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Overview

Genocide and ethnic cleansing have all-too-clearly demonstrated the dangers of failing to protect minority groups. A “kin-state” with strong ethnic, cultural, religious or linguistic links to a minority population abroad, may be well-placed to assist in its protection. But unilateral interference by kin-states can raise tensions with host-states, endangering international peace and security.

If a state neglects its primary responsibility to protect minorities under its jurisdiction, the subsidiary responsibility lies with the international community as a whole, *not* the kin-state in particular. Kin-state interest in minorities abroad must be pursued through constructive engagement, rather than unilateral interference. At the same time, international and regional organizations must build domestic state capacity while strengthening the tools and political will to deliver timely collective responses when states fail in their responsibilities. Bilateral and multilateral mechanisms alike can counter nationalist rhetoric and policies by emphasising that a diverse, well-integrated society is in the interest of both the majority and minorities.

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The Responsibility to Protect Minorities and the Problem of the Kin-State

STATES HAVE A RESPONSIBILITY TO PROTECT ALL people residing in their territory, be they members of majorities or minorities, indigenous peoples, citizens or non-citizens. This principle lies at the heart of the commitment on the responsibility to protect (R2P) made by all UN member states at the 2005 World Summit. R2P emerged in order to avert atrocity crimes such as genocide and ethnic cleansing—which in the past have all-too-clearly demonstrated the dangers of failing to protect people targeted by their fellow citizens or by the state. Identity-based tensions have been present in many of the conflicts that have required UN Security Council (UNSC) action since the end of the cold war, and more often than not minorities have been the principal victims.

Underlying this form of conflict is the natural mismatch between states, as artificial constructs with arbitrary borders, and nations—broad groupings with social, cultural and linguistic ties. The inter-ethnic relations of the nation transcend the hard borders of the sovereign state and can challenge its territorial integrity when independence movements pursue self-determination through secession. Failing to adequately protect the rights of minority ethnic, religious, cultural and linguistic groups leaves them vulnerable to discriminatory laws and policies, raising grievances that can be exploited by violent extremists or instrumentalized by neighbouring states.

Minority protection is thus clearly of prime concern for the maintenance of international peace and security. But a protection agenda itself can also be dangerous—in World War II the issue of German minorities in Poland and Czechoslovakia was abused by Nazi Germany as a pretext for aggression. Indeed, the international community has often struggled with the question of how to protect minorities. The approach to protection has been shaped by the drafters of the UN Charter, who intentionally discarded special provisions on minorities in favour of a general human rights regime based on the principles of equality and non-discrimination. Minority issues were thereby left for states to deal with, internally or bilaterally.



Minority Protection and the Kin-State

National minorities have a right to protect and promote their identity, and it is the obligation of the state in which they live to defend that right. However, neighbouring or nearby states may have strong ethnic, cultural, religious or linguistic links to the minority population, and a legitimate interest in its protection. Such “kin-states” may be well placed to offer advice or assistance to improve the protection of related minorities abroad. Kin-states may also be directly affected if a state is failing to protect minorities—for example through strong public opinion advocating intervention to protect the kin abroad or through an influx of refugees.

The potential constructive role for kin-states in resolving sensitive and volatile minority issues was evident in the successful resolution of a long-running disagreement between Italy and Austria over the status of the German-speaking minority in the South Tyrol region of northern Italy. Following World War II, Austria pursued its kin interest through bilateral negotiations with UN oversight, leading to the eventual implementation of a treaty giving greater autonomy to the region.

International norms affirm the rights of persons belonging to minority groups to establish peaceful contacts across borders with those of a common identity or heritage. But the strengthening of bonds between a kin-state and a neighbouring minority risks creating or exacerbating tensions with their state of residence, resulting in a deterioration of bilateral relations. When the interest of the kin-state extends to cross-border interference and even attempts to take unilateral action on the basis of kinship to protect national minorities living abroad, the prospect of violent conflict can arise. Ultimately there are two specific, related fears overshadowing

such tensions: irredentist claims by the kin-state, advocating annexation of another state’s territories; and secessionist claims from the minority itself.

The divisive effects of kin-state involvement were highlighted when Hungary adopted the “Act on Hungarians Living in Neighbouring Countries” (known as the “Status Law”) in June 2001. The law unilaterally granted special rights for the significant ethnic Hungarian minority populations in neighbouring Romania, Serbia, Slovakia, Slovenia and Ukraine to work within Hungary, referring to them as part of the “unified Hungarian nation”. It also gave financial subsidies exclusively to individual ethnic Hungarians who were involved in teaching or studying the Hungarian language. The Status Law was strongly criticized by the neighbouring states, particularly Romania and Slovakia, as interference in their domestic affairs and a violation of their sovereignty. Among the law’s provisions were special visas, work permits, educational assistance, and access to the Hungarian social security and health care systems for ethnic Hungarians living in neighbouring countries. To receive these special rights, individuals simply had to voluntarily declare themselves as being of Hungarian nationality. Neighbouring states considered these provisions—in particular those concerning employment—discriminatory against their citizens of non-Hungarian ethnic origin.

With tensions rising, international organizations including the Council of Europe, the Organization for Security and Co-operation in Europe’s (OSCE’s) High Commissioner on National Minorities (HCNM), and the EU, pressured the states involved to enter into bilateral negotiations which eventually defused the situation. These cases illustrate the dilemma of kin-state involvement in minority protection



abroad: although kin-states can provide much-needed assistance and fill capacity gaps, preventing and resolving minority tensions, their interference in the domestic affairs of other states can also present a destabilizing threat to regional security. Should states be permitted to contribute to the protection of their kin abroad? If so, how? Does, for example, China have a special responsibility towards overseas Chinese, say in Indonesia; Russia towards Russians in the Baltic states; India towards ethnic Indians in Fiji or Tamil Hindus in Sri Lanka; Pakistan towards Muslims in

responsibility for protection of people from these atrocity crimes with the state. If the state is unwilling or unable to fulfil this responsibility, it falls to the international community to take appropriate action to protect threatened populations—with the possibility of coercive measures including intervention.

R2P can be seen as the culmination of an evolution towards sovereignty as responsibility, away from the historical conception of sovereignty as a function of power or control over territory. Whereas in the past states could

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India; or the West towards the white population of Zimbabwe?

Under international law, the protection of minority rights is clearly the responsibility of the state in which they reside. States may have an *interest* in “kin” living abroad, but no legal *right* of interference. But if the host-state fails to protect a minority group or groups, what role, if any, can the kin-state play? It is in this context that we turn to the R2P norm, which is particularly relevant to the protection of vulnerable communities, and can therefore provide some guidance on the possibilities and limits for states to play a legal and legitimate role in the protection of their kin minorities abroad.

The Responsibility to Protect

Affirmed by the UN General Assembly at the 2005 World Summit, the R2P norm emerged to reconcile the seemingly intractable tensions between state sovereignty and the need for robust action to halt genocide, war crimes, ethnic cleansing and crimes against humanity. R2P firmly places primary

invoke the shield of sovereignty to commit atrocities with impunity, sovereignty no longer implies a licence to kill. Unfortunately in practice there remain large gaps in the implementation of and compliance with R2P; its only widely recognized success being Kofi Annan’s mediation in Kenya to end the post-election violence of December 2007–January 2008. At the same time, the doctrine is also vulnerable to misuse, as by Russia in the 2008 conflict with Georgia over South Ossetia.

R2P understandably attracts most attention related to its provision for intervention to halt atrocity crimes. However the R2P norm is more than a mere substitute for humanitarian intervention, rather, it entails a threefold responsibility to prevent, react, and rebuild. Here the emphasis is on the responsibility to *prevent* such significant abuses occurring in the first place, so intervention is not required—a priority reaffirmed in the 2009 report of the UN Secretary-General on implementing R2P.

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Minority Protection and the Responsibility to Prevent

Given the role of discrimination and ethnic conflict in atrocity crimes, implementing the responsibility to prevent requires effective protection of minority rights. If minorities are adequately protected, this avoids the instrumentalization of minority issues, either by radicals in the minority community or by neighbouring states—which may even use violence to seek the world’s attention. States must support minority groups in expressing and preserving their identities, while promoting inte-

special responsibility to protect minority groups abroad, beyond its responsibility as any other state in the international community. The role of the kin-state can therefore be seen within a broader understanding of the responsibility to prevent: preventing tensions from escalating to R2P situations, by contributing to international efforts to protect minorities. And the same principle applies—the state in which minority populations reside has the responsibility to protect minority rights, but if it fails to do so, this obligation falls to the international community.

“The kin-state can play a role, but only multilaterally, in its capacity as an integral member of the international community”

gration and equality before the law to strengthen social cohesion and prevent discrimination. Language is particularly important—from the integration of minority languages into educational curricula and media content, to the general involvement of minority language speakers in public life. Wider minority participation in public institutions should be encouraged—for example, Hungary’s agreement with Serbia and Montenegro ensures minority representation in public services, including the police.

The state is clearly the most appropriate actor to implement these measures, as part of its primary obligation to protect its population, and in particular, vulnerable groups such as minorities. But R2P’s second “pillar” also requires the international community to assist states in building their capacity to implement the responsibility to prevent. It is here that the kin-state can play a role, but only multilaterally, in its capacity as an integral member of the international community. A kin-state has no

Under the auspices of the United Nations and regional organizations, a range of multilateral treaties and declarations setting forth standards for minority protection have been adopted and commitments undertaken by states. But regional organizations may be particularly well placed to implement the responsibility to prevent. Indeed, the early warning and conflict prevention capacity of the United Nations is relatively limited; Chapter VIII of the UN Charter specifically encourages the use of regional arrangements for conflict prevention.

An example of a regional organization with advanced conflict prevention capacity and tools is the OSCE; its HCNM has an intrusive mandate to take and support early diplomatic action, as well as provide early warning and technical assistance. Other regions lack such institutions and conflict prevention capacity, although the African Union’s “Panel of the Wise” offers interesting potential. The process of regional integration itself generates

trust, by providing greater opportunities for cross-border cooperation and dispute resolution. For Hungary, Slovakia, Slovenia and Romania, as well as the Baltic states, accession to the EU has brought stronger incentives for cooperation, and greater potential for economic development and infrastructure improvements for minorities living in border regions.

Nevertheless, international capacity for minority protection is generally limited; international agreements lay out non-binding standards for interstate relations. To implement these international standards, and thereby actively prevent minority issues from developing into R2P situations, more specific, binding agreements between states have proved necessary.

Bilateral agreements

Bilateral agreements on minority issues serve to build confidence for both sides. For the kin-state, they provide a means through which to legally and legitimately improve protection of kin minorities in the host-state. Perhaps more importantly, for the host-state they relieve concerns of interference by the kin-state. Indeed, they can expressly stipulate that the parties have no territorial claims on each other—a particular concern where there are fears of secessionist movements.

Most bilateral agreements affirm the right of individuals to express, preserve and promote ethnic, cultural, linguistic and religious identity individually and as a member of a group. Culture features prominently in bilateral treaties concerning national minorities, including provisions on the rights to express, preserve and promote the ethnic, cultural, linguistic and religious identity of persons belonging to national minorities.

There is no uniform model or procedure for bilateral mechanisms, as

they are, by their very nature, specific to the region and parties they address. However, bilateral agreements generally build upon existing (non-binding) international or regional standards, tailoring these to reflect the historical, political and social context. For instance, while Hungary's bilateral treaties with its neighbours add nothing to European standards concerning equality and non-discrimination, they are stronger in the area of linguistic rights, by providing for use of the minority language, rather than merely a language understood by the person, and by covering civil and administrative law as well as criminal law.

Bilateral agreements can lay down stronger provisions for language in education, including the right to be instructed in the minority language, as well as to learn the minority language. Treaties can also provide for legitimate cross-border cooperation between national minorities or minority organizations and the kin-state, avoiding tensions such as those caused by Hungary's introduction of direct cross-border support in its Status Law without the consent of neighbouring states.

To be effective, agreements must use specific language which addresses the practical concerns of the minority community, rather than vague references to "protecting identity". The implementation of minority-specific bilateral agreements—or of minority provisions within general treaties on friendly bilateral relations—must also be monitored to avoid further disputes, through mechanisms such as Joint Intergovernmental Commissions. These commissions have no binding power, and do not receive complaints from individuals; rather, they meet regularly to evaluate the implementation of bilateral agreements and present recommendations for consideration by the respective governments on their implementation and, if

Relevant International Minority Protection Instruments

1948: Universal Declaration of Human Rights

1950 (1953): European Convention on Human Rights

1965 (1969): International Convention on the Elimination of All Forms of Racial Discrimination

1966 (1976): International Covenant on Civil and Political Rights

1973: Conference on Security and Co-operation in Europe (CSCE)

1975: CSCE Helsinki Final Act

1990: Copenhagen Document on the Human Dimension of the CSCE

1990: Charter of Paris for a New Europe

1992: UN Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

1995 (1998): The Council of Europe's Framework Convention for the Protection of National Minorities

1995: Organization for Security and Co-operation in Europe (renamed from CSCE)

2000: International Commission on Intervention and State Sovereignty (ICISS)

The dates treaties entered into force are shown in parentheses.



The Bolzano/Bozen Recommendations

The OSCE published *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations in 2008*, emphasising the primary responsibility of the host-state and laying down certain fundamental principles regarding kin-states and national minorities, including:

- all support for minorities abroad should be non-discriminatory, and undertaken with the consent of the state of residence;
- any support should be limited to the fields of culture and education;
- states should be consistent in the level of benefits offered to minorities in their own jurisdictions, and between minorities in different states.

OSCE High Commissioner on National Minorities. *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (The Hague: OSCE, 2008). Available at: http://www.osce.org/publications/hcnm/2008/10/33388_1189_en.pdf

necessary, modification. Commissions generally devote most of their time to issues of culture, language, education and religion, and where established as part of minority-specific treaties (rather than general treaties on “friendly relations and good neighbourliness”), they explicitly require the participation of minority representatives.

The mandates of these Commissions to facilitate cooperation and exchange of information allows pressing minority issues to be debated and resolved in a timely manner before such issues have the opportunity to become a source of conflict. For example, Hungary’s Joint Commissions with its neighbours, particularly Romania and Slovakia, were effective in resolving the conflict related to the adoption of the Status Law. The meetings of the Hungary-Romania intergovernmental commission resulted in an agreement which achieved a bilateral resolution to the dispute. These Joint Commissions continue to function, with successfully implemented recommendations including the renovation of theatres, the financing of minority radio stations and publications, and minor improvements in language education. One interesting approach to educational issues emerged in an early meeting of the joint Hungarian-Slovak Commission, which agreed to renew the activity of a joint committee of historians working on a handbook to coordinate history teaching in the two countries. This initiative has strong potential to improve bilateral relations, such as by reducing the increasingly negative attitudes of young Slovaks towards the Hungarian minority, although it is still awaiting implementation 10 years later. Indeed, for issues to remain on the agenda of joint commissions is preferable to them disappearing under the surface, where they may simmer and re-emerge later—even if they remain unresolved indefinitely, as

in the case of the request by neighbouring countries for Hungary to ensure the representation of minorities in its parliament.

Both bilateral and multilateral mechanisms for minority protection must focus on specific, practical difficulties and solutions, such as minority languages and representation in public institutions. If the dialogue is dominated by vague, emotive questions of “national identity”, minority issues will be vulnerable to instrumentalization. At the same time, nationalist rhetoric must be countered by emphasising that a diverse, well-integrated society is in the interests of both the majority and minorities, and that the existence of minority groups enriches the cultural values of the respective countries.

Dual responsibility

Clearly, while the world cannot stand by when minority rights are being violated, neither can the protection of national minorities be used by kin-states as an excuse to violate state sovereignty. Applying the R2P doctrine to this dilemma reinforces the primacy of host-state responsibility—as affirmed in numerous international instruments, the responsibility for minority protection lies primarily with their state of residence. If this state fails to fulfil its responsibility, whether unwilling or unable, the subsidiary responsibility lies with the international community as a whole, *not* the kin-state in particular. States therefore have a dual responsibility: firstly to protect and promote the rights of minorities under their jurisdiction; and secondly to act as responsible members of the international community with respect to minorities under the jurisdiction of other states.

We must recognize the interest of the kin-state in protecting related minorities abroad, but ensure that this is pursued through constructive engage-



ment rather than unilateral interference. In this way, the kin-state's interest can be utilized as a means to stimulate efforts to improve the general level of minority

Effectively mobilizing international efforts requires accurate risk assessment and early warning for minority-related conflicts. Recognising the need to

“We must ensure the kin-state's interest is pursued through constructive engagement rather than unilateral interference”

protection in both states. Crucially, in all cases, kin-state support should only be offered with the full cooperation and consent of the host-state in which the minority resides, to avoid escalating tensions. Bilateral treaties and intergovernmental commissions between committed states have proven effective means to facilitate such constructive engagement by the kin-state; providing a legitimate means for active involvement of the kin-state enables improvements in minority protection while alleviating concerns and suspicions on both sides.

For the wider international community, efforts to improve minority protection by building domestic state capacity are the primary means to implement R2P in this context. But international and regional organizations must also strengthen the tools and political will to implement timely and decisive collective responses when states are manifestly failing to protect their citizens—the third “pillar” of R2P. If the international community, and in particular the UNSC, fails in this responsibility, there is a danger that kin-states will take matters into their own hands, recalling Vietnam's 1979 intervention to protect its kin in Cambodia. Indeed, with a weak or uncertain third pillar of R2P, to condemn unilateral kin-state action in all cases would be to tacitly endorse international inaction in some cases.

strengthen and improve the coordination of these mechanisms within the UN system, in his 2009 report on R2P the Secretary-General proposed establishing a joint office on genocide prevention and R2P, bolstering the Office of the Special Adviser on the Prevention of Genocide. However, these initiatives will need to overcome political resistance from member states desperate to avoid such scrutiny. The Secretary-General's report also rightly emphasizes the need to ensure the two-way exchange of information and analysis with regional organizations, bringing local knowledge and perspectives to UN decision-making. Inputs from other institutions should also be incorporated, such as the Committee on the Elimination of Racial Discrimination, which acknowledged the link between discrimination and ethnic conflict by setting up an early warning mechanism for cases in which international peace and security may be at risk. Although it issued urgent warnings in the contexts of Yugoslavia and Darfur, these concerns were not acted upon until violence erupted. This underlines the need to ensure that effective early warning mechanisms are complemented with a strong capacity to implement timely, collective responses when necessary, if we are to avoid the risk of further such atrocities in future.

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