

Latvia and the OSCE¹

General Overview

Latvia joined the OSCE (then still the CSCE) in 1992, after the 1991 crisis between the pro-democratic and pro-Soviet forces that preceded Latvia's independence had been resolved and before the wider international community had become fully aware of and concerned with the ethnic tensions related to Latvia's post-independence citizenship and language policies. It would probably be fair to say that the OSCE as an organization has been both loved and hated in the country. In the early stages of the OSCE's involvement in Latvia, the Organization was viewed as a friendly partner thanks to its involvement in the withdrawal of Russian troops from Latvian territory and the dismantling of the Skrunda radar station – the last operating Russian military object in Latvia. At that point, the OSCE was able to mediate successfully, as its involvement was readily accepted and even solicited by both Latvia and Russia. For Latvia, membership of the OSCE formed part of the country's policy of returning to the international community after the Soviet period, which featured an attitude of extreme openness towards international organizations in general. However, other OSCE activities that concerned Latvia's internal affairs rather than its external policies were met with less enthusiasm. For instance, the presence of the OSCE Mission and the involvement of the High Commissioner on National Minorities have generally been viewed as damaging to Latvia's international image.

On the whole, the OSCE has been seen in Latvia as a soft-security organization that is unable to provide any real security guarantees for the country. That being the case, membership of the OSCE was never perceived in Latvia as an alternative to NATO membership. Nonetheless, it is undeniable that the OSCE has played a significant role in furthering Latvia's more long-term security goals of joining NATO and the EU. It is also undeniable that Latvia's participation in the OSCE is inevitably linked to Latvian-Russian interstate relations. Every aspect of the OSCE's involvement in Latvia has aimed directly or indirectly at these relations – something the Latvian authorities were aware of at times, but which was far from evident to them on other occasions, with the result that they did not always value it.

¹ The opinions expressed in this article are those of the author. The article covers the period up to October 2004.

Immediately following Latvia's declaration of independence, the OSCE acted as an impartial international observer of Russia's withdrawal of the troops that remained on Latvian territory. This was not an easy task given the new Latvian elite's pursuit of a policy of excluding the Russian-speaking minority from Latvia's citizenry and Russia's indignant reaction to that policy, which culminated in careless public statements linking troop withdrawal to the safeguarding of the rights of the Russian-speaking minority. At that stage, the OSCE attempted to ensure that, on the one hand, the troops were withdrawn in an orderly and timely manner and, on the other hand, that Latvia's exclusionary policies were subjected to close international scrutiny.

The question of troop withdrawal and other issues relating to the former Soviet army, such as the situation of military pensioners, were among the most delicate areas of Latvian-Russian relations. Emotions ran high and agreements were difficult to reach and implement. To oversee the agreement on the status of military pensioners, the OSCE appointed its Representative to the Latvian-Russian Joint Commission on Military Pensioners, thus providing impartial international supervision. The OSCE also appointed its Representative to the Joint Committee on the Skrunda Radar Station, whose activities were aimed at facilitating the implementation of the agreement on the legal status of the Skrunda Radar Station during its temporary operation and dismantling. The radar station was shut down in August 1998 and successfully dismantled in October 1999. Although its continued operation was often presented in Latvia as a symbol of ongoing occupation following the withdrawal of Russian troops, the fact that the agreement was reached with Russia in 1994 on its eventual dismantling points to the will of both parties to handle the issue in a disciplined manner. The OSCE's supervision did not cause tension or lead to negative perceptions of the Organization as a whole on either side. International law was observed and any potential conflict situations were avoided.²

Thus, in matters that concern the army, the OSCE's role is generally viewed positively in Latvia. Russia was perceived as an external threat to Latvian security, and the OSCE was understood to have assisted in removing that major threat. Perceptions changed, however, when the OSCE became closely involved in monitoring Latvia's internal policies towards its Russian-speaking minority and insisting that Latvia comply with international standards in the field of human rights. Although the Latvian government did not object to the establishment of the OSCE Mission, it grew increasingly intolerant of its presence over the years. The Mission was engaged in such activi-

2 Cf. Jürgen Hübschen, *The Skrunda Agreement and the OSCE's Involvement – An Example of Conflict Prevention and Confidence-Building*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 1999*, Baden-Baden 2000, pp. 179-184.

ties as collecting information on human-rights violations by the Latvian Citizenship and Immigration Department, assisting the High Commissioner on National Minorities in preparing and carrying out his visits to Latvia and in furthering the implementation of his recommendations, holding seminars related to minority rights in Latvia's cities and towns, helping local NGOs, and more.³ The reaction of the Latvian government to these activities was generally the opposite of its reaction to the OSCE's involvement in army-related matters: The OSCE was now often accused of interfering in Latvia's internal affairs, taking Russia's side, and pushing Latvia towards adopting legislation and policies which were not in Latvia's interest.

It is fairly evident that the OSCE's interest in shaping Latvian policies towards its Russian speakers was not based solely on a concern for minority rights as such. Russia had signalled its strong dissatisfaction with the line being taken by the Latvian government, and Latvia's citizenship and language policies had led to a serious deterioration in Latvian-Russian relations. The OSCE thus viewed the situation as potentially explosive and capable of triggering an international conflict. Had Russia not been Latvia's neighbour, it is not obvious that so much international attention would have been paid to the country's internal affairs. As long as Latvian citizenship and language legislation did not comply with the norms established by international law, Russia would always voice dissatisfaction and draw international attention to the position of the Russophone minority in Latvia. But it is also evident that certain political forces in Russia used the situation to pursue their own interests or to project what they saw as Russia's wider geopolitical goals. Conscious of the close interconnectedness of internal and external factors in Latvian security, the international community, and the OSCE in particular, was primarily concerned with the consequences Latvia's policies towards its minority Russophones could have on international security.

The OSCE High Commissioner on National Minorities

In this regard, the role of the OSCE High Commissioner on National Minorities (HCNM) appears fundamental. The first High Commissioner, the former Dutch Foreign Minister Max van der Stoep, directed his attention to the situation in Latvia immediately after the establishment of his office in December 1992. The Latvian citizenship policy that aimed at disenfranchising those who settled in the country during the Soviet period, mostly Russophones, was

3 For accounts on the Mission's activities, see: Undine Bollow, The OSCE Missions to Estonia and Latvia, in: *ibid.*, pp. 169-178; Falk Lange, The OSCE Missions to the Baltic States, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 1997*, Baden-Baden 1998, pp. 115-121; Sabine Machl, The OSCE Missions to the Baltic States, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2002*, Baden-Baden 2003, pp. 209-218.

a preoccupation given its implications for ensuring the smooth transition to democracy and the overall stability in the country. Within the OSCE's comprehensive concept of security, the situation was classified as falling under the High Commissioner's mandate, according to which the HCNM is

an instrument of conflict prevention at the earliest possible stage [...] and] 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 [...]'⁴

The frequency and intensity of the High Commissioner's involvement in Latvia speak for themselves: During his time in office, van der Stoep paid 18 visits to the country, directed at least 20 letters to at least seven Latvian officials, and issued seven public statements on Latvia. No other international actor has been involved in Latvia to such an extent. Evidence suggests that the High Commissioner played an important part in bringing about the decisions of the two post-independence Latvian presidents, Guntis Ulmanis and Vaira Vīķe-Freiberga, to veto problematic legislation on three occasions (the Citizenship Law in 1994, the amendments to the Labour Code in 1998, and the Law on the State Language in 1999). These facts alone are not yet sufficient to declare the HCNM's involvement a success. However, taken together with the media coverage of his actions and the reactions of those involved, they provide evidence of the HCNM's capacity to exercise significant influence upon the discourse and behaviour of the key Latvian political actors, and on the inter-ethnic atmosphere in general, thus testifying to his operational effectiveness.

The High Commissioner could not prevent the disenfranchisement of the majority of the Russian-speakers in Latvia, as the decision upon this issue had already been taken and the arguments of the Latvian side internationally accepted before his first intervention in 1993. While automatic recognition of the citizenship of all legal residents of Latvia at the time of independence was the solution that Russia preferred and even demanded, Western actors were careful to differentiate their approach from Russia's in spite of the fact that most of the affected non-citizens in Latvia also favoured the Russian position. The HCNM was compelled to accept the idea of a gradual naturalization of those not granted citizenship, and attempted to accelerate this process by advocating fast-track naturalization and the simplification of requirements in

4 The mandate is included in the CSCE Helsinki Document 1992: The Challenges of Change, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 721-777, here: pp. 715-721 (paras 2 and 3).

his initial recommendations. Although the Latvian *Saeima* (parliament) rejected his 1993-1994 recommendations and adopted a Citizenship Law that minimized the opportunities for the Russian-speaking non-citizens to naturalize, the HCNM followed up on the issue and was one of the principal causal factors behind the change of the Citizenship Law in 1998 that opened the access to naturalization to the majority of non-citizens, regardless of their age or place of birth. The High Commissioner was also very closely involved in the process of bringing the controversial Law on the State Language, adopted in late 1999, minimally in line with Latvia's obligations under international law, as well as in the drafting of the Language Regulations of the cabinet of ministers that were intended to guide implementation of the Law.⁵

Although the HCNM's recommendations were rarely implemented in their initial form, and the final result agreed upon by the Latvian decision-makers usually represented complex compromises resulting from a long process of negotiations over a specific issue, the overall involvement of the HCNM in Latvia can be regarded as positive thanks, for example, to the extensive international publicity it has given to the minority issues in Latvia. Attempts to tighten the policy towards the Russian-speakers have been kept at least partially in check thanks to the High Commissioner's efforts to ensure that the new legislation remained in accordance with international law.

The HCNM and International Norms

The HCNM often invoked international human rights norms as arguments for accepting his recommendations. However, the answer to the question of whether Latvia has or has not complied with the norms he invoked is not a straightforward one. It appears that the High Commissioner managed to be "normatively effective" in Latvia in the sense of arriving at what may be termed "normative compromises" with the Latvian authorities through an exchange of concessions during the negotiation process. It also appears that it was the legal precision of international norms (or rather their imprecision) that determined the extent to which those norms could be negotiated and, in the end, made a subject of compromise. As one of the HCNM's strategies was the "translation of norms"⁶ to local circumstances, it is difficult to evaluate the HCNM's activity in terms of the compliance or non-compliance of

5 For a detailed account of the implementation of the HCNM's recommendations to Latvia, see: Jekaterina Dorodnova, *Challenging Ethnic Democracy. Implementation of Recommendations of the OSCE High Commissioner on National Minorities to Latvia, 1993-2001*, CORE Working Paper No. 10, Hamburg 2003, available at: http://www.core-hamburg.de/documents/CORE_Working_Paper_10.pdf.

6 Steven Ratner, Does International Law Matter in Preventing Ethnic Conflict?, in: *Journal of International Law and Politics* 3/2000, pp. 591-698, here: pp. 623-625.

Latvian legislation with international instruments.⁷ In general terms, however, the HCNM succeeded on several occasions in bringing the normative behaviour of the Latvian side closer to ensuring compliance than would have been the case without his involvement.⁸

His references to international norms had a political dimension, as they provided the necessary justification for his involvement in the first place and helped him to avoid being perceived as a representative of minority interests. By referring to certain norms and standards, the HCNM provided a framework for the debates on minority issues, where the norms served to balance the extreme positions. Although minority actors would also often invoke the same international human rights instruments, their opinion was usually disregarded. When referred to by the HCNM (whose opinion was usually backed by the EU), however, the norms acquired political weight and had to be addressed by the Latvian side one way or another.

On the whole, the HCNM has been willing to accept the compromise if this in his view reduced the likelihood of conflict escalation. In this way, he has contributed to moving the conflict to the normative level. Lately, relations between the minority and the state in Latvia have increasingly become defined in legal terms, particularly with the increasing number of cases brought by minority representatives before national and international courts. The HCNM has thus contributed to the gradual transformation of the majority-minority conflict in Latvia from a purely political conflict to a legal one. It is to be noted, however, that the decade following independence saw the gradual but steady restriction of the rights that Russian speakers had once enjoyed. Whether justified by international norms or not, the taking away of rights they had previously enjoyed has been a painful experience for the affected minority.

The HCNM and Political Conditionality

While appealing to international norms was important, the key arguments for convincing the Latvian government to accept the HCNM's recommendations were political. By mobilizing the support of influential international actors (the Council of Europe, the EU, individual Western governments, and later also NATO), the HCNM linked his recommendations to Latvia's foreign-policy priorities. This strategy proved remarkably effective in winning the government's co-operation. The HCNM had an astonishing ability to ensure

7 The difficulty in determining the degree of compliance is implied, for instance, by the HCNM's statement on the Law on the State Language and the Language Regulations, where he speaks of the provisions being "essentially in conformity" with Latvia's international obligations. Statements of the High Commissioner on National Minorities from 9 December 1999 and 31 August 2000.

8 On this point, see: Saadia Touval, Does the High Commissioner Mediate?, in: *Journal of International Law and Politics* 3/2000, p. 712.

that the recommendations were supported and regularly referred to by the international actors with the greatest political weight. The close co-ordination of the positions and activities of international actors on the crucial issues also played an important role. Throughout his years of activity in Latvia, the High Commissioner succeeded in making his recommendations the standard to which virtually all other representatives of international organizations subscribed. The EU, for example, on several occasions “fully subscribed” and “fully supported” the HCNM’s recommendations, as did the Commissioner of the Council of the Baltic Sea States (CBSS), individual governments (in particular those of the Scandinavian countries and the USA), and even NATO on some occasions. This international unanimity appears to be the one factor that has contributed the most to the successful outcomes of the HCNM’s involvement.

While recognizing that the EU would probably not have been able to become involved in the situation in Latvia as effectively as the HCNM did, it is also true that the High Commissioner would not have achieved the results he did without the political backing of the EU. The activities of the EU and the HCNM complemented each other, with the EU relying on the HCNM’s expertise and experience and the HCNM receiving the open political support of the EU for his recommendations.

However, in spite of both the normative and the political incentives, in most cases the Latvian side recognized neither the domestic importance of following the HCNM’s recommendations nor the importance of their implementation for its bilateral relations with Russia. Whenever concessions were made, this always simply aimed at increasing Latvia’s chances of gaining EU membership rapidly. Thus, liberalization of minority policy in one area was usually neutralized or compensated for by its tightening in another field. Furthermore, negotiations over minority issues were held almost exclusively with the HCNM and other international representatives. Identical suggestions made by domestic pro-minority leaders were rejected on most occasions, which raises concerns as to the existence of a fruitful dialogue in Latvia between the minority and the state.

The Closure of the OSCE Mission

The international community was nonetheless willing to trust in the political commitment of the Latvian government to prioritize issues related to the consolidation of society. The OSCE Mission to Latvia that had been established in 1993 and had proved so indispensable in supporting the work of the HCNM was closed at the end of 2001, as the OSCE participating States considered its mandate to have been fulfilled. This was a major symbolic decision taken prior to Latvia’s joining NATO and the EU. Russia strongly ob-

jected to the closure of the Mission,⁹ but its position was regarded as a predictable and habitual action. Max van de Stoel's term of office also came to an end in 2001, and, with his departure, the continual active involvement of the HCNM, his frequent visits to the country, and the practice of issuing recommendations to the government also largely stopped.

It is, however, not evident that the decision not to extend the Mission's mandate beyond 2001 was indeed a timely one. From 1993, the Mission was both a partner to the government, providing support and advice, and a careful monitor of the country's democratic commitments. The variety of activities it carried out under its mandate, which were directed at fostering the establishing of a participatory multi-ethnic democracy in Latvia, cannot be underestimated. In addition, the Mission worked hand in hand with the HCNM, supplying him with information and performing background work such as analysing and translating draft legislation and attending the meetings of the parliamentary committees responsible for drafting minority-related laws. The mere existence of the Mission, regardless of the final effects of its activities, provided the minority with a sense that a third party was present and capable, despite the artificially tilted power balance in favour of the majority, of ensuring that decisions affecting the minority were not entirely disadvantageous. When the Mission closed, this ceased to be the case.

As might have been expected, some of the most controversial issues in which the OSCE Mission and the HCNM are no longer involved have proven to heighten tensions in Latvian society. The reform of education that came into force on 1 September 2004 has triggered major protests by the Russophones, who feel harassed by what they see as the undue imposition of largely Latvian instruction in Russian-language schools. The events of the last two years have shown that the question of language in education is sensitive enough to polarize political views and to further ethnicize Latvian politics. The radicalization of political opinions was reflected by the enormous support for right-wing parties in the June 2004 elections to the European Parliament, in which Latvian citizens participated for the first time. Nor is Russia's reaction to Latvia's education policy exactly conducive of harmony in relations between the states. Furthermore, following the withdrawal of the OSCE Mission, the cessation of the HCNM's activity in Latvia, and the reality of rather limited EU involvement, the formation of negative attitudes towards the EU has been observed among Latvia's Russophones – an alarming sign that has overshadowed Latvia's long-awaited accession to the EU. The fact that Latvia's almost 500,000 non-citizens are not allowed to participate in the local elections and the question of their legal status within the EU remain among the most sensitive issues on the political agenda.

⁹ See, for example, Organization for Security and Co-operation in Europe. Permanent Council. 374th Plenary Meeting. Statement by the Delegation of the Russian Federation, 18 December 2001, PC. JOUR/374.

It would probably not be an understatement to say that the OSCE has played a major role in assisting the Latvian government throughout the transition to democracy. No other international organization has been as deeply involved in the most delicate issues Latvia has faced throughout the years following the re-establishment of independence. The OSCE assisted during the process of Russian troop withdrawal, monitored the implementation of politically sensitive agreements between Latvia and Russia, and made available conflict prevention mechanisms to secure long-term stability in the country. The OSCE's involvement with the citizenship question and other matters related to the position of the Russian-speaking minority has helped to turn the conflict between the minority and the state into one of compliance with norms, thereby reducing the possibility of escalation. At the same time, however, progress depended very much upon the incentives that were offered in the form of membership of important international organizations: initially the Council of Europe, and later the EU and NATO.

In 2002, Nils Muižnieks, Minister for Special Assignments for Society Integration Affairs, argued that "the ability of the OSCE to invoke the EU and NATO was a unique historical window that is now closing as NATO and EU accession approaches".¹⁰ Indeed, the momentum of pre-accession helped the HCNM in particular to succeed, but a number of unresolved problems continue to sour inter-ethnic relations in Latvia. In this situation, the question of the future role of the OSCE acquires greater topicality. It seems at times that the OSCE's involvement exhausted itself with EU accession. Considering the current situation, however, it appears that the OSCE's expertise in the field of minority rights could be of major significance in the future.

Today, however, things are fundamentally different from the period up until the end of 2001. We can no longer take for granted that the OSCE's preventive diplomacy will be taken into account as it used to be. Latvia is now a full member of the EU and NATO, and the carrot of membership in these organizations can no longer be used in attempting to convince the government to accept the recommendations of third parties. The OSCE Mission is no longer present in the country, and the HCNM's involvement is limited. On the positive side, most of Latvia's Russian speakers are no longer in a situation of extreme uncertainty as to their future, which used to be the case in the early-to-mid 1990s, due to the adoption and later revision of naturalization rules.

As things stand, a general problem that is likely to continue to exist in the future is the discrepancy between the political leverage and the minority-related expertise of the key international actors. The Council of Europe and

10 Nils Muižnieks, *The OSCE and Latvia: Arm Twisting, Hand Holding or Partnership?*, presentation at the conference "OSCE and Latvia: Past, Present and Future" organized by the Latvian Centre for Human Rights and Ethnic Studies, Riga, 20 March 2002.

the OSCE currently have very little effective political power in spite of their expertise in the field of minority rights. On the other hand, the actors with more political authority, the EU and NATO, have not yet developed powerful legal tools or substantial expertise in the area of minority rights. The EU's first steps in this direction have been taken in the field of anti-discrimination. The Racial Equality Directive 2000/43/EC and the Employment Equality Directive 2000/78/EC now both form part of the *Acquis Communautaire* and contain fairly strong legal provisions. It is to be hoped that the binding non-discrimination and minority-rights tools of the EU, as well as its monitoring activities, will continue to multiply. This, however, promises to be a lengthy process.

Latvia's current domestic political situation suggests that tensions that have remained in society require international attention. In this respect, the resumption of the HCNM's work in Latvia and the co-operation of the Office of the HCNM with the EU are essential for ensuring long-term harmony. The OSCE Office for Democratic Institutions and Human Rights could acquire a major role in forging such co-operation.

At the end of 2001, in return for the closure of the OSCE Mission, the Latvian government took a number of steps to formally fulfil the guidelines developed under the Austrian Chairmanship of the OSCE. However, the political will to transform those steps into a sustainable process is needed on the part of both the Latvian government and the international actors. The advice Max van der Stoep gave prior to EU enlargement still applies to Latvia even though it is now a full member of the EU:

Sometimes I have the impression that minority-related policies are followed grudgingly as if one were going down a checklist of points that have to be ticked off in order for a State to acquire a certain respectability. True, respect for minority rights is an important barometer of a State's compliance with international standards and this can facilitate closer integration, for example, EU accession. But it should not be seen as a "one time" initiative to appease the international community. Rather, it should be regarded as a process to foster long-term inter-ethnic stability. This is in the best interest of the State concerned.¹¹

11 OSCE HCNM, *Nationhood and Statehood: Reconciling Ethnicity and Citizenship in an Interdependent World*, address by Max van der Stoep to the Raoul Wallenberg Seminar on Human Rights, Budapest, 7 May 2001, at: http://www.osce.org/documents/hcnm/2001/05/479_en.pdf.