

# Introduction

This volume examines post-Cold War nation building in a context of kin (ethnic) minority protection. The initial interest in the matter stems from the Hungarian Status Law (2001), which sought to provide benefits to members of the Hungarian nation in most neighbouring states and, in this way, strengthen ties among the Hungarian nation. While state support of kin minorities is not unique to Hungary, the law sparked considerable controversy both inside and outside Hungary, with international criticism largely focused on the presumed violation of the sovereignty of Hungary's neighbours. The international debate generated by the Hungarian Status Law raised attention to the principles of and approaches to 'trans-border' minority protection. (Zoltán Kántor, Balázs Majtényi, Osamu Ieda, Balázs Vizi, and Iván Halász, eds., *The Hungarian Status Law: Nation Building and/or Minority Protection*. Slavic Eurasian Studies, no. 4, Slavic Research Center, Hokkaido University, 2004.)

While the law was amended in 2003, the issue of the kin minority's 'status' is not dead, but is still active in Hungarian politics. For example, in December 2004 an unsuccessful referendum was held on dual citizenship for the kin minorities, and more recently there have been reports that Hungary's socialist-led government is preparing to amend the Constitutional article related to Hungarians abroad. The revised paragraph would read: '[the Republic of Hungary] complies with its responsibilities for Hungarians living abroad', replacing: 'bear a sense of responsibility for the fate of Hungarians living outside of the borders'. This paragraph is, surprisingly, the same as the first sentence of the Hungarian Status Law. With the on-going debate in Hungary over relations with ethnic Hungarians abroad and as other states in the region, including Romania and Slovakia, have sought to build ties with their kin minorities, there is a growing need for the European institutions, first of all the Venice Commission of the Council of Europe, to establish clear international norms on the issue. Otherwise, the broader process of European integration as well as the further eastward enlargement of the European

Union (EU) could be threatened by problems related to regional security. So while not unique, the Hungarian Status Law and its international implications have raised strong scholarly and political interest on more general questions on cross-border relations between minorities and their kin-states and on the concept of transnational minority protection.

Each paper of the volume examines one or more of these issues. Altogether 20 papers are collected in this book, classified into the four parts by their main topics. The first part examines theoretical aspects of the relations between sovereignty and minority protection. In the opening paper, *Balázs Majtényi* indicates that the failure of international organizations to appropriately deal with the Hungarian Status Law is rooted in their overprotection of the state, particularly shown by their inability to reconcile principles of security and human rights. According to him, international organisations and the documents adopted under their auspices treat the international protection of minorities as a part of international human rights, but at the same time it is sometimes regarded as a security issue. He concludes that this tension is the root of the inconsistencies and theoretical failures of the international responses to status laws. The organizations—whether rightly or wrongly—found possible threats to international peace in these legal rules and then looked for legal arguments which would support their opinion.

In examining the Hungarian Status Law in the context of European norms on sovereignty and minority policy, *Stephen Deets* agrees with Majtényi's conclusions that minority rights are often seen as a security issue, but he points out that sovereignty in the Westphalian system initially arose in part to restrict states from intervening on behalf of their co-religionists and to make states accept religious toleration. Therefore, 'discrimination of minorities was seen as threat to international peace', and consequently domestic minority policy long has been 'a matter of collective concern for Europe'. He argues that the 'Hungarian Status Law did seek neo-Medievalism in Europe', trying to build 'a system of overlapping authority and multiple loyalty'. In conclusion, the author, conceiving no way to balance a transsovereign nation with European norms, foresees European institutions trying to maintain ideas of state power being strictly contained within its territorial boundaries. Continuing

the theme of the tension between states and nations, the chapter by *Zoltán Kántor* focuses on the use and misuse of the concept *nation* in the various Central and East European ‘status laws’, especially the Hungarian law. After the collapse of the communist regime, there was a clear attempt across Central and Eastern Europe to at least partially redefine their polity in national terms. Initially this was reflected in the constitutions and citizenship laws, while the framing of the so-called status laws represents a more recent development. The debates around the status laws, especially around the Hungarian one, brought again into the centre the two different conceptions on the nation—political and ethno-cultural. As states in both the ‘West’ and the ‘East’ are institutionalised on an ethnocultural basis, the author asks, ‘Do we move toward a Europe of states or to one of nations?’ His answer is the latter, because the ethnocultural approach, ‘could lead to a deeper understanding of the problem and possibly an easier solution’, thus concluding that ‘The term, political nation, should be dismissed and replaced with citizenship.’ *Sherrill Stroschein*’s paper uses this divide between ethnic and political nations to examine how ideas and practices of non-territorial minority governance illustrate the limits of the hierarchical Weberian state to deal with identity communities. However, non-territorial sub-units of federal states, forms of ethnic corporatism, and attempts to build communities across state boundaries all raise real challenges in determining when an individual is subject to which governing body’s jurisdiction. However, they do pose intriguing possibilities for reimagining the nature of the state.

The second part of the book examines the issues in the context of European integration, concentrating in greater detail on European law and the activities of the European institutions. *Judit Tóth* sets the framework with her discussion of the challenges the enlarged EU must confront in light of the significant number of minorities living in the new Member States and their adjacent countries. To address these issues, Tóth believes the legal and political reactions of the EU and candidates/Member States will lead to either a so called flexible Schengen regime, encompassing various visa and border control systems, a developed neighbourhood strategy with promise of further accession, partnership, and set of readmission agreements, or a series of unilateral, national legal novelties

based on ethnic preferences in nationality law as well as status laws. To her, these approaches are more probable than a minority protection regime at the EU level, despite the simple reference on respect for minority rights in the Constitutional Treaty for Europe. While Tóth points out the challenges facing the EU, *Balázs Vizi* sees opportunity. Focusing on the European institutions' responses to the Hungarian Status Law, Vizi argues that there has been no accepted criteria in Europe on minority protection, much less on the norms or roles of kin-states over kin minorities, and that the European institutions themselves do not necessarily share opinions on the issue. Vizi further suggests that 'in the process of European integration, the question of nation is increasingly losing its legal/political relevance', and '[t]he concept of post-sovereign order in Europe may indeed lead to the acceptance of shared sovereignty. [...] Consequently the promotion of diversity through providing cultural, educational benefits to kin minorities could be seen not only as a retrograde, but also as a progressive move in European integration'. *Walter Kemp*, in the first half of his paper, uses Brubaker's 'triadic nexus' as a framework with which to examine developments after the passage of the Status Law. In the second half, the author insists that adding a fourth player, the international community and international law, is necessary to understand the events. As Kemp himself was involved as a member of OSCE in the concerned Hungarian minority issue, the paper provides the inside aspects of the European organisation. While he agrees with Vizi that 'Europe needs clarity on who deals with these issues in the future and how', it is clear that their preferred solutions would differ.

The other three papers in this section address the current legal issues surrounding this gap on minority rights and kin-states in European law. *Gábor Kardos* asks whether the kin-states' role over kin minorities actually is legitimate under current international practice, citing, for example, the inter-state complaint procedure under the European Convention on Human Rights and the statements on Quebec by the French Foreign Minister in 1995. Kardos states: 'there is a room for the kin-state to play a role. The question is what kind of role is legitimate and does not undermine security?' Eventually, however, Kardos concludes the role of the kin-state is limited; in accordance with the Venice Commission,

it can help ensure their kin's home states 'adhere to international human rights', protect and promote kin through bilateralism, and 'concentrate on culture and avoid extraterritorial effect in case of unilateral legislation'. *Helge Hornburg* names the status laws as transnational minority laws and tries to determine whether or not transnational minority laws infringe European Community law. Analysing the question in detail, the author concludes that while transnational minority law does not infringe on Community law in each and every case, individual laws may need to be more closely investigated in the context of Community law. *Herbert Küpper* extends his examination to the debates on the Hungarian civic initiative for dual citizenship. Though the author's analyses are of a legal specialist, the conclusion includes his political suggestion to the international society; 'the root of the matter, i.e. the Trianon trauma. The Trianon Treaty was hypocritical and therefore unjust. An official acknowledgement of this injustice by Western states may lead to pacification in Hungary politics and in the future may prevent similar initiatives that feed on this feeling of nation having been treated unjustly. It would prevent Hungary from embarking on initiatives that are doubtful under international law and also cause problems in domestic law'.

The third part of the book relates the ideological background of the Status Law legislation. Analysing the controversy among Hungary's major political parties over amending the Status Law in 2003, *Osamu Ieda* makes clear what the parties shared on the issue and what they did not. The author details the positions of the major four parties (Socialist, FIDESZ, Free Democrats, and Hungarian Democratic Forum) regarding their perspective on the Trianon Treaty, the Hungarian minority, relationships with the neighbouring countries, and EU integration in order to explain their varying level of support for different amendments. *George Schöpflin*, introducing the key concept of consent, interprets the Hungarian motivation as an attempt to reunify the ethnic or cultural Hungarian nation across state borders. The author starts with the history of the Trianon Treaty, which left the Hungarian residents in the concerned territories outside the Hungarian state without their consent. The author understands the Hungarian Status Law as a natural reaction to the 'assumption that these minorities have definitely not abandoned their

political and cultural aspirations to be Hungarian and this necessarily places them in a relationship with Hungary'. The author suggests, based also on his own experiences, including as a member of the European Parliament, 'the Commonwealth of the Hungarian language' has never ceased to exist and European integration allows this 'Magyarophonie' to exist in a new form.

The other two papers in this section, while largely agreeing with Schöpflin on the ideology driving the law, view this perspective in a less positive light. In this to way, these three papers collectively serve to illustrate the differing positions discussed by Ieda. *Nigel Swain*, starting with detailed analyses of Article 18, paragraph (2) subsection (e) of the Status Law, ties Hungary's presumption that it can unilaterally influence rural development policies of its neighbours to its myth of national victimhood. According to the author, this can be emblematic of contemporary nationalist sentiment in Central and Eastern Europe, and the author documents this through textual critiques of official statements by the Hungarian and Slovak governments. Swain suggests in the conclusion that 'The European Union was based around the historic burial of French and German national myths of victims and oppressor. It has welcomed into its hold nations which betray no willingness to bury theirs'. *András László Pap* puts the Hungarian Status Law within the broader context of the Hungarian government's approach to minority rights. He argues that Hungary's 1993 law on minorities was designed not for the sake of the minorities in Hungary, but for the Hungarian kin minority, hoping that the neighbouring countries would follow the model in Hungary's law. The author, nevertheless, points the inconsistency and the contradiction of the two Hungarian minority policies; one for the minorities in Hungary and the other for the Hungarian kin minority abroad. In conclusion, the author argues the policies raise questions not only on why certain minorities receive benefits not available to other national minorities (i.e. why are ethnic Armenians, most of whom are recent immigrants, covered by the law while the Chinese are not), but also 'what makes ethno-national identity worthy of this special, publicly financed and constitutionally articulated protection that is different from the recognition or protection of other cultural, sexual, gender, etc. identity'.

The last part of the book examines the status laws and kin minority questions in a global perspective. This part questions the applicability of status laws to other minorities and provides alternative approaches than the solutions preferred by the European institutions. *Iván Halász* widens the scope of analyses on status laws chronologically and spatially, mentioning how questions of external minority protection are not recent, but arose in such documents as the peace treaty of Karlowac (1699) between the Habsburg emperor, the Polish king, and the Ottoman emperor. Halász's primary purpose, however, is to detail comparisons of provisions among the status laws of Austria, Slovakia, Slovenia, Russia, Romania, Bulgaria, Croatia, Macedonia, Albania, Greece, Italy, and Hungary, focusing on the definition of kin minority/co-nationals to be covered by the legislations and the content of the laws. This comparative analysis makes it clear that the Hungarian law was not a unique creature for kin minority, but a syndrome with mutual influences on each other. *Zsuzsa Csergő* and *James M. Goldgeier* demonstrate that contrary to expectations, kin-state activism in Central and Eastern Europe has increased despite a substantive improvement of minority rights in most societies in the region and the fact that most of these countries are now either part of the EU or expect to join in the near future. This paper outlines the types of kin-state strategies that have emerged as popular in the region, comparing the Hungarian case to strategies pursued by Romania and Russia. *Amitabh Singh* suggests three models of 'nationality politics' in the recent European history; the German model, unifying the members of the nation, the Romanian model, unifying the territories, and the Hungarian model, preserving the national identity across the borders. The author regards the Hungarian model as 'closest to the philosophy of the united Europe'. However, even the Hungarian model is applicable only with great care when the kin minorities are heterogeneous, for example, in religion. In conclusion, therefore, the author emphasises 'a clear limit' to which either the kin-state or home state can intervene into an individual's freedom of identity.

The last three papers use kin-state and kin minority relations as a jumping off point to consider other types of minorities and in other types of situations. *Nurcan Özgür-Baklacioglu* explores the kin minority

policies and their implementations in Turkey and Bulgaria, mainly focusing on the Turkish population with dual citizenship 1990s. The author's scope is wide enough to show the complexity of the kin and home minorities question in both countries. As the community of dual citizens moves back and forth across the border, she raises the issue of whether ethnic Turks in Bulgaria are part of Turkey's kin minority while in Bulgaria and, as Bulgarian citizens, part of Bulgaria's kin minority while in Turkey, which echoes Kántor's earlier discussion on the tension between ethnic and political nations. Özgür-Baklacioglu believes that the interaction between cross-border actors, such as migrant associations, and economic links may create a new kind of extraterritorial social space based on dual citizenship rights, responsibility, and participation. [...] [These dual structures] facilitate moderation of long-lasting historical prejudices and longstanding solutions for likely minority problems'. *Natsuko Oka* focuses on the 'triadic nexus' in Kazakhstan, specifically as it relates to the Russian, Uighur, and Korean minorities. These kin minorities represent one with a neighbouring kin-state, one with remote and double kin-state (North and South Korea), and one without kin-state, but an external historic homeland. In examining the relations with the kin-state (or homeland) and the home state, Kazakhstan, one of her conclusions is that 'the feeling of alienation does not necessarily lead to collective political actions. In Kazakhstan, the government strategy of control and cooption effectively has prevented mobilization along ethnicity'. Compared to the European cases, though, no active roles played by international institutions are mentioned; still, the author seems to suggest that such regional organizations like the Shanghai Cooperation Organization could have some influence in future kin minority issues in Central Asia. *Tjeerd de Graaf's* case study examines the ethno-religious group of the Russian Mennonites. Their history, language and culture are described as a particular case of the German ethnic minority in Siberia with specific rights resulting from the legal rules (comparable to aspects of a 'status law') in the German Federal Republic. The German law provides special benefits for those ethnic Germans who come to Germany and stay there. In Germany many of these immigrants are known as Russians, and their integration into German society continues to be a



tremendous challenge, especially as Russian and a Low German dialect are their primary languages.

The original papers in the book were presented at an international conference in Budapest on 14–16 October 2004, and they were subsequently revised for this publication. Additionally we have to mention *opus citatum* (Kántor et al., eds., 2004). This book is the pre-history of the Budapest conference and of this publication, and most authors in this volume also contributed to the earlier one. Therefore, reading this previous volume is recommended for a deeper understating the topic. It also contains documents, a chronology, and a bibliography related to the Hungarian Status Law.

Technically, the editors intervened in the papers in order to unify the terminology. For example, following the usage of the Venice Commission Report, we decided to use kin minority instead of ethnic minority or diaspora, home state instead of host state, kin-state instead of motherland or home country. Transcription follows the LC standards. The editors appreciate the agreement of the authors with the terminology.

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The editors