

The High Commissioner on National Minorities at 20 - Introduction

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As with all anniversaries, the twentieth anniversary of the High Commissioner on National Minorities (HCNM)—defined either by the establishment of the mandate in 1992 or the beginning of the HCNM’s activity in 1993—provided a good occasion for reflection on the framework, as well as the functioning and impact of this institution over two decades and three High Commissioners. The discussions in Flensburg in July 2012, and the contribution published here, amply illustrate the usefulness of such an exchange. One can only hope that it will inspire further research into the issues it raises.

In this JEMIE issue the writings of well-known analysts and observers of the HCNM address questions that span from mandate and its origins to the effectiveness of the institution and its work, pointing also to specific aspects that give added-value to the HCNM as a bilateral and regional actor preventing inter-ethnic conflict. While no detailed case studies can be included in such relatively short contributions, it is essential that some references to concrete cases be made, while also not shying away from general conclusions or indeed also conceptual challenges.

Looking at a 20-year span, an obvious but nevertheless useful starting point is the creation of the mandate of the HCNM in response to the events preceding it, including political upheaval and inter-ethnic conflict in the heart of Europe. **Arie Bloed**’s reminder that such an institution was and remains unique, and that its establishment, as the highly autonomous and intrusive instrument it is, would likely not have been possible at any other time in Europe’s history—especially today—is

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also indirectly a call to ensure its continued effective functioning. Another important point is the development of the HCNM as a tool through the work carried out in the first phase of the institution's existence, when certain precedents were firmly established that in some ways differ from the formal text of the mandate (partly, of course, also reflecting the changing institutional setting of the OSCE itself). This is not only another well-deserved *éloge* of the first High Commissioner Max van der Stoel and his wisdom, but also a broader reflection on the age-old question regarding the role of an individual in significant historical events. Clearly, the HCNM's foundations would not be as solid, and the respect for its confidentiality and independence as deep, had it not been for van der Stoel, especially since the mandate of the HCNM is a highly personal one—a fact that can be obscured through the passing of time and the creeping institutionalization that sometimes can hide behind concepts, such as streamlining, harmonizing, and rationalizing. At the same time, this means that future effectiveness, and thus the relevance of the institution, is also closely linked to the responsibility first and foremost of the OSCE participating States—individually or in groups—to ensure appropriate candidacies, and collectively to ensure efficient and effective appointment procedures. Beyond the description in the mandate as ‘an eminent international personality with long-standing relevant experience from whom an impartial performance of the function may be expected’, the person chosen for the position also has to have discerning judgment regarding the conflict potential of highly complex and sensitive situations, and the wisdom to contribute to constructive solutions, while being aware that any intervention in a volatile situation can also backfire.

The key period in establishing the HCNM in practice, and in shaping the understanding of its early warning and early action functions, was undoubtedly the 1990s. The modalities of working visits by the HCNM, and preparatory ones by his staff, developed over time, as did the balance between the responsible and accountable membership in the OSCE family and the independence necessary for fulfilling the requirements of confidentiality and impartiality as foreseen in the mandate. Nevertheless, the initial, key period is the most well-known and most written about phase of HCNM activities, particularly given that this period saw the development of approaches that entrench the mandate.

The availability of materials, including research conducted under his guidance in the past, has most likely also contributed to the focus of cases from the first decade

of HCNM work, *i.e.* the Max van der Stoel era. Nevertheless, the conceptual challenges that **Zellner** posits in his systematic approach to the question of effectiveness set an explicit frame to the discussion, which is useful for both the OSCE and other conflict prevention purposes. After decades of their use, and in a context of a renewed OSCE-wide discussion on the “Conflict Cycle” (which includes early warning), the lack of clarity on the definition of certain terms—such as “preventive diplomacy” or indeed “conflict” itself—and the conceptual background to their use may seem baffling. Zellner’s focus on these basic elements before launching into the challenges of conceptualizing and measuring effectiveness is thus still a surprisingly necessary exercise. The lack of a definition of “national minority”, and the pros and cons of it, are noted by both Bloed and Zellner. These issues are arguably rather well-known, as is the evolution of acceptable criteria for any working definition, especially in terms of scope of application of minority rights—*e.g.* the movement away from citizenship as a legitimate criterion, which has taken place cross-institutionally. At the same time, the (re)focus on the actors of a potential conflict to be prevented—as in Zellner’s reminder of the first HCNM’s perception that the classic case under the HCNM mandate involves a triangular relationship comprising a majority, a national minority and a kin-state—is more useful in order to place the HCNM’s own role in context, as well as to clarify the types of cases warranting his engagement. This approach is also helpful as a reference point in tracing the evolution of the HCNM’s involvement over time, in response to situations on the ground: the kin-state factor retreats at times, just to reappear with a vengeance at other times, while the minority and majority actors remain stable elements of any situation of inter-ethnic tensions that have received the HCNM’s attention. Similarly, Zellner’s unequivocally placing the HCNM’s tasks within the short-term rather than structural prevention, which he considers beyond the remit of the HCNM—although admittedly noting that the HCNMs, starting with Max van der Stoel, do consider the longer-term impact of the involvement—may be another valuable point for debate over how and to what extent this approach has evolved over time. This debate can take place in light of the more recent High Commissioners’ emphasis on the added-value of the HCNM’s unique combination of short-term and long-term engagement in parallel, where immediate policy measures are considered together with longer-term policy shifts, and the necessary structural changes these would require. An example of this within one important policy field—education—is the various case-specific

engagements on legislation and immediate issues such as language and school availability/accessibility versus supporting the strategic development of integrated education within a context of overall education reform. The latter cannot be achieved without long-term structural changes.

Arguments regarding the relevance of the HCNM in the past, present and future require seriously tackling the question of effectiveness. This entails making the framework for assessment clear, as Zellner does in his article, rather than engaging in anecdotal support or criticism of the track record of the HCNM. Both the content of the three types of effectiveness listed—operational, substantive and normative—could be usefully developed further, as could the analysis of the cases chosen and their respective placement in a category of success or lack of it. The challenge of disentangling successes and failures when it comes to multiple actors and reinforcing messages is, of course, also of long standing, as pointed out in several of the contributions.

The importance of the HCNM's thematic work is noted by both **Stefan Wolff** and **Jennifer Jackson-Preece**. Although all the recommendations and guidelines, starting with The Hague, Oslo and Lund Recommendations in the 1990s and ending, for now, with the Ljubljana Guidelines of 2012, are based on HCNM experience and are meant to be of practical use, their approach and flavour have changed over time. The first three appeared at a time when the rights of persons belonging to national minorities were still being developed, and the content of those rights gradually clarified, as was the case even with the Council of Europe Framework Convention for the Protection of National Minorities. Conversely, the last two—Bolzano/Bozen and Ljubljana— as argued by Stefan Wolff, were developed on the basis of the distilled experience of over two decades of HCNM engagements and the hitherto three High Commissioners. In this, Bolzano/Bozen and Ljubljana Recommendations do not in any way supersede the previous recommendations, but arguably encompass and build further on them, including by incorporating the argument that respect for the rights of persons belonging to minorities is a necessary but not always sufficient factor when balancing the interests of society's various groups in order to ensure peace and stability. The combination of responsible external and internal policies in relation to national minorities are predicated on a model of integration in society that precludes involuntary assimilation in all its forms, but also firmly reiterates that the primary responsibility for minority rights lies with the State where the minority resides, and

reasserts the requirement of respect for jurisdictions and good neighbourly relations. In this sense, it is not only a desecuritization of actual situations that is sought through the HCNM's work and approach, but indeed a deepened, "thicker" view of the responsibilities that sovereignty carries for contemporary States. The thematic recommendations are, then, a valuable contribution because they provide an in-depth reflection of the HCNM's work and experience, which otherwise is neither particularly visible, in view of confidentiality requirements, nor seen in a comprehensive way, as it is based on particular cases and contexts. In addition, as Wolff points out, the recommendations are beneficial as they have received the support of the OSCE participating States; thus, it can be argued that they contribute to the evolution of standards, even in times when establishing new binding standards is generally seen as unrealistic.

In this sense, Jackson-Preece's emphasis on the important role of HCNM as a normative actor is particularly relevant, and provides the starting point for further research and analysis. Nevertheless, while cautiously treading this creative path when possible, it is essential that the HCNM remains firmly entrenched in the politico-military dimension of the OSCE as a conflict prevention instrument, while fully using the tool box from the human dimension, including minority rights. Indeed, on this basic cross-dimensional approach rests the uniqueness and particular value of HCNM among regional actors.

If the question of possible relevance of the HCNM for other regions of the world remains topical—with all due caution considering the non-transferability of direct experience, and rather examining lessons learned with specific contexts in mind—there is also the question of the effective use of the HCNM within the OSCE area. It not only resonates with the questions concerning effectiveness raised by Zellner, but also with Stefan Wolff's suggestion that the embeddedness of the institution within the OSCE, and the overall use of the specific HCNM-based knowledge by other OSCE structures, could benefit from strengthening. This line of thinking could fit well within the ongoing "Helsinki +40" strategic reflections, if not existential soul-searching. Arguably, however, these considerations cannot be made without recognizing that it is precisely the independence and autonomous functioning of the HCNM—as an OSCE institution with a mandate specifying that engagement depends on the judgment (and one is tempted to add wisdom) of the High Commissioner—which makes it less constrained than other OSCE structures

requiring consensus-based decisions in order to become active. This factor is key to the institution's effectiveness.

This special JEMIE issue brings to the fore important considerations, many of which could serve as the basis for further debate. Nevertheless, other aspects concerning the present and future effectiveness of the HCNM remain to be further explored. Although there is continuity in both challenges and activity—and several of the arguments presented in the special issue focus on these—there is also a need to look in greater detail into the changing context of the HCNM's work since the 1990s, and the effect this has had and will have on HCNM engagement.

In addition to the changes that are noted by Stefan Wolff—including the shifting belief as to whether ethnic conflict will continue to affect stability—there are many others worth exploring in more detail and also, perhaps, over time, as some changes detected in the 2000s have altered yet again in the 2010s. Factors or changes also appear at different levels: not only at the geopolitical, systemic one, but also at the bilateral and domestic levels. The establishment and evolution of minority rights standards, both through the OSCE commitments and the Framework Convention on the Protection of National Minorities, have increased both the acceptance of the existence of such rights and the agreement on their content, even if it is a process that continues, as it should. Mechanisms for monitoring and engaging in dialogue with States have become well-established. The HCNM, although not a household name for all Europeans, has nevertheless been recognized as an actor that enjoys a high level of support among OSCE participating States. At the same time, there are new challenges to the successful engagement by the HCNM in assisting in the resolution of tensions that could lead to a conflict. Apart from geopolitical developments internationally and regionally, with the receding fears of imminent ethnic tensions comes a receding sense of urgency to prioritize these specific issues. Many observers have noted with concern the tendency to retreat from the commitment to multilateralism and, even in the field of minority concerns, some developments point in the direction of re-bilateralization of such issues—which presumably was precisely one of the rationales for strengthening the international framework and for creating mechanisms and fora for dialogue to address potential causes of increased tensions between States. At the domestic level, the sense of insecurity resulting from the period of upheavals in the 1990s was followed by a phase of stabilization which gradually gave way to a sense of “business as usual”, and with it a degree of self-confidence. Yet in some cases this

positive development has also contributed to reducing international advice and expertise, or led to a cosmetic engagement of the “ticking the box” kind, without internalization or commitment. The generation of leaders that emerged in the 1990s in many post-Socialist countries could easily condemn the legacies of the previous regimes, viewed as the source of all evils, while admitting to fundamental flaws in recent policies has been less appetizing.

The principal point in the context of this journal issue is that, naturally, major contextual changes have also meant that the HCNM’s engagements have evolved over time, and not only because of the personal factor of the High Commissioners. Therefore, one can hope that an outcome of this JEMIE issue will be that the reflections and questions in the contributions that follow become the basis for further research. This would also include further analysis of the second decade of the HCNM’s work. The value of the HCNM as a unique and flexible instrument of conflict prevention in situations involving national minorities will continue only as long as this institution remains relevant and useful. This means that the close interaction between rigorous academic/policy analysis and the HCNM’s policy action is essential, if the quality of small-scale but “game-changing” engagements is to be sustained and further developed.