

Reflections on the Role of the OSCE High Commissioner on National Minorities as an Instrument of Conflict Prevention

Since I became OSCE High Commissioner on National Minorities, I have tried hard to give substance to my primary role as an instrument of conflict prevention. In this article I will summarize my mandate and working methods and then present some general observations on minority situations.

As the mandate states, the High Commissioner is "an instrument of conflict prevention at the earliest possible stage" who 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 (presently the OSCE area, M.v.d.S.), affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO (presently the Ministerial Council or Senior Council, M.v.d.S.)".

The High Commissioner, therefore, has a two-fold mission: first, to try to contribute to solutions to particular inter-ethnic problems and thus contain and de-escalate tensions involving national minority issues, and second, to alert OSCE participating States, by issuing an 'early warning', whenever such tensions threaten to develop to a level at which he can no longer work towards their containment with the means at his disposal.

Taking this mandate into account, I understand my tasks as the High Commissioner on National Minorities as being framed in political terms and the tools in my hands as being essentially tailored to deal with political issues. My blueprints are OSCE principles and commitments and international legal norms and standards. The political and legal elements of my work are inter-linked in the sense that my political involvement (through visits and recommendations) is short-term while the implementation of the recommendations (usually through enacting legislation) by the State in question can create long-term frameworks for inter-ethnic accommodation. My role is therefore very much that of a facilitator, working with the parties to find compromise solutions to inter-ethnic problems.

Since the beginning of my work as High Commissioner, I have employed an approach which can be characterized with three catch words: impartiality, confidentiality and co-operation.

I regard it essential to my effectiveness that the reputation of my office as being an impartial third party is preserved at all times. In view of the sensitive issues

with which the High Commissioner must deal, he cannot afford to be identified with one party or another. It is important to understand in this context that the mandate of the High Commissioner makes the distinction that I am the High Commissioner "on" National Minorities and not "for" National Minorities. I am not an ombudsman, nor do I investigate individual minority rights violations.

Confidentiality is important for my effectiveness and therefore means that I have a low profile. Parties directly involved often feel they can be more co-operative and forthcoming if they know that the content of their discussions will not be revealed to the outside world. Electoral politics are such that party leaders may make much stronger statements in public than in confidential conversations, feeling that they should be seen as maintaining strong demands or trying to exploit outside attention. Because my involvement in a particular country is a gradual process that usually requires follow-up, I regard it as important that the confidence and trust of my interlocutors is maintained over a long period of time. Sensationalizing issues could de-rail this process.

In a similar vein, the co-operative and non-coercive nature of the High Commissioner's involvement is a hallmark of successful preventive diplomacy. Durable solutions are only possible if there is a sufficient measure of good will and consent on the part of the parties directly involved. In my activities, I continually try to find such solutions and to bring the parties to such a consensus.

The 1992 High Commissioner's mandate contained a number of innovative elements relevant to conflict prevention. Firstly, as an external third party he or she can become involved at the earliest possible stage of an impending conflict. Secondly, such involvement is at this third party's discretion: the approval of the OSCE Permanent Council is not needed, nor that of the state concerned. Thirdly, the High Commissioner has far-reaching competencies when involved in a given situation, including the right to enter a participating State without that state's formal consent or the explicit support of other participating States. Fourthly, he or she, as a non-state entity, can operate independently (albeit accountable to the Organization, particularly the Chairman-in-Office). Finally, with the establishment of the High Commissioner on National Minorities, the OSCE has developed an early warning capacity specific to the extremely sensitive area of national minorities. I believe that all these elements taken together make the Office of the High Commissioner on National Minorities a valuable institution for the OSCE, a unique instrument in international mediation, and a vital point of contact to which governments and minorities can turn to when dealing with national minority issues.

During my years as High Commissioner, I have developed the practice of regular visits to countries where I am involved and in most cases I have issued several recommendations, each one building on previous ones. These recommendations have generally focused on two broad areas. Firstly, I have suggested specific changes in the substance of government policy vis-à-vis minorities in

order to address some of the most pressing concerns, problems and causes of tensions. A growing number of such recommendations concern possible changes in the existing national legislation which relate to the position of persons belonging to national minorities. Educational reform has also been a recurrent theme. Secondly, I have proposed various possible measures to establish or strengthen institutional capacity for government-minority dialogue and communication. The recommendations are usually made in the form of a letter to the Foreign Minister of the state concerned. They become public after the government to whom they are addressed has had the opportunity to send a response.

The recommendations are non-binding. Although proposals have been made to give them a legal character, I have always felt that making my recommendations legally binding on states would be counter-productive. If states felt coerced into accepting my recommendations they might become less willing to co-operate with me in the search for compromise solutions. The OSCE is a co-operative security organization and I have always striven for a co-operative approach in my relations with states and minorities. I encourage the same approach in their relations with each other.

The reactions of other OSCE States to my recommendations are especially important for my work. While the mandate allows me to operate with a large degree of independence, it is clear that I could not function properly without the political support of the participating States. This becomes particularly acute whenever I present my reports and recommendations to the state concerned and, afterwards, to the Permanent Council of the OSCE where all participating States are represented. At such a stage it becomes clear as to whether there is sufficient support for my activities and recommendations and whether states are willing to give their own follow-up where needed. To avoid acting in isolation, I remain, in conformity with the mandate, in close contact with the Chairman-in-Office to whom I report in strict confidence after my visits to OSCE participating States. Until now, my activities, reports and recommendations have been met with the appreciation and support of OSCE participating States. This gives me the necessary political backing of the Organization as a whole.

Since 1993, my activities as the High Commissioner on National Minorities have been expanding constantly. This underlines the crucial importance of tackling issues related to national minorities in order to maintain peace and stability in the OSCE area. In 1998/1999 I continued to be involved in minority situations in several parts of Europe and Central Asia, in particular in Croatia, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. In every case, the particular set of circumstances is different. However, certain themes and issues repeat themselves and can therefore be analysed systematically.

1. When studying minority issues, one cannot fail to note the intense interest with which the so-called "kin-states" almost invariably follow the fate of the related minority on the other side of the border. Such an interest is legitimate, but it is easy to understand that the government of the state where such a minority lives is often inclined to consider expressions of concern about its policies or legislation regarding such a minority as an inappropriate interference in its internal affairs. In such situations, there are two complementary ways of avoiding friction. One is to ask the OSCE - or, more specifically, its High Commissioner on National Minorities - to look into the matter. The other is for the kin-state and the state where the minority lives to engage in a dialogue about the duty of a state to respect and foster the identity of a minority on the one hand and the duty of persons belonging to a national minority to be loyal to the state on the other. While such a dialogue is not always free of tension, it can bring positive results. Indeed, the very process can often be an important confidence-building exercise. The result is sometimes bilateral treaties of good neighbourliness and friendly relations which can include mechanisms for periodic consultations and which offer opportunities for an exchange of views on minority matters.

However, such treaties cannot ensure specific solutions to specific minority problems: specific minority problems have to be resolved within states on the basis of their commitment to international norms and principles. If this is insufficient, the High Commissioner can be an important third party. Whereas the affected minority population may question the objectivity of the state and the state may question the motivation of the kin-state, the High Commissioner is regarded as an outside honest broker. Through his involvement the High Commissioner is not only able to solve particular issues within the country concerned, but can also contribute to preventing the escalation of tensions between the country concerned and the kin-state (and even other countries which have minority populations of the same ethnicity as the kin-state). One could regard this as a regional dimension to the High Commissioner's conflict prevention role.

In cases where a "kin-state" is absent, such as with the Crimean Tatars, the Meskhetian Turks and the Roma and Sinti, one could argue that my role as "honest broker" is even more important. It is for this reason that I devote a good deal of attention to those socially disadvantaged groups.

2. As a result of my involvement in various minority issues, I have become more and more convinced of the need to have adequate structures for *dialogue between governments and minorities*. Disputes frequently arise because of insufficient mechanisms for dialogue at the national level. Even if dialogue will not lead to full agreement on the issues at hand, the exchange of views in itself can help create a better understanding of the problems and concerns of the other side and to lower walls of mutual suspicion. It is especially important that draft legislation relating to minorities has adequate input from the affected parties be-

fore being presented to parliament. The same applies to government plans for new policies of special relevance for minorities. If minorities feel that they have a stake in the process, they will feel that they have a stake in the outcome.

In response to this problem, I have promoted the development of structures for dialogue and the establishment of other instruments of democratic discussion and decision-making. Conclusions reached at such forums can be submitted to the authorities in the form of recommendations and can, thus, with time, become an integral part of policy-making in these countries. The development of these institutions and processes of dialogue will demonstrate on the one hand that the authorities are willing to listen to minorities' concerns and on the other that minorities are willing to participate in the political life of the country in which they live.

Dialogue should not only be at the national level. Many minority issues are local issues and should be tackled at the local level. In cases where decision-making is highly centralized, minority concerns are often under-represented. Good and effective democratic governance implies that the persons affected should be involved in the process of decision-making, at least in the form of consultative participation. This kind of participation can significantly enhance the level of identification by members of a minority with the state they live in and are citizens of. As such, it is both an important part of conflict prevention and democracy-building.

3. Another observation that I have made during my years as OSCE High Commissioner on National Minorities is that minorities often have a marked preference for *territorial autonomy*. They clearly see this as the best way to protect their interests and their identity. Conversely, I have also noted a great reluctance on the part of governments to grant such autonomy. When relations between the government and the minority are strained and the region which is seen by the minority as a territorial expression of its national identity borders on the kin-State, there is quite often a suspicion of the government concerned that the minority's insistence on territorial autonomy is part of a hidden agenda which ultimately aims at secession and/or unification with the kin-state. Minorities often argue that this suspicion is unfounded, but, as is so often the case in politics, perceptions play a key role, even if they are incorrect.

There are two important considerations concerning this thorny issue. Firstly, one should recall that territorial autonomy is mentioned as an option in the OSCE Copenhagen Document. However, the Document does not commit governments to establish such autonomous areas. Secondly, even though the Copenhagen Document mentions territorial autonomy as an option, minorities have to take into account that such a demand would probably meet maximum resistance. They might be able to forward their aims more effectively if they concentrated on legislation which would enable them to have a greater say in fields of special interest for them, such as education and culture, or try to concentrate on matters,

which, apart from having their support, also have the sympathy of many amongst the majority, for instance, an increase of the powers of local self-government. Experience has taught us that inter-ethnic relations improve when states become more open and decentralized and allow for the free exercise of individual choice. Vibrant minorities can strengthen states; non-integrated minorities can disintegrate states. In order to discuss these matters and to exchange the experience of various OSCE States in this sphere, the International Conference "Governance and Participation: Integrating Diversity" took place in Locarno between 18 and 20 October 1998. It was hosted by the Swiss government and the Canton of Ticino and was prepared by my office with the assistance of the OSCE Office for Democratic Institutions and Human Rights. The Conference emphasized the need for a positive correlation between the principles relating to self-determination and respect for sovereignty, territorial integrity and the inviolability of internationally recognized borders. These principles are not irreconcilable.

"External" self-determination through secession is fraught with the potential for conflict. The alternative, as it was observed during the Conference, is that a great variety of solutions are available to the contemporary State in order to accommodate the vital interests and aspirations of minorities through the means of "internal" self-determination. These include effective participation of minorities in public decision-making through electoral processes as well as special mechanisms for dialogue, consultation and advice, various forms of cultural or functional autonomy, opportunities for the use of language and the enjoyment of minority culture, as well as educational regimes responding to the genuine needs and desires of minorities to develop and maintain their identity. Such forms of integration offer realistic alternatives to the detrimental policies of forced assimilation on the one hand, and of self-imposed isolation by minorities on the other. Indeed, it has been demonstrated that addressing minority concerns through methods of integration can lead members of minorities to focus not merely on their own concerns, but on those of the state as a whole. Such peaceful integration prevents extreme nationalism from posing a direct threat to stability and security within the state. Efforts, both internally and internationally, to achieve such integration constitute fundamental premises of successful conflict prevention in the state itself, in the region and in the OSCE area as a whole. As a follow-up to the Locarno Conference a group of international experts, at my request, studied these issues with a view to formulating a comprehensive set of general recommendations on the matter. These recommendations, which should reinforce the debate on these important issues in present-day Europe, were presented to the OSCE in the summer of 1999 as *The Lund Recommendations on the Effective Participation of National Minorities in Public Life*.

4. It is clear that *education* is an extremely important element for the preservation and development of the identity of persons belonging to national minorities. Therefore, I came to the conclusion that it would be useful to invite some internationally recognized experts to make recommendations on an appropriate and coherent application of minority education rights in the OSCE region. Accordingly, the Foundation on Inter-Ethnic Relations, which works closely with my office, brought together such a group of experts who, in turn, agreed upon *The Hague Recommendations Regarding the Education Rights of National Minorities*. Soon afterwards the Foundation organized a seminar on minority education issues, held in Vienna in November 1996 under my chairmanship, which enjoyed the participation of Ministers of Education and minority representatives from a number of states where these issues are especially salient. *The Hague Recommendations* were well received by relevant parties as a practical and balanced guide for resolution of many issues concerning minority education rights. To the extent that the Recommendations may usefully guide governments in elaborating more appropriate and acceptable laws and policies with regard to minority education, they will serve to resolve or at least diminish an important source of inter-ethnic tensions. Several states have already referred to *The Hague Recommendations* in the context of current national discussions.

In order to demonstrate how important solutions to minority education problems can be in effective conflict prevention, one can consider, as an example, the question of Albanian language higher education in the former Yugoslav Republic of Macedonia. This issue, around which the Albanian community can be easily politically mobilized by its leaders, is considered by them as fundamental for the position of the Albanian minority in the country. A number of positive steps were taken in recent years to address this issue: the government introduced a quota system which led to an increase in the number of Albanian students at the universities. At my request, the Foundation on Inter Ethnic-Relations started a programme aimed at helping pupils of Albanian language secondary schools to prepare themselves for university entrance examinations.

However, the underlying problem of Albanian language higher education still needs to be solved. In November 1998, I presented a number of recommendations on a possible compromise solution. I suggested the creation of an Albanian language university college for training teachers for elementary and secondary schools and of a private trilingual (English, Macedonian, Albanian) university for business and public administration. In designing these solutions I took into consideration the objective needs of the Albanian population in the field of education, the necessity of developing Albanian language education at all levels, as well as the requirements of the Macedonian system of education. I also based my considerations on the need to secure a sufficient level of integration among all ethnic groups in the country within the overall system of education. I am now in the process of discussing further implementation of these projects with both

the government and representatives of the Albanian community. On the occasion of my most recent visit to Skopje the government assured me that considerations that would facilitate tertiary education in the Albanian language within the framework of a private university were under way. Though, this must be added, the financing of that private higher education institution would have to be raised by the international community. This prospect would very much improve inter-ethnic relations in the former Yugoslav Republic of Macedonia.

5. With regard to the *use of languages of persons belonging to national minorities*, in 1996 I sent a questionnaire to all OSCE participating States. This was done in response to the expressed wish of a number of countries that comparative studies should be made on the situation of minorities in OSCE states. In 1998, my office began analysing the governments' replies. On the basis of these replies and my own appreciation of the overall situation, I have been able to draw some conclusions with a view to determining common practices and to revealing the variety of existing approaches from which each state may wish to draw examples and conclusions in relation to particular situations. The results of this study have found their way into a report which has recently been distributed to all participating States.

Part of the process was to consult a group of internationally recognized experts in order to receive their recommendations on an appropriate and coherent application of the linguistic rights of persons belonging to national minorities in the OSCE region. These consultations, facilitated by the Foundation on Inter-Ethnic Relations, resulted in *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities*. These recommendations were presented to representatives of institutions dealing with minority linguistic rights in a number of OSCE participating States at a conference held in Vienna in February 1998. They refer to specific areas in relation to the use of minority languages: personal names and place names, religious activities, community life, the media, economic life, administrative authorities and public services, the administration of justice.

The use of minority languages has been a contentious issue in Slovakia since the country's independence in 1993. In the past six years minority language issues have been discussed in a number of contexts, particularly in regard to the erosion of minority rights which existed in the former Czechoslovakia. Major disputes arose during the years of the Meciar governments on issues such as the position of the Hungarian language schools, the use of minority languages in official communications, the registration of Hungarian names in Hungarian and the right of having school certificates issued in both the official and minority languages. The situation became particularly acute after the adoption of a new state language law in November 1995. This new law created a legal vacuum as far as the use of minority languages in official communications was concerned,

and fell short of international norms and standards. The initiative undertaken by me to allow experts to assist in the drafting of a complementary minority language law did not come to fruition under the last Meciar government. On several occasions I cautioned the government that compliance with international principles and standards was an important consideration for developing closer relations with the European and international communities.

In October 1998 the new Slovak government, which included Hungarian minority representatives, immediately started to implement a number of my recommendations, including the abolishment of the law on local elections (which I had criticized previously as not being in conformity with international standards accepted by Slovakia) and the reintroduction of school certificates in both the state and minority languages. Most importantly, they committed themselves to introducing a new law on minority languages which would lay down some general principles regarding the use of these languages, a detailed reference to existing Slovak legislation on minority language protection, and a solution of the problem of the use of minority languages in official communications. The law adopted in July 1999, though far from being perfect, is a major step forward in the effective integration of the Hungarian minority into Slovak society and to improving relations between Slovakia and its neighbours.

6. I have been paying great attention to the question of the *integration of minorities into a wider society*. Sometimes, persons belonging to national minorities or various ethnic groups have difficulties in becoming integrated into society, even when they have the best intentions of doing so. For instance, in some states, where stateless residents have to pass language and other tests in order to become citizens, the costs of classes are prohibitive or the facilities are inadequate. This problem may seem minor, but the accumulation of a number of individual problems can quickly add up to a bigger problem. Inversely, small scale and focused assistance can have large-scale and long-term positive results.

A concrete example can be seen in work that was done in Latvia and Estonia in 1998. Since 1993, I have been dealing, in co-operation with the governments of these two Baltic states, with the question of the integration of minorities in these countries. In doing so I have been careful to take into account the historical experiences of these countries and the challenges of post-Communist transition as well as the concerns of the minority populations. I paid particular attention to the integration of the young generation of minority members; those who were born, who grew up and who were educated in independent Latvia and Estonia. I stressed that the conferral of citizenship to children of stateless parents born in the two countries after the regaining of independence would promote the process of integration and, thus, would contribute to the easing of tensions.

In 1998, both Latvia and Estonia adopted relevant amendments, as suggested by me, to their citizenship laws. In Latvia these amendments, which also included the abolition of provisions delaying the right to apply for citizenship until later

years for an important number of non-citizens, were approved in a referendum. As a result, I concluded that my recommendations to the governments of Latvia and Estonia on citizenship issues had been fulfilled. At the same time, I continue my activities in these countries regarding a number of other important minority issues, such as legislation regarding the position of the state language.

It took the Latvian Parliament over two years to work out the Latvian state language law. This process was supported by my office, the OSCE Mission to Latvia and the Council of Europe. At an early stage I had already warned the Latvian legislature that the law was particularly intrusive upon the language use in the private sphere and would be in contradiction to international norms and standards. Despite intensive consultations by international experts with Latvian specialists, Parliamentarians and politicians a law was adopted in July 1999 which only complies with these international standards rather inadequately. Following an appeal by a number of national governments and international organizations Latvian President, Vaira Vike-Freiberga, decided to return the law to the Parliament for further discussion.

In conclusion, when addressing situations falling within my mandate as the High Commissioner on National Minorities, I have not sought to come up with generally applicable solutions. There are no golden rules when it comes to dealing with national minority issues; every situation has to be analysed in its specific context. There are, however, some common aims and perspectives that have guided me in my work and which should be considered as objectives in developing harmonious societies and preventing conflict.

The protection of persons belonging to national minorities has to be seen as essentially in the interest of the state and of the majority. It is a reciprocal relationship. Peace and stability are, as a rule, best served by ensuring that persons belonging to national minorities can effectively enjoy their rights. If the state shows loyalty to persons belonging to national minorities, it can expect loyalty in return from those persons who will have a stake in the stability and well-being of that state.

Solutions to various inter-ethnic problems should be sought as much as possible within the framework of the state itself. The most essential contribution to the elimination of minority problems as a source of instability in Europe is the promotion of a better and more harmonious relationship between the majority and the minority in the state itself. Constructive and substantial dialogue between the majority and minority as well as effective participation by minorities in public affairs need to be encouraged. Through dialogue and participation, persons belonging to national minorities may be meaningfully integrated into political processes with a view to improving overall governance. Furthermore, the full development of the aspirations of persons belonging to national minorities can

be achieved within the framework of the state. Such development need not require territorial expression; it can be fully realized through policies and legislation promoting the protection and the deepening of the identity of the minority in various fields, for instance culture and education. In such fields, social integration can take place through the wider accommodation of ethnic differences. The onus for making this accommodation possible does not rest solely with the state. National minorities must play a constructive role in finding solutions to their own problems. If they refuse to recognize that they share a common destiny with the majority in the state within which they live, if they constantly seek to isolate themselves from the rest of the society and insist on institutional arrangements which would promote such isolation, the reaction on the other side will, most likely, be increasingly suspicious and intransigent. On the other hand, the minority can try to follow a policy which combines efforts to safeguard its identity with the recognition that living together on one territory - and consequently sharing many common interests - inevitably requires a certain degree of integration into the wider society. By rejecting isolation, by recognizing that the fates of minority and majority are linked, the minority will also be able to create more understanding for the protection and promotion of its own identity. Bearing these points in mind, frameworks for protecting the interests of minorities can and should be established within states. Sometimes the alternative of equating nationhood with statehood and creating a patchwork of ethnically homogeneous micro-states in Europe is mentioned. But this is not a genuine alternative. As minorities in Europe do not live in compact geographic areas, it is not possible to create ethnically homogenous states unless the inhumane and totally unacceptable instrument of ethnic cleansing would be used. By effectively integrating national minorities, the minorities, the states and Europe as a whole will be a more stable and peaceful place. Perhaps there will come a day when the OSCE area no longer needs a High Commissioner on National Minorities. As recent developments continue to demonstrate, however, there is still a long way to go before we can feel safe that a new "Kosovo" will not reappear.