

Twenty Years On and Twenty Years Ahead: The Continuing Relevance of the OSCE High Commissioner on National Minorities

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The mandate of the OSCE High Commissioner on National Minorities (HCNM), agreed by the participating States of the July 1992 Helsinki Summit of the then Conference for Security and Co-operation in Europe, is about early warning and early action on minority conflicts across the OSCE area:

The High Commissioner will provide “early warning” and, as appropriate, “early action” at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO [Committee of Senior Officials].¹

Over the past two decades, this has predominantly applied to the post-Communist countries of Central and Eastern Europe and the former Soviet Union, including Central Asia, because countries in Western Europe were generally less willing, and less susceptible to pressure, to allow HCNM engagement in conflicts in their jurisdictions. This is unlikely to change, and resistance to HCNM involvement is likely to increase in an era in which sovereignty concerns all too often trump concerns over human and minority rights. Yet, this does not make the institution of the HCNM itself irrelevant—on the contrary. I see three areas in which the HCNM has a future role to play: monitoring, preventive quiet diplomacy, and policy transfer.

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1. Areas of continuing relevance for the HCNM

1.1. *Monitoring*

The HCNM has significant expertise, tools, and experience in monitoring situations of potential and actual tension, to recognising the signs of escalation, and engaging actors in governments and regional and international governmental and non-governmental organisations to take appropriate action.

Situations involving minorities (and majorities) require specific knowledge and understanding to make sense of their complexity—not because they are more complicated than other social conflicts, but because their dynamics are often different, the drivers for escalation and de-escalation are different and interact differently, and policy responses produce unintended and often unwanted consequences.

As a result, there is a clear need for a dedicated agency specialised in and focused on minority issues. This is also the case because there is no shortage of situations that require attention: from Abkhazia to Anatolia, from the Baltics to the Balkans, from Corsica to Crimea, tensions involving national minorities and majorities are frequent and have a tendency to escalate into violence if left unattended.

1.2. *Preventive, quiet diplomacy*

Knowing that trouble is afoot is one thing, doing something about it is quite a different matter. Thus, the early-action part of the HCNM's mandate was almost revolutionary in 1992, albeit dependent on "approval" by the Committee of Senior Officials ('The High Commissioner may recommend that he/she be authorized to enter into further contact and closer consultations with the parties concerned with a view to possible solutions, according to a mandate to be decided by the CSO. The CSO may decide accordingly.')2 and the practice that followed it was in many cases highly successful.

This was also partly the case because the HCNM operated outside the limelight of publicity-seeking diplomacy and had, with Max van der Stoep and his advisors, a highly capable and effective first team of diplomats and legal and political experts to offer facilitation, mediation, and practical solutions to governments and minority representatives enabling them to resolve differences by political rather than violent means.

The cumulative knowledge of the HCNM as an institution on issues of facilitation, mediation, and institution-building is highly valuable, as are the network of experts on which the HCNM can draw and the seven sets of thematic recommendations (on education, linguistic rights, participation, kin-states, policing in multi-ethnic societies, minority languages in broadcast media, integration and conflict prevention) that can form a useful starting point for engagement in situations of minority-majority tension and potential conflict.

This knowledge base and expertise on how to bring diplomacy and institutional design to situations in which local leaders would otherwise be overwhelmed by the complexity of the situation that they have to deal with continues to remain useful and it is necessary to draw on it in the management of population diversity from Northern Ireland to Nagorno-Karabakh.

1.3. Policy transfer

Geographically and historically, the OSCE region from Vancouver to Vladivostok is rich in examples of successes and failures of conflict prevention and management, and the same goes for the history of the HCNM itself. The institution made a significant and positive contribution to managing minority-majority relations in the aftermath of the collapse of communism, while also being constrained, or even prevented, from acting in a number of cases.

This offers clear opportunities for cross-national and cross-institutional policy learning and transfer within the OSCE area and beyond: the conflicts of the early 1990s that created some of the impetus to establish the HCNM were neither unique, nor are they a specifically (eastern) European phenomenon, and there is no reason to believe that the HCNM's experience would not be useful to organisations like the African Union, the Organisation of the Islamic Conference, or the Arab League, to name just a few.

2. Two empirical illustrations of the HCNM's added value

2.1. The Bolzano Recommendations on National Minorities in Inter-state Relations

The HCNM's Bolzano Recommendations of June 2008 reflect very clearly a continuing concern within the OSCE as an international organisation of States about the "security implications" of the existence of national minorities and specifically,

including their treatment by the States in which they reside, the relationship that they have with their kin-state, and the relations between these two States.

The “General Principles” of the Bolzano Recommendations are primarily concerned with the meaning of sovereignty in this context, conceptualising it as a right of States, protected by international law, to exercise jurisdiction within their boundaries and over their population without interference by other States unless they consent to it and a responsibility of States to protect their populations, including by observing existing international human and minority rights standards.

Sovereignty as a set of responsibilities of States is more weakly enshrined in international law, and while there has been significant progress since the end of the Cold War, legally-binding obligations upon States, especially as far as minority rights (rather than more general human rights) are concerned, are far and few between and monitoring and enforcement mechanisms and capabilities are relatively weak.

This is very much reflected in Section II of the Bolzano Recommendations on ‘State obligations regarding persons belonging to national minorities’. Nonetheless, Section II also indicates three distinct areas in which States with citizens who belong to national minorities can make a positive contribution. First, *participation*: by creating opportunities for equality, integration and an effective voice, thus enabling members of minorities to participate effectively in all areas of social, economic, political and cultural life in the States in which they live. Second, *particularism*: by striking a careful balance between the need to achieve inclusion while avoiding assimilation, on the one hand, and giving members of national minorities the space and opportunities to express, deserve and develop their particular identities, on the other. And third, *partnership*: by limiting restrictions on the ability of members of national minorities to maintain meaningful contacts across borders with others with whom they share an identity.

While the focus in Section II of the Bolzano Recommendations is on “State obligations”, the concern for broader international security, *i.e.* the potential of situations involving national minorities to disrupt inter-State relations and create or exacerbate tensions, translates into explicit minority obligations as well. Members of national minorities must be willing to participate and respect the rules and regulations of the States of which they are resident citizens. This means that any cross-border contacts that members of national minorities have must be peaceful. In other words, in the same sense in which sovereignty is a right and a responsibility of States,

citizenship of the State in which members of national minorities reside creates not only a set of rights to enjoy but also a set of responsibilities to fulfil.

If we take a closer look at the situation in the Black Sea Region, a diverse picture emerges with respect to three of the countries there, in whose borders national minorities reside: Bulgaria, Moldova, and Ukraine.

In *Bulgaria*, the largest national minority is that of ethnic Turks with a share of 9.4% of the country's total population, equivalent to just under 750,000 people according to the 2001 census, living predominantly in the south and east of the country. From 1956 onwards, Turks in Bulgaria faced a gradual assimilation campaign that culminated in the so-called "revival process" and the "big excursion" in the second half of the 1980s. Both processes were stopped and reversed after the collapse of Communism, and the latter was officially recognised as ethnic cleansing in a February 2010 declaration by the Committee on Human Rights and Religious Freedom of the Bulgarian National Assembly. Bulgaria has ratified the Framework Convention for the Protection of National Minorities, but not the European Charter for Regional or Minority Languages. The Bulgarian constitution guarantees equality and prohibits any discrimination. It also allows citizens whose mother tongue is not Bulgarian to use and study their own language. Public television and radio regularly broadcast in Turkish. Relevant legislation is generally permissive with regard to opportunities for participation, particularism and partnership. In 1997, a consultative body on minority issues, the National Council on Ethnic and Demographic Questions, was established. The Movement for Rights and Freedoms, which enjoys significant support among members of Bulgaria's Turkish minority, is firmly integrated in the political process of Bulgaria, including as part of various governing coalitions. Bulgaria allows dual citizenship for citizens of another country. Bulgarian citizens, however, can only acquire a foreign citizenship after they have been released from their Bulgarian citizenship.

In *Ukraine*, the largest national minority is that of ethnic Russians with a share of 17.3% of the country's total population, equivalent to just over 8.3 million people according to the 2001 census, living predominantly in the south and east of the country. Smaller national minorities include: Belarusians (275,800/0.6%), Moldovans (258,600/0.5%), Bulgarians 204,600/0.4%), and Romanians (157,000/0.3%). After Ukraine gained its independence in the process of the dissolution of the Soviet Union, there were significant tensions within Ukraine and between Russia and Ukraine,

especially over the status of Crimea and its Russian and Russian-speaking inhabitants. These were, for the most part, resolved in a process that led to the establishment of the Autonomous Republic of Crimea in 1995. Ukraine has ratified both the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The Ukrainian constitution guarantees equality and prohibits any discrimination. Early on in the post-Soviet period, a Declaration on the Rights of Nationalities (November 1991) established a broad range of minority rights and a Law on National Minorities (June 1992) provided State support for the development of minorities. The 1996 Ukrainian constitution designated Ukrainian as the official language of the State, but also permitted the use of other languages. Despite recent efforts to reassert Ukrainian as the official language in all sectors of society and across all regions of Ukraine, Russian remains widely used in public and private life, including education, business and the media. Relevant legislation is generally permissive with regard to opportunities for participation, particularism and partnership. There are no specifically “ethnic” parties of any electoral significance. Ethnic Russians are strongly represented in, and supportive of, the Party of the Regions, the Communist Party of Ukraine, and the Progressive Socialist Party. These are generally pro-Russian in their foreign policy outlook but do not question Ukrainian statehood, as some smaller radical groups do by supporting either the restoration of the Russian Empire or the secession of predominantly ethnic Russian parts of Ukraine. Ukraine does not allow dual citizenship.

In *Moldova*, the largest national minorities are ethnic Ukrainians and ethnic Russians, with a share of approximately 11% and 9% of the country’s total population, respectively, equivalent to 440,000 and 370,000 (based on calculations according to the 2004 censuses in Moldova and the area of Transnistria). The overwhelming majority of members of both groups live in the area of Transnistria, where they constitute 29% and 31% of the locally resident population, respectively. Gagauzians (a Turkic minority) live in the south of the country and number approximately 150,000 (3.8%). There are also around 80,000 Bulgarians (2%) in Moldova. After Moldova gained its independence in the process of the dissolution of the Soviet Union, there were significant tensions especially related to the reassertion of a Moldovan national culture, including in the area of language use. Some violent conflict ensued, leading to the separation of Transnistria from the rest of the country (which continues to the present day), as well as, in 1995, the establishment of the

Autonomous Territorial Unit of Gagauzia. Moldova has ratified the Framework Convention for the Protection of National Minorities and is a signatory to the European Charter for Regional or Minority Languages. The Moldovan constitution guarantees equality and prohibits any discrimination. The 2001 Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organisations is generally permissive in its provisions and aims to create opportunities for participation, particularism and partnership. Moldova allows dual citizenship.

Thus, the three countries of the Black Sea region considered here by and large fulfil their “State obligations” as outlined in Section II of the Bolzano Recommendations. As far as sovereignty as a key “general principle” of inter-State relations is concerned, a different picture emerges: only Bulgaria and Ukraine are unchallenged in their sovereignty. Moldova, in contrast, does not exercise *de facto* sovereignty over a significant part of its territory and population. This is despite the commitment of successive Moldovan governments to resolve the conflict over Transnistria peacefully and offer that region a large measure of territorial self-governance within Moldova. This is despite significant changes in Moldovan law and policy since the early 1990s when members of national minorities in Transnistria arguably had justifiable concerns about their opportunities to express, preserve, and develop their identities. It is also despite significant international efforts to find a negotiated solution for the conflict over Transnistria, and despite the relatively positive precedent of the 1995 settlement for Gagauzia, mediated by the OSCE.

These rather different situations should not make us question the value of a set of more general principles such as those laid down in the Bolzano Recommendations. To the contrary, it makes them even more important. The “general principles” outlined in Section I of the Bolzano Recommendations offer important guidelines to all States concerned, as well as to the international organisations of which they are members, about their mutual conduct. While sovereignty as both a right and obligation is central to these principles, the preservation of peace and the peaceful conduct of international and bilateral relations are equally important. Thus, even where there is a dispute over sovereignty—either as a right or as an obligation—such a dispute cannot be resolved by recourse to military force.

“State obligations”, as outlined in Section II of the Bolzano Recommendations, may have a weaker basis in international law, but, at least as far as

the three short case studies here are concerned, have been fulfilled by and large. However, while State obligations represent an important element as far as national minorities and inter-State relations are concerned, the case of Moldova (or more specifically Transnistria) highlights that there are situations in which the State living up to these obligations may not be sufficient for conflict situations to be resolved. This, in turn, underlines the need to consider the whole breadth of principles and obligations, including obligations that arise for kin-states, national minorities and the international community.

2.2. The Ljubljana Guidelines on Integration of Diverse Societies

There can be no question that the post-Soviet space in Eastern Europe has seen its fair share of conflict involving national minorities over the past two decades. From Central Asia to the Caucasus north and south, to Ukraine, Moldova, and the Baltic States, some of these conflicts were very violent, others were more contained. A number of these conflicts remain unresolved, and there is, unfortunately, potential for old conflicts to escalate again and new ones to emerge. At the heart of all of these—past, current, latent, potential—conflicts is a fundamental lack of social cohesion. In the wake of the major geopolitical changes that occurred in Eastern Europe more than two decades ago, a lack of integration and/or rapid disintegration of societies goes a long way in explaining the origins and early phases of the conflicts in Georgia (Abkhazia and South Ossetia), Moldova (Gagauzia and Transnistria), and the Nagorno-Karabakh territory in Azerbaijan, as well as the persistent tensions and volatility of these situations today, highlighted dramatically by the re-escalation of conflict in Georgia in 2008.

What is it about social cohesion that is so important for successful conflict prevention? One of the fundamental ideas underlying the notion of conflict prevention in diverse societies is that different population segments can resolve any differences through recourse to institutional processes rather than violence. For such institutional processes to be effective, a viable and resilient State is required whose fundamental constitutional principles are broadly accepted and respected across all segments of societies. If this is the case, societies may well be diverse across any number of indicators, including ethnicity, language, and religion, but they will also be characterised by a sufficient level of social cohesion. In the absence of social cohesion, the State will become fragile and unable to provide the institutional setting

in which differences can be addressed effectively. Such States gradually lose sovereignty, at least in a *de-facto* sense. State sovereignty, rightly emphasised in the 2012 Ljubljana Guidelines on Integration of Diverse Societies, is thus indeed an essential pre-requisite of both integration and conflict prevention. In this sense, integration and conflict prevention in diverse societies are very closely related: integration ideally achieves sustainable social cohesion, which provides the framework for effective conflict prevention.

The connections between integration and conflict prevention do not end there. Both are two-way processes that involve mutual recognition and reciprocation by all segments in diverse societies, minorities and majorities alike. This is reflected in the notion of rights and duties: accepting and respecting basic constitutional principles is only meaningful if it happens broadly across societies and if individual citizens fulfil their duties arising from this and are, at the same time, secure in their rights under this constitution. As majorities question the right of minorities to their distinct identities and as minorities reject the idea of being part of a State in which they feel threatened, and thereby seemingly undermine the very existence of this State, conflict escalates and often becomes intractable as has happened in the Caucasus for the last two decades.

In diverse societies, therefore, integration as a set of policies aimed at achieving social cohesion requires striking a careful balance between inclusiveness and distinctiveness. In other words, viable States in which violent conflict can be prevented, are sufficiently cohesive around a basic constitutional consensus, but within this framework allow for, and guarantee, the individual, group, and institutional expression of distinctiveness, be it qua the recognition of a second (or third) official language, cultural autonomy arrangements in the areas of religion and education and/or territorial self-governance and power sharing. Crimea and Gagauzia, despite all their shortcomings, serve as examples of how to make a genuine attempt at getting this balance right, at least some of the time.

In Ukraine, the dispute around Crimea never escalated to the level of a full-blown violent conflict because the process of resolving the status of Crimea in Ukraine was inclusive and participatory locally, nationally and regionally. In this sense, of the cases considered briefly here, Crimea is the one in which conflict prevention actually worked, partly because the process of disintegration of the Ukrainian State and society was arrested in time through OSCE mediation and the

moderating influence of elites in Kiev, Simferopol, and Moscow. Yet, while national integration has been pursued quite sensibly and effectively (considering the considerable divide within Ukrainian society at large) and prevented a re-escalation of conflict between Simferopol and Kiev, integration at the local level has been less successful and social tensions remain high, especially in relation to the Tatar population.

The case of Gagauzia, at the same time, demonstrates that establishing an acceptable constitutional consensus alone is not enough if it is not followed by a context-sensitive integration strategy. While there has been, and is, no real danger of Gagauzia sliding back into violent conflict, the decade after the OSCE-mediated settlement of this conflict in 1995 has seen little, if any, serious effort at integration. While this short-coming has been addressed at least at an institutional level with closer political integration, Gagauzia continues to suffer from a degree of isolation—or lack of integration—that is, if anything, increasing, partly because little effort was made in the past to promote, and embrace, Moldova's official language in a small region where Russian remains the locally predominant medium of communication.

Effective integration and conflict prevention are also linked in that they require a comprehensive approach in terms of the policy areas and people or groups they involve. Integration and conflict prevention policies, thus, have both horizontal and vertical dimensions: they need to engage elites and the masses within and across different population segments and they need to address the specific concerns that they have.

Responsive engagement is key to effective integration and thus to achieving sustainable conflict prevention. It highlights the significance of one particular mechanism noted in the Ljubljana Recommendations—effective participation. This is not a new approach as such, but has been present in earlier recommendations by the HCNM, in particular, the 1999 Lund Recommendations. Effective participation is so important because it establishes channels of communication across the range of institutions and at all levels of society, because it is one of the pre-requisites for access to remedies for those who perceive their rights to be ignored or violated, and because it can prevent alienation and (self-)isolation from State and society thus eroding social cohesion and rendering States more and more fragile and vulnerable to conflict.

Where citizenship and the rights and duties that flow from it remain contested, as for parts of the Russian populations in Latvia and Estonia and many Crimean Tatars in Ukraine, effective participation is not possible and thus cannot be a means to build trust between different segments in diverse societies. Effective participation in itself may not guarantee that institutional processes will always result in a particular individual's or group's most preferred outcomes, but it can ensure that broadly acceptable outcomes are achieved most of the time and that the fundamental constitutional consensus that they have signed up to is protected. Integration is an outcome-oriented process to achieve social cohesion and prevent future conflict, which is often the most necessary and yet most difficult to achieve after violent conflict when diverse societies are at their least cohesive and the State is still very fragile.

This requires a great degree of sensitivity about how to pursue integration: too much too early would be as counter-productive as too little too late, the only difference being in when conflict would be likely to re-escalate. Past experiences with integration thus offer crucial lessons for conflict management and prevention.

For example, in relation to the conflict over Transnistria where optimism is again waning about the immediate prospect of successful conflict settlement efforts in the 5+2 talks,³ the need for a broadly acceptable consensus on a viable Moldovan State has not diminished, nor has the necessity that such a consensus also needs to be promoted actively across all segments of society. This will require a comprehensive integration strategy that accompanies, and extends beyond, the conflict settlement process that is currently underway. Such an integration strategy should be modelled closely on the Ljubljana Recommendations and address among others the institutional, socio-economic, and cultural concerns of all citizens.

Integration, thus, is, on the one hand, essential for conflict prevention, and can, on the other hand, only succeed if it is based on the acceptance of a constitutional consensus in which social cohesion and diversity are equally valued, promoted and protected. This is borne out quite clearly by the experiences of success and failure in conflict and conflict management in Eastern Europe over the past two decades. The Ljubljana Recommendations cannot easily undo the failures of the past, but they offer a very useful guide for local, national, regional and international actors in the post-Soviet space and well beyond to avoid similar failures in the future.

3. Looking ahead to the next decade (or two)

Thus, it seems that it will be business as usual for the HCNM in the next 20 years. However, we must not underestimate that there is a profound change in the context in which the HCNM is, and will be, operating. First, after a period of relative calm, or lack of serious violence, in relation to minority-majority relations, the past few years since 2008 have seen a return of violence on a number of occasions (Georgia, Kyrgyzstan, Macedonia) and a serious, and often unfortunate, international politicisation of minority issues, perhaps most obviously embodied in the developments in and around Kosovo. Kosovo marks a secessionist moment in the post-colonial context and underscores the failure of the international community, in its organised form of the UN, to deal effectively with the Kosovo crisis.

At the same time, developments in the Arab Spring highlight very concretely the fact that minority issues are not a uniquely OSCE/European issue, and much like in the early 1990s in Central and Eastern Europe, that expertise and will to handle them is thinly spread. And while it may be too late for early warning and early action in many cases in the Arab Spring, and across many other places in Africa and Asia, the HCNM's problem-solving expertise—from both a perspective of process and substance—would be extremely valuable.

The HCNM is a “package” institution, and there is an argument that elements of the package may be easier to transfer than the whole. Yet, while constituent parts of the HCNM mandate are valuable in themselves, the success of the institution is in large part due to the fact that it is larger than the sum of its parts, that there is real added value in early *warning* and early *action*, in a toolkit and its quiet and preventive application. This is not a plea for out-of-area missions, but for carefully considered, context-sensitive policy learning and transfer beyond the OSCE area.

One of the problems that the HCNM is facing in my experience is that it is an independent institution within the OSCE: the OSCE is dealing with many minority-related issues, but this is not an exclusive domain for the HCNM, nor is the HCNM always involved or its knowledge and understanding drawn on, and it seems to me that this is an area of necessary improvement. Thus, there is the need for careful, closer integration of the HCNM's work into the OSCE and European international and regional organisations' mainstream.

Another issue to consider is the question whether the HCNM is (or should be) an instrument of democracy promotion. And here, similar to calls for out-of-area

operations, the answer, in my view, has to be a clear no. This is not to say that the HCNM should stand in the way of democratic political practices, but the institution needs to remain focused on its existing mandate. The mandate focus is particularly relevant in periods of transition or regime change—after all, the HCNM was established to prevent conflicts involving national minorities at the time of, and in response to, post-Communist democratic transitions in Central and Eastern Europe, the former Soviet Union and the successor States of Yugoslavia. In executing this mandate, the HCNM will inevitably promote forms of good governance in majority-minority and inter-State relations that are compatible with existing understandings of democracy, but this is different from promoting a particular system of government. To do otherwise would further increase the resistance of governments to HCNM assistance.

Managing tensions between minorities and majorities, preventing their escalation into full-scale conflicts, and contributing to restoring and sustaining peace after violent conflict will remain a significant challenge for the international community in the years to come and in most parts of the world.

To deal successfully with the challenges that such self-determination conflicts pose requires leadership, diplomacy, and institutional design in equal measure. The work of the HCNM thus far offers both important lessons for future international conflict management and a set of tools, knowledge, and understanding that has relevance within and beyond the OSCE area.

We need to be realistic, however, about what the HCNM can contribute and achieve. It can bring diplomacy and institutional design; that is, it can offer facilitation and mediation and it can draw on a wide knowledge base of institutions that can mitigate minority-majority tensions. It cannot, however, substitute for a lack of local leadership: where skilled and determined leaders with a vision for peace and co-existence are absent, the HCNM's efforts may be futile. That said, the involvement of the HCNM itself bears the potential to change local attitudes. In this sense, the HCNM can very well be seen as the master of its own success, and it is this potential, and evident track record, of quiet self-made success that requires its continued existence and, it seems to me, replication beyond the OSCE area.

Notes

¹ Conference for Security and Cooperation in Europe, ‘CSCE Helsinki Document 1992: The Challenges of Change’, at <http://www.osce.org/mc/39530?download=true>.

² *Ibid.*

³ The negotiations over a settlement on the Transnistrian conflict are conducted in the framework of regular meetings in the 5+2 format – the sides (Moldova and Transnistria), the mediators and guarantors (OSCE, Russia and Ukraine) constituting the “5”, with the observers (EU and US) constituting the “2”. For a background and the current status of the talks, see Stefan Wolff, *The Transnistrian Issue: Moving Beyond the Status-Quo* (Brussels: European Parliament, 2012).