



**CHAPTER 6**

**A CONTRIBUTION TO  
RULES-BASED INTERNATIONAL ORDER:  
CODIFICATION OF KIN-STATE PROTECTION  
FOR INTER-STATE RELATIONS**

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# A CONTRIBUTION TO RULES-BASED INTERNATIONAL ORDER: CODIFICATION OF KIN-STATE PROTECTION FOR INTER-STATE RELATIONS

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## **Abstract**

Based on the fact that there live their kinsmen outside their borders, kin-states act inevitably attentive to the treatment of their kinsmen in home-states, where they are the citizens of the latter. The Balkans is a typical case, given historical legacies in the region. In such a political environment, policies of kin-states on their kinsmen living in other states are often prone to negative interpretations, such as violating the principle of non-intervention in internal affairs, which constitute a problematic for the international order affecting inter-state relations and good-neighbourliness. This paper seeks to provide food for thought for possible formulations of internationally accepted norms for states to follow policies concerning their kinsmen in other states without being accused of such non-compliance of the said principle. In IR, in addition to the unilateral approach, the treatment of kinsmen has gradually become a subject of either bilateral or multilateral regulations, mostly within the realm of minority rights' law. Against this background, kin-state protection stands as a promising norm to formulate a multilateral instrument binding for signatories to follow in their policies towards their kinsmen in full compliance with the principle of non-intervention in internal affairs. Added to relevant human rights and non-discrimination norms, such a codification would definitely need certain concepts to be focused on, mainly the promotion of a culture of living together, which would encompass accepting differences as richness rather than threats, inclusiveness and social cohesion, along with the issues of collective identity building. Thus, as to methodology this paper focuses on social constructivism given its emphasis on such socio-psychological and ideational factors without rejecting the realist parameters ruling the foreign policies of states. In that regard, to build on good practices, the paper examines the issue in comparison with the above mentioned regulations as appropriate, with a view to asserting that the codification of kin-state protection, possibly in a multilateral instrument, would better serve the inter-state relations and good-neighbourliness in the Balkans which might in return contribute to efforts for peace, security, stability and prosperity in the region and beyond.

## **Keywords**

*Kin-State Protection, Non-Intervention in Internal Affairs, The Balkans, Social Constructivism, Rules-Based International Order*

## **Introduction**

In the globalised world at present there exist a great number of challenges in respect of international relations. Such challenges can be observed in a rather wide spectrum ranging from those linked to conventional threats and risks, such as wars, armed conflicts, terrorism and cyber crimes, to the others mainly linked to environmental and ecological degradations, coupled with societal ones, such as food and waters scarcity, energy crises and irregular migration, etc. In such an environment, possible directions of present global transformations in international relations heavily depend on what sorts of measures could be taken in the period ahead.

Given these transboundary challenges, be they considered as security risks or threats, the need for joint or at least concerted efforts is felt increasingly for peace, security, stability and prosperity, at both regional and global levels, all of which in principle would be facilitated by a rules-based world order. Naturally, in such an order, the rules to be imposed should not be those of not the *hegemon*, but of universal nature where all democratic countries can contribute to, in cooperative frameworks, be them bilateral or multilateral.

In this process, fostering inter-state relations through cooperation and non-conflictual ways, respecting common norms and principles, remains as a key to the rules-based order. Naturally, there are several sensitive areas susceptible to conflicts in inter-state relations, one of which is the treatment of kinsmen in their states where they live as citizens.

Many countries in the European continent are diverse, be they in ethnical, linguistic or religious terms and in their territories live communities enjoying a collective identity which is originating from those with titular groups in other states (kin-states). Notably for inter-state relations among neighbouring states, it is a fact that kin-states consider such members/ groups of communities living in each other's territories as their kin/kinsmen for various reasons. Their attentive behaviour for the treatment of those kinsmen in respect of non-discrimination and the protection of their fundamental rights and freedoms, as well as for their well-being, is inevitable. Yet, the conduct of acts and policies of such kin-states towards those populations in other states is a delicate issue for inter-state relations which might be conflict-prone if not handled with care. In fact, a basic document prepared by the OSCE High Commissioner for National Minorities (HCNM), entitled "*The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations*" acknowledges this phenomenon: "When states unilaterally take steps to defend, protect or support what they describe as "their kin" outside their sovereign jurisdiction, there is a risk of political tension or even violence" (HCNM Recommendations, 2008, p.1).

In such a political environment, policies of kin-states concerning their kinsmen living in other states (hereinafter called home-states) are often prone to interpretations, such as violating the principle of non-intervention in internal affairs, which constitutes a problematic for the international order affecting inter-state relations and good- neighbourliness. This study seeks to provide food for thought for possible formulations of internationally accepted norms regarding the policies of kin-states to follow policies for their kinsmen in other (home) states without being accused of such non-compliance of the said principle which is enshrined in the UN Charter (Article 2/7).

As to the methodology, the study focuses on this problematic in a structured way, touching upon *inter alia* terminology, history, practices and theory. To begin with, the study is not about the protection of minorities which has indeed an extensive literature. According to the established international norms and principles, it is primarily those called "home-states" which should take measures to protect minorities living in their own countries as their citizens. In this respect, whether a minority status in national legislation is granted by a home-state to its citizens whose origin is different from the titular population of that state, is a prerogative of this home-state, according to the case law of the European Court of Human Rights (ECHR). The minority studies thus focuses on the policies of those states where persons recognized as minority live in their territories and other states' policies directed to those minority groups who might also be considered their kinsmen of those states do not necessarily fall into the scope of such studies.

Therefore, complementary to these studies, this study will be about how other states (kin-states) can follow policies, in compliance with the principle of non-intervention in internal affairs, for the betterment of their kinsmen who are those living in other states (home-states) as the citizens of the latter, regardless of whether those kinsmen are also entitled with the minority status in their home-states.

Having clarified the preceding, as to the concepts which are the focus of the study, namely kinship, kinsmen, kin-state and kin-state protection, the study will provide a review of the relevant literature. Further on, the focus will be on how states act for the protection of kinsmen, bilaterally and multilaterally, in contrast to acts of unilateralism, with a special emphasis on the Balkans as a test case. Two reasons for choosing the Balkans can be attributed to this. Firstly, given its history and demographic situation the Balkans stands as a region where almost all states have their kinsmen living in its neighbours or even in other states within the region.

Secondly, it is a region where such a presence of kinsmen poses certain effects on Türkiye's politics in its inter-state relations in the region, just like other regional countries' policies. Given the presence and the rule of the Ottoman Empire in the region for more than half a millennium, the Balkans has always been home to millions of Turkish origin scattered over several states. Inevitably, this legacy was embraced by the Republic of Türkiye upon its establishment in 1923. The Turkish kinsmen living in the states in the region were naturally focused by Türkiye when it enacted bilateral and multilateral agreements with those Balkan states following its proclamation. Furthermore, the diasporas belonging to those kin-communities who emigrated to Türkiye have always been influential in its politics. All of these peculiarities unavoidably transform the issue of kin-state engagement pertinent in inter-state relations of Türkiye with the countries in the Balkans and in the Turkish foreign policy in general.

In view of these, the Balkans will be the case to be reviewed as regards kin-state policies and their effects on inter-state relations. Based on this review the study will try to make a workable proposition for kin-state protection which can be instrumental in alleviating the risk of conflicts in inter-state relations.

Throughout the study, as the theoretical framework the study will benefit from the social constructivist approach in analysing the issue with a view to offering a workable formulation to contribute to the peace, security, stability and prosperity in the Balkans which appears to be particularly relevant for this theoretical researches, given the influence of socio-psychological factors in the formulation of foreign policies in the regional states.

## **Terminology Review of Basic Concepts: Kinship, Kinsmen, Kin-state and Kin-state Protection**

### **Kinship, Kinsmen**

As argued, the term "kin" is considered to be a concept that is heavily contested due to the lack of a commonly agreed definition in the related literatures, be it in law or academia (HCNM recommendations, 2008). In that sense, the kinship refers to a state of sharing the same kin. However, what then defines a kinship? Generally speaking, this term refers to bonds of an ethno-cultural-linguistic affinity. It is also asserted that "Kinship is understood not only in ethno-national, but also in more general political, linguistic, cultural and historic terms" (Sabanadze, 2006, p. 244).

In simple terms, one can then argue that "kinship" refers to a presence of close connection among persons who are considered to share or enjoy a collective identity stemming from various commonalities. In the same vein, the term "kinsmen" can refer to those persons who share and enjoy such a kinship, based on such close affinities and bonds through a collective identity. In this context, the term "kin communities" will also be used interchangeably with the term "kinsmen" in the study.

As to the *acquis* developed in the Council of Europe, the leading regional organisation in the continent, in which such issues, including the law and protection of national minorities have been formulated in respect of standard and norm-setting in Europe, the main criteria in defining “kinsmen” is related to ethnicity which is defined primarily on the linguistic basis, namely the presence of the same mother tongue.

This definition has even been developed throughout the years with the evolution of the law of minority rights. Today, persons can identify themselves through self-identification, rather than being imposed by others. In fact, the Venice Commission of the Council of Europe in one of its reports related to kin-state protection in 2001, made a similar reference, according to which is that the term “kinsmen” in a state is about a minority population, the members of which share close affinities with another state (kin-state), differing from their own state to which they belong as citizens (Venice Commission, 2001). Here, too, one can clearly see the importance of collective identities. In fact, all these make the social constructivist perspective (Ulusoy, 2007) more relevant for this study which will focus on this theoretical approach in the following sections.

### **Kin-states**

In view of the above discussion on the term “kinship and “kinsmen”, what can then be attributed to the term “kin-state”? Following the above conceptualisation, the term “kin-state” can be referred to a state which considers itself sharing close affinities and bonds, namely the same kinship, with certain populations living outside its territory as its kinsmen. In practice, the definition of such kinship varies, depending on the choice of the “kin-state”, as constructed self-identification matters in such policies as well.

Kinsmen normally live in the neighbours of a kin-state. It is argued that “the term *kin-state* refers to a state that represents the majority nation of a trans-border ethnic group whose members reside in neighbouring territories” (Waterbury, 2008, p. 1). However, evidently, there are states whose kinsmen not exclusively live across their borders but beyond. The Bulgarian kinsmen living in Ukraine or the Turkish kinsmen living in the Balkans beyond Bulgaria and Greece attest to this fact. This is a consequence of historical legacies as to the transformation of nation states.

### **Kin-state Protection**

As stated earlier, kin-states feel attachment to their kinsmen outside their territories in other states in which these people reside enjoying the citizenship of those states. In the literature, the latter is referred to as “home-state” (Venice Commission, 2001; Udrea et al., 2023) whereas the former is also referred to as “homeland” (Nagle, 2013; Subašić, 2023) of the kinsmen, in addition to the term “kin-state”, which is the most common use in the literature (HCNM, 2008; Venice Commission, 2001; Sabanadze, 2006; Udrea et al., 2023; Waterbury, 2010).

As one scholar argues, “a State becomes a kin-state when political and cultural elites perceive a group of individuals residing in other States as members of one and the same ethno-national or cultural community”, over which they consider that they ‘belong’ together and “assert that their condition must be monitored and their interests protected and promoted by the state” (Brubaker, 1995, p.110). This definition indeed covers both the relation between a kin-state and its kinsmen and the reason for the policies followed by kin-states for their kinsmen. Such policies followed by kin-states are not novel in Europe. They are related to the emergence of nation-states (Sabanadze, 2006; Udrea et al., 2023; Waterbury, 2010).

The difference of scope between minority protection and kin-state protection is already mentioned in the introduction. The presence of a group of people residing and holding the status of citizenship in a state (home-state), who is considered different in origin from the titular population of this state can be the subject of both studies if they are granted by the home-state with a minority status while they are also considered as the kinsmen of another state (Kin-state) by the said state. In this sense, minority protection and kin-state protection deal with the two sides of the same coin.

It is argued that “kin-states actively cultivate ties to their kinsmen, based on shared cultural and national kinship, and take on a role in the protection and preservation of their external kin (kinsmen)” (Waterbury, 2020, p. 1). This refers to a sense of constructed responsibility for the kin-state towards its kinsmen. As argued, the reason for such policies of kin-states for the well-being of their kinsmen derives from “a shared culture and/or common history” and this creates a self-imposed obligation on the kin-state itself to engage with the home-state (Udrea et al., 2023).

The study of kin-state politics deals with certain questions such as why, how, and to what extent kin-states implement such a policy, with a particular emphasis on the consequences of these policies. The OSCE Bolzano Recommendations (2008) acknowledge “common identity or heritage as minimal grounds for a legitimate interest by the kin-state”.

Here, one should also make a distinction between citizens of a state living in other states and those kinsmen of this same state (kin-state) resident in other states without the citizenship of their kin-state. Those covered in the first category do not relate to the realm of kin-state politics as they enjoy the protection of their own state (kin-state) as, under the aegis of “consular protection” that is outside the scope of this study.

The policies followed by kin-states for the protection of their kinsmen in home-states were in the past mostly linked to conflicts. This was followed by an evolution towards peaceful initiatives, coupled with legislative acts and bilateral agreements (Sabandze, 2006). As one scholar rightly argues, kin-states can play important roles “for confronting oppressive relations, promoting human rights, and enhancing international peace and cooperation” (Vasilev, 2019, p. 407). In the related literature, policies of kin-states towards their kinsmen are labelled as either “activism” (Csergö & Goldgeiger, 2013; Sabanadze, 2006; Vasiliev, 2019), “involvement” (Caspersen, 2008; Udrea, et al., 2023), “intervention” (Koinova, 2008; Kemp et al., 2011), “engagement” (Smith & Udrea, 2021; Waterbury, 2020) or “protection” (Venice Commission, 2021; Waterbury, 2020), depending on the scope of such studies.

As the focus of the study is linked to facilitating to create norms that would both avoid interpretations or accusations directed to a kin-state’s policies by a home-state as intervening in its internal affairs and help those kin-states to assist their kinsmen for the protection and enjoyment of their fundamental rights and freedoms without negative discrimination but with positive statute rights (positive discrimination), the term “kin-state protection” will be used. Nevertheless, as appropriate, the term “kin-state engagement” will also be used interchangeably with “protection”. As one scholar rightly states, protection as a term intrinsically lies with the terminology of human rights as it refers to acts and policies to be initiated by states to honour their state responsibilities towards their citizens regardless of their origin, as stipulated by universal rules and norms valid in the field of human rights (Stamatopoulou, 2002). According to relevant international law, citizens of a state whose origin are different from the titular group of a said state need to be protected by the said state, that is usually referred to as the home-state (Udrea et al., 2023). Here, the kin-state protection plays an addition role in enabling kin-states to contribute to these efforts for the betterment of the living conditions of their kinsmen living in those home-states.

### **The Evolution of the Kin-State Protection in History: The Balkans as a Case**

The interest shown by states to their kin-people is not a new phenomenon in Europe. Yet, the emergence of nation-states in the history has elevated this interest. Based on the fact that there live their kinsmen outside their borders, kin-states act inevitably attentive to the treatment of their kinsmen in those host-states, where they are the citizens of the latter. The Balkans is a typical case, given historical legacies in the region.

The European history and particularly the Balkans are testimony to several cases where members of a certain kin population were forced to stay in different states as minorities, often due to territorial changes among states after wars or armed conflicts. The presence of such populations (kinsmen) living in other states (home-states) as their citizens while having bonds of kinship with other states (kin-states) in this region is a consequence of history there. The dissolution of

empires and kingdoms after World War I and during the inter-war period, which was followed by the collapse of the Socialist Federal Republic of Yugoslavia at the end of the Cold War have led altogether to such a complex reality. The Balkans is full of such populations whose members live in their home-states as a minority in respect of the titular population in those states. They are either conferred on minority rights as officially recognized (national) minorities, or live without such rights but benefiting from certain status rights/positive discrimination (Udrea et al., 2023; Smith & Udrea, 2021).

In this context, the evolution of kin-state engagement coupled with protection has certain characteristics. Treatments of such populations, either called kinsmen or kin minorities, in Europe and in the Balkans in particular has evolved from a security-oriented approach, such as 'minority guarantees' as witnessed in territorial settlements following World War I, to policies focusing on the protection and promotion of fundamental rights and freedoms after World War II and in the post-Cold War era particularly (Udrea et al., 2023). The former was a period where those regulations aimed for peace in inter-state relations securing the borders of states. Yet, they had little effects in countering discriminatory and assimilation policies by home-states towards their citizens of different origin, i.e. the kinsmen of other states (kin-states) (Udrea et al., 2023).

In the aftermath of World War II was a significant shift towards a novel conception in the kin-state policies and the protection of kinsmen. Home-states were expected to provide protection and non-discrimination to their citizens, regardless of their origin. Additionally, the multilateral codification efforts were intensified in this respect regionally or globally, such as the 1946 Universal Declaration of Human Rights (Waterbury, 2010).

In the aftermath of the Cold War, the end of the totalitarian regimes in eastern Europe including the Balkans, coupled with ethnic wars in the region, has inevitably brought forward increased concerns over the protection of minorities and kinsmen which led to the Balkan states to be more engaged in the protection of their kinsmen (Venice Commission, 2001). In fact, as one scholar asserts, "the emergence of a specific kin-state literature has been intimately tied to developments within post-communist Europe and the former Soviet Union and to the search for analytically fitting tools with which to understand them" (Waterbury, 2020, p.2).

Faced with ethnic tensions and conflicts in the Balkans during the 1990s, international organisations became more engaged, too, in the pursuit of codification for explicit standards of minority and kin protection by enforcing home-states to do more in that regard. In this process, the early years of the new millennium witnessed a strong enthusiasm shown to this area by the countries of the former Communist Bloc as was a requirement for their adhesion to Euro-Atlantic structures and the EU membership in particular (Waterbury, 2008). Here, it is noted that "This was hailed as a clear sign of democratisation and an indication of the successful, if modest, diffusion of liberal multiculturalism in the post-communist states" (Kymlicka, 2007, p. 25).

Yet, compared to the responsibilities of home-states in such countries, there was less attention to kin-states policies for the protection and promotion of the enjoyment of fundamental rights and freedoms of their kinsmen without the risk of inter-state conflicts. Many scholars acknowledged that the international legal space governing the kin-state politics was relatively undeveloped, mostly due to the fact that this domain was heavily securitised (Smith & Udrea, 2021).

### **Analysis of Kin-State Protection in Practice**

In the preceding parts of the study, it is explained that states follow policies towards their kinsmen in other states (home-states) for various reasons. This is a sensitive and delicate issue to be handled as it could be easily interpreted, perceived or manipulated as an act of intervention in internal affairs of other states where such kinsmen live. Helping the betterment of the life of its kinsmen while maintaining peaceful and stable inter-state relations with the home-state is the ideal state of affairs. Yet, the history shows that it has never been a easy task in Europe and in the Balkans in particular.

Kin-state engagement has been a subject of studies from either legal or political perspectives in the literature. The former has focused more on its aspects linked to international intervention and protection (Kemp et al., 2011) or on its relevance in terms of minority protection law (Bloed & van Dijk, 1999; Venice Commission, 2001; Palermo & Sabanadze, 2011). Some others have studied more on the political aspects of such kin-state engagement (Subašić, 2023; Waterbury, 2020).

Conceptualisation of kin-state politics lies with the state reflexes dominant in their foreign policies which were impacted by the conditions of the time over the history. The main determining reflex of states in such politics is the state behaviour towards their citizens whose origin are different from the titular population in their own countries. The existence of groups of populations in home-states who were separated from their kin-states has long been considered problematic for inter-state relations and international/regional security. For many years in the Balkans' history, for states, hosting citizens of different origins has been regarded as a source of potential threat or at least a security risk. This has led to the policies towards such individuals and groups in which the enjoyment of their fundamental rights and freedoms was not fully welcomed while negative discriminations towards them continued. As argued, these reflexes also stem from the desire of nationalist projects seeking for ethnically "pure" states. Such desires for "purity" have made home-states more concerned of the perceived threat to be posed by such peoples of different origin in their own lands who are linked to their titular kinsmen in another state (Nagle, 2013)

Naturally, these policies were not helping for the loyalty of such people towards their home-states. In that regard, the policies of kin-states towards such people, considered as their kinsmen, were sometimes perceived or portrayed as irredentist or secessionist by home-states. This further exacerbated the said mindset leading to a vicious circle, in which kin populations in such states suffered more and inter-state relations became prone to conflicts.

This above problematic is closely linked to "securitisation". In the conduct of foreign policies, if and when "securitised", any issue may turn to be a security matter. As developed by Barry Buzan et al. (1998), one can talk about the securitisation of an issue, once "the issue in question is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bonds of political procedure" (Ulusoy, 2007, p. 51).

This sort of securitisation of the relations between a kin-state and its kinsmen has unavoidably impacted the treatments of such kinsmen living in home-states in the Balkans. In this process, kin-state politics were regarded as a "subversive tendency challenging the dominant architecture of the [nation] state system", rather than something associated with "positive conceptions of what justice and democracy require" (Bauböck, 2000, pp. 12–13).

The abovementioned conceptualization inherent in the mindset of states seems to have changed over the years for an inclusive and human rights approach towards those kin minorities in their lands. This was thanks to the development of norms and standards for non-discrimination and for the protection of fundamental rights and freedoms with the European legal space in the course of the integration process of those states in Euro-Atlantic structures (Waterbury, 2008).

As one prominent scholar points out, "there is no internationally recognized 'right' or 'obligation' of a state to protect its kin minorities in other countries" (Sabanadze, 2006, p. 245). Yet, those who consider themselves as kin-state have nevertheless pursued policies in different forms, be they unilateral, bilateral or multilateral, for the sake of kin-state protection.

Today, one can talk about a number of different types of policies that are conducted by kin-states towards their kinsmen. Sabanadze (2006, p. 248) classifies them as follows: "nationalist", "geopolitical" and "normative". The nationalist ones are those influenced by internal political considerations and ideologies. The geopolitical one is related to a policy of a kin-state instrumentalising its kinsmen in a home-state to influence or pressure that state for its geopolitical interest, such as its political regional standing. The third is the "normative" one, which stands as the least problematic type of kin-state politics which focuses on better promoting the treatments of kinsmen in home-states, through cooperative measures conducted bilaterally or via relevant international bodies (Sabanadze, 2006).



As one can see, the former two are conflict-prone for inter-state relations whereas the third “normative” one seems to be the ideal for the sake of both inter-state relations and their kinsmen. Yet, even in this type, the conduct of kin-state politics should be handled carefully so that negative impacts could be avoided in inter-state relations between the kin-state and the home-state. This type is similar to what this study adopts, namely the human rights-based approach. As explained earlier, in this approach the kin-state aims to assist its kinsmen with a view to contributing to their well-being through the protection and promotion of fundamental rights and freedoms, including the better enjoyment of positive discrimination while preventing negative discrimination, without harming or endangering friendly inter-state relations with the home-state.

In such policies the kin-state can also instrumentalize what is called “leverage support” (Nagle, 2013, p. 299). For example, a kin state can use diplomatic tactics toward home-states for the better treatment of their kinsmen. In this process, international organisations can be also instrumentalized for certain actions to be taken in favour of their kinsmen. As argued (Nagle, 2013; Waterbury, 2008), the membership to the EU and NATO contained a conditionality for those states to fulfil guarantees to protect the rights of such groups.

These human rights-oriented policies have several categories in practice. Education, religious services, economic supports, culture and arts are the main typical areas where a kin-state can use its policies. These are called “benefits-based” kin-state policies, focusing on technical aspects (Sabanadze, 2006, p. 248; Dodovski et al., 2023). The Bolzano recommendations categorize them as follows: “benefits to be enjoyed within the territory of the kin-state” and “benefits to be enjoyed in the home-states” (HCNM recommendations, 2008, p. 9). To cite an example, scholarships at educational institutions in the kin-state is a typical support for the former category whereas those assisting “mother tongue education in the home-state (e.g., textbooks, scholarships, training for teachers), as well as assistance to local NGOs promoting the identity of kinsmen” are part of the second category (HCNM recommendations 9 and 12-13, 2008).

This preceding review illustrates why and how the kin-state protection has been performed in the Balkans over the history. Here one should also categorize the instrumentalisation of kin-state politics in 3 methods, i.e. unilateralism, bilateralism and multilateralism for the ease of a better analysing.

## **Methods of Kin-State Protection**

### **Unilateralism:**

As already explained earlier in this section, the policies conducted at a unilateral basis by a kin-state for kin-state protection are the most known, but most confrontational at the same time as observed in the history. The Balkan states have either specific laws (such as Bulgaria, Greece, Hungary, Romania and Slovenia) or provisions enshrined in their constitutions (such as Croatia, Hungary, Romania and Slovenia). The problematic part in such unilateralism is first the intention of the kin-state as stated before. Yet, moreover, even if the intention is not irredentist or politically disruptive for the home-state, the fact that such unilateral measures should also be subject to certain criteria has become an interest of international community in the field. Shared affinities in terms of culture, ethnicity, language or religion and shared history are incentives to states to show an interest for the well-being of their kinsmen in other states. Yet, currently in international law, no entitlement to a right under international law can be exercised by a state as a kin-state to impose its jurisdiction over its kinsmen who are citizens of other states (home-states) (HCNM recommendations, 2008).

### **Bilateralism:**

The first response to unilateralism was the bilateral approach to the protection of kin populations that primarily came into practice at the time of League of Nations (Venice Commission, 2001). Similarly, after the end of the Cold War and the dissolution of the Federal Socialist Republic of Yugoslavia in the Balkans several bilateral treaties were signed among the countries in this pursuit (specific bilateral treaties on the treatment of minorities/kinsmen were signed by almost all Ex-Yugoslavian states and Hungary and Romania in the post-Cold War period. Additionally, some bilateral treaties on the establishment of diplomatic relations and friendly relations, consisting of certain provisions on those communities, were also signed, including states like Türkiye, Albania, Bulgaria, Moldavia, Greece mostly in that period, too.)

As explained above, the optic has been changed from security-focused to the protection and promotion of fundamental right and freedoms. Obviously, analysing these treaties in depth falls outside the scope of the study. Yet, it would suffice to underline that these treaties tend to focus on certain “classic” human rights and freedoms, primarily in the fields of language, culture and identity, religion and education, as well as media, including political liberties, such as the freedom of expression, association and participation in political life and elections (Udrea et al., 2023). Concerning the bilateral approach, it is argued that added to the protection and promotion of the above-mentioned core rights and freedoms of their respective kinsmen, bilateral instruments may furthermore contribute to overcoming the complaints of intervention in internal affairs between states, including accusations of non-respect to their territorial sovereignty and unity (Otsuki & Turner, 2010).

These treaties *inter alia* form joint commissions mostly to work for the protection of kin populations between signatory home-states and kin-states. Naturally, political backing by respective governments is essential for the effective functioning of such bodies. In fact, the European human rights and minority monitoring structures, such as the Advisory Committee for the Framework Convention of National Minorities, have always promoted the signing of such legal and administrative instruments at bilateral levels (Udrea et al., 2023).

### **Multilateralism:**

In the post-Cold War era the kin-state politics has gradually become a subject of interest for such states, not only for their kinsmen in other states in the region and beyond, but also for their aspirations to join the Euro-Atlantic structures, both of which are closely linked to the friendly inter-state relations as a condition for the stability, peace and security in the Balkans and in the Euro-Atlantic region.

In the post-Cold War era, two main multilateral conventions came into existence on the normative standards for the protection and the better treatment of minority populations including, of course, kinsmen, namely the European Charter for Regional or Minority Languages (ECRML) and the Framework Convention for the Protection of National Minorities (FCNM) which were adopted by the Council of Europe in 1992, and 1995 respectively. These two conventions focus on the treatments of those recognized by home-states as national minorities. Thus, they are about the responsibilities and undertakings of the signatory home-states for their citizens of different origin (kin populations). The implementations of such responsibilities are monitored by the treaty bodies of these Conventions. Their monitoring bodies regularly invite state parties to these conventions to engage more in cooperation, be it bilaterally or multilaterally (Udrea et al., 2023). Prior to these conventions was the European Cultural Convention which was prepared under the aegis of the Council of Europe in 1954. Under this treaty, promoting cultural diversity and mutual understanding is encouraged among the peoples of Europe with a special emphasis on linguistic, cultural and historical studies (Udrea et al., 2023).

Beside these multilateral conventions, two important international documents have been developed in the multilateral setting over the years by the relevant bodies of the Council of Europe and the OSCE, relating to the regulation of unilateral kin-state politics and legislation. As pointed out, in this field the EU has not so far developed relevant standards and therefore, “relies on the normative framework developed by the Council of Europe and the OSCE” (Udrea et al., 2023, p. 10).

The first one is the 2001 “Report on the Preferential Treatment of National Minorities by their Kin-State” carried out by the European Commission for Democracy through Law (Venice Commission), an advisory body in the legal issues in the Council of Europe. This report was prepared in reply to the requests lodged by Romania and Hungary about their national legislations on the kin-state protection. As argued, these laws raised “the need for clear and specific international norms that would guide states in their treatment of kin-minorities abroad” (Sabanadze, 2006, p. 245).

The Report, having acknowledged “the importance of kin-state engagement for the protection of kin minorities abroad” (Venice Commission 2001, Section D), drafted 4 norms as to the limits of unilateral kin-state intervention (Venice Commission, 2001, Section E). According to these norms, unilateral policies aiming for the protection and promotion of the fundamental rights and freedoms of their kinsmen, are recommended to be implemented by respecting the following principles: “ a) the territorial sovereignty of states; b) *pacta sunt servanda*; c) friendly relations amongst states, and d) the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination” (Venice Commission, 2001, p.16). As a non-binding report, the member states were nevertheless encouraged to respect those principles in the conduct of their kin-state politics.

Seven years later, this time, an OSCE body, the High Commissioner for National Minorities (HCNM) developed a set of recommendations for the OSCE participating states (members). Named as the Bolzano/Bozen Recommendations, they underline the following in this regard:

Kin-states must refrain from taking unilateral measures that have the intention or effect of undermining the territorial integrity of home-states and must not neglect the minority groups living on their territories at the expense of kin minorities abroad (or a particular kin minority in one country). Conversely, home-states should not obstruct the enjoyment of kin-states’ benefits as long as they comply with the principles and standards of international law (HCNM Recs. 10 and 15).

The importance of this document lies also with the rule of having a consent from the home-state by the kin-state before its kin-state measures directed on its kinsmen living in the said home-state. According to this rule as underlined in the Recommendations, such a consent would be stated either clearly or tacitly.

As to the works in the multilateral fora regarding the unilateral policies of kin-states to protect their kinsmen, the cases of atrocity crimes against such populations have also been a subject of scrutiny in international organisations, particularly the UN. As argued, atrocity crimes, such as crimes against humanity, genocide and ethnic cleansing committed by a home-state against its citizens who may be the kinsmen of another state, i.e. kin-state, call on the direct attention of the latter. A “kin-state” can offer assistance for the protection of its kinsmen facing such crimes. Yet, unilateral intervention by kin-states in such cases “can obviously raise tensions with host-states, endangering international peace and security” (Otsuki & Turner, 2010, p. 1).

This problematic was *inter alia* addressed at the UN World Summit in 2005 which resulted in an outcome document adopted by the General Assembly. Paragraphs 138 and 139 marked the norm “responsibility to protect (r2p)”. Under this norm it was acknowledged that protecting its people residing in its territory against atrocity crimes lies with the said state in question (para. 138). Yet, as a human rights safeguard, a clause of international responsibility in a collective manner is stipulated for UN member states to help each other through various means if the situation in the state in question becomes unbearable due to such crimes. The measures to be taken would then lie with the UN Security Council and in accordance with the United Nations charter (para. 139) (UN World Summit Outcome document, 2005).

This norm can be implemented in a three-pillar process. The first pillar refers to the responsibility of every state to protect its own population from such atrocity crimes. Under this pillar, a state where there is such a situation might be urged to take measures to remedy these violations of human rights. In case of a failure on the part of the state in question, the second pillar may be called for technical assistance by the international community to help the said state. Under this pillar international diplomatic efforts can also be initiated to alleviate the severity of the situation. However, should this yield no results on the home-state in question, then comes the third pillar, namely the possible use of force and coercive measures by the international community which can only be authorized under the UN system in respect of the relevant articles of the UN Charter. As to the role of kin-states in such situations, it is clear that they can take unilateral measures only in pillar one. The second pillar activities are normally taken by a kin-state if the UN system calls for such measures. Yet, the third pillar-related acts cannot be initiated unilaterally by a kin-state as such coercive measures are normally formulated jointly once and if the UN Security Council resolves in this direction (Paris, 2014; Global Centre for the Responsibility to Protect, n.d.).

### **Summary of the Methods in Practice**

The above analysis has provided the readers with an understanding of why and how kin-states engage in kin-state politics to protect their own kinsmen living in other states (home-states) with a particular emphasis on the situation in the Balkans. As mentioned, the focus of this study is how the conduct of such policies is realized in conformity with the UN principle of non-intervention in internal affairs. Thus, such policies need to be carefully conducted for the sake of good inter-state relations.

As seen in the history, unilateral acts of kin-states may cause conflicts in inter-state relations. It is a fact that unless coordinated with the home-state, kin-state engagement risk causing troubles to the kin population which might be prone to charges of treason and disloyalty leading to anti-minority sentiments in the home-state. Additionally, such kin-state policies may be exploited for political and ideological purposes, in such manifestations as instigation of nationalist tendencies and/or radicalisation of such kin-people (Sabanadze, 2006).

Under such circumstances, it is also possible that kinsmen in a targeted home-state may not be in favour of such engagement by their kin-state as they might fear it due to security concerns deriving from such an activism. Furthermore, as witnessed in practice, kin-state policies might encourage home-states to weaken their commitments towards the kin populations in their territories, even if they are their citizens. Such tendencies risk counter-productive for their rights and freedoms (Udrea et al., 2023). All this shows clearly that kin-state engagements need to be carefully conducted.

Given all these difficulties inherent in the conduct of kin-state protection, normative regulations of such policies have increasingly been encouraged by the international community (Udrea et al., 2023). As summarized above, bilateral and multilateral methods to regulate kin-state policies for the protection of kinsmen have all their advantages and disadvantages. Bilateral agreements between kin and home-states in respect of the protection of kinsmen in both countries can produce more targeted measures as they are mostly tailor-made. Venice Commission (2001) acknowledges that should bilateral treaties provide specified commitments on sensitive issues, they become more effective.

Despite these, bilateral agreements are mostly politicized and complicated to function regularly as the inherent inefficiency of joint commissions tasked to deal with kin-state policies between those states. More inherently, the use of reciprocity norm is in nature contradictory to the responsibility of a state to protect its own citizens, even if some of them are considered kinsmen of another state. Thus, imposing conditionality on the protection of such groups by the home-states due to reciprocity is not welcome in the modern international human right law. For that reason, it is noted that “bilateral approach should not undercut the fundamental principles laid down in multilateral instruments in human rights” (Stamatopoulou, 2001, p. 75).

On the other hand, the multilateral methods provide more normative norms in line with the relevant international law and regulations. At present, in the European human rights space, two basic multilateral treaty instruments have so far been developed in the context of protecting and promoting the rights and freedoms of individuals recognized as national minorities (The Framework Convention for the Protection of National Minorities and The European Charter for Regional or Minority Languages). Both are the product of the arduous works conducted in the 1990s within the Council of Europe. In essence, their provisions focus on preventing negative discrimination and promoting positive discrimination in the enjoyment of human rights for those recognized as a national minority. The issues regulated are generally related to mother tongue learning, religious worship and cultural rights and freedoms. These instruments are mainly implemented within the framework of the minority protection law (Udrea et al., 2023; Sabanadze, 2006; Waterbury, 2020).

Yet, the present conventions seem to suffer two inherent problematics. First, their provisions are regulatory but not fully legally binding for the contracting parties. The state parties are expected to improve their national legislation and implementations in view of the conclusions of the advisory committees of these conventions. Second and more importantly, as they focus on minority rights

(mostly kinsmen of a kin-state in the legal space of the Council of Europe) in home-states and the conducts of these home-states towards the members of those recognized by the said home-states as national minorities, they do not regulate neither the role of kin-states in such protection, nor what should be done to comply with the principle of non-intervention in internal affairs.

Despite these loopholes, multilateral regulatory works have yet led to the formulation of certain norms to advise kin-states to follow in their kin-state policies that would also be conducive to avoid problems in inter-state relations. These are as stated, namely, the Venice Commission of the Council of Europe report on the treatment of kin minorities (kinsmen) by their kin-states and the Bolzano recommendations of the OSCE High Commissioner of National Minorities (HCNM). Both have produced certain recommendations for member states that can be followed in their kin-state politics. Yet, all those which are directly related to how kin-states should act in their policies, such as the 4 principles developed by the Venice Commission and the consent condition of the HCNM, are nevertheless non-binding and advisory. As pointed out, such non-binding documents of the Council of Europe and the OSCE High Commissioner on National Minorities in fact provide a good sum-up of what has already been achieved normatively and guide their conduct regarding the protection of kin people's rights (Udrea et al., 2023).

In view of the above discussion, one can clearly see that there is a vacuum of norms as to the protection of those considered "kinsmen" by their kin-states in a non-conflictual manner *vis-a-vis* relations with home-states which are the responsible one for such a protection as those are their citizens. One scholar criticized this vacuum as follows: "the European norms and standards of minority protection developed since the start of the 1990s prove little if any concrete guidance as to how and to what extent a kin-states engagement could actually contribute to protecting non-dominant groups within their home states" (Smith & Udrea, 2021, p. 68 ). In such a vacuum, as the Venice Commission once acknowledged, kin-state policies can be pursued by kin-states to support their kinsmen residing in their home-states, provided that no breach of international law would be caused by such policies (Venice Commission, 2001). However, as already discussed, this situation does not provide answers to the need how inter-state relations could be freed from potential conflicts due to kin-state politics.

### **A Workable Proposition for a Better Protection of Kinsmen by Their Kin-states in Avoidance of Inter-state Conflicts?**

As already discussed above, states may have an interest in the well-being of members of certain communities residing in other states if they consider those as their kinsmen on the basis of shared affinities, in terms of culture, ethnicity, language or religion and shared history. Yet, international law does not grant states to use their jurisdiction in other states, unless otherwise codified bilaterally or multilaterally. This is the state of affairs surrounding the issue of kin-state protection at present. Although there is no right conferred on a kin-state legally, they do follow politics in this regard for many reasons. In line with the contemporary approach in literature, the study focuses on the human rights aspects of such an engagement. In other words, how a kin-state can assist its kinsmen in a home-state for the enjoyment of their rights and freedoms in a non-discriminatory manner while preserving good inter-state relations is the focus. As discussed above there are certain regulations, be they bilateral or multilateral to ensure these conditions to be fulfilled by states. However, there seems to be a vacuum in addressing the conditions of respecting the principle of non-intervention in internal affairs.

It is accepted that states' interests and concerns in matters concerning their kinsmen in other states are legitimate as long as they are related to assisting the protection of the kinsmen in terms of enjoyment of the fundamental rights and freedoms without discrimination (Sabanadze, 2006; Smith & Udrea, 2021; Udrea et al., 2023; Waterbury, 2020). As part of international human rights, the rights of persons belonging to such kin communities and national minorities are universal. In this sense, as seen in international politics, the treatment of such populations also falls into the relevant international bodies, notably the United Nations, the OSCE, the Council of Europe and the EU (Udrea et al., 2023).

In view of the foregoing, one can summarize that first and foremost it is home-states that are tasked for the protection of its citizens who are considered kinsmen of another state, to enable such persons with the enjoyment of fundamental rights and freedoms, preventing negative discrimination and providing positive ones while promoting cultural diversity, whereas kin-states are entitled to assist in and improve these efforts on the basis of certain conditions to be honoured. In this process, international organisations, notably those functioning in the field of human rights, are also entitled to contribute to these efforts through various means including the norm and standard setting.

Undoubtedly, the role of international structures and multilateral instruments has increased over the years in the field of kin-state protection in Europe. In the past literature, scholars argued for a “triadic nexus” among the targeted kinsmen, its kin-state and its home-state, all of which work together in the sense of deploying combined efforts for a better treatment of the said kinsmen (Brubaker, 1995). With the increased role of international structures in this field, another scholar has proposed a “quadratic nexus” as a framework of analysis to emphasize the fact that international organisations and their multilateral instrument have also contributed to the system of kin-state protection in a sense of shared responsibility (Smith, 2002).

In view of these arguments, the study proposes a two-fold approach to regulate the inter-state relations in the field of kin-state protection. Firstly, it is true that normative works for improving the enjoyment of fundamental rights and freedoms of kinsmen/ kin populations in their home-states, through the engagement of kin-states while the principle of non-intervention in international affairs is upheld and ensured, are needed to be codified at the multilateral level, possibly in the form of an international convention of a binding nature. In this process, the recommendations of the Venice Commission and the HCNM which are already analysed should be incorporated into the codification.

Secondly, these works should be assisted by expert studies in addressing the socio-psychological factors governing the inter-state relations in terms of such kin-state politics to help transforming the mindset of states into a new and positive postulate concerning such issues that are still heavily securitized. Such transformation should assist both kin and home-states in respect of kinsmen in each other’s territories to develop sets of common understanding for the betterment of the life of those kinsmen without risking the inter-state relations.

In this regard, it is argued that social constructivism is instrumental in dealing with such socio-psychological factors, including identities governing foreign policies of states. Principally, it is national interests that drive foreign policies. Here lies a correlation between national interests and identities. Social constructivism in its conventional variant helps scholars to analyse the situation better, as it “does not reject the positivist world but approaches it with post-positivist tools to better explain the situation” (Ulusoy, 2007, p. 44). As such, “conventional constructivism truly represents a middle ground between strictly materialist-individualist rationalist perspectives and strictly ideational-structural reflectivist perspectives” (Adler, 1997, p. 322). The Importance of social constructivism is that it provides a complementary explanation to the world affairs which are run by realist parameters as it posits that this world is also socially constructed. Thus, conventional constructivists can be labelled as “ontological realist” as well (Ulusoy, 2007).

Constructivist scholarship has also contributed to the study of human rights from a political scientific perspective by challenging both the indifference of realists to the relevance of human rights, and the instrumentalist interpretation of liberal scholars of the effect of human rights (Ulusoy, 2001; Hayman, 2008).

As to the reason why a kin-state follows policies for the sake of its kinsmen, Karl Cordell and Stefan Wolff (2004) refer to the correlation between national identity and national interest. Similarly, it is asserted that “national interest refers to how kin-state interventions are generated by the kin state’s domestic and foreign strategic objectives. National identity stimulates kin-state intervention when a state believes the kin group and its territory constitute intrinsic parts of the ethno-national community” (Nagle, 2013, p. 293).

In fact, conventional constructivism brings comprehensive explanations to the correlation between national interests and identities. It emphasizes the importance of social constructed foreign policy interests of a state and its identity (Adler, 1997 ; Ulusoy, 2007 and Wendt, 1992). This approach explains that “identity and interest are not totally different concepts and they are not independent from each other. In fact, they constantly shape each other” (Ulusoy, 2007, p. 45). “Identities are the basis of interests”, says one prominent scholar (Wendt, 1992, p. 398). He further asserts, “States are engaged in a socialization process and as they become socialized they make them part of their identity and that identity in turn creates the interest” (Wendt, 2001, p. 1025). This correlation and interaction can be said as follows: we cannot know what we want if we do not know who we are. To sum up, one can assert that “beliefs, values, norms, and practices embodied and manifested by state identities logically and necessarily matter all the way down and generate state interests and thus strategies” (Ulusoy, 2007, p. 43).

Building on this premise one can also argue that if different states could form a collective identity, then they could also develop at least close national interests. It is argued that “collective identity formation is like a pool where states contribute elements from their own identity” (Yanık, 2002, p. 26). This could then facilitate a non-problematic situation between a kin-state and a home-state in the treatment of a certain populations, i.e. the kinsmen of the kin-state and kin minority in the home-state.

In a world dominated by realist parameters, common denominators act decisively for the formation of such collective identities. In this formation, added to ideational factors, history stands as an important component. Thus, for the construction of a collective identity between two states, history can be used in two ways: First, as a lesson learned not to repeat past mistakes. Second, to focus on good practices of the culture of living together and common understandings between two states. In fact, collective identities help to create a culture of living together. In that culture, adopting norms and rules which would be honoured by the two states also becomes more plausible, all of which could facilitate a conduct of kin-state protection without risks of inter-state conflicts. In that regard, encouraged by the presence of a collective identify or at least a culture of living together, some scholars even propose that “kin-state engagement should complement home-states’ domestic commitments, in order to foster more effective minority/kin-state protection in the sense of shared responsibility between kin-state and home-states” (Udrea et al., 2023, p. 67). In fact, thanks to the creation of collective identities between the kin and home-state, forming a sense of shared responsibility to complement each other’s policies in approaching the protection of kinsmen between these states would be instrumental in the transformation of their mindsets towards such an understanding. This transformation of mindset could be translated into an international convention via codification of norms with the help of those already developed by the Council of Europe and the OSCE. In short, that constitutes the proposition of this study.

## **Concluding Remarks**

As stated earlier, the aim of this study is to propose a workable formulation for kin-state protection, through which a kin-state could adequately contribute to the betterment of the enjoyment of fundamental rights and freedoms of its kinsmen without affecting its inter-state relations with the home-state, in compliance with the principle of non-intervention in internal affairs. As argued, “kin-state politics is an important area of study as it may have a great variety of consequences *inter alia* for regional peace, security and stability” (Waterbury, 2010, p. 7).

Yet, this is a domain surrounded with susceptible issues as the presence of kin communities in home-states was generally perceived as a potential source of security risk in the history of the Balkans. In the post-Cold War era, ethnic wars and tacit or blatant discriminatory and exclusionary policies of states have not been helpful for the needed progress as to the enjoyment of fundamental rights and freedoms by such kin–communities in their home-states. Under such circumstances, formulating adequate norms and standards for kin-state policies aiming at the protection of kin populations has become even more crucial. In this context, the study has reviewed present practices governing the kin-state protection in Europe in general and the Balkans in particular.

In reviewing the advantages and disadvantages of these practices, the study has developed a two-fold proposition with the help of social constructivist tools. To be implemented either in tandem or simultaneously, this two-fold formulation would combine codification works aiming for a multilateral convention, with a process of collective identity formation, with a view to transforming the mindsets of states, be they kin or home-states, to accept those of different origin in their countries as a source of vibrant and inclusive democracies, rather than a security risk. In this sense, promoting cultural diversity as a source of societal richness to home states is definitely instrumental and recognizing it as such will contribute further to peace and stability in inter-state relations in the Balkans.

To conclude, then, added to relevant human rights and non-discrimination norms, the codification of such a kin-state protection, possibly in a multilateral legal instrument, would better serve the inter-state relations and good-neighbourliness in the Balkans, which would in return contribute to the efforts for peace, security, stability and prosperity in the region and beyond. Here, as discussed earlier, efforts for forming a sense of shared responsibility to be utilized in a complementary manner, in the form of a “Quadratic Nexus” (Smith, 2002) among a kin community, a kin-state, a home-state and the international organisation where the said convention would be drafted, seem also worth-trying. In that sense, such a codification could be supported as a peace project for the rules-based international order. To borrow from a prominent scholar, such a world order should definitely be a quest for the transformation of mindsets of states from the *Hobbesian* to the *Kantian* understanding in the sense of forming collective identities to handle inter-state relations (Wendt, 1999).

The above discussion may seem to be over-ambitious by some. Yet, given the ever-increasing transboundary scourges unfolding in all walks of life, which inevitably necessitate collective responses both regionally and globally, it is time that relations among states were strengthened. Inter-state relations in the Balkans are no exception to this. Thus, in the light of its historical legacy, the aforementioned two-fold proposition codifying a system of kin-state protection in the region and beyond to free such inter-state relations from the discussion of intervening in domestic affairs of each other would also be timely for reflection both academically and politically.



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