

# **The Bolzano Recommendations on National Minorities in Inter- State Relations: Reconciling justice and security**

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## Introduction

In October of 2008, the OSCE High Commissioner on National Minorities (HCNM) issued the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (hereinafter Bolzano Recommendations). This is the latest in the series of recommendations developed by the HCNM on issues that recur throughout his work. The tradition of clarifying and enhancing norms and standards for minority protection through different sets of recommendations goes back to the first High Commissioner, Max van der Stoep, who saw a direct link between the protection of human rights and fundamental freedoms and the maintenance of peace and security.<sup>1</sup> As Ratner has argued, the HCNM as a conflict prevention instrument integrates and relies on norms in his activities and seeks to induce compliance by States through the process of close engagement and persuasion.<sup>2</sup>

The High Commissioner's reliance on norms illustrates how closely interconnected matters of justice and security are in the context of national minorities. Minority rights are part of fundamental human rights and are to be respected for the sake of democracy, equality and justice. At the same time, minority rights are linked to one's culture and identity and, therefore, should be protected for the sake of upholding security and stability of any multi-ethnic society. The violation of rights breeds discontent and creates fertile ground for nationalist mobilization and 'ethnicization' of everyday politics, where even the most mundane of daily matters are cast in terms of rights and identity: 'us' vs 'them.' This could challenge the social cohesion and integrity of any State, particularly if the State in question is weak and fragile and does not have strong traditions of democratic coexistence amongst its various ethnic communities. This is why, as an integral part of his conflict prevention efforts, the HCNM pays considerable attention to both the development of and compliance with international norms and standards of minority protection. Thematic recommendations, therefore, can be described as a manifestation of the HCNM's 'security through justice' approach.

This new set of recommendations, however, differs somewhat from the previous ones. The Bolzano Recommendations do not focus on minority rights per se but rather on States and their responsibilities towards minorities both at home and abroad. They are also the first normative document of its kind to address openly the international dimension of the minority question and to place pronounced focus on security and inter-State relations. The very title of the document, National Minorities in Inter-State Relations, implies that the protection of national minorities — and more broadly State-Minority relations — is not only a matter of domestic politics and internal security but also has a direct bearing on inter-State relations and hence on international security. The purpose of this article is to illustrate how the Bolzano Recommendations reconcile considerations of justice and security with the aim of fulfilling the HCNM's conflict prevention mandate. It addresses the following questions: Why has the HCNM shifted his focus from minority rights to States and their national security concerns? Is the HCNM further 'securitizing' the question of national minorities and, by doing so, taking it out of the realm of justice and human rights and placing it in the realm of security and realpolitik? Whose security are the Recommendations trying to uphold States or individuals, i.e. persons belonging to national minorities? How does the High Commissioner intend to address security challenges through a set of

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1 For a discussion of the High Commissioner's influence on the elaboration of standards for the protection of persons belonging to national minorities, see Arie Bloed and Rianne Letschert, 'The OSCE High Commissioner on National Minorities' in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection: European and International Law Perspectives*, Cambridge University Press, 2008, pp.88-118.

2 S.R. Ratner, 'Does International Law Matter in Preventing Ethnic Conflict?', *New York University Journal of International Law and Politics*, 32:3, 2000, pp.591-698.

non-binding, normative recommendations?

## State interests vs minority rights

One may wonder why the High Commissioner's latest recommendations are no longer concerned with minority rights as such and instead focus on States and arguably on state interests and security. The shift does not imply that the HCNM is satisfied with the state of minority protection in the OSCE area or that he is no longer preoccupied with minority rights. Instead, it reflects the changing realities to which the HCNM has to adjust in order to retain his relevance and effectiveness as an instrument for conflict prevention. It also demonstrates the HCNM's approach of treating minority rights and state interests as well as considerations of justice and security not as mutually exclusive and contradictory, but rather as mutually complementary and interconnected at many different levels.

The High Commissioner's previous normative work is a response to the needs of the 1990s, when basic norms and standards for minority protection were lacking and had to be developed through the efforts of international organizations such as the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe (CoE). The basic principles are now in place and the majority of OSCE participating States have incorporated them into their domestic legal frameworks and adopted them as part of their international commitments. Certainly, there is still much to do in terms of their implementation. The legal and normative foundations for the protection and promotion of minority rights, however, have been laid down. The HCNM's latest recommendations do not substitute his previous work but complement it and should be read in conjunction with his earlier rights-based thematic documents. In addition, he continues to incorporate minority rights as part of his conflict prevention efforts in specific countries and regions.

The HCNM's reliance on minority rights, norms and standards relates to the understanding that the violation of rights is one of the major causes of conflict. The experience of the early 1990s has shown that the most violent of intra-State conflicts have often been sparked by the inability to use one's mother tongue, by the lack of respect for one's culture and identity and by the fear — real or perceived — of forceful assimilation. As the first HCNM noted shortly after taking up his position, 'The respect for human rights and the maintenance of peace and security can no longer be considered as separate items on the world's agenda of crucial questions, they are inextricably linked.'<sup>3</sup> Suppressing legitimate concerns, interests and aspirations creates serious negative reactions, which may ultimately threaten the State. In other words, there is a clear link between the protection of human rights — including minority rights — and the prevention of conflicts, which in turn translates into peace and security for States.

There is also another, albeit less frequently noted, link between state security and stability and the protection of human rights. This is particularly true in the case of minority rights, which requires an elaborate institutional framework and, therefore, is entirely dependent on a stable State and its functioning institutions. There is not much point in asking failed States or States that are struggling to maintain their territorial integrity and political viability to develop and invest in the establishment of sophisticated minority rights mechanisms since they will lack both the resources and the capacity to do so. Insecurity of States, particularly of multi-ethnic States, directly translates into insecurity for its citizens and may lead to what can be described as dangerous ethnicization of everyday politics. The experience of the early 1990s has demonstrated that

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3 Max van der Stoep speech of 3 February 1993 as quoted in M. Merrick Yamamoto (ed.), *Preventing Ethnic Conflict and Building Cohesive States*, Visual Tutor Company, Carmichael, 2007, p. 31.

when States fail, people turn to their ethnic kin and family for protection and basic security. Under such circumstances, group divisions are reinforced and any — even the most benign — disputes, become framed in non-negotiable categories such as ‘identity,’ ‘culture,’ ‘respect’ and ‘us against them,’ making the likelihood of violent conflict even more likely. In this context, it becomes clear how state security and human security, namely the security of persons belonging to national minorities, are inextricably linked. This also explains why the HCNM’s approach aims to achieve a balance between the interests and needs of States and those of minority communities in order to maximize the benefits to all parties. Past experience has demonstrated that when States take unilateral action on behalf of minorities abroad and act out of geopolitical or irredentist interests, the risk of conflict increases. Sometimes States have the noble intention of supporting their kin abroad but do so by means perceived as threatening and unfriendly by the States where minorities reside. It is for this reason that the incumbent High Commissioner, Knut Vollebaek, decided to address the question of the so-called kin-State activism and mitigate its conflict-provoking potential by highlighting good practices and relevant international norms of friendly, inter-State behaviour. He acknowledges that the question of national minorities has often been the cause of tension and even of violent conflict but believes this does not have to be so in the future. The Bolzano Recommendations show that there is a different, less contentious way in which States can co-operate and support national minorities without jeopardizing peace or straining interethnic relations. According to Vollebaek, States cannot claim any rights over minorities residing abroad but they can support them in consultation with the State of residence and with due respect for the principles of territorial integrity, sovereignty and friendly relations. In addition, ‘States should ensure that their policies with respect to national minorities abroad do not undermine the integration of minorities in the State where they reside or fuel separatist tendencies.’<sup>4</sup>

Upholding the rights of States in this context goes hand in hand with the protection and well-being of minority communities. The first victims of inter-State confrontation who personally feel the consequences of deteriorating bilateral relations are often persons belonging to national minorities. Kin-State involvement stops the minority question from being just an issue of domestic politics and human rights and turns it into a national security and international politics issue. Minorities thereby come to be seen as a threat to States’ territorial integrity and social cohesion and are often accused of treason and disloyalty. Their States of residence treat them with suspicion and see them as pawns in political games of their ‘protector’ States. Unless finely balanced and co-ordinated with States of residence, kin-State involvement may contribute to the revival of nationalist tendencies and could even lead to an anti-minority backlash and a dramatic deterioration of State-Minority relations.

### The securitization dilemma

The linking of state security and territorial integrity with the question of national minorities leads to the so-called ‘securitization’ of State-Minority relations. The High Commissioner, who looks at the question of minorities not only from the perspective of human rights but also from that of state stability, social cohesion, good governance and consequences for inter-State relations, has been accused of contributing to the

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4 The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, Introduction, p. 2.

further securitization of the minority question.<sup>5</sup> In this vein, the Bolzano Recommendations are also seen as a manifestation of the HCNM's security approach to the question of minorities, since they arguably focus on security implications of the triadic relationship between States of residence, minorities and kin-States.<sup>6</sup>

There are clear risks stemming from the excessive securitization of State- Minority relations. For instance, securitization may erode the democratic space for voicing minority demands and diminish the likelihood of those demands being accepted and treated as a matter of normal democratic politics. Violations of minority rights may become easy to justify in the name of protecting vital national security interests. Most importantly, securitization of minority issues may generate the wrong kind of responses, often heavy handed on the part of State authorities, which in the long run, may actually undermine the very security they were trying to uphold. The HCNM is well aware of these risks. There are, however, also certain openings and opportunities that the security label can offer and the HCNM has been able to take advantage of these.

It so happens that attaching a 'security' label to a certain issue or a problem ensures greater attention and commitment from relevant State authorities, international organizations and third States to tackle it. This can be particularly important for countries undergoing structural changes often linked to the painful processes of transition, when resources are scarce and problems numerous. Under such circumstances, the competition for available resources is fierce. Governments often need compelling reasons to commit money and pay particular attention to minority schools, for example, instead of to all the other, arguably, equally burning issues. In such a context, the security perspective provides the HCNM with valuable leverage in his dealings with authorities. Defined in terms of security and stability, it can appeal to the self-interest of States and by doing so persuade them to tackle minority issues as a matter of priority. The effectiveness of an institution such as the HCNM, which has neither enforcement power nor economic incentives and cannot even rely on 'name and shame' tactics because of the confidentiality of its mandate, would be significantly curtailed if it were to speak only about the promotion of rights and minority interests, especially in countries that are openly indifferent to the rights discourse.<sup>7</sup>

The Bolzano Recommendations address one of the most contentious issues surrounding the question of national minorities, namely the involvement of another, often neighbouring State in support of a particular minority. The Recommendations, therefore, have clear security implications. One can argue, however, that their ultimate goal is actually de-securitization and normalization of State-Minority relations. As already mentioned, the kin-State factor is one of the main factors linking the question of national minorities with that of national and regional security. This is particularly true in post-communist Europe, where the presence of kin-States is associated with threats of irredentism — justified or not— and with fears of potential political and even military intervention in the name of 'defending' a particular group of people. Historic legacies also

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5 For further discussion see Gwendolyn Sasse, 'Securitization or Securing Rights? Exploring the Conceptual Foundations of Policies towards Minorities and Migrants in Europe', *Journal of Common Market Studies*, 2005, p. 682-684. For a detailed analysis of the securitization of minorities and its consequences, see Will Kymlicka 'Justice and Security in the Accommodation of Minority Nationalism' in Stephen May, Tariq Madood and Judith Squire (eds.), *Ethnicity, Nationalism and Minority Rights*, Cambridge: Cambridge University Press, 2004; Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, Oxford: OUP, 2007. For one of the earliest expositions of the concept of 'securitization', see Ole Weaver 'Securitization and Desecuritization', in Ronnie D. Lipschutz (ed.), *On Security*, New York: Columbia University Press. See also Katherine Nobbs, 'The Effective Protection of Minorities in the Wider Europe: Counterbalancing the Security Track' in Marc Weller, Denika Blacklock and Katherine Nobbs (eds), *The Protection of Minorities in the Wider Europe*, London: Palgrave, 2008.

6 Kinga Gal, *National Minorities in Inter-State Relations: Country Perspectives*, manuscript.

7 See Neil MacFarlane and Yuen Foong Khong, *Human Security and UN: A Critical History*, Indiana University Press, 2006.

exacerbate the problem, particularly when the kin-State in question is a former imperial power. Successive High Commissioners have been engaged in those cases where kin-State involvement has had the potential of exacerbating State-Minority relations and escalating into regional conflict. The Bolzano Recommendations synthesize this experience and demonstrate how, under what conditions and within which limitations States may support minorities abroad without appearing threatening and jeopardizing peace and good-neighbourly relations. Benign, friendly kin-States that work in co-operation with States of residence can allay traditional fears associated with their involvement, which will ultimately lead to the de- securitization of State-Minority relations to the benefit of minorities and to friendly, inter-State relations.

### Security for whom?

The discussion has so far focused on state security and its links with the protection of minority rights. We are all, however, aware that minorities often become victims of their own States and suffer abuse, discrimination and, in extreme cases, ethnic cleansing. Under such circumstances, kin-State involvement may be the only hope minorities have for physical survival and the protection of basic rights. The question, therefore, is how the Bolzano Recommendations address the security concerns not only of States but also of persons belonging to national minorities.

Protection of human rights, including minority rights, is the responsibility of the State where the minority resides. This is the central message of the Recommendations. At the same time, however, the Recommendations state that the protection of human rights is also a matter of international concern. This reflects one of the fundamental principles of the OSCE, which, through the Moscow Document of 1991, recognizes the international dimension of human rights and reaffirms that human rights, including minority rights, do not constitute exclusively an internal affair of the respective State.<sup>8</sup>

International concern implies that other States, including the so-called kin- States, may have an interest in the well-being of certain groups abroad, particularly those with whom they share ethnic, cultural, linguistic, historic and other ties. The Recommendations, however, stress that this interest, even when enshrined in the constitution, does not translate into a right under international law to exercise jurisdiction over those persons on the territory of another State and without that State's consent. In this context, the Recommendations appeal to the dual responsibility of States. This includes responsibility to protect and promote rights of persons belonging to national minorities under their jurisdiction and to act as responsible members of the international community with respect to minorities under the jurisdiction of another State.

International concern also implies that in those extreme cases when a State is unable or unwilling to protect minorities on its territory from acts of organized violence, the protection of human life and dignity may become the responsibility of a broader community of States. The question in this context is whether the so- called kin-States can legitimately act in defence of human rights in place of or prior to the actions of the international community. These States could potentially be both more interested and more willing to act under such circumstances than many, 'disinterested' members of the international community. The Recommendations do not directly touch upon such situations. At the same time, however, they clearly stop short of recognizing and accepting any special role for kin-States with respect to protecting minorities abroad. So-called kin-States may act only within the international framework and as part of the international

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<sup>8</sup> Report of the CSCE Meeting of Experts on National Minorities in Geneva, Section II, Para. 3, 1991.



community respecting basic principles of international law.

There are both normative and practical considerations underpinning such an approach. First, the principle that States bear ultimate responsibility for their residents is uncontested in international law and is one of the cornerstones of the existing international order. Second, recognizing a special role for a kin-State with respect to minorities may lead to the outsourcing of minority protection from States of residence to kin-States. As a result, those minorities with rich and powerful kin-States will inevitably find themselves in a more advantageous position than those without, which could lead to various discriminatory practices and adversely affect interethnic relations in any multi-ethnic State. Third, accepting a special role for kin-States would lead to the erosion of the principle of 'non-intervention,' which has served as a stabilizing factor under the conditions of anarchy characteristic of the existing international system. Humanitarian discourse on protecting and defending minorities in another State can serve as a pretext for intervention for various geopolitical and strategic purposes.

Finally, universality underpins the principle of international responsibility for upholding human rights. The kin-State paradigm, however, contradicts the very essence of universality of human rights since kin-States are concerned only with the rights of a certain kind of people, i.e. those with whom they share ethnic, cultural, historic or other ties. In addition, their motives may not necessarily be restricted to humanitarian purposes and may lead to grave abuse of arguably noble principles. High Commissioner Knut Vollebaek noted in his statement of August 25, 2008, 'When human rights, including minority rights, are violated on a large scale as in cases of ethnic cleansing, mass expulsion and acts of terror, the international community has a duty to intervene. Multilateral operations best assure the purpose, legitimacy and effectiveness of such intervention. If unilateral steps are taken, particularly by neighbouring States, the motives and credibility of their actions may be brought into question.'<sup>9</sup>

## The power of norms

The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations address a very sensitive subject, which goes to the core of not only state security but also regional and international stability. Throughout his work, the HCNM confronts tensions that stem from the mishandling of minority issues both by States of residence and kin-States. He came to realize that the normative framework for kin-State activism was clearly underdeveloped. Since the majority of international documents rightly focus on duties and obligations of States of residence with respect to persons belonging to national minorities, the role and behaviour of kin-States remained relatively unregulated. The first international opinion on the subject was a substantive report by the Venice Commission and a brief statement made by High Commissioner Rolf Ekéus in response to the controversies surrounding the adoption of the Hungarian Status Law.<sup>10</sup> The Bolzano Recommendations build on these two documents and aim at further reducing normative ambiguity in this highly sensitive area.

One may certainly wonder how effective a collection of non-binding norms and principles can be, particularly

9 Knut Vollebaek, OSCE Commissioner on National Minorities, Statement on Protection of Minorities and Citizens Abroad (2008), available at: [www.osce.org/hcnm](http://www.osce.org/hcnm).

10 See Venice Commission Report on Preferential Treatment of National Minorities by their Kin-States, Council of Europe Publishing, 2002; Rolf Ekéus, OSCE High Commissioner on National Minorities, Statement on Sovereignty, Responsibility and National Minorities, 2001. For further discussion of the above two documents, see Walter Kemp, 'Kin-States Protecting National Minorities: Positive Trend or Dangerous Precedent?' in J. McGarry and M. Keating (eds.), *European Integration and the Nationalities Questions*, London: Routledge, 2006.

when it comes to those issues that engage the interests of more than one State. While no one is under the illusion that these Recommendations will be enough to stop States from pursuing unfriendly and unconstructive policies entirely, they have made it more difficult for States to exploit and abuse legal and normative uncertainties surrounding the issue of kin-State activism and to justify their actions. It is debatable, however, whether norms and principles have any 'real life' value if one is looking for an example of a war having been stopped or a single human life saved. They do have the value, nonetheless, of legitimacy, which continues to matter to States and their respective authorities. In the existing international system, one cannot entirely separate law and norms from what we call a 'political interest.' To quote Martin White, 'the fundamental problem of politics is the justification of power [...]. Power is not self-justifying; it must be justified by reference to some source outside or beyond itself, and this be transformed into 'authority.'<sup>11</sup>

## Appendix 1. Recommendations on National Minorities in Inter-State Relations

### I. GENERAL PRINCIPLES

1. Sovereignty comprises the jurisdiction of the State over its territory and population, and is constrained only by the limits established by international law. No State may exercise jurisdiction over the population or part of the population of another State within the territory of that State without its consent.
2. Sovereignty also implies the obligation of the State to respect and to ensure the protection of human rights and fundamental freedoms of all persons within its territory and subject to its jurisdiction, including the rights and freedoms of persons belonging to national minorities. The respect for and protection of minority rights is primarily the responsibility of the State where the minority resides.
3. The protection of human rights, including minority rights, is also a matter of legitimate concern to the international community. States should address their concerns for persons or situations within other States through international co-operation and the conduct of friendly relations. This includes the full support by States of international human rights standards and their agreed international monitoring mechanisms.
4. A State may have an interest – even a constitutionally declared responsibility – to support persons belonging to national minorities residing in other States based on ethnic, cultural, linguistic, religious, historical or any other ties. However, this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State without that State's consent.

### II. STATE OBLIGATIONS REGARDING PERSONS BELONGING TO NATIONAL MINORITIES

5. States should guarantee the right of everyone, including persons belonging to national minorities, to equality before the law and to equal protection under the law. In this respect, discrimination based on belonging to a national minority or related grounds is prohibited. Achieving substantive equality may require special measures and such measures should not be regarded as being discriminatory.
6. States should respect and promote the rights of persons belonging to national minorities, including the right freely to express, preserve and develop their cultural, linguistic or religious identity free from any

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<sup>11</sup> Martin Wright, *International Theory: The Three Traditions*, Gabriel White and Brian Porter (eds.), (Leicester University Press, 1991), p.99.



attempts at assimilation against their will.

7. States should promote the integration of society and strengthen social cohesion. This implies that persons belonging to national minorities are given an effective voice at all levels of governance, especially with regard to, but not limited to, those matters which affect them. Integration can only be achieved if persons belonging to national minorities, in turn, participate in all aspects of public life and respect the rules and regulations of the country they reside in.
8. States should not unduly restrict the right of persons belonging to national minorities to establish and maintain unimpeded and peaceful contacts across frontiers with persons lawfully residing in other States, in particular those with whom they share a national or ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

### **III. BENEFITS ACCORDED BY STATES TO PERSONS BELONGING TO NATIONAL MINORITIES ABROAD**

9. States may extend benefits to persons residing abroad, taking into account the aforementioned principles. Such benefits may include, inter alia, cultural and educational opportunities, travel benefits, work permits and facilitated access to visas. They should be granted on a non-discriminatory basis. The State of residence should not obstruct the receipt or enjoyment of such benefits, which are consistent with international law and the principles underlying these Recommendations.
10. States should refrain from taking unilateral steps, including extending benefits to foreigners on the basis of ethnic, cultural, linguistic, religious or historical ties that have the intention or effect of undermining the principles of territorial integrity. States should not provide direct or indirect support for similar initiatives undertaken by non-State actors.
11. States may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad. States should, however, ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship en masse, even if dual citizenship is allowed by the State of residence. If a State does accept dual citizenship as part of its legal system, it should not discriminate against dual nationals.
12. States may offer assistance to support education abroad, for example, with regard to textbooks, language training, teacher training, scholarships and school facilities. Such support should be non-discriminatory, have the explicit or presumed consent of the State of residence and be in line with applicable domestic and international educational standards.
13. States may provide support to cultural, religious or other non-governmental organizations respecting the laws and with explicit or implied consent of the country in which they are registered or operating. However, States should refrain from financing political parties of an ethnic or religious character in a foreign country, as this may have destabilizing effects and undermine good inter-State relations.

14. The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, may not be prohibited on the basis of ethnicity, culture, language or religion. Limitations are restricted to broadcasts that use hate speech or incite violence, racism or discrimination.
15. When granting benefits to persons belonging to national minorities residing abroad, States should ensure that they are consistent in their support for persons belonging to minorities within their own jurisdiction. Should States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question.

#### IV. MULTILATERAL AND BILATERAL INSTRUMENTS AND MECHANISMS

16. States should co-operate across international frontiers within the framework of friendly bilateral and multilateral relations and on a territorial rather than an ethnic basis. Transfrontier co-operation between local and regional authorities and minority self-governments can contribute to tolerance and prosperity, strengthen inter-State relations and encourage dialogue on minority issues.
17. In dealing with issues concerning the protection of persons belonging to national minorities, States should be guided by the rules and the principles established in international human rights documents, including those multilateral instruments and mechanisms which have been created specifically to support the implementation of standards and commitments relating to minorities.
18. States are encouraged to conclude bilateral treaties and make other bilateral arrangements in order to enhance and further develop the level of protection for persons belonging to national minorities. These mechanisms offer vehicles through which States can share information and concerns, pursue interests and ideas, and further support minorities on the basis of friendly relations. A bilateral approach should follow the spirit of fundamental rules and principles laid down in multilateral instruments.
19. States should make good use of all available domestic and international instruments in order to effectively address possible disputes and to avert conflicts over minority issues. This may include advisory and consultative bodies such as minority councils, joint commissions and relevant international organizations. Mediation or arbitration mechanisms should be established in advance through appropriate bilateral or multilateral agreements.



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