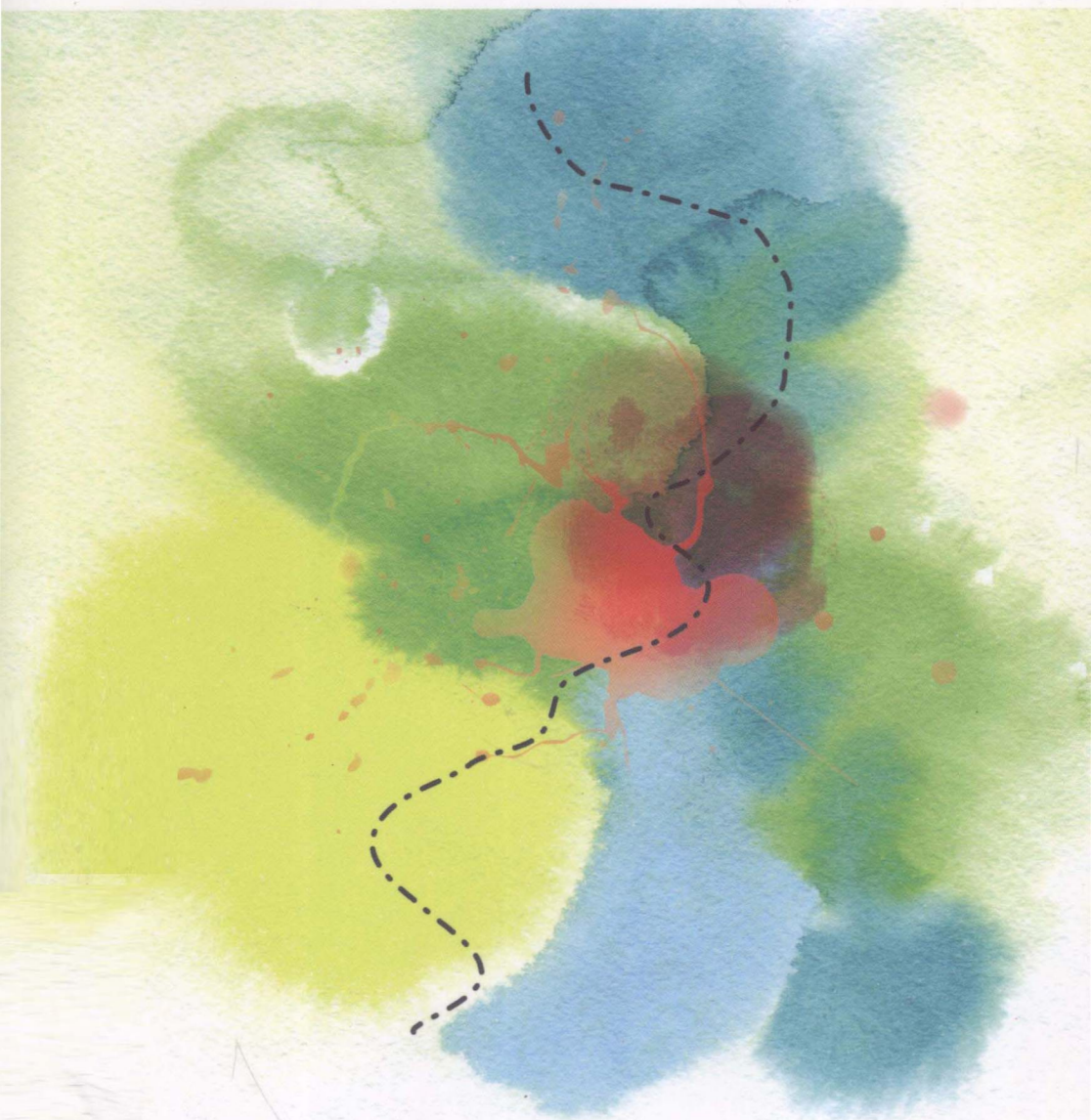


Blood and Borders

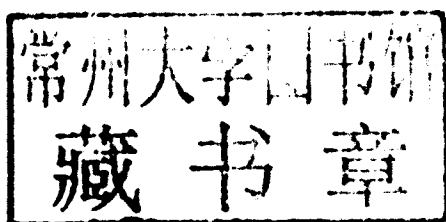
**The Responsibility to Protect
and the Problem of the Kin-State**



Edited by Walter Kemp • Vesselin Popovski • Ramesh Thakur

Blood and borders: The responsibility to protect and the problem of the kin-state

Edited by Walter Kemp, Vesselin Popovski and
Ramesh Thakur



**United Nations
University Press**

TOKYO • NEW YORK • PARIS

© United Nations University, 2011

The views expressed in this publication are those of the authors and do not necessarily reflect the views of the United Nations University.

United Nations University Press
United Nations University, 53–70, Jingumae 5-chome,
Shibuya-ku, Tokyo 150-8925, Japan
Tel: +81-3-5467-1212 Fax: +81-3-3406-7345
E-mail: sales@unu.edu general enquiries: press@unu.edu
<http://www.unu.edu>

United Nations University Office at the United Nations, New York
2 United Nations Plaza, Room DC2-2062, New York, NY 10017, USA
Tel: +1-212-963-6387 Fax: +1-212-371-9454
E-mail: unuony@unu.edu

United Nations University Press is the publishing division of the United Nations University.

Cover design by Michiko Kurihara

Printed in the United States of America

ISBN 978-92-808-1196-4

Library of Congress Cataloging-in-Publication Data

Blood and borders : the responsibility to protect and the problem of the kin-state / edited by Walter Kemp, Vesselin Popovski and Ramesh Thakur.
p. cm.

Includes bibliographical references and index.

ISBN 978-9280811964 (pbk.)

1. Ethnic conflicts—Prevention—Political aspects. 2. Conflict management—Political aspects. 3. Ethnic conflict—Prevention—Case studies. 4. Conflict management—Case studies. 5. Intervention (International law) 6. Kinship—Political aspects. I. Kemp, Walter A. II. Popovski, Vesselin. III. Thakur, Ramesh Chandra, 1948–
JZ6368.B56 2011
305.8—dc23

2011021068

Endorsements

“It is vital to protect national minorities. But history shows us that when states take unilateral steps to protect ‘their kin’ outside their borders, there is a risk of tensions. This book highlights the dilemma of how protecting national minorities can affect inter-state relations.”

Knut Vollebaek, *High Commissioner on National Minorities, Organization for Security and Co-operation in Europe (OSCE)*

“For two centuries the history of Europe – and latterly the world – has been bedevilled by the emergence of nations (‘imagined communities’) whose borders do not coincide with those of sovereign states. This timely book examines that problem from a new angle – that of the international ‘responsibility to protect’ populations threatened by mass atrocities – and suggests ways of ensuring that action by one state claiming kinship with a threatened minority in another state can help resolve such conflicts rather than make them worse.”

Edward Mortimer, *Senior Vice-President, Salzburg Global Seminar*

“This compilation juxtaposes thorny issues which have persistently troubled international relations. Indeed, misunderstood and unchecked, both the notions of ‘kin-state’ and ‘responsibility to protect’ can cause harm. Yet, they are ideas that motivate and mobilise, and so merit careful examination in context. Those concerned with complex inter-ethnic situations within and between states should read this book to note both what to avoid and what to secure. The new multilateralism of this century requires reflections and approaches as the authors of this book share and advocate.”

John Packer, *Professor and Director, Human Rights Centre, University of Essex*

Contributors

Rhuks Ako is a qualified barrister and solicitor of the Supreme Court of Nigeria. He has a doctorate from the University of Kent at Canterbury, UK, and currently lectures at the University of Hull Law School, UK. A 2010 Volkswagen Foundation “Our Common Future” fellow, his research interests broadly encompass human rights and sustainable development issues with a specific focus on Nigeria’s oil industry.

Bogdan Aurescu is President of the International Law Section of the Association of International Law and International Relations of the Romanian Branch of the International Law Association (London) and editor-in-chief of the *Romanian Journal of International Law*. He teaches Public International Law at the Law School of the University of Bucharest, Romania. He is also a member of

the Permanent Court of Arbitration (The Hague), a substitute member of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, alternate representative of Romania to the Danube Commission and an arbitrator designated by Romania according to Article 2 of Annex VII to the United Nations Convention on the Law of the Sea.

He is author or co-author of 15 volumes in the field of international law and of some tens of articles published in Romanian or foreign journals, such as the *Romanian Journal of International Law*, *Annals of the University of Bucharest – Law Series*, *Annuaire Français de Droit International*, the *International Journal of Marine and Coastal Law*, *Security and Human Rights* (formerly *Helsinki Monitor*), *European Yearbook of Minority Issues*, *Revue Hellenique de Droit*

International, and the *Chinese Journal of International Law*. As a substitute member (independent expert) of the Venice Commission, he was or is rapporteur or co-rapporteur for 16 reports, opinions or studies of this forum.

A career diplomat since 1996, he was, *inter alia*, Director General for Legal Affairs (2001–2003), Agent of the Romanian Government before the European Court of Human Rights (2003–2004), Secretary of State for European Affairs in the Romanian Ministry of Foreign Affairs (2004–2005), Agent of the Romanian Government in the Case concerning Maritime Delimitation in the Black Sea before the International Court of Justice (2004–2009), and Secretary of State for Strategic Affairs in the Romanian Ministry of Foreign Affairs (2009–2010). Since August 2010, he has been Secretary of State for European Affairs and NATO.

Joshua Castellino is Professor of Law and Head of Law at Middlesex University, UK. He also serves as Adjunct Professor of Law at the Irish Centre for Human Rights, Galway, Ireland. He worked as a journalist in India, was awarded a Chevening Scholarship, and completed his PhD in International Law in 1998 at the University of Hull, UK. He has published books and articles on public international law and human rights, and is currently completing a book series, published by Oxford University Press, that examines the comparative constitutional provisions within states for the promotion and protection of minorities and indigenous peoples. He regularly

participates in discussions concerning human rights issues at intergovernmental and non-governmental level and was a member of the EU–China Diplomatic and Expert Dialogue on Human Rights. His next book, co-written with Kathleen Cavanaugh, is entitled *Minority Rights in the Middle East* (Oxford University Press, 2011 forthcoming).

Elizabeth F. Defeis is a graduate of St John's University School of Law, USA, and obtained a Master of Law at New York University School of Law, USA. She is a member of the International Law faculty of Seton Hall University School of Law, USA, and had previously served as Dean of the Law School for five years. In addition to international law, Professor Defeis teaches international human rights, international criminal law, European Union law and United States constitutional law. She was a visiting Professor of Law at the University of Milan, Italy, and held a Distinguished Chair at the University of Naples, Italy, pursuant to a Fulbright Scholarship. In addition, through Fulbright Scholarships, she has lectured at various universities including those in India, Bangladesh, Egypt and Armenia. She is also the recipient of several other awards and fellowships, including a Ford Foundation Fellowship and a Reginald Heber Smith Fellowship.

Ho-Ming So Denduangrudee is currently a Master's candidate at The Fletcher School, Tufts University, USA. She is particularly interested in the intersection of human rights, longer-term good

governance objectives and broader socioeconomic development aims and has spent the past three years working on minority inclusion in governance from the community to national level in East, Southeast and South Asia.

Walter Kemp is Director for Europe and Central Asia at the International Peace Institute (IPI), based at IPI's office in Vienna, Austria. He joined IPI in August 2010 after serving for four years as spokesperson and speechwriter at the United Nations Office on Drugs and Crime (UNODC). At UNODC his main focus was on Afghanistan, West Africa, piracy, corruption and the impact of organized crime on security and development. From 1996 to 2006 he worked for the Organization for Security and Co-operation in Europe (OSCE), including as Senior Adviser to the OSCE High Commissioner on National Minorities and Senior Adviser to the OSCE Secretary General and Chairmanship. He also assisted in the drafting of the report of the Panel of Eminent Persons on increasing the effectiveness of the OSCE and the Bolzano Recommendations on National Minorities in Inter-State Relations.

Dr Kemp has a PhD in International Relations from the London School of Economics, UK, a Master's in Political Science from the University of Toronto, Canada, and a Bachelor's (Honors) in History from McGill University, Canada. He is the author of *Nationalism and Communism in Eastern Europe and the Soviet Union* (Palgrave Macmillan, 1999) and *Quiet Diplomacy in Action* (Kluwer Law International, 2001)

and has written several articles and chapters on issues including conflict prevention, the OSCE, the political economy of conflict, and national minorities.

Emma Lantschner is an assistant professor at the Centre for South-East European Studies at the University of Graz, Austria. She attained her PhD in law at the University of Graz with a thesis on standard-setting and conflict management through the monitoring mechanisms of bilateral and multilateral instruments. She has been a senior researcher at the Institute for Minority Rights at the European Academy of Bolzano/Bozen, Italy, and has worked as an expert of the Council of Europe on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo. Her current research focuses on the practice of minority protection in Central Europe.

Vesselin Popovski is Senior Academic Officer and Head of the Peace and Security Section at the Institute for Sustainability and Peace, United Nations University, Tokyo, Japan. He has initiated and completed several book projects, and he co-edited and wrote chapters for *International Criminal Accountability and the Rights of Children* (Hague Academic Press, 2006), *World Religions and Norms of War* (UNUP, 2009), *Democracy in the South* (UNUP, 2010) and *Human Rights Regimes in the Americas* (UNUP, 2010). He co-edited the UNU Press series "Trends and Innovations in Governance": *Engaging Civil Society* (2010), *Building Trust in Government* (2010) and *Cross-*

Border Governance in Asia (2011). He also co-edited and wrote the chapter on International Criminal Tribunals for *Legality and Legitimacy in World Politics* (Oxford University Press, 2011). Before UNU, Vesselin Popovski was a Bulgarian diplomat, a NATO Research Fellow, a Lecturer at Exeter University (UK), and an Expert for the EU Project “Legal Protection of Individual Rights in Russia”. He has taken part in two major academic initiatives: the ICISS Report *The Responsibility to Protect* (2001) and the *Princeton Principles on Universal Jurisdiction* (2001).

Olena Shapovalova is an Assistant Professor at the V.N. Karazin Kharkiv National University School of International Economic Relations and Tourist Industry (Ukraine). She obtained her PhD in World History from the National Academy of Sciences of Ukraine in 2009. She has published numerous articles in various international journals, book chapters and workbooks on international relations and Russian politics. Her areas of scientific study include Russian–Japanese relations and territorial problems, Russian–Ukrainian relations, and the self-identification of former USSR countries’ populations. She teaches international relations and political science to undergraduate and postgraduate students.

Ramesh Thakur is Professor of International Relations in the Asia-Pacific College of Diplomacy, Australian National University, and Adjunct Professor in the Institute of Ethics, Governance and Law at Griffith University in Australia. Educated in India and Canada, he

has held full-time university appointments in Australia, Canada, Fiji and New Zealand, been an adviser to several governments and serves on the international advisory boards of institutes in Africa, Asia, Europe and North America. He was Senior Vice Rector of the United Nations University, UN Assistant Secretary-General, Commissioner and a principal author of *The Responsibility to Protect*, and principal writer of the UN Secretary-General’s 2002 reform report. The author and editor of over 30 books and 300 articles and book chapters, he also writes regular op-eds. His books include *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge University Press, 2006), *Global Governance and the UN: An Unfinished Journey*, co-written with Thomas G. Weiss (Indiana University Press, 2010), and *The Oxford Handbook of Modern Diplomacy*, co-edited with Andrew F. Cooper and Jorge Heine (Oxford University Press, forthcoming).

James Tiburcio is a lecturer in international relations at Centro Universitário do Distrito Federal, Brazil. He also holds a research scholarship at the Institute for Applied Economic Research in Brasília, Brazil. His current research is focused on food security and Brazilian foreign policy towards Southern Africa.

Nicholas Turner is Academic Programme Associate in the United Nations University’s Institute for Sustainability and Peace in Tokyo. He holds an MA in international relations from the University of Kent in the UK, and previously

worked for local government and non-governmental organizations there, as well as for Qinetiq PLC on a Defence Training Review for the UK Armed Forces. He lectures at Aoyama Gakuin University and Hosei University in Tokyo, Japan. His research interests lie in human rights and ethics, focusing on just war theory, the responsibility to protect and non-state actors in military conflict – including private

military companies. His publications include *World Religions and Norms of War*, co-edited with Gregory M. Reichberg and Vesselin Popovski (United Nations University Press, 2009) and *Foreign Direct Investment in Post-Conflict Countries: Opportunities and Challenges*, co-edited with Virtus C. Igbokwe and Obijiofor Aginam (Adonis & Abbey, 2010).

Contents

| | |
|---|----------|
| Contributors | viii |
| 1 The responsibility to protect minorities: Is the kin-state a problem or a solution? | 1 |
| <i>Walter Kemp</i> | |
| Part I: Problems and perspectives | 7 |
| 2 The responsibility to protect: A forward-looking agenda | 9 |
| <i>Ramesh Thakur</i> | |
| 3 The borders of sovereignty: Whose responsibility is it to protect national minorities? | 28 |
| <i>Bogdan Aurescu</i> | |
| 4 Where are the borders? National identity and national security | 49 |
| <i>Walter Kemp</i> | |
| 5 Minority protection, bilateral mechanisms and the responsibility to protect | 63 |
| <i>Elizabeth F. Dedeis</i> | |

| | |
|---|-----|
| Part II: Case studies | 91 |
| 6 Bilateral instruments and mechanisms to protect “kin-minorities” abroad: The case of Hungary’s bilateral agreements with its neighbours and their monitoring through joint intergovernmental commissions | 93 |
| <i>Emma Lantschner</i> | |
| 7 R2P and kinship in the context of Syria and Lebanon | 122 |
| <i>Joshua Castellino</i> | |
| 8 Problems and prospects for R2P: The unilateral action of Viet Nam in 1978 | 144 |
| <i>Ho-Ming So Denduangrudee</i> | |
| 9 The role of Russia as a kin-state in protecting the Russian minority in Ukraine | 168 |
| <i>Olena Shapovalova</i> | |
| 10 Brazilians in Paraguay: A growing internal problem or a regional issue? | 188 |
| <i>James Tiburcio</i> | |
| 11 The responsibility to prevent conflicts under R2P: The Nigeria–Bakassi situation | 208 |
| <i>Rhuks Ako</i> | |
| Part III: Conclusion | 229 |
| 12 Blood across borders: The role of the kin-state in minority protection | 231 |
| <i>Vesselin Popovski and Nicholas Turner</i> | |
| Index | 240 |

1

The responsibility to protect minorities: Is the kin-state a problem or a solution?

Walter Kemp

States have a responsibility to protect all people at risk from atrocities living on their territories – be they citizens or non-citizens, indigenous people, majorities or minorities. But sometimes states may be too weak to do so. Or they may act in a way that endangers part of the population, for example persons belonging to a national minority.

What happens when states do not fulfil their responsibility to protect their own citizens? History shows that repeated discrimination against minorities and oppression of cultural, linguistic and other rights can lead to inter-ethnic tensions, violence and atrocities. The worst-case scenario involves genocide, ethnic cleansing, crimes against humanity or war crimes.

After so many atrocities in the past, the international community has vowed not to look away in the future. Thanks to a decision taken at the 2005 World Summit on the responsibility to protect (R2P), gone are the days when states could tell others not to interfere in their “internal affairs”. Now, according to the 2005 *Outcome* document, if states abrogate their responsibility to protect, others must act to prevent atrocities, either by providing assistance and building capacity or through a timely and decisive response.¹

But who can intervene, and how? Surely a state in which a large percentage of the population shares the same ethnicity or culture of the group under threat would have a strong interest in defending “its kin”. Yet, history shows that the intervention of a so-called “kin-state” or “motherland” to defend a threatened minority in a neighbouring state

Blood and borders: The responsibility to protect and the problem of the kin-state, Kemp, Popovski and Thakur (eds), United Nations University Press, 2011, ISBN 987-92-808-1196-4

can increase rather than defuse conflict. Instead of helping find a solution, the interested party exacerbates the problem. But if it does not act, who will?

This book examines the following dilemma: how can the protection of national minorities be strengthened (internally) to prevent inter-ethnic conflict, and, if that is insufficient, what are the possibilities and limitations of “kin-states” in defending the interests of people sharing cultural, linguistic, ethnic or historic bonds in a way that does not provoke bilateral or regional tensions?

This is not just a philosophical question, it goes to the heart of peace and security and the protection of human rights. For example, Hitler invoked the concept of *Schutzmacht* as an ethnically based “right” of Nazi Germany to protect “its” kin in Poland and Czechoslovakia. India and Pakistan have fought wars in Kashmir in defence of their respective kin. Wars in the Balkans demonstrated what happens, both when minority protection fails and when kinship ties lead to inter-state conflict. Cyprus is another classic “kin-state” crisis. Russia’s relations with Russophones in its “near abroad”, particularly the Baltic states and the Caucasus, also highlight the potential for tensions, as do Hungary’s attempts to strengthen ties with Hungarians abroad. Kosovo’s future will hinge on the relationship between Kosovo’s Serbian community and its links with Serbia. China’s treatment of national minorities and its policies towards Tibet and Taiwan demonstrate the complexities of internal and external R2P. Failure to protect minorities has led to atrocities in Africa, tensions in the Middle East and border conflicts in South America. As the case studies in this book demonstrate, this is an issue of international significance.

What international laws and mechanisms exist to deal with such cases where kinship ties complicate minority protection and bilateral relations? That is the main focus of this book.

The book addresses the dual responsibility of states: (a) towards minorities within their sovereign jurisdiction, and (b) as responsible partners of the international system. The premise, central to R2P, is that sovereignty and responsibility are mutually reinforcing principles. But how does this work in practice? Since the boundaries of nations are seldom perfectly congruent with the borders of states, nationally defined interests may spill over into the sovereignty of other countries. The feeling of responsibility to protect the nation (and co-nationals who are nevertheless citizens of other countries) is therefore potentially explosive, and may lead to tensions between states. If a country violates responsibility (a), a kin-state feels entitled to violate responsibility (b). This is a lose-lose situation. To prevent this situation, what leverage does the international

community have to help states improve minority protection and good-neighbourly relations?

The book is inspired by contributions made at a workshop on R2P and national minorities that took place at the European Centre for Minority Issues in Flensburg, Germany, in October 2008. It is part of a project co-funded by the United Nations University (Tokyo) and the Centre for International Governance Innovation (Waterloo, Ontario).

The book is divided into three parts. Part I looks at conceptual aspects of R2P in the specific context of minority protection, including the role of “kin-states”. Part II presents case studies that illustrate the complexities of the issue in practice. Part III contains a concluding chapter that explores these various insights and their implications.

Part I begins with a chapter by one of the founders of R2P, Ramesh Thakur. He explains the concept, its origins and what steps have been taken to apply it in practice. He looks in particular at the political and legal arguments that have been made for and against R2P since the adoption of the *Outcome* document in 2005.

In Chapter 3, Bogdan Aurescu looks at how the concept of sovereignty has evolved from the imperative of control to the need for responsibility. He underlines the primary character of the responsibility of the home-state in protecting individuals belonging to national minorities, and the scope for international intervention when this fails. He coins the expression “kinterested” state to suggest that states sharing kinship ties with a minority under threat may have an interest in the latter’s fate (and well-being), but he argues that such states cannot intervene unilaterally to protect “their kin”.

Walter Kemp (Chapter 4) considers “upstream” R2P, namely the responsibility to prevent, and what happens when states fail to live up to their obligations. He highlights how R2P can be abused by states defending the interests of nations, and how the international community – such as the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe – can defuse tensions before they become conflicts.

Bilateral treaties and mechanisms such as joint commissions are one way of building confidence across borders and enabling interested states to play a role in protecting and promoting the national identity and human rights of national minorities. Elizabeth F. Defeis (Chapter 5) explores the history of how minority protection has been internationalized and has become the subject of bilateral agreements and peace treaties, for example in South Tirol.

Part II of the book presents particular cases that relate to R2P and kin-states. Emma Lantschner (Chapter 6) provides an analysis of Hungary’s

bilateral agreements with its neighbours, and how the minority issue has both caused tensions and built confidence among states in Central Europe. Particular attention is paid to the role played by joint international commissions for defusing tensions and protecting minorities.

The Middle East is also a theatre for R2P tensions. As described by Joshua Castellino in Chapter 7, kinship issues within and between states – for example Syria and Lebanon – define the region’s cultural diversity, and can sometimes cause frictions. Castellino analyses Syria’s motivation for intervening in Lebanon in 1975–1976, in terms of both Realpolitik and R2P.

Ho-Ming So Denduangrudee looks in Chapter 8 at Viet Nam’s intervention in Cambodia in 1978, particularly in relation to its desire to protect the Vietnamese minority from the atrocities of the Khmer Rouge. In Chapter 9, Olena Shapovalova considers Russia’s role as a kin-state since the collapse of the Soviet Union, particularly in respect to protecting “compatriots” in Ukraine. This chapter begs the question: is kinship based on language, ethnicity or citizenship? In the case of Russia, and other countries, what is the bond that unites so-called compatriots or kin, and what is the right of the “motherland” to protect them? How does this affect stability within these countries and bilateral relations between them and the “kin-state”? The Georgia–Russia conflict in 2008 highlights the sensitivity and potential explosiveness of this issue.

James Tiburcio (Chapter 10) brings to light a lesser-known case, namely that of Brazilians in Paraguay. He demonstrates how demographic and economic factors have created a large Brazilian population in Paraguay, and looks at how these *Brasiguaios* relate to the Paraguayan population as well as to neighbouring Brazil. He shows how issues of land, citizenship and culture – if left unresolved – can potentially develop into crises within and between states. The final case study by Rhuks Ako (Chapter 11) examines the dispute between Nigeria and Cameroon over the Bakassi peninsular, focusing on the role of Nigeria as a kin-state.

Some of the chapters appear critical of R2P, particularly the potential abuse of the concept as a cover for hegemony or interference in the internal affairs of another (usually neighbouring) state. But the criticism is of those who misuse the concept, not of the concept itself. Furthermore, the focus is more on sovereign responsibility, prevention and strengthening the capacity of states to protect persons belonging to national minorities (the first two pillars of R2P), rather than intervention after things go horribly wrong (the third pillar). These aspects of R2P, often overlooked because of debates about how states should respond to R2P situations in a timely and decisive manner, deserve greater understanding and elaboration.

When opening the debate on R2P in the United Nations General Assembly in July 2009, UN Secretary-General Ban Ki-moon reminded member states about their failure to act in the past to prevent atrocities and crimes and to protect the lives of millions of victims. "Together, in this century, we can chart a different course . . . Join me in the search for a better way." This book is part of that search.

Note

1. UN General Assembly, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, 24 October 2005; available at <<http://www.un.org/summit2005/documents.html>> (accessed 9 December 2010).

