Chapter Four

The “Kinterested” State and the HCNM Bolzano “Rules of Engagement”

Bogdan Aurescu

I. Preliminary Remarks

This paper proposes an assessment of the main aspects of the Bolzano/Bozen Recommendations of the High Commissioner on National Minorities of the OSCE on “National Minorities in Inter-State Relations”, issued on October 2, 2008. It tries emphasising the added value of this important document both from the academic and international law perspective, and from the practical angle of its future implementation. It also focuses on some proposals of improvement, related to, *inter alia*, the issue of using the term kin-state, the primary responsibility of the home-state, the interest of the kin-state to act in favour of ‘its’ kin-minorities, the field where the kin-state may grant benefits, the issue of the so-called certificates for ethnic origin, the problem of “citizenship en masse”, the fact that the home-state cannot block the assistance if all legal conditions are met.

The OSCE High Commissioner on National Minorities’ adoption of “The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations” (hereinafter Bolzano Recommendations) on October 2, 2008, is the latest effort in finding a comprehensive approach to regulating the limits of kin-state involvement in supporting “its” kin-minorities abroad.

It is built on the lessons learned following the European-scale debate prompted by the adoption by Hungary, in June 2001, of the Law on Hungarians Living in Neighbouring Countries (hereinafter Hungarian Law).¹

This piece of legislation was adopted without consulting the neighbouring states. It was a *unilateral* measure regulating other unilateral measures to be taken by the kin-state in favour of the kin-minority abroad. The lack of consultation

with neighbouring countries and the unilateral character of the whole démarche were justified by the concept that the Hungarian State, as “mother-state”, has a constitutional right (set forth in Article 6 (3) of the Hungarian Constitution) and, at the same time, an obligation to protect the Hungarian minorities abroad. This “mother-state” concept, promoted by Hungary at that time, was replaced from the legal point of view by the “kin-state” formula, following the adoption by the Venice Commission of the 2001 “Report on the preferential treatment of national minorities by their kin-State”.

It should be mentioned that at that time there were no detailed standards set forth in order to regulate the support that may be granted to kin-minorities abroad, despite the fact that a correct interpretation of the existing fundamental principles and rules of international law would have offered a substantive answer as to which state conduct would fall inside or outside the existing international law, and would have led to the conclusion that consultation – instead of unilateral action – should have been mandatory.

The law adopted in 2001 was problematic for a number of legal reasons: it produced discriminatory and extraterritorial effects, and risked creating a political (and quasi-legal) bond between the kin-state and the kin-minority.

The solution to this unilateral (and unilaterally created) problem was found at bilateral level, but with the active involvement and support of the international community. It became a debate at European level – which involved many organizations and bodies like the Council of Europe (through the Venice Commission and the Parliamentary Assembly of the Council of Europe: PACE), the High Commissioner on National Minorities (HCNM) of the Organization for Security