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AND NATIONAL MINORITIES"**

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REPORT

**"PROTECTING MINORITIES
AND PROMOTING STABILITY IN THE OSCE REGION"**

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1. OSCE mandate in protecting minorities and promoting stability

There are different reasons for protection of national minorities in the conduct of international relations and international law. From the perspective of the OSCE, the organization is concerned with formulating codes of state conduct towards national minorities

- as a way of minimizing national minority/majority conflicts by preventing oppression of individual members of national minority communities.

This corresponds to the OSCE comprehensive concept of security which directly correlates peace, security and prosperity to the respect for and observance of human rights, democratic principles and the role of law. In this respect the institutional arrangements of the OSCE have been developed along its three pillars/dimensions of security:

- politico-military dimension
- economic and environmental dimension; and
- human dimension.

2. OSCE standards – contribution to minority rights normative standard setting

The response to the situation of in Europe in early 1990s resulted in the process of including statements of national minority rights in all official documents – which formed the basis of the organization's activities and embodying its transformation from diplomatic conference to an international organization.

These documents include the main OSCE human rights standard setting texts:

- Document of the Copenhagen Meeting of the Conference on the Human Rights Dimension of the CSCE (the Copenhagen Document), 1990;
- Charter of Paris for a New Europe, 1990;
- Report of the CSCE Meeting of Experts on National Minorities, Geneva, 1991;
- Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991;
- CSCE Helsinki Document: The Challenges of Change, 1992;
- Concluding Document of Budapest: Towards a Genuine Partnership in a New Era, 1994;
- Lisbon Document, 1996;
- Istanbul Document, 1999;
- Document of the Maastricht Ministerial Council, 2003.

The Copenhagen Document

From the perspective of the standard setting under international law, the OSCE political commitments, in particular the Copenhagen document has been surpassed by the legally binding treaty of the Council of Europe, the Framework Convention for the Protection of National Minorities (FCNM). In this context, the Copenhagen document served as a basis for development of the legal text of the FCNM. However, the OSCE commitments are politically binding on the OSCE participating states and provide a basis for the monitoring mechanisms of the Organization and serve as a normative framework for the OSCE activities.

Nature of political and legal commitments - There is often a discussion on the differences and the nature of these commitments, however I consider this perhaps less important issue. In general the enforcement mechanisms of the international law are very weak, even when it comes to respect of UN resolutions or the judgments of the international judicial authorities. Therefore, from my experience, respect and implementation of the international standards and their enforcement depends on *effectiveness of cooperation* of the monitoring mechanisms of the international organizations with the member states, in the case of the OSCE the participating states. Secondly, the OSCE decision-making mechanism is a consensus among all participating states; therefore the political commitments of the OSCE have wide legitimacy since they have been adopted by all OSCE states as a minimum standard of behavior when it comes to protection of national minorities.

3. OSCE mechanisms and institutional framework

Comparatively, the OSCE has established a really unique institution and effective mechanism to influence the state's conduct towards national minorities. In 1992 after internal dialogue on the situation of national minorities in Eastern Europe and how to ensure that national minority/majority disputes did not escalate into armed conflict, the OSCE established the mandate of the High Commissioner on National Minorities (HCNM).

The HCNM was designed more as a diplomatic instrument of conflict prevention and mediation rather than a more direct agent of minority rights standards enforcement. Although the role of the HCNM was primarily to prevent ethnic conflicts from arising, the by-product of his work was negotiation of normative content of the international standards and international law into national legislation and policies of the OSCE participating states.

Besides the specific conflict prevention mandate of the HCNM, the OSCE adopted other mechanisms dealing with implementation of human and national minority rights commitments.

a. The Human Dimension Mechanisms

▪ **Human Dimension Implementation Meetings**

The HD Implementation Meetings serve as self-monitoring mechanisms of the OSCE participating states. The Meeting is held yearly and is hosted by the ODIHR in Warsaw to discuss implementation of human dimension commitments. A special session is dedicated to discussion on the implementation of minority rights commitments. While these meetings are not mandated to produce any negotiated text, their recommendations may feed into OSCE's decision-making process, in particular to Ministerial Council documents. Also non-governmental organizations could address their governments directly in these meetings. More focused and thematic meetings take place three times a year, these are called supplementary human dimensions meetings and a human dimension seminars on specific issues of HD are held every year.

- **Vienna Mechanism**
- **Moscow Mechanism**

Both mechanisms constitute intergovernmental complaint procedure that could be utilized in conflict situations between states.

Under the human dimension mechanisms, participating states agreed to:

- (1) to exchange information and respond to requests for information made to them by other participating states within ten days;
- (2) to hold bilateral meetings to examine matters relating to the human dimension with other states within one week of the request to do so. Participating states could provide information on steps (1) and (2) at review conferences.
- (3) A participating state could invite assistance of an OSCE mission consisting of up to three experts to address or contribute to the resolution of questions on its territory relating to the human dimension. Such mission could gather the necessary information; use its offices in mediation services to promote dialogue and cooperation among interested parties.
- (4) A rapporteur mission could also be initiated if a state considered that a particularly serious threat to the fulfillment of the human dimension had arisen in another participating state and it has support of ten other participating states. Also upon the request of any state, the Permanent Council could itself decide to establish committee of experts of rapporteurs. The report is submitted to the states concerned and Office for Democratic Institutions and Human Rights (ODIHR) will transmit it and the observations made by states involved to all participating OSCE states.

However, given that the mechanisms were unduly complicated and time consuming to employ they have not been used very often and are now rarely invoked. With respect to minorities, the Vienna mechanism was invoked by Turkey against Bulgaria over treatment of its Moslem minority and Hungary invoked it against Romania over treatment of the Hungarian minority in Transylvania. It had been used by UK towards Bosnia and Croatia regarding attacks on unarmed civilians in 1992; by Russia with regard to Estonia's citizenship law also in 1992 – in the end Estonia agreed to invite an OSCE mission of experts; by Moldova in 1993 to invite an expert mission to Moldovan territory; by Permanent Council who in June 1993 decided to send a rapporteur mission to Serbia-

Montenegro to investigate human rights violations – the mission was unable to fulfill its tasks because of Serbia-Montenegro's refusal to issue visa.

These national minority examples account only for a very small proportion of they overall use since more effective institutional mechanisms exist within the OSCE.

b. Institutions

▪ Office for Democratic Institutions and Human Rights (ODIHR)

The ODIHR, with its seat in Warsaw, organizes the observations of elections, reviews legislation and provides advice on how to develop and sustain democratic institutions, including training programmes and projects for government and law-enforcement officials and non-governmental organizations on how to uphold, promote and monitor human rights. The institution also monitors the human rights situation throughout the OSCE region to provide early warning when specific tensions arise. Given that more specialized institution of the HCNM exists, ODIHR plays a limited role when it comes to the special conflict prevention mandate. However, two departments have a specific mandates which relate to protection of national minorities. The Department on Tolerance and Non-discrimination and the Contact Point for Roma and Sinti Issues.

- Tolerance and Non-discrimination

The mandate is to support the OSCE participating states in their effort to combat hate crimes and violent manifestations of racism, xenophobia, anti-Semitism; Intolerance/discrimination against Muslims; promote intercultural understanding and a respect for diversity and ensure freedom of religion and belief. Notable activities include the Law enforcement Officer Programme on Combating Hate Crime, legislative assistance in particular by Panel of Experts on Freedom of Religion or Belief, their Guidelines for Review of Legislation Pertaining to Religion or Belief, *Tolerance and Non-Discrimination Information System* launched in 2006– which provides collecting point of information on legislative support in the field, such as recommendations and guidelines, access to country initiatives, legislation, national specialized bodies, statistics, and other information, international standards and commitments, information from specialized institutions.

- Contact Point for Roma and Sinti Issues

This is specialized institutional arrangement within the OSCE which is specifically dedicated to the support of the rights and equal opportunities of Roma and related communities. The activities are currently carried out under the *Action Plan on Improving Situation of Roma and Sinti within the OSCE area* adopted in 2003. The main focus areas of the work of the Contact Point are: enhancing political participation combating discrimination and racial violence, in particular in media and in police practices; addressing social issues, such a legalization of informal settlements, civil registration, and anti-trafficking measures.

Perhaps the most successful and important mechanisms within the OSCE are the OSCE High Commissioner on National Minorities and the OSCE field missions.

▪ **The OSCE High Commissioner on National Minorities (HCNM)**

Mandate

The High Commissioner's function is to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between participating states of the OSCE. The mandate tasks the High Commissioner to provide:

- *early warning*
- *early action*

in regard to tensions involving national minority issues which have not yet developed beyond and early warning state, but in the judgment of High Commissioner have potential to develop into a conflict within the OSCE area.

He has two principle tasks: first to contain and deescalate tensions, and second, if necessary to act as "tripwire", that is to alert the OSCE whenever tensions threaten to develop to a level at which he can not contain them with the means at his disposal.¹ The Office of the HCNM is based in the Hague and the post is currently held by Knut Vollebaek, a former Norwegian foreign minister.

Early warning

Early warning should provide the relevant OSCE bodies with information about escalatory developments, far enough in advance in order for them to react in timely and effective manner, if possible still leaving them to employ non-coercive and non-military preventive measures.

In comparison with other mechanism dealing with protection of national minorities at the European level, the HCNM institution has been develop as a security mechanisms, however in early years of its establishment and with the lack of fully functioning monitoring mechanisms of other institutions in Europe, his activities greatly contributed to the mediation of minority rights standards into national legislation. The High Commissioner is essentially political instrument. He mainly considers national minority issues in the context of how they affect intra- and inter-State relations. What should be understood clearly about work of the HCNM is that, although many of the recommendations of the HCNM are framed in the context of international standards, in the first instance he usually considered issues (like culture, history, language or education of national minorities) in relation to how they affect political processes within and between OSCE participating States. The HCNM intervenes as a political actor, and 'interested' third party – in those situations that he regards as potentially destabilizing to OSCE participating states by advocating achievable and durable solutions.

High Commissioner in practice

Fact-finding and collecting information

¹ See OSCE, HCNM, Fact sheet, www.osce.org/13022.html

The HCNM office may collect and receive information regarding national minority issues from any source, including media reports, OSCE mission reports, receipt of information from partner organizations, NGOs, minority communities, NGOs. However, he can not communicate with persons or organizations that practice or publicly condone terrorism or violence. When we talk about limitations on the mandate, the HCNM is also excluded to deal with individual cases concerning persons belonging to national minorities. This restriction of the mandate was essentially designed to keep focus the HCNM on the situations which are threat to stability and security of a country. The institution was not designed to be an ombudsperson for persons belonging to national minorities.

Why, where and when the HCNM becomes involved

Once the HCNM has been informed of a potential national minority tensions, he immediately assesses the role of parties concerned, the nature of tensions, recent developments on the matter and any possible consequences for peace and stability within the OSCE area.

It could be said that issues concerning persons belonging to national minorities are prevalent in many OSCE countries, but it is the degree to which these problems affect security that interests the HCNM. In practice there are two reasons upon which the HCNM often acts. He is involved in the countries which face especially difficult and complicated minority questions and secondly the HCNM believes that the office can be of help in coping with them.

Visits

To this end the HCNM is entitled to visit any OSCE member state and communicate in person with parties directly concerned, so as to obtain the information. During such visits the HCNM often promotes dialogue, confidence and cooperation between the parties involved. If having investigated the matter, the HCNM concluded there was indeed prima facie risk of potential conflict he or she could issue an early warning to the Permanent Council. This has been issued only once. In 1999, the alarm was raised about the possible repercussions on inter-ethnic relations from the large influx of Kosovo Albanian refugees into former Yugoslav Republic of Macedonia. However, most of the HCNM action focuses on the preventive action. The HCNM based on the information gathering and his visits enters into further contact and closer consultations with parties involved so as to discuss possible solutions. To this end, the HCNM could also request assistance from experts with relevant expertise in specific matters.

The HCNM in his effort to contain disputes and to address the reasons why disputes broke out in the first place uses number of effective tools.

HCNM approach to conflict prevention

- Initiating and Maintaining Dialogue

There are different types of dialogues which the HCNM tries to initiate: dialogue between himself and the parties and dialogue between the Government and minority representatives. His usual approach is not to mediate a dialogue but rather to create the conditions, frameworks and impetus for parties to initiate and maintain their own

dialogue. In his respect, the HCNM supported the efforts of the governments to establish formal dialogue mechanisms between the government and minority representatives.

- Advice and Recommendations

- b. Country specific

In dialogue with governments, the HCNM puts forward recommendations, in face-to-face meetings or through written communications suggesting ways to reduce the tensions. The HCNM pays particular attention to political processes, including drafting of legislation, voting procedures, the timing and wording of political pronouncements. This is often where decisions are made, promises kept or broken. Often it is the process itself which causes difficulties among the parties. In this respect, the HCNM besides the often offers procedural solutions and ways out. Some of the types of procedural recommendations that the HCNM made included amending legislation, delaying a vote, requesting the President to send the law back to Parliament.

These recommendations include proposals for new legislation, legislative amendments, institutional reform or change of practice, as well as other measures to establish political and participatory framework. The HCNM has also focused on encouraging bilateral co-operation between neighboring states. Mechanisms for promoting bilateral co-operation. They are important for defusing tensions when kind states seeks to support and secure the rights of its kind ethnic groups in neighboring states.²

- a. Thematic

The HCNM in addressing tensions realized that in order to prevent conflict, it is necessary to address the root causes. In this respect, he frequently encountered similar issues across the OSCE region. The HCNM realized that general thematic recommendations and guidelines would be useful for states to be able to negotiate the general normative content of international minority rights standards into their domestic context. These recommendations cover education rights of minorities, linguistic rights of minorities, participation of minorities in public life, media and broadcasting in minority languages and policing practices in multi-ethnic societies.

- The Hague Recommendation regarding the Education Rights of National Minorities
 - The Oslo Recommendations regarding the Linguistic Rights of National Minorities
 - The Lund Recommendations on the Effective Participation of National Minorities in Public Life
 - The Guidelines on the use of Minority Languages in Broadcast Media
 - Recommendations on Policing in Multi-Ethnic Societies, OS

- Tension Reducing Projects

As a very useful to tool to achieve cooperation with the government and communities, the HCNM carries a large number of project activities in areas such as education,

² See OSCE, HCNM, Fact sheet, www.osce.org/13022.html

language training, training of civil servants and police on how to function in multiethnic environment.

c. Field Operations

OSCE field Missions

OSCE missions of long duration are intended primarily to prevent the spread of existing conflicts. The mandates of the specific OSCE field operations vary but in general such missions monitor political developments in the various countries, provide advice and encouragement to local processes of conflict resolution and conciliation and keep relevant OSCE political bodies up to date on events.

The current OSCE field operations are maintained through OSCE Missions in Albania, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, OSCE Spillover Monitor mission to Skopje, Moldova, OSCE Office in Minsk, OSCE Project Co-ordinator in Ukraine, Georgia, OSCE Office in Baku, OSCE Office in Yerevan, OSCE Centre in Ashgabad, OSCE Centre in Bishkek, OSCE Project Co-ordinator in Uzbekistan; OSCE Centre in Dushanbe.

1. Reading materials:

- OSCE High Commissioner on National Minorities, Mandate
- The Hague Recommendation regarding the Education Rights of National Minorities; OSCE HCNM ,1996;
- The Oslo Recommendations regarding the Linguistic Rights of National Minorities, OSCE HCNM, 1998;
- The Lund Recommendations on the Effective Participation of National Minorities in Public Life, OSCE HCNM, 1999;
- The Guidelines on the use of Minority Languages in Broadcast Media, OSCE HCNM, 2003
- Recommendations on Policing in Multi-Ethnic Societies, OSCE HCNM, 2006

2. Recommended literature:

- *Parzymies Stanislaw (Ed.), OSCE and Minorities: Assessment and Prospects*, Scholar Wydawnictwo Naukowe, Warsaw 2007;
- *Drzewicki Krzysztof, Vincent de Graaf , The Activities of the OSCE High Commissioner on National Minorities (July 2005 – June 2006)*, in European Yearbook on Minority Issues, (Eds.) Arie Bloed, Rainer Hofmann, Joseph Marko, James

Mayall, John Packer, Marc Weller, Volume 5, 2005/6, Martinus Nijhoff Publishers, Leiden 2007, pp. 315-337;

- *Yeorgigis I. Diacofotakis*, **Expanding Conceptual Boundaries: The High Commissioner on National Minorities and the protection of minority rights in the OSCE**, Bruylant: Brussels, 2002;

- *Walter A. Kemp (Ed.)*, **Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities**, Kluwer Law International, The Hague, 2002.