

The High Commissioner on National Minorities as a Normative Actor

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The High Commissioner on National Minorities (HCNM) is usually presented as a classic instrument of security and conflict prevention (Galbreath and McEvoy, 2012). This is arguably a misleading representation. In fact, the HCNM's role has evolved over the past twenty years to become much more than that: arguably, the HCNM is now better understood as a "normative actor". It is this unexpected, yet arguably crucially important, normative dimension of the HCNM that this commentary will reflect upon.

The purpose of the HCNM as envisioned at its inception in 1992 was not one of standard setting or advocacy aimed at norm influence and persuasion, but one of diplomacy in response to domestic minority/majority tensions. The HCNM's intended role was to work with governments to reduce tensions in accordance with a fundamental respect for the principles of sovereignty and territorial integrity of existing States. The carefully negotiated mandate agreed at Helsinki in 1992 authorizes the HCNM to:

provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States (OSCE Helsinki Document, 1992: Chapter II para. 3).

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The mandate implies a mostly static view of minority/majority relations within States and of international relations between States. The clear implication of the mandate is that the HCNM is intended to preserve and protect the territorial status quo from any war, mass migration, secession or irredentism that might otherwise follow on from “aggressive nationalism” on the part of nationalizing States, national minorities or their kin-States and in so doing threaten international peace and stability. However, if we look beyond the text of the original mandate to consider the ways in which the HCNM has evolved over the past twenty years, a more complex and dynamic approach to minority/majority relations becomes apparent. Over the past twenty-years, norm standard setting and influence in the form of both general thematic and country-specific recommendations have emerged as a central activity of the office.

When the first HCNM Max van der Stoel assumed this office on January 1, 1993, there were only a few standard setting documents relevant to minorities, notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social Rights (ICESR), and the European Convention of Human Rights (ECHR). The ICCPR, ICESR, and ECHR are primarily human rights focused and have therefore generated only a limited minority specific jurisprudence. The first dedicated European minority rights instrument since the interwar period—the Framework Convention for the Protection of National Minorities (Framework Convention)—was not agreed until 1995, and did not enter into effect until 1998. Moreover, the earliest States to complete the first monitoring cycle (*e.g.*, Denmark, Italy, Malta) only did so in 2001. As a result, the practical application of the Framework Convention remained largely undetermined for most of the first decade of the HCNM’s mandate. This diffuse normative context meant that there was little practical guidance that the HCNM could call upon as he began his work to diffuse minority/majority tensions. Existing normative frameworks did not provide sufficient answers to concrete policy dilemmas much beyond the general requirement to ‘respect the rights of persons belonging to minorities’. Yet it was precisely this sort of specific policy guidance that OSCE Member States required from the HCNM. The HCNM thus became a normative actor ‘not by design but out of necessity’ (Bloed, 2012).

During the tenure of the first HCNM, Max van der Stoel, three general recommendations were issued: the Hague Recommendations regarding the Education

Rights of National Minorities (1996), the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998), and the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999). These general recommendations were not intended to merely restate the status quo; instead, Stoel's declared goal was 'to be bold and creative while remaining within the parameters of international human rights law' (Sieminski and Packer, 1997: 348). This declared goal suggests that Stoel understood himself to be engaged in norm entrepreneurship and regarded this activity as a necessary and legitimate part of his mandate.

His successors have continued to act in this normative standard setting and persuasion capacity. Under Rolf Ekeus, the HCNM issued Guidelines on the Use of Minority Languages in the Broadcast Media (2003), as well as Recommendations on Policing Multi-Ethnic Societies (2006). Following on from this, Knut Vollebaek initiated the Bolzano/Bozen Recommendations on National Minorities and Interstate Relations (2008), and Ljubljana Guidelines on Integration of Diverse Societies (2012). Significantly, these various normative interventions have been welcomed as legitimate and desirable contributions by OSCE Member States and the wider human rights community (Heintze, 2006; Philips, 2008; Farahat, 2008; Drzewicki, 2009; Gheballi, 2009; and Altenhoener and Palermo, 2011). The general recommendations and guidelines articulate "best practice" in a particular thematic area drawing upon a combination of existing international standards and the HCNM's personal experience. The general recommendations and guidelines are typically drafted by independent experts at the request of the HCNM, according to the formula 'experts draw up, Commissioner endorses' (Drzewicki, 2005: 126).

Coexistence norms that aim to manage minority/majority relations are most prominent in those recommendations or guidelines that address structures of governance, *e.g.*, the Bolzano/Bozen Recommendations on National Minorities and Interstate Relations (2008), the Recommendations on Policing in Multi-ethnic Societies (2006), and the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998). Governmental structures, such as the judiciary, the police, local government, autonomy regimes and the like, to the extent that they recognize minority/majority identities, unavoidably also reify these social constructs. Such norms suggest that the classic security management envisioned in the original 1992 mandate remains the preferred short/medium-range strategy of the HCNM.

However, the general recommendations and guidelines also suggest that the transformation of minority/majority relations towards the creation of integrated societies in which diversity is universally respected and valued has become the HCNM's long-range strategy. Such a normative transformation is not something that can be achieved through a restructuring of the State; instead, it also requires a change in the public approach to diversity. Thus, it is in those general recommendations where the emphasis is on public policies that are most likely to impact public perceptions of diversity where this long-range transformative agenda is most apparent.

The Hague Recommendations on the Education Rights of National Minorities are a case in point. Educational policy has long been regarded as a means of socializing future citizens into a particular public narrative. Precisely because education endorses and transmits such a narrative, education related controversies are a recurring feature of the HCNM's work. The Hague Recommendations envision educational policy formulation as an open and shared process in which minorities 'participate in a meaningful way' in the 'development and implementation' of 'minority education' (HCNM Hague Recommendations, 1996: Article 6). Education itself is understood to be "intercultural" and best practice is characterized as a compulsory curriculum that includes the history, cultures and traditions of both minorities and majorities in the context of mutual bilingualism (HCNM Hague Recommendations, 1996: Article 19). The goal of education is thus to 'contribute to the strengthening of tolerance and multiculturalism within the State' (HCNM Hague Recommendations, 1996: Article 19).

Similarly, the Lund Recommendations on the Effective Participation of National Minorities (1999) are premised on the general principle that 'individuals identify themselves in numerous ways in addition to their identity as members of a national minority' (HCNM Lund Recommendations, 1999: Article 4). Although the Lund Recommendations include numerous references to State structures including the organization of central government, electoral systems, and territorial and non-territorial self-government, they also emphasize that process is just as important as substance in peaceful and democratic societies and call upon States to 'foster intercultural understanding' (HCNM Lund Recommendations, 1999: Article 5).

Most recently, the Ljubljana Guidelines on Integration of Diverse Societies (2012) endorse a pluralist framework for public policy directed at diversity. The

Ljubljana Guidelines affirm the commitments of all OSCE participating States towards the principles of plural democracy, non-discrimination/equality, and human rights including the rights of persons belonging to minorities. But more than this, they endorse the fundamental premise that:

Diversity is a fact of all contemporary societies and of groups composing them, and this should be acknowledged by States and societies. The legislative and policy framework should allow for recognition that individual identities may be multiple, multi-layered, contextual and dynamic (HCNM Ljubljana Guidelines, 2012: premise 5).

The HCNM's role as a normative actor is significant both for understanding the success of this specific instrument as well as the crucial importance of norms in diffusing and ultimately overcoming minority/majority tensions more generally. Security, like politics, is a fundamentally normative activity. Within this context, actors engage in a political process intended to secure a particular normative outcome. In the HCNM's case, that outcome is security for minorities and majorities understood as a plural democracy in which diversity is recognized and respected. Successful conflict prevention and resolution entails successful normative standard setting and persuasion; thus, in order to be effective, security actors must also be normative actors. The 1992 mandate's failure to recognize this crucial normative dimension of conflict prevention and resolution was a major weakness in the way the HCNM's role was originally conceived. Stoel arguably recognized this normative weakness and made a concerted effort to overcome it by initiating standard setting and persuasion activities. His successors have continued to build upon the normative basis established by Stoel such that normative activity has become a crucial component of the HCNM's role. If normative activity had remained outside the HCNM mandate, it is unlikely that the office of the HCNM would have achieved the credibility that it currently possesses.

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