

## DEVELOPING A 'PEACE AND SECURITY' APPROACH TOWARDS MINORITIES' PROBLEMS

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Violent inter-ethnic conflicts of the past decade, indeed the last century, have demonstrated the dangers of extreme nationalism. National minorities have frequently suffered in these conflicts. The lessons of the past have underlined the necessity of respect for the rights of persons belonging to national minorities freely to express, preserve and develop their cultural, linguistic or religious identity free of any attempts at assimilation. While maintaining their identity, a minority should be integrated in harmony with others within a State as part of society at large. This is fundamental to international peace, security and prosperity.

Rolf Ekeus, OSCE High Commissioner on  
National Minorities, October 2001<sup>1</sup>

### I. INTRODUCTION

The centuries old problem of protecting minorities within multicultural states through international law is a recognised contemporary global issue.<sup>2</sup> Minority protection schemes constitute an important facet in the arsenal of techniques available to states and international policy-makers in managing the potentially destabilising effects of nationalist aspirations, where manifested in ethnic conflict.<sup>3</sup> These aspirations range from minimalist claims for personal autonomy to maximalist claims for spatial autonomy, even independent statehood.

From Westphalia to the 1919 Versailles Peace Conference to the post-Cold War adoption of the 1990 Charter of Paris for a New Europe (Paris Charter), European initiatives have led the field in constructing minority protection schemes. The imperative of establishing legal frameworks to promote the peaceful co-existence of distinct communities—differentiated traditionally by religious and ethno-cultural traits—within the same polity is particularly acute

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<sup>1</sup> *Sovereignty, responsibility and national minorities*, Press Statement, 26 Oct 2001: <<http://www.osce.org/news>> (visited 31 Oct 2001).

<sup>2</sup> JA Laponce, *The Protection of Minorities* (1960). Working Group on Minorities (WGM) Chairman Eide, recognised non-European minority issues existed: UN Doc E/CN.4/Sub.2/2001/22, paras 14, 28.

<sup>3</sup> N Berman, 'The International Law of Nationalism: Group Identity and Legal History', in D Wippman (ed), *International Law and Ethnic Conflict* (Cornell University Press, 1998) 25.

[*ICLQ* vol 52, January 2003 pp 115–150]

in Europe, given the inextricable mix of ethno-cultural communities dotting the political landscape. The reconfiguration of territorial borders in Communism's wake 'created' many large minorities in new states, some with protective 'kin' states, for example, the Russian Federation's 'natural concern' after the fate of Russians in the Baltics.<sup>4</sup> These seminal political developments set the stage for both intra and interstate tensions. The exigencies of responding to chronic minorities' problems, particularly in the Balkans and Baltic States, spurred a flurry of minority-related standard-setting and institution-building initiatives by the major European regional organisations in the 1990s. Handling self-determination claims and minorities problems assumed a contemporary urgency unparalleled since the 1930s.

Organisations such as the Council of Europe (COE) located minorities' issues within its larger mission of fostering democracy, the rule of law and human rights.<sup>5</sup> Other regional and sub-regional organisations such as the European Union,<sup>6</sup> the Council of Baltic Sea States (CBSS)<sup>7</sup> or the Commonwealth of Independent States (CIS)<sup>8</sup> also address minorities concerns, from a human rights or security perspective, or both.

Within the context of the Organisation for Security and Co-operation in Europe (OSCE), formerly the Conference on Security and Co-operation in Europe (CSCE), the issue of national minorities was an incipient institutional concern, evident from the 1975 Helsinki Final Act (HFA).<sup>9</sup> Minorities issues are primarily treated as security matters, although also encompassed within the OSCE's idiosyncratic notion of the 'human dimension', which is analogous to 'human rights'.<sup>10</sup> Minorities concerns were not always prioritised within the CSCE. However, a 'sea change' in affairs occurred in the twentieth century's final decade, with the OSCE formulating the most advanced and sophisticated minority-related norms, influencing the concurrent revived interest in norm development within the United Nations. This process peaked by the mid-1990s whereupon attention shifted towards devising effective institutional means to implement these standards.<sup>11</sup> In 1992 OSCE members by consensus decided to create a specific institution to address minority concerns, in the form of the OSCE High Commissioner on National Minorities (HCNM).<sup>12</sup>

<sup>4</sup> UN Doc E/CN.4/1995/SR.21, para 12.

<sup>5</sup> Section 3, COE Statute, ETS No 1.

<sup>6</sup> MAM Estabanez, 'The Protection of National or Ethnic, Religious and Linguistic Minorities', in Neuwahl and Rosas (eds), *The European Union and Human Rights* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1995) 133.

<sup>7</sup> O Espersen, 'The Functions of the CBSS Commissioner on Democratic Institutions and Human Rights', (1995) 64 *Nordic J of Int L* 347.

<sup>8</sup> The CIS 1995 Human Rights Convention (text: (1996) 17 *HRLJ* 159) contains a direct minorities clause (Art 21); Breaches may be submitted to the CIS Human Rights Commission through interstate and non-state procedures.

<sup>9</sup> (1975) 14 *ILM* 1292.

<sup>10</sup> See R Brett, 'Human Rights and the OSCE' (1996) 18 *HRQ* 668.

<sup>11</sup> Establishing the WGM in 1995, which oversees the 1992 UN Minorities Declaration, paralleled these developments: see LA Thio, 'Resurgent Nationalism and the Minorities Problem: The UN and Post Cold War Developments' (2000) 4 *Sing JICL* 300.

<sup>12</sup> *CSCE Helsinki Document 1992* (1992) 13 *HRLJ* 284. ['Helsinki Document'].

This office was designed to prevent conflict as an 'early warning' mechanism, through promoting the application of OSCE national minorities' standards, thereby enhancing stability, particularly within nascent European democracies.<sup>13</sup>

The mandate and subsequent practice of the HCNM represents a unique departure from previous systematic approaches towards the international legal protection of minorities. Past efforts have focused on protecting minorities through group rights or the individual rights of group members, whether for instrumental purposes of promoting peace through pacifying minorities and placating concerned kin states, or for the intrinsic good of securing human welfare.<sup>14</sup> In departing from this dominant human rights or group protection paradigm, the HCNM's envisaged role is to promote regional peace and security rather than secure minority welfare. This is underscored by the office's purposeful naming as the High Commissioner *on* rather than *for* National Minorities.<sup>15</sup> Nevertheless, the HCNM's work, oriented towards interstate mediation, yields practical benefits directly or indirectly for minority groups by improving their human rights situations. Insofar as this positively promotes minority group welfare, it is unique, as the HCNM does not operate as part of a human rights regime.

This article examines and evaluates the work of the HCNM as a specific OSCE institution dedicated to managing national minorities related problems in relation to pioneering a 'peace and security' based approach towards minority protection.<sup>16</sup> This reflects a growing appreciation of how gross human rights violations, including those arising from ethnic conflict, implicate security matters.<sup>17</sup> First, it sets out the normative framework of international standards related to national minorities which guides the HCNM. Secondly, it examines the mandate and functions of the HCNM and third, the HCNM's work in practice is evaluated and some concluding observations offered.

<sup>13</sup> Mainly, the Balkans and Baltic States: Section I, *Report, CSCE Experts Geneva Meeting on National Minorities* (1991) 12 *HRLJ* 332 ['Geneva Document'].

<sup>14</sup> P Thornberry, *International Law and the Rights of Minorities* (Oxford: Oxford University Press, 1991).

<sup>15</sup> *Peace and Stability through Human and Minority Rights: Speeches by the OSCE HCNM*, W Zellner and F Lange (eds), (1999), at 133. ['HCNM Speeches'].

<sup>16</sup> See J Wright, 'The OSCE and the Protection of Minority Rights' (1996) 18 *HRQ* 190.

<sup>17</sup> An embryonic 'peace and security' approach is discernible from the Committee overseeing the 'Racial Discrimination' Convention (CERD)'s work. A 1993 working paper considered various early warning measures (A/48/18, annex III) and one was established in 1995 to respond to potential CERD violations. A Human Rights Committee 1991 practice requests the presentation of special reports where ICCPR rights are 'seriously affected' in an 'emergency situation': UN Doc HRI/MC/1996/2, para 111. Special reports should 'fit into the framework of preventive measures': UN Doc CCPR/C/133, (1997), Annex, para 16(c).

## II. THE OSCE NORMATIVE FRAMEWORK WITH RESPECT TO NATIONAL MINORITIES

A. *The OSCE and Minority Standard Setting*

Ironically, the post-Communist resurgence of nationalism erupted after 1989, in both emancipatory and destructive form,<sup>18</sup> within an apparently more liberal, pluralist European climate. The Paris Charter optimistically proclaimed a new era of ‘democracy, peace and unity’, supposedly heralding the end of the ‘era of confrontation and division’.<sup>19</sup> Yet, Europe had to battle economic decline, xenophobic social tensions, aggressive nationalism, ‘ethnic cleansing’, and warfare.

Thus, minority standard setting within European regional organisations was prioritised. The COE adopted the Vienna Declaration in 1993,<sup>20</sup> calling for the adoption of legal instruments for protecting national minorities.<sup>21</sup> Subsequently, the 1992 European Charter for Regional and Minority Languages<sup>22</sup> and the 1995 Framework Convention for the Protection of National Minorities (FCNM),<sup>23</sup> the first legally binding multilateral minorities instrument, were adopted.<sup>24</sup> Together with OSCE authored minority standards, COE instruments embody a set of substantive standards governing the treatment of minorities, as aspects of common European values.<sup>25</sup>

Within the OSCE, the consensus-based minority standard setting process peaked around 1990–1, departing from the initial focus on egalitarian principles of non-discrimination.<sup>26</sup> A series of significant documents were produced, including the 1990 Paris Charter,<sup>27</sup> the 1990 Copenhagen

<sup>18</sup> M Koskenniemi, ‘National Self-Determination Today: Problems of Legal Theory and Practice’ (1994) 43 *ICLQ* 214.

<sup>19</sup> *Charter of Paris for a New Europe* (1990) 11 *HRLJ* 379 [‘Paris Charter’].

<sup>20</sup> *Vienna Declaration, Council of Europe (COE) Heads of State and Government* (1993) 14 *HRLJ* 373.

<sup>21</sup> The European Convention for Human Rights (ECHR), 213 UNTS 221, contains no minorities clause though Commission and Court’s jurisprudence indicates that minority group members receive some indirect protection, eg, clauses protecting traditional lifestyles: C Hillgruber, *The ECHR and the Protection of National Minorities* (Germany: Verlag Wissenschaft und Politik, 1994).

<sup>22</sup> ETS No 148. In protecting European culture and safeguarding languages, minority linguistic communities are indirectly benefited. <sup>23</sup> ETS No 157.

<sup>24</sup> Art 27, FCNM allows COE states to become Convention parties: Explanatory Report (COE Doc H (95) 10), para 99. The COE Parliamentary Assembly (PA) criticised the FCNM’s weaknesses, proposing a stronger regime: Recommendation 1201(1993), see G Gilbert, ‘The COE and Minority Rights’ (1996) 18 *HRQ* 160.

<sup>25</sup> FCNM and OSCE Copenhagen Document standards were applied by an ad hoc group of three in July 2000, appointed by the ECHR President, in evaluating whether EU Member, Austria, sufficiently protected its national minorities. This flowed from concerns when Jorg Haider’s right-wing Freedom Party joined the coalition government. *Report on the Commitment of the Austrian Government to the common European values* (2000): <<http://www.mpiv-hd.mpg.de/de/Bericht-EU/report.pdf>> (visited 15 Sept 2000).

<sup>26</sup> Principle VII, para 4, HFA, addressed national minorities in individualist terms, with a bolder minorities approach first emerging in ss 18–19, *Vienna Concluding Document*, (1989) 10 *HRLJ* 270 [‘Vienna Document’].

<sup>27</sup> Paris Charter, above n 19.

Concluding Document,<sup>28</sup> the 1991 Moscow Concluding Document<sup>29</sup> and the 1991 Geneva Concluding Document.<sup>30</sup> While OSCE standards reiterate the global minimum standards embodied in Article 27 of the 1966 International Covenant on Civil and Political Rights<sup>31</sup> and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities,<sup>32</sup> they are more far-reaching. OSCE standards transcend the traditional mould of minority rights, in the form of the right to maintain educational, cultural and religious institutions and the public or private use of the mother tongue. In particular, the Copenhagen Document contains a comprehensive, progressive rights catalogue regarding national minorities in the areas of language, education and political participation.<sup>33</sup> OSCE standards are innovative in recognising the bilateral dimensions<sup>34</sup> of minority relations and the right of groups sharing common ethnicity or cultural heritage to forge trans-frontier links.<sup>35</sup> They have also recognised that territorial autonomy and power-sharing schemes short of independence<sup>36</sup> are possible expressions of the right to 'effective participation'<sup>37</sup> as a way of protecting group identity, which has proved controversial. Nevertheless, this development represents the most distinctive shift in the field of minority protection from the usual list of individual human rights.

Rights to transfrontier contacts and 'autonomous arrangements'<sup>38</sup> as solutions to minorities questions bear political repercussions, potentially threatening territorial integrity as precipitants of irredentism or greater autonomy claims, even secession.<sup>39</sup> Hence, they are conditioned by the usual safeguard clauses prohibiting the exercise of rights in a manner inconsistent with UN principles and international law, including the principles of territorial integrity,

<sup>28</sup> *Copenhagen Meeting, CSCE Human Dimension Conference* (1990) 11 HRLJ 232 ['Copenhagen Document'].

<sup>29</sup> *Moscow Meeting, CSCE Human Dimension Conference* (1991) 12 HRLJ 471 ['Moscow Document'].

<sup>30</sup> Geneva Document, above n 13. The experts were state representatives; hence, the Document contains CSCE commitments. <sup>31</sup> 999 UNTS 171.

<sup>32</sup> GA Res 135, A/47/678(1992).

<sup>33</sup> The far-reaching Copenhagen Document would not have been adopted after 1991, as prolonged violence in Yugoslavia drained post-Cold War optimism. HCNM Interview (May 1999), HCNM Speeches, above n 15, at 14.

<sup>34</sup> Section IV, Geneva Document, above n 13.

<sup>35</sup> Para 32.4, Copenhagen Document, which inspired Art 17(1) FCNM, Explanatory Report, above n 24, paras 83–4.

<sup>36</sup> Para 35, Copenhagen Document suggested 'appropriate local or autonomous administrations' while Art 11, PA Recommendation 1201 (1993) proposed a more extensive right to ethnic-based territorial autonomy.

<sup>37</sup> Art 15, FCNM does not recognise collective rights: Explanatory Report, para 13; above n 24. See *Lund Recommendations: Effective Participation of National Minorities in Public Life*, HCNM.GAL/4/99.

<sup>38</sup> Part IV, Geneva Document contains a 'shopping list' of autonomy arrangements, above n 13.

<sup>39</sup> The HCNM in discussing Greece's national minorities' issues declared the Copenhagen Document did not support secessionist claims: HCNM GAL/6/99.

friendly interstate relations and prohibiting third party intervention.<sup>40</sup> The latter is significant, as European 'kin' states have a history of acting as self-appointed guardians of 'kin' minorities in other states. This persists today, fuelling bilateral tensions, as when Yugoslavia accused Albania of supporting Albanian separatist leaders in Kosovo, for the sake of a 'Greater Albania', undermining regional stability.<sup>41</sup> The HCNM has also stressed that territorial autonomy is optional, echoed in OSCE insistence these 'may not undermine but strengthen territorial integrity and sovereignty',<sup>42</sup> underscoring the function of minority rights as buttressing, not subverting, internal state stability.

States' wariness towards minority rights as inhibiting national integration or as forerunners to secessionist claims persist. While OSCE documents do address national minorities as collective entities, they do not contain collective rights that inhere in a collectivity with standing to enforce it.<sup>43</sup> This quells the fear that recognising collective rights would give 'kin' states a legal basis for protecting 'kin' minorities beyond their borders.<sup>44</sup> Instead, the rights are framed in individualistic terms, exercisable individually and jointly in community.<sup>45</sup>

The preferred OSCE solution for addressing ethnic conflict and minorities problems is to promote a multicultural state committed to democratic pluralism,<sup>46</sup> prohibiting coercive assimilative measures<sup>47</sup> and actively supporting vulnerable minority cultures.<sup>48</sup> HCNM recommendations to promote European stability and 'human dimension' commitments presume an intra-state framework, locating national minorities' issues within the OSCE mission of democratic development<sup>49</sup> and socio-economic progress.

COE and OSCE minority standards represent the furthest limits states are willing to accept currently,<sup>50</sup> with the Copenhagen–Geneva consensus

<sup>40</sup> Paras 36, 37, Copenhagen Document, above n 28.

<sup>41</sup> UN Doc A/50/97, 14 Mar 1995.

<sup>42</sup> *Charter for European Security* (Istanbul, 1999) [Istanbul Charter].

<sup>43</sup> Para 33, Copenhagen Document, above n 28.

<sup>44</sup> Countries with large national groups beyond their frontiers support collective minority rights, as Hungary did at the 1990 Copenhagen Conference: V Mastny, *The Helsinki Process and the Re-integration of Europe, 1986–1991* (London: Pinter, 1992), 233–6. States hosting large national minorities prefer an individual rights, egalitarian minority protection approach.

<sup>45</sup> Para 32.6, Copenhagen Document, above n 28. This follows the UN's individualist minorities principles, in Art 27 ICCPR and the 1992 Minorities Declaration.

<sup>46</sup> Para 40, Copenhagen Document, *ibid*.

<sup>47</sup> Para 32 Copenhagen Document. Paras 40.1–40.7 condemned ethnic intolerance. *Ibid*.

<sup>48</sup> *Cracow Cultural Heritage Symposium* (1991) 12 *HRLJ* 279. Special measures are contemplated in requiring states to, eg, create 'adequate opportunities' for mother tongue instruction. Paras 31, 33–4, Copenhagen Document, *ibid*.

<sup>49</sup> An Office for Free Elections, later renamed the Office for Democratic Institutions and Human Rights (ODIHR) was established: Section III, para 9, *Prague Document on Further Development of CSCE Institutions and Structures* (Jan 1992) [Prague Document].

<sup>50</sup> Contemporary human rights documents, such as the EU Fundamental Rights Charter (2000/C 364/01), are decidedly individualist in nature: see Art 21(1) [non-discrimination]; 22 [respect for cultural, religious, linguistic diversity].

embodying the 'high water mark' for the most specific and far-reaching normative commitments. It must be noted that OSCE standards as political commitments adopted at the highest political level,<sup>51</sup> are not legally binding. However, this does not mean they are without legal weight or political impact, particularly where the HCNM has invoked them in discharging his mandate, further examined below. The OSCE Parliamentary Assembly has urged states to vindicate their OSCE commitments, including those relating to national minorities, by translating them into national legislation;<sup>52</sup> in some instances, bilateral treaties have elevated 'soft' OSCE norms<sup>53</sup> into applicable domestic legal provisions.<sup>54</sup>

### B. The OSCE and a Security Oriented Approach Towards Minorities Protection

The OSCE, spanning 'from Vancouver to Vladivostok',<sup>55</sup> spearheaded a security-oriented approach towards minorities protection in Europe. This considers minority rights as instrumental to overriding security goals.<sup>56</sup> However, both within the OSCE and the UN, a broader, multi-dimensional understanding of 'security' is comprehended in the post Cold War setting faced with ethnic tensions arising from the federal dissolution of Yugoslavia and the USSR. This appreciates that gross human rights violations, including the rights of minorities, threaten state sovereignty and peace and security.<sup>57</sup> Thus, maintaining peace and security extends beyond reactive notions of collective security to proactive conflict prevention techniques.<sup>58</sup>

Minorities issues were unequivocally characterised as matters of legitimate international concern.<sup>59</sup> Hence, appropriate CSCE mechanisms and procedures

<sup>51</sup> The Concluding Documents bolster the growing body of OSCE commitments through modifying the HFA: Buergenthal, 'The Copenhagen CSCE Meeting: A New Public Order for Europe' (1990) 11 *HRLJ* 217 at 220.

<sup>52</sup> OSCE Parliamentary Assembly St. Petersburg Declaration (1999), Ch III, paras 69, 89.

<sup>53</sup> C Chinkin, 'The Challenge of Soft Law' (1989) 38 *ICLQ* 850.

<sup>54</sup> Art 15(4)(b), *Treaty on Good Neighbourly Relations and Friendly Co-Operation (Hungary & Slovak Republic)*. Germany concluded minorities agreements giving CSCE standards legal effect in bilateral relations: HJ Heintze, 'The International Law Dimension of the German Minorities Policy' (1999) 68 *Nordic J of Int'l L* 117.

<sup>55</sup> The CSCE, a flexible state conference created in 1972 sought to normalise European interstate relations through dialogue. Undergoing institutional consolidation after Communism's retreat, it became the OSCE in 1995, charged with constructing a new European security architecture based on democracy and market economics: *Budapest Summit Declaration on Genuine Partnership in a New Era*, para 3 (1994); (1995) 34 *ILM* 764.

<sup>56</sup> The task of supervising two EU initiatives seeking to promote peace through strengthening human rights (the March 1995 Stability Pact in Europe and June 1999 Stability Pact for SE Europe, available at <<http://www.seerecon.org>> (visited July 2000)), was placed under OSCE auspices. (1999) 6 *OSCE Newsletter* 7. This recognised the OSCE as Europe's primary conflict management instrument.

<sup>57</sup> *Lisbon Declaration, Common & Comprehensive Security Model for 21st Century Europe* (1996), para 2.

<sup>58</sup> Para 25, Helsinki Document, above n 12.

<sup>59</sup> Moscow Document, above n 29, para 8.



supervising general CSCE commitments regarding the ‘Human Dimension’,<sup>60</sup> were potentially relevant to national minorities.<sup>61</sup> In this regard, the Human Dimension Mechanism could be expanded to promote human rights, including minority rights.<sup>62</sup> This provided for on-site investigative missions to monitor deteriorating human rights conditions, reflecting the new approach of actively involving third party mediators. In subjecting themselves to external scrutiny and control, OSCE states undertook to distribute information concerning national minorities’ situations within their jurisdictions to other states, via the CSCE secretariat.<sup>63</sup> However, no specific CSCE mechanism for monitoring the treatment of minorities within states was created.

### III. THE OSCE HCNM MANDATE

#### *A. The Need to Strengthen the Institutional Structure of the CSCE in Relation to Conflict Prevention*

The CSCE shifted its focus in the 1990s to building mechanisms to police and monitor the substantial body of ‘human dimension’ principles developed, as part of an overall strategy to stabilise states through preventing conflict, buttressing stability upon shared values and developing civil society.<sup>64</sup>

Lacking mandatory enforcement powers, the OSCE relies heavily on persuasion to effect this end, adopting strategies such as conditioning admissions requirements for states in ‘post wall’ Europe upon their adopting OSCE standards to the satisfaction of rapporteur missions.<sup>65</sup> Formal processes like the Human Dimension Mechanism,<sup>66</sup> fact-finding and conciliation procedures were later established as reviewing mechanisms. Minorities’ issues could be raised where they implicated the general conflict prevention mandate<sup>67</sup> of various CSCE organs or dispute settlement procedures,<sup>68</sup> and are staple

<sup>60</sup> Encompassing OSCE members’ commitment to ensuring respect for human rights and other humanitarian issues: Ch IV, Vienna Document, above n 26 at 547.

<sup>61</sup> The Geneva Document, above n 13, noted the relevance of appropriate CSCE mechanisms to national minorities issues, recommending an expanded Human Dimension Mechanism: Sect VIII, Para 37; Section I(2) Moscow Document, above n 29.

<sup>62</sup> Section VIII, Geneva Document, *ibid*.

<sup>63</sup> Section VII, *ibid*.

<sup>64</sup> This body of commitments, from the UN Charter and OSCE Documents, were recognised as establishing clear standards regulating individual treatment within state territories: Section II, Istanbul Charter, above n 42.

<sup>65</sup> Moscow Document, paras 1–16, above n 29.

<sup>66</sup> The Vienna Document, above n 26, details four control methods.

<sup>67</sup> Minorities’ issues can be raised before the ambassador-level Permanent Council, whose Chairman has investigatory powers and can deploy good offices.

<sup>68</sup> Specifically, the non-binding ‘Valletta Mechanism’ available to OSCE members and the Geneva-based 1994 Optional Convention on Conciliation and Arbitration. This provides for obligatory conciliation procedures and non-binding settlement proposals. See JJ Preece, *National Minorities and the European Nation-States System* (Oxford: Clarendon Press, 1998), at 145–6, 156–8.



agenda items considered at annual implementation review conferences<sup>69</sup> conducted under ODIHR auspices where participating states assess their human rights practices collectively. At these meetings, specific recommendations for improving minority protection have been made, including ratifying relevant treaties such as the FCNM.<sup>70</sup>

These formal processes, open only to states, were an inadequate response to the minority-related tensions. The need to strengthen CSCE capacity to facilitate the pacific solution of national minorities situations, fuelling conflicts 'both within and between states' was pressed.<sup>71</sup> An institutional breakthrough was achieved at the 1992 Helsinki II Summit, with the creation of the High Commissioner on National Minorities.<sup>72</sup>

### *B. The Role of the High Commissioner on National Minorities*

#### *1. Origin and Design: Low-Key Diplomacy*

The HCNM was a piecemeal, institutionalised response to the post Communist threat of ethnic conflict and regional insecurity, arising from the OSCE's failure to prevent ethnic wars in Yugoslavia and the Caucasus. OSCE states agreed upon the need for national and international channels to diffuse minorities-related conflict.

The preferred method of choice was to entrust the HCNM with an international mandate to proactively prevent the outbreak of conflict in 'hot spots'. Equipped with politico-diplomatic tools, the HCNM would work quietly behind the scenes as an external third party and independent actor. As 'an instrument of conflict prevention at the earliest possible stage' the HCNM was tasked with providing 'early warning' and 'early action'<sup>73</sup> after objectively evaluating tensions threatening to impair peaceful interstate relations.<sup>74</sup> This apparently excludes situations within states, such as if the rights of American Indians were violated. Both internal and interstate tensions may threaten regional peace and the HCNM has, in practice, considered the situation of groups within states, for example, Roma.

<sup>69</sup> Prague Document, above n 49. Initial reluctance to invoke these techniques to criticise politically vulnerable former communist states dissipated by 1995, eg, the EU and US sent Slovakia diplomatic notes criticising its failure to respect democracy, human, and minority rights. Preece, *op cit*, at 149.

<sup>70</sup> ODIHR, Fourth Implementation Warsaw Meeting on Human Dimension Issues, Consolidated Summary, (1998), Rapporteur's Report: 'National Minorities'.

<sup>71</sup> Prague Document, above n 49.

<sup>72</sup> Helsinki Document, above n 12, contains the HCNM mandate terms, its procedural and operational guidelines.

<sup>73</sup> *Ibid.*, Part II, (2) and (3). Though undefined, their meaning was discussed at *CSCE Warsaw Seminar on Early Warning and Preventive Diplomacy* (Jan 1994). The first formal warning in May 1999 stemmed from inter-ethnic tensions in FRYOM following a massive Kosovar Albanian refugee influx; the HCNM was asked to monitor the situation: (1999) 6(5) *OSCE Newsletter*, 8–9.

<sup>74</sup> Helsinki Document, para 33.3, above n 12.

The enhancement of OSCE institutional capacities facilitated engagement in an extended spectrum of activities, ranging from conflict prevention, crisis management to post-conflict rehabilitation. The HCNM's operational involvement is slated at the earliest stage of this continuum of activities in hopes of pre-empting future conflict, curbing further disintegrative processes. It represents part of OSCE efforts to shape the new Europe by promoting 'pluralistic structures of stability'<sup>75</sup> through regional cooperation.

## 2. *The Nature of the HCNM Mandate*

The HCNM's mandate has developed without reference to precedent though the HCNM does not have *carte blanche* to deal with all national minorities' issues, only those considered likely to precipitate conflict. The HCNM seeks to de-escalate tensions through various strategies. Where force is used or where conflict is open, the matter becomes one of conflict management, not prevention, and the HCNM ceases to have a role apart from a specific mandate from the Committee of Senior Officials (CSO).<sup>76</sup>

The HCNM's intrusive engagement in politically sensitive 'internal' national minorities issues rests on the recognition that human dimension commitments are of 'direct and legitimate concern' to all participating states. However, situations 'involving organised acts of terrorism'<sup>77</sup> were excised from the HCNM's mandate, having the effect of precluding interference with respect to the Northern Ireland situation, the Basques in Spain, and the Kurds in Turkey. However, other OSCE states or organs may raise national minority situations involving a 'terrorist' element.

The HCNM performs a 'tripwire function' in issuing 'early warnings' of escalating tensions to the OSCE Chairman in Office, who reports to the CSO. While undefined, 'early warning' implies a stage where preventative action by the whole OSCE remains possible.<sup>78</sup> While one of the HCNM's strongest sanctions, a premature warning involving the whole OSCE in the matter could heighten conflict by allowing a disputing party to exploit the additional attention.

The HCNM is not an 'Ombudsman'; the office is not designed as a quasi-judicial individual complaints mechanism providing legal redress to members of a national minority who suffered OSCE commitments violations.<sup>79</sup> In functioning at the inter-governmental level, the HCNM cannot issue formal recommendations to minorities although informal contact can be maintained. The

<sup>75</sup> Ibid, para 34.

<sup>76</sup> Ibid, para 79. The HCNM may request authorisation to take 'early action' through consulting the concerned parties: para 16.

<sup>77</sup> Helsinki Document, Section II, para 5(b), above n 12.

<sup>78</sup> Early warning serves 'to provide the information' upon which to base preventive diplomacy. HCNM Speeches, above n 15, 61, at 64.

<sup>79</sup> Helsinki Document, Sect II, para 5(c), above n 12. Arguably, individual cases are better served by legal-judicial procedures affording victims remedial measures.

HCNM deals with ethnic tensions arising from larger-scale state-minority 'situations'. Implicitly, 'situations' falling short of the requisite threshold of gravity, imperilling interstate relations, fall outside the HCNM's functional ambit. This contrasts with the mandate of CBSS Commissioner on Democratic Institutions and Human Rights, Including the Rights of Persons belonging to Minorities, who may receive complaints from individuals, groups and organisations, concerning smaller scale everyday situations involving the rights of individual minority members.<sup>80</sup>

HCNM mandate terms precludes the evolution of this office into a comprehensive minority protection mechanism, fixing upon it the diplomatic role of an impartial mediator.<sup>81</sup> This preference for flexible 'political' methods of inducing compliance with OSCE norms over rigid legal processes is consonant with the CSCE's history as a political process.

### 3. HCNM Powers: Information-Gathering

The HCNM must possess sufficient information to accurately assess situations before issuing an 'early warning', to avoid premature warnings which can force involved parties into intransigent stances, undermining other on-going OSCE mediatory processes.

To this end, the HCNM is not confined to one-sided state-authored reports but may receive information from almost any source, including the media and non-government organisations. However, communications from non-state actors are merely informational and the HCNM may decide whether action is warranted. However, he is prohibited from communicating with 'any person or organisation which practices or publicly condones terrorism or violence'.<sup>82</sup> He may also receive specific reports from and maintain close consultative contacts with parties directly concerned<sup>83</sup> with a national minority issue, with a view to finding solutions.

To keep apprised of the developments, the HCNM regularly undertakes fact-finding country visits, including regions with large minorities or acute tension such as Kosovo.<sup>84</sup> During state visits, the HCNM can choose his interlocutors and receive information from any directly concerned individual,

<sup>80</sup> Above n 7.

<sup>81</sup> Where affiliated with a national minority or citizen of an involved state, the HCNM needs all parties' approval to act: Helsinki Document, Section II, para 4, 5(a), above n 12. This impartiality requirement extends to HCNM enlisted experts: paras 31–6.

<sup>82</sup> Ibid, Section II, para 25. Turkey insisted on adding this paragraph.

<sup>83</sup> These include national and regional governments of participating states, including minority organisations representatives or NGOS authorised by minorities to represent them: Ibid, Section II, para 16.

<sup>84</sup> The HCNM when visiting Kosovo in Dec 1999 met representatives from communities besides the Albanians, including Turkish and Muslim Slav communities (2000) 7(1) *OSCE Newsletter*, 17. The HCNM provides confidential reports to the OSCE Chairman-in-Office's (Kosovo), suggesting possible tension-reducing steps the international community can undertake: *Annual Report OSCE Activities* (1998), 3.7.

group or organisation.<sup>85</sup> Consultations are held with high-level government officials, regional authorities, and minority representatives. To facilitate free information exchanges, OSCE states are to refrain from taking action against anyone contacting the HCNM.<sup>86</sup> These exchanges contribute to an accurate assessment of conditions at ground level and the need for early warnings.<sup>87</sup>

#### 4. *Appointing Experts*

The HCNM may appoint experts to examine particular situations. For example, both Slovakia and Hungary agreed to establishing a team of impartial minority rights specialists to analyse minorities' situations in their jurisdictions.<sup>88</sup> States thereby demonstrate their commitment to implement OSCE commitments.<sup>89</sup> These experts would conduct short-term semi-annual visits to gather information. This approach has been commended as a possible constructive model for addressing minorities' issues in CSCE states, many of which both host minorities and are kin states concerned with the treatment of 'their' co-nationals in other states. The HCNM has sent experts to help negotiate autonomy claims predicated on maintaining Ukrainian territorial integrity, between the central government and the regional Crimean authority.<sup>90</sup>

#### 5. *Preventive Diplomacy*

Where appropriate, the HCNM seeks to depoliticise and concretise issues between disputing parties, to 'promote dialogue, confidence and co-operation between them',<sup>91</sup> setting the groundwork for creating trust, a pre-requisite for ameliorative solutions. Thus the HCNM transcends the boundaries of traditional interstate diplomacy, where the mediator's chief function is to get the parties to talk to each other, by actively soliciting contacts with civil society and allowing minorities a direct role in the CSCE process, pro-actively fashioning a *via media* between competing interests. Post-visit reports may include recommendations to governments to alter laws considered inconsistent with OSCE standards, to ratify relevant treaties<sup>92</sup> or to improve organisational structures for protecting

<sup>85</sup> Para 29, Helsinki Document, above n 12.

<sup>86</sup> *Ibid*, para 30.

<sup>87</sup> This decision is shared between the Permanent Council and the Chairman-in-Office, to whom the HCNM sends confidential reports. The former decides whether to publicise HCNM recommendations.

<sup>88</sup> *HCNM Proposal to Slovakia and Hungary and Replies* (1993) 14 *HRLJ* 224–6. The expert team's terms of reference are found in CSO Vienna Group, Journal No 14, Annex I.

<sup>89</sup> *Letter, Hungarian MFA to HCNM* (Mar 1993) supporting the HCNM proposal (1993) 14 *HRLJ* 226.

<sup>90</sup> The CSCE endorsed the HCNM's recommendation for a team of experts to study the Ukraine–Crimea constitutional and economic relationship, *Annual Report CSCE Activities* (1994), 3.9.

<sup>91</sup> Helsinki Documents, Section II, paras 11–12, 23–4, above n 12.

<sup>92</sup> Greece and the FCNM: (1999) 6(10) *OSCE Newsletter*, 10.

minorities<sup>93</sup> and promoting related dialogue,<sup>94</sup> in service of establishing pluralist, participatory democratic orders. These recommendations build on previous ones, ensuring some continuity as the HCNM follows up on the implementation of past proposals, like establishing an early warning service in Kyrgyzstan.<sup>95</sup>

### 6. Cooperation

The HCNM has participated in joint missions with other international organisations such as the UN and COE in areas of overlapping interests, particularly, discussing a country's human rights and democratisation record,<sup>96</sup> scrutinising electoral<sup>97</sup> and state language laws.<sup>98</sup>

The HCNM as a high level adviser has profitably cooperated with OSCE missions dealing with minorities and integration issues, as in Estonia and Latvia. The spillover Monitor Mission to Skopje also provides local support for the HCNM in Kosovo.<sup>99</sup> The permanent presence of these missions, which often provide advice on citizenship issues, facilitates detailed familiarity with local conditions.

For example, the HCNM undertook joint action with the Estonia mission in February 1993 to help Estonia revise its Law on Aliens. Responding to a request by the Estonian Parliamentary Constitutional Committee, the HCNM sent experts to Tallinn for consultations about proposed amendments to the Citizenship Law.<sup>100</sup> Evidently, the HCNM's expertise is valued and requesting assistance demonstrates a commitment to OSCE standards before the OSCE community.

### 7. Project-Oriented Approach

With the support of a Hague-based NGO, the Foundation on Inter-Ethnic Relations, the HCNM seeks to make a practical difference at the grassroots level through a project-oriented approach. This involves concrete projects that tackle the root causes of conflict through activities like education, economic development and building infrastructure.<sup>101</sup> To prevent the radicalisation of

<sup>93</sup> Eg, an Albanian special office for minority questions (1993) 14 *HRLJ* 432, at 436.

<sup>94</sup> Para 26, Helsinki Document, above n 12, advocates constructive dialogue.

<sup>95</sup> *Annual Report OSCE Activities* (1999), para 2.6.

<sup>96</sup> The HCNM participated in a joint OSCE–UN–COE Mission of this nature to Croatia, *Annual Report OSCE Activities* (1999), para 2.2.

<sup>97</sup> The HCNM cooperated with the OSCE Mission, the ODIHR, and the COE in analysing Croatian electoral law, *Annual Report OSCE Activities* (1998), para 3.2.

<sup>98</sup> The HCNM, COE, and EC representatives jointly commented on a Slovakian minority language draft law before a Slovak delegation, resulting in a revised draft (1999) 6(6), *OSCE Newsletter*, 12.

<sup>99</sup> *Annual Report OSCE Activities* (1999), para 1.1.6.

<sup>100</sup> (1998) 5(11), *OSCE Newsletter*, 12.

<sup>101</sup> The HCNM supported projects providing educational support for Albanian students sitting University of Skopje entrance examinations and to create multicultural home schools in areas with undeveloped infrastructures in Ukraine, mostly Tartar settlements: *Annual Report OSCE Activities* (1998), 3.10, 3.31.

young Crimean Tartars returning to the Crimea whose socio-economic conditions are poor, the HCNM has sought international financial assistance for development projects, eliciting modest responses.<sup>102</sup> It has also supported state language training programmes in Estonia and Latvia to integrate Russian-speakers into society and facilitate their acquisition of citizenship.<sup>103</sup>

#### 8. *Independence and Accountability*

The low profile, confidential approach of the HCNM encourages non-state actors to provide him information and states to be more forthcoming in making concessions without attracting publicity. Before issuing an early warning, the HCNM enjoys a significant degree of initiative and far-reaching competence, conducive to swift action. He can, for example, visit an OSCE state without obtaining its' consent or that of OSCE political bodies. This insulates the office in part from third party interference, undercutting the institution's impartiality.

Nevertheless, this independence needs to be tempered with accountability as the HCNM is not a 'lone ranger' but an OSCE organ. Hence, the HCNM consults regularly with the Chairman-in-Office prior to a visit, providing confidential reports thereafter.<sup>104</sup> Furthermore, the HCNM needs to harness the support of more than fifty OSCE states and political organs, which can influence a state's receptivity to non-binding HCNM recommendations, maintaining close consultative links with OSCE political organs. This disabuses any perceptions that HCNM recommendations are one independent expert's isolated views. After the relevant government responds to them, these recommendations are brought to the attention of all OSCE states. The HCNM is lent political support through *démarches* and OSCE public statements supportive of HCNM recommendations, reinforcing the office's role as a collective OSCE instrument. Furthermore, transparency is promoted where the Permanent Council authorises the publication of the written HCNM-government exchanges which equalise the position of minorities *vis-à-vis* governments regarding information availability, by allowing minority representatives access to relevant written material.

#### C. *The Normative Basis of the HCNM's Role in Practice* (*'Normative Intermediary'*)

The HCNM acts as a 'normative intermediary',<sup>105</sup> in proactively seeking to tailor solutions to meet the specific exigencies of a situation. These solutions

<sup>102</sup> HCNM Interview, HCNM Speeches, above n 15, at 21–2.

<sup>103</sup> HCNM Speeches, above n 15, 127, at 130.

<sup>104</sup> Helsinki Documents, Section II, paras 17–18, above n 12.

<sup>105</sup> This is a party 'authorised by states or an international organisation seeking to promote observance of a norm, who involves himself . . . in a particular compliance shortcoming of a state

are not forged within a normative vacuum but serve the purpose of promoting OSCE values, specifically, commitment to pluralist democracy, the rule of law, human rights and the strengthening of civil society. Intolerant, authoritarian societies are more likely to violate human and minority rights, which has destabilising effects.

The HCNM's mandate is based on but not confined to 'CSCE principles and commitments'.<sup>106</sup> Specific reports detailing CSCE commitments violations with regarding national minorities may also include 'other violations in the context of national minority concerns'.<sup>107</sup> The HCNM has freely referred to principles and rights in UN documents and COE treaties in crafting specific political solutions.

#### D. Developing Norms and Formulating Solutions

##### 1. Elaborating International Standards

In formulating proposals, the HCNM pragmatically does not draw rigid, formalistic distinctions between 'hard law' norms in treaties like the FCNM and 'soft law' norms in non-binding instruments like the UN Minorities Declaration or OSCE documents. Instead, general reference is made to the umbrella category of 'international standards',<sup>108</sup> which form the normative basis for his evaluations.<sup>109</sup> These norms are not sufficiently precise to provide guidance to states as to what is required of them. Even norms in legally binding treaties may be soft in impact where provisions are weakly formulated in non-imperative language, heavily qualified, leaving an 'appropriate measure' to state determination. By relying upon these general standards, including the good practices of OSCE states,<sup>110</sup> to forge practical solutions and specific recommendations, the HCNM contributes towards elaborating their content. This aids the development of 'soft law' norms in this field as a set of basic standards regarding minority protection, allowing non-binding norms to play an influential role in HCNM brokered solutions, to which states have evidenced receptivity.

and seeks to induce compliance through a hands-on process of communication and persuasion with relevant decision-makers'. SR Ratner, 'Does International Law Matter in Preventing Ethnic Conflict?' (2000) 32 *NYU J Int'l Law and Po* 591, at 668.

<sup>106</sup> Helsinki Documents, Section II (4), above n 12.

<sup>107</sup> *Ibid.*, Section II (23)(b).

<sup>108</sup> On how the HCNM uses soft law, Ratner, *art cit.*, n 105, at 609–47.

<sup>109</sup> Eg, during his August 1995 Romanian visit, the HCNM stated his opinion regarding the Education Law rested on international standards, including the Copenhagen Document, the UN Minorities Declaration and FCNM: *HCNM Statement, Romania visit*, Press Release, 1 Sept 1995.

<sup>110</sup> The HCNM recommended that Slovakia, to promote government-minority dialogue, adopt an institution similar to Romania's Council for Ethnic Minorities which maintained links with local authorities and could receive minority concerns-related complaints from institutions and organisations, *HCNM Letter to the Slovak Republic* (1320/93/L) (CSCE Communication No 308, Prague, 29 Nov 1993).



The HCNM has also facilitated the ‘concretisation’ of vague norms through commissioning experts to study particular minority concerns. Three expert reports, which elaborate upon international standards that only provide directions for solution finding, rather than ‘specific recipes’<sup>111</sup> for problems encountered, have been completed. These are the *Hague Recommendations regarding the Education Rights of National Minorities (1996)*,<sup>112</sup> the *Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998)*,<sup>113</sup> and the *Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999)*.<sup>114</sup> The latter in particular, explores untested possibilities regarding constitutional orders and election systems, providing host states a ‘toolbox’ of instruments to promote minority confidence that their interests will be safeguarded, pursuant to good governance.<sup>115</sup>

HCNM recommendations illumine the purposes underlying norms, describing what detailed application of these norms may or do not require.<sup>116</sup> The parameters of a norm are clarified where laws or practices contravening international standards are identified and corrective steps suggested.<sup>117</sup> Encouraging compliance with these standards forms part of a long-term conflict prevention strategy.

In substantive terms, the HCNM has made detailed recommendations relating to topics like language<sup>118</sup> and education,<sup>119</sup> stressing the importance of contextualising the application of international standards to meet the variable educational needs of minorities.<sup>120</sup> Recommendations have also pertained to domestic institutions and processes, like establishing national institutions with

<sup>111</sup> HCNM Interview, HCNM Speeches, above n 15, at 23.

<sup>112</sup> See ‘Special Issue on the Education Rights of National Minorities’ (1996/7) 4(2) *International Journal on Minority and Group Rights*.

<sup>113</sup> See ‘Special Issue on the Linguistic Rights of National Minorities’ (1999) 6(3) *International Journal on Minority and Group Rights*.

<sup>114</sup> HCNM.GAL/4/99.

<sup>115</sup> HCNM Interview, HCNM Speeches, above n 15, at 25.

<sup>116</sup> Eg, in discussing the Romanian educational system, the HCNM stated that international standards were integrationist, rejecting coercive assimilation. Education should both promote minority identity and provide minorities opportunities to learn the state language to enhance minority participation in public affairs. International standards did not require minority language instruction in all subjects or at all educational levels. Above n 109.

<sup>117</sup> The HCNM has urged that inadequate laws be redressed through elaborating more comprehensive minorities codes, stating the constitutional position of minorities. *HCNM Recommendations, Visits to Romania and Albania (1993)* 14 *HRLJ* 432–7: Recommendation 3.

<sup>118</sup> The HCNM commented on the compatibility of Latvia’s draft language laws with international standards: (2000) 7(4), *OSCE Newsletter* 19.

<sup>119</sup> Eg, the HCNM recommended a special Albanian Language tertiary institute to provide qualified teachers equipped to teach Albanian at all educational levels in Macedonia, facilitating the ethnic Albanian community’s long-term socio-economic and political advancement. (2000) 7(5) *OSCE Newsletter*, 18.

<sup>120</sup> The HCNM noted the significant interest national minorities in Romania displayed towards vocational and minority language education should be the ‘subject of special attention’. *HCNM Statement, Romania visit*, above n 109.

adequate minority representation dedicated to supervising minority issues<sup>121</sup> and handling complaints<sup>122</sup> and processes facilitating structured government-minority dialogue, which diffuses suspicions.<sup>123</sup> He also endorsed devolutionary arrangements, bringing political decision-making to those most affected.<sup>124</sup>

By discussing these recommendations and drawing attention to proposals made before various roundtables and seminars,<sup>125</sup> the HCNM provides a resource for states to utilise in enacting laws and devising policies to effectuate their commitments regarding national minorities. The HCNM noted with gratification that his recommendations have influenced national discussions and legislation, for example, a Latvian document on national integration policy referred to the Oslo and Hague recommendations.<sup>126</sup>

#### *E. HCNM Attitudes Toward Issues Related to Minority Protection*

The HCNM has made clear the various assumptions upon which his work is based, which relate to his understanding of issues associated with the protection of minorities.

##### *1. Attitude towards 'Self-determination': Focus on the 'Internal Aspects'*

HCNM recommendations are understood as designed to operate within the political structure of the existing state, through creating institutions and dialogue processes that facilitate minority participation in public affairs, while preserving territorial integrity.

The HCNM considers changing borders in the name of self-determination

<sup>121</sup> The HCNM recommended that Albania regularly consult Greek minority representatives over relevant legislation, see above n 119. The HCNM approved the National Minorities Council (Romania), the Presidential Roundtables (Latvia and Estonia) and the People's Assembly (Kazakhstan and Kyrgyzstan) as facilitating minority participation in the decision-making process, Annual Report OSCE Activities (1999), paras 2.5, 2.6.

<sup>122</sup> The HCNM recommended that, pursuant to para 40(5), Copenhagen Document, the Albanian government should ensure that minorities' members suffering discrimination had a sufficient complaints procedure available, above n 119: Recommendation 5. The HCNM suggested creating a human and ethnic rights ombudsman (Kazakhstan and Kyrgyzstan) and a 'National Commissioner on Ethnic and Language Questions' (Estonia and Latvia), Annual Report OSCE Activities (1999), paras 2.5, 2.6.

<sup>123</sup> Eg, the Croat government was urged to open dialogue with Serbs in the Danube fearing for their physical security; consequently, the Croat government created an advisory body to coordinate and express Serbian concerns about government policy. *Exchange of Letters, Croatian MFA and HCNM*, HCNM.GAL/8/99.

<sup>124</sup> The HCNM approved FYROM's efforts to accommodate local needs, including minority concerns, through decentralisation, offering suggestions effective local self-government. *HCNM Statement, Recommendations on inter-ethnic issues in the FYROM*, HCNM.GAL/10/98.

<sup>125</sup> For example, the HCNM and Foundation of Inter-Ethnic Relations organised seminars in Croatia and Ukraine in June and Sep 1999 to discuss the Hague and Oslo recommendations: *Annual Report OSCE Activities* (1999), paras 2.2, 2.11.

<sup>126</sup> HCNM Interview, HCNM Speeches, above n 15, at 24.

an undesirable and unfeasible solution to national minorities' problems.<sup>127</sup> As minorities in Europe are scattered over large regions and intermingled elsewhere, this would augur an impossibly fragmented Europe. Further, the 'myth' of the ethnically homogenous 'nation-state' contradicts OSCE democratic values and the commitment to address minority issues 'particularly in areas where democratic institutions are being consolidated'.<sup>128</sup> In public speeches, the HCNM has differentiated self-determination and secession,<sup>129</sup> branding the pursuit of the mono-ethnic state as a 'dead end street'.<sup>130</sup> Nevertheless, group aspirations for self-realisation had to be met, otherwise, open conflict might ensue as in, for example, Chechnya and Nargorno-Karabakh. Kosovo is often cited as an example of not reconciling the principles of self-determination and territorial integrity.

The HCNM advocates ensuring 'a process of internal self-determination within the state'<sup>131</sup> as the best approach towards inter-ethnic problems. Referring to the 'Geneva shopping list',<sup>132</sup> schemes of cultural autonomy, regionalisation, and self-government numbered among the means of ensuring minority group self-realisation aspirations. Autonomy aspirations would be balanced against territorial integrity within a multicultural state that valued minorities as agents of cultural enrichment rather than destabilisation. States still resist territorial autonomy proposals for fear these might escalate.<sup>133</sup> To alleviate state fears, the HCNM, responding to a Greek request for his opinion, publicly stated that territorial autonomy, as mentioned in the Copenhagen Document, was not a right but optional.<sup>134</sup> Given state reticence in this matter, the HCNM only proposes territorial-based solutions in exceptional cases such as the Crimea.<sup>135</sup> He pragmatically advises minorities to focus on less contentious ways, which achieve more practically, of advancing their interests. For example, enacting specific laws protecting minority interests in fields such as education, securing minority representation in central government, or pressing concerns shared by the majority in a region, like expanding local government powers.<sup>136</sup>

<sup>127</sup> HCNM Speeches, above n 15, at 165–73, 171–2.

<sup>128</sup> Above n 13.

<sup>129</sup> Secession as a panacea to minorities' problems was clearly rejected: *Keynote Address, HCNM Warsaw CSCE Human Dimension Seminar Case Studies on National Minorities Issues: Positive Results* (1993).

<sup>130</sup> *Keynote Speech, Stability Pact Conference*, 16 Mar 2000.

<sup>131</sup> HCNM Address, *National Minorities Issues in the OSCE Area*, Seminar on the OSCE, arranged by the Norwegian Foreign Affairs Ministry, 22 Oct 1998.

<sup>132</sup> HCNM Speeches, above n 15, at 45–8.

<sup>133</sup> Eg, the Ukraine government feared that seeking 'economic sovereignty' was a prelude to separating the Crimea from the Ukraine: *Ukraine MFA Letter to the HCNM*, CSCE, Communication No 23/94.

<sup>134</sup> Statement, 25 Aug 1999: (1999) 6(8) *OSCE Newsletter*, 10.

<sup>135</sup> J Packer, 'Autonomy within the OSCE: The Case of Crimea', in M Suksi (ed), *Autonomy: Applications and Implications* (The Hague/Boston: Kluwer Law International, 1998), 295–316.

<sup>136</sup> *HCNM Report, Warsaw Implementation Meeting on Human Dimension Issues* (1995), 6(4) *Helsinki Monitor*.

To promote minority loyalty towards the state, civic rights, allowing all citizens to participate in democratic processes and general political life, warrant promotion. Civic nationalism helps curb separatist tendencies. The HCNM has lauded the Romanian government's efforts to integrate minority representatives in the government, as replacing the ethnic with the civic principle signalled a progress towards a democratic society.<sup>137</sup> Consistently, he criticised Slovak local elections laws designed to fix electoral representation along ethnic lines, contrary to international standards relating to free elections.<sup>138</sup>

The HCNM has urged minorities to reciprocate by accepting a common destiny with the majority group,<sup>139</sup> noting that resources must be committed towards promoting integration beyond special minority rights.<sup>140</sup> For example, providing sufficient opportunities for the minority Russian-speaking population in Latvia to learn the state language and encouraging russophones to take advantage of this.<sup>141</sup> The HCNM's balanced view requires that both state and minority must accommodate competing aspirations within a plural society.

## 2. *Appealing to the Responsibility of the International Community*

The HCNM has requested financial assistance from OSCE states to implement his recommendations, lamenting that a mere fraction of some states' defence budgets could sufficiently fund a wide range of conflict prevention programmes.<sup>142</sup> In the long run, this is more cost-efficient than running peace-keeping and post-conflict rehabilitation programmes.<sup>143</sup>

## 3. *Attitude Towards Kin States*

The HCNM has realistically affirmed that kin states have a legitimate interest in the fate of minorities sharing the same ethnic origin outside their borders. This attitude was manifest when the HCNM during a July 1999 visit to Hungary discussed with Hungarian officials the situation of the Hungarian minority in Slovakia and Romania.<sup>144</sup>

<sup>137</sup> *Annual Report OSCE Activities* (1997), 3.1.2.

<sup>138</sup> *Ibid* (1998): 3.12.

<sup>139</sup> Above n 136.

<sup>140</sup> While restoring the Kazakh language, the HCNM urged that Russian Speakers, constituting 36 per cent of the population, be allowed to continue using Russian before public authorities, to stem their outflow and encourage them to contribute towards Kazakhstan's development, *HCNM Recommendations to the Kazakhstan Government* (CSCE Communication No 26/94).

<sup>141</sup> (1999) 6(8) *OSCE Newsletter*, 10.

<sup>142</sup> Eg, the HCNM requested donor aid to help resettle Crimean Tartars, *Annual Report OSCE Activities* (1998), 3.13.

<sup>143</sup> Above n 136.

<sup>144</sup> This related to language and education concerns (1999) 6(7) *OSCE Newsletter*, 12. The HCNM has discussed the ethnic Greeks in southern Albania with high-ranking Greek ministers, *Annual Report CSCE Activities* (1993), Section 3.

This is significant as most situations the HCNM considers involve a triangulated relationship between ‘national minorities’ who are citizens or residents of the host ‘nationalising state’, but bearing an ethnocultural affinity with, but not the legal citizenship of, an ‘external national homeland’ or kin state. Within the post Communist landscape, some 3 million ethnic Hungarians (Romania, Slovakia, Ukraine, Serbia), 2 million Albanians (Serbia, Montenegro, Macedonia) and 1 million Turks (Bulgaria) live outside their ‘kin state’. Also problematical are the situations of the Armenians in Azerbaijan, the Uzbeks in Tajikistan, Tajiks in Uzbekistan, and the Poles in Lithuania. Similarly, Russia has displayed concern for formerly privileged Russian minorities in newly nationalising Baltic states who resent these minorities after decades of ‘forced russification’. Tensions fester in this context. Indeed, the initial HCNM missions were to the Baltic states, where the excessively stringent official language requirements for citizenship, which carries state welfare services and pension benefits, was a pressing issue.<sup>145</sup>

The HCNM acknowledges host state sensitivities that the expression of kin state concerns can be destabilising, unduly interfering in domestic affairs. Rather than addressing such bilateral issues by consigning responsibility for minorities to some international body as during the League era, the HCNM advocates addressing the matter head-on by various means. States have been encouraged to conclude bilateral treaties of friendship and cooperation, such as between Hungary and Romania, which provide for interstate consultations over sensitive minorities matters. Additionally, impartial intermediaries such as the HCNM himself can look into such problems, encouraging states to comply with international standards through finding solutions within the domestic framework, preventing kin states from championing minority causes for political purposes.

#### IV. THE WORK OF THE HCNM: WORKING METHODS AND ETHOS<sup>146</sup>

##### *A. The Scope of the HCNM's Work*

Since 1993, HCNM activities have been steadily expanding involving minority situations in Europe and Central Asia, including Albania, Croatia, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Macedonia, Romania, Slovakia, and the Ukraine. The issues most often addressed by the HCNM relate to minority language schools, citizenship issues, political participation rights, unequal access to public resources such as government employment, contracts, and social security benefits.

‘National minorities’, the subject of the HCNM’s mandate, have not been

<sup>145</sup> See R Zaagman, *Conflict Prevention in the Baltic States: The OSCE HCNM* (Flensburg: European Centre for Minority Issues, April 1999).

<sup>146</sup> WA Kemp (ed), *Quiet Diplomacy in Action: The OSCE HCNM* (The Hague: Kluwer Law International, 2001).

authoritatively defined in any CSCE document.<sup>147</sup> The term confuses since 'national' has dual meanings: it may refer to citizenship or indicate a person's national roots and ethno-cultural affiliation with a kin state. If 'national' is understood to mean citizen, individual minority members lacking host state citizenship would be excluded from any minority protection afforded.<sup>148</sup> If 'national' is taken to link a group to its national roots, it could exclude minorities without kin states from minority protection.

The HCNM has rejected a restrictive understanding of 'national minorities', favouring a pragmatic and liberal approach towards the definitional issue. Given the lack of consensus, the HCNM followed the Permanent Court of International Justice approach in the *Convention between Greece and Bulgaria Respecting Reciprocal Emigration*,<sup>149</sup> that the existence of a minority is a factual, not legal matter, asserting that 'I know a minority when I see one'. Consequently, the HCNM publicly disagreed with Greece's denial that minorities existed in its territories, stressing the importance of minority self-identification while affirming state's territorial integrity.<sup>150</sup> Hence, a minority does not require formal state recognition to invoke OSCE national minorities related commitments.

The HCNM proposed a working definition of 'minority' as 'a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority'; such a group 'usually not only seeks to maintain . . . but also tries to give stronger expression to that identity'.<sup>151</sup> 'National minorities' in the OSCE context conventionally denotes a non-dominant population that is a numerical minority within a state,<sup>152</sup> entailing an expansive understanding of 'national minorities', irrespective of citizenship.<sup>153</sup> Typically, the HCNM engages situations involving the classic triangulated relationship between

<sup>147</sup> Other European instruments, eg, FCNM, do not define 'national minorities', but see PA Recommendation 1201(1993): (1993) 14 *HRLJ*, 144–8. Clearly, national minority membership turns on individual choice, para 32, Copenhagen Document, above n 28.

<sup>148</sup> Citizenship is apparently a pre-requisite for attracting minority protection: Section IV, Geneva Document, states that national minorities' members share the same rights and duties of citizenship. 'National' in the CSCE process seems to narrowly refer only to citizens, excluding migrant workers and refugees from the ambit of 'national minority', contrasted with the liberal though controversial view of the Human Rights Committee in General Comment 27(50) that even 'visitors' attracted minority protection.

<sup>149</sup> Advisory Opinion No 17, 1930 PCIJ ser B No 17 (31 July).

<sup>150</sup> HCNM.FGAL/6/99; *Annual Report OSCE Activities* (1999), 2.4.

<sup>151</sup> HCNM Speeches, above n 15, at 45–8.

<sup>152</sup> Although undefined in Principle VII, HFA, 'national minorities' were understood as distinct from 'peoples' having the right of self-determination, the latter constituting a state's entire population: A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 283, 289.

<sup>153</sup> The HCNM framed his recommendations about the national minorities' situation in the Baltic states in terms of the 'non-Estonian' and 'non-Latvian' population group, indicating their application to other population sectors although Russians, who have a kin state, were of chief concern: *Recommendations, HCNM to Estonia, Latvia and Lithuania* (1993) 14 *HRLJ*, 216–19. The HCNM's efforts were not blocked by objections that 'national' means citizen, as the Russian speakers' lack of citizenship was at issue.

minority group, host and kin state, setting the scene for interstate tension of the sort defining most European history, for example, Hungary's concern for Hungarians in Slovakia and Romania. HCNM recommendations concerning the management of this triangular relationship to allay interstate friction is consistent with HCNM mandate framed in terms of mediating potential conflictual situations *between* participating states rather than *within* a state, to promote security. However, the HCNM has intervened in situations not involving interstate friction, regarding groups like the Roma<sup>154</sup> who are considered a national minority, albeit without territory, kin state and having a dispersed settlement pattern.<sup>155</sup>

### *B. A Conciliatory and Impartial Ethos*

The HCNM seeks to promote the openness of disputing parties to his mediatory involvement by adopting a cooperative ethos sensitive to all perspectives. Rather than being a 'stigma', HCNM involvement should be viewed as a 'sign of solidarity' between the OSCE and its members facing 'especially complicated issues in the field of national minorities',<sup>156</sup> which assistance by a friendly institution can help resolve.

In demonstrating balanced, objective assessment of situations, the HCNM has practically recognised the problem of limited state resources, for example, the HCNM noted the priority of economic recovery after the communist regime's disastrous economic policies in Albania. As such, the Greek minority had to accept the restricted provision of schools providing mother tongue education outside so-called minority areas, as necessitated by the grave economic situation.<sup>157</sup>

While critical of governments and minorities alike, the HCNM avoids condemning either party. This sensitivity was demonstrated in the HCNM recommendations to Estonia and Latvia concerning the 'non-Estonian' and 'non-Latvian' population, with Russians constituting the largest group in both cases, against the backdrop of Russia's keen interest.<sup>158</sup> Before critically commenting on issues relating to language and citizenship requirements, the HCNM registered his understanding of Estonian and Latvian desire to re-establish their national identity after the previous russification policy. He sought to mollify Estonia and Latvia by noting their concern about Estonians/Latvians within the Russian Federation. This voided any perceptions he was lending his

<sup>154</sup> Groups like indigenous populations have received particular attention within the CSCE Human Dimension context: Section VI, Para 29 Helsinki Document, above n 12.

<sup>155</sup> The HCNM stated that the Roma's plight, stemming from discrimination, straddled both national minorities concerns and the general OSCE Human Dimension but were better managed under the latter. *HCNM Address, 1999 Supplementary Human Dimension Meeting on Roma and Sinti Issues*, HCNM.GAL/7/99.

<sup>156</sup> HCNM Speeches, above n 15 at 147–50.

<sup>157</sup> Above n 118, at 435.

<sup>158</sup> Russia commented on the HCNM's recommendations on his Estonian and Latvian visits (1993) 14 *HRLJ* 223–4.



voice to Russian kin state concerns, as opposed to being concerned with national minorities' situations throughout the OSCE region. Thus, all states as host and kin states should equally comply with international minorities' standards.

Furthermore, the balanced consideration of competing concerns and necessity of forging acceptable compromises is reflected in handling the fears of the Crimean Russians in the Ukraine that Ukraine language requirements would undermine Russian language and culture. Ukraine viewed with hostility Crimean Russians autonomy, fearing secession or Russian interference. The HCNM recommended the provision of opportunities to speak Russian before public bodies, alongside the official language.

Such a conciliatory, even-handed approach is necessary as the HCNM's mandate is framed in political terms and the office equipped with politico-diplomatic powers of persuasion rather than juridical tools.<sup>159</sup> The HCNM is aware that his recommendations will have no concrete impact apart from the voluntary, good faith involvement of the state and the parties concerned.<sup>160</sup> To foster support for workable, durable solutions, the HCNM seeks to nurture a cooperative relationship with states,<sup>161</sup> viewing his task as facilitating, rather than imposing solutions. He seeks to ensure that the parties concerned accept HCNM involvement as legitimate and his recommendations as beneficial to their interests. Cultivating good working relationships is important as solutions involve measures that can run into the long term, as complex minorities problems are not susceptible to one-off 'overnight' solutions. This is evident in the tact displayed in HCNM letters to foreign ministers proposing recommendations and handling disagreements.<sup>162</sup> His *modus operandi* is non-coercive, exploratory, and low-key.

<sup>159</sup> The HCNM opposed Russia's proposal to make HCNM recommendations binding with mandatory reporting obligations, preferring a flexible non-coercive approach, Zaagman, above n 145, at 13.

<sup>160</sup> Slovakia and Hungary supported the HCNM's 1993 proposal to establish an impartial experts team to analyse the minorities' situations in both countries: (1993) 14 *HRLJ* 224–6.

<sup>161</sup> Without cooperation, any effective role for the HCNM or the OSCE is precluded. Eg, the Mission to Kosovo, Sandjak, and Vojvodina deployed on 8 Sept 1992 was non-operational after 28 June 1993 when the FRY refused consent to Mission activities unless its' suspension to the CSCE was lifted, *Annual Report CSCE Activities* (1993), 2.1.

<sup>162</sup> Even after the Moldovan Foreign Minister (31 March 2000) rejected by exchange of letters the HCNM's view (2 Nov 1999) that amendments to a draft advertising law mandating the use of the state language in private advertisements were incompatible with Moldova's international commitments, the HCNM sought to keep the dialogue process open. The HCNM in a letter (20 Apr 2000) received Moldova's views on linguistic legislation and the need to reverse the effects of imposed russification 'with great interest', welcoming the invitation to visit and 'undertake a constructive dialogue on these issues in the Moldovan context', while maintaining that protecting the linguistic rights of all were central to consolidating civic peace. (These letters were made public; available at <<http://www.osce.org/hcnm>>.)

*C. Strategies for Inducing Compliance with Minority Standards  
and HCNM Recommendations*

*1. Of Carrots and Sticks: Promoting Compliance*

Given the practical limitations to the HCNM's working methods, various strategies have been adopted to persuade state compliance with OSCE principles and to implement HCNM proposals. Many new central and eastern European states where ethnic tension is acute desire to be perceived as new democracies for the purpose of facilitating admission into European organisations and to attract conditional financial assistance. Hence, the HCNM actively presents compliance with OSCE standards as a legitimating factor.

Aware that the HCNM office essentially consists of one man with 'small teeth and few carrots',<sup>163</sup> the political weight of HCNM recommendations is buttressed where the endorsement of OSCE participating states and OSCE organs is secured. By interacting with governments and vigilantly monitoring problem issues, the HCNM keeps governments on their toes. If an issue is made public, a state has to justify its policies and is motivated to bring about improvements to avoid the 'stick' of public disapprobation. The HCNM also appeals to the self-interest of countries seeking integration with a regional organisation by stressing that respecting national minorities' rights reflects a country's willingness and ability to meet its international commitments.

In this, the HCNM has mobilised other international organisations' support as an aspect of 'cooperative security in action',<sup>164</sup> to back up his proposals and to promote outcomes consistent with OSCE norms. Possessing greater political and economic leverage, these external actors can present 'political' carrots such as membership and financial aid to reward compliance with minority standards, as well as disincentives for non-compliance. The HCNM has cooperated with the EU whose accession criteria requires respecting the same values the OSCE espouses, viz, promoting human rights, democracy and protecting national minorities. Hence, as the principal mechanism for monitoring how states fare in relation to these goals, the HCNM seeks to induce compliance with these standards by reference to the prize of EU membership. Indeed, the HCNM in 1997 stated that it has become customary for EU organs to seek the HCNM's advice regarding EU membership applications.<sup>165</sup> For example, securing EU membership was a primary Latvian foreign policy goal. Hence, the HCNM asked the EU to link Latvia's admission to his language and citizenship recommendations. Consequently, the EU made this link clear

<sup>163</sup> HCNM Speeches, above n 15, 165, at 169.

<sup>164</sup> *Ibid.*

<sup>165</sup> HCNM Interview, HCNM Speeches, above n 15, at 18. On 27 May 1999 the HCNM consulted with the European Commission in Brussels concerning potential new EU members: (1999) 6(5) *OSCE Newsletter*, 9.

while Latvia was in the process of adopting its citizenship law in 1998<sup>166</sup> and language law in 1999.<sup>167</sup> HCNM recommendations were thus used as benchmarks for Estonia and Latvia in discussing their EU membership applications, and to restrain the Russian Federation's statements and behaviour towards Baltic states<sup>168</sup> by highlighting areas of progress in relation to minorities. Thus, by implying that implementing HCNM recommendations would fulfil EU standards in the sphere of minority rights, this carried the 'threat' that non-compliance would hinder the accessions process with another regional organisation.

While the HCNM works confidentially, the judicious use of publicity is resorted to, to urge states to progressively develop minority protection. By issuing public statements of approval,<sup>169</sup> noting state progress in certain respects or issuing communications (usually with prior agreement) with governments, widely accessible through the media and internet, a state's demonstrated commitment to effectuate its international obligations may gain it legitimacy. With respect to minority tertiary education concerns in Romania, the HCNM noted that establishing a multicultural state university offering tuition in Hungarian and German was a choice falling within the ambit of what international standards required. This sort of public endorsement shields the host-state from external and internal critics, enhancing the government's political legitimacy through referencing the support of the German Group (Board of the Democratic Forum of Germans in Romania) towards the proposal.<sup>170</sup> Furthermore, the HCNM has sought to spur states facing similar problems to emulate another's successful efforts. A HCNM press release welcoming the referendum on Latvia's Law of Citizenship praised this as an important step towards solving inter-ethnic problems and conforming legislation governing the nationality of children of stateless parents born in Latvia since its restoration of independence with European practice. Further criticism would be muted by the HCNM's statement of having no intention to make further recommendations in this matter. He expressed the hope that the Estonian Parliament would follow suit.<sup>171</sup>

<sup>166</sup> The EU presidency made a Declaration on 26 June 1998 noting that the passage of a Latvian citizenship law would 'fulfil key elements on the recommendation of the OSCE HCNM ... in respect of citizenship': <[http://europa.eu.int/comm/dgla/daily/06\\_98/pesc\\_98\\_68.html](http://europa.eu.int/comm/dgla/daily/06_98/pesc_98_68.html)>

<sup>167</sup> European Commission Opinion on Latvia's Application for EU Membership, B.1.3. 15 July 1997: <<http://www.europa.eu.int/comm/enlargement/latvia>>.

<sup>168</sup> Zaagman, above n 145, at 11. The EU issued a 9 Dec 1998 statement that Estonia's amended Citizenship law fulfilled OSCE recommendations respecting citizenship requirements: at 47.

<sup>169</sup> A press statement lauded restoring of minority languages usage in official communications, noting that the Slovak Law on the Use of National Minority Languages (1999) met HCNM recommendations permitting national minorities members to use their own language before public administrative organs in municipalities where the minority constituted minimally 20 per cent of the population. (1999) 6(7) *OSCE Newsletter*, at 13.

<sup>170</sup> *HCNM Statement on Romania*, Press Release 8 Oct 1998 (Petofi-Schiller University).

<sup>171</sup> *HCNM Statement*, Press Release, 5 Oct 1998.

Furthermore, encouraging statements can temper the sting of third party criticism, especially that of an overzealous 'kin' state. Russia was highly critical of Baltic States' policies regarding Russian-speaking minorities. In his report made after visits to Estonia and Latvia, the HCNM noted that 'there is no convincing evidence of systematic persecution of the non-Estonian population since the re-establishment of Estonian independence' or inter-ethnic violence.<sup>172</sup> He thereby disagreed with the Russian assessment of the situation as involving gross human rights abuses. This helped vindicate the position of the host states before the OSCE community, aiding their public relations struggle with Russia.<sup>173</sup> In displaying further good faith, Estonia requested that HCNM recommendations be circulated for all to assess Estonia's performance.<sup>174</sup>

The HCNM also provides financial and other carrots to motivate states to adopt his proposals, such as promising to conduct special training courses to assist Kyrgyz officials in managing inter-ethnic relations<sup>175</sup> and seeking international sponsorship of programmes to meet the language needs of the Albanian minority in Macedonia. These include establishing a special Albanian Language State University College for Teacher Training, a compromise to the Albanian desire for a general tertiary institution.<sup>176</sup> The HCNM has also called for a Private Higher Education Centre for Public Administration and Business to be founded and funded by a consortium of states interested in helping promote business in Macedonia. It would be generally beneficial to have highly qualified business students and this institution could also have a language-training centre teaching Albanian and other languages, and a centre for European studies to buttress an internationalist orientation with English as the dominant teaching language, to maximise access to the tuition provided. This proposal sought to appeal to Macedonia's integrationist desires while ensuring some attention to minority concerns.

From the Macedonian government's perspective, it would be advantageous, without providing any financial assistance itself, to permit the operation of these programmes that convey that Macedonia took its international commitments seriously.

#### V. ASSESSING THE CONTRIBUTIONS OF THE HCNM

While noting that the Nazi scourge has gone and that 'communism and respect for human rights are incompatible', the HCNM stressed that Europe still faced dangers threatening chaos and disintegration. In opposing any form

<sup>172</sup> (1993) 14 *HRLJ* 216–24.

<sup>173</sup> Indeed, Russia quietly supported the HCNM's recommendations in this respect. *Ibid.* See the HCNM's affirmation that Ukrainian legislation concerning minority questions complied with international obligations (CSCE Communication No 23/94, 14 June 1994).

<sup>174</sup> Zaagman, above n 145, at 46.

<sup>175</sup> (1999) 6(1) *OSCE Newsletter*, 12.

<sup>176</sup> HCNM.GAL/10/98.

of nationalism that disrespected minority rights, he considered that 'no stable European order is possible without solving the problems of minorities and excessive nationalism'.<sup>177</sup>

The HCNM's conflict prevention mandate serves short and long-term goals towards the paramount end of security. In the short term, the HCNM seeks to diffuse tension through mediation. In the long term, the HCNM seeks to buttress stable democratic development in countries through forging practical solutions to minorities' issues on a principled basis, to pre-empt populists from stirring ethnic-based tensions undermining the push towards the stabilising effects of sustainable economic growth.

His recommendations go beyond encouraging compliance with individual rights in recognising national minorities' collective needs and aspirations, particularly their ability to participate in government decision-making processes. Compliance with these recommendations casts a country's minorities' policy in a positive light before the international community. The HCNM can also publicise particular problems through the organisation of seminars and international conferences convened to brainstorm solutions. Publicity serves an educative function in imparting a set of common values and focuses attention on developing comprehensive approaches towards specific problems.<sup>178</sup>

For states desiring to improve treatment of national minorities, the HCNM variously serves as a resource centre. The HCNM helps to mobilise international financial support to cash-strapped governments to help solve minorities-related issues that might escalate into conflict if left festering.<sup>179</sup>

The HCNM also provides technical expert advice in reviewing legislation for compliance with international standards or offering assistance in the development of recommended institutions.<sup>180</sup> Requests for aid in this respect, both from states and other international organisations, testifies to the HCNM's success as a centre for specialist minorities information and legal consultation. As a legal adviser, the HCNM has played an interpretative function when responding to requests for his opinion on the scope of OSCE commitments.

<sup>177</sup> HCNM Interview, HCNM Speeches, above n 15, at 16.

<sup>178</sup> Eg, the HCNM drew international attention to the problems of the Meskhetian Turks, a people deported from Georgia by Stalin in 1944. He initiated consultation meetings in cooperation with the UN High Commissioner for Refugees in Sept 1998, attended by Turk representatives and the governments of Azerbaijan, Georgia, and the Russian Federation, *Annual Report OSCE Activities* (1998), 3.5. The HCNM also convened roundtables to address the complex Crimean problem: REF.HC/7/96.

<sup>179</sup> The Kyrgyz Republic government's letter of 6 Sept 1995 (21-601) expressed gratitude for the HCNM's facilitation of funding assistance for various ethnic conflict prevention programmes. It welcomed further OSCE support through providing material assistance to the Executive Council of the People's Assembly in the form of grants, equipment and personnel training. *HCNM Letter to Republic of Kyrgyzstan MFA* (897/95/L), 7 Aug 1995 and Reply (REF.HC/7/95, 7 Sept 1995).

<sup>180</sup> Eg, recommending that Lithuania establish an Ombudsman, *Letter to Lithuania* (No 239/93/L), (1993) 14 *HRLJ* 221.

For example, in relation to the on-going discussion on the question of national minorities in Greece in August 1999,<sup>181</sup> the HCNM clarified that the Copenhagen Document did not endorse secessionist claims and the optional nature of autonomy provisions. He has also commented on the scope of both political and legal standards found in non-OSCE documents such as Assembly Recommendation 1201, the ECHR and the FCNM,<sup>182</sup> referring to these standards in criticising state practice.<sup>183</sup> By maintaining specialised data banks and reference materials, the HCNM's work facilitates comparative references between OSCE state practices. The HCNM has suggested that states consult the work of COE experts on specific minorities' issues, such as their needs regarding tertiary education.<sup>184</sup> These HCNM activities are oriented towards structuring internal governments in accordance with OSCE standards, part of the long-term approach towards conflict prevention.

#### A. *Success: Diffusing Tension?*

Given that much of the HCNM's work is based on diplomacy and persuasion, it is difficult to evaluate his contribution to conflict prevention, compared to the more palpable results evident from judicial procedures.

From the steady expansion of HCNM involvement throughout almost the entire OSCE area, one might infer that the office's utility is valued. The COE Parliamentary Assembly rapporteur noted that the HCNM is 'particularly effective' in the context of crisis and conflict prevention.<sup>185</sup> There are indications that certain states are receptive to and welcome the HCNM's work, evident from comments made by states at conferences<sup>186</sup> or in letters to the

<sup>181</sup> HCNM.GAL/6/99.

<sup>182</sup> The HCNM in his letter to the Slovak Republic stated that Art 11, Recommendation 1201 imposed no legal obligation to provide ethnic-based autonomy. However, making extensive reference to FCNM provisions, he recommended that language laws not criminalise propaganda for autonomy. This would violate Art 10 ECHR free expression guarantees, given the difficulty in maintaining that calls for the territorial autonomy concept threatened state security. *HCNM Letter to Slovak MFA*, 13 Aug 1996 (Ref 910/96/L) (REF. HC/12/96, 25 Oct 1996). In noting the over-centralisation of education, the HCNM urged that greater responsibility and funds be given to municipalities for running schools, pursuant to Art 15 FCNM. Regarding Art 12, the HCNM asked whether the Nitra pedagogical university could train sufficient numbers of Hungarian teachers and urged allowing purchasing textbooks from other countries.

<sup>183</sup> The HCNM criticised the Slovak Local Elections Law, effectively fixing electoral representation along ethnic lines, as contradicting various human rights standards. He referred to both legal and political standards: Art 21(3) UDHR, Art 25(b) ICCPR, Art 5(c) CERD, para 7(5) Copenhagen Document and P1-3 and Art 14 of the ECHR. *HCNM Letter to Slovak Republic and Reply*, Ref No 1026/98, 29 May 1998.

<sup>184</sup> *HCNM Letter to the Romanian MFA*, 2 Mar 1998, Ref 730/98 recommending consultations with COE experts about problems faced elsewhere concerning the need for separate state-funded minority language institutions.

<sup>185</sup> *Report on the Protection of National Minorities*, Doc 7899, 8 Sept 1997, para 7.

<sup>186</sup> Several states at the 1999 OSCE Review Conference expressed appreciation for the HCNM's aid in assessing their domestic practices against international obligations: *Review of the implementation of all OSCE principles and commitments in the human dimension*, Rapporteurs' Report: National Minorities.



HCNM. The Kazakhstan government described HCNM recommendations as having 'real practical value', declaring that it attaches great importance to 'high officials of such an authoritative international organisations as the CSCE'.<sup>187</sup> The Ukraine government expressed appreciation for the HCNM's 'personal efforts' in solving the economic, political and legal issues of the Autonomous Republic of Crimea, hopeful of continued 'future fruitful co-operation'.<sup>188</sup> Other countries have characterised HCNM recommendations as 'friendly and constructive',<sup>189</sup> evidencing a 'realistic appraisal of the situation',<sup>190</sup> lauding his 'objective report'<sup>191</sup> for displaying 'fair and valuable analysis' evident in its thoroughness and objectivity.<sup>192</sup>

Furthermore, state requests for HCNM assistance acknowledges that office's contribution, for example, the Estonian government in July 1993 asked the HCNM to return to Estonia to address the issue of conducting local referenda regarding the demand for local autonomy in Estonian cities with a dominant Russian-speaking population.<sup>193</sup> The Slovak Republic has also demonstrated its eagerness for the HCNM's input, along with that of COE and EU experts, in inviting delegations to discuss minority language issues in the light of Slovakia's international commitments. It later submitted its draft general law to these organisations for further comment.<sup>194</sup> The Latvian Saeima drafting committee chairman also invited the HCNM and a team of COE experts to hold consultations concerning a draft language law to ensure compliance with international norms.<sup>195</sup> HCNM suggestions have been favourably received in many instances, such as when the HCNM was informed that in accordance with his recommendations on educational rights, the Greek minority in Albania had been provided with mother tongue higher schooling.<sup>196</sup> Latvia was responsive to HCNM recommendations in amending its citizenship laws in 1994 to meet international standards, specifically omitting the quota system the HCNM had expressed reservations to.<sup>197</sup>

There is evidence of occasions where the HCNM's successful interactions with governments influenced the shaping of minority-related policy; subsequently, inconsistent laws were amended and institutions protecting minorities adopted. The Latvian parliament adopted a draft state language law in 8 June 1999 which the HCNM considered fell short of international standards, particularly as it intruded into the private sphere. The HCNM appealed to the President not to promulgate it and after telephone discussions with the HCNM, she invited the legal adviser to Riga to discuss the law with her, referring to

<sup>187</sup> *HCNM Recommendations: Kazakhstan Government* (CSCE Communication No 26/94, 14 June 1994).

<sup>188</sup> Exchange of Letters between the Ukraine MFA and HCNM, Ref HC/7/96, 15 May 1996.

<sup>189</sup> (1993) 14 *HRLJ* 436–7.

<sup>190</sup> *Ibid.*, at 223.

<sup>191</sup> *Ibid.*, at 437.

<sup>192</sup> *Ibid.*, at 221.

<sup>193</sup> *Annual Report CSCE Activities* (1993):3.0

<sup>194</sup> *Ibid.* (1998): 3.12.

<sup>195</sup> *Ibid.*, 3.9.

<sup>196</sup> Letter to HCNM (17 Sept 1993), responding to HCNM letter (10 Sept 1993); (Ref 1051/93/1) (1993) 14 *HRLJ* 434–6 and 437.

<sup>197</sup> *Annual Report CSCE Activities* (1994), 3.6.



the Oslo Recommendations in this respect.<sup>198</sup> She subsequently returned the law to parliament for further consideration,<sup>199</sup> which decision the HCNM lauded in a public statement on 15 July 1999.<sup>200</sup> In it, he declared support for the state language, asking the international community to support measures to promote Latvian, especially by providing Latvian language training to non-Latvians.<sup>201</sup> Parliament later passed a revised law incorporating key OSCE suggestions in December 1999.<sup>202</sup>

The HCNM's intervention produced palpable results in relation to the 1993 Estonian Law on Aliens,<sup>203</sup> which provoked tensions over the feared expulsion of the non-citizen Russian-speaking population. Moscow condemned the law as a human rights violation. Calls for holding a referendum on the subject of local autonomy for the mostly Russian inhabited cities of Narva and Sillamae were made. In response, the Estonian government confidentially requested urgent assistance from the OSCE Chairman in Office (CIO) who consulted with the HCNM. Voicing support for HCNM involvement in Estonia, it asked the HCNM to give his legal opinion on the matter on the OSCE's behalf, inviting the Estonian government 'to take appropriate action in response to the recommendations of the HCNM'.<sup>204</sup> The CIO also sent a letter to the Estonian president endorsing the HCNM's advice.<sup>205</sup> Here, the HCNM acted with the full support of OSCE political organs. Subsequently a presidential communique was issued regarding the HCNM's recommendation, and the law sent back to Parliament<sup>206</sup> and amended, following the recommendations.<sup>207</sup> Thus, the HCNM wrangled a compromise between the Estonian government and Russian community representatives, mollifying Russia and defusing a potentially volatile situation.

Not all states are keen to have HCNM involvement in their own backyard and have sought by interpretation to limit his mandate. France and Turkey have argued the non-existence of minorities within their borders while the UK has sought to preserve discretion in handling such cases by blocking HCNM involvement in the name of 'public safety' and 'national security'.<sup>208</sup>

<sup>198</sup> (1999) 6(7) *OSCE Newsletter* 13.

<sup>199</sup> *Annual Report OSCE Activities* (1999), 2.7

<sup>200</sup> *HCNM Speech, OSCE Review Conference*, Vienna, 20 Sept 1999.

<sup>201</sup> *HCNM Statement on Latvian Language Law*, Press Release, 15 July 1999.

<sup>202</sup> *HCNM Welcomes State Language Law in Latvia*, Press Release, 9 Dec 1999.

<sup>203</sup> Zaagman, above n 145, at 27.

<sup>204</sup> 22nd CSO Journal, No 2, Annex 2.

<sup>205</sup> CSCE Communication, No 194, 8 July 1993.

<sup>206</sup> The Estonian President made public the HCNM's recommendations: (1993) 4(3) *Helsinki Monitor* 89–91.

<sup>207</sup> Russia supported as a realistic and balanced compromise the HCNM's recommendations to peg stringent language requirements for Estonian citizenship at the lower level of 'conversational knowledge'. This would sufficiently indicate the Russian minority's willingness to be integrated in Estonian society, allow most ethnic Russians to satisfy this citizenship requirement, while affirming the state's interest in consolidating national identity through requiring reasonable national language proficiency and loyalty oaths, Russian Comments, above n 153, at 223–4.

<sup>208</sup> For interpretative statements to the HCNM's mandate, see Journal No 50, 8 July 1992.

Consequently, the focus of the HCNM's work has not been in Western Europe, despite problems in Northern Ireland and Basque separatism, as the mandate disallows involvement with terrorist-related situations.

*B. The Impact of the HCNM on Protecting the Human Rights of Minorities*

The HCNM's mandate and work extends beyond protecting the rights of national minorities, being oriented toward addressing nationalism and minority problems from the conflict prevention angle, as European security transcends an armaments issue. Nevertheless, in discharging his security-oriented functions, the HCNM has displayed concern with internal human rights situations, offering recommendations for their improvement. In this, OSCE and other international and regional human rights instruments inform his analytical framework.<sup>209</sup> Thus, the HCNM's work bridges conflict prevention and human rights.

While not an ombudsman or human rights advocate, the HCNM's work has a beneficial effect in promoting compliance with human rights norms, which help stem ethnic conflict. The HCNM has taken a liberal view of his functions in intervening in situations without a patent threat to interstate peace but where internal destabilisation is brewing from discontented minority groups within. While the 'classic' case the HCNM deals with relates to large national minorities with a protective kin state, the HCNM has also devoted some attention to the situation of groups without kin states.<sup>210</sup> He has raised Roma issues with Romania, Hungary, the Slovak and Czech republics, producing various Roma reports, although such cases do not directly threaten interstate security. Roman problems have been characterised as that of systematic discrimination and exclusion, racial violence vulnerability, low educational levels, poor living conditions and political marginalisation.<sup>211</sup>

While noting that Romani communities' concerns fall within the HCNM's mandate, sometimes, the complexity of the problems involved is beyond the office's competency.<sup>212</sup> A broader response, best handled by the ODIHR, may be required as the problems fall more appropriately under the OSCE human dimension ambit, requiring long-term programmatic assistance, and monitoring and financial support. While the HCNM was described as a conflict prevention measure in the Helsinki Document rather than a formal part of the human dimension, the sole mention of the HCNM in the 1994 Budapest Document notably occurs in the human dimension chapter. This

<sup>209</sup> While para 4 grounds the mandate on OSCE principles, para 6 permits the HCNM to consider international instruments. *Ibid.*

<sup>210</sup> In 1993, the Council of Ministers invited the HCNM focus on all aspects of aggressive nationalism, *Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism, CSCE and the New Europe—Our Security is indivisible.*

<sup>211</sup> *Report on the Situation of Roma and Sinti in the OSCE Area* (2000).

<sup>212</sup> *Ibid.*, 10.

acknowledges the HCNM's growing role in this field, reaffirming the Copenhagen Document's recognition of the need to address the human rights of minorities *per se*.

While not addressing individual cases,<sup>213</sup> the HCNM proposes reforms relating to general structural changes in government processes and institutions in service of a durable peace. These provide the legal and political environment respectful of human rights norms. Indeed, one of the best types of 'early action' is to build civil societies that respect human rights.

Where states fall short of their OSCE commitments, the HCNM urges compliance. Topics range from safeguarding minority cultures,<sup>214</sup> educational policy and the need for adequate mother tongue instruction while ensuring the learning of the official state language. Religious freedom issues<sup>215</sup> and accommodating minorities' concerns through forms of financially viable local government have been canvassed.<sup>216</sup> These activities directed at promoting human dimension issues thus have a beneficial effect on human rights protection, including those of persons belonging to national minorities. Naturally, the satisfactory protection of minority rights minimises ethnic tensions, promotes inter-ethnic harmony and helps prevent conflict. Consequently, the institution is considered one of the most effective modes of protecting minorities in Europe.

### *C. The HCNM and Norm Development*

While the HCNM's general approach has been to arrest tensions at their source, he has in the course of this based his arguments to promote practical solutions on international standards. He thereby helps to elucidate the current state of international law as it applies to ethnic conflict, which guides state behaviour.

The HCNM bases his work on a body of political commitments contained in OSCE documents, adopted by consensus and embodying a shared normative framework or common values shared by OSCE states. In relation to national minority protection, consensus-based standards are not lacking and can be found in the Paris Charter and Copenhagen Document. Since no fundamental objection to these documents have been raised, their legally non-binding 'soft law' norms carry persuasive value and the political expectation that participating states in developing laws and policies will endeavour to meet their international commitments.

<sup>213</sup> In contrast, the CBSS Commissioner may receive communications regarding human rights concerns from individuals, groups and organisations, make recommendations and refer non-compliant states to the Council Ministers. See *Report of the First Mandate Period (1994–7)*, Section 2: <<http://www.cbss-commissioner.org>>.

<sup>214</sup> Eg, the HCNM in Aug 1995 criticised the Slovak government's reduced budget for minorities' cultural activities: REF. HC/5/95 (No. 924/95/L).

<sup>215</sup> The HCNM recommended the acceleration of the compensation process in Albania regarding Communist era seized church property, above n 117: Recommendation 6.

<sup>216</sup> HCNM.GAL/10/98.

From the outset, the HCNM has framed his dialogue with states by reference to these norms, seeking norm-based solutions to conflict resolution. The HCNM also refers to non-OSCE instruments in his proposals, such as Assembly Recommendation 1201,<sup>217</sup> the Framework Convention, the Regional Charter,<sup>218</sup> the ECHR and the ICCPR. Without discrimination, he subsumes both legally binding standards and political standards under the umbrella term 'international standards'. For example, he has invoked treaty norms in relation to a non-party state in conducting dialogue.<sup>219</sup> The HCNM seeks to promote the acceptability of the 'soft' norms encompassed by his conception of 'international standards', which cannot be invoked before judicial proceedings. He has encouraged the factoring in of such soft norms into domestic law through bilateral agreements stating that they are to be applied as legal obligations or in encouraging states to formulate domestic policy in accordance with these standards.<sup>220</sup>

In insisting upon a norm-based problem-solving approach, the HCNM plays an important interpretative role. First, he identifies the relevant standards. As many of the soft norms are open-textured, the HCNM in his dialogue and proposals outlines the legal contours of a norm and clarifies it, indicating to the parties involved what they can expect or are expected to do. Within these interpretative 'bookends', the HCNM considers a range of possible solutions consistent with these norms, both mandatory and optional. For example, he clarified that Recommendation 1201 as it related to the bilateral treaties between Hungary–Slovakia and Hungary–Romania did not entail collective rights or an obligation to grant territorial autonomy. In relation to the Albanian minority in FYROM and their claim for an Albanian tertiary institution, the HCNM clarified that applicable international standards set the boundaries for seeking a practical solution within the parameters of the permissible. Referring to the 1966 UN Covenants and the FCNM, he stated that the standards guaranteed minorities a right to establish their own educational institutions, but did not entail public funding rights or a state duty to recognise their diplomas. However, the government had to recognise institutions and diplomas on the basis of objective educational criteria and not solely on linguistic criterion.<sup>221</sup>

The HCNM thereby translates and concretises abstract principles through

<sup>217</sup> Regarding Art 7(3), the HCNM recommended guaranteeing using mother tongue before Romanian administrative authorities in regions with substantial numbers of a national minority, above n 117.

<sup>218</sup> He discussed these instruments in relation to providing 'alternative instruction' in the Slovak Republic offering broader possibilities in choosing one of three educational forms: conducted in Slovak, Hungarian and both languages. *Letter from Slovak MFA to HCNM*, 28 Oct 1994 (CSCE Communication No 36, Vienna, 14 Nov 1994).

<sup>219</sup> The HCNM invoked the FCNM in criticising Latvia's draft language law, although Latvia had only signed it: *HCNM Letter to Latvian MFA*, 10 Nov 1997.

<sup>220</sup> *HCNM welcomes restoration of use of minority languages in official communications in Slovakia*, Press Release, 16 July 1999. He sought to ensure the Slovak Language Law complied with Copenhagen Document standards.

<sup>221</sup> Above n 124.

detailed applications to particular situations.<sup>222</sup> As an intermediary, he offers his policy recommendations with an eye to maximally accommodate all competing concerns, presenting states with detailed suggestions consonant with international standards.

Furthermore, the HCNM contributes to the development of the pool of soft norms. Where references to vague notions such as 'autonomy' do not provide much guidance, he makes suggestions, sometimes stemming from general ideas or the other states' practice to elaborate on these concepts. For example, in relation to the Crimean problem, the HCNM has in his discussions with the relevant parties proposed indirect definitions of autonomy through description. The goal was to engineer a formula of substantial autonomy for Crimea, especially in economic matters, while preserving Ukrainian territorial integrity.<sup>223</sup> Relevant matters implicated dividing government powers between state and regional bodies and delimiting areas of exclusive state competence over foreign affairs and defence matters. He stressed that this division of competence did not exclude the central government from consulting with the government of the Autonomous Republic of the Crimea (ARC) on relevant matters. Furthermore, allowing the ARC to sign international commitments with respect to specific topics such as culture and trade was compatible with the idea of autonomy, as was including Crimean representatives in official delegations to other states.<sup>224</sup> In relation to three specific topics, language, education, and political participation, the HCNM in manifesting a strategy for developing norms, and providing further normative guidance commissioned a set of reports on these topics.<sup>225</sup> These traversed the ground between the translating existing norms and indicating possible routes of future development.

#### VI. CONCLUDING OBSERVATIONS

As direct links between security and human rights issues are drawn in post Communist Europe, international government organisations are shouldering responsibility for war and peace issues. While proletarian internationalism restrained expressions of ethnic diversity, nationalism has been revitalised in Europe, after the fall of the Berlin Wall. This has heightened appreciation of the need to actively diffuse minority-related conflicts stemming from the resurgent political importance of ethnicity, religion and culture as primary bases of identities and fault-lines of potential conflict

<sup>222</sup> In discussing minority public participation, the HCNM made detailed recommendations to Slovakia, calling for 'specialised organs with adequate minority representation and participation . . . [with] real competencies with regard to legislation touching upon minority issues', *HCNM Letter on National Minorities to Slovak Republic*, OSCE Communication, No 36, Vienna, 14 Nov 1994.

<sup>223</sup> *Recommendations: Ukraine Government*, CSCE Communication, No 23/94, Prague, 14 June 1994.

<sup>224</sup> *HCNM Letter to Ukraine MFA*, HC/10/95, 15 Nov 1995, discussing the 1992 Ukraine Demarcation Law.

<sup>225</sup> Above nn 112, 113.

With a developed set of norms relating to minority protection, the focus within the OSCE shifted in the last decade of the 20th century towards finding practical measures to consolidating states and ensuring their survivability. The focus has been on establishing new patterns of co-existence between distinct groups in multiethnic states, in managing the relationship between host minority states, minorities and 'kin' states. Pursuant to this, the OSCE seeks to help states develop democratic institutions that promote peaceful co-existence of groups and secure citizens' basic rights. This is reflected in the expanded work done in the 'Human Dimension' and the extended OSCE involvement in human rights, which falls beyond states' reserved domain. Since the human dimension involves ideas of democracy and the rule of law, this means that OSCE policing goes beyond the traditional monitoring of government behaviour to examining the fundamental nature of government and promoting a standard of civilised governance.

The OSCE has become a primary arena for the development of new mechanisms of minority protection based on various institutions, programmes and procedures, operating pursuant to a set of agreed upon principles and norms. The HCNM as an impartial and proactive mediator who seeks norm-based solutions to minorities related conflict, is central to this. These developments reflect the recognition that international bodies need to be more directly involved in ethnic conflict, beyond handling individual complaints. As Donnelly has noted, the move from a declaratory and promotional regime to one featuring implementation and enforcement mechanisms requires a 'qualitative increase in the commitment of states'.<sup>226</sup> The OSCE and the HCNM are thus involved, through consultation, negotiation and monitoring, in addressing matters that reach to the very heart of states' political and legal systems.

In negotiating state-minority relations, the HCNM forms part of the more innovative, intrusive human rights or human welfare monitoring mechanisms developed in the post Cold War era. While not an minorities ombudsman per se, HCNM diplomatic endeavours in constructing a regional peace based on civil society, curbing nationalism through constitutionalism, is certainly one that provides an environment supportive of distinct minority identity and autonomy. Human and minority rights are promoted as part of a larger political settlement of conflicts borne of aggressive nationalism.

The HCNM as a multilateral institution capable of preventive action and mediatory processes in the field of ethnic conflict represents the current preference for adopting political methods as a response to malign nationalism. This allows for a pragmatic and flexible approach in the mission to include all parties in seeking a path to intergroup reconciliation in participating states. This pragmatism is reflected in the refusal of the HCNM to get bogged down in the difficult task of defining national minorities and in the HCNM's ready

<sup>226</sup> J Donnelly, 'International Human Rights: A Regime Analysis' (1986) 40 *International Organisation* 599 at 633.

resort to both legal and non-legal norms indiscriminately under the rubric of ‘international standards’ in framing his recommendations. The HCNM’s active and pre-emptive diplomatic mediation, policy and institutional proposals designed to promote harmonious majority–minority relations represents a more hands-on approach than the traditional protection of human rights law through regional courts or through international quasi-judicial monitoring processes. The latter is more limited in addressing specific cases and seeking to vindicate individual rights through legal remedies. Ultimately, both political and legal approaches to minority protection are complementary in constituting a comprehensive response to the enduring minorities’ problem in Europe. President Wilson’s observation in 1920 that ‘nothing . . . is more likely to disturb the peace of the world than the treatment which might . . . be meted out to minorities’<sup>227</sup> bears contemporary resonance. Hence, the work of the HCNM in treating minorities issues not as individual human rights matters but as a ‘peace and security’ concern, represents a valuable contribution to the Sisyphean project of cultivating ‘the science of human relationships—the ability of all peoples of all kinds to live together’.<sup>228</sup>

<sup>227</sup> Plenary Session, 31 May 1920; HWV Temperley, *A History of the Peace Conference of Paris*, vol 5 (London/New York: Oxford University Press, 1969).

<sup>228</sup> President FD Roosevelt, referring to what civilisation needed to survive (1945) *International Conciliation*, 403–5, reprinted from 91(74) *Congressional Record* (1945).