

Chapter 7

Fuzzing Citizenship, Nationalising Political Space: A Framework for Interpreting the Hungarian 'Status Law' as a New Form of Kin-state Policy in Central and Eastern Europe*

Brigid Fowler

-
- * Research for this paper was conducted in 2001, as passage of the 'Status Law' and the international fallout that resulted were ongoing. The paper was written up in the autumn of that year and reflects the state of affairs in mid-November 2001 *i.e.* immediately after publication of the Venice Commission Report and the European Commission's annual progress report on Hungary, but before agreement of the December 2001 Hungarian-Romanian memorandum. The paper was published in January 2002 as Working Paper 40/02 of the 'One Europe or Several?' programme at the Sussex European Institute, University of Sussex. The paper represented an initial attempt to present a large share of the conceptual issues raised by the Status Law, and kin-state politics in Central and Eastern Europe more generally, as well as related empirical research. The author's views have in some respects developed in the intervening three years. However, given the paper's status as one of the first English-language studies of the law, the author and the editors of the current volume agreed that it was worth publishing in its original form. In the current volume, only minor textual corrections have therefore been made to the working paper version. The author would like to thank the editors for their work in preparing the paper for its current publication. The original research was undertaken as part of the project 'Fuzzy Statehood' and European Integration in Central and Eastern Europe', funded by the UK Economic and Social Research Council under its 'One Europe or Several?' programme (project reference L213252001). The author would like to acknowledge the assistance provided during the original research by the following people (with their 2001 affiliations): Zsolt Németh, Political State Secretary, Hungarian Ministry of Foreign Affairs, and his staff; Károly Gruber, Hungarian Government Office for Hungarian Minorities Abroad; Péter Bajtay, Delegation of the European Commission in Hungary; Csaba Tabajdi MP, Hungarian Socialist Party; Tamás Magda, Embassy of Hungary, London; Cristian Olimid, Embassy of Romania, London; Lubica Vasekova, Embassy of Slovakia, London; Claudiu Mesaros, Third Europe Group, Timisoara; Zoltán Kántor, Teleki László Institute, Budapest; Dr Judy Batt and Dr Katarzyna Wolczuk, Centre for Russian and East European Studies, European Research Institute, University of Birmingham; and Nigel Hardware and Marta Slaska, European Resource Centre, European Research Institute, University of Birmingham. Judy Batt, Moya Flynn and Károly Gruber commented on a draft. The author naturally retains responsibility for remaining errors of fact or interpretation.

In the future it won't be the territorially defined state that determines everything. Its role will remain important, but alongside it national communities, for example, will also strengthen. For me, in the future there won't be minorities, only communities. And I believe that our continent will become a community of communities.

János Martonyi, Hungarian Foreign Minister, on the Hungarian 'Status Law'
168 Óra, 31 May 2001

Under the flag of European integration Budapest is concealing the wildest nationalism, and with ethnic parties and various actions it is urging separatism in Romania, Voivodina and Slovakia.

Anghel Stanciu, Vice-President of the Greater Romania Party, on the Hungarian 'Status Law'
Magyar Hírlap, 31 May 2001

[...] the implications and significance of the concepts of nationality and citizenship in the building of Europe need to be explored in depth. For [...] there are countries where 'state' and 'nation' are *not the same thing* [...]

Links between Europeans living abroad and their countries of origin, Report of the Committee on Migration, Refugees and Demography, Parliamentary Assembly of the Council of Europe,
5 March 1999

On 19 June 2001, Hungary's Parliament passed the so-called 'Status Law', giving entitlements to members of the Hungarian minority communities in some of Hungary's neighbouring states.¹ The legislation has become the subject of a serious difference of views between Hungary on the one hand, and Romania and Slovakia on the other, straining relations for most of 2001 to an extent not seen for several years.² As of mid-November 2001, when this

1 Act 2001: LXII, 'A szomszédos államokban élő magyarokról', *Magyar Közlöny*, No. 77, 7 July 2001. The law is properly translated as 'Act on Hungarians Living in Neighbouring Countries'; 'Status Law' is used in this paper since this is the term by which the legislation has become commonly known in English. An English translation of the law is accessible via the website of the Hungarian Government Office for Hungarian Minorities Abroad, at <http://www.htmh.hu/law.htm>, and is reprinted in this volume.

2 Among Hungary's neighbours, Austria is not included in the terms of the law, for reasons discussed below. Croatia, Slovenia and Ukraine have raised no objections to the legislation; Yugoslavia has given mixed signals. See *Népszabadság Online* [<http://www.nepszabadsag.hu>], 11, 19 and 22 June 2001; *Népszabadság*, 6 July 2001; *RFE/RL Newslines*, 9 May and 10 and 11 October 2001; 'Croatia backs Hungarian law on ethnic Hungarians – Hungarian report', *BBC Monitoring*, 11 October 2001. Some factors affecting countries' stances *vis-à-vis* kin-state politics are suggested below, but this paper makes no systematic attempt to explain the position of those of Hungary's neighbours which accept the Status Law. The focus is exclusively on the argument between Hungary and the states which clearly reject the

paper was completed, all sides were expressing openness to talks; but if no agreement could be reached on disputed provisions of the law, Bucharest and Bratislava suggested that they would prefer it to be suspended, rather than put into effect as scheduled on 1 January 2002. A call for suspension was also made by a Council of Europe rapporteur, pending completion of his report.³ As an alternative to the Status Law, Bucharest presented to Budapest a draft protocol on bilateral cooperation in the minorities field.⁴ However, Hungary indicated that it would implement the Status Law at the start of 2002 as planned.⁵ Some voices in Romania urged Bucharest, in this case, to block implementation of those aspects of the legislation that were designed be carried out on the territory of the minorities' host-state.⁶ It was apparent that the last weeks of 2001 would see delicate negotiations between the Hungarian and Romanian sides in particular, with face-saving compromises likely to be made in the 'technical' implementing orders for the Status Law, for which the original legislation left much scope.

The Status Law and the dispute surrounding it have a threefold significance. First, the law reawakened concerns among some in the West about Hungary's behaviour as a kin-state *vis-à-vis* the Hungarian minorities beyond its borders in the Carpathian basin.⁷ After several years in which a mutually

law, namely Romania and Slovakia.

- 3 Hungary rejects European rapporteur's request to delay Status Law introduction', *BBC Monitoring*, 1 November 2001.
- 4 Protocol between the Government of Romania and the Government of the Republic of Hungary on the cooperation in the field of protection of the rights of persons belonging to national minorities', draft presented to the Hungarian side at the meeting of the Committee for Minorities, Romanian-Hungarian Joint Intergovernmental Commission, 10 September 2001 (hereafter GoR Protocol).
- 5 *RFE/RL Newslines*, 5 October 2001; 'Hungary sees no reason to change Status Law, official says', *BBC Monitoring*, 23 October 2001; 'Hungary rejects European rapporteur's request to delay Status Law introduction', *BBC Monitoring*, 1 November 2001.
- 6 Government of Romania, 'Proposals concerning the Law on Hungarians Living in the Neighbouring Countries to be considered by the Venice Commission in the elaboration of its study' (hereafter GoR Proposals), Paragraph 12; 'Slovak, Romanian Speakers concerned over Hungary's Status Law', *BBC Monitoring*, 9 October 2001; 'Romania to continue drive against disputed Hungarian law – official', *BBC Monitoring*, 23 October 2001; 'Romanian opposition urges premier to withdraw suggestion on Hungarian IDs', *BBC Monitoring*, 31 October 2001; 'Romanian ruling party official rejects Hungary's proposals on Status Law', *BBC Monitoring*, 1 November 2001. The term 'host-state' has been adopted in this paper as being less likely to cause confusion than 'home-state'; the term should not be interpreted as casting doubt on the permanence or legitimacy of the minorities' presence there.
- 7 For hostile international press reaction, see *The Economist*, 7 April 2001; *Financial Times*, 22 August 2001. For concerns from the international community, see the comments of the then European Commission delegation chief in Budapest, *Népszabadság*, 28 December 2000; the then OSCE High Commissioner on National Minorities, *RFE/RL Newslines*, 9 May 2001; the Chairman of the Parliamentary Assembly of the Council of Europe (PACE), *RFE/RL Newslines*, 26 June 2001; and the Director General for Enlargement at the European

acceptable framework for the management of the Hungarian minority issue appeared to have been found, Hungary's introduction of the Status Law raised questions about its reliability as a factor for stability in the region. Given the EU's interest in good relations between its future members, and the ways in which hopes originally associated with the Status Law collided with the EU *acquis*, the legislation also raised questions about the compatibility of Hungary's kin-state aspirations and its EU membership, under the circumstances in which EU enlargement is set to take place.

Second, the Hungarian law has drawn attention to the number of states in Central and Eastern Europe which also assert a kin-state role and have passed legislation similar to that of Hungary. Until the Hungarian legislation threatened to disturb regional relations, the existence of this body of law seems barely to have been known in the international policy or academic communities. In 1996, Slovenia passed a parliamentary resolution awarding privileged treatment in Slovenia to Slovenes from other states. Slovakia awarded entitlements to 'expatriate Slovaks' under a law passed in 1997,⁸ and Romania granted benefits to members of Romanian communities abroad under a piece of 1998 legislation.⁹ In Poland, the Senate approved special treatment for those holding a 'Pole's Charter' in a bill passed in 1999, which was rejected by the Sejm in 2000 but which remains under discussion.¹⁰ Bulgaria granted privileged treatment to Bulgarians living outside its borders in a

Commission, *RFE/RL Newslines*, 2 July 2001. In their English-language documents, Hungary and Romania make a distinction between 'mother-states', which are seen as asserting an exclusive right of protection over their external minorities, and 'kin-states', which are seen as accepting the primacy of the minorities' host-state. 'Kin-state' has been adopted in this paper merely because it is more frequently used in the literature (and now also in the Venice Commission Report discussed below). For the purposes of this paper, 'kin-state' is also more straightforward than some of the other terms used to refer to the same phenomenon, such as Brubaker's 'external national homeland' or van Houten's 'reference state': Rogers Brubaker, *Nationalism Reframed. Nationhood and the National Question in the New Europe* (Cambridge, 1996); Pieter van Houten, 'The role of a minority's reference state in ethnic relations', *European Journal of Sociology* 34 (1998), pp. 110-146.

- 8 Law 70/1997, 'On Expatriate Slovaks', 14 February 1997; English translation provided by the Embassy of Slovakia, London. Reprinted in this volume.
- 9 Law 150/1998, 'Törvény támogatás nyújtásáról a nagyvilág román közösségeinek', *Románia Hivatalos Közlönye*, 3 August 1998; the Romanian-language original was in *Monitorul Oficial al Romaniei*, 16 July 1998 and an English translation was included as Annex II with Romania's submission to the Venice Commission. Reprinted in this volume.
- 10 Resolution of the Senate of the Republic of Poland concerning the submission to the Sejm of a draft law on the Poles Charter and the procedure of establishing the national status of persons of Polish nationality or Polish origin', 22 April 1999; English translation accessible via the Senate website, at <http://www.senat.gov.pl/k4eng/senat/index.htm>. According to Hungarian press reports, the draft was discussed by the Sejm again in summer 2001 but again rejected: *Népszabadság Online*, 8 and 19 June 2001.

law passed in 2000.¹¹ It is reported that Ukraine and Croatia are considering introducing similar legislation,¹² and that some in Romania are calling for the further development of Romania's regime of support for Romanians living abroad.¹³ Interest in institutionalising the kin-state relationship is thus widespread across Central and Eastern Europe and appears to be strengthening. Indeed, depending on the impact and international reception of the Status Law, Hungary's legislation may become a model for other states in the region.¹⁴ However, little is known about specific micro-level kin-state policies in Central and Eastern Europe, the reasons for their adoption or their practical impact, with scholarly attention focusing instead on the effects of kin-state politics on inter-state relations.¹⁵ The fact that several Central and East European states which are set to join the EU wish to maintain and strengthen relationships with external minorities is likely to affect their positions on a wide range of issues once they are inside the Union, from foreign, single market and cultural policies to justice and home affairs and the further enlargement and development of the Union itself. The kin-state nature of many of the Central and East European states is, therefore, something which the EU is likely to need to take on board, in the same way as it has accepted the UK's relationship with its dependent territories and former colonies, France's special interest in North Africa, and the Iberian states' ties to Latin America.

Third, and relatedly, the dispute surrounding the Hungarian Status Law is prompting broader consideration in European institutions of the legal and po-

11 The texts of the Bulgarian and Slovene legislation have not yet been obtained, so these cases are not considered in detail in this paper, which is based on the Hungarian, planned Polish, Romanian and Slovak legislation. The October 2001 Venice Commission Report discussed below (Venice Commission Report) considers all these pieces of legislation, plus such similar West European laws as exist, plus Russia's 1999 law on 'state policy in respect of compatriots abroad'; the Russian case, on which there is now a substantial literature, is also not considered here.

12 'The official position of the Romanian Government on the Law on Hungarians Living in the Neighbouring Countries' (hereafter GoR Venice Position), Conclusions and Annex I; *Népszabadság Online*, 13 May 2001; *Magyar Hírlap*, 14 May 2001.

13 *Magyar Hírlap*, 27 February 2001. The wish to frame some sort of relationship with Serbs outside Serbia is also likely to arise during that country's democratic reconstruction.

14 Opponents of the Senate bill in Poland, for example, cited the fact that Hungary had not adopted such legislation as a reason why Poland should also not proceed. Apart from the sources cited, information on the Polish case has been provided by Katarzyna Wolczuk, CREES, University of Birmingham.

15 The volume edited by Neil Melvin and Charles King dealt only with Poland among the non-post-Soviet ex-communist states: Neil Melvin and Charles King, eds., *Nations Abroad: Diaspora Politics and International Relations in the Former Soviet Union* (Boulder, 1998). The recent volume edited by Kiss and McGovern represents an important step in mapping the details of kin-state policies but similarly deals only with Hungary among states outside the FSU: Ilona Kiss and Catherine McGovern, eds., *New Diasporas in Hungary, Russia and Ukraine: Legal Regulations and Current Politics* (Budapest, 2000).

litical principles that should govern states' relationships with co-ethnics abroad.¹⁶ This is, not least, because both the pro- and anti-Status Law camps have appealed to 'Europe' in their campaigns, both rhetorically and by seeking legal and institutional support from European bodies. Broadly, the argument over the kin-state relationship in general, and legislation such as the Status Law in particular, is an argument about the admissibility of deviation from 'modern' norms of statehood – of absolute territorial sovereignty, singular national identities, and an exclusive citizenship as the only possible legal and political relationship between states and individuals. However, in contemporary Europe, the concepts and practices of citizenship, sovereignty, territoriality and identity are in an acute state of flux. The dispute over the Status Law is thus archetypal of a form of conflict found frequently in contemporary Central and Eastern Europe – issues of principle appear particularly starkly, 'Europe' is appealed to for adjudication, but 'Europe' finds that its own principles on the issue in question are far from clear. However, in response to requests from Romania and Hungary, the Council of Europe's European Commission for Democracy through Law (the Venice Commission) accepted a report in late October 2001 which represents the first step towards the development of international norms governing kin-state policy towards co-ethnics abroad.¹⁷ It has also been proposed that the European Parliament examine the Hungarian law, while on the Parliament's request the European Commission is doing likewise; a further Council of Europe investigation is also underway.¹⁸ Hitherto, where they have not caused international disputes, states' policies towards co-ethnics abroad have been developed with little political or academic debate, and in *ad hoc* fashion. These investigations of the Hungarian law, however, are likely to raise international awareness of the external minority issue, encourage its consideration as part of the ongoing

16 As will become clear below, discussion of the Status Law and similar legislation requires a term that refers to individual members of external national minority communities, not just the minorities as such. However, no such term has yet gained general acceptance. André Liebich, 'Plural Citizenship in Post-Communist States', *International Journal of Refugee Law* 12 (2000), pp. 97-107, speaks of 'co-nationals (in the non-juridical sense)' (p. 106), but this is cumbersome for frequent use. 'Co-ethnics' is therefore adopted here, although this is also less than fully satisfactory. The Venice Commission Report introduces the suggestive term 'kin-foreigner'.

17 European Commission on Democracy through Law, *Report on the Preferential Treatment of National Minorities by their Kin-State*, adopted by the Venice Commission at its 48th Plenary Meeting, Venice, 19-20 October 2001, published in Strasbourg, 22 October, as document CDL-INF (2001) 19; text reprinted in this volume (hereafter Venice Commission Report).

18 *RFE/RL Newslines*, 31 August and 6 September 2001; 'Hungary rejects European rapporteur's request to delay Status Law introduction', *BBC Monitoring*, 1 November 2001.

European debate on changing notions of sovereignty, citizenship and identity, and perhaps prompt the development of an EU position on the question.¹⁹

This paper sets the Hungarian Status Law and similar Central and East European legislation in this broader European context. It focuses exclusively on the concepts and principles of statehood engaged in the kin-state relationship in general, and the arguments surrounding the Hungarian Status Law in particular.²⁰ In taking this approach, the paper makes one of the first attempts to bring consideration of ethnic minority and kin-state politics in Central and Eastern Europe together with the debate on new forms of statehood and citizenship in the EU.²¹ Despite its mushrooming literature, this debate does not yet seem to have considered the conceptual and legal challenges raised by the position of external co-ethnics.²² The focus has instead been on citizenship ‘beyond the nation state’ vertically, as it were – comprising a relationship between individuals resident inside the Union and supranational global or European regimes. The kin-state policies discussed in this paper, by contrast, raise the prospect of citizenship ‘beyond the nation state’ horizontally, or territorially. The paper suggests that the idea of the kin-state relationship challenges archetypal ‘modern’ norms of *both* territoriality *and* citizenship; in institutionalising this relationship, the Status Law and similar legislation go a step beyond even relatively new practices in the EU, by institutionalising a relationship between states and individuals who are *neither* their citizens *nor* their residents. Inasmuch as Status Law-type legislation creates rights claimable by particular individuals against specific states, it creates a form of citizenship; but it is a ‘fuzzy citizenship’, since it is not full citizenship, it does not coincide with any existing legal relationship between states and individu-

19 Not least because one of the nearest equivalents to the Hungarian Status Law appears to be legislation approved by Greece giving special rights to members of Albania’s Greek community (see Venice Commission Report).

20 The paper thus does not discuss the second major set of arguments surrounding the Status Law and similar legislation, concerning the criteria used to establish membership of external minority communities and eligibility for kin-state entitlements, and the likely impact of the laws on the identities and sizes of Central and Eastern Europe’s various national groups.

21 Korcelli and especially Papp consider post-communist Polish and Czech/Slovak citizenship provisions, respectively, in this broader European context: Piotr Korcelli, ‘Current Issues Related to Immigration and Citizenship. The Case of Poland’, in Rainer Bauböck, ed., *From Aliens to Citizens. Redefining the Status of Immigrants in Europe* (Aldershot, 1994), Tibor Papp, *Who is In, Who is Out? Citizenship, Nationhood, Democracy, and European Integration in the Czech Republic and Slovakia*, EUI Working Paper RSC No. 99/13 (Badia Fiesolana, San Domenico, 1999).

22 But see Faist’s attempt to bring the transnational communities literature together with the issue of citizenship: Thomas Faist, ‘Transnationalization in International Migration: Implications for the Study of Citizenship and Culture’, *Ethnic and Racial Studies* 23 (2000), pp. 189-222.

als, and its terms are often unclear.²³ Within the limits represented by their own kin-state policies and adherence to international minority rights instruments, however, Romania and Slovakia are shown to have argued against the Hungarian Status Law primarily in terms of ‘modern’ norms of territorial sovereignty and equal citizenship. Hungary, by contrast, has argued in explicitly ‘post-modern’ terms for its Status Law, the terms of which point towards an alternative to the ‘modern’ territorial state and its citizenry as the sole means of organising political space.

The paper proceeds in five sections. The first sketches the challenges facing archetypal ‘modern’ norms of citizenship and territorial sovereignty, and EU states’ responses in the form of new relationships with resident non-citizens and non-resident citizens. The second introduces the Central and East European context, showing how the notion of the nation as separate from the state and its citizenry leads the Central and East European countries into a kin-state role which challenges ‘modern’ norms of both territoriality and citizenship. The third analyses the Hungarian Status Law and some of Central and Eastern Europe’s other similar legislation as a specific form of kin-state policy, defining the key features of ‘fuzzy citizenship’ and the differences between the Hungarian and other laws. The fourth presents Hungary’s Status Law as part of an effort on the part of some of its political forces to develop alternatives to the ‘modern’ territorial state and its citizenry as the only means of organising political space. The final section examines the positions of three actors whose criticisms of the Status Law reveal their greater adherence to elements of ‘modern’ statehood – the main opposition party in Hungary, the governments of Romania and Slovakia, and the EU.

I. Two Elements of ‘Modern’ Statehood in Transformation

Two elements of statehood provide the framework for the analysis in this paper – territoriality and citizenship. For the purposes of mapping movements away from them in the practices to be discussed, it will be useful to establish ideal type ‘modern’ norms of these two aspects of statehood:

i) Territoriality. This term denotes a bundle of linked notions: that political space is organised exclusively and exhaustively into clearly demarcated territorial units, called states; that states should have jurisdiction only over people and phenomena occurring on their territory; and that states should be

23 Although the notion of ‘fuzziness’ seems to be taking on a life of its own in some recent social science literature, the term ‘fuzzy citizenship’ emerged primarily as a shorthand among those involved in the ‘fuzzy statehood’ project. Suggestions would be welcome as to whether an alternative term might be preferable, and if so, what it might be.

the only sources of legitimate legal authority inside their own frontiers. One element of the territoriality of ‘modern’ states is thus the principle of their territorial sovereignty, which has as a corollary the fact that states are not obliged to see implemented on their territory law made by any other authority.

ii) Citizenship. In its narrowest sense, citizenship is the defining legal relationship between states and individuals. Flowing from this, citizenship also defines the boundaries of the group that makes up the political community of any state, and that enjoys voting rights in particular. As a consequence of their role in defining the political community, citizenship laws are both expressive and constitutive of the nature of any state; the amendment of citizenship laws can have high symbolic as well as practical importance, and is often associated with historical ruptures in the life of the state. Under ideal type ‘modern’ citizenship, an individual has access to civil, political and social rights only from a particular state and only inasmuch as she is its citizen; and she can be a citizen of only one state. As citizens, and therefore as the bearers of such rights, all individuals are equal. The ‘modern’ notion of citizenship is also often thought to involve an exclusive affiliational or identity element, which works in a mutually reinforcing relationship with its formal political and socio-economic aspects to bind individuals to ‘their’ states even more closely. This set of ideas and practices is most commonly referred to as ‘national citizenship’ or ‘nationality’. This terminology reflects the historical circumstances in which these ideas and practices took root: in established states, where – after the emergence of the idea that the political community should be a ‘nation’ – the existing citizenry was assumed or encouraged to be synonymous with the nation in question. However, this usage is crucially misleading in the Central and East European context. This set of ideas and practices will therefore be referred to here exclusively as ‘(state) citizenship’.

These two elements of ‘modern’ statehood have been closely related, conceptually and practically. In particular, territoriality and citizenship have been held together by the assumption that citizens would typically be physically present on the territory of ‘their’ state – working, paying taxes, marrying, exercising political rights and requiring state assistance within its frontiers. Under ideal type ‘modern’ statehood, in other words, the twin principles of states’ sovereignty over their territory, and their exclusive legal and political relationship with their citizens, have been regarded as compatible, or even synonymous.

However, since the Second World War, the ideas and practices of ‘modern’ state territoriality and citizenship have gradually been undermined, especially among the states of the EU. The factors behind this shift – which has by now been well-mapped in the literature – include the rise of individual

rights, and phenomena usually subsumed under the labels ‘globalisation’ and ‘integration’. To summarise:

- The growth of international regimes of law, standards and rights across a range of fields, from trade to the treatment of minorities, has constrained states’ ability to claim exclusive juridical authority in their own territories. At the same time, the rise of such international regimes has expanded what is seen as the legitimate territorial scope of states’ action. Within the EU, states have ceded a particularly large share of their territorial sovereignty to allow control of significant policy areas to pass to a strong supranational regime.
- The growth of international regimes has given individuals access to rights that do not flow exclusively from citizenship of a particular state, but instead from international institutions, or from the simple fact of their personhood.²⁴ Maastricht (or ‘European’) citizenship within the EU is a particularly strong example of this phenomenon, laying obligations on EU states towards individuals who are not their citizens, and giving EU citizens rights flowing from the Union rather than the states of which they are citizens. Most notable among such entitlements is the right of EU citizens to vote and stand in local and European Parliament elections anywhere within the EU.
- Increased international migration has similarly weakened the link between citizenship and individual rights, encouraging several EU states to award rights akin to those that arise from citizenship to settled but non-naturalised immigrants even from outside the EU.²⁵
- Larger international migration flows have also spurred a reversal in international norms on dual citizenship (helped also by the growing number of mixed-citizenship marriages and the wish to equalise women’s rights to pass on citizenship). In 1963, the Council of Europe’s *Convention on the Reduction of Cases of Multiple Nationality* regarded dual citizenship as a source of conflict and confusion and thus as something to be minimised. However, under a 1993 protocol amending the earlier norm, and then the 1997 *European Convention on Nationality*, more space is allowed for the possibility of dual citizenship. Under these later norms, dual citizenship can be seen as a means of integrating immigrants while safeguarding the individual’s right not to be deprived arbitrarily of her original citi-

24 Yasemin Soysal, ‘Changing Citizenship in Europe: Remarks on Postnational Membership and the National State’, in David Cesarani and Mary Fulbrook, eds., *Citizenship, Nationality and Migration in Europe* (London, 1996), pp. 17-19.

25 On the emergence of ‘denizens’, see, in particular, Tomas Hammar, *Democracy and the Nation State. Aliens, Denizens and Citizens in a World of International Migration* (Aldershot, 1990).

zenship.²⁶

- Minority rights regimes are challenging the equal treatment element of ‘modern’ state citizenship, providing a basis for state action that discriminates among citizens of the same state.
- Non-state phenomena which have gained prominence over recent years – such as multinational corporations, transnational communities and NGOs, and international crime and terrorism networks – have suggested the potential emergence of ‘de-territorialised’ actors.

These developments have led in recent years to the identification of a new, emergent paradigm of statehood. Various labels have been applied to different aspects of this paradigm, but ‘post-modern’ will be adopted here as an encompassing term, for simplicity (and to avoid ‘post-national’, given the complications involved in transferring Western notions of the ‘national’ to Central and Eastern Europe). In this ‘post-modern’ picture, states are no longer fully sovereign within their frontiers; those frontiers are more porous; and trans-state phenomena challenge states’ position as the sole actors within the international system. Minority rights can override the norm of equal treatment associated with ‘modern’ citizenship; and citizenship need not in any case be individuals’ only route to rights, political participation and identity.

However, there is no agreement on the extent to which the basic formal organisational structures of political life, including the state, can or should shift from ‘modern’ to ‘post-modern’ formats in order to accommodate or institutionalise these developments. As it is, ‘modern’ elements seem to retain their pre-eminence: territorial states, and citizens defined in relation to them, remain the basic units of international law and political organisation. In some key respects, this remains the case even within the EU, normally regarded as being at the forefront of the post-modernist turn. This is not to make a claim in the ongoing ‘intergovernmental or supranational?’ argument about the nature of EU decision-making. Rather, it is simply to highlight the obvious facts that only states can be members of the EU, that the EU has (increasingly) hard territorial borders defined by the territorial borders of its geographically outermost states, and that individuals acquire ‘European’ citizenship only inasmuch as they are already citizens of EU member states. Whatever the innovations involved in EU decision-making processes or policy

26 Council of Europe, *European Convention on Nationality* (1997), Articles 4, 14-17; Council of Europe, *Links between Europeans living abroad and their countries of origin*, Report of the Committee on Migration, Refugees and Demography, Parliamentary Assembly, 5 March 1999 (Council of Europe document 8339) (hereafter *Links between Europeans*), Paragraph 75; James Clarke, Elsbeth van Dam and Liz Gooster, ‘New Europeans: Naturalisation and Citizenship in Europe’, *Citizenship Studies*, 2 (1998), pp. 43-67; Liebich, ‘Plural Citizenship’, pp. 97-98.

regimes, the EU remains profoundly state-based in its basic political organisation. At most, the EU might be seen as offering the opportunity to escape the territorial state ‘vertically’ more consistently than it does ‘horizontally’. That is, all the EU’s member states can participate in its supranational policy processes; but only those not on its perimeter can achieve the fully free flow of goods and people across all their borders, and thus lose awareness of the territorial limits of the state to a large extent.

As we shall see below, the EU’s state-based nature is having consequences as the Union enlarges into Central and Eastern Europe. It is increasing the premium on holding the citizenship of some states in the region rather than others, as some countries move close to accession, or at least come off the list of states whose citizens require EU entry visas. It is also heightening consciousness of state borders in the region, as the prospect nears of some such borders becoming the EU’s new eastern frontier. Hitherto in the post-communist period, many borders in Central and Eastern Europe have been relatively ‘soft’, crossed by large flows of people. Borders are often also only weakly rooted in historical memories or identities. Assuming that Poland, Slovakia and Hungary join the EU in its next enlargement, many of the inter-state boundaries that will then make up the Union’s new border divide territories and populations which have been part of a single state within living memory. In particular, several national minority populations are set to find themselves separated by the new border from the kin-states to which they or their forebears once belonged. However, as enlargement takes place, the frontiers which will make up the EU’s new border are being re-hardened to at least some extent, as the new member states implement the Union’s customs, single market and justice and home affairs regimes.²⁷

As regards the rights enjoyed by its citizens, the EU also seems to stand closer to ‘modern’ than ‘post-modern’ norms. At least so far, ‘modern’ principles of non-discrimination and equal treatment are much ‘harder’ in the EU’s legal regime than any principles of minority rights. EU minority rights requirements formally apply only to the current candidate states, and then only in the vague wording of the relevant Copenhagen criterion from 1993 – the candidate states are required to have stable institutions ‘guaranteeing [...] respect for and protection of minorities’. In its recent anti-discrimination directive, the EU follows existing international norms by allowing ‘measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin’, but the legal *obligation* on

27 On the implications of the EU’s border regime for Central and Eastern Europe, see, for example, Heather Grabbe, *The Sharp Edges of Europe: Security Implications of Extending EU Border Policies Eastwards*, Western European Union, Institute for Security Studies, Occasional Paper 13 (Paris, 1999).

member states is to eliminate such discrimination, in employment, training, education, health, housing and welfare.²⁸

For their part, minority rights regimes concede on the ‘modern’ ideal of equal treatment for citizens, but in other respects they remain wedded to ‘modern’ norms, since such regimes are typically conceived within the framework provided by the territorial state. This applies both to the work of theorists such as Kymlicka and to international practice.²⁹ Kymlicka admits that the kin-state issue raises problems for his model of ‘multinational federalism’ in the states of Central and Eastern Europe which he cannot yet resolve.³⁰ Minority rights regimes are typically seen as necessary where the nature or actions of a state mean that members of a minority population cannot enjoy ‘full’ or ‘effective’ as opposed to purely formal equality.³¹ However, minority rights regimes are to be realised *via* change in the institutions or policies of the state concerned. Although international bodies and other countries may act in numerous ways in their efforts to see minority rights realised within a particular state, and the violation of minority rights may certainly not be cost-free as it would be in a world organised purely according to ideal type ‘modern’ norms, international minority rights instruments typically stress that they are to be implemented without violating states’ territorial sovereignty.³² In particular, such instruments do not award any special authority in securing minority rights to any kin-state of the minorities concerned. The October 2001 Venice Commission Report (Section D) reaffirmed territorial sovereignty as one of the principles which must condition the adoption of any kin-state measures.

At the most, the legal and institutional formats that are emerging to regulate the relationship between states and individuals in light of ‘post-modern’ developments typically deviate from ‘modern’ norms of either territoriality or citizenship, but not both simultaneously. Contemporary conditions are increasingly recognised as bringing the principles of states’ territorial sover-

28 Council of the European Communities, Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of the European Communities*, L180, 19 July 2000.

29 Will Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Oxford, 1995). On international practice, see Faist, ‘Transnationalization’, pp. 208-209.

30 Will Kymlicka, ‘Nation building and Minority Rights: Comparing West and East’, *Journal of Ethnic and Migration Studies* 26 (2000), pp. 183-212, here p. 201.

31 See Council of Europe, *Framework Convention on the Rights of National Minorities* (hereafter *Framework Convention*), Article 4.

32 See, for example, United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) (hereafter UN Declaration), Article 8; *Framework Convention*, Article 21. On this issue, see Jennifer Jackson Preece, ‘National Minority Rights vs. State Sovereignty in Europe: Changing Norms in International Relations?’ *Nations and Nationalism* 3 (1997), pp. 345-364.

eignty and their exclusive legal and political relationship with their citizens into conflict; new arrangements typically resolve this by conceding on one principle or the other.³³ In EU states, regimes which give rights to non-citizens (whether from other EU states or elsewhere) do so where such non-citizens are at least long-term residents in the states concerned. Such regimes privilege the claims which arise from residence over the ‘modern’ notion that citizenship can be the only route to rights;³⁴ both academic and policy discussion of the position of third-country nationals in the EU suggests that the claims of residence are likely only to gain in weight in future. In privileging residence, however, such regimes re-emphasise the similarly ‘modern’ idea that the state should have a relationship of rights and duties primarily with the population existing on its territory. As regards voting rights, for example, it is precisely because increasing numbers of non-citizens find themselves falling under – and paying taxes to – the same territorial political authority as citizens that the demand for resident non-citizen rights has arisen.³⁵ In this respect, ‘post-modern’ (or ‘post-national’) citizenship reaffirms the territorial aspect of state action and responsibility.

Although the phenomenon has received less attention than the new rights of resident non-citizens, West European states have also been showing increased interest in their non-resident citizens. While reaffirming the importance of the citizenship tie, this interest in expatriates challenges the ideas that states should concern themselves primarily with people living on their territory, and have exclusive authority over such residents. There is growing awareness of the obstacles that non-residence can place in the way of the full enjoyment of citizenship rights, and there have been strengthening calls for such obstacles to be eliminated.³⁶ Some states, for example, have traditionally

33 See Rainer Bauböck, ‘Changing the Boundaries of Citizenship. The Inclusion of Immigrants in Democratic Polities’, in Rainer Bauböck, ed., *From Aliens to Citizens. Redefining the Status of Immigrants in Europe* (Aldershot, 1994), pp. 199-232; *Links between Europeans*, Paragraph 17.

34 See Theodora Kostakopoulou, ‘European Union Citizenship as a Model of Citizenship beyond the Nation State’, in Albert Weale and Michael Nentwich, eds., *Political Theory and the European Union* (London, 1998), pp. 158-171.

35 See Anthea Connolly, *Alien suffrage in the European Union and direct elections to the European Parliament 1951-1980*, Working Paper ‘Civic 2/2001’ of the project ‘Strategies of Civic Inclusion in Pan-European Civil Society’ at the University of Exeter, <http://www.ex.ac.uk/shipss/politics/research/strategies/papers.htm>, and the works discussed therein.

36 The Council of Europe seems to have been the main international actor in this process. A PACE committee has prepared two reports on Europeans living abroad and the policies towards them of their ‘kin-states’ which seem to be the most comprehensive surveys of the issue available: Council of Europe, *Europeans living Abroad*, Report of the Committee on Migration, Refugees and Demography, Parliamentary Assembly, 21 April 1994 (the ‘Böhm report’) (Council of Europe document 7078), and *Links between Europeans*. Following each report, PACE adopted a text urging member states to develop their expatriate relation-

been hesitant about allowing their non-resident citizens to vote, certainly while remaining on the territory of these citizens' host-states. This is because expatriate voting seems to violate two principles: that of host-states' territorial sovereignty, since voting would take place on host-states' territory under the terms of kin-states' electoral law; and that which ties voting to the payment of taxes, since taxes are typically paid to the state of residence, not that of citizenship. However, several states previously reluctant about the issue have moved recently to ensure that their non-resident citizens are able to vote – at least in national elections – without having to return 'home' (UK 1987, Austria and Switzerland 1992, Italy 2000). Portugal, France and now Italy also have seats in their national legislatures set aside for representatives elected from non-resident constituencies. In 1999, a Council of Europe Parliamentary Assembly (PACE) committee called for the development of a body of international 'law of expatriates' to cover issues such as these. The committee acknowledged that such law would be focused on individuals, not states, and would challenge the principle of territorial sovereignty, since it would require host-states to implement on their territory law made by expatriates' kin-states.³⁷

There has also been rising interest in the institutionalisation of links between states and their expatriate communities through the creation of special councils, enjoying consultative rights on issues of interest to expatriates. The longstanding Council of the Swiss Abroad has been joined recently by the World Council of Hellenes Abroad (1995) and Turkey's High Council for Nationals Living Abroad (1998), for example. These bodies are of interest in the present context not only because they challenge the idea that states should have a relationship exclusively with their residents but also because they institutionalise a role for non-state actors in an area of state interest and policy. Although there is a trend towards expatriates' direct election of their council representatives, the non-governmental associations of expatriates typically retain a role in the organisation of such elections, even if not direct representation on the councils themselves. Such non-state organisations can thus gain some say over the use of the kin-state's public funds. In this respect, the expatriates' councils can be seen as a small part of the wider challenge to states' exclusive role in the delivery of public goals.

ships: Council of Europe, Resolution 1035 on Europeans Living Abroad, Parliamentary Assembly, 18 May 1994, and Council of Europe, Recommendation 1410 on Links between Europeans living abroad and their countries of origin, Parliamentary Assembly, 26 May 1999. The Council also organised a conference on the issue in 1997, plus two conferences (in 1999 and October 2001) on the related subject of nationality/citizenship. The 1999 PACE committee report is the source for this paragraph and the next.

37 *Links between Europeans*, Paragraphs 19-20.

This applies even more strongly if the expatriates' councils are seen as part of a broader phenomenon than the wish to ensure the realisation of expatriates' citizenship rights. It has been suggested that, in an era of increased global interdependence and economic competition but unstable international political alliances, there is an increased premium on states' ability to mobilise 'friendly' forces around the world, whether these be investors, lobbyists or cultural representatives.³⁸ Expatriates can act as such forces; but this kind of role does not depend on the retention of the kin-state's citizenship. Rather, numbers, geographical spread and political and financial muscle are the factors that count. In the case of the Central and East European states' post-communist transformations, for example, King has highlighted the role played by emigrants naturalised in the West but then re-engaged with their kin-states, as sources of financial capital, managerial know-how, diplomatic lobbying power and sometimes political leadership.³⁹ From this perspective, states have an interest in expanding their 'expatriate' relationships to encompass people of any citizenship living abroad with whom they can identify any kind of historical or cultural link. Thus, under certain circumstances, people of Italian extraction *who are not Italian citizens* can become members of the General Council of Italians Abroad (a similar provision applied formerly for the Portuguese equivalent).⁴⁰ For their part, populations never or no longer resident in their 'original' state may wish to retain some kind of tie or access to it, without wishing ever to live there permanently as do archetypal diasporas. It is these kinds of arrangements that has led some authors to identify 'deterritorialised nation states', comprising networks of often scattered and mobile people united by an identity and some form of tie to a common state, but not necessarily by either citizenship or residence.⁴¹ Enthusing on the first Conference of Italians Abroad, held in Rome in December 2000, the magazine *Italy Down Under* declared the event to be 'the start of another phase of the Italian mission in the world' and 'a sign of the times, specifically globalisation and liberalisation of trade [...] This mass of nearly 200 million people, scattered in every corner of the planet, provide a potential network for cooperation and coordinated interaction [...]'⁴² For its part, acknowledging that its Status Law has 'some transboundary aspects', Hungary declared these to be 'a con-

38 See, for example, Robin Cohen, *Global Diasporas: An Introduction* (London, 1997), pp. 155-176.

39 Charles King, 'Introduction: Nationalism, Transnationalism, and Postcommunism', in Melvin and King, *Nations Abroad*, pp. 1-27.

40 *Links between Europeans*, Paragraphs 66-67.

41 Linda Basch, Nina Glick Schiller and Cristina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments and Derritorialized Nation-States* (Amsterdam, 1994); see also Cohen, *Global Diasporas*, pp. 127-137, 173-175.

42 *Italy Down Under*, 2000, Issue 4, at <http://www.italydownunder.com.au>.

sequence of the globalising world' and suggested that to reject kin-state politics on these grounds alone would be pointless.⁴³

II. Neither Residents nor Citizens: Nations, States and Co-ethnics in Central and Eastern Europe

The state transformations underway in post-communist Central and Eastern Europe are usually regarded as somewhat divorced from the 'post-modernist' ferment identified in the EU. Indeed, the suspicion that the Central and East European states are uncomfortable with the 'post-modern' norms assumed to prevail within the Union is one source of hesitancy in the EU about enlargement, and of the unprecedented conditionality attached to the present accessions on issues such as minority rights. Freed from Soviet domination, the Central and East European states are usually seen as asserting a traditional form of statehood, involving 'modern' notions of sovereignty, territoriality and citizenship. A large share of these states' domestic and international politics since 1989-90 has indeed revolved around activities archetypically accompanying the establishment of 'modern' states: demarcating territorial borders, establishing interstate relations, passing constitutions and citizenship laws, choosing state symbols, creating tax systems, and establishing the full control of central domestic political authorities over military and other security forces.⁴⁴

However, the Central and East European states have been pursuing 'modern' statehood in an environment which differs in an important respect from that prevailing at the establishment of the archetypal 'modern' European states such as France, Spain or the Netherlands. From the late nineteenth century to the present day, Central and East European states have typically been established – like Germany – only *after* the spread of the idea of the nation, conceived as a mass population sharing a single language and culture, and the parallel notion that states should be 'of and for' particular nations.⁴⁵ In Central and Eastern Europe, there has typically been little question of established states being able to appropriate the concept of nationhood and fashion 'nations' out of their existing citizenries. Instead, nations are typically conceived as cultural collectivities existing independently of states and their citizenries. Indeed, the prior existence of a nation is typically a major ele-

43 'Paper containing the position of the Hungarian Government in relation to the Act on Hungarians Living in Neighbouring Countries', as submitted to the Venice Commission (hereafter GoH Venice Position), Paragraphs 7.3 and 7.9.

44 See Judy Batt and Kataryna Wolczuk, 'Redefining the State: The Constitutional Process', in Stephen White, Judy Batt and Paul Lewis, eds., *Developments in Central and East European Politics 2* (Basingstoke, 1998), pp. 74-90.

45 Brubaker, *Nationalism Reframed*, p. 5.

ment in the contemporary claim to statehood, with the revolutions of 1989-90 presented as the final achievement of the nation's long struggle for self-determination. The major exception to this picture relevant to this paper is Romania, which – as we shall see below – claims officially to adhere to a French-style conception of the nation as synonymous with the citizenry.⁴⁶

The separation of 'state' and 'nation' in Central and Eastern Europe applies geographically as much as conceptually. Owing to the late achievement of statehood, historical population movements and the way in which territorial borders have been drawn and re-drawn in the region since 1918, Central and East European states typically find themselves with groups living inside their borders which conceive of themselves as belonging to nations other than the titular one, and members of 'their own' nation living outside, usually in neighbouring or nearby states. Different counting methods produce varying figures for the size of such minorities, and the numbers involved are in any case often disputed between host- and kin-states. However, among the external minorities of kin-states discussed in this paper, there are possibly 1.5-2.0 million Poles in the former Soviet Union, as a result of the westward shift of Poland's borders at the end of the Second World War, plus Stalinist deportations to Central Asia; up to 7 million Romanians in the former Soviet Union, Hungary and south-east Europe, owing to the inclusion of part of contemporary Romania in the Austro-Hungarian Empire before the First World War, and the annexation of contemporary Moldova and parts of Ukraine from Romania to the Soviet Union after the Second; 2.7-3.3 million Hungarians in Hungary's neighbouring states, as a result of Hungary's loss of territories under the 1920 Treaty of Trianon; and up to half a million Slovaks in various states of the region.⁴⁷ Nineteenth and twentieth-century emigration to the West, driven by war, poverty and political upheaval and persecution, has further widened the territorial discrepancy between state and nation understood in Central and East European terms. Western diasporas may total up to 12 million for Poland, 3 million for Romania, upwards of 2.5 million for Hungary and 2 million for Slovakia.⁴⁸ Members of such Central and East European 'nations abroad' typically did not hold the citizenship of their kin-states at the end of communist rule, owing either to the terms of treaties

46 See also Constantin Iordachi, 'Állampolgárság és nemzeti identitás Romániában', *Regio* 11 (2000), 3, pp. 27-61.

47 For these figures, see, for Poland, *Reczpospolita*, 28 April 2001; for Romania, the website of the Romanian Ministry of Foreign Affairs, <http://domino.kappa.ro/mae>; for Hungary, GoH Venice Position, Annex 1; and for Slovakia, L. Bartalska, *Sprievodca slovenským zahraničím* (Bratislava, 2001).

48 Sources as in previous note except for Hungary, where figures were taken from 'Jelentés a Kárpát-medencén kívül élő magyarság helyzetéről', accessible *via* the website of the Government Office for Hungarian Minorities Abroad, at <http://www.htmh.hu>.

providing for interstate territorial transfers (typical for co-ethnics in the region), or to the removal of citizenship by communist regimes and/or the requirements of communist-era emigration and naturalisation elsewhere (typical for co-ethnics in the West).

Under these Central and East European circumstances, the post-communist effort to fashion states ‘of and for’ particular nations has typically involved their tethering to the history, symbols and language of particular national cultural groups. The role of the state can often be seen as being to protect and promote the culture of the titular nation, and thus by implication the position of those who carry it. The Central and East European stress on the cultural nation has strengthened West European reservations about the region’s ‘modern’ state-building, since cultural nationhood is seen as being a less appropriate basis for the process than shared commitments to political institutions, values or practices, for example. As regards states’ internal arrangements, ‘modern’ norms of statehood seem to fall naturally into harmony with the effort to construct states ‘of and for’ particular nations, and have often been harnessed in its support – with highly problematic results. For example, the ‘modern’ idea that formally equal citizenship rights can be the only basis for states’ treatment of individuals is typically marshalled by titular majorities unwilling to admit the claims of national minorities, producing numerous well-known cases of tension and conflict. In their new post-communist citizenship laws, Central and East European states have typically asserted the primacy of the titular majority nation – by denying citizenship on the basis of birth on their territory alone, requiring evidence of cultural assimilation before granting citizenship by naturalisation, and favouring people seen as members of the nation in the naturalisation process (for example, by not requiring them to abandon another citizenship, or by setting a shorter than normal residence requirement).⁴⁹ Hungary’s post-communist citizenship law of 1993, for example, made possession of ‘Hungarian nationality’ (defined other than in terms of forebears’ citizenship) an advantage for the first time in the history of Hungarian naturalisation law, even though Hungary gained control over its own citizenship legislation as early as the 1867 Compromise with Austria.⁵⁰ However, as we shall see below, the pri-

49 As regards assimilation requirements, prospective Romanian citizens, for example, must ‘prove with their behaviour their loyalty to the Romanian state and people’ and ‘know Romanian sufficiently to be able to fit into social life’ (Chapter II Paragraph 9 of the Romanian citizenship law, in *România Hivatalos Közlönye*, 6 March 1991). Prospective Hungarian citizens must take a Hungarian-language test on their knowledge of constitutional issues (Article 4 (1) of the Hungarian citizenship law, Law 1993: LV, *Magyar Közlöny*, 77). For more on the place of the nation in Central and East European citizenship laws, see Liebich, ‘Plural Citizenship’.

50 Mária Parragi, ‘A magyar állampolgársági jog és az ország határain kívül élő magyarság’, in

macy of the dominant national identity and ‘its’ state is often further underlined by ‘modern’ bans or other limits on dual citizenship, at least for existing citizens. As in the Hungarian case, these citizenship laws do not always define membership of the nation in terms of previous (or forebears’) citizenship of the state concerned, but sometimes by more nebulous criteria. Most notably, Croatia offers citizenship to any ‘person who belongs to the Croatian nation’.⁵¹

Externally, the wish to construct states ‘of and for’ particular nations has yielded the notion that the Central and East European countries should have some sort of relationship with co-ethnics abroad. According to these states’ constitutions, Poland, for example, ‘shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage’ (Article 6). Romania ‘shall support the strengthening of links with the Romanians living abroad and shall act accordingly for the preservation, development and expression of their ethnic, cultural, linguistic and religious identity’ (Article 7). Hungary ‘bears a sense of responsibility for the fate of Hungarians living outside its borders and promotes the fostering of their relations with Hungary’ (Article 6). Slovenia ‘shall attend to the welfare of the autochthonous Slovenian minorities in neighbouring countries and of Slovenian emigrants and migrant workers abroad and shall promote their contacts with their homeland’, and – in a unique provision among the region’s constitutions – shall provide ‘special rights and privileges’ in the kin-state to non-citizen co-ethnics from abroad (Article 5). And under an amendment passed in 2001, Slovakia ‘shall support national awareness and cultural identity of Slovaks living abroad and their institutions for achieving these goals as well as their relationships with their homeland’.⁵²

Provisions asserting a link with co-ethnics abroad were wholly absent from Central and Eastern Europe’s communist-era constitutions. Even where communist regimes sought to associate themselves with titular majority nationalism domestically, the demands of Soviet bloc politics meant that the assertion of an interest in co-ethnics abroad remained a taboo (at least until the very last years of communist rule in Hungary saw the regime take up the issue

Judit Tóth, ed., *Schengen: A magyar-magyar kapcsolatok az uniós vízumrendszer árnyékában* (Budapest, 2000), pp. 93-122, here p. 97.

51 Liebich, ‘Plural Citizenship’, p. 103; OSCE, *Republic of Croatia: Parliamentary Elections (House of Representatives), 2 and 3 January 2000: Final Report*, Warsaw: Office for Democratic Institutions and Human Rights, 25 April 2000.

52 The Slovak amendment is noted in the Venice Commission Report, Section A. Apart from those quoted here, kin-state clauses are also included in the constitutions of Albania, Croatia, Macedonia, Serbia and Ukraine, among Central and East European countries. The Czech, Bulgarian and Baltic state constitutions do not mention a kin-state responsibility. Bulgaria and Slovakia thus developed ‘fuzzy citizenship’ legislation without there being a kin-state clause in their constitutions at the time.

against Ceaușescu's Romania). The assertion of an identity as a kin-state should therefore be seen as part of the process of self-redefinition in which the Central and East European states are engaged following the collapse of the communist system. Although often confusing the distinction between policies towards expatriate citizens and those concerning non-citizen co-ethnics abroad, the 1999 PACE committee report noted that the emergence of the Central and East European states was helping to tip the balance in Europe towards states with 'proactive' policies towards citizens/co-ethnics abroad, and away from the continent's *'laissez-faire'* northern countries (Paragraph 16). Since the end of communist rule, most Central and East European states with co-ethnics abroad have created government and/or parliamentary bodies responsible for relations with these communities, and there has been a plethora of gatherings and policy initiatives in pursuit of this agenda.

However, in contrast to the situation regarding domestic aspects of the state, the effort to make the Central and East European states 'of and for' particular nations *via* a relationship with external co-ethnics runs up *against* 'modern' norms of statehood. The 'modern' principles that states can legitimately have a relationship only with their citizens, or only with people resident on their territories, cannot accommodate a relationship between states and non-citizen co-ethnics abroad. Similarly, the 'modern' idea that individuals' national identities must coincide with their citizenship leaves no room or reason for a kin-state relationship. Conceptually, one way around this dilemma is to turn co-ethnics abroad into resident citizens, *via* population transfers or territorial revision, followed by naturalisation. Such policies represent the ultimate assertion that territory and citizenship can be the only bases for a relationship between the state and individuals, and that the state's territory, citizenry and nation must be coterminous. Milošević's Serbia seems to represent the clearest recent embodiment of such ideas; in a very different fashion, they were also affirmed by the reunification of Germany. Central and Eastern Europe has, of course, experienced revisionist episodes in the past – such as Hungary's reacquisition of parts of contemporary Slovakia, Romania and Yugoslavia in 1938-41 – that continue to colour contemporary kin-state politics in the region. Whereas some in Romania and Slovakia believe that Hungary's post-communist assumption of the kin-state role is merely the prelude to a renewed revisionist effort, Hungary's search for new kin-state instruments has been informed precisely by the wish to find alternatives to the revisionism of the inter-War period.

However, even where the kin-state has no revisionist intentions, and this is accepted by the host-state of its external minority, the kin-state role can remain threatening to a host-state adhering to 'modern' norms. At least implicitly, the kin-state relationship suggests that citizenship and territorial statehood need not be the only channels for the organisation of politi-

cally-relevant phenomena; the relationship challenges the host-state's territorial sovereignty, its exclusive citizenship relationship with its citizens, and its assumption of a singular tie of loyalty and identity between the citizenry and the state. It is for this reason that policies that Budapest sees as wholly different from those of the inter-War period, since they no longer reflect the 'modern' assumptions of revisionism, have continued to cause conflict with 'modernist' host-states such as Romania throughout the post-communist period. If the integrity of contemporary Romania as a 'modern' state is to be defended, it is threatening whether Hungary wishes to redraw territorial borders, or merely assert a non-revisionist kin-state role *vis-à-vis* Romania's Hungarian minority.

The argument so far is that the kin-state role at least implicitly opens the way to some 'post-modern' ideas, of attenuated or shared sovereignty, multiple identities and non-citizenship relationships between states and individuals. It should be stressed that only Hungary among the Central and East European states couches its defence of its kin-state policies explicitly in these terms, as we shall see below. In some important respects, of course, the kin-state relationship differs significantly from the 'post-modern' relationships between resident non-citizens and non-resident citizens that are emerging in the EU. According to Soysal, most notably, these relationships primarily express and accommodate the rights of individuals, and specifically migrant individuals,⁵³ whereas the kin-state role is predicated on the idea of the nation as a cultural collectivity. Domestic policies directed at cultural communities defined other than by citizenship and breaching the 'modern' norm of equal treatment are now accepted internationally, in the form of minority rights regimes. However, the kin-state relationship challenges the 'modern' norm not only of equal treatment but also of territorial sovereignty. In terms of Hammar's two-by-two tabulation of alternative citizenship and residence combinations, external co-ethnics are a group within the 'fourth box', which Hammar could fill only with 'foreigners abroad'.⁵⁴ The position of external co-ethnics in Hammar's schema is represented in Figure 1 at the end of the paper. It is because of the clash with territorial sovereignty that the kin-state role has not been protected in international law, as noted in the previous section. For the same reason, in the academic literature, kin-state politics has been analysed principally as an international security issue.⁵⁵ In such analyses, the bias is often towards the assumption that external minorities represent 'ethnic con-

53 Soysal, 'Changing Citizenship in Europe', pp. 23-24.

54 Hammar, *Democracy and the Nation State*, p. 16, Table 1.

55 See, for example, Daniel Nelson, 'Hungary and its Neighbours: Security and Ethnic Minorities', *Nationalities Papers* 26 (1998), pp. 313-330; van Houten, 'The role of a minority's reference state'.

flicts waiting to happen'.⁵⁶ Most influentially, Brubaker has cast kin-state politics as part of an inherently unstable 'triadic' relationship between kin-state, host-state and minority.

Within certain limits, the argument about the admissibility of kin-state politics in Central and Eastern Europe can thus be seen in principle as a conflict between 'modern' and 'post-modern' norms of statehood. However, in practice, the Central and East European states cannot be categorised into two groups which accept or reject kin-state politics *per se*. Rather, Central and East European states often behave both as kin-states towards their own co-ethnics, and as affronted host-states defending 'modern' norms against the kin-state policies of their neighbours. Competing principles of statehood are thus often marshalled on different occasions to support the preferences of the titular majority nation. For example, Romania and Slovakia often attempt to parry kin-state policies from Hungary by acting more forcefully as kin-states themselves. Romanian critics of the Hungarian Status Law sought to undermine Budapest's claim that it was acting as a defender of minority rights by pointing to perceived deficiencies in Hungary's treatment of its Romanian minority. One of Romania's complaints against Hungary's behaviour was that, in passing the Status Law unilaterally, Budapest had deprived Bucharest of the opportunity to negotiate its way to the extension of similar privileges to the Romanian minority in Hungary (GoR Venice Position, Paragraph 2.2.2). Most prominent in this context is the way in which Romania has asserted its kin-state role *vis-à-vis* Moldova while rejecting Hungary's assumption of a kin-state role *vis-à-vis* the Hungarian minority in Romania.⁵⁷ A further complication is that host-states can be more open to the assertion of the kin-state role by some states than by others – thus Bucharest does not seem to find problematic the adoption of the kin-state role by Croatia or Slovakia *vis-à-vis* their minorities in Romania. The variation in host-state attitudes in turn complicates the effort to pursue consistent kin-state policies, which logically

56 Charles King and Neil Melvin, 'Diaspora Politics: Ethnic Linkages, Foreign Policy and Security in Eurasia', *International Security* 2 (1999), No. 3, pp. 108-138, here p. 116.

57 During the writing-up of this paper, Romania has been engaged in a dispute with Moldova which found it rejecting accusations of revisionism made by the new Moldovan government, even as it sometimes verged on making the same accusation of Hungary. One argument advanced to explain the apparent contradiction in Romania's stance is that Moldova in its entirety was created out of former Romanian territory, so Bucharest's kin-state policies towards it stay within the framework of states and their citizenries (see Iordachi 2000, 55). Logically, however, this ought to mean that Bucharest would be more receptive to Hungary as a kin-state if Budapest asserted an interest in all those citizens of Romania descended from pre-1920 citizens of Hungary, rather than only those of Hungarian national identity. This seems unlikely. The 'state-led' argument also fails to account for Romania's assumption of the kin-state role *vis-à-vis* Romanian minority populations in host-states other than Moldova – but see Bucharest's own explanation of this point in section V below.

would require perceived members of the nation to be treated equally as such. The pattern of politics in this field is shaped not so much by principles as by contingent factors – particular historical memories, the size and assertiveness of the minorities involved, the state of play as regards other aspects of kin-state/host-state relations, domestic politics in both states, the availability of political and economic resources, and the incentives and constraints provided by the international environment.⁵⁸ Thus the fact that Hungary is Central and Eastern Europe’s most consistent upholder of the kin-state role (and the principles of domestic minority rights) can be seen as a product of its demographic and historical circumstances – it has large and culturally important external minorities, but small and highly assimilated domestic ones, and it has faced no recent claims to its contemporary territory. Hungary reportedly encouraged Romania to adopt a status law of its own, and in its Venice position paper came close to arguing that the Status Law was acceptable because it offered the same treatment to Hungarian minorities abroad as Hungary would welcome for its own internal minorities from their kin-states.⁵⁹

In the field of kin-state politics, much also depends on the precise form which kin-states seek to give to their relationship with external co-ethnics. Although they can be enough to raise host-state concerns, constitutional declarations of a kin-state identity do not in themselves create a legal or otherwise tangible tie with the kin-state for co-ethnics abroad. From a kin-state perspective, the offer of citizenship to co-ethnics abroad without requiring them to take up residence represents an alternative to territorial revisionism which similarly institutionalises the relationship (but which also does not necessarily encourage immigration). One example of the non-resident citizenship option is Croatia’s offer of citizenship to all ‘members of the Croatian nation’, as noted above. More commonly, the offer of non-resident citizenship is made in ‘post-imperial’ or ‘post-federative’ situations. Just as the UK offers forms of citizenship to some citizens of its former colonies (and is preparing to offer full citizenship to all dependent territory citizens), Russia since 1991 has offered citizenship without requiring residence to all former citizens of the Soviet Union who did not take another citizenship. Croatia has similarly offered citizenship to all those who were republican citizens of Croatia within pre-1991 Yugoslavia, regardless of their current residence (OSCE 2000). Non-resident citizenship has arisen in Central and Eastern Europe, secondly,

58 For an argument on these lines, see King and Melvin, ‘Diaspora Politics’; and for accounts of Hungary’s pre-Status Law kin-state policies, see George Schöpflin, *Nations, Identity, Power: The New Politics of Europe* (London, 2000), pp. 347-409; Judit Tóth, ‘Diaspora in Legal Regulations: 1989-1999’, and *idem*, ‘Diaspora Politics: Programs and Prospects’, both in Kiss and McGovern, *New Diasporas*, pp. 42-95 and 96-141 respectively.

59 See GoR Venice Position, Paragraph 2.2.2; GoH Venice Position, Paragraph 1.9; remarks by Hungarian Prime Minister Viktor Orbán reported in *Magyar Hírlap*, 20 June 2001.

where citizenship has been restored to those who were stripped of it or required to abandon it in order to emigrate or achieve post-emigration naturalisation elsewhere during the communist period. Many post-communist states have simply nullified communist-era laws that removed citizenship from people identified as political enemies. Such states also often allow the re-naturalisation of former citizens and their descendents without requiring them to be resident; this is Hungary's practice as regards its Western diaspora, for example (but not, importantly, that of Poland, which so far requires would-be re-naturalisees to take up residence).⁶⁰ The most important example in the present context is that of Romania. Its provisions regarding the re-naturalisation of former citizens and their descendents effectively and intentionally offer Romanian citizenship to many citizens of Moldova and Ukraine.⁶¹

As in EU states' relations with their expatriates, the non-resident citizenship solution emphasises the citizenship relationship, while conceding on the principle of territorial sovereignty. Croatia, alone among the Central and East European states, has gone as far as replicating the practice of some West European states by creating seats for non-resident constituencies in its legislature.⁶² As in the case of several West European states, the wish for a link with citizens abroad can be a factor encouraging states to tolerate dual citizenship even for their existing citizens.⁶³ Hungary, Slovakia and, it would appear, now also Poland allow this type of dual citizenship.⁶⁴ However, in terms of its practical political significance, and particularly from a host-state perspective, the taking of kin-state citizenship by members of external minor-

60 Renaturalisation without residence for those who lost their Polish citizenship before 1989 was proposed in a draft citizenship law approved by the Senate in 1999 but not passed by the Sejm. Poland is unusual in the region in that it continues to operate with a communist-era (1962) citizenship law. See Liebich, 'Plural Citizenship', for these issues in general; Article 21 of Hungary's citizenship law, as in note 30, for its renaturalisation provisions; and the draft Senate bill *via* the Senate website, at <http://www.senat.gov.pl/k4eng/senat/index.htm>.

61 Chapter VII, Paragraph 37 of the Romanian citizenship law, as in note 49; see Iordachi, 'Állampolgárság', pp. 52-53

62 The idea has also reportedly been discussed in Poland (*Links between Europeans*, Paragraph 46). Obviously, as with West European states, not all non-resident citizens of Central and Eastern European states are allowed to vote: expatriate voting is another area of diversity across the region. Poland and (obviously) Croatia allow it, as do Romania and Bulgaria, for example, but Hungary does not; a move to allow the practice is reportedly under discussion in the Czech Republic. See the election reports of the OSCE Office for Democratic Institutions and Human Rights, at http://www.osce.org/odihr/documents/reports/election_reports; 'Czech parliament passes election bill to final reading', *BBC Monitoring*, 18 October 2001.

63 For the EU cases, see Randall Hansen and Patrick Weil, 'Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?' in Randall Hansen and Patrick Weil, eds., *Towards a European Nationality: Citizenship, Immigration and Nationality Law in the EU* (Basingstoke, 2001), pp. 1-23, here p. 18.

64 See Liebich, 'Plural Citizenship', pp. 100-106; *RFE/RL Newslines*, 21 July 2000.

ity communities who are host-state citizens differs significantly from the exercising of existing citizenship rights by emigrants. For a host-state adhering to 'modern' norms, an ethnic minority of dual citizens can make real many of the fears raised implicitly by the idea of the kin-state relationship. Especially where levels of trust are low and the host-state is felt to be insecure, dual citizenship can be regarded as a threat to the host-state's ability to assume a commonality of identity, interest and loyalty with its citizens, and as an instrument through which the kin-state may undermine the host-state's independence and integrity.⁶⁵ As already noted, some Central and East European states have therefore banned or otherwise limited their citizens' ability to acquire a foreign citizenship while retaining their original one (even where former citizens and their descendents may be allowed to reacquire kin-state citizenship without forgoing their foreign one). Yugoslavia has recently rescinded its ban on dual citizenship, but other states which host minorities relevant to this paper and which employ such restrictions include Belarus, Moldova, Russia and Ukraine.⁶⁶ In particular, Moldovan citizens who have taken up Romanian citizenship have been violating Moldovan law. This has caused considerable strain in the relationship between Moldova and Romania, and appears recently to have prompted Chisinau to recognise a *fait accompli* by legalising dual citizenship.⁶⁷ For its part, Romania formally allows dual citizenship under its 1991 law.⁶⁸ However, Article 16 of the constitution bans foreign nationals, who are interpreted to include dual citizens, from holding public office.⁶⁹

65 Thus Croatia's awarding of citizenship to the Croat community in Bosnia is regarded with suspicion by the international community as being prejudicial to the Dayton Accord; see *Traces*, Issue 6, April-June 1999, Issue 8, October-December 1999 and Issue 9, January-March 2000. *Traces* is an online news digest from the ESRC's Transnational Communities Programme based at the University of Oxford, drawing mainly on western news agency reports and BBC Monitoring, at <http://www.transcomm.ox.ac.uk/traces.htm>.

66 For Yugoslavia, see *Traces*, Issue 9, January-March 2000. The Ukrainian case is considered in King and Melvin 1999.

67 *Traces*, Issue 9, January-March 2000; *RFE/RL Newslines*, 13 September and 7 November 2001.

68 See Liebich, 'Plural Citizenship', p. 104.

69 One group within the Democratic Alliance of Hungarians in Romania, the main Hungarian minority organisation in Romania, proposed recently that these restrictions be removed; 'UDMR Reformist Bloc head details proposal to amend Romanian Constitution', *BBC Monitoring*, 26 September 2001. A case reported recently, in which a ministerial advisor was sacked because he held dual French/Romanian citizenship, suggests that Romania enforces these restrictions on at least some occasions, although other instances suggest a more relaxed approach; see *RFE/RL Newslines*, 13 July 2001. For its part, the Romanian nationalist Greater Romania Party proposed that all those in Romania who applied for Hungarian 'fuzzy citizenship' under the Status Law should be treated as if they had acquired dual citizenship; *RFE/RL Newslines*, 26 June 2001.

The restrictions placed on dual citizenship by several of the most important host-states for Hungarian minorities have consistently been among the factors holding Hungary back from offering citizenship to its co-ethnics in neighbouring states. Concerns not to undermine the independence and integrity of Belarus and Ukraine also seem to have featured in Poland's rejection of the citizenship solution for its co-ethnics abroad. Even where host-states formally allow dual citizenship, the political ramifications of the dual citizenship solution, and the way in which it would discriminate against Hungarian minorities whose host-states disallow or penalise it, have acted as further constraints in the Hungarian case. Hungarian policy has traditionally sought to treat equally the 'post-Trianon' Hungarian minorities in Hungary's neighbouring states, even as it draws a distinction between them and the Western emigrant diaspora, which can be seen as less 'deserving' and less in need of support (Hungarian policy on this point is discussed further below). The current situation, however, yields what is – for many concerned with the 'Hungarian nation' – the uncomfortable result that Hungarians who left for the West can often (re-)gain Hungarian citizenship, while those who remained in the Carpathian basin and lost Hungarian citizenship as a result of the Treaty of Trianon cannot. The demand that Hungarians in neighbouring states should be granted full Hungarian citizenship without a residence requirement has been a recurrent theme since 1990 for some in Hungary's right-wing political elite and external minority communities most inclined to give absolute priority to Hungarian nationhood.

As in Western Europe, there are, of course, also more practical reasons why states might not wish to admit a fully-fledged non-resident citizenship, from fears about the creation of at least a latent claim on state socio-economic resources, to worries about the impact on domestic electorates and electoral results of the enfranchisement of non-tax-payers. In the post-communist context, the scope of citizenship also has implications for privatisation and economic restitution schemes. In Central and East European states which reject the non-resident citizenship solution, policy-makers wishing to institutionalise a relationship with co-ethnics abroad have therefore needed to develop an alternative format, which avoids triggering the problems associated with dual citizenship, but which gives expression to the idea that co-ethnics are part of the nation that the state is 'of and for'. It is the contention of this paper that the Hungarian Status Law and other similar pieces of legislation in Central and Eastern Europe create such a relationship. Policy-makers have been explicit that these laws were drafted as an alternative to the offering of the non-resident citizenship option. The 'substantiation' attached to the Polish Senate's 1999 bill mentioned bans on dual citizenship as one reason why the need for the proposed Pole's Charter had arisen, as 'an alternative for all those compatriots who want contacts with Poland'. Budapest informed the

Venice Commission that, in passing the Status Law, it ‘set aside all aspirations for any kind of dual citizenship for persons belonging to Hungarian national minorities and living in the neighbouring countries’.⁷⁰ However, with the citizenship solution ruled out, policy-makers seem to have felt that there would be something deficient in their state, and contrary to its nature as a state ‘of and for’ a particular nation, if it could make no distinction between members of that nation and ‘ordinary’ foreigners. According to Hungarian Prime Minister Viktor Orbán, for example, Hungary had to decide if it was justified to regard Hungarians living in Hungary’s neighbouring states ‘simply as tourists’ when they were in Hungary. Similarly, one of the initiators of the Polish bill asserted that ‘Poles who do not want to leave their homes located in Ukraine or Belarus [...] should not be treated in Poland as foreigners’.⁷¹ According to the justification attached to the bill, the legislation would ensure that ‘Poles traveling to their mother country will be treated as Polish citizens right on the border, not as foreign visitors, which is their experience now’. While allowing co-ethnics to be treated as citizens in some spheres, however, the desired legal relationship would be an innovative one – creating a status which would be ‘more than a tourist, but less than a citizen’, in Orbán’s words, or what the Slovakian Foreign Ministry called ‘a specific legal category between citizen and alien’.⁷²

The idea of this new relationship as an alternative to full citizenship explains why, among the four pieces of legislation examined in this research, the Romanian law of 1998 is not fully of the same type as the Hungarian Status Law, and does not create the same type of relationship. Romania has dealt with its largest and most significant external minorities through the offer of citizenship. As shown by Table 1 at the end of the paper, Romania’s law concerning its co-ethnics abroad does not create entitlements for specific individuals, but simply for ‘members of Romanian communities’ outside Romania, and it does not specify how individuals may establish their eligibility for the entitlements concerned. For Romanian co-ethnics abroad without Romanian citizenship, the Romanian regime is thus closer to the general programmes of

70 GoH Venice Position, Paragraph 1.8 – although official statements in 2001 suggested that if external Hungarian minorities continue to demand dual citizenship, Budapest might after all consider it; see the remarks of Prime Minister Viktor Orbán reported in *Magyar Nemzet*, 21 August 2001.

71 Senator Janina Sagatowska, quoted in *The Warsaw Voice*, 26 September 1999.

72 ‘Comparison of Act of the Republic of Hungary on Hungarians Living in Neighbouring Countries with Act No. 70 on Foreign Slovaks’, Ministry of Foreign Affairs of the Slovak Republic, no date (hereafter Slovak MOFA Comparison). Orbán’s comments came in an interview for the programme ‘Reggeli Krónika’, Hungarian Radio, November 17, 1999; transcript at the Hungarian Government website, <http://www.meh.hu>. It was language such as this that produced the term ‘Status Law’.

support for the Hungarian minorities operated by Hungary before passage of the Status Law, than to the Status Law itself.

III. 'Fuzzy Citizenship' and Its Varieties

If we accept that 'to be a citizen is to have concrete rights against, and duties to, a specific sovereign state',⁷³ it seems justified to call the relationship created by the Hungarian Status Law and the Slovakian and planned Polish legislation a form of citizenship.⁷⁴ These pieces of legislation create, in law, socio-economic, cultural and entry and residence rights claimable by specific individuals against particular states; in the Hungarian case, a duty to pay employment taxes on earnings in Hungary is also specified in return.⁷⁵ Under the Hungarian, Slovakian and planned Polish legislation, entitlement to these rights is also signified by possession of an official document. However, the status created by this legislation is also 'fuzzy', since it is not full citizenship, it does not appear to coincide with any existing legal relationship between states and individuals, and its terms are often unclear. Tables 1 and 2 at the end of the paper summarise the Hungarian, Slovakian and planned Polish legislation, together with the 1998 Romanian law, presenting the entitlements created and the conditions of eligibility for their enjoyment.

Drawing on these tables, and the discussion in the previous two sections, four parameters can be identified which encapsulate 'fuzzy citizenship' and distinguish it from other legal relationships between states and individuals. 'Fuzzy citizenship' is a legal relationship between states and individuals who are, in relation to the state concerned:

i) *not full citizens*. This distinguishes 'fuzzy citizenship' from the non-resident citizenship enjoyed by emigrant citizens, 'post-imperial' citizens or re-naturalised but not resettled emigrants, in both Western and Central and Eastern Europe.

ii) *not or not necessarily resident*. This distinguishes 'fuzzy citizenship' from the rights awarded to resident non-citizens within the EU, under Maastricht citizenship or regimes designed for non-EU immigrants. The Slovak legislation does permit 'fuzzy citizenship' to people already possessing residence rights in Slovakia, but the other laws apply only to those whose permanent residence is outside the kin-state. However, the Slovak and failed Pol-

73 Andrew Linklater, 'Cosmopolitan Citizenship', *Citizenship Studies*, 2 (1998), pp. 23-41, here p. 23.

74 Judging from the Venice Commission Report, the Bulgarian law seems of a similar type, although – in terms of the differences between the laws to be outlined below – closer to the Polish or Slovak cases than the Hungarian; the report contained few details of the Slovenian legislation (Venice Commission Report).

75 As these laws do not award voting rights, this potentially raises a 'no taxation without representation' problem for Hungary's 'fuzzy citizens'.

ish legislation offered an unlimited right of residence in the kin-state as one of the benefits of ‘fuzzy citizenship’.

iii) *defined by their membership of a cultural nation, not a state’s citizenry*. In terms of the circle of those eligible, this distinguishes ‘fuzzy citizenship’ from relationships short of citizenship which have been developed between some former colonial powers and citizens of their ex-colonies. Such relationships include that between Portugal and Brazil, for example, under which citizens of either state living in the other can vote and stand for election there;⁷⁶ or that which allows Commonwealth and Irish citizens effectively to be treated as UK citizens when resident in the UK. Like ‘fuzzy citizenship’, these relationships express the existence of a historical or cultural link between one state and citizens of another. However, these relationships are created on the basis of individuals’ citizenship status; they are primarily the expression of a past tie between two states, not a present relationship between one state and some of the citizenry of another. For this reason, these relationships cannot be accused of discriminating among people holding the same citizenship. Among the ‘fuzzy citizenship’ laws, only Hungary’s specifies citizenship of particular states as a prior condition for eligibility for ‘fuzzy citizenship’. Otherwise, as Table 1 shows, eligibility is defined at most by past citizenship of the kin-state, and can also be achieved *via* the fulfilment of much more nebulous criteria.

iv) *entitled to state services in the kin-state*. This distinguishes ‘fuzzy citizenship’ from kin-state policies which support external minorities in their host-states. As such, it brings ‘fuzzy citizens’ much closer to full citizens, conceptually and physically. As Table 2 shows, ‘fuzzy citizens’ are entitled to use many of the same public services as citizens, such as in education, healthcare and transport; and several provisions of the various ‘fuzzy citizenship’ laws state explicitly that this access is to be on the same terms as full citizens. There should be no difference, for example, between the conditions faced by a ‘fuzzy citizen’ studying in a public higher educational institution in Hungary, or applying for a job in Slovakia, and those facing the citizens of those countries. The combination of entitlements in the kin-state but residence outside it means that privileged treatment as regards entry to the kin-state becomes one of the most important entitlements attaching to some ‘fuzzy citizenships’. As we shall see below, it has been an important additional grievance for Slovakia and Romania that the Hungarian ‘fuzzy citizenship’ legislation also creates entitlements to be enjoyed by co-ethnics in their host-states.

So far, this paper has located the wish to strengthen the kin-state tie, including through the development of ‘fuzzy citizenship’, primarily within the

76 *Links between Europeans*, Paragraph 78.

process of post-communist state redefinition. This understanding helps to explain why interest in strengthening the kin-state relationship has been so widespread across Central and Eastern Europe, and seems to have risen over time. For kin-state policy-makers, giving substance to the kin-state relationship might well not have been a leading priority in the immediate post-communist period. However, the initial constitutional definition of a country as a kin-state sets up pressures from both domestic forces and co-ethnics abroad to make the relationship more tangible in due course. In particular:

- Strengthening the kin-state relationship represents a means of making the state more clearly ‘of and for’ its nation for political forces dissatisfied with the post-communist situation so far. In Poland, Hungary and Slovakia, the laws considered here were proposed by domestic political forces which have been more concerned than others to make the state expressive of the titular majority culture.
- The kin-state relationship may be seen by both domestic forces and co-ethnics abroad partly as a reparative or compensatory one, which should be used to overcome as far as possible the past sufferings and present difficulties of co-ethnics separated from the kin-state, or to provide a *quid pro quo* for Western émigrés who have played the kind of supportive diasporic role suggested in section I. Inasmuch as the first of these aims rests on a moral claim, and the second on a continuing role (for example, in lobbying over NATO/EU enlargement), pressures for a stronger kin-state relationship are unlikely to dissipate.
- Over time, elites can come under pressure to define a more specific role for their state in their region or the wider world; the development of the kin-state role can represent one response to such pressures. This has certainly been the case for Poland and Hungary, which have also gained confidence in their regional roles as they have achieved success in Western integration.

For their part, host-states are often engaged in their own efforts to become more clearly ‘of and for’ their titular majority nations, making the position of their minorities increasingly difficult and creating pressures on the kin-state to step up its role as the protector of the minorities’ cultural identity. This is the type of interaction discussed by Brubaker.⁷⁷ Following Brubaker, Kántor thus suggests in his study of the Status Law that the legislation should be seen as uniting the nation building processes of Hungary and the external Hungarian minorities.⁷⁸

77 Brubaker, *Nationalism Reframed*; see also Schöpflin, *Nations, Identity, Power*.

78 Zoltán Kántor, ‘Hungary and the Hungarians abroad: homeland politics and the “Status

However, there are also more practical reasons why Central and East European states should wish to develop co-ethnic entitlements to services *in the kin-state*, as under the fourth parameter of ‘fuzzy citizenship’. Post-communist economic differentiation across the region has often seen kin-states emerge as more prosperous and developed than states hosting their external minorities to the east and south (Poland *vis-à-vis* Lithuania/Belarus/Ukraine, Slovakia *vis-à-vis* Ukraine, Hungary *vis-à-vis* Ukraine/Romania/Yugoslavia/Croatia, Romania *vis-à-vis* Moldova). This has strengthened the feelings of residual guilt that are sometimes found in the kin-state as regards its co-ethnics abroad, while giving increased prominence to the kin-state’s role as an actual and potential socio-economic resource for co-ethnics abroad. Daily or short-term visits to the kin-state (for trade, employment, healthcare and education) have become increasingly important for many external co-ethnics. Thus Budapest has presented the Status Law in part as an enhanced form of support for the external Hungarian minorities made possible by Hungary’s new economic wealth. However, widening economic disparities are also intensifying pressures for permanent migration to the kin-state. Where kin-states do not wish to encourage co-ethnic immigration, as in the Hungarian case, the granting of limited rights in the kin-state has been presented as a way of encouraging external co-ethnics to remain permanently settled in their host-states, by giving them legal access to the higher wages available in Hungary without having to move permanently, for example. Hungarian policy-makers have cited repeatedly in support of the Status Law a poll showing that the number of Hungarians in Hungary’s neighbouring states contemplating emigration would drop significantly were such legislation to be passed.⁷⁹ However, where kin-states appear to be open to at least some co-ethnic immigration, as in the Slovak and Polish cases, the creation of special rights in the kin-state can ease the resettlement and reintegration process.

There has been one further and more specific consequence of differentiation across the region which has spurred the development of ‘fuzzy citizenship’ legislation – the prospect of EU enlargement in stages and to only some of the states of the region, with a Schengen border regime on the Union’s new eastern frontiers. Where kin-states have made the citizenship option available, states’ staggered progression towards EU membership has increased the premium on holding the citizenship of some states rather than others. Thus for Croatians in Romania, for example, the main gain in taking Croatian citi-

Law”’, paper presented to the conference ‘Nationality and Citizenship in Post-Communist Europe’, Institut d’Études Politiques de Paris, 9-10 July 2001.

79 The poll is reported in Ferenc Dobos and Istvan Apró, ‘Integrációs esélyek és veszélyek’, *Pro Minoritate* 8 (2000), 2, pp. 19-43.

zanship is the easier access to the EU that flows from the fact that Croatia (unlike Romania) is no longer on the EU's visa blacklist.⁸⁰ Although figures are hard to pin down, it is similarly reported that the demand for Romanian citizenship among Moldovan citizens intensified following the EU's December 1999 Helsinki summit, at which it was agreed that Bucharest could open EU accession negotiations.⁸¹ However, where - as in the Polish and Hungarian cases - non-resident citizenship of the (relative) EU insider is not on offer to external co-ethnics in the region, many in the kin-states and among the external minorities who are now used to relatively free exchanges across the EU's future border fear that the imposition of a Schengen regime will threaten kin-state ties - this is the idea of Schengen as the 'third Trianon' in the Hungarian case.⁸² Currently, citizens of Romania, Ukraine and Yugoslavia require visas to enter the EU. For external co-ethnics, the incentive is therefore to find some means of securing physical and legal access to the EU space, or, at the very least, to the kin-state inside it. Permanent migration to the kin-state is one possibility. An alternative response is to demand the full citizenship solution after all, a move made most prominently in the Hungarian case by the World Federation of Hungarians in April 1998.⁸³ However, in the Hungarian case, some among the external minorities and in the kin-state increasingly focused their thinking on the development of a status that would incorporate the elements of citizenship most useful in the specific circumstances in prospect - access to some of Hungary's public services and perhaps labour market, and most importantly to Hungarian passports that would allow unimpeded travel to Hungary and on into the rest of the EU. As a minimum, talk of a 'national visa' came onto the agenda. Poland's planned 'fuzzy citizenship' legislation represented an attempt to respond to similar pressures. In both cases, 'fuzzy citizenship' was also intended to offer general reassurance to the external minorities that kin-states' western aspirations would not mean the abandonment of their responsibilities to co-ethnics to the east. The problems created by relative economic backwardness and the EU's new borders of course face all the citizens of the states to be left outside the EU's initial enlargement. However, access to a neighbouring kin-state is clearly more useful to co-ethnics who speak its language than to other citizens, and is

80 Melania Kaitor, 'Satul Schengen', *Banăţeanul*, No. 16, 18-24 September 2001.

81 Reported numbers of Moldovan citizens with Romanian citizenship range from 70,000 to 300,000: see 'Ukraine: 'Creeping Romanianization'', *RFE/RL Poland, Belarus and Ukraine Report*, Vol. 2, No. 42, 14 November 2000; Lily Hyde, 'Moldova/Romania: Many Obstacles Still Prevent Unity', *RFE/RL Weekday Magazine*, 23 November 2000.

82 The second being the 1947 Paris Treaty that restored the 1920 borders. For just one use of this terminology, see Béla Pomogáts, 'Schengeni határok és külföldi magyarok', *Magyar Nemzet*, 9 May 1998.

83 *Népszabadság*, 6 and 7 April 1998.

more important in terms of contact with families and the national culture. It is for these reasons that cross-border contact with the kin-state is protected in international minority rights instruments.⁸⁴

It will already be clear that, notwithstanding the processes and pressures shared across the region, there are important differences between the three ‘fuzzy citizenship’ laws analysed here. The ‘fuzzy citizenship’ bill proposed by the Polish Senate has not, of course, been passed by the Sejm at all, partly on the advice of the pre-September 2001 government. The administration was concerned about this form of ethnically-based discrimination, about the potential cost of implementing the legislation, about the impact on bilateral relations with host-states, about the potential conflict between the proposed ‘national visa’ regime and Schengen, and about following a precedent set at the time principally by the government of Vladimir Meciar, the nationalist Prime Minister of Slovakia mainly responsible for the deterioration of that country’s relations with the West.⁸⁵ Comparing the Polish draft with the Hungarian and Slovakian laws, however, four elements of variation in the provisions are particularly illuminating of the specific purposes and thinking at work in each case.

First, there is the geographical spread of the potential ‘fuzzy citizenry’. As shown in Table 1, the Slovakian and Polish legislation potentially awards ‘fuzzy citizenship’ to citizens of any other state, whereas Hungary offers the status only to citizens of six of its neighbours, Croatia, Romania, Slovakia, Slovenia, Ukraine and Yugoslavia (Article 1 of the Status Law). Within its rather different terms, the Romanian law followed the Polish/Slovakian pattern. The Polish/Slovakian position would seem more in accord with the idea of the nation as a purely cultural, rather than territorial, phenomenon. Indeed, Hungarian Prime Minister Viktor Orbán has declared that ‘the border of the [Hungarian] nation extends as far as the Hungarian language is understood’.⁸⁶ However, other factors intervened to narrow Hungary’s definition of its potential ‘fuzzy citizenry’. As already noted, Hungary offers citizenship without residence to former citizens and their descendents in the West - whereas Poland, which does not, would have institutionalised a relationship

84 UN Declaration, Article 2; *Framework Convention*, Article 17.

85 See Katarzyna Wolczuk, *Poland’s Relations with Ukraine in the Context of EU Enlargement*, ESRC One Europe or Several? Programme Briefing Note 4/01, April 2001; *Népszabadság Online*, 8 and 19 June 2001. These arguments in Poland seem to have repeated those provoked by earlier proposals concerning a privileged entry regime for ethnic Poles from the former Soviet Union; see Korcelli, ‘Current Issues’, pp. 129-130. By the time of the most recent Polish discussions of the draft in 2001, opponents were reportedly also citing the difficulties attending the Hungarian Status Law as a further reason not to proceed.

86 Remarks made at Tököl, 10 March 2000, accessible *via* the website of the Prime Minister’s Office, <http://www.kancellaria.gov.hu/miniszterelnok>.

with this group (and greatly increased the potential costs of the policy) through its wider definition of its potential ‘fuzzy citizenry’.⁸⁷ In its position paper for the Venice Commission, Budapest offered the Western diaspora’s access to Hungarian citizenship as its explanation for the limited territorial scope of ‘fuzzy citizenship’.⁸⁸ However, policy-makers have also wanted to perpetuate the distinction underlying Hungary’s citizenship provisions, between Hungarians who emigrated and requested their own release from citizenship, and those who saw the borders move over them and their citizenship effectively removed by fiat.⁸⁹ The result of Budapest’s position is that Hungarian ‘fuzzy citizenship’ is associated only with Hungarian populations lost to Hungary as a result of the Treaty of Trianon.⁹⁰ This was the case to an even greater extent in the original bill than the final legislation, as the earlier text proposed that citizens of Austria should be eligible for ‘fuzzy citizenship’ - but the provision that ‘fuzzy citizenship’ could be awarded only to those who had lost their Hungarian citizenship involuntarily would have discriminated between Austria’s ‘post-Trianon’ Hungarians and its communist-era Hungarian immigrants (the reasons for Austria’s eventual exclusion from the law are discussed below). The link between Hungarian ‘fuzzy citizenship’ and Trianon has been a particular source of distress to Romania and Slovakia, who rejected the notion that Hungary should pursue any reparative policy linked to the post-1918 settlement.⁹¹ Bucharest and Bratislava seized in particular on remarks made by Zsolt Németh, Political State Secretary at the Hungarian Foreign Ministry and the chief architect of Hungary’s policies towards its co-ethnics under the post-1998 government, in which he said that the Status Law would ‘contribute significantly to the overcoming of our nation’s

87 Although, if the citizenship bill put forward by the Senate at the same time as the ‘fuzzy citizenship’ draft had been passed, many non-resident Western Poles would have become eligible for full citizenship; see note 34 above.

88 GoH Venice Position, Paragraph 1.4.

89 See, for example, Foreign Minister János Martonyi’s opening presentation in the parliamentary debate on the Status Law, 19 April 2001. Hereafter, quotations or citations followed only by a date refer to contributions to the parliamentary debates on the Status Law. Transcripts were accessed *via* the parliamentary website, at <http://www.mkogy.hu>.

90 Although even this linkage is imperfect: critics pointed out that the states to which citizens of Hungary were transferred in 1920 included Czechoslovakia, not just today’s Slovakia, and a Yugoslavia covering its pre-1991 territories. On this argument, ‘fuzzy citizenship’ ought to be offered also to citizens of the Czech Republic and any of the Yugoslav successor states. Amendments to this effect put forward by both government and opposition deputies were rejected.

91 See Slovak MOFA Comparison; Government of Romania, ‘Commentary concerning the position document of the Hungarian Government on the Law on Hungarians Living in the Neighbouring Countries’, as submitted to the Venice Commission (hereafter GoR Venice Commentary), pp. 3-4.

80-year-old Trianon trauma'.⁹² Given the link with Trianon, Romanian Prime Minister Adrian Năstase was only the most prominent Romanian actor to identify 'crypto-revisionism' in the Status Law.⁹³

As a second difference between the various 'fuzzy citizenship' laws, there are the institutional mechanisms established for granting 'fuzzy citizenship' status and administering the entitlements which it grants. As regards the acquisition of 'fuzzy citizenship', the Slovak and Polish legislation provides for a transaction between individual members of external minority communities and institutions of the kin-state, in the shape of the foreign ministry or its consulates. Display of the 'fuzzy citizen' card is then sufficient to gain access to all 'fuzzy citizenship' entitlements. Under the Hungarian legislation, by contrast, the potential 'fuzzy citizen' does not deal directly with the institutions of the kin-state, but must go through a non-state 'recommending organisation' in her host-state, recognised for the purpose by Hungary, which forwards her application together with its recommendation to the Hungarian authorities. Several 'fuzzy citizenship' entitlements must then be applied for, rather than claimed as of right, with applications going to foundation-like public bodies established for the purpose. As of mid-November, the precise make-up and functioning of both these types of bodies remained unclear, not least because of the comments of the Venice Commission. However, the 'recommending organisations' are set to include representatives of the Hungarian minority organisations in Hungary's neighbouring states, along with figures from the Hungarian churches and Hungarian cultural and professional associations there.⁹⁴ According to Hungarian policy-makers, these provisions were included so that the Status Law would become an instrument for strengthening the Hungarian minorities abroad *as communities*, rather than merely supporting minority members as individuals, as under the Slovak law. In addition, Budapest wished to avoid a situation in which the Hungarian state could be seen to be deciding whether specific individuals possess Hungarian identity and thus to be engaging in ethnic discrimination. Budapest adheres instead to the principle that national identity should be an individual's free choice. From this perspective, the 'recommending organisation' serves as an alternative to the listing, in Hungarian law, of criteria for recognition as a Hungarian 'fuzzy citizen'.

A third difference between the various 'fuzzy citizenship' laws is the extent to which they allow 'fuzzy citizens' long-term residence in the kin-state.

92 Zsolt Németh, 19 April 2001.

93 *RFE/RL Newslines*, 27 August 2001.

94 'Romania's Hungarians agree on body to assist Hungary's Status Law', *BBC Monitoring*, 7 November 2001; 'Ethnic Hungarians in Ukraine consider implementation of Hungarian Status Law', *BBC Monitoring*, 11 November 2001.

As already noted, the Slovak and planned Polish legislation offered ‘fuzzy citizens’ a long-term residence entitlement, whereas eligibility for Hungarian ‘fuzzy citizenship’ is lost as soon as a residence permit for Hungary is obtained (Article 1 of the Status Law). Hungary’s wish to see Hungarians in its neighbouring states remain in their traditional areas of settlement is the key factor behind this feature of its ‘fuzzy citizenship’ law, as compared to those of Slovakia and Poland. Slovakia’s law allows ‘fuzzy citizens’ to acquire real estate in Slovakia and to apply for full Slovak citizenship under special provisions, and Bratislava recognises the legislation as being similar to a repatriation law, providing a framework for Slovak ‘fuzzy citizens’ eventually to settle permanently in Slovakia.⁹⁵ Similarly, the Polish ‘fuzzy citizenship’ bill was introduced as one element in a three-part package of legislation aimed partly at facilitating the resettlement and renaturalisation of repatriates.⁹⁶

As a final difference between the ‘fuzzy citizenship’ laws considered here, there is the extent to which ‘fuzzy citizenship’ also creates entitlements to be enjoyed in the host-state. No such entitlements are created in the Polish or Slovak cases. Apart from entitlements to education and some health-care in the kin-state, the Romanian law provides primarily for support in the host-state; but, as we have seen, this is offered to Romanian minority communities in general, rather than to specific individuals. The Hungarian Status Law, however, entitles ‘fuzzy citizens’ to apply for funds from Hungary to support the Hungarian-language education of their children *in their host-states* (Article 14).

Drawing together these four elements, it can be seen that the Hungarian legislation differs in several respects from the Slovakian and proposed Poland laws, as well as the Romanian law. Whether these differences are significant in international and specifically European law has been the question at issue between Budapest, Bucharest and Bratislava. Budapest argues that these differences are not essential, whereas – as we shall see in section V below – Bucharest and Bratislava claim that Hungary’s law is fundamentally different from their own in ways which place it outside even the modified ‘modern’ norms of statehood that currently prevail. Overall, it was on points where the Hungarian law differs from those of other states that the Venice Commission implied the legislation was inadmissible. In a key step towards the in-

95 Slovak MOFA Comparison.

96 See *The Warsaw Voice*, 26 September 1999. Of the three pieces of legislation in the original package, only the repatriation bill had been passed by late 2001, leaving the citizenship and ‘fuzzy citizenship’ drafts; see *Traces*, Issue 11, July-September 2000; *RFE/RL Newslines*, 21 July 2000; *Népszabadság Online*, 8 June 2001; addresses by the former Marshall of the Polish Senate, Alicja Grzeskowiak, on Poles’ and Polish Communities Abroad Day, 2 May, in 1999 and 2001, accessible *via* the Senate website, at <http://www.senat.gov.pl/k4eng/senat/index.htm>.

ternational recognition of a kin-state role, the Commission accepted that kin-states could create individualised co-ethnic entitlements to some types of privileged treatment under certain circumstances. However, while endorsing the awarding of such entitlements in the kin-state, the Commission had concerns about their extension in the host-state, at least without the latter's consent; while allowing that non-governmental external minority organisations might provide information needed for the operation of any kin-state regime, the Commission ruled against the granting of 'administrative, quasi-official functions to non-governmental associations registered in another country'; and it suggested that the criteria to be used for the granting of any ethnically-based entitlement should be set out in law.⁹⁷

IV. Hungarian Visions: Escaping the Territorial State

The Hungarian Status Law is certainly more challenging of the 'modern' territorial state and the norms associated with it than the other 'fuzzy citizenship' legislation. By giving entitlements in the kin-state to non-residents, for example, all 'fuzzy citizenship' laws assume a degree of cross-border mobility. By ruling out permanent residence for 'fuzzy citizens' in the kin-state, however, Hungary's legislation rests wholly on an assumption of repeat cross-border migration. By providing entitlements also to be enjoyed in the host-state, the Hungarian law further suggests that its beneficiaries will move between Hungary and their host-state. What seems to be intimated by such provisions, combined with the law's territorial limits, is a space in the Carpathian basin in which Hungarian 'fuzzy citizens' are present in their host-state or in Hungary not so much as a result of their citizenship or the physical and bureaucratic constraints of state borders, but rather as the result of a decision as to where a particular function – work, education, receiving medical treatment – can best be carried out. Some of the most striking language surrounding the Status Law has involved the notion that Hungarians should feel equally 'at home' as Hungarians in their host-state and in Hungary.⁹⁸ For its part, the right-wing Hungarian government that took office in 1998 has stated repeatedly that the Status Law is a major element in its achievement of 'national reunification' or 'national integration' 'across' or 'without changing' the borders.⁹⁹ Policy-makers stated explicitly that the Status Law creates a legal

97 Venice Commission Report, Section D.

98 See, for example, Martonyi, 19 April 2001; Béla Markó, president of the DAHR, *Magyar Hírlap*, 2 March 2001; Prime Minister Viktor Orbán, *Népszabadság*, 21 August 1999. Contrast the view from Romania's Venice Commentary, Paragraph 19, that 'the destiny of the minorities *should be* rather different from the Hungarians living in Hungary' (emphasis added – BF).

99 See, for example, Zsolt Németh, 19 April 2001. This was a major theme in the speeches of Prime Minister Viktor Orbán in 2000 and 2001.

relationship between Hungary and its ‘fuzzy citizens’ in neighbouring states, and presented the legislation as achieving a form of ‘legal integration’.¹⁰⁰

The Status Law aims to aid the cohesion not only of the Hungarian nation as a whole but also of particular professional or functional communities within the ‘fuzzy citizenry’. ‘Fuzzy citizens’ who are students – in any subject or language – in higher education in their host-states are entitled to the discounts in Hungary that go with Hungary’s student identity card (Article 10). This extension of kin-state support without an apparent connection to the preservation of Hungarian cultural identity was a further source of concern for the Venice Commission. Similarly, ‘fuzzy citizens’ who are teachers in their host-states, in higher education or at any level in the Hungarian language, are entitled in Hungary to the same privileges as those enjoyed by teachers there (Article 12). Academics who gain ‘fuzzy citizenship’ may become ‘external members’ of the Hungarian Academy of Sciences and belong to its governing bodies (Article 5).¹⁰¹ The Status Law also offers financial support for Hungary-based institutions of higher education to open branches in neighbouring states, encouraging the spread of pan-Hungarian institutions (Article 13).

The conception that emerges from these provisions echoes the vision which underpins the EU. Attempting to avoid repetition of past territorial conflict between states adhering to ‘modern’ norms, a way of organising political space is sought which renders territorial borders meaningless (‘just lines drawn on a map’, according to Orbán),¹⁰² and which reduces the negative consequences of ‘modern’ statehood felt by inhabitants of formerly disputed territories not fully at ease with their current state status. The new space is based on the assertion of a trans-state identity; and it should be an area of free movement for its citizens, in which workers or students should be treated equally as such, wherever they are currently located. One article of the Status Law (Article 3) refers explicitly to ‘the free movement of persons and the free flow of ideas’ as an aim, and official language has sought to emphasise the parallels between the European and Hungarian efforts towards integration and the reduction of the significance of territorial borders:

The Status Law is a milestone in the process whereby Hungarian nation-policy shifts the emphasis from borders, which are becoming

100 See, for example, Zsolt Németh, 19 April 2001, and his comments to the parliamentary Foreign Affairs Committee, reported in *Magyar Hírlap*, 1 March 2001.

101 This begins to implement an idea floated by the historian Ferenc Glatz, the President of the Academy, under which the ‘state-organisational’ academy should be transformed into an institution of the cultural nation, with branches in neighbouring states. According to Glatz, relations would be ‘clearer’ in Europe generally if they were defined in terms of cultural relationships instead of state organisation: MTI [Hungarian News Agency], 26 January 2000.

102 Remarks made at Tököl, 10 March 2000, accessible *via* the website of the Prime Minister’s Office, <http://www.kancellaria.gov.hu/miniszterelnok>.

ever less significant in the uniting Europe, to people and their communities [...] What was the answer provided by European history to the heavy legacy of the twentieth century? Integration [...] The Hungarians are proceeding on Europe's road; they see the answer to their own problems in integration, in European and nation-integration, which aid and complement each other, and which do not change but make bearable the borders.¹⁰³

Assuming that Hungary does not decide, in the light of the Venice Commission Report, to implement the Status Law wholly through its consulates, the non-governmental bodies which are to help implement the legislation represent an incipient administrative capacity for this new space. Moreover, the Hungarian space and community now also have a peak political body, in the shape of the Hungarian Standing Conference (HSC). The forerunner to this body was the 'Hungarian-Hungarian summit' held in 1996 under the previous, left-liberal, Hungarian administration.¹⁰⁴ At that gathering, it was agreed that Budapest would consult the minorities on legislation affecting them and consider ways of institutionalising this consultation mechanism. However, HSC was created only after the post-1998 right-wing administration took office, as the first standing body, regulated in Hungarian law, bringing representatives of Hungary together with representatives of Hungarians abroad. HSC includes representatives of Hungary's government and parliamentary parties, the Western diaspora, and those external Hungarian minority organisations from Hungary's neighbouring states which are represented in national or provincial legislatures there. Membership by non-citizens in HSC is thus the norm, not the exception as in the West European 'expatriate' councils. HSC's role also goes well beyond the consultative function which those councils enjoy. The body has played a central role in the development of the 'fuzzy citizenship' legislation. Formally, the Hungarian government was acting on HSC's request in introducing the Status Law, and the legislation was negotiated and drafted in six HSC working committees in which external minority representatives worked together with bureaucrats from Hungary's ministries.¹⁰⁵ According to Budapest, 'the Hungarians are already not just a cultural nation [...] but a community which has a political body. The Hungarian Standing Con-

103 Zsolt Németh, 19 April 2001.

104 See Zsófia Szilágyi, 'Hungarian Minority Summit Causes Uprow in the Region', *Transition* 2 (1996), No. 18 (6 September 1996).

105 The request to 'examine the regulation in law of the legal status in Hungary of Hungarians from beyond the borders' was formulated in the closing declaration of the second session of the HSC, 12 November 1999, accessible *via* the website of the Government Office for Hungarian Minorities Abroad, at <http://www.htmh.hu>. Reprinted in this volume.

ference represents and embodies the 15-million strong Hungarian nation in the political field'.¹⁰⁶

It must be stressed that Hungarian policy-makers do not see the nascent Hungarian political space and community as a replacement for the existing *status quo* of states and borders in the Carpathian basin. HSC and the Status Law are not envisaged as the kernel of a Hungarian state which will simply reincorporate the territories and populations lost at Trianon within 'modern' territorial borders and citizenship provisions. Indeed, the improved and more multi-dimensional state-to-state relations which have developed between Hungary and its neighbours over recent years – most importantly through the border guarantees and other provisions of the bilateral treaties signed between Hungary and Slovakia (1995) and Hungary and Romania (1996) – seem to have provided the platform from which Budapest felt able to move on 'fuzzy citizenship'.¹⁰⁷ What seems to be envisaged is, rather, a dual system, in which at least some issues concerning support for the Hungarian national identity and its bearers are handled within the trans-state Hungarian community, while other questions are handled within traditional state-to-state channels. This seems to be the trans-state parallel of the intra-state cultural autonomy enjoyed by recognised minorities in Hungary and demanded by its external minorities in their host-states.¹⁰⁸ This kind of system, inside or beyond the state, rests on the view that individuals can have multiple identities, which each need to be catered for by different institutional systems.¹⁰⁹ Thus Hungarians

106 Zsolt Németh, 19 April 2001.

107 See Martonyi, 19 April 2001; on the basic treaties, see Gáspár Bíró, 'Bilateral Treaties between Hungary and its Neighbors after 1989', in Ignác Romsics and Béla Király, eds., *Geopolitics in the Danube Region: Hungarian Reconciliation Efforts, 1948-1998* (Budapest, 1999), pp. 347-378.

108 For Hungary's minority rights system, see Andrea Krizsán, 'The Hungarian Minority Protection System: A Flexible Approach to the Adjudication of Ethnic Claims', *Journal of Ethnic and Migration Studies* 26 (2000), pp. 247-262; for autonomy and Hungary's external minorities, see Judy Batt, 'The Politics of Minority Rights in Post-Communist Europe: The Hungarians and "Autonomy"', in F. Laursen and S. Riishoj, eds., *The EU and Central Europe* (Esbjerg, 1996), pp. 45-58; for the historical precedents behind this kind of thinking, see Judy Batt, 'The Problem of Statehood in Central and Eastern Europe', MS 2001.

109 'The concept of the Act accepts the existence of dual identity and, in this way, recognition of one identity does not exclude a second identity or other identity. Such combination of identities does not confuse an individual of the sense of where he or she belongs, nor does it engender a feeling of being deprived of a 'homeland'. In the culturally pluralistic Europe which is emerging, people are assuming differentiated levels of identity without rejecting the country of their home' (GoH Venice Position, Paragraph 2.17). Contrast this from the GoR Venice Commentary, p. 10: 'it should be stressed that a person cannot have several identities. A person can have several citizenships but not dual identity'. See also a particularly blithe passage in the 1999 PACE committee report (Paragraphs 108 and 110): 'Many problems could certainly be solved by making a clear distinction between two sets of rights – those linked with residence in a given geographical area ('citizenship rights') and

in Romania can have a citizenship relationship with Bucharest; but, however fully Romania fulfils its minority rights obligations, their cultural needs as Hungarians can ultimately only be fulfilled *via* a relationship with a state which is ‘of and for’ the Hungarian nation. On this point, Hungarian policy-makers marshal Kymlicka’s argument that all states are culturally biased towards their dominant group.¹¹⁰ However, in this Hungarian view, cultural diversity does not threaten the citizenship relationship; Hungarian policy-makers ‘reject the idea that a good citizen can only be someone who assimilates [...A] good citizen is someone who preserves his or her national identity’.¹¹¹

For the most part, Hungary has argued that the Status Law does not violate ‘modern’ norms of territorial sovereignty, and deviates from ‘modern’ norms of equal citizenship towards ethnically-based discrimination only as far as do existing international minority rights instruments. Some of the law’s provisions represent the result of an effort by Budapest to leave such ‘modern’ norms intact and negotiate around them. For example, Budapest was careful to make support for Hungarian ‘fuzzy citizens’ in their host-states available only *via* the application procedure noted above, as against the privileges due as of right within Hungary, to try to avoid the accusation that the legislation created extra-territorial rights. Apart from the considerations already mentioned, a further factor behind the role given to non-state bodies in administering the ‘fuzzy citizenship’ identity card system was the recognition in Budapest that the establishment of offices of the Hungarian state in Hungary’s neighbours would clearly violate their territorial sovereignty. The ‘recommending organisations’, by contrast, along with the bodies which are to receive applications for financial support in the host-states, are to constitute themselves ‘spontaneously’, as non-governmental organisations, under host-states’ existing laws on the right of association. We have already noted that, in an effort to avoid the charge that the Hungarian state would be deciding on individuals’ national identity, and to reduce the potency of the charge of ethnic discrimination, the Status Law also does not specify the criteria to be used in awarding ‘fuzzy citizen’ status. Instead, the criteria to be used by the ‘recommending organisations’ were drawn up by MAÉRT and, at least origi-

those linked with possession of a given cultural, civil and national identity – and disregarding the traditional definition of the sovereign state, based on the concept of territory [...] This distinction could also help to solve the problem of minorities [...]

110 Kymlicka, ‘Nation building and Minority Rights’, pp. 185-187; Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford, 2001), pp. 23-32.

111 Zsolt Németh, interview with this author, Budapest, 5 June 2001. Prime Minister Viktor Orbán has made the same point on several occasions with regard to members of Hungary’s minority communities.

nally, were apparently to be used as guidelines on the basis of an informal understanding.¹¹²

In these respects, the Status Law is merely the latest example of a process whereby, in seeking to avoid aggravating those who adhere to ‘modern’ norms, right-wing forces in Budapest, in particular, succeed only in moving further from them, by handing a major role in the development and discharge of public policy to non-state actors. The argument over the relative weights of the Hungarian state and the external minority organisations in Hungarian policy was seen clearly in the disputes which surrounded the Hungarian-Slovak and Hungarian-Romanian basic treaties, for example.¹¹³ In signing the basic treaties, the 1994-98 administration led by the Hungarian Socialist Party (MSZP) prioritised the interests of the Hungarian state – and western powers – in good state-to-state relations in the Carpathian basin, over the claims of the external Hungarian minorities for stronger minority rights guarantees from their host-states and greater weight in Hungarian policy-making. The MSZP-led administration refused to award the minorities a right of veto over Hungary’s interstate treaties.¹¹⁴ Partly to make a contrast with the preceding administration, the post-1998 right-wing government has been keen to be seen to be letting the external Hungarian minorities take the lead in the development of Hungary’s policy concerning them.¹¹⁵ Apart from aiming to achieve improved and more productive relations with the minorities, this strategy also aims to avoid Budapest being seen as the driver of minority agitation, as sometimes occurred under Hungary’s first post-communist administration of József Antall. In line with this strategy, the Hungarian government amended the original draft of the Status Law to make explicit reference to MAÉRT as

112 The criteria may yet be specified in the Status Law’s implementing orders, in order to give them some legal status and thus respond to the Venice Commission’s concerns. The criteria were originally formulated as Annex 2 to the closing declaration of the third session of the HSC, 14 December 2000, and, in an altered form, also included in the closing declaration of the fourth session, 26 October 2001; both texts are accessible *via* the website of the Government Office for Hungarian Minorities Abroad, at <http://www.htmh.hu>. Reprinted in this volume. There has been a tension in the argumentation made by Budapest as regards the recommending organisations: in order that the award of ‘fuzzy citizenship’ is based only on individuals’ choice of identity, and not on any state decision, Hungary cannot override the recommendation of the ‘recommending organisation’ to grant ‘fuzzy citizenship’ if all other conditions are also met (Status Law, Article 20); but in order to avoid the charge that the recommending organisations are agencies of the Hungarian state, Budapest has also claimed that their recommendations are not binding (GoH Venice Position, Paragraph 7.5).

113 Analysed by Péter Csigó and Éva Kovács, ‘The Hungarian-Romanian Basic Agreement: Positions and Issues in the Debate’, in Kiss and McGovern, *New Diasporas*, pp. 142-190.

114 Szilágyi, ‘Hungarian Minority Summit Causes Uproar in the Region’.

115 See, for example, the foreign policy programme of the main party in the post-1998 government: FIDESZ-MPP, *A Jövő Választása. A FIDESZ-Magyar Polgári Párt Külpolitikai Programja* (Budapest, 1998), p. 19; also Zsolt Németh, 19 April 2001.

the initiator of the legislation.¹¹⁶ However, the idea that Hungary's policy may be led by the external Hungarian minorities, who are not state actors and not Hungarian citizens, is hardly less unsettling to some of Hungary's neighbours than Budapest-led demands, and is further from traditional state-led foreign policy. The role given to non-state actors of course also raises issues of transparency and accountability for Hungary's citizenry.

Sometimes, however, Hungarian language has acknowledged and indeed celebrated the fact that the Status Law goes beyond 'modern' norms; occasionally, policy-makers have admitted that their aim is to develop 'the value system of a *future* Europe'.¹¹⁷ The fact that Hungary has both attempted to make the Status Law compatible with 'modern' norms, and highlighted its 'post-modern' aspects, testifies to the mix of these elements in the contemporary European legal and political system, and to uncertainty over how Hungary might best present itself in these circumstances. As well as the European integration parallel and the 'soft border' ideas, Hungary has pointed to its 'post-modern' thinking as regards multiple identities, non-state communities and non-traditional governance structures. For example, in his opening statement in the parliamentary debates on the Status Law, Foreign Minister János Martonyi referred favourably to 'the slow dissolution of the principles of absolute state sovereignty and absolute territoriality [and] the gradual recognition and acceptance of the possibility and right to belong to multiple communities'.¹¹⁸ According to Németh, this space for multiple identities and multiple communal memberships is 'what Europe is about'.¹¹⁹ In this view, the Status Law places Hungary at the forefront of the 'post-modernist' turn in Europe, proving its openness to archetypally 'post-modern' ideas and its capacity to think creatively around and beyond the 'modern' state. The way in which some actors on the political right in Hungary are unconcerned about some aspects of state sovereignty, and actively promote cross-border phenomena and governance structures, is particularly noteworthy given the way in which most Central and East European political actors who wish to protect and promote the cultural nation are wedded to the idea of the 'modern' state. Several authors have suggested that Hungarian right-wing forces' concern for

116 This change was proposed by the MSZP, which is in opposition to the post-1998 government (amendment T/4070/118). Preparing to vote for the Status Law, when the international community was largely hostile, the MSZP had an interest in stressing the fact that the legislation followed minority wishes. This approach also reduced the domestic political embarrassment involved in voting for a government measure.

117 Zsolt Németh, quoted in 'Europe's view on minorities obsolete – Hungarian official on EU report', *BBC Monitoring*, 8 September 2001 (emphasis added – BF). See also Prime Minister Viktor Orbán declaring that the Status Law represents the 'future of Europe', *Népszabadság*, 28 June 2001.

118 János Martonyi, 19 April 2001.

119 Interview with this author, Budapest, 5 June 2001.

Hungarian cultural identity makes them potentially resistant to European integration.¹²⁰ However, this potential may be mitigated to the extent that the effort to protect and promote Hungarian cultural nationhood is seen as *requiring* an attenuation of state sovereignty and a diminution of the importance of territorial borders. Inasmuch as the promotion of cultural nationhood is not fully connected to the territorial state, European integration may not necessarily be seen as threatening. From this perspective, the desired conception is a Europe of nations, which is not at all the same thing as a Europe of nation states. According to Budapest, ‘Every link across borders, public service above borders, which is in the Union and strengthens Europe’s internal integration, is in our interest’.¹²¹

There are, however, at least two difficulties with the Hungarian integration-European integration parallel. First, notwithstanding the EU’s official wish to create ‘an ever-closer union between the *peoples* of Europe’, it does so, at least through its formal provisions, only inasmuch as *states* unite. This is clearly problematic in Central and Eastern Europe, where states and peoples do not coincide territorially, and where only some states will be members of the Union at any time. Where the EU has arguably provided a framework for the emergence of minority identities and institutions, the management of sensitive borders, or cross-border contacts between divided peoples, it has done so where the states concerned are members (Ireland-UK, Denmark-Germany). However, this situation will not exist as regards all the states with Hungarian communities for some time, if ever. It has been suggested that national elites with difficulties of various sorts with their states look to the EU as a means of easing them; but the EU cannot help if the difficulty is the location of a state’s external border with a non-EU member (the West German case is the obvious example). Moreover, European integration has been developed on the basis of agreements between all the states concerned, whereas the Hungarian model seems to suggest that, as regards matters pertaining to ‘national integration’, Budapest can deal directly with the Hungarian minorities, rather than with their host-states. In Romania’s view, therefore, ‘the integrative role of the European Union should not be compared with the integrative endeavours of certain states regarding the unity of a nation as a whole, which would be composed of citizens of different states’.¹²² The preference for keeping the management of minority issues within a consent-based state-to-state framework also emerges strongly from the Venice

120 Tibor Navracscics, *A Missing Debate? Hungary and the European Union*, Sussex European Institute Working Paper No. 21 (Brighton, 1997); Agnes Batory, *Hungarian Party Identities and the Question of European Integration*. Sussex European Institute Working Paper No. 49 (Brighton, 2001).

121 Zsolt Németh, 19 April 2001.

122 GoR Venice Commentary, p. 6.

Commission Report, and from a statement issued shortly after its publication by the OSCE High Commissioner on National Minorities.¹²³

Second, whatever the problems surrounding the notions of ‘European identity’ and ‘European citizenship’, it is at least accepted that these concepts are of a different type to their national-level counterparts. However, Hungarian identity, even if existing across state borders, is of the same type as other national identities. It is therefore more difficult for some in Romania or Slovakia to accept that individuals might have a dual identity as Romanian and Hungarian than it is for them to see the possibility of a dual Romanian-European identity. Thus Bucharest regards European citizenship as a ‘modality to pass beyond the differences of nationality between the inhabitants of Europe’, not as a cover for their re-accentuation. On this view, the re-emphasising and institutionalisation of ethnic difference is precisely the opposite of what ‘Europe’ is thought to be about.¹²⁴

Romania and Slovakia thus reacted with deep scepticism to Hungary’s employment of ‘post-modern’ and European integrationist language to explain and justify the Status Law. Often, the use of such language was seen as merely the latest ploy by inventive but opportunistic policy-makers in Budapest to disguise longstanding revisionist goals. Romania did not accept that the Hungarian conception could be seen as progressive at all, regarding it instead as ‘specific to the period of the nineteenth century characterised by the formation of the nation states and express[ing] the tendency of regrouping the persons having the same ethnic origin in the same state’.¹²⁵ Such differences seem to raise the possibility that, as long as levels of trust between Hungary and Romania and Slovakia remain low, some integrationist language and practices may come to be discredited for some in Bucharest and Bratislava by the suspicion that integration is a Hungarian project.¹²⁶ Clearly, a system of international relations in the Carpathian basin based on existing territorial states is to the advantage of Romania and Slovakia, whereas any system which admits of non- and trans-state communities will strengthen the Hungarians’ position.

123 ‘Sovereignty, Responsibility, and National Minorities’, Statement issued by Rolf Ekeus, OSCE High Commissioner on National Minorities, The Hague, 26 October 2001, reprinted in this volume.

124 GoR Venice Position, Paragraph 2.3.3; see also GoR Venice Commentary, p. 10.

125 GoR Venice Position, Paragraph 3.1.3.

126 The comparison may seem far-fetched, but it may be worth bearing in mind the apparent conviction among some British Eurosceptics that the entire integration project is a plot designed for their own benefit by France and/or Germany.

V. 'Modern' Statists

Reservations about the Status Law were voiced by two further actors apart from Romania and Slovakia – the Hungarian Socialist Party (MSZP), the main opposition to Hungary's post-1998 government, and the EU. Although each of these three players criticised the Status Law for their own reasons, they each referred to the others in elaborating their positions. Bucharest and Bratislava seized on EU and other international criticism to bolster their claims that the Status Law was 'un-European'. Apart from the specific legal difficulties surrounding the Status Law to be discussed below, the EU's concern seems to have been engaged principally by the prospect of a deterioration in relations between Hungary, Romania and Slovakia. And MSZP criticism of the Hungarian government's behaviour was motivated partly by fears about its impact on both relations with Hungary's neighbours and Hungary's EU integration.

The extent and specific content of these three players' reservations about the Status Law varied considerably. However, uniting them was the fact that, to different degrees, they awarded higher priority in their stances to 'modern' norms of statehood than did the law's framers:

i) The MSZP. The communist successor party includes elements that are traditionally concerned about the fate of the external Hungarian minorities. It endorses Hungary's constitutional declaration of responsibility for the minorities, supports the notion of autonomy for them, and organised the 1996 Hungarian-Hungarian summit when it was in office. Shortly before the 1998 parliamentary elections, the MSZP's then Prime Minister Gyula Horn raised the possibility of some kind of travel document for Hungarian co-ethnics in Hungary's neighbours to ensure their free access to Hungary.¹²⁷ In opposition since 1998, the MSZP did not object to the general idea of a law extending the minorities further support. Indeed, the MSZP voted for the Status Law. This was a major source of satisfaction for the government, which sought to be able to present the legislation not as a purely right-wing project but as enjoying broad consensus within Hungary. The MSZP's position meant that the Status Law would be implemented at least in some form even if there were to be a change of government in Budapest following the spring 2002 elections. The extent to which the MSZP adheres to purely 'modern' norms of statehood is thus heavily circumscribed.

However, four of the major criticisms and proposals raised by the MSZP in connection with the Status Law suggested the same kind of stance as was evident in the MSZP's approach to the basic treaties – a framework in which

127 *Népszabadság*, 23 February 1998.

states, their borders and their citizens remain the ultimate factors structuring political life. The MSZP argued that:

- Bilateral state-to-state relations between Hungary and its neighbours should have figured more heavily in the preparation of the Status Law, and in Hungarian policy generally. In particular, Schengen should be approached as a ‘neighbourhood’ problem, not one pertaining exclusively to the Hungarian nation.¹²⁸ An MSZP proposal to make explicit reference to the basic treaties in the Status Law was rejected (amendment T/4070/45), but an amendment adding more language about the importance of good neighbourly relations was accepted (T/4070/42).
- The scale of the support offered to the minorities under the Status Law is too great given the constraints of Hungary’s state budget and the continuing needs of its citizens, who should enjoy priority. The MSZP proposed that citizens of Hungary should also enjoy the discounts on public transport and support for schooling costs offered to ‘fuzzy citizens’. There were also particular MSZP concerns about the impact of external Hungarian co-ethnic employment on the Hungarian labour market.
- Relating to the previous point, Hungarian support for the minorities should be focused in their host-states, rather than encouraging visits to Hungary. For example, MSZP deputies proposed unsuccessfully that Hungary should support Hungarian minority students in higher education in their host-states who promised to remain there afterwards, and offer tax breaks to Hungary-based firms establishing operations in the neighbouring states and promising to employ mainly Hungarians there (amendments T/4070/56, T/4070/39).
- The criteria for recognition as a ‘fuzzy citizen’ should have been specified in the Status Law, rather than being left to non-state actors to determine and act upon (amendment T/4070/48).

ii) The governments of Romania and Slovakia. Some Romanian and Slovakian argumentation engaged with some of the ‘post-modern’ norms cited by Hungary, namely international minority rights instruments allowing positive discrimination among citizens of a single state if this promotes the ‘effective equality’ of members of disadvantaged groups. However, Romania and Slovakia argued that the Status Law involved discrimination against their titular majority citizens beyond these limits, in particular by awarding socio-economic entitlements seen as unnecessary for the preservation of the

128 Csaba Tabajdi MP, the main MSZP figure in the minority affairs field, interviewed by this author, Budapest, 11 June 2001.

Hungarian minorities' cultural identity.¹²⁹ Moreover, Romania argued that, under international minority rights instruments, it is the responsibility of the host-state, not the kin-state, to determine whether positive discrimination is required, and to implement it if so.¹³⁰ In a key piece of argumentation before the Venice Commission, Hungary had argued that, by committing all signatory parties to pursue 'effective equality' between minorities and majorities, the Council of Europe's *Framework Convention* did not *exclude* parties other than the minorities' host-state from doing so.¹³¹ However, Romania would accept that its sovereignty could be infringed only if it had clearly failed in its duty towards its minorities, and then only by the international community as a whole, not by a single state.¹³²

Within the limits represented by their own adherence to international minority rights instruments, and their own kin-state policies, the argumentation against the Status Law employed by Slovakia and Romania for the most part took the form of a robust defence of 'modern' norms of statehood, which they regarded the Status Law as having violated. Two points were particularly prominent:

- The Status Law was seen as a unilateral move by Hungary, violating the principles of reciprocity and equality between states enshrined in the basic treaties and supported by international law. In the view of Bucharest and Bratislava, state-to-state relations in general, and the basic treaties in particular, should remain the framework for the conduct and content of relations in the Carpathian basin. According to Bucharest, 'the Romanian side is essentially favourable to the idea of granting the highest level of rights for the persons belonging to the Hungarian minority, but as specified in the *bilateral Treaty*, only as a result of *bilateral* cooperation, by concluding *bilateral agreements*.'¹³³ As it is, Bucharest 'underlines that no situation which is contrary to the letter and the spirit of the bilateral treaty, created as an effect of the Law, can be incumbent upon the Romanian side on the sovereign territory of Romania'.¹³⁴ The terms of the draft protocol presented by Romania clearly represented an attempt to fold minority

129 GoR Protocol, preamble; GoR Venice Position, Paragraph 2.1.

130 GoR Venice Position, Paragraph 1.1.

131 GoH Venice Position, Paragraph 5.3 – but the preamble of the *Framework Convention* commits signatory states to protect minorities 'within their territories' (emphasis added – BF). Romania repeats this formula in its draft protocol.

132 GoR Venice Position, Paragraph 1.1.1, 1.1.2.

133 *Ibid.*, Paragraph, 1.2.2, emphasis in original.

134 'Declaration of the Government of Romania with regard to the adoption of the Law concerning the Hungarians living in Neighbouring Countries', 19 June 2001 (hereafter GoR Declaration).

issues back inside the bilateral state-to-state relationship. Against Hungary's apparent view of the basic treaties as a framework for dealing with only some issues, and as providing the regional background needed to develop parallel Hungarian-Hungarian relations, Romania and Slovakia thus seem to regard the basic treaty framework as all-encompassing.

- The Status Law was seen as having extra-territorial effects, despite the provisions discussed above with which Budapest hoped to avoid this charge. Bucharest and Bratislava saw as extra-territorial the functioning on their territories of the non-state bodies involved in the administration of the Status Law. Romania would prefer Hungary to re-locate the administration of the 'fuzzy citizen' identity card system onto its own territory.¹³⁵ The extra-territoriality charge was also raised about the fact that citizens of the host-states, engaged in activities on host-state territory taking place under host-state law, would be able to claim related financial support from Hungary, on the basis of an official identification document issued by the Hungarian state. Romania and Slovakia both stressed that the entitlements which they have awarded to their co-ethnics abroad are to be enjoyed only on kin-state territory.

From the Romanian argumentation in particular, there emerges a strong conception of a 'modern' state on the French model, in which the nation and the citizenry are synonymous. According to Bucharest, Romanians abroad are, in contrast to external co-ethnics in the Hungarian conception

part of the nation *lato sensu* [...] But they are not [an] effective part of the nation *stricto sensu* unless they repatriate in Romania. This 'modern' conception about the nation is very much influenced by the important role played by [...] citizenship [...] [which] is the expression of the historical evolution, considering that persons which have a common history, should they be part of the minority or of the majority, share the same aspiration and represent a coagulated nation'.¹³⁶

In this view, internal minorities should be 'integrated *in* the state of citizenship and not dissociated from the rest of the population of the state' (emphasis in original). The state is the key mechanism for achieving this integration: 'Equality of [civic and socio-economic] rights between the citizens determines [...] the social cohesion and the homogeneity of aspirations of these persons'.¹³⁷ Citizenship can be the only relationship between states and individuals – it 'represents indeed the basis of functioning for the state

135 GoR Venice Position, Paragraphs 1.2.3 and 3.2.

136 *Ibid.*, Paragraph 3.1.3.

137 *Ibid.*, Paragraph 1.1.1.

power'.¹³⁸ Bucharest regards the kin-state relationship between Hungary and its Hungarian minority created by the Status Law as 'a breach inside the citizenship legal relationship', as threatening to Romania's social cohesion, and as violating the minorities' duty of fidelity to Romania under Article 50 of the constitution.¹³⁹ Romanian language laid particular emphasis on the idea that loyalty is owed from all its citizens in return for the civic rights which the state bestows regardless of ethnic identity, under a 'social contract' model.¹⁴⁰ Bucharest seemed particularly perturbed by the asymmetry of the 'quasi-legal and parallel legal connection' between external Hungarian co-ethnics and Hungary created by the Status Law, in which some of the individuals involved may owe no obligations in return for the rights granted by Budapest.

Clearly, many of the concerns raised by Romania and Slovakia, and by the MSZP, were shared by the Venice Commission. The main difference came on the issue of the location where individualised co-ethnic entitlements should be delivered. As we have already noted, the MSZP wanted Hungary to focus its support for its co-ethnics in their host-states. In some respects, this is less challenging to territorial statehood, since there is less incentive for external minority members to cross the border into the kin-state, and less encouragement for the emergence of a trans-state community. However, in legal terms, this is more threatening to the principle of territorial sovereignty. By endorsing the extension of co-ethnic entitlements only in the kin-state unless the consent of the host-state has been obtained, Romania, Slovakia and the Venice Commission gave priority to this latter principle.

iii) The EU. While urging consultations between Hungary and its neighbours, EU representatives made little public comment about the substance of the Status Law before its passage. Since then, it has been confirmed that the law does not violate Hungary's Association Agreement with the EU, currently the only legal relationship between the two parties.¹⁴¹

However, the EU made its influence felt in two respects before passage of the law. First, there was the issue of the border regime to be applied to Hungary's 'fuzzy citizens' wishing to enter the country. As we have seen, as awareness has grown of the prospective Schengen border around Hungary's eastern and southern frontiers, this has become one of the most important issues for those in Hungary and among its external minorities who wish to secure the kin-state relationship. However, the Status Law grants one of its

138 Government of Romania, 'Supplementary information to the position document forwarded to the Venice Commission' (hereafter GoR Venice Supplementary), p. 6.

139 *Ibid.*, pp. 4-6.

140 GoR Venice Position, Paragraph 1.1.3; GoR Venice Commentary, Paragraph 18.

141 'EU lawyer: EU-Hungarian associate treaty allows Status Law, Treaty of Rome may not', 'Hungarian Status Law in line with EU law – EU lawyer tells EU-Hungary committee', *BBC Monitoring*, 11 October 2001.

weakest entitlements in precisely this area: the law offers only ‘the most favourable treatment possible in the given situation, taking international legal obligations into account’ (Article 3). Particularly combined with other clauses which commit Hungary to applying the Status Law only in conformity with its international treaty obligations (Article 2) and specifically with the terms of its EU accession treaty (Article 27), this clearly offers little to external Hungarian minorities anxious about losing their easy access to Hungary. Disappointment with the treatment of the border issue in early government plans prompted the World Federation of Hungarians and the Democratic Union of Romanian Hungarians separately to launch counter-proposals which would have awarded ‘fuzzy citizens’ a Hungarian passport – and thus access to the EU after Hungary’s accession – through the creation of an ‘expatriate citizenship’ modelled on the UK regime and not including voting or residence rights.¹⁴² The tussle between the Hungarian government and the minority organisations over the border question took up much of 2000; that the Status Law mentions the border regime at all was a concession achieved by the minority organisations at the third MAÉRT session at the end of the year. However, in contrast to its concession of employment rights in Hungary, for example, the Hungarian government would go no further in meeting external minority demands on the border regime. This signalled, to the external minorities and to the EU, that the administration was prepared to disappoint the former in order not to create a new obstacle to Hungary’s EU accession in the highly sensitive area of justice and home affairs. Given Hungary’s position, the test regarding EU attitudes towards privileged co-ethnic entry regimes in the candidate states may now come when Slovakia negotiates its justice and home affairs chapter (although the Slovak law also leaves room for international treaties to take priority).

The same Hungarian wish to avoid at least immediate direct contravention of EU law was seen as regards the second area of EU intervention: the original planned inclusion of Austrian – and therefore EU – citizens under the terms of the Status Law. In behind-the-scenes consultations during the parliamentary amendment process, EU representatives signalled that Austria’s inclusion would be incompatible with the clause in Hungary’s EU Association Agreement which prohibits it from discriminating among EU citizens in areas relevant to the single market.¹⁴³ Sometimes, Hungarian government representatives have sought to claim that Austria was taken out of the law because

142 The bill creating this status drafted by the World Federation of Hungarians is accessible at the body’s website, www.mvsz.hu

143 Europe Agreement establishing an association between the European Communities and their Member States and the Republic of Hungary, *Official Journal of the European Communities*, L 347, 31 December 1993, Articles 37 and 115

its Hungarians did not need the form of support created by the Status Law, living in a country that is richer than Hungary, or often being able to reacquire citizenship.¹⁴⁴ However, on other occasions, the role of the EU has been acknowledged. Bucharest and Bratislava seized on Austria's exclusion as 'a confirmation of the incompatibility of the Law with the European spirit' (GoR Declaration).

Austria's exclusion from the Status Law signalled to all concerned that states currently covered by the legislation will have to be taken out from the scope of its application as they join the EU. Since all such states' citizens will then – at least in theory – enjoy free access to Hungary, its labour market and some of its public services, most (although not all) of the provisions of the Status Law will become redundant in any case. However, this leaves open the position of Hungarian 'fuzzy citizens' of states which will not join the EU in its next enlargement, if ever. When Hungary joins the EU, under current conditions, three relevant changes will take place: Hungary will become party to the EU anti-discrimination directive, which forbids member states from engaging in racial and ethnic discrimination, in fields covered by the Status Law, not only among EU citizens but among third-country nationals; Hungary will also be bound not to treat non-EU citizens more favourably than EU citizens; and EU citizens will themselves gain the extra rights in Hungary that go with Maastricht citizenship. Given these conditions, it may be that the Status Law has to be abandoned in its entirety on Hungary's accession, or so substantially amended as to undermine its purpose, a prospect of which Hungarian policy-makers have privately been aware, and which appears to be confirmed by the European Commission's November 2001 report on Hungary's progress towards accession (Commission of the European Communities 2001, 91).¹⁴⁵ It may therefore be at the point of Hungary's accession that the conflict between the claims of the 'Hungarian nation' and the integration of the Hungarian and other states into the EU appears at its starkest. As a result of EU enlargement, some members of the 'Hungarian nation' will become 'European citizens', while others will become third-country nationals, and may lose at least some of their 'fuzzy citizenship' entitlements. It will be difficult for many of those concerned with the 'Hungarian nation' on both sides of Hungary's borders to accept that a Hungarian citizen of Slovakia resident in Hungary can vote in Hungarian local elections, but a Hungarian

144 See, for example, Zsolt Németh, quoted in *Népszabadság Online*, 30 May 2001; GoH Venice Position, Paragraph 1.4.

145 Commission of the European Communities, *2001 Regular Report on Hungary's Progress towards Accession*, Brussels, 13 November 2001, p. 91. It should, however, be noted that the Venice Commission Report seems to leave space for the extension of co-ethnic socio-economic entitlements where these are already 'available to other foreign citizens who do not have the national background of the kin-state' (Venice Commission Report, Section D).

citizen of Romania living next door cannot; and even more difficult to accept that a Hungarian citizen of Romania resident in Hungary cannot vote in Hungarian local elections, but a British (or Slovakian Slovak) citizen living next door can.¹⁴⁶ We saw above that one of the purposes of the Status Law was precisely to elevate the position of non-citizen members of the ‘Hungarian nation’ above other foreigners as regards their treatment when in Hungary; and as long ago as 1994, one right-wing Hungarian MP was proposing that the Hungarian minorities abroad should gain Hungarian voting rights at the same time as ‘European’ citizens.

Conclusion

This paper has analysed the kin-state role in Central and Eastern Europe, and specifically the arguments surrounding the Hungarian Status Law, in terms of alternative principles of statehood. Section one sketched the ways in which ‘modern’ norms of territoriality and citizenship are being challenged, especially in the EU, but suggested that ‘modern’ norms ultimately retain their pre-eminence in the international and EU legal and political system. At the most, new practices concede on ‘modern’ principles of *either* territoriality *or* citizenship. The second section suggested that the conceptual separation of state and nation in Central and Eastern Europe opens the way at least implicitly to kin-state relationships which challenge ‘modern’ principles of *both* territoriality *and* citizenship, and which admit ‘post-modern’ notions of multiple identities, non-citizenship relationships between states and individuals, and attenuated state sovereignty. By institutionalising this kind of relationship, through the creation of entitlements claimable in law by specific individuals against particular states, it was claimed that the Hungarian, Slovak and planned Polish legislation covered by this research creates a form of citizenship which goes beyond even relatively new practices in the EU, inasmuch as it endows individuals who are *neither* citizens *nor* residents of the states concerned. Within this class of legislation, the third section of the paper identified the differences between the Hungarian and the other laws. The fourth section presented Hungary’s Status Law as part of an attempt by some of its political forces to develop ‘post-modern’ alternatives to the territorial state and its citizenry as the only means of organising political space. The final section reviewed the positions of three more ‘modernist’ actors, the MSZP, the governments of Romania and Slovakia, and the EU.

The paper has shown that the battle between ‘modern’ and ‘post-modern’ norms of statehood is being fought out in vivid and urgent terms between the governments of Hungary and Romania, in particular. To some extent, the

146 See Péter Kovács, *A schengeni kérdés* (Budapest, 2000), p. 77.

dispute occasioned by the Status Law can be seen as the latest episode in a long-running argument about the organisation of political relations in the Carpathian basin. In this argument, states' experiences with internal and external minorities shape their preferred conceptions of statehood. Romania adheres to a French-style, state-led conception, of equal citizenship rights as the basis for a singular national identity and homogenous political community, as a way of seeking to deal with its Hungarian minority and defend its integrity as a 'modern' state. In this view, the international system should be based on state-to-state relations. By contrast, Hungary is more open to the ideas that territorial sovereignty might be attenuated and differential treatment given to members of a single citizenry, owing to its experience with small and quiescent minorities at home but large and assertive co-ethnic ones abroad. At least some elements of Hungary's political right, in particular, are led by their concern for trans-state Hungarian nationhood to advance a vision of non-state cultural pluralism, in which non-state actors and communities defined other than by citizenship act alongside states and their citizenries.

Both the 'modernist' and 'post-modernist' camps appeal to 'Europe' to find support for their conceptions, in terms of specific institutional and legal backing and in terms of 'European' principles or values. In the Romanian view, it appears, Europe is a place where differences of national identity are superseded by a culturally neutral, equal European citizenship which leaves existing state-based arrangements intact. For the right-wing Hungarian government, by contrast, Europe is a place in which differences of national identity are protected and celebrated, if necessary by superseding the territorial state. This is the idea of Europe as a 'community of communities', a concept which has become prominent in the pronouncements of Hungarian Foreign Minister Martonyi in the course of 2001.¹⁴⁷ As regards the position of 'really-existing' Europe, the Council of Europe's Venice Commission and the European Commission have importantly different stances regarding the kind of kin-state policy represented by the Status Law. However, overall, the international community continues to line up – with the MSZP and Romania and Slovakia – behind the primacy of territorial statehood and state-to-state relations. As regards the specific issues surrounding Hungary's kin-state policies in the context of EU enlargement, the Union is part of the bundle of 'modern' norms of statehood that Budapest is seeking to escape.

The further investigation of Central and East European countries' conceptions of statehood, and the likely impact of these on new members' stances inside the EU, represents one avenue for further research and policy consideration suggested by this paper. The second, relatedly, concerns the place of

147 See, in particular, his 'A jövő Európája – a közösségek közössége' ('The Europe of the future – the community of communities'), *Magyar Nemzet*, 10 November 2001.

the kin-state role in Central and Eastern Europe's politics and international relations. The paper has suggested the wide-ranging implications of kin-state politics in the region, and the apparently rising significance of the kin-state role for many of its states. However, it has also highlighted the dearth of even basic readily available information about a field which clearly involves significant variation and complex relationships, between citizenship laws, electoral rules and immigration policies, domestic and international politics, history and economics, identity and institutions. The variation uncovered by the paper suggests a gradation of kin-states in the region, from those which have not moved beyond a constitutional declaration of a kin-state identity, to those which offer only generalised support to co-ethnics abroad (Romania for some co-ethnics), to those which offer individualised entitlements but only in the kin-state (Slovakia and the Polish plans), to Hungary's trans-state conception – not forgetting those which have pursued the non-resident citizenship solution (Croatia, and Romania *vis-à-vis* Moldova and Ukraine). However, we know little about why states have adopted such different regimes, or how they operate in practice. Given the existence of some similarities in the circumstances which created their 'nations abroad', the differences between the kin-state policies of Hungary and Poland seem particularly noteworthy, for example. Poland's path to a substantive kin-state relationship seems to have been much more tortuous than Hungary's, and Warsaw appears less willing than Budapest to differentiate between the 'Western' and 'Eastern' branches of its 'nation abroad', and more willing to encourage co-ethnic immigration.

Given that, as we have seen, the EU is organised on the basis of states and their citizenries, questions related to kin-state politics are likely to increase in salience as the Union enlarges eastwards. The fact that issues of minority rights and positive discrimination are only just appearing on the EU's agenda seems to offer an opportunity to include consideration of the external co-ethnic issue as this policy area develops. The kin-state question also seems likely to become increasingly relevant to the immigration issue, both in the Central and East European states, as they become targets for non-European as well as co-ethnic immigration,¹⁴⁸ and at the EU level. The current combination of economic circumstances, Central and East European citizenship policies, EU external border policies, and international legal support for the enjoyment of rights only *in* the states awarding them, tends towards a situation encouraging permanent co-ethnic migration to the 'insider' kin-states.

148 Liebich, 'Plural Citizenship', pp. 106-107.

Table 1. Definitions of Potential ‘Fuzzy Citizens’

<i>Country and date of legislation</i>	<i>‘Fuzzy citizen’ signifier</i>	<i>Citizenship/residence conditions</i>	<i>Other conditions</i>	<i>Family members included?</i>
Slovakia (1997)	Free ‘expatriate card’ of unlimited validity	Citizens of states other than Slovakia; may have right to permanent residence in Slovakia	<p>Possesses Slovak cultural and language awareness, defined as at least passive knowledge of Slovak and basic knowledge of Slovak culture, or an ‘active declaration’ for the Slovak ethnic group; Slovak awareness to be proved by current activities and testimony of local Slovak organisation or two local expatriate Slovaks</p> <p>AND</p> <p>Slovak nationality or ethnic origin, the latter defined as having direct ancestors (to third generation) with Slovak nationality. Nationality/ethnic origin to be proved <i>via</i> proof of birth/baptism/marriage/right to permanent residence in, or citizenship of, the inter-War Czechoslovak Republic, Czechoslovak Socialist Republic or Czecho-Slovak Federal Republic; or recommendation from a Slovak minority organisation in country of residence; or recommendation from two ‘expatriate Slovaks’ in country of residence</p> <p>AND</p> <p>free from contagious diseases and criminal convictions defined by Slovak law</p>	Children under 15
Romania (1998)	---	Members of Romanian communities living in states other than Romania	----	---

Table 1 (continued). Definitions of Potential ‘Fuzzy Citizens’

<i>Country and date of legislation</i>	<i>‘Fuzzy citizen’ signifier</i>	<i>Citizenship/residence conditions</i>	<i>Other conditions</i>	<i>Family members included?</i>
Poland (1999) (legislation rejected by Sejm)	Free ‘Pole’s charter’ of unlimited validity	People who are neither citizens nor permanent residents of Poland but who are ex-citizens of Poland by virtue of emigration or post-1945 border changes, or who are descendents of such ex-citizens, or who have no connection to Polish citizenship but are ‘attached to the Polish nationality’	Documentary evidence of Polish nationality or origin <i>e.g.</i> Polish identity, birth, marriage, school, military service certificates, evidence of former Polish citizenship, evidence of deportation or imprisonment, documents issued by country of settlement confirming Polish nationality OR Membership in Polish organisations; or involvement in ‘the struggle for the Polish cause’; or adherence to Polish culture in the family; or personal risks taken ‘during the era of foreign rule’ which prove ‘solidarity with the Polish people’ OR Command of Polish and conduct demonstrating that individual feels Polish AND No conviction for deliberate offence, unless performed for the cause of the Polish state	Children under 18
Hungary (2001)	‘Hungarian card’ valid for 5 years	Residents of Croatia, Romania, Slovakia, Slovenia, Ukraine and Yugoslavia of Hungarian nationality who are not Hungarian citizens, lost Hungarian citizenship involuntarily and have no right to permanent residence in Hungary	Has recommendation attesting to Hungarian nationality from a Hungarian organisation in home-state recognised by Hungary for this purpose AND Not subject to entry ban or criminal proceedings in Hungary	Partners, and children under 18

Sources: Slovak law 70/1997; Romanian law 150/1998; Polish Senate resolution of 22 April 1999; Hungarian Act 2001: LXII, as in notes 1 and 8-10

Table 2. 'Fuzzy Citizenship' Rights in the Kin-state and at Its Border

	Slovakia (1997)	Romania (1998)	Poland (1999) (legislation rejected by Sejm)	Hungary (2001)
<i>Border regime</i>	Requirements for visas and letters of invitation waived, where possible under international agreements; where visas are required, fees waived		Right to 'national visa', allowing multiple border crossings; exempt from requirements regarding possession of money to cover costs of stay	'The most favourable treatment possible in the given situation, taking international legal obligations into account'
<i>Residence</i>	Long-term residence without permit		Unlimited residence	'The most favourable treatment possible in the given situation, taking international legal obligations into account'
<i>Employment</i>	Can apply for employment without work or permanent residence permit			Work permit granted regardless of labour market conditions for 3 months per calendar year, with possibility of extension; can apply for help with costs of establishing eligibility for work
<i>Healthcare</i>		'Help for individuals in exceptional circumstances'	Access to services on same terms as Polish citizens during stay in Poland	Must pay employment taxes on work undertaken in Hungary unless international treaty orders otherwise; entitled to some healthcare provision in line with taxes paid; non-tax-payers can apply for help with healthcare costs in Hungary

Table 2 (continued). 'Fuzzy Citizenship' Rights in the Kin-state and at Its Border

	Slovakia (1997)	Romania (1998)	Poland (1999) (legislation rejected by Sejm)	Hungary (2001)
<i>Social security</i>	Can request exemption from social security payments abroad, if entitled to social security provision in Slovakia			Must pay employment taxes on work undertaken in Hungary unless international treaty orders otherwise; entitled to some pension rights in line with taxes paid
<i>Education</i>	Can apply to study in any educational institution	Can apply to study in any educational institution; those in higher education can receive Romanian state grants and free accommodation	Access to public schools on same terms as Polish citizens	Entitled to higher education on same terms as citizens of Hungary, including state financial support; those following non-state-funded programmes can apply for maintenance funds; higher education students in neighbouring states with Hungarian card or studying in Hungary entitled to Hungary's student card and associated privileges; teachers working in Hungary in neighbouring states entitled to further training in Hungary, including financial support, and the privileges due to Hungary's teachers

Table 2 (continued). ‘Fuzzy Citizenship’ Rights in the Kin-state and at Its Border

	Slovakia (1997)	Romania (1998)	Poland (1999) (legislation rejected by Sejm)	Hungary (2001)
<i>Public transport</i>	Local and national rail/bus transport half-price to retired and disabled, free to over 70s			Domestic public transport free for under-6s and over-65s; 90% reduction for under-18s in groups once a year and for all individuals 4 times a year
<i>Culture</i>				Same as citizens of Hungary
<i>Other</i>	Can own and acquire real estate; can apply for Slovak citizenship under ‘outstanding personality’ provisions		Can receive civil and military honours awarded to Polish citizens; exempt from taxes normally paid by foreign citizens	Can receive Hungarian state honours and grants; become external member of Hungarian Academy of Sciences

Sources: As for Table 1

Figure 1. Residence, Citizenship and Membership of the Nation () for a Multinational Kin-state (State A) with ‘Fuzzy Citizenship’ Legislation

Residence	Citizenship	
	<i>Citizens of state A</i>	<i>Foreigners to state A</i>
<i>In state A</i>	Resident citizens	Foreigners in state A including ‘denizens’ (foreigners with some rights)
	including	Both groups may include
<i>Abroad</i>	Members of state A’s majority national group	Members of state A’s majority national group
	Members of state A’s majority national group	Members of state A’s majority national group – ‘fuzzy citizens’ (foreign co-ethnics with some rights)
	as a subset of Citizens abroad (expatriates)	as a subset of Foreigners abroad

Source: Adapted from Hammar, *Democracy and the Nation State*, p. 16, Table 1