic, religious and linguistic identity. On the other hand, citizens belonging to national minorities have a loyalty obligation and they have to respect the national legislation of the state concerned. The EP advised that citizenship be accorded to those people willing to become citizens. While the EP regretted the exclusionary effects of the Estonian Citizenship Law, it welcomed the debate on citizenship in Latvia, which had led to proposals of less exclusionary policies. With a view to the elections of 5 and 6 June 1993, it demanded the Latvian authorities to ensure respect for the election law.

Interestingly, the EP considered that the adoption of a binding minority charter by the CSCE, with control guarantees and covering all member states, would contribute to the protection of the minority rights in the Baltic states.

Finally, the EP condemned the advocates of a forced expulsion of all minorities. Any governmental action in that direction should automatically lead to the suspension of all aid and community assistance (Resolution A3-0109/93, OJ C 150/330-335).

Instead of threatening with sanctions, the EP requested the conversion of the TCAs in association agreements as soon as possible.

The resolution of 23 April 1993 was based on a report of Ferrer of 24 March 1993.

In the first comprehensive report of the Committee on foreign affairs and security policy on the situation in the Baltic republics, the rapporteur, Ferrer, had namely defended the Estonian Law on Citizenship. The Estonians had the right to preserve their identity and the language requirement in the law was therefore fully legitimate. Neither the ECHR nor any other international treaty recognised the right to a certain citizenship as a fundamental right. On the other hand, the nature of a democratic system could be affected if substantial parts of the population are denied the right to become citizens with the accompanying right to vote in parliamentary elections. In such a case, it could be doubted whether the free expression of the will of the people is sufficiently ensured. Human rights problems could arise if either citizenship is refused to residents on the ground of their membership of a certain minority group, or if criteria for admission to citizenship are so strict that a substantial part of the population is in fact denied citizenship. In any case, the naturalisation conditions of the law made it, in her view, possible for many Russian-speakers to vote in the next parliamentary elections of March 1995. Ferrer considered only the group of Russians of the interwar period

and their descendants as minorities (*“Cela ne signifie pas toutefois que les Russes doivent être considérés globalement comme une minorité, dans la mesure où leur présence sur le sol estonien s’explique par des circonstances historiques diverses.”*). The great majority of the Russian-speakers were post-war settlers who had entered Estonia while this country was under Soviet occupation. This was a violation of international law, which prohibits the transfer of people into occupied territories (article 49 of the Fourth Geneva Convention). Ferrer considered the language and residence requirements of the Latvian Citizenship Resolution too restrictive. Therefore, she proposed to soften some naturalisation conditions in the future citizenship law. On the whole, the restrictive nature of the Latvian Citizenship Resolution was justified given the history of the country and the legitimate need to protect the Latvian identity (A3-0109/93:14-17).

In the subsequent plenary session of 22 April 1993, Ferrer stressed again that an evaluation of the human rights and minority policy of the Baltic states had to take into account their history as victims of a forced Sovietisation policy. She underlined again that the post-war settlers and their descendants could not be regarded as members of minorities in a legal sense.

Ferrer considered that the EP could only monitor and judge whether the legal order of the Baltic states was in accordance with general principles of public international law and fundamental rights and freedoms of the whole population. It could not interfere in matters belonging to their national sovereignty and which were not related to fundamental rights (Handelingen van het Europees Parlement, 1993/1994, Nr. 3-430:332-333).

While most of the speakers reacted positively to the report of Ferrer, Geraghty of the non-inscribed group disagreed with the document, considering it a justification of the, in his view, worsening human rights situation. He pleaded for a strong signal, rejecting a discriminatory treatment of the Russian-speakers after the departure of the Russian troops (Nr. 3-430:334-335).

On a parliamentary question of MEP Kostopoulos of the non-inscribed whether the EPC would remind the Baltic countries that Community aid was conditional on the respect for the human rights of persons belonging to minorities, the Council simply referred to the reports of the UN and the CSCE which had found no human rights violations (93/276, answer to written question Nr. 593/93, European Foreign Policy Bulletin Database).

Russia's internationalisation of the settler's issue thus actually worked in favour of Estonia and Latvia. By this, these states were namely given the opportunity not only to show effectively

the lack of evidence of human rights violations, but also to set out in detail and establish the legitimacy of denying automatic citizenship to those who were not citizens before the 1940 Soviet occupation of their countries. The Estonians and Latvians made the point that their states were never *de iure* parts of the Soviet Union and that therefore they had the right to reinstate the pre-1940 citizenship laws and were under no obligation to recognise the Soviet citizenship of post-1940 immigrants (Putins Peters (1994:627)).

The forementioned views and resolutions of the EP perfectly summarise the policy of the European institutions and EU-member states towards the restorationist policies of the Baltic states. Although the 'official Europe' had endorsed the principle of legal continuity of the Baltic states, it also made it clear that there were 'limits to restorationism' (Smith D J (1998:309)) and that the endorsement of the principle of legal continuity would not serve as a justification for a decolonisation policy as proposed by several Estonian and Latvian politicians. A leading representative of the British Foreign Office declared that although the UK government regarded the Estonian Citizenship Law as a legitimate response to a peculiar set of circumstances, it wanted to see the settler issue resolved as quickly as possible through the speedy naturalisation of Estonia's non-citizen population (Smith D J (1997); Smith D J (2003:17-18)).

Debates in the European Parliament coincided broadly with two other key developments in the evolution of the relationship between the Baltic states and certain IGOs, namely the dispatch of OSCE missions to Estonia and Latvia, and Estonia's entry to the CoE. These were followed shortly thereafter by the crisis over Estonia's Aliens law, the episode which perhaps does most to expose the workings of the 'quadratic nexus' in the post-Soviet Baltic states.

The establishment of OSCE-missions in Estonia and Latvia and the High Commissioner on national minorities

The international background

After the Baltic states had regained their independence, they were admitted as participating states of the OSCE at an additional meeting of the OSCE Council of Ministers on 10

September 1991 (Zaagman:16)). Contrary to Albania, they were unconditionally admitted (Gheballi (1996:109)).

As indicated above, already in 1992 Russia started to raise the question of the Russian non-citizen population in several international fora like the United Nations (UN) and the CSCE. In order to confront Russian allegations, Estonia and Latvia submitted their legislation to an examination by international institutions.

In September 1992, Latvia invited a mission of experts of the UN to analyse whether its citizenship legislation violated human rights. This mission visited Latvia between 27 and 30 October 1992. In accordance with the Moscow mechanism on the human dimension, Estonia invited a mission from the Office for Democratic Institutions and Human Rights (ODIHR) of the CSCE to confront its legislation with human rights principles. This mission enrolled in Estonia between 2 and 5 December 1992. Upon a request of the Estonian government of October 1992, a mission from the UN visited Estonia between 7 and 11 February 1993 (Gheballi:345). While concluding there were no systematic human rights violations, this mission noted at the same time that certain regulations and administrative practices could discriminate against certain individuals of the population and lead to an unfavourable climate for harmonious inter-ethnic relations.

The UN-mission in Estonia stated that it had found no discrimination on the basis of ethnic origin or religion. On the other hand, it observed that the Russian-speaking communities were uneasy about their future and that certain members of the Estonian community wished to return to the situation before 1940 without taking into account the changes which had occurred. The mission also concluded that the Estonian Constitution and the relevant legislation were in accordance with general human rights principles but underlined that the application of this legislation in practice could lead to problems (Gheballi:346).

The mission of the ODIHR underlined that no international human rights instrument recognises the right to citizenship as a human right enjoyed by everyone, and also stated that the Constitution and other laws met international human rights standards. On the other hand, the members of the mission considered it to be in the interest of Estonia itself to facilitate the integration of a large group of persons and to provide them with equal rights including citizenship. The mission therefore recommended specific measures like a law detailing language requirements for the acquisition of Estonian citizenship, significantly lower than the then level, exceptions that would waive all language requirements for invalids and certain

pensioners and the granting of citizenship to otherwise stateless children (report in: Dahlgren (1993)).

A report on Estonia on behalf of the Parliamentary Assembly of the CoE also stated that neither the ECHR nor any other international human rights convention recognise the right to a certain citizenship as a human right. Consequently, it must be left to each state to determine the conditions for acquiring its citizenship. If, however, “*substantial parts of the population of a country are denied the rights to become citizens, and thereby are also denied for instance the right to vote in parliamentary elections, this could affect the character of the democratic system in that country. As regards the European Convention on Human Rights, the question could be raised whether in such a situation the elections to the legislature would sufficiently ensure the free expression of the opinion of the people, as required by article 3 of the First Protocol to the Convention. Human rights problems could arise if citizenship was refused to residents on the ground of their membership of a certain minority group and not on the basis of an examination of each individual case ...*” (Doc. AS/Ad hoc-Bur-EE (43)2:14).

The deployment of OSCE missions in Estonia and Latvia

Because Russia continued to raise the situation of the Russian non-citizen population, the OSCE decided to intervene in order to prevent an escalation (Ghebali:347).

On 13 December 1992, the OSCE decided to establish a mission for an initial period of six months in Estonia (subsequently extended by six months periods). This mission was deployed on 15 February 1993 in Tallinn and subsequently established offices in Kohtla-Järve and Narva. Its mandate was to promote stability, dialogue and understanding between the Estonian and Russian communities in Estonia. It had to work in close co-operation with the authorities and maintain contact with relevant non-governmental groups. Further, it had to exchange information and co-operate on relevant issues with the ODIHR and, in questions falling within its competence, with the High Commissioner. It had to report regularly to the OSCE Permanent Council. The mission was mandated to provide advice and assistance with regard to the integration of the non-indigenous population of Estonia (implementation of legislation concerning non-citizens, including questions relating to the implementation and

amendment of the Law on aliens). An important task of the mission was to monitor the implementation of the Estonian/Russian agreement on matters relating to social guarantees for military pensioners. According to this agreement, the OSCE representative was invited to participate in the work of the government commission, which makes recommendations concerning residence permits (Zaagman:18; Ziemele (2000:15); Kettig (2004:145-146); Birckenbach (2000:10-11); Lahelma (1999:19-38)). The OSCE long-term mission to Latvia was deployed on 19 November 1993. It was mandated to address citizenship issues and other related matters and to be at the disposal of the Latvian government and authorities such as the Naturalisation Board for advice on such issues. It was also to provide information and advice to institutions, organisations and individuals with an interest in dialogue on these issues, including of course persons belonging to minorities. Like in Estonia, the mission was involved in the implementation of the terms of the Latvian/Russian agreement on the social welfare of retired personnel and their family members (Zaagman:19-21; Ziemele (2000:15-16); Kettig:147-148; Krupnick:38), Maeder-Metcalf (1997:42)).

In short, the missions had three functions: collecting information on the ground in order to function as a 'political antenna', functioning as a negotiator between the parties and contributing to the reconstruction of a civil society (Ghebali:352-353). In the beginning, the Estonians and Latvians were not very enthusiastic about the establishment of these missions in their country, which they considered in fact as a violation of their sovereignty. Afterwards, they realised that the mission could function as a counter-balance to Russia (Batkowski (2000)). Although the OSCE mission in Estonia sometimes hinted at the need to liberalise certain provisions of the citizenship law, it never called for a full-scale revision of this policy. For example, it underlined on several occasions in 1994 its respect for Estonia's citizenship policy and reiterated that Estonia had been illegally occupied by the Soviet Union (Birckenbach (2000:9)).

The High Commissioner on national minorities

The HCNM visited Estonia, Latvia and Lithuania in January 1993. As a result of this visit, he decided that the inter-ethnic situation in Lithuania did not warrant the kind of preventive diplomacy he was mandated to undertake. The situations in Estonia and Latvia, on the other hand, fitted in his view into his mandate: tensions between a minority on the one hand and a

majority and the state government on the other hand, and the presence of a neighbouring kin-state with an interest in the condition of its kinfolk on the other side of the border causing it to become involved and leading to the international tensions with a potential for international conflict (Zaagman:23; Kettig:149).

On 6 April 1993, the HCNM sent a letter to the Foreign ministers of Estonia and Latvia with a list of recommendations in the field of citizenship and language policy. In general, the HCNM urged the governments of both countries to facilitate the integration of their non-citizen population. Only such policy would prevent a destabilisation of their countries. With regard to Lithuania, the HCMN noted in a letter of 5 March 1993 that the problem of citizenship for members of the Russian and Polish minorities had virtually been solved and that the relationship between the various population groups seemed on the whole to be harmonious (text of letters and recommendations, in: Dahlgren; short summary in: Yakemtchouk (2004:163)). While Estonia reaffirmed its commitment to the protection of the elderly and disabled, it did not refer to the HCNM's recommendation that children born in Estonia who would otherwise be stateless be given citizenship. In general, the message from the Estonian government was that rather than discriminating against non-Estonians, its policy was aimed at redressing the disadvantages of the Soviet policy of Russification. While conceding that the lack of a Citizenship law was problematic, the Latvian government addressed virtually no other points found within the HCNM's recommendations. It simply stated that the "*conclusions and recommendations are carefully being examined by the respective government institutions of Latvia*" (Galbreath:244-245).

The conflict prevention capacities of the OSCE were seriously tested in the issue of the Aliens law in Estonia.

The question of the Aliens law in Estonia

With regard to citizenship, the CSCE report of September 1992 had highlighted a need for better defined guidelines for the language test, as well as assurances that local officials would not arbitrarily deny citizenship to qualified applicants. The report of the ODIHR mission had called for an easier naturalisation for elderly and disabled applicants. The HCNM echoed these demands.

Two months after the first CSCE report, the Estonian prime minister announced that no arbitrariness on language tests would be permissible (Barrington (1995)). This was followed by the Law on Estonian language requirements for applicants for citizenship of February 1993. This law not only listed the language skills that are required but also described the linguistic deficiencies that would be overlooked in the examination (Shorr (1994:16)). On 23 April 1993, the government issued an order outlining 'special examination guidelines' for older persons. The written portion of the exam was waived for those born before 1 January 1930, with only an oral examination required (Shorr:17). Fees for elderly and invalid applicants were waived. According to Ole Kvarno, CSCE mission leader in Narva, these changes were made as a direct result of specific demands by the CSCE (Barrington). A March 1993 amendment to the Citizenship law provided that henceforth citizenship would be passed automatically via the maternal as well as the paternal line.

All these changes were designed to facilitate Estonia's admission into the CoE (Pettai (2001:272); Barrington). Immediately after Estonia became a member of the Council of Europe, its relationship with this organisation, however, soured:

While the Estonian Constitution allowed non-citizens to vote in local elections, it gave no automatic guarantee that non-citizens would be allowed to stand for office. During the final visit of Estonia's delegation to the CoE in May 1993, this organisation sought to prompt Estonia to grant non-citizens the right to be elected. Just before the final debate on Estonia's accession, the government gave assurances that under the new law on local elections, non-citizens would also have the right to be elected (Smith D J (1997); Smith D J (2003:21)). However, five days after Estonia had been admitted to the CoE on 14 May 1993, the deputies from the Estonian National Independence Party broke with the government on this issue and the *Riigikogu* overturned the amendment to allow permanent residents to stand for office (Smith D J (2003:21-22)). In light of the recent changes to the citizenship changes and the new law on language requirements, allowing non-citizens to stand for office was a bridge too far for many Estonian politicians (Smith D J (1997)).

This outcome was, however, only the beginning of what became, in Pettai's words, "*a fairly turbulent summer for Estonian ethno-politics and Western international organisations*" (Pettai:272).

Once the hurdle of CoE membership had been taken in May 1993 with the citizenship legislation more or less intact, more radical elements within the ruling coalition felt the time was ripe for a more assertive policy vis-à-vis the Russian-speaking population (Smith D J (2003:22)). In this regard, one can agree with David Shorr who observes that the summer of 1993 was a more favourable moment for opponents of the aliens legislation than had been the winter of 1991-1992 when the citizenship law was adopted. During the winter of 1991, the August putsch was still a recent event. Russian leaders in northeastern Estonia were discredited as a result of their political stance during this putsch. Furthermore, in late 1991 and 1992, the leaders of the Russian Federation were also occupied with the dismantling of the Soviet Union and the consolidation of Russia's role as the successor state to the USSR. In the summer of 1993, the Russian leaders in the Northeast had reasserted themselves as the champions of a disgruntled Russian-speaking community. Next to this, Moscow followed a much more confrontational stance (Shorr:19).

On 21 June 1993, the *Riigikogu* adopted the Law on Aliens. Under this law, residents with Soviet or Russian passports would have to apply for new residence and work permits within one year. Only temporary five-years permits were to be issued in the first instance. Applicants were required to have a lawful source of income, which was only vaguely defined. It was, for example, unclear whether unemployment benefit would fall into this category (Smith D J (2002c:97)). Those who did not apply or had their applications rejected, were classified as illegal immigrants and could face expulsion (Smith D J (1997); Smith D J (2002a:86)). In response to this law, the Russians living in Narva and Sillamäe prepared for local referendums on territorial autonomy. David Smith claims that, contrary to the common view, these referendum proposals were not a secessionist move. The Russian leaders were above all trying to capitalise on the wave of Western criticism that had followed the adoption of the Law on aliens. Also Russia portrayed the referendum as strictly an internal affair of the Estonian state. Moscow declared that in case the population of Narva and Sillamäe would vote in favour of territorial autonomy, the possibility of a union with Russia was excluded (Smith D J (2002c:97-98)).

Tensions were heightened further by the Law on education which was passed in the same month. This law stipulated that all Russian-language secondary schools and higher education establishments were obliged to switch to teaching entirely in Estonian by the year 2000 (Smith D J (1997)). On the other hand, the Russian language would be maintained in primary

schools. Also the Law on Cultural Autonomy, also adopted in June 1993, illustrated that the Estonian education policy was not entirely assimilative (Smith D J (1997)).

At the same time, also this law proved to be a point of discussion between Estonia and the CoE. Experts of the Council of Europe saw it namely as a fundamental problem of the representiveness of the institutions of cultural self-government that stateless persons and citizens of foreign states resident in Estonia could not be elected or appointed to the managing bodies of these institutions. According to them, generally implemented European norms or at least a European standard-setting trend require that non-citizens who have lived on the national territory in large numbers for a long period are entitled not only to vote but also to stand as candidates in elections to the bodies concerned. They wanted the principle of integration take precedence over that of exclusion with regard to participation in public affairs (Geistlinger (1995:109)). Their opinion was sent to the Secretary General of the CoE and to the President of the State Assembly of Estonia on 6 October 1993. Estonia did not follow their recommendations.

To return to the Aliens law, Estonian President Lennart Meri announced on 28 June 1993 that he would not sign the aliens law but would instead submit it to the CSCE High Commissioner and the CoE for comment. A number of concerns were raised by the CSCE High Commissioner and a special CoE-convened panel of legal experts. The essence of their criticism was that the legal basis on which resident status was granted was not sufficiently clear or equitable. The experts criticised the fact that persons already resident on the territory of Estonia were put on the same level as persons who had not yet settled in Estonia (Munuera (1994:32-33); Shorr:23-24). As a result, in the final version of the law, adopted on 8 July 1993 and signed into law on 12 July 1993, several sections were revised to limit the possibility of abuse. Sections that were not revised were clarified in government assurances on general policy and the application of the law. The most important of these pledges was a 'categorical' statement that there were no plans for the mass expulsion of Russian residents (Shorr:24). Although the OSCE could not prevent the referendums in Narva and Sillamäe, the organisation was promised by the town leaders that they would respect a ruling by Estonia's Supreme Court on the legality of their move. In August 1993, the Court declared that the referendums violated the Constitution and with that, the crisis was ended (Pettai:273). Simultaneously, president Meri announced the creation of a Round Table of non-citizens and minorities. Also the Russian representative Assembly was officially recognised on 6 July

1993 (Munuera:33). The first significant agenda in the Round Table was the naturalisation of non-citizens in order to enable them to run for local elections in October 1993. After some discussions in this newly created institution, the Estonian government encouraged the naturalisation of persons who were considered as loyal to the Estonian government. As a result, at the end of September 1993 in Sillamäe, two-thirds of candidates for the local elections were Russians, which constituted an acceptable number for the government (Nishimura (1999:30)).

After the adoption of the changes by the Estonian Parliament, the European Political Co-operation commended Estonia for its co-operation with the European institutions and noted that *“this political act is a clear indication of the attachment of Estonia to democratic principles and its commitment to political dialogue and compromise and non-confrontation with its communities and its neighbouring countries”* (Statement of 9 July 1993, European Foreign Policy Bulletin Database, 93/302). But although the amendments represented an improvement of the law, they did not address all the concerns expressed by the experts. Many changes simply brought more clarity to its provisions. David Smith refers to the author of the Aliens law, *Isamaa* deputy, Mart Nutt, who described the changes to the draft as purely ‘cosmetic’ (Smith D J (1997)). In his detailed analysis of the subsequent changes to the draft, David Shorr concludes that many suggestions of the High Commissioner and the CoE were not addressed and that the situation for many Russian residents remained unclear (Shorr:24-27).

If the Aliens law exposed tensions between the domestic nationalist agenda of the Estonian government and the goal of international integration, such tensions appeared if anything even more pronounced in the case of Latvia, where the implementation of a functioning naturalisation law - and hence CoE membership - had to wait until the start of 1995.

The Council of Europe and the Latvian Citizenship law

Latvia applied to join the CoE on 13 September 1991. Two years later, a report of the European Commission of the CoE concluded that the absence of a citizenship law, setting out the conditions for the naturalisation of non-citizens, and the absence of a legal status of non-

citizens, were ‘outstanding problems’. Latvia could not become a member until these legal issues were solved.

As mentioned above, in April 1993 the HCNM had made several recommendations in the field of citizenship policy. Max Van der Stoel had indicated that a rapid adoption of a Citizenship law would help to give the non-Latvian population confidence and promote harmonious relations between Latvians and non-Latvians. He advised that children born in Latvia, who would otherwise be stateless, should be awarded citizenship, and further suggested that there should be no delay in acquiring citizenship once all the requirements were met. Language requirements should not exceed conversational levels, and people over 60 should be exempted from the language examinations. In response to these recommendations, the Latvian government stated that the lack of citizenship legislation was due to the fact that there was not yet a legally elected parliament. The *Saeima* to be elected in June 1993 would be able to enact the relevant legislation and all recommendations would then be presented to the *Saeima* (Dahlgren).

By mid-autumn, several drafts had already appeared in the elected Latvian parliament. The proposal of the For Fatherland and Freedom Party (TB) rejected the initiation of any naturalisation policy before the Russian army had fully been demobilised from the country. Even after the army’s departure, TB’s proposal foresaw only minimal expansion of the body of the citizenry beyond the renewed prewar citizenship community and direct descendants. TB specifically proscribed the granting of citizenship rights to residents who had moved to Latvia between 1 July 1940 and 1 July 1992. Latvia’s National Independence Movement (LNNK) presented a draft law in early September 1993. Contrary to TB, this party foresaw a naturalisation process, but its sixteen deputies also imposed stringent conditions. Naturalisation was to take place based on a quota principle, whereby the annual quota would not exceed 10 per cent of the natural growth of citizens the previous year (Eglitis (2002:120)). The first governing coalition, constituted by Latvia’s Way (LC) and Latvia’s Farmers Union (LZS) offered a third draft law. Like the previous proposals, this draft foresaw a confirmation of the pre-1940 citizenry and descendants. Like the LNNK, it called for quotas to be “*determined (each year) by the Cabinet of Ministers and approved by the Saeima, taking into consideration the demographic and economic situation in the country, in order to ensure the development of Latvia as a single nation-state*” (Barrington). The proposal also stipulated

that would-be citizens must be ten-year residents of Latvia, know the Latvian language at conversational level, swear an oath of loyalty to the state, and have a legal source of income. The proposal of Latvia's Christian Democratic Union (KDS) entirely rejected quotas, suggesting that naturalisation must take place based on individual cases. The single political organisation to reject the notion that the interwar citizenship community should be confirmed as the core of the post-Communist community, was the Equal Rights coalition (Eglitis:121). In November 1993, the Parliament voted on five drafts. The proposal supported by the coalition was adopted with fifty-three out of one hundred votes (Eglitis:122). After approval on the first reading, the law was sent to the CoE and the CSCE.

In a letter of 10 December 1993, the HCNM criticised the system of annual quotas, to be determined by the government and approved by the *Saeima*. According to Van der Stoel, this system gave the government too much latitude in deciding how many people would become citizens. Under this system, only very few would gain Latvian citizenship. Van der Stoel then outlined what was to become the 'windows system'. He was not opposed to some groups receiving priority access to naturalisation. Provisions for privileged groups may, however, not contravene the International Convention on the elimination of all forms of racial discrimination. Van der Stoel again stressed that otherwise stateless children should be awarded citizenship. Courts should decide whether people were eligible for citizenship and the Latvian government should inform non-citizens of the procedures for gaining citizenship (Morris (2003:10-11)). The CoE supported the provisions dealing with language knowledge, knowledge of the Constitution, the oath of loyalty, and the need for a legal source of income, but also rejected the notion of quotas. Pressure also came from another external actor. In late March 1994, a 'citizenship commission' in Russia iterated an official policy that sought to ensure citizenship for ethnic Russians in their post-Soviet countries of residence (Eglitis:123).

In March 1994, Latvia's Way opted to remove the quota system from the draft law. Instead, non-citizens were to acquire eligibility for naturalisation based on their membership in particular categories, for example, the number of years residents had been living in Latvia. The draft thus closely resembled the eventually adopted 'windows' system. The removal by Latvia's Way of the quota principle from the law caused a crisis in the ruling coalition. LC was eager to move the bill through as quickly as possible in order to be accepted into the CE. Holding out against this push were the nationalist forces.

On 9 June 1994, the bill on citizenship passed a second reading. As a compromise variant, it again contained quotas. Under the law, naturalisation could begin immediately for Latvians returning to Latvia, people who had graduated from a Latvian high school, and those who had been married to a Latvian citizen for at least ten years. Beyond that, naturalisation could begin from the first day of 1996 and would be open to non-citizens from sixteen to twenty years of age who had been born in Latvia. Beginning in the year 2000, the rest of the non-citizen population could be naturalised under a principle that foresaw an annual quota of 0,10 per cent of the total number of Latvian citizens of the previous year, a total that, according to the newspaper *Diena*, would have been about 1,976 persons per year (Eglitis:124). This quota principle was based on the claim that it was essential to regulate number in order to safeguard the national culture and language (Smith G et al (1998:105); Kolstoe:125).

The OSCE expressed disappointment that quotas had turned up again in the law. The OSCE mission in Latvia began to lobby the ambassadors of EU countries in Latvia to approach different factions within the *Saeima* to try and persuade them to drop the quota system and introduce the OSCE backed 'windows system' instead (Morris:13-14). The CoE stated that Latvia would not be offered membership until the restrictive quotas were dropped and Russia threatened to hold up Russian-Latvian economic agreements and to revoke the temporarily granted Most Favored Nation status extended to Latvia (Eglitis:124). Also the EU exerted diplomatic pressure. In a statement of 21 June 1994, the EU expressed its concern regarding the development of some aspects of the draft citizenship law and called upon the Latvian authorities to implement the recommendations of the HCNM and the CoE (Bull. EU 6-1994, 1.3.12; Foreign Policy Bulletin Database, N° 94/190). At their meeting in Corfu on 24-25 June 1994, the Heads of State or Government stated that the draft citizenship law was incompatible with these recommendations and that it therefore had to be reconsidered (Bull. EU 6-1994, I. 13; also: Yakemtchouk (1996:16)).

As a result of this pressure, representatives of Latvia's Way began to speak out against quotas. Prime minister Valdis Birkavs, a member of LC, stated that "*with quotas, we are sending signals to the world that we do not want to be in Europe, but in the CIS*". The country's largest newspaper '*Diena*' commented as follows: "*The law, that is, the order, under which a state accepts into the citizenry its noncitizens is the internal matter of each state, no one, ostensibly, denies that. But only "ostensibly". Because with this law ... the Council of Europe links Latvia's acceptance into or rejection from the Council. And, despite the fact*

that the CE is a body with a greater symbolic than practical meaning, without membership in that there is no possibility for membership in the European Union.”. The fear rose that Russia would join the CoE before Latvia and would then have the power to dictate the conditions under which Latvia would be admitted (Iglitis:124-125). On the other hand, the radical nationalist deputies on the other hand chided ‘Europe’ for its “*meddling in Latvia’s internal affairs*”.

After President Guntis Ulmanis had vetoed the law and had sent it back to the *Saeima* for reconsideration, the *Saeima* passed a new bill without the numerical quotas on 22 July 1994. This was done by a vote of fifty-eight to twenty-one, with four abstentions. The body of citizenry was formed by the citizens of Latvia and their descendants prior to occupation. The Law prescribed the following naturalisation requirements: residence in Latvia for five years (counting from 4 May 1990 or from the date of a permanent residence permit); knowledge of the Latvian language, the Constitution and the history of Latvia; a loyalty oath to the Republic of Latvia and a legitimate source of income. Also applicants must officially renounce any previous citizenship (Dreifelds:98; Ziemele (1998:258-259)). On the other hand, the naturalisation applications had to be submitted in accordance with the so-called ‘windows system’. Under this system, the majority of non-citizens could only apply for naturalisation under a strict procedure which began in 1996 and should end in 2003. Those born in Latvia should apply for naturalisation before those born outside the country. In 1996, applications would only be accepted from persons aged 16-20, who were born in Latvia. 1997 applicants had to be born in Latvia too, but could be up to 25 years of age. Applications from residents born outside Latvia but who were younger than thirty at the moment of their arrival in Latvia would only be examined from 2002. All the other residents would have to wait until 2003 before sending their naturalisation applications. The official reason was to ensure the smooth pace of naturalisation and to avoid that the state institutions would be overburdened (Yakemtchouk (1996:16); Arnswald (1998:33)).

In a statement of 28 July 1994, the EU considered the law as a good basis for the progress in the integration of ethnic minorities and development of good inter-community relations (Bull. EU 7/8-1994, 1.3.7; Foreign Policy Bulletin Database, N° 94/212). On 31 January 1995, the CoE Parliamentary Assembly voted unanimously to admit Latvia as a member state.

Thus, as Helen Morris indicates, the CoE had a profound impact on the citizenship policy of Latvia. The desire to join this organisation was crucial for both the passing of the initial Citizenship law and the later removal of the quota system (Morris (2003:7)). Membership of the CoE was regarded in its turn as a necessary step in the process of integration into the EU.

The Free Trade Agreements and the Bulgarian clause

The Free Trade Agreements

This process reached a decisive phase with the conclusion of Free Trade Agreements (FTAs). Immediately after the entering into force of the TCAs, the Baltic states wanted to start negotiations on Europe agreements with the EC (Ozolins (1996:83)). The Copenhagen European Council of 21 and 22 June 1993 however opted for FTAs, which were signed on 18 July 1994. While the FTA with Estonia established a free trade area between both parties for all industrial products from 1 January 1995 (Bull. EU 12/1994, 1.3.37), the FTAs with Latvia (Bull. EU 12/1994, 1.3.40) and Lithuania (Bull. EU 12/1994, 1.3.43) submitted the free trade in industrial products to asymmetrical tariff reductions. While the Community immediately dismantled its trade barriers, Latvia and Lithuania established a free trade area during a maximum period of respectively four and six years from 1 January 1995. The fact that no transitional period was stipulated in the agreement with Estonia was a tacit recognition of Estonia's greater progress in economic reforms (Bungs (1998:16)).

The FTAs were clearly a political gesture, designed to bolster the independence of the three Baltic states (Peers (1995:327-328)). Much more important than the actual content (the technical economic provisions) of these agreements was namely the political context and their significance in view of EU membership. At the occasion of the approval of the negotiation mandate in February 1994, the Council had namely issued a declaration on the relationship with the Baltic states, in which it explicitly stated to take all necessary steps with the aim of negotiating and concluding Europe agreements (EAs) as soon as possible, recognising that the ultimate aim of these countries was to become *members of the European Union through Europe agreements* (my emphasis) (Bull. EU 1-2/1994, 1.3.40).

Accordingly, the preamble of the FTAs recognised that it is the "*ultimate objective*" of the Baltic states to accede to the EU. In this regard, it is important to note that the negotiations on

the EAs already began on 28 November 1994, so before the FTAs entered into force (on 1 January 1995). The Essen European Council in December 1994 pushed the Commission and the Council to do all the necessary to sign EAs with these states in order to integrate them in the decided pre-accession strategy (Bull. EU 12/1994, I.13).

The explicit statement of 7 February 1994 put an end to all speculations about a so-called ‘third way’ for the Baltic states. Although the Copenhagen European Council had already stated – in line with the TCAs – that EAs with the Baltic states could be concluded as soon as the conditions were met, the declaration of 7 February 1994 was a landmark in the relationship between the Baltic states and the EU.

The Bulgarian clause

As mentioned above, the ‘Baltic clause’ was very problematic both from a legal and political point of view. The Community therefore searched for a new formula. The ‘Bulgarian clause’ proved to be acceptable. It mirrored the relevant rules of customary international law on the suspension of agreements and uphold the principle of consultation beforehand in an attempt to reach a solution between the parties.

This clause stated that: *“If either Party considers that the other Party has failed to fulfil an obligation under this agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.*

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests.” (OJ 1994 L 357/2, article 119, paragraph 2 (Rumania) L 358/3, article 118, paragraph 2 (Bulgaria)).

In sum, the Bulgarian clause provided a legal basis for the implementation of restrictive measures in case one of the contracting parties failed to fulfil *any* obligation under the agreement. A violation of the human rights clause was without doubt a material breach of the

agreement. The Baltic clause, on the other hand, was less comprehensive: its scope of application was restricted to the situation of a *serious* breach of the human rights clause. The Baltic clause allowed for an immediate suspension of the agreement. This was however the only answer to a breach. The Baltic clause was thus, in the words of Riedel and Will, a “*sharp sword with a limited range*” (Riedel and Will:728)). The Bulgarian clause, on the other hand, was formulated in a more diplomatic way: it aimed first at finding a solution, saving suspension or non-execution for cases of special urgency (Bulterman (2001:231); Pollet:292).

In the FTAs with the Baltic states, the Baltic clause was replaced by the Bulgarian clause.

The Baltic states and the Stability Pact

Almost immediately after the Baltic states were accepted as negotiation partners of a FTA in February 1994, they were integrated in the Stability Pact initiative of the EU.

The Stability Pact

The Stability Pact resulted from an initiative from the former French prime minister Edouard Balladur. Its aim was to contribute to stability by averting tension and potential conflicts in Europe, fostering neighbourly relations and encouraging the CEECs to consolidate their borders and to resolve problems of national minorities (Rouland, Pierré-Caps and Poumarède (1996:222); Nuttall (2000:260-261)).

The Copenhagen European Council of June 1993 endorsed the French initiative and charged the Council to elaborate a report. On 11 December 1993, the Brussels European Council approved this report and charged the Council to adopt the Stability Pact initiative as a joint action (Charpentier (1995:200)). On 20 December 1993, the Council adopted the Joint Action 93/728/CFSP (OJ L 339/1) which instituted the inaugural conference at Paris in May 1994. At this conference at 26-27 May 1994, negotiations of bilateral treaties were launched and two round tables were set up: one for the Baltic region and one for the CEECs. The objectives of the round tables were “*the identification of arrangements and projects aimed at facilitating the achievement and the realisation of agreements and measures for good*

neighbourly relations" in the following areas: regional transborder co-operation, minority questions, cultural co-operation, including language training, economic co-operation and administrative training and environmental problems.

The Stability Pact was adopted in a concluding conference in Paris in March 1995. It consisted of a declaration by which all conference participants pledged to pursue the common aims of the Pact and to use peaceful mechanisms for dispute settlement (Sedelmeier and Wallace (1996:377)) and a list of agreements and political declarations (Charpentier:205). The appendix was elaborated by the European Commission and contained so-called flanking measures to support several projects proposed by the participant states. The European Commission then designated projects that henceforth would be financed by PHARE (Benoît-Rohmer (1996:35)).

At the Cannes European Council in June 1995, the EU further specified some of the accompanying measures to be taken under PHARE alongside the Stability Pact. These included projects concerning transborder co-operation, issues relating to minorities, cultural co-operation, including language training and administrative training and environmental problems. Only a few projects were new. Most projects had already been started, for example under the PHARE Democracy Programme, and accordingly got a 'Stability Pact label'. The Stability Pact thus gave several measures and projects of PHARE a political orientation (Keukeleire (1998:378)).

The participants of the Paris Conference entrusted the OSCE with the further development and control of the Pact (Charpentier:201).

Also the Stability Pact can be compared with the policy of the League of Nations because it lacks general character and only deals with specific situations in some (Central and East) European countries. As M.A. Martin Estebanez puts it, "*economic, security and political factors seem to be prevailing once more over the human rights and international law aspects of the minority questions in Europe*" (Van Den Berghe:167).

The Baltic states and the Stability Pact

The Baltic Round Table brought together: Estonia, Latvia, Lithuania, Poland, the Scandinavian countries, Russia, the United States and Canada, the Council of Baltic Sea States, the Council of Europe, the OSCE and was presided over by the European Union.

In the beginning, the participation of Russia was uncertain. At the inaugural conference, Russia stated that it was not 'directly concerned' as great power. It preferred to use the OSCE framework (Charpentier:202). The Baltic states were opposed to Russian participation and the EU had to convince them that the involvement of Russia was necessary. While in the beginning Russia only sent an observer to the Round Table, later it participated actively (Ueta (1997:98)).

The Baltic Round Table focused on the Russian-speaking population in Estonia and Latvia. It was mandated to "*discuss general political issues of the region*" and to "*promote regional co-operation relating, for example, to integration of populations of foreign origin, national minorities, language training, ombudsman, transborder activities and maritime co-operation, and co-operation among regions of neighbouring countries*" (Council Decision 94/367/CFSP of 14 June 1994, OJ 1994 L 165). During its meetings, several initiatives aiming to foster Russian participation, were discussed like for example the creation of a Russian department in the Eurofaculty (Benoît-Rohmer (1994:572-573)).

Project proposals by Estonia and Latvia

In the field of cultural co-operation, Estonia proposed to raise the number of schools in Northeastern Estonia for the instruction of the Estonian language to Russian speaking students and measures to ameliorate the efficiency of language instruction centres, more particularly with a view to the preparation of the citizenship examinations. Further, the Estonians proposed to establish within the Ministry of Culture and Education a strategic planning unit for the instruction of Estonia as a second language.

Latvia proposed a project to provide language training for its population of foreign origin. Estonia and Latvia jointly proposed to elaborate a common programme together with the Council of Europe. This programme would examine the legal position of the non-citizenship population and establish a national policy of language training.

In the field of legal co-operation and administrative training, Estonia proposed a seminar about NGOs, to be organised with the assistance of the Council of Baltic Sea States. To ensure the application of its citizenship law, Latvia proposed measures in the field of training and technical assistance.

There were several PHARE projects supporting the Stability Pact. One PHARE project (title: 'Language training in Estonia') in the field of cultural co-operation aimed to improve the knowledge of the Estonian language among the Russian-speaking population (Benoît-Rohmer (1996: 100, 102 and 109)).

In general, the Baltic states considered that the discussions with Russia did not fundamentally change their delicate relationship with their superior neighbour. Nevertheless, they fully acknowledged the utility of the exercise, what resulted in a normalisation of the Russian-Lithuanian relations and an improvement of the relationship between Russia and Latvia on a few important issues. On the other hand, tensions between Estonia and Russia intensified during the discussions because of the border problem, the Russian non-recognition of the continuity of the Estonian state since 1920 and the Citizenship law (Benoît-Rohmer (1996:36-37)).

The European Agreements

The Baltic states in the pre-accession strategy

As mentioned above, the negotiations on EAs with the Baltic states already began on 28 November 1994, so before the FTAs entered into force on 1 January 1995.

By stating that associated countries were able to join the EU if they satisfied certain political and economic conditions, the Copenhagen European Council of June 1993 had termed these agreements as the basis of the so-called pre-accession strategy (Maresceau (1997:9)).

This pre-accession strategy was formally elaborated by the Essen European Council of December 1994. It aimed at the progressive integration of the CEECs into the single market through regulatory alignment (the White Paper) and at the same time provided for policies to promote integration in diverse areas. This integration was supported by PHARE, which was progressively converted into a financial instrument to promote the development of the infrastructure and regional co-operation. (Die Heranführungsstrategie:10).

Next to this economic dimension, the pre-accession strategy also comprised a political dimension in the form of the structured dialogue. The purpose of the structured dialogue was to involve the associated countries progressively in the Union's work in areas of common interest through joint meetings at various levels (Lippert (1997:203-204); Maresceau (1997:10)).

So, when the Baltic states signed their EAs on 12 June 1995, their definitive integration into the EU was a fact (Bungs:17). Accordingly, Latvia presented its application for EU-membership on 27 October 1995, Estonia on 24 November 1995 and Lithuania on 8 December 1995. To summarise (European Commission (1995) *EU Relations with the Baltic states*:5-6; Maresceau and Montaguti (1995)), the main elements of the EAs were: political dialogue, provisions regarding economic activities, rules and approximation of laws, economic and industrial co-operation, environmental co-operation, educational and training co-operation, monetary policy co-operation, financial co-operation (continuation of PHARE aid and other financial support), cultural co-operation and crime prevention co-operation. They also contained a new heading on co-operation in crime prevention and provisions for the three Baltic states to take part in framework programmes, in specific programmes and in projects or other schemes set up by the Community in various areas (Bull. EU 6/1995, 1.4.63). An Association Council (at ministerial level), an Association Committee (at seniors official level) and a Parliamentary Association Committee were instituted.

The human rights clause

Like the FTAs, the EAs contained a clause on observance of democratic principles and human rights and a clause enabling each party to take 'appropriate measures' if the obligations were not respected.

Article 2, paragraph 1 of these agreements stated:

“Respect for democratic principles and human rights, established by the Helsinki Final Act and in the Charter of Paris for a New Europe, as well as the principles of market economy, inspire the domestic and external policies of the Parties and constitute essential elements of this Agreement.”.

Article 123, paragraph 2, stated:

“If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests.”.

Next to these standard articles, the EAs with Estonia and Latvia contained a provision regarding persons belonging to minorities. Article 78, paragraph 2, namely stated that the co-operation (in the field of education and training) would also focus on the promotion of language training, in particular for resident persons, belonging to minorities.

When these EAs were discussed in the plenary session of the EP on 14 November 1995, both Truscott (EA with Estonia) and Rehn (EA with Latvia) briefly referred to the minority question. Truscott pointed out that obtaining Estonian citizenship can take six years and that it required a knowledge of the Constitution in Estonian. An often heard complaint of the Russian speakers was that the official language examinations are arbitrary and expensive. Because only citizens have the right to vote, most Russian speakers (only 140,000 of the 400,000 non-Estonians were Estonian citizens at that time) were unable to vote in the parliamentary elections of March 1995. In case of a deterioration of the human rights situation, the EU could invoke the human rights clause of the EA (Handelingen van het Europees Parlement, 1995/1996, Nr. 4-470:70-71).

Rehn simply mentioned that 71 per cent of the population of Latvia was Latvian citizen. Ethnic Russians – a third of the total population – constituted 38 per cent of the citizenry (Nr. 4-470:71-72).

Gary Titley reiterated the need to continue to monitor closely the human rights situation of the Russian minority. With regard to the freedom of movement of people, problems could, in his view, again arise from the restrictive citizenship laws. While Estonian and Latvian citizens enjoyed that freedom, non-citizens – residing for many years in these countries – were not allowed to move to EU-countries.

On the other hand, other speakers underlined that the citizenship *problématique* could not be separated from the history of 50 years of Sovietisation. Only gradual change was possible (Nr. 4-470: 75 and 79).

European institutions vis-à-vis restorationist policy in the period 1995-1997

Very soon after their independence, the Baltic states placed EU-membership high on their agenda. In the period between 1991 and 1995 they gradually strengthened their relationship with the EU. Through successive agreements, they moved closer to the European orbit. All these agreements contained a conditionality clause, making the respect for human rights and democratic principles a matter of common interest. This meant that Estonia and Latvia could not autonomously pursue their own citizenship and ethnic policy but had to abide by certain international obligations. But the interest of the EC/EU in ethnic affairs was nominal. The process of rapprochement between the EC/EU and the Baltic states was mainly driven by the internal Russian situation and geopolitical interests. The result of the first Duma elections, with the victory of Vladimir Zhirinovskiy, was probably the main reason why the FTAs with the Baltic states were turned into EAs even before they came into force. In this regard, Mr. Ustubs claims that if the Baltic states would have started a relationship with the EU in the late nineties, the Union would use a much tougher language because it has developed a much better relationship with Russia (Interview with Mr. Ustubs, 16 September 2002, Brussels). As Ms Halliste notes, the main institutions which dealt with minority issues in the period 1991-1997 were the CoE and the OSCE (Interview with Ms Halliste, 20 September 2002, Brussels). But their direct impact on the policies of Estonia and Latvia was minimal. True, the CoE had effectively made admission within its ranks dependent on certain changes in the

Latvian citizenship law. Most recommendations of the HCNM were, however, politely rejected.

Actually, in the same period 1994-1995 that the integration of Estonia and Latvia into the EU was definitive, these countries strengthened their restorationist policies. Already in 1994 the Latvian parliament adopted a law on local elections that limited voting and standing in local elections to citizens. The international community did not react. In 1995 the *Saeima* adopted a national election law which required candidates to have the highest level of language proficiency. If the candidate concerned had not completed the necessary education in a school with Latvian as the language of instruction, then the candidate had to submit a notarised document indicating the highest level of Latvian language skills. This move barred many ethnic non-Latvians who were citizens from running for national office. As a result, Latvia had curbed the ethnic Russian political representation on both the local and the national level (Kelley (2004:76-77)). In 1995 the Estonian parliament passed a new language law that reiterated the status of Estonian as official state language. It no longer obligated state officials to use the Russian language when interacting with Russian speakers, as the language law of 1989 had done. This law was intended to strengthen the position of the Estonian language after a survey had found that 83 per cent of the residents of Estonia claimed that they were fluent in Russian, while only 77 per cent claimed that they were fluent in Estonian. In addition, the Citizenship law was made even stricter in January 1995. The residency requirement for those who had entered Estonia after 1992 was changed from two to five years, the requirement to know the Constitution and Citizenship law was spelled out, and the language requirements were tightened. References from the HCNM to his letter of 6 April 1993 were ignored (Budryte:73; Kelley (2004:105)).

Despite the argumentation from the HCNM that the changes concerned failed to correspond to international agreements, the *Riigikogu* changed in 1996 the local election law, including language proficiency requirements (Kelley (2004:98)).

Between 1995 and 1997 the HCNM again sent letters with recommendations to the Latvian authorities. More specifically, in his letters of October 1996 and May 1997 to Latvian Foreign minister Birkavs, the HCNM recommended a reduction of the naturalisation fees, the simplification of the tests required of new citizens, and, above all, the granting of citizenship to stateless children and the abolition of the naturalisation windows. In his answers, Birkavs was evasive and defensive on the main recommendations. He pointed to political difficulties, defended Latvian practice as compatible with international law, and declared that a change in the law had to be decided by the *Saeima*, and not by the government (Schimmelfennig,

Engert, Knobel (2002:34); Engert, Knobel, Schimmelfennig (2001:27); in detail: Morris (2003:14-15)). A clear indication of the Latvian position was that in February 1997 the *Saeima* rejected a proposal to amend the citizenship law to automatically naturalise the twenty-five thousand Poles living in Latvia without Latvian citizenship. The following month the parliament rejected a proposal to end the windows system and grant citizenship to Latvian-born children of permanent residents and spouses of Latvian citizens after five years of marriage (Kelley (2004:90). With regard to citizenship also the efforts of the HCNM in Estonia had no result. After a change of government, the HCNM again visited Estonia in April 1997, reiterating his old recommendation to grant Estonian citizenship to otherwise stateless children. However, he faced fervent opposition. A 1997 poll had shown that 44 per cent of ethnic Estonians agreed that only those whose families were Estonian citizens before 1940 had the right to Estonian citizenship, and 62 per cent said they held that view very strongly. Following these results, the new prime minister, Mart Siimann said that his government would not change the principles of the citizenship law (Kelley (2003: 4 and 28-29)).

The OSCE's impact was thus minimal. The Estonian and Latvian government responded only to minor parts of the OSCE recommendations. In this regard, Judith Kelley makes a distinction between normative pressure and conditionality. Normative pressure occurs when an institution advises a government on the direction a policy should take, offering no reward other than the approbation of the institution. Conditionality, on the other hand, involves explicitly linking the change advocated to an incentive, like membership of an institution (Kelley (2004:3). The OSCE never used membership conditionality as a mechanism for influence. Since the OSCE texts are not legally binding and since the OSCE only used normative pressure, Estonia and Latvia paid little attention to the recommendations of the HCNM, whom they also depicted sometimes as Russian-friendly. Policy-makers in these countries also (correctly) calculated that few consequences would result from not following the advice of the HCNM. In ethnic issues, the EU remained in general silent in the period 1991-1997. It mainly concentrated on deepening economic co-operation with those countries. This changed dramatically in 1997.

Chapter seven: Estonia and Latvia in the EU accession process and the role of the OSCE.

The European Commission opinions of July 1997 and the Luxembourg European Council of December 1997

The Madrid European Council of December 1995 shifted the focus from association and pre-accession towards enlargement, by pointing out a timetable and the modalities of the process of enlargement. For the first time, an indicative date was set to open accession negotiations with the CEECs (alongside Cyprus and Malta), namely six months after the end of the IGC (which lasted from 29 March 1996 until 18 June 1996) (De la Serre (1998:12-13)). The Summit agreed to ask the Commission to prepare its opinions (*avis*) on the candidates “*as soon as possible*” after the conclusion of the Intergovernmental Conference (IGC) due to start in 1996 (Bull. EU 12/1995, I.25).

On 15 July 1997 the Commission published its opinion on enlargement and other reform topics in a document with the title ‘*Agenda 2000*’. The three volumes covered four main areas: the Commission’s opinions concerning the candidates’ ability to fulfil the Copenhagen criteria, a framework enlargement strategy, an impact study and a proposed new financial perspective.

On the one hand, the Commission considered that both Estonia and Latvia possessed stable institutions guaranteeing political stability, democracy, the rule of law and respect for human rights. On the other hand, both states were required “*to take measures to accelerate naturalisation procedures to enable the Russian-speaking non-citizens to become better integrated into (their) society*”. The Commission also insisted that Estonia and Latvia “*must consider ways to make it easier for stateless children*” born on their territory “*to become naturalised*”, with a view to the application of the European Convention on Nationality concluded in the framework of the Council of Europe. In addition, Latvia was urged “*to pursue its efforts to ensure general equality of treatment for non-citizens and minorities, in particular for access to professions and participation in the democratic process*”. An additional criticism related to the high enrolment fees for language examinations (European Commission (1997)). The Commission was especially critical of the windows system of the

1994 Citizenship Law of Latvia. It noted that this system “*has not served to grant Latvian nationality to very many people, a fact which suggests that a large proportion of the country’s population may remain foreigners for a long time*”. In its view, the “*system for age brackets, initially devised as a way of preventing the administration from being overwhelmed by a flood of applications, has had an inhibiting effect. Given this ‘shortage’ of applications for naturalisation, such a system no longer appears warranted.*” (European Commission (1997)). With regard to Estonia, the Commission observed that under the new naturalisation procedure of the Citizenship law of April 1995, the number of naturalisations per year had fallen and that at that rate “*a large percentage of Estonia’s population will continue to remain foreign or stateless for a long time*” (European Commission (1997)).

As Bruno De Witte notes, the Commission adopted in its reports “*a definition of minorities which includes all the communities residing in these countries, without distinguishing whether their members were nationals of the country or not*” (De Witte (2000:6)). Next to the acquisition of citizenship, also the rights of Russian speakers with respect to freedom of movement, political participation and access to public posts, access to courts, freedom of information and the educational system (Brandtner and Rosas (1998)). With this approach, the Commission did not intend to elaborate a new, broader theoretical concept of minority. Rather, like the OSCE High Commissioner, it employed a pragmatic political approach in order to ensure both internal and international stability (Pentassuglia (2001:21)).

Just as the earlier gradual integration of Estonia and Latvia into the European security architecture (period 1991-1997) had been driven by (geo)political considerations, the European Union’s policy with regard to the Russian settlers was also aimed primarily at ensuring both internal and international stability. Estonia and Latvia were henceforth potential EU-members. Priit Järve, Christian Wellmann and Rein Müllerson note that the citizenship policy of both countries had led to the emergence of a significant percentage of Russian citizens in these countries (by the beginning of 1998 almost 100,000 residents of Estonia had become citizens of foreign states, mostly of Russia), many of whom would normally have chosen Estonian or Latvian citizenship. Since Russia has a lawful interest in the fate of its citizens in Estonia and Latvia, this is a potentially destabilising factor and a security risk. Second, large numbers of non-citizens rendered the cohesion of the Estonian and Latvian societies problematical (Priit and Wellmann, (1999:9); Müllerson (1998:17-18)). Stringent language requirements in both the public and private sector would exclude many Russian-speakers from the labour market and would create an additional source of tension.

The response to the enlargement blueprint ranged from enthusiasm in Estonia to disappointment in Latvia. According to the Latvians, the 'rejection' by the European Commission was the result of Russian pressure (Bayou (2000:70)).

The statements in the Commission's opinions exercised a strong influence on the decision-makers in Estonia and Latvia, since membership of the EU had been declared the most important foreign policy goal of these states (Birzniece (1999:42)). Furthermore, the Commission undoubtedly provided human rights' and integration activists in Estonia and Latvia with valuable arguments since it was considered politically more efficient to rely on the EU standards than those of the United Nations, the OSCE, or the Council of Europe (Birzniece:10).

In a memorandum on Agenda 2000 of 22 August 1997 (RFE/RL Newline, 25 August 1997), the Latvian government considered the Commission's opinion as "*generally positive and mainly unbiased, with a strategic significance to promote Latvian integration in the EU*". On the other hand, it referred to "*several inaccuracies, misinterpreted facts and biased interpretations contained in the Commission Opinion*" (Memorandum (1997:3)). The Latvian government still intended to convince the European Council of Luxembourg to start accession negotiations with Latvia. A few practical actions in the short term – taking into account the Commission's opinion – were proposed. With regard to the political criteria, the government admitted that "*the further development of the naturalisation process is prerequisite for the shaping of an integrated society*". Therefore, it agreed to apply a sliding scale to the naturalisation fee and further promised to make an analysis of the reasons behind the slow rate of naturalisation applications. Also the limitations of the rights of non-citizens to practice certain professions would be examined (Memorandum:5). On 22 July 1997, the Cabinet of Ministers decided to decrease the naturalisation fee for certain groups of applicants to further promote naturalisation. For other groups, including orphans, the naturalisation fee was abolished altogether (Morris:20).

To satisfy the concerns expressed by the European Commission, the Estonian government decided in December 1997 to submit a draft law to the *Riigikogu* whereby all children born in Estonia would be granted citizenship if their parents had lived in the country for at least five years (RFE/RL Newline, 9 December 1997; Norgaard and others (1999:180); Yakemtchouk (2004:165)). The EU welcomed this decision and qualified it as a "*constructive step towards the integration of Estonia's non-citizens in the spirit of the UN Convention on the rights of the*

child and an important confidence-building measure” (Statement of 15 December 1997, European Foreign Policy Bulletin Database, Nr. 97/138; RFE/RL Newline, 16 December 1997).

The subsequent Luxembourg European Council of 12/13 December 1997 designated the accession process as an inclusive process comprising all the ten CEECs. All the candidate countries would participate in this process on an equal footing (Bull. EU 12-1997, I.5 (10)). However, whereas all the CEECs would be involved in the *enlargement* process, the summit also decided, in accordance with the Commission’s opinion, to begin *accession negotiations* in individual bilateral intergovernmental conferences only with the Czech Republic, Estonia, Hungary, Poland and Slovenia (together with Cyprus). At the same time, Bulgaria, Latvia, Lithuania, Romania and Slovakia would be prepared for these negotiations and could in time proceed to that stage (I.5 (27)).

The decision of the summit to start negotiations only with Estonia was based on a combination of external and internal factors. First of all, most EU member states preferred to initiate enlargement negotiations only with a limited group. The decision of the Union to include at least one of the Baltic states would signal that they were not automatically excluded because of their geographical situation and their former status as Soviet Republics. The inclusion of Estonia reflected the concern of the EU for regional stability. In the words of Mike, Estonia would function as flagship for EU good practice and influence in the Baltic region, should its progress lead to early membership: *“Thus, for instance, the treatment of the Russian minority in Estonia can only be enhanced by the tutelage of the Union, as progress towards membership depends, in part, upon the application of minority rights. Latvian treatment of its Russian minority might be anticipated to follow such good practice.”* (Mike (1999:61)). The specific choice of Estonia was mainly based on the value attached by the EU to economic development and administrative reform. According to the European Commission, only Estonia appeared as a functioning market economy able to make the progress necessary to cope with the competitive pressures and market forces within the Union in the medium term (Schimmelfennig (2001:181)). The Commission further indicated that Estonia had made more progress in administrative reforms than Latvia and Lithuania, and was thus better prepared for adopting the *acquis*. Obviously, Latvia was excluded from the first round of accession negotiations as the only country to receive a negative evaluation on both economic and political (citizenship policies, treatment of non-citizens) criteria. Lithuania had

no citizenship and minority problems. Therefore, “*The choice of Estonia instead of Lithuania, (...), seems to indicate that a functioning market economy and the ability to adapt to the acquis were perceived as more important by the European Commission than the question of citizenship policies. The most likely explanation of this position is the experience that it is more difficult to change economic institutions than the political rules of the game.*” (Norgaard:173). One must, however, add that also with regard to citizenship and minority policy, Estonia received a better evaluation than Latvia. The Commission not only strongly criticised the Latvian ‘window system’ but also urged Latvia to pursue a policy of equal treatment of ethnic minorities. According to Henderson, trends in the development of the minority policies of the candidate countries were very important for the Commission. Deficiencies in the treatment of minorities in Slovakia were one of the reasons why the Commission negatively evaluated the state of Slovakian democracy in its July 1997 opinion. The Meciar government of Slovakia accused the Commission of ‘lack of objectivity’ because it had ‘praised’ Rumania, where minority rights were no better than Slovakia, and decided that there were ‘no great problems’ in Estonia, where basic minority rights, in the Slovakian view, could be regarded as inferior to those in Slovakia because nearly a quarter of the population lacked citizenship. Henderson observes that - although this was never explicitly stated by the Commission - what really worried the EU were the negative trends in developments. The Romanian and Estonian governments were striving to ameliorate the position of their ethnic minorities, while under Meciar, minority rights were slowly being eroded (Henderson (1999:170-171)). Whereas attempts to amend the Latvian Citizenship law were blocked, the *Riigikogu* passed on 1 July 1997 important amendments to the Aliens law. Aliens who had applied for a temporary residence permit before 12 July 1995, were eligible to request permanent residency. The opposition ‘Pro Patria Union’ was opposed to these amendments because they would “*dilute Estonia’s strict citizenship and aliens policy*” (RFE/RL Newslines, 2 July 1997).

The system of the Accession Partnerships

The identified shortcomings in the Commission’s opinions were formalised as objectives in the Accession Partnerships (APs), which would function as the main instrument of the reinforced pre-accession strategy. The APs brought together all the initiatives for assisting the candidates in a single framework. The aim of the APs was to launch national programmes

to prepare the candidates for accession. Each individual AP offered a single framework which included the priorities for preparing for accession according to the specific situation in each state, in view of the political and economic criteria and the obligations inherent in being a member state of the EU. In addition, each AP included the financial resources, in particular PHARE, to assist each applicant in its implementation of the priorities laid down in the pre-accession period. The short-time priorities and intermediate objectives were based directly on the Commission's opinion and varied from one country to another. The short-term priorities had to be fully achieved in 1998 or at least have reached an advanced stage by the end of that year. The achievement of the medium-term priorities could take a number of years.

The APs were used as the basis for pre-accession aid, through the reorientated PHARE and for the National Programmes for the Adoption of the Acquis (NPAA). On the basis of its AP, each candidate country had to draw up a NPAA which had to set out a time table for achieving the priorities and intermediate objectives. The NPAA would also indicate the necessary staff and financial resources to achieve the priorities. The NPAA's were thus complementary to the APs. The reorientated PHARE-Programme focused its financial assistance on the adoption of the Community acquis and in particular on the priorities identified in the AP and in the NPAA. Each year, the Commission signed a Financing Memorandum with the applicant country by which that country undertook to meet a number of the priorities identified in its AP and the Commission to contribute financially to their realisation. Programming of Community financial assistance took into account the priorities and the time table of the NPAA (European Commission (1998) Accession Partnerships, MEMO/98).

The APs were conditional upon compliance with the requirement of respect for democratic principles and human rights. Article 4 of the Council regulation N° 622/98 which established in principle the APs (OJ 1998 L 85) stated that: "*Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular when the commitments in the Europe Agreement are not respected and/or progress towards fulfilment of the Copenhagen criteria is insufficient, the Council, acting by qualified majority on a proposal from the Commission, may take appropriate steps with regard to any pre-accession assistance granted to an applicant state.*". This Regulation *de facto* introduced a 'human rights clause' into PHARE assistance to the applicant countries, since PHARE is the main instrument for Community assistance to these countries in the framework of the APs. In case of substantial

human rights violations or significant infringement of democratic principles, the conditionality clause could be used to suspend, or even terminate, co-operation with the partner state. On the other hand, the clause could also serve as a basis for certain *positive* measures aimed at promoting human rights in one of the partner countries (Brandtner and Rosas).

In accordance with the conclusions of the Luxembourg European Council (I.25 (29)), the institutions of the EAs assumed an enlarged role within the reinforced pre-accession strategy, in particular with regard to the monitoring of the progress made by the applicant countries in the adoption and implementation of the *acquis* and the AP (European Commission, European Union enlargement:17; Gaudissart (1999:20); European Parliament, Briefing Nr. 36).

More specifically, the relevant sections of the AP were discussed in the appropriate subcommittee. The Association Committee discussed the overall developments, the progress and problems in meeting the priorities and intermediate objectives as well as more specific issues referred to it by the subcommittees. The Association Committee then reported to the Association Council on the implementation of the AP. The Commission adopted its regular reports on the basis of the conclusions regarding the implementation of the APs in the EAs. These reports were then translated in the APs into a more detailed list of what needed to be done. Proposals to revise the APs were put forward by the Commission to the Council at the same time as the regular reports. The new APs, mirroring the findings of the Regular reports, were then translated into the action plans of the governments of the applicant countries.

These NPAAAs then served for the discussions in the EA framework (Glaser:6).

The Joint Parliamentary Committee was a very important framework for parliamentary control. It was the only institution that brought together the European and candidate country parliaments, the government of the candidate country, the Commission and the Presidency of the Council. Also the chief negotiators of both the EU and the candidate country were invited to the meetings. The main asset of the JPC framework was that the Commission and the European Presidency could pass messages directly into the heart of the country concerned (European Parliament, Briefing Nr. 38). The naturalisation process and the integration of minorities were issues that were high on the agenda of most JPC meetings with Estonia and Latvia (European Parliament (2002:4)).

Dag Osuander, EP official, notes that the direct dialogue with the Estonian and Latvian law-makers enabled the MEPs and the Commission officials to exert a strong influence on the

law-making process in these countries. In general, resolutions of the EP could not be neglected since the EP has to give its assent for the accession of the candidate countries (Interview with Mr. Dag Osuander, 3 February 2003, Brussels).

The following pages examine how the EU successfully determined Latvian and Estonian citizenship and language policy by way of the system of APs and regular reports.

The EU and Latvian sovereignty

The citizenship law

The review of the window policy and the facilitation of naturalisation of otherwise stateless children were given a central place in the 1998 AP with Latvia. (OJ 1998 L 121:26-30).

The need for EU membership for security reasons became very clear in March 1998 when the Russian government threatened to impose economic sanctions on Latvia after by some 1,000 elderly Russian speakers in Riga against a recent increase in utility rates. This demonstration was broken up by the Latvian police and caused international uproar. Moscow accused Latvia of a "*blatant violation of elementary human rights*" and threatened to "*demand that all discriminatory measures against Russian speakers be removed*". Furthermore, the Russian government linked its signing of a treaty delineating the border between Latvia and Russia with the status of Russian speakers living in Latvia. According to Moscow, removal of these 'discriminatory measures' meant accepting the revisions to the Citizenship Law proposed by the OSCE (Budryte:117).

The EU stepped up its support of the OSCE. The head of the EU delegation in Latvia said: "*In March 1998 we really began to stress this issue of the citizenship law. And we came out and supported Van der Stoep and said that he is the bottom line.*" (Kelley (2004:90)).

Meanwhile, an Integration Council was established by the Prime minister in March 1998. It was endowed with the task of elaborating a concept for the National Programme on Integration of Society. On a meeting with journalists on 18 March 1998 in Riga, Valdis Birkavs noted that one of the programme's main goals was "*to avoid the emergence of a two-*

community state on Latvian territory”, adding that this “*long-term task*” was linked to Latvia’s “*strategic foreign policy goal, integration into the EU*” (RFE/RL Newsline, 19 March 1998).

On 14 April 1998, the Co-operation Council, composed of representatives of the ruling coalitions factions, reached an agreement on proposals for amendments to the Citizenship law. The ruling factions agreed that all children born after 21 August 1991 would be entitled to citizenship when they reached the age of 16 years and have sufficient knowledge of the Latvian language. They also upheld the partial removal of the ‘naturalisation windows’ to allow all children born in Latvia to be naturalised by 2001. Also other non-citizens would be able to become naturalised after that date (RFE/RL Newsline, 16 April 1998).

While a Russian Foreign ministry official on 16 April 1998 described the agreement as a “*step in the right direction*”, the EU urged Latvian law-makers to quickly enact amendments into the citizenship law. Noting that it had earlier raised the issue in the context of Latvia’s bid to join the EU, the Union considered it essential for the “*government’s program to match fully the standards established by the Organization for Security and Cooperation in Europe in this area, drawing on the advice of the OSCE’s High Commissioner on National Minorities*”. The Union underlined that it would “*continue to take a close interest in the implementation of the government’s programme*” and expressed the hope that “*the Latvian Parliament will take early action to adopt the Government’s decisions*” (European Foreign Policy Bulletin Database, Nr. 98/050). In early May 1998, the Latvian government approved a change to the citizenship legislation with regard to the children born in Latvia after 21 August 1991. Contrary to the proposals of the Co-operation Council, the only restriction was that the parents must have been living legally in Latvia for at least five years. The HCNM had namely noted that the proposal from this council to allow only children of 16 years or more to citizenship, was inconsistent with international standards and would provoke a negative response in Europe (RFE/RL Newsline, 7 May 1998). The final decision was appreciated by two high officials of the European Commission during a meeting with the Latvian Foreign minister on 8 May 1998 (www.mfa.gov.lv).

Both external and internal actors pressured the *Saeima* to change the citizenship law. Next to the European Union, the OSCE High Commissioner and Russia, also Ole Espersen, Commissioner of the Council of the Baltic Sea States (RFE/RL Newsline, 14 May 1998), and

the Council of Europe (RFE/RL Newswire, 19 May 1998) urged the Latvian parliament to amend the citizenship law. In strong wordings, both Foreign minister Valdis Birkavs (RFE/RL Newswire, 2 June 1998) and President Guntis Ulmanis (RFE/RL Newswire, 4 June 1998) put pressure on the *Saeima*. In case the amendments would not be adopted, they said, Riga would lose not only allies in Europe and the USA but also the chance to improve relations with Russia.

On 4 June 1998, the *Saeima* approved at a second reading the amendments of the government to grant citizenship at birth to stateless children born in Latvia after 21 August 1991, and to abolish the window system. On the same day, the Latvian newspaper '*Diena*' published a letter of 2 June 1998 from British Prime minister Tony Blair urging his Latvian counterpart, Guntars Krast, to help ensure that Latvian law and practice "*fully (conform) with the standards of international society*" (RFE/RL Newswire, 5 June 1998). In his capacity as President of the European Union, Blair noted that, "*bearing in mind Latvia's future membership of the EU, the EU considers it essential that this legislation should be in full compliance with the recommendations of the OSCE's High Commissioner on National Minorities ... a delay in implementation of the legislation, implementation of legislation that is not in line with the High Commissioner on National Minorities' recommendations, would not be seen as a positive development by the EU*" (Morris (2003:24).

After President Guntis Ulmanis had urged Guntars Krast to call an extraordinary parliamentary session to adopt the amendments in the third and final reading (RFE/RL Newswire, 9 June 1998), the EU welcomed the decision of the parliament. On the other hand, it critically noted in the statement of 9 June 1998 that the *Saeima* had voted not to address citizenship legislation under the urgent procedure. In spite of this, the EU expressed the hope that "*the Saeima (would) complete work on the legislation abolishing the window system and granting citizenship to stateless children without delay*". Further, the Union delivered a message to Russia in welcoming Primakov's statement that Russia sought no more from the Latvian government than full implementation of the OSCE's High Commissioner's recommendations (European Foreign Policy Bulletin Database, 98/100). After pressure from the President to hold an extraordinary session on the issue (RFE/RL Newswire, 18 June 1998), the *Saeima* approved on 22 June 1998 the amendments to the citizenship law in a third and final reading whereby citizenship was granted to all children born to non-citizens after 21 August 1991 if their parents would request it. The parliament also abolished the windows-

system and simplified language tests for people over 65 (European Parliament, Briefing Nr. 42).

In its statement on the parliament's decision, the Latvian Foreign ministry declared that by facilitating the naturalisation procedure, Latvia had fulfilled an important criterion for EU membership and admitted that this had been one *major incentive* (my emphasis) for amending the citizenship law (Arnswald:34). This was also the view of the European Commission. It commented that the amendments met the recommendations made by the OSCE and that they addressed "*one of the priorities in Latvia's preparations for membership*" (RFE/RL Newline, 23 June 1998). In a statement of 26 June 1998, the Union welcomed the decision and considered that it fulfilled the key elements of the recommendations of the HCNM in respect of citizenship (European Foreign Policy Bulletin Database, 98/114).

European pressure however had its limits. Immediately afterwards, those amendments were questioned by the Fatherland and Freedom Party. It collected the required number of deputies' signatures to prevent the amendments from going into force for two months (RFE/RL Newline, 23 June 1998). During that period, it sought to collect the signatures of 10 per cent of the voters to hold an amendment on the amended law (RFE/RL Newline, 29 June 1998). At the same moment as the petition drive for the referendum began, EU Commissioner Hans Van den Broek warned the Latvians during a visit to Riga on 20 July 1998 not to delay granting citizenship to non-Latvians. "*We expressed the hope with the government that this law will be implemented,*", Van den Broek told journalists, adding that "*we will have a disappointment to digest*" if the referendum would block the amendments. Van den Broek also urged Russia to stop trying to apply economic pressure on Latvia over the issue (RFE/RL Newline, 21 July 1998). Later, the Union underlined in a statement of 3 September 1998 its respect for the democratic process in Latvia but also expressed the hope that "*the people of Latvia (would) appreciate the importance of this legislation so that the law as submitted by the government take effect as quickly as possible*". In late August 1998, the Fatherland and Freedom Party was successful in gathering 226,530 signatures, almost twice the required 131,000 (RFE/RL Newline, 28 August 1998). President Guntis Ulmanis, who always had supported the amendments, blamed 'the West' for the popular reaction. He contended that "*recommendations from the West were perceived by society as pressure*" and that Latvians were rejecting Western meddling (Mandelbaum (2000:121)).

This was also the opinion of several Latvian NGOs. They urged Latvians to vote against the amendments to the citizenship law. In their view, the ruling parties showed a lack of interest in Latvia's fate by approving the amendments "*in a hurry*" and yielding to pressure from Russia and European organisations. They argued that the amendments should be adopted by the new parliament and should be adapted to reflect Latvian interests rather than European requirements (RFE/RL Newslines, 23 September 1998). In an interview with Reuters on 1 October 1998, Latvian Prime minister Guntars Krasts said that Western pressure on Latvia to ease citizenship requirements for its Russian-speaking minority was a "*mistake*". Such pressure was harmful and raised doubts about the value of joining the EU. By exerting pressure, the EU, in his view, behaved like Moscow did before Latvia quit the Soviet Union (RFE/RL Newslines, 2 October 1998).

Still, on 3 October 1998, Latvian voters rejected by a vote of 53 to 45 per cent the attempt to block the amendments to the citizenship law. In the simultaneous elections for the *Saeima*, the voters elected a minority government led by Vilis Kristopans of Latvia's Way; former Prime minister Krasts was relegated to the post of deputy prime minister for European integration (Mandelbaum:121). President Ulmanis congratulated the Latvians for having understood the importance of the integration of society. By adding that the vote was a positive signal towards the European Union, he revealed, however, the true meaning of the referendum and its result, namely EU-membership. In this regard, Céline Bayou argues that rather than a real desire to integrate the Russian speaking-community, the Latvians were afraid to see their chances of EU-membership jeopardised. Thus, in her view, the wish to conform to EU requirements determined the result of the referendum (Bayou (1999:101)).

In a statement of 5 October 1998, the European Union welcomed the decision of the Latvian electorate and noted that the amendments were in full accordance with the OSCE requirements. It observed that "*the decision of the Latvian electorate (took) into account the political priorities enumerated in the Accession Partnership*" and that it was "*of marked relevance to Latvia's relationship with the European Union*" (Press: 324 Nr. 11604/98; European Foreign Policy Bulletin Database).

Also the Commission recognised in its regular report of 4 November 1998 that Latvia had made major progress as regards the short term priorities of the AP relating to political criteria: "*The successful 3 October referendum on amendments to the Citizenship Law (had) facilitated*

an acceleration of the naturalisation process, notably by abolishing the 'window system' and granting citizenship to stateless children." On the other hand, referring to recommendations made by the OSCE, the Commission requested Latvia to further simplify the citizenship tests on Latvian history and the constitution. With regard to the integration of minorities, it emphasised the importance of language training. Although the first phase of a Latvian language programme had been successfully completed, there still remained a considerable shortage of teachers of the Latvian language (European Commission (1998:13).

Despite the positive developments in Latvia, the Commission made no recommendations to promote Latvia to the 'first wave'. Only Estonia was regarded as a functioning market economy, able to cope with the competitive pressures and market forces within the Union in the medium term. Although Latvia had made significant economic progress, it could not yet be regarded in the Commission's view as fully satisfying either criteria. However, if the momentum was maintained, negotiations could be opened before the end of 1999.

The language law

Budryte notes that the pressure from the European Union in the citizenship question had three consequences. First, shortly before amending the Citizenship law, the *Saeima* ratified a resolution condemning the occupation of Latvia by the Soviet Union. A second consequence was the national referendum. The issue of the language law was the third consequence (Budryte:119-120). After succumbing to European pressure over the citizenship issue, Latvian nationalists wanted to change the education and language legislation to secure the future of the Latvian nation (Morris (2003:24, referring to an interview with an EC official in Riga on 20 October 1998).

The *Saeima* had already elaborated a language law in 1996. The draft law stipulated that all documents, correspondence, and business meetings in private firms would henceforth have to be in Latvian. It also stipulated that all public gatherings and demonstrations should be conducted only in Latvian. The CoE and the OSCE argued that the draft violated the rights of private business as well as the right of public assembly (Pettai:279). As a result of this criticism, the draft was halted before returning in 1999.

Already in its 1998 Regular report, the Commission doubted whether the final text of the draft Latvian Language law would correspond to international standards and OSCE recommendations (European Commission (1998:13-14)). In January 1999, the HCNM said that the draft law on the state language, which was being prepared for its second reading in the *Saeima*, 'over-regulates' the use of foreign languages in private business. In his view, the requirement that private-sector employees speak Latvian intruded in the private sphere (RFE/RL Newslines, 14 January 1999).

Notwithstanding these critical comments, the Latvian parliament passed on 18 March 1999 the draft law in the second reading "*virtually without debate*" (according to the daily '*Diena*') (RFE/RL Newslines, 19 March 1999). Van der Stoep again objected to the draft and warned that passage of the bill in its current form might impair Riga's chances of integration into the EU (RFE/RL Newslines, 19 April 1999). Also the CoE sent expert visits and criticised the law in a report (Kelley:81). Following these objections, the Latvian Prime minister Vilis Kristopans called for changes to the bill. According to him, state interference in the private sector is only permissible if the interests of society, such as national security, territorial integrity or public safety demand it (RFE/RL Newslines, 20 April 1999).

In a subsequent meeting in Brussels, both European Commission President Jacques Santer and Foreign affairs Commissioner Hans Van den Broek warned the Latvian Prime minister that Latvia would jeopardise its case for admission, should the *Saeima* adopt, in their view, a "*discriminatory law*" (Bernier (2001:354)). Santer and Van den Broek therefore urged Kristopans to ensure that Latvia's state language bill met international requirements (RFE/RL Newslines, 23 April 1999). This warning was repeated by the Danish Foreign minister Niels Helveg Petersen during an official visit to Riga in early July 1999. Petersen noted that Latvia had fulfilled all the requirements to begin accession negotiations but underlined that if the new language law was found to violate EU regulations, it could become a barrier to these negotiations (RFE/RL Newslines, 7 July 1999). The link to EU admission was thus clearly made.

In spite of this pressure, the *Saeima* on 8 July 1999 overwhelmingly passed the language bill by a vote of 73 to 16. The new coalition's policy placed the priority of protecting Latvia's language and culture above strengthening relations with the EU (Kelley (2004:82)).

After the legislation was passed, the EU together with other international organisations, put pressure on the Latvian President to send the law back to the parliament for reconsideration (Bernier:354). The result was that Vaira Vike-Freiberga, elected President on 17 June 1999, refused to sign the law and sent it back to the parliament (RFE/RL Newslines, 15 July 1999), a decision which was “*warmly greeted*” by Van der Stoep (RFE/RL Newslines, 16 July 1999). The Latvian President justified her veto on the ‘triangle of requirements’ that the Latvian language law had to fulfil. In her view, the law had to strengthen the position of the Latvian language, without however hindering Latvian progress towards the EU or delaying the involvement of foreign businesses with the Latvian economy (Herd and Löfgren (2001:287)).

As a result, in late August 1999, Latvia received encouraging signals from the then EU chairman and Finnish President, Martti Ahtisaari about its bid to start negotiations on EU membership. The EU reassured Latvian policy makers that Latvia's chance of opening negotiations was good, pending passage of a favorable language law (Kelley (2004:83).

In its Regular report of 1999, the Commission strongly criticised the language law of July 1999 which, in its view, did not sufficiently integrate standards of proportionality and precision. It criticised the fact that under this law, the mandatory use of the state language in the private sector was the rule and not the exception. Further, the provisions were worded so broadly that they would impair the exercise of rights and freedoms guaranteed under the Europe Agreement. Furthermore, the Commission saw linguistic restrictions in other laws, like the Election law, and also noted several obstacles to the integration of non-citizens in the economic sphere. It concluded that although significant progress had been achieved in the integration process, it was necessary for Latvia to ensure that the final text of its language law was compatible with international standards and the Europe Agreement (European Commission (1999: 16-18 and 79-81)). In any case, the language law was considered a potential obstacle for opening accession negotiations.

Following the Commission's assessment, the 1999 AP urged Latvia to “*align the Language law with international standards and the Europe Agreement*” and to “*implement further concrete measures for the integration of non-citizens including language training and provide necessary financial support*” (Council Decision of 6 December 1999, in OJ L 335/29-34; European Commission, (1999: 4 and 7)).

On 9 December 1999, as the EU leaders met in Helsinki to decide over accession negotiations with second wave countries, the *Saeima* approved the new language law by a vote of 52 to 26. Despite strong opposition to the demands from 'official Europe', the desire to join the EU prevailed (Kelley:83). The new law regulated language use in the public sphere and in the private sector when the activities of enterprises affect legitimate public interests like public safety, health, morals, health care, protection of consumer and labour rights, safety in the workplace, or public administration supervision. Any such regulation must be proportionate to the rights and interests of the private companies. Foreign specialists of enterprises who work in Latvia can use an interpreter for their own needs; their knowledge of Latvian is not examined. A foreign language may be used at business meetings. Only if a participant requests translation in the state language, it has to be ensured. Contracts can be concluded in a foreign language but a translation into the state language has to be attached. The use of language is not regulated in public events organised by private organisations unless these events affect legitimate public interests ('State Language law' and 'Use of language in private business', both on: <http://www.am.gov.lv/en>). Both Vike-Freiberga and Van der Stoel stressed that the law fully complies with Latvia's international obligations (RFE/RL Newline, 10 December 1999).

EU Commissioner Günther Verheugen called the passage of the law 'positive' and also the CoE and the OSCE expressed their approval. The Russian Foreign ministry, however, was still critical about the new law and even went as far as to ask the EU not to consider Latvia's membership bid (RFE/RL Newline, 13 December 1999). The EU, however, agreed with Van der Stoel and found the language law an "*encouraging development for enhancing the process of integration of minorities in Latvian society*" (<http://ue.eu.int/Newsroom>; Foreign Policy Bulletin Database, Nr. 99/251).

Reviewing the state of Latvia's membership preparation in the light of the 1999 Commission report, the Association Council in its meeting in February 2000 "*welcomed the significant progress achieved in the integration of non-citizens into the Latvian society and noted with satisfaction that the final text of the Language law is now essentially in conformity with Latvia's international obligations and commitments*" (Joint Press Release, 15 February 2000, on: <http://ue.eu.int/Newsroom>).

The election law

Tensions rose again when international organisations asked Latvia to eliminate language requirements for candidates willing to run in national and local elections. The head of the OSCE mission to Latvia, Peter Semneby, told parliament deputy chairman Rihard Piks that he expected his mission to be closed by the end of 2001. However, he warned Rihard Piks that the Latvian election law, setting language requirements for candidates to the parliament and local councils, might prove an obstacle to EU and NATO accession. He suggested as a compromise, the abolition of the state language proficiency requirement for candidates who had obtained Latvian citizenship after 1991, and not setting a higher proficiency standard for candidates than the one needed to pass the language test for naturalisation (RFE/RL Newline, 15 November 2001). In response to Semneby's statements, Latvian President Vaira Vike-Freiberga pleaded for the abolishment of the language requirements in the Election law. In her view, these requirements were undemocratic because they created an inequality between Latvia's citizens. Vaira Vike-Freiberga requested experts to offer suggestions by early January 2002. She would then present these suggestions to the Latvian parliament (RFE/RL Newline, 7 December 2001).

The initiatives of the Latvian president were welcomed by both the European Union and the head of the OSCE mission. In a statement of 13 December 2001, the Union considered an amendment of the Election law in the sense proposed by the Latvian president as "*a step in the direction of democracy and respect for human rights*" and expressed its confidence "*that the Latvian authorities (would) be anxious to endorse it as soon as possible*" (<http://ue.eu.int/Newsroom> ; Foreign Policy Bulletin Database, Nr. 01/377).

On 18 December 2001, the Permanent Council of the OSCE decided to end its nine-year existence in Latvia. In his report to the Council, Semneby noted Latvia's achievements in building a democratic and integrated community, citing the smooth naturalisation process, the successful implementation of the national programme for Latvian-language teaching, the establishment of the Public Integration Fund, and the improved performance by the National Human Rights Office. Praising the recent initiative of Vike-Freiberga, he recommended the closing of the mission. Russia, on the other hand, still opposed the closing of the mission, claiming that the Russian speakers were still not suitably protected from discrimination (RFE/RL Newline, 19 December 2001).

Returning from a visit to the United States, Vike-Freiberga put additional pressure on her countrymen, saying that the US's favourable attitude toward Latvia's future membership in NATO could change if the country did not lift language requirements for candidates to the parliament and local councils (RFE/RL Newslines, 13 February 2002). In a speech before the Latvian parliament, NATO-Secretary-General, Lord George Robertson, said that also Russia would have a say in determining which countries could join the alliance. In that regard, he urged Latvia to abolish the language requirements to the parliament and local councils (RFE/RL Newslines, 22 February 2002). Following these developments, the Latvian Prime minister Andris Berzins assured the US Ambassador to NATO, Richard Burns, on 26 February 2002 that the laws concerned would be amended before the NATO Summit in November 2002. On the same day, the British Defense secretary, Geoffrey Hoon, told Vike Freiberga that amendments to the election law are a matter of Latvia's internal affairs, but that it was nevertheless very important to NATO that Latvia complied with requirements for democratic countries (RFE/RL Newslines, 27 February 2002).

After the European Court of Human Rights had ruled on 10 April 2002 that Latvia violated the ECHR in forbidding Ingrida Podkolzina from participating in the parliamentary elections in 1998, owing to her alleged inadequate knowledge of the Latvian language (RFE/RL Newslines, 10 April 2002), the *Saeima* amended the Parliamentary Election Law on 9 May 2002, abolishing the requirement that candidates must have the highest level of Latvian-language proficiency. The HCNM and the US government immediately welcomed the amendments (RFE/RL Newslines, 10 May 2002).

Latvian as the parliament's working language

Before deleting the language proficiency requirement in the election law, the Latvian parliament approved on 30 April 2002 amendments to the constitution, strengthening the status of Latvian as the state language. The amendments stipulate that the parliament's working language is Latvian and that each person has the right to ask questions and to receive answers from state institutions in the Latvian language. Further they obliged members of the parliament to swear an oath before taking their posts (RFE/RL Newslines, 2 May 2002).

Evidently, these constitutional amendments were regarded as 'compensatory' legislation guaranteeing the use of the Latvian language in parliament and in local government. MP Dzintars Kudums articulated the resistance of many Latvian politicians to the many subsequent changes: "*In the beginning, we amended the Citizenship Law, then the Language Law, and now the Election Law. All we have left is to make Russian a state language. Will this be the next step?*" (Budryte:122).

This step was indeed proposed on 20 March 2002 by OSCE ODHIR Director, Gerard Stoudmann. Stoudmann's suggestions created an outrage. Foreign minister Berzins strongly criticised Stoudmann's remarks and argued that two state languages would pave the way for a state of two communities, thereby reversing the integration process. Berzins also observed that the suggestion came as a complete surprise since neither NATO nor the EU had ever proposed two state languages. On the same day, the *Saeima* passed by a vote of 79 to 16 the first reading of amendments to the constitution, strengthening the status of Latvian as the state language (RFE/RL Newline, 21 March 2002).

The EU agreed with the Latvian Foreign minister. Already on the following day, the EU Presidency issued a statement, declaring that Latvia alone has the right to determine its state language. Also the new OSCE High Commissioner, Rolf Ekeus, said the EU did not expect Latvia to change or supplement legal norms that stipulate Latvian as the state language (RFE/RL Newline, 22 March 2002).

The EU and Estonian sovereignty

Citizenship policy

The amendments, submitted by the government in December 1997 in response to the Commission's opinion, however, twice failed to pass in 1998. The domestic opposition strongly opposed the government's draft. For example, Pro Patria, one of the leading opposition groups, declared the amendment contradictory to the principle of restoration of the Estonian state. As the EU negotiations were about to start in March 1998, however, the government introduced its draft and the bill passed in the first reading (Kelley (2004:107)).

Keeping up the pressure, the EU noted in the 1998 AP the short-term objective of “*measures to facilitate the naturalisation process and to better integrate non-citizens including stateless children*”. Also the EU-Estonian JPC urged progress. Because domestic opposition still hindered progress, the Commission used its first regular report of November 1998 to push for change again. The report noted that “*it is regrettable that the Parliament has not adopted amendments to the Citizenship law to allow stateless children to become citizens*” (European Commission (1998)). The following day, EU’s Commissioner for external affairs, Hans Van den Broek, met with Estonian President Lennart Meri. OSCE HCNM staff also went to Tallinn to try to persuade the amendments’ opponents. This time, the combined OSCE and EU efforts moved things along (Kelley (2003:30)).

Just before the Vienna Summit, Estonia made the changes requested by the Commission. On 8 December 1998, the *Riigikogu* passed the necessary amendments to the citizenship law that facilitated the granting of citizenship to stateless children. Stateless children under 15 who were born after 26 February 1992 (when the country’s 1938 citizenship law was reinstated) became eligible for citizenship. The children’s parents must apply on their behalf, must be stateless themselves and must have lived in Estonia for at least five years. Those opposed to the bill had argued in favour of applicants having to pass a language proficiency test (RFE/RL Newline, 9 December 1998; European Parliament, Briefing Nr. 42).

On the following day, the EU welcomed the passage of amendments and noted that the decision of the *Riigikogu* was fully in accordance with the political priorities enumerated in the AP (European Foreign Policy Bulletin Database, Nr. 98/371).

The desire to join the EU was determinant in adopting the amendments. The head of the human rights department in the Estonian ministry of foreign affairs said that while Estonian politicians disagreed with the recommendations from abroad, they eventually had to give in: “*About the stateless children issue we argued for a long time about how to interpret this ... Anyway, Van Der Stoel visited Estonia again and reopened this issue ... Many governments and the EU started to back him up. The EU was our first priority and this was well understood by EU Foreign Affairs Commissioner Hans Van Den Broek, and Van Der Stoel who obviously talked together. We had lots of contact and meetings with ambassadors of the EU countries.*” (Kelley (2004:108)). Many MPs had held reservations about such intense outside intervention and admitted that their vote was crucially affected by Estonia's need to

get into the EU. Tune Kelam, the chairman of the committee in charge of bringing Estonian laws in compliance with EU standards, argued that even though the Estonian government supported the amendment concerned, "*we (Estonia and international institutions) must make it absolutely clear where the end (to these amendments) will be. This should be the last demand for Estonia or any Baltic state.*" (Budryte:82).

The language and election law

It was, however, not the last demand from the 'official Europe' to Estonia in order to be allowed into the EU.

On 15 December 1998, the *Riigikogu* adopted amendments to the Parliamentary and Local Elections Law. These amendments required candidates for parliamentary and local elections to have a sufficient knowledge of Estonian to take part in the work of those bodies and to understand the content of legislative acts (RFE/RL Newslines, 16 December 1998). Although Estonian authorities claimed that these amendments did not discriminate against non-Estonian speakers, they were strongly criticised by Russia and the OSCE. According to Russian Foreign ministry spokesman, Vladimir Rakhamin, the amendments were a move aimed at forcing ethnic minorities out of the country's political life (RFE/RL Newslines, 23 December 1998). The HCNM said that it is up to voters to decide whether to elect someone who did not speak the official language. Van der Stoep rejected suggestions by some Estonian officials that his criticism was prompted by Russian objections (RFE/RL Newslines, 30 December 1998 and 11 January 1999).

Concurrent with the changes to the election law, the Estonians also restarted efforts to tighten the language law. On 9 February 1999, the *Riigikogu* amended the 1995 Language law, requiring linguistic proficiency - at a level established by the government - for all public servants, private sector employees, nongovernmental organisations, and even self-employed entrepreneurs (RFE/RL Newslines, 10 February 1999; also: 'Minority Protection in Estonia'). These amendments met considerable resistance from the Russian-speakers. The Russian Party in Estonia appealed to President Meri not to promulgate the amendments, while the United People's Party urged the EU and the OSCE to pressure Estonia to revoke the legislation (RFE/RL Newslines, 15 February 1999). On 18-19 February 1999, four members

of the presidential roundtable on national minorities resigned. In their view, the *Riigikogu* ignored the Roundtable's views in the issue of the election and language laws (RFE/RL Newswire, 22 February 1999).

After the EU-Estonia Association Council had stated in April 1999 that it would “*continue to follow closely developments in relation to the regulation of the use of the Estonian language*” (Joint press release, 27 April 1999, on: <http://ue.eu.int/Newsroom>), the head of the Commission's mission to Latvia, Gunter Weiss, expressed a clear warning to the Estonian lawmakers in July 1999, saying the restrictions encoded in the Estonian language law might create foreign policy problems for the country. In his view, Estonia ignored EU recommendations at a time when it was already holding membership talks (Herd and Löfgren:285). Meanwhile, also the HCNM had written a letter to Estonian foreign minister Toomas Hendrik Ilves and had visited Estonia in June 1999.

In a compromise under the pressure to publish some regulations, Estonia did effectively adopt language legislation on the public sector in August 1999, according to which, for example, teachers in public schools, including minority establishments, must demonstrate a ‘intermediate’ level of proficiency in Estonian. The ‘intermediate level’ requires oral and limited written proficiency in Estonian; the ‘highest level’ requires oral and written proficiency in Estonian (‘Minority Protection in Estonia’, 2001). Employees in the public administration were required to have a minimum level of Estonian language ability, proportional to the public interest of the post. This includes for example nurses, police and prison officials (European Commission (2001:23)). An Estonian delegation went to Brussels shortly thereafter to discuss the regulations on the private sector. It was then agreed that some modifications would be made and that the regulations would again be sent to the EU for comment. In this period, one Estonian official said: “*There has been fierce consultation between us and the EU and the law and the regulations. Just last week we had a meeting on the upcoming progress report - which will come out October 13 this year. The new report will most certainly touch on the language issue. (...) Just today, we sent the regulations on the private sector to the EU. We have followed all Van Der Stoel recommendations on the law. We worked closely with him in drafting the regulations/decrees. We discussed every single word with him.*” (Kelley (2004:101)).

In the regular report of 6 October 1999, the Commission indeed claimed in very strong words that the Language Law restricted access of non-Estonian speakers in political and economic life and therefore should be amended. Important to note is that the Commission's criticism of the law was mainly based on its concern that the language requirements would impose limitations to EU citizens to practice business in Estonia. In line with the concern expressed by the EP (Briefing Nr. 8), the Commission argued that Estonia possibly violated its obligations under the Europe Agreement, in particular, in the fields of free movement of persons, right of establishment, supply of services, capital movements and award of public contracts. The provisions of the language law were likely to have a negative impact on the establishment and operation of Community companies and of self-employed Community nationals in Estonia. In addition, the law could constitute a restriction to entry into and temporary presence in Estonian territory of Community citizens (European Commission (1999:14-15). This indicates that the Commission was not seeking to alter fundamentally the policies of the Estonian state regarding minorities. The Commission did not seek a binational state, in which the Russian language would be an official language. Its interest was mainly economical. Based on the findings and recommendations of the Commission, the 1999 AP identified the necessity for Estonia to "*align the language legislation with international standards and the Europe Agreement*" as a short-term priority (Council Decision of 6 December 1999, OJ L 335/35-40; European Commission (Accession Partnership 1999:4). At a conference on 'Estonia and the EU' held in Tallinn on 5 November 1999, the Finnish President Martti Ahtisaari, who then held the rotating presidency of the EU, reaffirmed the importance of Estonia aligning its language law with international and EU standards (Bernier:354).

The EU recommendations resulted in a lively policy debate in Estonia. In October 1999, Prime minister Mart Laar objected to the Commission's view and noted that the government had no plans to send a new amendment to the parliament. Mart Nutt, a member of the parliament's European affairs committee and one of the authors of the Language law, argued that the issue of the language law was not a legal issue but a political one. In his view, there were no common norms in the European Union regulating the use of language. He further noted that the Union blindly repeated the OSCE recommendations without trying to understand the heart of the problem. The Estonian Foreign ministry, however, brushed aside these objections. It stated that the prospect of Estonian EU integration was anything but clear and that Estonia had to loosen its language law in order to join the EU (Herd and

Löfgren:285-286). In a speech on 'Euro-integration' delivered to the members of the *Riigikogu* on 19 January 2000, Foreign minister Ilves referred to the EU's 1999 AP with Estonia and argued that changes to the language legislation were "*among those initial tasks to be fulfilled during the year 2000*" if Estonia was to keep its position in the competition over EU accession (<http://www.vm.ee/eng/pressreleases/speeches/2000>).

Work to modify the legislation to meet the EU demands proceeded, with the result that already the subsequent EU-Estonia Accession Council on 14 February 2000 "*expressed (its) confidence that the necessary legislative changes (would) be made so that the linguistic framework (complied) with international requirements, including the Europe Agreement*" (Press release of 14 February 2000). Also the Joint EU-Estonia Parliamentary Committee discussed the language issue. One of the two chairmen, MEP Per Stenmarck, stated that, on the one hand, Estonia's language law needed to be adjusted to meet EU norms and to allow equal competition for all businesses based in the EU. On the other hand, he stressed that the law was generally sound and that the EU fully understood that Estonian is the sole official language of the country (RFE/RL Newline, 29 March 2000). In this meeting, also Carlsson, Rapporteur of the EP's Foreign affairs committee on Estonia's application for membership of the EU, emphasised the necessity for new members to satisfy the high standards on human rights issues. In her view, the Estonian language law did not meet the OSCE requirements and should therefore be amended (PE 287.267).

In response to the Commission's 1999 Regular report and the subsequent 1999 AP, the *Riigikogu* removed the controversial provisions of the language law on 14 June 2000. Under the new law, the compulsory use of Estonian in the private sphere had to be clearly justified on the grounds of a specific public interest, such as public security, public order, public health, health protection, consumer protection and safety at work. At the same time the Estonian parliament also eased the naturalisation process for disabled applicants, removing both linguistic requirements and knowledge of the Estonian Constitution (RFE/RL Newline, 15 June 2000).

The Commission immediately welcomed the new language law and noted that Estonia had followed the recommendations made in the regular report and in the AP (Commission Press Room, 16 June 2000, IP/00/626, on: <http://www.europa.eu.int/rapid/start>). In a statement of 19 June 2000, also the European Presidency welcomed the amendments and agreed with the

HCNM that the law largely complied with international standards (RFE/RL Newswire, 24 August 2000). It further welcomed the State integration programme for the years 2000-2007 (<http://ue.eu.int/Newsroom>; European Foreign Policy Bulletin Database, Nr. 00/135). About two months before the Commission issued its yearly report, also the EP welcomed the amended language law and the forthcoming adoption by the *Riigikogu* of the State integration programme (A5-0238/2000).

In its 2000 regular report, the Commission welcomed, on the one hand, the amendments of the Citizenship law which had lifted the language and civic test requirements for disabled people and concluded that overall, Estonia had fulfilled the OSCE recommendations in the area of citizenship and naturalisation. Estonia had also made considerable progress in the field of language policy. In sum, the short-term priorities of the AP had been met to a large extent. On the other hand, the Commission regretted that under the Parliamentary and Local Elections law, language requirements for candidates to parliamentary and local elections remained. These requirements affected, in the Commission's view, the right of non-Estonian speakers to choose their candidates, in particular at local level (European Commission (2000: 20, 89 and 91)).

There remained indeed the issue of the language proficiency requirements for candidates to parliament and local governments.

In an interview with the daily '*Postimees*' on 29 October 2001, Ambassador Hertrampf noted that Estonia had harmonised its citizenship, aliens and language laws, as well as legal acts associated with education and language examinations, with European norms. The OSCE mission's mandate could therefore end on 31 December 2001. On the other hand, she emphasised that the issue of the Estonian-language requirement for candidates to parliament and local governments had still not been solved. Ms Hertrampf welcomed the recent raising of this issue in the *Riigikogu*, noting that "*these language requirements are not in conformity with the UN principles, which define political and civil rights*". She stressed however that no one challenges the right of Estonia to have a monolingual parliament (RFE/RL Newswire, 30 October 2001). The EU fully supported the demands from the OSCE ambassador, underlining that a closure of the OSCE mission was conditional on the fulfilment of all the OSCE guidelines: "*the Laws on local and national elections need to be brought into line with agreed international standards*" (RFE/RL Newswire, 28 June 2001).

After the Commission had repeated its criticism of the language requirements in the election laws in its 2001 regular report (European Commission (2001:22-23)), the *Riigikogu* amended on 21 November 2001 the Parliament Election Act and the Local Councils Election Act, abolishing the language requirement for candidates to the parliament and local councils (RFE/RL Newslines, 26 November 2001). In response to these developments, the Permanent Council of the OSCE decided on 13 December 2001 not to extend the mandate of its mission to Estonia, thus ending its nine-year existence on 31 December 2001. Prime minister Mart Laar underlined that the mission's departure marked the end of an era in the country's history and brought Estonia into the family of normally functioning democracies (RFE/RL Newslines, 14 December 2001).

Estonian as the working language of parliament and all state councils

Like the Latvians, the Estonians adopted legislation to compensate for the abolition of the language proficiency requirements in the election laws. When the *Riigikogu* discussed and passed the first reading of the amendments of the election laws on 7 November 2001 (RFE/RL Newslines, 17 October 2001), Foreign minister Ilves spoke in favour of it, arguing that it would help convince the OSCE to end its 10-year mission to Estonia. Complaints by the opposition Centre Party that the bill would endanger the position of Estonian as the state language were countered by noting that the Pro Patria faction had submitted bills that would officially establish Estonian as the working language of parliament and all state councils (RFE/RL Newslines, 8 November 2001). On 20 November and 4 December 2001, the Estonian parliament passed bills making Estonian respectively the working language of the *Riigikogu* and of the local councils (RFE/RL Newslines, 21 November and 5 December 2001).

The Copenhagen European Council of 12-13 December 2002

The Copenhagen European Council of 12-13 December 2002 solemnly concluded the accession negotiations with all the candidate countries and looked forward to welcoming these states as members from 1 May 2004. Thus, Estonia and Latvia had managed to return to Europe. To achieve this purpose, they had adapted their restorationist policies to certain external demands in the field of language and citizenship policy. But in general, the European

institutions fully accepted these citizenship and language policies *as such*. Demands related to certain specific issues and the EU fully agreed with the policy of linguistic integration. It did not demand from these states to install a binational order, whereby Russian would *de iure* be the second official language or whereby Russian-speakers would get territorial autonomy in Northeastern Estonia.

This was for example clear in the issue of the reform of the education system. In its 2002 regular report on Estonia, the Commission considered, on the one hand, the amendment of March 2002 to the Basic School and Gymnasium Act (full-time Russian language education can continue beyond 2007 in municipally-owned gymnasiums where the population so wishes) as a strengthening of the rights of Russian-speakers. On the other hand, it found it essential for Russian-speakers to have a good command of the Estonian language in order to have equal access to the Estonian labour market. In this regard, the Commission referred to a resolution from the Committee of ministers of the CoE of 13 June 2002. This resolution stated that a policy aiming at an increased knowledge of Estonian had to be coupled with instruction for minorities in their own language (European Commission (2002:30)). When Latvia reformed its education system, increasing the number of classes taught in Latvian at state-run Russian high schools, this decision prompted numerous protests by Russia, resistance from Latvia's non-governmental organisations and politicians supporting the rights of Russian speakers, along with mass demonstrations. The EU, the OSCE and the CoE, however, expressed strong support for the decision of the Latvian government to pursue the reform, admitting that Latvia's laws on language and education were in line with the standards outlined by the OSCE and the CoE (Budryte:124). As Budryte notes, the process of EU accession actually strengthened the ability of these nations to 'nationalise' because the EU actively supported the language training programs in these countries and strengthened their administrative capacity in general (Budryte: 86 and 91).

Important to note is that the Commission did not make the final admission of Latvia into the EU's ranks dependent on ratification of the CoE FCNM, something also several EU member states like Belgium, France and Greece have not done yet. Even in May 2004 the *Saeima* refused to ratify the FCNM, despite continued urging by international organisations.

President Vaira Vike-Freiberga has suggested that ratification is a non-urgent matter and maintains that adequate protection of minorities exists under current legislation. Foreign minister Artis Pabriks similarly argued in 2004 that ratification would only divide Latvian society further. Ina Druviete, head of the *Saeima* human rights and public affairs committee believes that ratification can only occur if there are no further unjustified protests against the

creation of an unified education system and Russian-speakers are ready to accept the fact that there will never be a retreat from Latvian as the sole state language (Morris (2005:258)). This can be seen as a respect for Latvia's domestic sovereignty in the broad sense of the word.

CONCLUSION

To return to the introduction and the research objective of the thesis: how did the representatives of the Baltic states construct their sovereign statehood in two completely different eras? More specifically, how did they organise their public authority structures? How did they regulate the relationship between the state and the constituent national groups? On the other hand, what kind of relationship did they forge with the principal international European institutions? And what implications did this relationship have for their Westphalian sovereignty?

As indicated in the first chapter, in the aftermath of the First World War there were both international and internal factors which shaped the subsequent process of state-building and the organisation and the views of the representatives of these states on domestic sovereignty. More specifically, the ideas of the Austro Marxists Karl Renner and Otto Bauer on cultural identity, cultural autonomy and the relationship between nation and state spread throughout the Russian Empire and began to dominate the thinking of all kinds of nationalist and revolutionary movements, including the Baltic national movements.

In Renner's view, nations were to be constituted as public law corporations on the basis of a nationality register in which individuals freely declared their affiliation. Those nations were then represented at the state level in separate national councils which had the power to legislate in cultural and educational affairs and to tax their co-nationals. The state retained its supremacy in economic and social affairs and in the field of internal and external security. The arrival of these ideas has to be seen against the background of an already long-standing corporate-style autonomy for the ruling German élite living in the western borderlands of the Russian Empire. The concept of cultural autonomy was also very familiar to the Lithuanians. In the Polish-Lithuanian Commonwealth (1569-1795), the Jewish community enjoyed an unique and far-reaching cultural autonomy. Jewish activity in virtually every field was regulated by rules and norms, created by their own special judicial system. The Council of Lithuania operated as the central institution of Jewish self-government, collecting all kinds of taxes, protecting the individual rights of Jews against non-Jews and monitoring the behaviour of Jews in practically all areas.

While Estonian and Latvian public life was dominated by the German language, the ruling élite of Lithuania was entirely Polonised. In the nineteenth century, the Estonian, Latvian and Lithuanian national movements, therefore, primarily aimed at the protection of the indigenous

language and culture. After the Russian revolution of 1905, these movements also demanded self-government, next to social and cultural reforms. The outbreak of the First World War and the Russian revolutions of March and October 1917 were a catalyst but it was not until the Bolsheviks seized power in Russia and a German occupation was unavoidable that the Estonians and Latvians declared themselves independent. In the light of the history of oppression of their people, the political leaders of Estonia and Latvia adopted a remarkable liberal approach towards the minorities in their state.

After the Estonian provisional government had promised the minorities cultural autonomy in the founding document of the new state, this principle was also enacted in the Constitution of 1920. Evidently, there were both internal and external tactical political reasons for this approach. The Estonian state needed indeed the support from all minorities and was still striving for membership of the League of Nations. However, more fundamentally was that many Estonians genuinely believed that the equality of nationalities was one of the cornerstones of the new international order. As a small people, the Estonians knew that the only future for their country was a peaceful and democratic one. After the necessary land reform had secured the predominance of the Estonian nation, the Estonians compensated the German minority.

Also the so-called political platform, issued by the provisional Latvian government, promised the different national groups to guarantee their cultural rights by way of fundamental laws. The Baltic German National Committee, however, asked for special privileges for the German minority and rejected the principle of proportional representation. Many Baltic Germans simply refused to accept a state, controlled by the majority nation. This view was, however, not supported by all Germans. Paul Schiemann tried to persuade the Baltic German community to fully acknowledge Latvian control of the new state. On the other hand, he tried to make the Latvians adopt cultural autonomy as a tool to reorganise the new state in a fundamental way. Also for Schiemann, this implied that minorities could constitute themselves as public law corporations. In Schiemann's view, a state, in general, had to become 'anational' and had to restrict itself to the general administration and to economic and security questions. Cultural and educational questions were an exclusive affair of the national communities, including the majority nation. Even in the beginning of 1919, the Baltic Germans strove for the establishment of a binational republic. This was also the objective of military putchists who drove the Ulmanis government from power in April 1919 but who were military defeated in June 1919. Although further military victories against the German-Russian army of Bermond-Avalov in October and November 1919 strengthened Latvian

nationalism, a law on school autonomy for minorities was approved in December 1919. Evidently, reactions from the outside world played a very important role for the new vulnerable state which actively strove for the membership of the League of Nations. On the other hand, the very enactment of the wide-ranging school autonomy for minorities against a background of continuous conflict with the Baltic Germans clearly indicated that the Latvians wanted a peaceful multinational future for their country. Just like the Estonians, the Latvians indeed believed the equality of nationalities to be one of the cornerstones of the new international order, embodied by the League, and that furthermore only a multi-ethnic solution would guarantee their state's viability. This again illustrated the interplay between Westphalian and domestic sovereignty.

Lithuanian politics was different. In their struggle with Poland over the eastern borderlands, the Lithuanians needed the support and loyalty of the Jewish and Belarussian minorities. That is why they promised these groups autonomy. Also the Paris Declaration of 5 August 1919, submitted at the Paris Peace Conference, with its detailed and far-reaching proposals regarding autonomy, was purely instrumental and only meant to strengthen the external position of the country. In 1919-1920 Lithuania, a kind of *de facto* personal autonomy, based on the historical Jewish self-government, developed. Like in the Polish-Lithuanian Commonwealth, Jewish autonomy was constructed from the bottom to the top. The basic entity was the local, territorially based *kehilla*. These *kehilla* were public agencies with the power to impose taxes, and issue by-laws in matters of religion, education and welfare. They could also register births, marriages and divorces. The Community Council was their decision-making body. Every Jewish community sent a representative to the Assembly of Jewish Councils, the supreme body of Jewish autonomy. This Assembly elected the National Council, the actual representative body of the Jewish community. The Ministry without portfolio for Jewish affairs had to defend the Jewish interests within the government and to function as a kind between the Jewish community and the Lithuanian government. Since it was a part of the government, it was not part of the system of Jewish national autonomy.

It became, however, immediately clear that the equality of nationalities was certainly not the leading principle of the new international order and that this order was in fact a continuation of old politics. The League of Nations as embodiment of this so-called new order, was not even the beginnings of a system of international government. Instead it was an association of sovereign independent states, dominated by the victorious Great Powers. Attempts to insert minority protection clauses in the League's Covenant were blocked by the same powers which

opposed any outside interference in their internal affairs. To preserve both the domestic stability and tranquility of the newly established states in Eastern Europe and the international peace, the Great Powers imposed on these states minority treaties, the provisions of which would be guaranteed by the Council as executive organ of the League. The League's minority protection system thus only had a political aim and had nothing to do with considerations of humanitarian nature.

This imposition of treaties was considered by the states concerned as a violation of their Westphalian sovereignty and was, therefore, strongly rejected. The heart of the matter was indeed that the international protection system of the League constituted an institutionalisation of inequality between East and West. Different scholars justify this policy by referring to the 'special quality', the so-called backwardness of Eastern Europe. Already the very liberal policy of the three Baltic states towards their minorities, however, contradicts this reasoning. This institutionalisation of inequality constituted in any case the very fault of the minority protection system. Whereas the treaties were deliberately aimed at a specific region, their guarantor was an universal organisation, based upon the principles of sovereignty and equality of its member states.

Contrary to the initial different 'Baltic' documents and laws, provisions concerning personal or cultural autonomy were very rare exceptions in the treaties. These international instruments mainly contained stipulations with regard to acquisition of citizenship, equal civil and political rights, equality before the law, use of language and establishment of schools and institutions. The reason was that the treaties were drafted by representatives of the western majority nations which only took the western minorities as their model. Most western minorities in 1919 were economically, socially and politically less advanced than the majorities and willingly adopted the language of the majorities. For these people, it sufficed that their language was tolerated in their private life and that their children received their first instruction in their mother tongue. They certainly did not strive for a differentiated national existence next to the majority nation. More fundamentally, the western treaty drafters went out from an unitary, indivisible state nation. For them, a single national culture had to prevail in each state. They opposed cultural autonomy as construction of public law because this would allow, in their view, minorities to become a state within a state. In their view on domestic sovereignty, no external rival like a national community next to the one legitimate authority of the state was allowed to exist. The state had to retain exclusive control over all its citizens.

It was against this legal and political background that the Baltic states entered into the League in 1921. As condition for their entrance, the Great Powers insisted that also these countries sign international instruments for the protection of minorities. The negotiation of the Lithuanian minority declaration showed again the lack of support from the Great Powers for the construction of personal autonomy. Lithuania very rapidly signed a declaration, completely modelled on the Polish minority treaty, because of political tactical reasons. Estonia and Latvia, on the other hand, refused to sign such a declaration which they regarded as a violation of their Westphalian sovereignty. In general, the representatives of both states emphasised that their own national policies were more liberal than what the treaties prescribed. Minority protection was, in their view, a national internal affair. There were only some imposed treaties but no genuine international minority protection instruments. In line with this, Estonia and Latvia only agreed to accept minority obligations which were binding for every member state. This was again underlined by the Latvian representative Walters when he launched a campaign for generalisation of minority rights in the League's Assembly. Pusta and Walters argued that an unilateral imposition of minority clauses would make of their countries half-sovereign states, while the full sovereignty and equality of all states was one of the pillars of the League. The proposed declaration violated, in their view, their constitutional law and would place an external actor next to their own people. A further strong argument was that their states were not born out of the peace and minority treaties and that they had already been recognised unconditionally. Estonia and Latvia, therefore, wanted the Council to consider the protection of minorities as an entirely internal national matter and formalise this by way of a declaration as the Council had done before with Finland. In the end, a compromise was reached in terms of Westphalian sovereignty. On the one hand, the Estonian and Latvian minority declaration stressed the sovereignty of these states. These 'independence declarations', as they were called by Ziemele, did neither contain an explicit international guarantee nor concrete minority obligations. The Permanent Court of International Justice could only give an advisory opinion. On the other hand, Estonia and Latvia were obliged to respect the general principles laid down in the treaties and minorities could petition the League to try to enforce their rights. The reference to their Westphalian sovereignty was also one of the main arguments that the Baltic governments used before the League in response to the requests for financial compensation, made by the Baltic Barons in their petitions against the land reform acts. As explained above, these reforms constituted a genuine social and national revolution. Before the League, Estonia and Latvia defended with success that the land reforms were necessary to

ensure their domestic stability and tranquility and to counter communist influence. Land reform was an integral part of social-economic policy which belonged to the exclusive competence of a state. Their states were perfectly entitled to pursue these policies, even if this meant that certain national groups were affected more than others. Minorities were able to use internal judicial means to challenge acts of a government. An intervention by the League in such an internal judicial procedure would constitute a manifest violation of their sovereignty. The League entirely accepted these arguments and the petitions were rejected. The case of the petition against the Latvian government of 1925 very clearly illustrated the very nature of the League's minority protection system. The League was no supranational organisation but an association of sovereign states. Since the League could never take a decision against the will of the government concerned, the minority protection procedure was one of negotiation between the Council and the government, aimed at finding a mutually satisfactory solution. This was even more the case in issues related to agrarian reform. The League's system was especially created to ensure domestic stability. Agrarian reform was crucial for the economic and social consolidation of many countries in Central and Eastern Europe and that is why the League never intervened.

Whereas the Estonian and Latvian governments primarily based themselves on their sovereignty to ward off an intervention by the League in their agrarian reform, the Lithuanians rejected the minority protection system as such. Both with regard to several minority petitions and in the matter of the reform of the minority protection system in 1929, Lithuania articulated a thesis of absolute Westphalian sovereignty. An acceptance of the Lithuanian views in these different matters would have meant an even greater predominance of the states in the minority protection system vis-à-vis the Council.

Already before, Lithuania refused to place its minority declaration under the international guarantee of the League. The refusal of the Lithuanian government to ratify the declaration and to make it part of its internal law was a further illustration of its absolute view on sovereignty.

The external position of Lithuania vis-à-vis the League perfectly reflected the radically deteriorating internal situation. The first signs were hopeful for the Jewish population. The Lithuanian government promised to implement a far-reaching autonomy along the same lines as the historical autonomy in the Polish-Lithuanian Commonwealth. The different institutions of this *de facto* Jewish autonomy were however never legally recognised. After the change of the international and internal political situation, they were easily disbanded.

From the beginning Jews and Lithuanians had different expectations and ideas for the implementation of autonomy. The Lithuanians believed that the Jews would help them in acquiring Vilnius and Memel and in attracting Belarussians to a multinational Lithuania. They had much less need of the Jews in the relatively homogenous Lithuania which actually emerged. It also became clear that the Jews were not a significant factor in acquiring Vilnius. The Jews, on the other hand, took far too seriously the assurances made by Lithuanian politicians. In general, the Lithuanian minority policy indeed failed because the Memel and Vilnius question poisoned the internal political development of the country. The radical nationalist forces were strengthened whereby the social and political balance of the country was undermined. Also important to note is that Jewish autonomy was promised during the time of the *Taryba*, when it had been dominated by the Nationalists and Populists. The Nationalists' ideology contained elements of sociocratic concepts, while the Populists had strong liberal tendencies and were favourable towards national minorities. The Christian Democrats became firmly established in the *Seimas* after the elections to the Constituent Assembly. They saw the Jewish social factor as an obstacle to creating a modern Lithuania. Next to these factors, there was also no consensus on the institution of autonomy within the Jewish community itself. Many Jews were dissatisfied with taxation or attacked the autonomous institutions as excessively party-dominated.

In terms of domestic sovereignty, the internal situation in Estonia developed radically different. The founding documents and the Constitution of 1920 were of course the perfect basis for the German minority to try to obtain full cultural autonomy. At the same time as Estonia tried to enter into the League, the first German proposals to establish cultural self-government were submitted. Nevertheless, the Germans faced an uphill struggle. Many Estonians namely feared that cultural autonomy would create 'a state within a state'. The negotiations between Estonia and the Council over the minority declaration were also not a supportive factor. On the contrary, the Estonian adversaries of the cultural autonomy law continuously emphasised that the international developments clearly showed that minority rights were not an issue for the League of Nations and the Great Powers, let alone that the establishment of cultural autonomy was a condition to enter the League. This again demonstrates the interplay between Westphalian and domestic sovereignty. The decisive factor for the adoption of the bill was the agreement between the German minority and the most important adversaries that autonomy would only relate to cultural affairs and could not be used as a political vehicle. The cultural autonomy law indeed attempted to separate culture and politics. The Estonian state delegated its decision-making power in cultural and

educational questions to corporations of public law of a certain nation. But by doing this, it did not renounce its ultimate legal authority in these questions. It remained the highest authority of the members of the cultural self-government and also controlled this institution. Cultural autonomy proved to be a success and its integrative function was appreciated by the Estonians. Only when the Estonian system became authoritarian, cultural autonomy came under pressure. It was abolished after foreign powers overran Estonia.

The school autonomy for the minorities in Latvia, on the other hand, was not a full autonomy. School autonomy was administered by the Latvian ministry of education and not directed by a public corporation. The Latvians did not institute a clear separation between culture and politics. Compared with the public corporations in Estonia, the school administrations of the minorities in Latvia depended much more on the continuously changing political situation. The essence is that the Latvian state never delegated decision-making power to minorities. Minorities could not constitute themselves as public corporations. Even if it is true that the Baltic German National Community practically fulfilled the same functions as the cultural self-governments in Estonia, this private organisation could never be equated with these public corporations. This became painfully clear when only a few months before the coup d'état in 1934, the German minority tried to constitute itself as a public corporation. It was namely fully aware that it had to remove its so-called autonomous school administration from the increasingly dangerous 'political environment'.

True, the relative homogeneity of Estonia implied that it could afford to be generous towards its minorities. But there many other reasons. As shown above, because of several factors, the relationship between the majority nation and the most influential minority was much more difficult in Latvia than in Estonia. Also important to note is that already in December 1919 the Latvian state had granted school autonomy to its minorities. Ironically, this very early introduction was actually one of the obstacles for a later full cultural autonomy. Members of the Baltic German community argued that cultural autonomy was no longer necessary because of the acquired school autonomy. But, as stressed above, this school autonomy was not a full cultural autonomy. The Baltic German community continuously disagreed over the content of cultural autonomy. Even its official bill of 1924 did not aim for full cultural autonomy, modelled on the system in Estonia. Contrary to Estonia, cultural autonomy also never had a constitutional basis in Latvia.

The period 1940-1991 saw a dramatic change in the population structure of the three Baltic countries, as historically rooted minority groups such as the Germans and Jews practically disappeared, and the Russian-speaking population grew exponentially as a result of large-scale inward migration. When regaining independence, the Estonians and Latvians had almost become minorities in their own states. The massive immigration of Russians and Russian speakers not only altered the demographic profile of these countries but also led to the replacement of the native languages by the Russian language in several functional domains. The replacement of relatively small but historically rooted and culturally very conscious German and Jewish minority groups by large groups of Russian-speaking immigrants, consisting of workers, party officials, military is of course fundamental in the whole discussion over domestic sovereignty.

Together with the restoration of their 'historic homeland' in 1991, the Baltic nations also restored the membership of these homeland, a membership limited to the residents of pre-1940 Estonia and Latvia and their descendants. Post-war settlers had to go through a process of naturalisation to test their loyalty. The restoration of the political community and the accompanying rejection of automatic citizenship were acceptable and legitimate, both from a legal and political point of view. Just like the land reforms in the 1920s had dramatically reversed the existing order, the Estonians and Latvians secured in the beginning of the 1990s an institutionally superior position for themselves through the citizenship and language laws. The next question was then whether they would organise their internal state structure in a way as to provide Russian-speakers with certain institutions or collective rights.

In Estonia, the cultural autonomy law of 1925 was formally reintroduced by the law of 1993. Apart from the question whether this law is really relevant to the needs of the territorially compact Russian-speaking population of the north-east, the law itself appears to be a pale imitation of its famous predecessor. Experts point out, first, that the institutions concerned look more like private bodies, at variance with the 1925 law, second, that a cultural self-government can only establish so-called Sunday Schools, and third, that Russians are not interested in the limited cultural autonomy of the Sunday schools because their needs are already fulfilled by the Russian-language schools. This is an interesting analogy with the interwar period, when many leading members of the German minority in Latvia were not interested in full cultural autonomy because they were of the opinion that their cultural needs were already fulfilled by the school autonomy. The Presidential Roundtable on minorities is an institution, established in response to the 1993 crisis and designed to enable a regular dialogue between Estonians and Russian-speakers. In terms of domestic sovereignty, the

roundtable is only an advisory body which can only make recommendations. The weak position of the roundtable vis-à-vis the Estonian state has been illustrated at several occasions when the state took decisions running against its recommendations. In Latvia, a law of 18 March 1991 guarantees all 'nationalities' and 'ethnic groups' the right to cultural autonomy and self-administration of their own culture. This law, however, only provides certain individual rights and certain rights of minority associations in the private area. It certainly does not foresee public law corporations which administer autonomously their own affairs. The Social Consultative Council on Nationalities of the *Saeima* was never established and the activities of its successor, the President's Advisory Minority Council, have stopped. Like the Estonian roundtable, both organs are only advisory organs whose decisions are not binding for the *Saeima* or other constitutional organs. Also the concept of cultural autonomy in Lithuania falls behind the rights and guarantees of the earlier Constitution of 1922. The Council of National Communities has a similar task as the forementioned Estonian and Latvian bodies. Also the Council is an advisory organ which does not have any decision-making power. In sum, the three Baltic countries have put much more emphasis on linguistic integration than on collective rights. In line with Mark Jubulis, one can argue that through their citizenship and language laws, Estonia and Latvia have adopted a form of cultural nationalism. Central goal of their nationalising policies is to reverse the asymmetrical bilingualism and to create a native cultural environment within their own states. Estonia's and Latvia's cultural nationalism makes inclusion into the political community dependent upon integration into the culture of the majority nation. That these states did not adopt a policy of ethnic nationalism is also illustrated by the continued access of Russian-speakers in both countries to state-financed Russian schools. From a material point of view, this can be seen as a *de facto* cultural autonomy, certainly in Estonia where the Russian language was also constitutionally retained both as internal working language and external communication language for the local governments in northeastern Estonia.

Although the Estonian and Latvian citizenship laws were not ethnically based, their actual effect was that a very large part of their population was deprived of political rights. Next to this, these laws and other policies were adopted within a context where leading politicians and decision makers openly pleaded for a repatriation of most Russian-speakers. This was clearly a bridge too far for the Western European countries, fearful of both the domestic stability and tranquility of these states and the international peace. Although the 'official Europe' had endorsed the legal continuity principle, it made it also clear that any radical decolonisation

policy would be unacceptable and would create an obstacle for 'returning to Europe', an aim formulated very early by all Baltic politicians. The collapse of communist rule in Eastern Europe with the accompanying rise of nationalism and ethnic tensions led to a growing interest of European institutions in minority rights. The CoE and the OSCE were the institutions most actively involved in the monitoring of the ethnic situation in Estonia and Latvia. Analogous to the interwar period and the policy of the League of Nations, early efforts to install a minority rights régime binding for all members of the organisations concerned, failed because of the resistance from leading Western European states. The depiction of Central and Eastern Europe as 'problematic' and the exclusive concentration on Central and Eastern Europe was also a characteristic of the EU's Stability Pact. Russian efforts to internationalise the settlers issue and to block the integration process of the Baltic countries into Europe backfired. International human rights institutions not only denied human rights violations but also confirmed their respect for the concept of legal continuity. Neither the crisis round the Aliens law in Estonia nor the issue of the Latvian Citizenship law led to a major modification of the restorationist policies of Estonia and Latvia. As a result of the human rights clauses in the TCAs, FTAs and EAs, ethnic policy theoretically was no longer an internal affair of the Baltic states. But just like the minority declarations in the interwar period, this constituted only a formal violation of their Westphalian sovereignty. Estonia and Latvia actually strengthened their restorationist policies in the period 1995-1997. The HCNM put normative pressure on the two states but his recommendations were disregarded. The process of integration into the 'official Europe' was mainly driven by the internal Russian situation and geopolitical considerations.

Starting from the Commission's opinions in July 1997, normative pressure by the HCNM combined with the EU's policy of conditionality produced results. As neighbour states of Russia, Estonia and Latvia were also potential member states of the EU. Because the EU has a strong interest in the domestic stability and tranquility of these states and in the prevention of international conflict, citizenship and language policies had to be closely monitored and corrected if necessary. The EU's policy constituted a clear violation of the Westphalian sovereignty of Estonia and Latvia. These countries adopted the requested changes in their legislation concerned which they would never have done without the EU's pressure. This interventions did, however, not entail a fundamental change to their domestic sovereignty. The amendments in the citizenship laws shifted the political balance in favour of the non-

titular population. The EU did however not strive for a change of the unitary nation-state vision at the heart of the state-building projects of Estonia and Latvia.

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ANNEX

Lithuanian minority declaration (JO (1922:586-588); League of Nations (1927:34-35))

Article 1

The stipulations of this Declaration are recognised as fundamental laws of Lithuania and no law, regulation, or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future, prevail over them.

Article 2

Full and complete protection of life and liberty will be assured to all inhabitants of Lithuania, without distinction of birth, nationality, language, race or religion.

All inhabitants of Lithuania will be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Article 3

The Lithuanian Government shall advise the Council of the League of Nations of all constitutional or legislative stipulations regarding the conditions necessary to the acquisition of the status of Lithuanian nationals.

All persons born in the territory of the Lithuanian State, subsequent to the date of the present Declaration, who cannot claim another nationality by birth, shall be recognised as Lithuanian nationals.

Article 4

All Lithuanian nationals shall be equal before the law, and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Differences of religion, creed or confession will not prejudice any Lithuanian national in matters relating to the enjoyment of civil or political rights, as for instance, admission to public employments, functions and honours, or the exercise of professions or industries. No restriction will be imposed on the free use by any Lithuanian national of any language in

private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment of an official language, adequate facilities will be given to Lithuanian nationals of non-Lithuanian speech for the use of their language, either orally or in writing before the Courts.

Article 5

Lithuanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Lithuanian nationals. In particular they shall have an equal right to maintain, manage and control at their own expense, or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Article 6

Provision will be made in the public educational system in towns or in districts in which are resident a considerable proportion of Lithuanian nationals whose mother tongue is not the Lithuanian language, for adequate facilities for ensuring that in the primary schools instruction shall be given to the children of such nationals through the medium of their own language; it being understood that this provision does not prevent the teaching of the Lithuanian language being made obligatory in the said schools.

In towns and districts where there is a considerable proportion of Lithuanian nationals belonging to racial, religious or linguistic minorities, these minorities will be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets, for educational, religious or charitable purposes.

Article 7

Educational Committees appointed locally by the Jewish communities of Lithuania will, subject to the general control of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with Article 6, and for the organisation and management of these schools.

The provisions of Article 6 concerning the use of languages in schools shall apply to these schools.

Article 8

Jews shall not be compelled to perform any acts which constitutes a violation of their Sabbath, nor shall they be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their Sabbath. This provision, however, shall not exempt Jews from such obligations as shall be imposed upon all other Lithuanian citizens for the necessary purposes of military service, national defence or the preservation of public order.

Lithuania declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday.

Article 9

The stipulations in the foregoing Articles of this Declaration, so far as they affect the persons belonging to racial, religious or linguistic minorities, are declared to constitute obligations of international concern, and will be placed under the guarantee of the League of Nations. No modification will be made in them without the assent of a majority of the Council of the League of Nations.

Any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction, of any of these stipulations, and the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Any difference of opinion as to questions of law or fact arising out of these Articles between the Lithuanian government and any Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.