

ECMI Monograph # 1

**Conflict Prevention in the Baltic States:
The OSCE High Commissioner on National Minorities
in Estonia, Latvia and Lithuania**

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**European Centre for Minority Issues (ECMI)
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The cut-off date for this paper was 31 January 1999.

ETHNIC COMPOSITION OF THE BALTIC STATES

(percentage of total population, 1989 census)

Table 1: Ethnic Composition of ESTONIA

Ethnic origin	%
Estonians	61.5
Russians	30.3
Ukrainians	3.1
Belarussians	1.8
Finns	1.1
Jews	0.3
Tatars	0.3
Germans	0.2
Latvians	0.2
Poles	0.2
Lithuanians	0.2
Others	0.9
Total	100.0

Source: *Estonian Human Development Report 1995*
(United Nations Development Programme, 1995).

Table 2: Ethnic Composition of LATVIA

Ethnic origin	%
Latvians	52.0
Russians	34.0
Belarussians	4.5
Ukrainians	3.5
Poles	2.3
Other	3.7
Total	100.0

Source: *Ethnosituācija Latvijā, Fakti un Komentāri*
(Riga: LR Valsts Statistikas Komiteja and Zināntu Akademijas
Filozofijas and Socioloģijas Instituts, 1994)

Table 3: Ethnic Composition of LITHUANIA

Ethnic origin	%
Lithuanians	79.6
Russians	9.4
Poles	7.0
Belarussians	1.7
Ukrainians	1.2
Other	1.1
Total	100.0

Source: *Natsional'nyi sostav naseleniya SSSR*
(Moscow: Finansy i statistika, 1991)

MAP OF THE BALTIC STATES



INTRODUCTION: THE OSCE AND MINORITIES

The importance of national minority questions has long been recognised by the Organization for Security and Co-operation in Europe (OSCE), and this organisation has dealt with them extensively. Initially overshadowed by the East-West stand-off, minority issues were framed exclusively in terms of individual human rights, in particular the rights of persons belonging to national minorities. In “post-Wall” Europe, however, the explosive potential of many of them—e.g., in Yugoslavia and the Caucasus—became all too apparent. It also became clear that in this new era international violence would be mainly a consequence of domestic conflicts. Moreover, soon after the break-up of the Soviet Union the issue of the ethnic Russians outside the Russian Federation became an important factor in international relations in the OSCE area. As a result, minority issues are now mainly seen from the angle of conflict prevention, although this does include the continued pursuit of the implementation of human rights.

The importance the OSCE attaches to minority issues as problems of peace and security is reflected most prominently in the office of the High Commissioner on National Minorities (HCNM) which was established in 1992 to prevent violent ethnic conflict. Equally, it finds its reflection in the mandates of most, if not all, of the long-term missions the OSCE has established over the years, of which inter-ethnic issues are the main and sometimes exclusive component. These developments fit in the increased emphasis the OSCE has been putting on conflict prevention, playing the role of an impartial, non-coercive third party.

Against this background, the tense inter-ethnic relations in Estonia and Latvia were addressed early on by the OSCE. Even though no inter-ethnic violence had taken place, a number of factors made for a volatile mix in both Baltic states: firstly, the existence of domestic tensions between a large minority of mainly Russians without citizenship who had to get used to post-Soviet realities and a majority determined to preserve and strengthen its own identity; and secondly, increasing international tensions because of the active interest which neighbouring Russia, mainly for geopolitical reasons, was taking in the condition of its kinfolk in Estonia and Latvia. By contrast, these factors were absent in the third Baltic state, Lithuania.

As analysed in the following, the situations in Estonia and Latvia were typically cases for which the OSCE High Commissioner had been established. They demonstrate the extent to which international involvement can keep domestic conflicts tractable—by helping the parties to devise policies and positions which avoid an escalation of disputes and possibly irreconcilable differences—and thus at the same time prevent the build-up of international conflict potential. They are also showcases for the specific approach the OSCE High Commissioner has developed in dealing with tense inter-ethnic situations. Although for reasons of space the main emphasis of this paper will be on Estonia, it should be realised that many similar issues are at stake in Latvia.

I. THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE¹

1. Introduction

Starting in 1972 as the Conference on Security and Co-operation in Europe, or CSCE, the OSCE was first intended as a meeting place where East and West, together with the neutral and non-aligned states of Europe, would discuss a number of political, military, economic and human rights issues. With the momentous changes in the communist countries of the late nineteen-eighties and nineties, the primary function of the OSCE changed to providing a forum for comprehensive security discussions and being an agent of conflict prevention and crisis management in the OSCE region with a special focus on the transition processes in Central and Eastern Europe and the states on the territory of the former Soviet Union.²

Symbolic of the post-Cold War ambitions with regard to the OSCE were two steps. In July 1992 the OSCE states declared their understanding of the CSCE as a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations. A further step was the decision of December 1993 to rename the Conference into Organization.³ (Originally consisting of a loosely organised series of meetings, since 1990 the CSCE had already developed a light structure of permanent institutions. Hereafter, for the sake of convenience only the acronym OSCE will be used.)

Employing a comprehensive or multidimensional approach to security, the OSCE works on the basis of a body of political commitments and policy guidelines on matters in the political, military and economic fields and regarding human rights and democracy. The OSCE states have agreed that these are all matters for legitimate international scrutiny. The commitments are not legally binding, but their political proscriptive and prescriptive force is generally accepted—and invoked, if necessary—by the OSCE states. Even though the OSCE's mechanism of consensus decision-taking is often cumbersome, once consensus is reached it involves and binds all states politically.⁴ The non-coercive way in which the OSCE usually operates is intended to enhance co-operation by the affected states. (Of course, there are cases where this approach does not work: witness former Yugoslavia.)

¹ For a concise introduction to the earlier OSCE, see Arie Bloed, "Two Decades of the CSCE Process: From Confrontation to Cooperation. An Introduction", in *Conference on Security and Cooperation*, Bloed, ed., pp. 1-118. More extensive coverage is provided by Victor-Yves Ghebal in *La diplomatie de la détente: la CSCE, 1973-1989* (Brussels: Emile Bruylant, 1989) and *L'OSCE dans l'Europe post-communiste, 1990-1996. Vers une identité paneuropéenne de sécurité* (Brussels: Emile Bruylant, 1996).

² See e.g. Klaas Walraven, *Conflict Prevention and Early Warning in the Political Practice of International Organizations* (The Hague: Clingendael Institute, February 1996), pp. 9-21, and "Intergovernmental Organisations and Preventing Conflicts: Political Practice Since the End of the Cold War", in *Early Warning and Conflict Prevention. Limitations and Possibilities* (The Hague/Boston/London: Kluwer, 1998), Klaas van Walraven ed., pp.19-49.

³ See the *Helsinki Summit Declaration*, paragraph 25 (10 July 1992) and *Budapest Summit Declaration*, paragraph 3 (6 December 1993).

⁴ Consensus is deemed to exist if no state raises a fundamental objection to a specific decision.

Presided over at all levels by representatives of the Foreign Minister who is currently Chairman-in-Office (the function rotates on an annual basis), the OSCE is in the first place a forum for raising issues which have wider security and stability implications, including bilateral issues. The fact that such issues are being discussed in a multilateral setting is understood in itself to have a dampening effect on certain situations or escalatory developments. The key operational body is the ambassador-level OSCE Permanent Council in Vienna which is responsible for most decision-taking and day-to-day management. (The Council of Ministers meets only once a year and the Senior Council—formerly known as Committee of Senior Officials or CSO and consisting of high-level representatives from capitals—has declined in significance.)⁵

Secondly, and of equal importance, the OSCE undertakes a number of field activities on the territory of member states. Pre-eminent are the long-term on-site missions the OSCE has established in a number of states for a variety of tasks, but very often with a strong minority-related component in their mandates.⁶ They are established by consensus, i.e. with the consent of the host country. The OSCE also has other instruments at its disposal. It deploys short-term fact-finding, rapporteur and expert missions. Based in Warsaw, the Office for Democratic Institutions and Human Rights (ODIHR) is the leading OSCE institution with regard to assisting OSCE states in the implementation of their human dimension commitments.⁷ Finally, the OSCE High Commissioner on National Minorities is the personification of OSCE conflict prevention with regard to situations involving national minorities.

Thus, the OSCE can act as an impartial third party or honest broker, serving as a go-between or facilitator of compromises for parties to a dispute. Also, the OSCE can function as a politico-diplomatic interposition force when parties are very unequal in size and power, as in the Baltic-Russian case. Often, it will also work within states and within governmental processes, as what Diana Chigas has termed an “insider third-party”.⁸ It is its

⁵ For a discussion of these bodies see Arie Bloed, “The OSCE Political Bodies and their Role in Conflict Prevention and Crisis Management”, in *The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes*, Michael Bothe, Natalino Ronzitti and Allan Rosas, eds., (The Hague/Boston/London: Kluwer, 1997), pp. 35-52.

⁶ For a summary of mission mandates see the *OSCE Handbook* (2nd ed., Vienna: OSCE Secretariat, 1996), pp. 17-41, and Allan Rosas and Timo Lahelma, “OSCE Long-term Mission”, in *The OSCE in the Maintenance of Peace and Security*, Bothe et al., eds., pp. 167-190. All OSCE documents referred to in this paper can be found on the OSCE Website at “<http://www.osceprag.cz>”. See *The Conference on Security and Cooperation in Europe. Analysis and Basic Documents, 1972-1993*, Arie Bloed, ed., (2nd ed., Dordrecht/Boston/ London: Martinus Nijhoff, 1993) and *The Conference on Security and Cooperation in Europe. Basic Documents, 1993-1995*, ed. Arie Bloed (Dordrecht/Boston/London: Martinus Nijhoff, 1997), and the English-language quarterly *Helsinki Monitor*.

⁷ The human dimension encompasses all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character, democracy, democratic institutions and the rule of law.

⁸ Diana Chigas, with Elizabeth McClintock and Christophe Kamp, “Preventive Diplomacy and the Organization for Security and Cooperation in Europe: Creating Incentives for Dialogue and Cooperation”, in *Preventing Conflict in the Post-Communist World. Mobilizing International and Regional Organizations*, Abram Chayes and Antonia Handler Chayes, eds., (Washington (D.C.): The Brookings Institution 1996) pp. 25-97.

emphasis on a preventive, thematically broad and non-coercive approach to security, its use of politico-diplomatic tools and the inclusiveness of its membership⁹ that give the OSCE a distinct identity and role in respect to the other intergovernmental organisations active in Europe.

2. *The OSCE and national minorities*¹⁰

The OSCE is a political organisation employing primarily political and diplomatic tools. As such, it is in principle well suited to address national minority issues. These issues are by their very nature highly political, requiring a primarily political approach in which legal considerations, including human rights, and sometimes economic factors must be embedded. Often they are intimately connected to the existence of states, touching upon the relationship between regions and the centre, border issues and the territorial integrity of states. Also, they often have to do with the self-awareness of groups of people. An important factor in many concrete situations are political, social and economic processes of transition and the pain which often accompanies them.

As a matter of fact, many of the OSCE's activities are focused on situations in which minority issues are at the core of the problem complex to be addressed. The mandates of most, if not all, long-term missions are a reflection of this, as is of course the mandate of the High Commissioner. At the same time, minority issues are among the most controversial with which the OSCE has had to come to grips.

The main normative achievements of the OSCE with regard to national minorities are contained in just a few documents.¹¹ The *Helsinki Final Act* of 1 August 1975¹² contains a list of ten Principles guiding relations between participating states. Of particular relevance to minority issues are Principles VII (Respect for human rights and fundamental freedoms) and IV (Territorial integrity of States).¹³ The fourth paragraph of Principle VII deals with the protection of persons belonging to national minorities (equality before the law and enjoyment of their human rights and fundamental freedoms).

⁹ There are fifty-four OSCE participating states in all (the United States, Canada, all states on the territory of the former Soviet Union and all other European states), Yugoslavia (FRY—Serbia and Montenegro) having been suspended from participation since 8 July 1992.

¹⁰ A short introduction to the OSCE and minority issues is offered by Kate Birmingham, *The OSCE and Minority Issues* (The Hague: Foundation on Inter-Ethnic Relations, November 1995) and Arie Bloed, "The CSCE and the Issue of National Minorities", in *Universal Minority Rights*, Alan Philips and Allan Rosas, eds., (Turku/Åbo/London, 1995), pp. 113-122.

¹¹ For an overview and analysis of the OSCE commitments concerning persons belonging to national minorities, see Jan Helgesen, "Protecting Minorities in the Conference on Security and Cooperation (CSCE) Process", *International Journal on Group Rights* 2:1 (1994), 1-34. Also of interest is Alexis Heraclides, "The CSCE and Minorities. The Negotiations behind the Commitments, 1972-1992", *Helsinki Monitor* 3:3 (Fall 1992), 5-18.

¹² Full title is *Final Act of the Conference on Security and Co-operation in Europe*.

¹³ OSCE documents do not establish a link between national minorities issues and the right to self-determination (Principle VIII). For a more extensive treatment of this subject in relation to the OSCE, see Rob Zaagman, "Commentary", in *Self-Determination and Self-Administration. A Sourcebook*, Wolfgang Danspeckgruber and Arthur Watts, eds., (Boulder (Col.)/London: Lynne Rienner, 1997), pp. 248-254.

After Helsinki, by far the most important standard-setting text on national minority issues within the OSCE (and beyond)¹⁴ was Chapter IV of the *Copenhagen Document* (1990),¹⁵ although it does contain a number of qualifying phrases and escape clauses. Several elements stand out. Firstly, it is recognised that “questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law.” Secondly, the question of definition is addressed—although not determined—in so far as it is established that “to belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice.”¹⁶ As other international organisations, the OSCE does not have a commonly agreed definition of what constitutes a national minority.¹⁷ Although this state of affairs is perhaps unsatisfactory from a legal point of view, it does allow room for political manoeuvre when dealing with issues involving national minority questions.

Thirdly, specific rights are elaborated to an extent which was hitherto unknown in the OSCE context, including the right to use the minority’s mother tongue in public, to learn it and to be educated in it. The individual rights approach is clearly dominant although there are some provisions with a collective dimension. (These do not, however, establish collective rights within the OSCE.)

However, after the Copenhagen Meeting it became clear that the window of opportunity for achieving consensus on new norms regarding national minorities had closed. The *Geneva Report* (1991) mainly reaffirmed existing commitments.¹⁸ Much of the effort at Geneva had to go into safeguarding what had been achieved earlier. A new element was the expressed right of persons belonging to national minorities to be free from assimilation against their will. Importantly, it stated that “Issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State.” (Chapter II). This built upon a process of increasing legitimate involvement of the OSCE states in each other’s domestic affairs, which essentially started with the beginnings of the OSCE itself.¹⁹

¹⁴ It served as the primary source of inspiration to the drafters of the Council of Europe *Framework Convention for the Protection of National Minorities* (1995) and influenced the UN *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic minorities* (1992). See John Packer, “On the Content of Minority Rights”, in *Do We Need Minority Rights?*, Juha Rääkkä, ed., (The Hague/Boston/London: Martinus Nijhoff, 1996), pp. 121-178 at p. 162.

¹⁵ *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (Copenhagen, 29 June 1990).

¹⁶ Paragraphs 30 and 32, respectively.

¹⁷ See also John Packer, “Problems in Defining Minorities”, in *Minority and Group Rights Toward the New Millennium*, B. Bowring and D. Fottrell, eds., (The Hague: Kluwer Law International, forthcoming).

¹⁸ *Report of the CSCE Meeting of Experts on National Minorities* (Geneva, 19 July 1991). Originally not intended as a binding document in its own right, the *Geneva Report* was confirmed in the *Moscow Document* of the September 1991 Meeting of the Conference on the Human Dimension of the CSCE (paragraph 37) and endorsed by the January 1992 Prague meeting of the OSCE Ministerial Council (paragraph 16 of the *Summary of Conclusions*).

¹⁹ See Rob Zaagman and Hannie Zaal, “The CSCE High Commissioner on National Minorities:

Subsequent OSCE meetings did not go beyond confirming previous commitments, with one notable exception. Confronted with ethnic cleansing in the former Yugoslavia, the *Helsinki Document* of 1992 stated that the OSCE states would “refrain from resettling and condemn all attempts, by the threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories.”²⁰ The major developments regarding minority issues took place in the institutional field, most prominently the establishment of the position of OSCE High Commissioner on National Minorities.

Prehistory and Negotiations”, in *The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath*, Arie Bloed, ed., (Dordrecht/Boston/London: Martinus Nijhoff 1994), pp. 95-111.

²⁰ *CSCE Helsinki Document 1992: The Challenges of Change* (Helsinki, 10 July 1992), Chapter VI, paragraph 37.

II. THE HIGH COMMISSIONER ON NATIONAL MINORITIES: MANDATE AND PRACTICE

1. Introduction

The only specifically minority-related OSCE body is the OSCE High Commissioner on National Minorities (HCNM) which was established in July 1992 at the proposal of the Netherlands.²¹ The first High Commissioner—Max van der Stoep, a former Foreign Minister of the Netherlands—was appointed by the OSCE Council of Ministers in December 1992 and started work on 1 January 1993. He was reappointed in December 1995. Although the mandate provides for two three-year terms only, the OSCE states have decided to extend Van der Stoep's mandate by another year (after having ascertained his willingness), but expressly without establishing a precedent.

The establishment of the post of HCNM was a response by the OSCE states to their inability to prevent the ethnic wars in Yugoslavia and the Caucasus. It fit into the increased emphasis which the OSCE states in general were placing on domestic and international conflict prevention and crisis management and more specifically on contentious minority issues. Thus, the High Commissioner is defined as an instrument of international conflict prevention who will provide “early warning” and “early action” at the earliest possible stage in regard to those tensions involving national minority issues which, in his²² judgement, have the potential to develop into a conflict within the OSCE area which could affect peace, stability or relations between OSCE states.²³

The HCNM was not intended as a human rights instrument nor as a protector of the individual or group rights of persons belonging to national minorities. To make the point, for the title of the post the preposition “on” was chosen instead of “for”. A further reflection of this point is the fact that the HCNM is explicitly precluded from considering violations of OSCE commitments with regard to an individual person belonging to a national minority.²⁴ However, situations with which the High Commissioner has had to deal contain many human rights aspects, so that his activities generally do have a positive effect on the implementation of rights of persons belonging to national minorities, including general human rights.

²¹ See Zaagman and Zaal, “CSCE High Commissioner”, p. 97.

²² Although a woman could of course also occupy the post, for convenience sake the words “he” and “his” shall be used.

²³ Articles 2 and 3, Chapter II of the *Helsinki Decisions* of July 1992. For a comprehensive analysis of the HCNM mandate see Rob Zaagman, “The CSCE High Commissioner on National Minorities: An Analysis of the Mandate and the Institutional Context”, in *Challenges of Change*, Bloed, ed., pp. 113-175. A concise and more recent overview is *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention. An Introduction*, ed. Joanne Thornburn and Rob Zaagman (The Hague: Foundation on Inter-Ethnic Relations, June 1997). See also María Amor Martínez Estébanez, “The High Commissioner on National Minorities: The Development of the Mandate”, in *The OSCE in the Maintenance of Peace and Security*, Bothe et al., eds., pp. 123-165.

²⁴ Also excluded are situations involving organised acts of terrorism (Article 5b, Chapter II, *Helsinki Decisions*).

Since January 1993, High Commissioner Van der Stoel has addressed the following situations: the Greek minority in southern Albania; minorities in Croatia, in particular Serbs; Estonia, primarily with regard to the Russians living there; the Albanian population of the Former Yugoslav Republic of Macedonia; the Slovak minority in Hungary; inter-ethnic relations in Kazakhstan and Kyrgyzstan; Latvia, primarily with regard to the Russians living there; Lithuania (the High Commissioner has terminated his involvement in that country); various minority issues in Moldova; Romania, in particular concerning the Hungarian minority; the Hungarian minority in Slovakia; and Ukraine, in particular the situation in Crimea.

2. *Mandate*

The mandate of the OSCE High Commissioner reflects the recognition of the political nature of minority issues. The High Commissioner's tasks are framed in political terms and his tools are essentially tailored to deal with political issues, although out of necessity legal factors are included as well. He has to find compromises which will be accepted by all parties directly concerned and which answer to the requirements of the concrete situation. High Commissioner Van der Stoel has employed a pragmatic political approach, trying to identify, first, the main causes of tension and to explore, second, the possibilities for mutually acceptable first steps to removing these causes. Often, he will reinforce his recommendations with comments relating to the political aspects of the overall situation.

Van der Stoel's emphasis has been on persuasion and co-operation rather than coercion, working with governments as a typical "insider third party" rather than as an outsider imposing solutions.²⁵ In his view, presented in numerous speeches and articles,²⁶ durable solutions to the issues he is dealing with are only possible if there is a sufficient measure of consent and co-operation on the side of those directly concerned. Sometimes he finds that he can only facilitate the beginning of a process of *rapprochement* and reconciliation. At other times, if the political situation allows it, he may lead the parties to specific solutions. Putting a premium on a tactful diplomatic manner, he makes suggestions and recommendations and tries to avoid language that could give the impression of being an instruction or decree. This reflects the basic conviction of the HCNM that in the vast majority of cases durable progress depends on the willingness of the authorities in question to co-operate, and that co-operation and compromise cannot be forced upon the parties. Nevertheless, HCNM Van der Stoel also devotes considerable effort to marshalling support for his recommendations among other OSCE states, both with a view to generating assistance for the government at which his recommendations are aimed and to increase their authority in the eyes of the addressee (and, if need be, involve other states in changing its policies).

²⁵ Chigas, "Preventive Diplomacy and the OSCE", pp. 51-56.

²⁶ See the *Bibliography of the OSCE High Commissioner on National Minorities. Documents, Speeches and Related Publications* (The Hague: Foundation on Inter-Ethnic Relations, March 1997). See also the HCNM's report to the OSCE Implementation Meeting on Human Dimension issues, 12-28 November 1997, in *Helsinki Monitor* 9:1 (1997), pp. 68-76.

An integral aspect of this approach is that the HCNM makes conscious efforts to show that he is aware of the many sensitivities involved in the situation under scrutiny. On the one hand, if many human rights commentators will typically focus exclusively on the concerns of individuals or minority groups seen to be under pressure, the HCNM is mindful of the concerns of the majority and the government as well. He has repeatedly emphasised that efforts by both sides are needed, not just by the government. On the other hand, the HCNM very often refers to the concerns and uncertainties with which the non-citizens are faced, both in general terms and with regard to specific pieces of legislation or administrative practices. Still, this is done almost exclusively from the perspective of conflict prevention and stability building.

Eventually, the HCNM will formulate (non-binding) recommendations for the state concerned—although not necessarily after each and every visit—and will ensure the necessary follow-up, including through subsequent visits.²⁷ The government will respond and subsequently the Permanent Council will discuss the issue, generally expressing its support for the activities of the High Commissioner and encouraging him to continue his activities. (This procedure is not contained in the mandate but has evolved in practice.)

A limitation to the High Commissioner's mandate is that he cannot issue formal recommendations to the minorities in question, nor is he equipped to do grass-roots work. In his consultations with their representatives—if there are such representatives—he will, if necessary, try to influence their thinking on relevant issues. However, with minorities this can only be an informal process. This state of affairs is a reflection of the fact that the OSCE is an organisation which is operating almost exclusively on the intergovernmental level. (It should be noted that the HCNM co-operates closely with the non-governmental Foundation on Inter-Ethnic Relations which is co-located with his office and which increasingly undertakes project work and other activities at decentralised and non-governmental levels.)

It is interesting to note that OSCE states will often make reference to the HCNM's recommendations in their bilateral contacts with states in which the HCNM works. The European Union (EU), for instance, has used his recommendations to Estonia and Latvia as benchmarks both in its discussions with those states, including on their applications for EU membership,²⁸ and in its efforts to restrain the Russian Federation in its statements and behaviour towards these Baltic states.

For an effective functioning of the High Commissioner in a given case, the following aspects of the mandate would seem essential: (1) an adequate mix of independence from and accountability to the OSCE states; (2) sufficient access to political support within the OSCE if needed; (3) confidentiality, providing the possibility of low-profile preventive diplomacy; and

²⁷ The HCNM's country reports and recommendations to governments and those governments' replies can be obtained from the OSCE Secretariat or the OSCE website at <http://www.osceprag.cz>. A number have been published in the *Helsinki Monitor* and are also available on the MINELRES (Minority Electronic resources) website at "<http://www.riga.lv/minelres/osce/counrec.htm>."

²⁸ They are also reflected in the Opinions of the European Commission on Estonia's and Latvia's applications for EU membership.

(4) sufficient latitude in the choice of interlocutors who can provide information and assessments regarding a particular situation.

The High Commissioner himself decides which situations he wants to become involved in and when. He has the competence to travel to a state without the explicit consent of either the OSCE—whose decision would be subject to the consensus rule—or the visited state. He is equally free in his choice of interlocutors, either within the country in question or elsewhere. Typically, he will also consult with the government of what may be called the kin-state of the minority in question, e.g., Russia or Hungary in cases where a Russian or Hungarian minority, respectively, is involved. After each visit (or round of visits), the High Commissioner provides the OSCE Chairman-in-Office with a strictly confidential report on his findings and the progress of his involvement, as required by the mandate. The Chairman-in-Office is his formal link with the OSCE states.

The politically most powerful instrument of the High Commissioner is the possibility of involving the whole of the OSCE, generally through the OSCE Permanent Council. Partly, this is decreed by the mandate. If in spite of his involvement, a situation escalates towards conflict or when he thinks there is a *prima facie* risk of potential conflict, the HCNM will have to alert the OSCE states as a whole, e.g., by issuing a formal message of “early warning”. So far, this has not happened. The HCNM can also turn to the OSCE states to ask for political (or financial) support with regard to a certain follow-up activity or if a state proves to be non-co-operative. In addition, Van der Stoel maintains contacts of varying intensity with individual OSCE states and groups of states, in the first place the EU.

The High Commissioner works behind the scenes, avoiding publicity unless it serves the purposes of his activities. Sometimes, he has considered it necessary to make statements to the media on substantial matters, but this was generally done with the explicit agreement of the parties concerned. A case in point was his press conference in Tallinn on 12 July 1993, in which he announced the results of his mediation efforts between the Estonian Government and the local authorities of the city of Narva (see below).

The mandate also provides for the possibility of the involvement of experts to assist the High Commissioner to travel with him on his fact-finding missions. Of a different nature are two other types of involvement of experts. Firstly, the HCNM has sometimes engaged experts to discuss a particular situation, e.g., Crimea, or a specific theme, like education and minority languages. Such discussions may involve representatives of minorities and of governments. Secondly, he has sometimes involved specialists in dispute resolution to facilitate confidence-building meetings between representatives of various ethnic groups.

The HCNM's mandate constituted a major step forward in the increasing, legitimate OSCE role in the internal affairs of the OSCE states. Since 1992, the mandate has not changed, although there have been proposals, primarily by Russia, to amend it e.g., by making the recommendations of the High Commissioner binding and requiring governments to report to the OSCE on the state of their implementation. However, the present HCNM has not welcomed such efforts. Indeed, established practice has followed an expansive interpretation

of the mandate which was routinely endorsed by the Permanent Council. The mandate as it stands provided sufficient flexibility for him to operate effectively and a change could lead to more restrictions. Moreover, the Russian proposals were not compatible with his strong preference for a non-coercive approach.

3. Normative frame of reference

The mandate stipulates that the High Commissioner has to base his work on OSCE principles and commitments.²⁹ As his primary task is to prevent conflict, reference to OSCE norms is limited to those which are relevant to that task in a given situation. On the one hand, in practice quite a range of OSCE standards have been of relevance to situations with which the HCNM has been dealing, in particular those relating to minorities (see above) but also more general human dimension norms. On the other hand, OSCE commitments do not necessarily cover all issues relevant to a particular situation. In such instances, High Commissioner Van der Stoel has used norms contained in other international instruments as points of reference, in particular declarations and treaties elaborated in the frameworks of the United Nations, the Council of Europe and the International Labour Organisation.³⁰ The HCNM will in certain recommendations refer to specific international legal obligations assumed by the state in question, implying that the government would violate these obligations if it were to ignore those recommendations. A case in point is the question of stateless children born on the territory of Estonia and Latvia (see below). Also, he will sometimes make reference to state practice within the OSCE area, mainly of member states of the European Union or the Council of Europe.

The recommendations of the High Commissioner himself have been written for specific situations and cannot readily be used in other cases. However, a number of broad themes arise out of these recommendations, and experiences in one case have helped the HCNM formulate recommendations in others. Also, with regard to the issues of educational and linguistic rights of minorities the HCNM has stimulated the drafting of guidelines (see below).

Since there is no OSCE definition of the term “national minority”, High Commissioner Van der Stoel has had to decide for himself which groups he sees as national minorities. Underlining that the existence of a minority is a question of fact and not of definition, he has referred on various occasions to the *Copenhagen Document* of 1990 which states that to belong to a national minority is a matter of a person's individual choice (paragraph 32). Although he has stated that he would know a minority when he saw one, he also gave some characteristics which focused on the issue of identity. First of all, in his view a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also

²⁹ Article 4.

³⁰ Article 6 of the mandate opens the possibility for this. Moreover, starting with Principle X of the *Helsinki Final Act* of 1975 - “Fulfillment in good faith of obligations under international law” - many OSCE commitments expressly refer to international law or, more specifically, international human rights law.

tries to give stronger expression to that identity.³¹

Somewhat of a problem for the HCNM could have been the adjective “national” which seems to imply that only citizens of the state concerned belong to a national minority. (However, OSCE documents do not contain an explicit limitation of this kind.)³² Thus, situations involving non-citizens or alleged non-citizens would be excluded from the High Commissioner's scrutiny. However, in some situations—e.g., Estonia and Latvia—the issue of citizenship is precisely one of the main causes of the tensions which the High Commissioner should address. It would be contrary to the very concept of the HCNM's mandate if a state could bar the High Commissioner from taking up such an issue by maintaining that the requirement of citizenship had not been fulfilled. In the case of the Baltic states, the interpretation of the term “national” mentioned above was not used to ward off the HCNM's involvement, although the Estonian Foreign Minister did use it in a discussion with the HCNM about Estonia's interpretation of the *Framework Convention for the Protection of National Minorities* of the Council of Europe.³³

4. General themes

As far as the general subject-matter of his analyses and recommendations is concerned, like the OSCE as a whole the High Commissioner has taken a comprehensive approach to security, including in his analysis all elements he determined were connected to the root causes of the problems before him, especially those linking the domestic and international spheres. The HCNM has also devoted attention to the lack of economic or financial resources on the part of states with minority issues and encouraged other governments to provide humanitarian aid, expertise or financial assistance. As another example of linkage between the domestic and international spheres, the HCNM has sometimes called upon OSCE states to take steps, e.g., to recognise the aliens' passports issued by Estonia and Latvia as valid travel documents (see below).

Against this general background, there are some main areas, often interlinked, on which the HCNM has focused his analyses and recommendations:³⁴

Identity, or the right of each person to determine, maintain and develop his or her identity free from prescription or coercion. This issue raises questions of the use of language, culture, education, the status and use of names, etc. With regard to language, the High Commissioner took the initiative for expert consultations with a view to establishing “recommendations on an

³¹ HCNM's keynote address to the OSCE seminar on case-studies on national minorities in Warsaw, 24-28 May 1993. Reprinted in the *ODIHR Bulletin* 1:3 (Fall 1993), 22-25.

³² See Zaagman, “CSCE High Commissioner”, pp. 133-135.

³³ Estonia stated that the Convention only applied to citizens. See reply of 27 November 1996 by Acting Foreign Minister Riivo Sinijärv to the letter by the HCNM of 28 October 1996.

³⁴ Based on John Packer, “The OSCE High Commissioner on National Minorities” in *Human Rights Monitoring Procedures: A Textbook on How to Petition and Lobby International Organizations. Liber Amicorum for Jacob Möller*, Gudmundur Alfredsson, Göran Melander and B. Ramcharan, eds., (The Hague: Kluwer Law International, forthcoming).

appropriate and coherent application of the linguistic rights of persons belonging to national minorities.” As a result the so-called *Oslo Recommendations Regarding the Linguistic Rights of National Minorities* were drafted.³⁵

Education is essential to minorities for transmitting and maintaining their identity over the generations. Again, language, both as language of instruction and as subject of instruction, figures prominently. (This is equally true, of course, for small nations under occupation, like Estonia and Latvia in the Soviet era.) Since education for and/or by minorities has been the subject of considerable attention in almost every situation in which the HCNM is involved, he has stimulated consultations among independent experts which resulted in their adoption of *The Hague Recommendations Regarding the Education Rights of National Minorities*.³⁶

Political participation is another core issue in the situations which the High Commissioner has addressed. His main document of reference on this issue is the OSCE *Copenhagen Document* which states that persons belonging to national minorities should enjoy “effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.” (paragraph 35).

The issue of *citizenship* is a particular aspect of political participation, but also of importance with regard to economic questions such as the right to own property or to participate in privatisation programmes. It entails equality within the polity, in particular equality before the law. Citizenship demonstrates on the part of the individual the wish to be part of the wider society and his loyalty to the state. In Estonia and Latvia, the citizenship laws have had the effect—intentional or not—of excluding the overwhelming majority of persons belonging to national minorities despite their long or very long permanent residence or even being born on the territory of the state.

Access to resources, including access to employment, to governmental contracts, etc. For non-citizens who are long-term residents—and taxpayers—it is also a question of access to social security benefits. Financial resources—i.e., government subsidies—are needed to effectively exercise for instance cultural or educational rights. Sometimes, governments will use this dependence to put pressure on minorities.

High Commissioner Van der Stoel has been very reluctant to propose *territorial solutions* for minority issues. States are mostly not willing to contemplate such arrangements, as is reflected in OSCE norms and OSCE state practice which give little support for claims to territorial autonomy (let alone secession).³⁷ Neither would it be a real solution in view of the many minorities in Europe and their geographical distribution. Therefore, the HCNM has stated on various occasions that solutions should be found as much as possible within the framework of the state itself, often emphasising various options of decentralisation and

³⁵ *Oslo Recommendations Regarding the Linguistic Rights of National Minorities* and Explanatory Note (The Hague: Foundation on Inter-Ethnic Relations, February 1998).

³⁶ *International Journal of Minority and Group Rights* 4:2 (1996/97), 202-205 (Special Issue on the Education Rights of National Minorities).

³⁷ Zaagman, “Commentary”.

subsidiarity in decision-making.³⁸ Efforts should be directed towards strengthening the democratic framework as the basis for the prevention of violations of rights of persons belonging to national minorities, for the effective participation in public life of all groups and for channelling and resolving the conflicts of interest which exist in all societies. In Van der Stoel's view, self-realisation as a minority could often be accomplished through legislation promoting the development of the identity of the minority in various fields, for instance culture, education, local government, etc. In very specific cases, arrangements like strong local government or even territorial autonomy could be envisaged. In some exceptional cases, the High Commissioner has explored the possibilities of local or regional autonomy, e.g., in Crimea.³⁹

In general, HCNM Van der Stoel has encouraged various forms of *structured dialogue* between the authorities and minority representatives so that these parties would interact and also find solutions on their own, such as inter-ethnic councils or the expansion of existing forms of participation of national minorities in decision-making processes. Furthermore, he has analysed existing and draft legislation, policies and administrative practices as part of his overall analysis of a situation with a view to determining the sources of tension between minorities and governmental authorities, and has suggested changes to them.⁴⁰

³⁸ For a recent expression of his position in this regard, see Max van der Stoel, *The Role and Importance of Integrating Diversity*, address to the conference "Governance and Participation: Integrating Diversity", Locarno, 18 October 1998.

³⁹ John Packer, "Autonomy within the OSCE: The Case of Crimea", in *Autonomy: Applications and Implications*, Markku Suksi, ed., (The Hague: Kluwer International Law, 1998), pp. 295-316.

⁴⁰ Based on Packer, "OSCE High Commissioner", pp. 8-9.

III. THE OSCE AND THE BALTIC STATES

1. Introduction

From the beginnings of the OSCE process in 1972, attention had been given to the situation of the Baltic states. Many Western states had never accepted their annexation by the Soviet Union.⁴¹ The *Helsinki Final Act* of 1975 declared in the last paragraph of Principle IV about the territorial integrity of states: “The participating States will likewise refrain from making each other’s territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.” According to the American OSCE diplomat John J. Maresca “This language was inserted by the West partly to maintain the principle that Stalin’s annexation of the Baltic states [in 1940] will not be recognized.”⁴² Thus, while the principle of the territorial integrity of each OSCE state was confirmed, the consequences of past or future military occupation were declared illegal.

Nevertheless, for political reasons the attitude of Western states in general remained ambivalent regarding the position of the Baltic states within the Soviet Union. At various OSCE meetings, the situation in the Baltic states was raised, but mainly from a strictly human rights perspective. There was little enthusiasm to raise the issue of Baltic independence and a marked reluctance to do so during the period of Gorbachev, whose position many Western governments did not want to jeopardise. From 1989 onward, there had been repeated attempts to secure Baltic representation at OSCE meetings, each of which was blocked by the Soviet Union. For example, after strong Soviet protests including the threat of Soviet non-participation the French Government withdrew its earlier invitation to Baltic representatives to participate in the Paris Summit of November 1990.⁴³ As an alternative, Baltic representatives were sometimes included as members of some Western delegations.

Matters changed in the course of 1991. The bloody repression in Riga and Vilnius by Soviet OMON troops in January 1991 caused the neutral states together with Czechoslovakia, Hungary and Poland to request a special meeting of the OSCE, which was rejected by the Soviet Union.⁴⁴ An attempt was also made by Austria and other states to invoke the so-called human dimension mechanism with a view to compelling Moscow to discuss these incidents within the OSCE. The Soviet Union rejected this step as inadmissible interference in its

⁴¹ See, however, W.A. Timmermans, “The Baltic States, the Soviet Union and the Netherlands: A Historic Note”, in *Netherlands International Law Review* 32 (1985), 288-294 for the argument that only the United States pursued a consistent policy of non-recognition, i.e. de iure as well as de facto.

⁴² John J. Maresca, “The People Have A Right To Choose”, in *International Herald Tribune*, 21 June 1989; reprinted in Vojtech Mastný, *The Helsinki Process and the Reintegration of Europe, 1986-1991. Analysis and Documentation* (London: Pinter Publishers, 1992), Institute for East-West Security Studies, pp. 187-189.

⁴³ Falk Lange, “Die baltischen Staaten und die KSZE” [The Baltic states and the CSCE], in *Osteuropa* 44:3 (March 1994), 232-241, at 237.

⁴⁴ Lange, “Die baltischen Staaten”, 237.

internal affairs.⁴⁵ After the coup in Moscow in August 1991, things changed dramatically. The Baltic states regained their independence and were admitted as participating states of the OSCE at an additional meeting of the OSCE Council of Ministers on 10 September 1991 in Moscow, just prior to the beginning of the OSCE human dimension meeting in that city.⁴⁶

However, a number of fundamental and contentious issues remained outstanding, in particular the continued presence of Soviet (later: Russian) troops in the Baltic states and the position of the hundreds of thousands of non-indigenous persons who had moved to the Baltic states in Soviet times and their descendants.

During the 1992 OSCE Follow-Up Meeting in Helsinki, the Baltic representatives used every opportunity to raise the issue of the continued presence of foreign troops on their territory and the urgent need for their withdrawal. For example, when environmental issues were discussed they eventually turned the subject towards the detrimental environmental effects of the ageing Soviet nuclear submarine fleet and then demanded the withdrawal of these and other military units.⁴⁷

Russia initially declined to discuss these questions in the OSCE framework with the argument that they were bilateral issues which had no place on the agenda of the multilateral OSCE. However, it soon found that it could not continue to dodge the issue. It then proceeded to link the withdrawal of the troops to the position of the Russians and other non-Baltic people in the independent Baltic states, in particular Estonia and Latvia,⁴⁸ a linkage it maintained until the last troops had left the Baltic states.⁴⁹

The main reason for Russia's interest in its kinsmen in the Baltic states was military-strategic rather than the fate of these Russians. This is not to say that the latter could not have been a factor as well.⁵⁰ After all, many Estonians and Latvians looked with distrust if not hostility upon that portion of the non-indigenous population—the vast majority of which had settled in their countries during the Soviet period. Russian strategic motives were, however, paramount. The early-warning radar station at Skrunda, Latvia, was Russia's Western-most land-based element of its strategic anti-missile defence.⁵¹ Its military installations in the Baltic states were

⁴⁵ More on the human dimension mechanism and its application in Rob Zaagman, "Institutional Aspects of the CSCE Human Dimension After Helsinki-II", in *The Challenges of Change. The Helsinki Summit of the CSCE and its Aftermath*, Arie Bloed, ed., (Dordrecht/Boston/London: Martinus Nijhoff, 1994), pp. 231-281 at p. 237.

⁴⁶ The Decision is contained in the Journal of the Additional Meeting of the Council (Moscow, 10 September 1991), paragraph 4. See also Bloed, "Two Decades", pp. 105-106.

⁴⁷ See various articles in *Challenges of Change*, Bloed, ed., and the report *The Helsinki Follow-Up Meeting of the Conference on Security and Co-operation in Europe, March 24-July 8, 1992* (Washington: Commission on Security and Co-operation in Europe, 1992), pp. 48-49.

⁴⁸ Alexis Heraclides, *Helsinki-II and Its Aftermath. The Making of the CSCE into an International Organisation* (London/New York: Pinter, 1993), p. 139.

⁴⁹ Lange, "Die baltischen Staaten", 239.

⁵⁰ Russia also pursued this issue vigorously within the Council of Baltic Sea States (CBSS). See Ole Espersen, "Human Rights Protection in the Baltic Sea Area. The Commissioner on Democratic Institutions and Human Rights including the Rights of Persons belonging to Minorities", in *Helsinki Monitor* 7:2 (1996), 52-64 at 54.

⁵¹ See e.g. chapter 3.4. "Command and Control System and Its Current Status", in *Nuclear Arms*

very important to projecting Russian naval power in the Baltic sea area. And finally, the Baltic states had made no secret of their desire to join Western institutions, in the first place NATO and the EU. No doubt maintaining a military presence in the Baltic states was seen in Moscow as one way of preventing that from happening. After the withdrawal of troops, the position of the Russian residents, in particular in Estonia and Latvia, gave Russia a legitimate basis to remain involved in those Baltic states.

Eventually, the *Helsinki Summit Declaration* of July 1992 stated the following with regard to the Russian troops in the Baltic states:

“Even where violence has been contained, the sovereignty and independence of some States still needs to be upheld. We express support for efforts by CSCE participating States to remove, in a peaceful manner and through negotiations, the problems that remain from the past, like the stationing of foreign armed forces on the territories of the Baltic States without the required consent of those countries.

Therefore, in line with basic principles of international law and in order to prevent any possible conflict, we call on the participating States concerned to conclude, without delay, appropriate bilateral agreements, including timetables, for the early, orderly and complete withdrawal of such foreign troops from the territories of the Baltic States.”⁵²

After the Helsinki meeting, the issues of the troop withdrawals and the position of the non-indigenous populations remained a source of constant friction between Russia and the Baltic states, in particular Estonia and Latvia, and tensions flared up time and again. In response to these tensions, the OSCE became involved in these issues in several ways. Until the last military units had been withdrawn, there was constant attention devoted to the issue of troop withdrawals during OSCE discussions, including at the levels of senior officials and ministers.⁵³ In this way, the issue was not just left in the bilateral sphere where parties were of greatly unequal strength. (Although it is hard to determine exactly how important this multilateral scrutiny was to the resolution of the issue in addition to the bilateral pressure exerted by the US and the EU.)⁵⁴

The OSCE became involved in other, more direct ways as well. Apart from sending short-term diplomatic delegations, the OSCE decided to establish long-term missions first in Estonia (deployed on 15 February 1993) and then in Latvia (19 November 1993). The organisation also assumed a role in the commissions dealing with issues relating to military pensioners of the Soviet/Russian army who had remained in Estonia and Latvia. Furthermore, in 1994 it

Reduction: The Process and Problems, A. S. Diakov, ed., (Moscow: Center for Arms Control, Energy and Environmental Studies, June). The entire report can be found at “<http://blue.iris.mipt.ru/iso/reductions/main.htm>”.

⁵² Paragraph 15.

⁵³ *Decisions* of the Stockholm Meeting of the CSCE Council of 15 December 1992, the *Declaration on Baltic Issues* of the Rome Council (30 November-1 December 1993), and the Budapest Summit Meeting of 6 December 1994.

⁵⁴ Lange is quite sceptical about this: “Die baltischen Staaten”, 239.

agreed to assist Latvia and the Russian Federation in monitoring the implementation of the agreement which granted Russia the right to temporarily continue using the Skruna radar station. To conclude the list, already in January 1993 the OSCE High Commissioner on National Minorities paid the first of many visits to the Baltic states.

2. *The OSCE in Estonia: long-term mission and military pensioners*⁵⁵

On 13 December 1992, the OSCE decided to establish a mission for an initial period of six months in Estonia⁵⁶ (subsequently extended by six-month periods). This was done following the advice of an OSCE delegation which had visited Estonia in early December 1992 and had issued a report with recommendations at the end of that month.⁵⁷ (Although the visit had taken place at the request of Estonia, apparently the US had strongly suggested that the Estonian Government issue that invitation.)⁵⁸ The Mission was deployed on 15 February 1993 in Tallinn and subsequently established offices in Kohtla-Järve and Narva.

The mandate of the OSCE Mission to Estonia is to promote stability, dialogue and understanding between the Estonian and Russian communities in Estonia. (The communities were not mentioned in the mandate by name, but it was clear which were meant.) The Mission works in close co-operation with the authorities and maintains contacts with relevant non-governmental groups. The Mission exchanges information and co-operates on relevant questions with the ODIHR and, in questions falling within his competence, with the High Commissioner. It reports regularly to the OSCE Permanent Council (typically, every fortnight).

The provision on co-ordination is of importance, in view of the considerable overlap in competencies between the Mission and the HCNM. The Mission is mandated to provide advice and assistance with regard to the integration of the non-indigenous population of Estonia. In that context, it has monitored the process of the implementation of legislation concerning non-citizens, including questions relating to the implementation and amendment of the Law on Aliens (entry into force early July 1995). It supported the proposal made by the Estonian Government and adopted in June 1994 by the Estonian Parliament to extend by one year the deadline for the registration of non-citizens applying for Estonian residency, which in the Law on Aliens was put at 12 July 1994. The Mission also monitored developments related to citizenship issues, such as the adoption of the Citizenship Law which took place in January

⁵⁵ Based on Klaus Törnudd, "The Role of the CSCE Missions in Preventive Diplomacy – The case of Estonia" and Timo Lahelma, "The Role of the CSCE Missions in Preventive Diplomacy – The case of Estonia (August 1993-June 1994)" in *The Challenge of Preventive Diplomacy. The Experience of the CSCE*, Staffan Carlsson, ed., (Stockholm: Ministry of Foreign Affairs, 1994), pp. 73-86 and 87-99 respectively; the relevant paragraphs in the *Annual Reports* by the Secretary General of the OSCE; and the *OSCE Handbook 1996*, pp. 28-29. See also the relevant section on long-term missions of the Website of the OSCE Secretariat.

⁵⁶ 18th CSO, Journal No. 3, Annex 2 (13 December 1992). See 19 CSO, Journal No. 2, Annex 1 (3 February 1993) for the mission's Terms of Reference.

⁵⁷ Törnudd, "Role of the CSCE Missions", pp. 74-76.

⁵⁸ According to a US diplomat in a conversation with the author. The Estonian request was made in accordance with the first step of the so-called Moscow human dimension mechanism (see Zaagman, "Institutional Aspects", p. 237).

1995 and its implementation, including monitoring citizenship examinations, the processing of residence permits and the issuing of alien's passports. The Mission is also involved in language training for residents who are not citizens.

The OSCE Mission is also involved in the follow-up of certain aspects of the Russian troop withdrawal from Estonia. On 26 July 1994, Estonia and Russia agreed on the withdrawal of Russian troops and on social guarantees for Russian military pensioners. According to article 2, paragraph 2, of the "Agreement on Matters Related to Social Guarantees for Military Pensioners of the Russian Federation on the Territory of the Republic of Estonia", signed on 26 July 1994, the OSCE was invited to participate in the Estonian Government Commission on Military Pensioners which is charged to make recommendations on the issuance of residence permits. The OSCE Representative was duly appointed and reports to the Chairman-in-Office.⁵⁹ He is co-located with the OSCE Mission to Estonia.

In all, the Commission has dealt with about 17,000 applications for residence permits. As of mid-July 1998 some 3,000 applications still had to be processed for people with a "security-related background" whose temporary residence permit would have expired by then. The OSCE has sometimes intervened on humanitarian grounds and as a result some refusals were rescinded. It has also undertaken activities aimed at integrating or repatriating divorced and widowed former dependants left behind after the Russian troop withdrawal.

3. *The OSCE in Latvia: long-term mission, military pensioners and Skrunda radar station*⁶⁰

The OSCE long-term mission to Latvia was deployed in Riga on 19 November 1993 upon the recommendation of a Special Representative of the OSCE Chairman-in-Office.⁶¹ It is mandated to address citizenship issues and other related matters and to be at the disposal of the Latvian Government and authorities such as the Naturalisation Board for advice on such issues. It should also provide information and advice to institutions, organisations and individuals with an interest in dialogue on these issues, which includes of course persons belonging to minorities. Unlike the Terms of Reference for the Mission to Estonia, there are no provisions on consultation and co-operation with the HCNM in the Mission's mandate itself. However, the report by the Personal Representative stated that the Head of Mission would ensure the necessary co-ordination and exchange of information on relevant questions with other OSCE institutions, including ODIHR and the HCNM.⁶²

The Mission followed the process of drafting the new Citizenship Law and made recommendations to the Government, as did the HCNM. Elements of these recommendations

⁵⁹ 28th CSO, Journal No. 3, Decision (g) (16 September 1994).

⁶⁰ Based on *OSCE Handbook 1996*, pp. 30-32, the relevant paragraphs in the *Annual Reports* by the OSCE Secretary General and the relevant section of the OSCE Website.

⁶¹ It was established by decision of the 23rd CSO meeting on 23 September 1993 (Journal No. 3, Annex 3). Its Terms of Reference were adopted at the 31st meeting of the CSO Vienna Group on 7 October 1993 (Annex 1 to the Journal). The *Report of the Personal Representative regarding a Possible CSCE Presence and Further Engagement in Latvia* was published as CSCE Communication No. 260 of 23 September 1993.

⁶² Paragraph 12 of the *Report of the Personal Representative*.

are reflected in the law which was adopted in a fourth, extraordinary reading by the Parliament on 22 July 1994, after the President of Latvia had returned the previous version, which had already been adopted by Parliament, for further consideration. The Mission also followed events leading up to the adoption of the Law on Non-Citizens which was adopted in April 1995 and its subsequent implementation. It monitors the naturalisation process as a whole and makes on-site evaluations of the tests that are part of that process, which includes sitting in on naturalisation examinations. The Mission is also involved in activities relating to language training.

Typical for the activities of the Mission is the systematic collection and processing of information on individual cases involving citizenship-related problems, which provided a good basis for the Mission's work on those issues. It looks into patterns of rigid or arbitrary administrative practices and discusses these findings with the Government. However, it does not take up individual cases.

A further involvement of the OSCE in Latvia followed from the request by the Latvian and Russian Governments that the organisation provide assistance in the implementation of two agreements between them concluded in connection with the withdrawal of the Russian army, i.e. on the social welfare of retired Russian military personnel and on the legal status of the Skrunda radar station. The OSCE agreed to comply with the request and decided on the modalities for such assistance on 23 February 1995.⁶³

Co-located with and providing full information to the OSCE Mission, the OSCE Representative to the Russian-Latvian Joint Commission on Military Pensioners and the Alternate Representative are tasked, *inter alia*, with considering questions relating to the application of the provisions of the "Agreement on the Social Welfare of Retired Military Personnel of the Russian Federation and their Family Members Residing on the Territory of the Republic of Latvia" of 30 April 1994. This is done at the request of either party. Together with Latvian and Russian representatives, the OSCE Representative will consider appeals on matters involving the rights of persons to whom the Agreement applies, i.e. Russian military pensioners and their family members who had permanent residence in Latvia by 28 January 1992, and participate in the adoption of recommendations and decisions on the basis of consensus.

In June 1995, the parties and the OSCE Representative reached an agreement on the modalities of work of the Joint Commission. The OSCE Representative particularly focused on problems related to pensioners' rights to housing and work permits, the investigation of individual cases and the preparation of recommendations for Latvia.

In June 1994, Latvia and Russia requested the OSCE to assist them in monitoring the implementation of the "Agreement between Latvia and the Russian Federation on the Legal Status of the Skrunda Radar Station During its Temporary Operation and Dismantling of 30 April 1994" (Article XIV of the Agreement). An integral part of the agreement on the

⁶³ See Permanent Council Journal No. 9 and its Annexes 1 and 2.

withdrawal of the troops of the Russian Federation (see Article I), the Agreement granted Russia the right to continue using the Skrunda radar station until 31 August 1998.⁶⁴ After that date, Russia would have to dismantle the installation before the Agreement expired on 29 February 2000. In the meantime, Russia would continue paying rent to Latvia (5 million US dollars a year).⁶⁵

The OSCE agreed to the request of Latvia and Russia, and on 23 February 1995 the Permanent Council decided on the Terms of Reference for an OSCE Inspection Regime.⁶⁶ On 6 April 1995, an OSCE Representative to the Joint Commission on the Skrunda Radar Station and an Alternate Representative were appointed by the OSCE Chairman-in-Office. Two periodic and two extraordinary inspections could be undertaken each year to ascertain that Moscow was not using the station as a military base. The first periodic inspection was carried out from 28 to 30 August 1995 and served as the baseline inspection. Subsequently, six more inspections took place. On 3 September 1998, OSCE experts visited the radar station and verified that it had indeed been shut down.⁶⁷ At the request of both parties, who had agreed on this in the Summer of 1997, the OSCE will remain involved during the dismantling phase through two inspections per year and participation in the meetings of the Joint Commission.⁶⁸

4. Conclusion

These OSCE activities illustrate some general points about the potential usefulness of the OSCE. First, the OSCE can offer a forum for raising bilateral issues which have wider (security and stability) implications. Furthermore, it can act not only as an honest broker serving the parties to a dispute but also as a politico-diplomatic interposition force between parties who are, like in the Baltic-Russian case, very unequal in size and power. The physical presence of on-site missions symbolises the interest and attention on the part of the OSCE states as a whole and provides the OSCE with eyes and ears in situ, which is often indispensable to building a fairly accurate picture of the actual situation.

Despite these obvious advantages for both Baltic states, many Estonian and Latvian politicians and opinion leaders have come to dislike or even resent the presence of the OSCE Missions either as unwanted external interference in their countries' internal affairs or as an expression of international opinion that something is wrong with the state of democracy and human rights in Estonia and Latvia. (Similar sentiments have been expressed in most other OSCE states which host OSCE missions.) So far, the US and other Western states, in particular the member-states of the EU, have been able to convince the Governments of these Baltic states that it is in their interest to allow the Missions to continue their work. A name change may be

⁶⁴ Article III. See also Arie Bloed, "OSCE Monitors Latvian-Russian Agreements", in *Helsinki Monitor* 6:2 (1995), 55-56.

⁶⁵ RFE/RL Newline of 31 August and 7 September 1998.

⁶⁶ 9th meeting Annex 1.

⁶⁷ *OSCE Newsletter* 5:9 (September 1998), 7; Press Release of the Latvian Ministry of Foreign Affairs of 26 August 1998.

⁶⁸ Paragraph 2.4.3. of the *Annual Report 1997* of the Secretary General of the OSCE.

necessary in the near future—e.g., assistance group instead of mission⁶⁹—or perhaps even an amendment to the mandate. The High Commissioner on National Minorities, too, has to face such sentiments.⁷⁰

⁶⁹ Russia would only accept an OSCE mission in Chechnya under the name Assistance Group. Belarus admitted a so-called Advisory and Monitoring Group.

⁷⁰ Extreme opinions can take the form of the advertisements which in 1998 were published by Mr. Aivars Slucis in the *International Herald Tribune* in which he called the OSCE and the HCNM “agents of Russian imperialism” and Van der Stoel “a clone of Chamberlain/von Ribbentrop” (29 April 1998).

IV. THE HIGH COMMISSIONER AND THE BALTIC STATES

1. Introduction

The very first situations High Commissioner Van der Stoel decided to address were those in the three Baltic states. He visited Estonia, Latvia and Lithuania during the last three weeks of January 1993, returning many more times to the first two countries. He decided that the inter-ethnic situation in Lithuania did not warrant the kind of preventive diplomacy he was mandated to undertake. The non-Lithuanian component of the population did not exceed twenty percent, mainly ethnic Poles (9%) and Russians (8%). Upon restoration of independence, the Government of Lithuania had offered free choice of citizenship for all permanent residents, except Soviet military and security personnel and their families. (The vast majority of permanent residents seem to have opted for Lithuanian citizenship.) Another important factor contributing to the absence of international tension in Lithuania has been the co-operative and non-confrontational attitude of the Polish Government.

The situations in Estonia and Latvia, however, were typical for the kind of situation for which the office of the High Commissioner had been created: tensions between a minority on the one hand and a majority and the state government on the other, and the presence of a neighbouring kin-state with an interest in the condition of its kinfolk on the other side of the border causing it to become involved and leading to the international tensions with a potential for international conflict. In these particular situations, the size of the minorities in relation to the overall population of Estonia and Latvia, the huge disparity in size and power between the Baltic states and Russia, and the convolutions in the domestic political scene in Moscow were potentially conflict creating factors.

In Estonia and Latvia, a large part of the population was—and still is—ethnically non-Estonian (40% in 1993, 35% today) or non-Latvian (almost half then, 44% today). The great majority of these peoples were not accepted as Estonian or Latvian citizens when these states regained their independence in 1991. Instead of offering citizenship to all residents on the basis of a “zero-option” formula, like all other states on the territory of the former Soviet Union did, the Estonian and Latvian Governments restricted automatic citizenship to those who had held it before the Soviet occupation and their direct descendants.

The non-citizens were for the most part not integrated in Estonian or Latvian society and often did not speak the national language. Most ethnic Estonians and Latvians considered them as illegal immigrants, their presence a product of the policy of enforced Russification which had led to considerable demographic changes in their countries which experienced a massive influx of settlers from other parts of the USSR, mainly Russians and other Slavs. Often characterised as “Russian-speakers” because of their primary language, these settlers and their descendants now account e.g., for about 35 percent of the population of Estonia (as opposed to 8 percent in the pre-war period). Many Estonians and Latvians still fear that they will one day find themselves a minority in their own country, unable to preserve their language and national identity.

In addition, the continued presence of Soviet (later: Russian) troops only reinforced those bitter memories. Even after the withdrawal of those troops, distrust and resentment remained important factors in determining the attitude of many ethnic Estonians and Latvians towards the Russians in their midst, including a fear that they would function as a fifth column to Moscow. As a result, in the parliaments of both countries, parties with an ethno-nationalist platform have had an influential voice. The policies of various Estonian and Latvian Governments towards the non-citizens were to a large extent motivated by the desire to protect the Estonian and Latvian national identities, respectively. In particular in Latvia the fear of “statistical genocide” was quite strong.⁷¹

While understandable from a psychological point of view, these policies generated resentment, distrust and hostility among the non-citizens who feared expulsion from the state (where many had been born) or deprivation of political and economic rights if they were allowed to remain. (Certainly in the first few years, there were strong voices advocating such drastic measures.) In addition, many had great difficulty in adjusting to a new situation in which they were no longer the representatives of the dominant nation in the state and in which their language had been replaced as the official tongue by a language few of them spoke or even understood. This sentiment is still quite widespread. Lastly, those non-citizens who in 1991 had come out in favour of Estonian or Latvian independence felt a sense of betrayal.

The Russian Federation did little to take away the fear on the part of the Balts that its ultimate goal was reintegration of the Baltic states into a reborn Soviet Union. It used every opportunity to put pressure on Estonia and Latvia, shifting its focus from one to the other as circumstances changed. Immediately after Baltic independence, it linked the withdrawal of its troops and, at a later stage, the resolution of the border question with Estonia to the issue of the treatment of not only ethnic Russians but of all Russian-speakers.⁷² Other steps were also taken: An energy embargo in 1993 imposed on all three Baltic states found a distant echo in various economic sanctions—called “measures” by the Russian Government—against Latvia in the Spring and Summer of 1998, such as actions and regulations by the Russian Central Bank and new tariffs for railroad transports.

The danger of an escalation of the tensions into an international conflict was most pressing in the first few years. Without the intervention of the OSCE and the High Commissioner, a long-term process of alienation and growing distrust could have provided a fertile breeding ground for tensions which under the circumstances could have led to a violent conflict. The OSCE High Commissioner prevented during those first few years the enactment of legislation and policies which would have created a strong basis for long-term resentment

⁷¹ For an analysis see Graham Smith’s articles “The Ethnic Democracy Thesis and the Citizenship Question in Estonia and Latvia”, *Nationalities Papers* 24:2 (1996), 199-216, and “When Nations Challenge and Nations Rule: Estonia and Latvia as Ethnic Democracies”, *International Politics* 33:1 (1996), 25-41.

⁷² See also *Estonia and Latvia: Citizenship, Language and Conflict Prevention. A Special Report by the Forced Migration Project* (New York: Open Society Institute, August 1997), pp. 8-12. Representative of the official Russian position is Teimuraz Ramishvili, “Latvia and Estonia: Human Rights Violations in the Center of Europe”, in *International Affairs* [Moscow] 44:4 (1998), 116-127. (Ramishvili is the head of the directorate for international humanitarian cooperation and human rights of the Russian Ministry of Foreign Affairs.)

into which nationalist and expansionist circles in Moscow, if not a future Russian government, could have played. The crisis in Estonia over the Law on Aliens in the Summer of 1993 demonstrated what kinds of dangerous situations could have arisen.

2. *HCNM conflict prevention in practice: crisis in Estonia*⁷³

At the end of June and the beginning of July 1993, tensions in Estonia increased. The adoption by the Estonian parliament of a law on the status of aliens led to fears among the non-citizen population of Estonia that a process of expulsion had been set into motion. Partly in response to that law, calls for a referendum on local autonomy in the mostly Russian-inhabited Estonian cities of Narva and Sillamäe gained strength. The Russian Foreign Ministry announced measures in protest of the law which it characterised as a grave violation of human rights, and an escalating stream of accusations ensued from Moscow. Coincidentally, natural gas deliveries from Russia were cut off to all Baltic states but in the case of Estonia implicitly linked to Estonia's domestic policies. Deeply concerned about the rapid escalation of events but not wishing to give in to the Russians' demands, even threatening armed measures, the Estonian Government confidentially asked the OSCE Chairman-in-Office, Sweden, for urgent assistance.

As a result of consultations with the HCNM, on 25 June President Lennart Meri of Estonia issued a communiqué in which he announced that he had requested an expert opinion from the OSCE on the law on the status of aliens and furthermore that he had decided to establish a roundtable on minority issues. On 30 June 1993, the OSCE states invited the High Commissioner "to respond promptly, on behalf of the OSCE," to President Meri's request. They also voiced their support for the HCNM's continued involvement in Estonia and invited the Government of Estonia "to take appropriate action in response to the recommendations of the High Commissioner on National Minorities."⁷⁴ The political support thus given to the HCNM was reinforced by a letter from the OSCE Chairman-in-Office, Swedish Foreign Minister Margaretha af Ugglas, to President Meri in which she expressed her full support for the High Commissioner's advice on the law.⁷⁵

After a period of intense "shuttle diplomacy", including further consultations with President Meri, on 12 July the HCNM was able to secure a compromise which was reflected in a statement he issued on assurances received from the Estonian Government and from representatives of the Russian community in Estonia. He was able to convince the leaders of the predominantly Russian-populated towns of Narva and Sillamäe to respect the

⁷³ See Konrad J. Huber, *Averting Inter-Ethnic-Conflict: An Analysis of the CSCE High Commissioner on National Minorities in Estonia, January-July 1993* (Atlanta: Carter Center of Emory University, April 1994). Also of interest in this regard is Graham Smith and Andrew Wilson, "Rethinking Russia's Post-Soviet Diaspora: The Potential for Political Mobilisation in Eastern Ukraine and North-east Estonia", *Europe-Asia Studies* 49:5 (1997), 845-864.

⁷⁴ 22nd CSO, Journal No. 2, Annex 2.

⁷⁵ *CSCE Communication No. 194* of 8 July 1993. Although the Swedish Chairman-in-Office was in close and continual contact with the HCNM, it is remarkable that the OSCE states gave the High Commissioner more or less *carte blanche* in this crisis.

territorial integrity of Estonia and to abide by a forthcoming ruling by the National Court on the legality of the referenda. (As generally expected, they were ruled illegal and did not take place.) Following the HCNM's recommendations and comments by Council of Europe experts, the President issued a communiqué in which he announced his decision to send the Law on Aliens back to Parliament.⁷⁶ Subsequently, the law was amended by Parliament, taking on board the HCNM's recommendations.⁷⁷

⁷⁶ The HCNM statement and presidential communiqué are reproduced in Annex 3.

⁷⁷ The High Commissioner's comments and recommendations were made public by President Meri (text in *Helsinki Monitor* 4:3 (1993), 89-91).

V. THE HIGH COMMISSIONER IN ESTONIA AND LATVIA⁷⁸

1. Introduction

From the perspective of the High Commissioner, the situations in Estonia and Latvia had many similarities and in both cases he addressed the same problems and came up with largely similar recommendations. The present chapter will not treat both situations separately but as far as practicable together, referring mainly to the Estonian case. In addition, a few issues which are particular to Latvia will also be discussed.

In the following, the recommendations are not treated in a strictly chronological order but rather thematically, with a focus on the most important sources of friction and tension as the HCNM sees them.

2. General HCNM analysis of the situation

In his first letter to the Government of Estonia,⁷⁹ the High Commissioner expressed his awareness of “the political and psychological background of many of the questions” he would be dealing with: the long years Estonia suffered under Soviet occupation, the bitterness caused by the deliberate policy of Russification during those years, Estonian concerns about the continued presence of Russian troops on Estonian territory, and the determination of the Estonian people to maintain its national identity.

As a gesture to the Estonian Government, Van der Stoel also stated that he had registered the concern it had expressed about the situation of the Estonians living on the territory of the Russian Federation. In other cases the HCNM has taken note of similar concerns and has addressed them if he thought they would fall within his competence. However, he never considered this as a *quid pro quo* nor did he accept any kind of interdependence between situations. (Nevertheless, the Estonian Government from time to time found it useful to point at other situations in which it felt the HCNM should become involved, e.g., Chechnya.)⁸⁰

Then the HCNM established several important basic facts, i.e. that:

- “there is no convincing evidence of systematic persecution of the non-Estonian population since the reestablishment of Estonian independence, and moreover, that there have virtually been no incidents pointing to interethnic violence”;
- the Estonian Government had repeatedly assured him that “it was determined to fully respect its CSCE commitments, including those concerning minorities” and that its aim was “to find a formula for the problem of the non-Estonian population in [Estonia] in

⁷⁸ Based on the written recommendations that were made public by the OSCE.

⁷⁹ Letter of 6 April 1993 to Foreign Minister Trivimi Velliste. The first letter to the Latvian Foreign Minister was remarkably similar in tone and, even though it was longer, contents. As an illustration of the present HCNM’s method of work, it is included as Annex 2.

⁸⁰ E.g. Acting Foreign Minister Riivo Sinijärvi in his letter of 27 November 1996.

accordance with the international standards subscribed to by Estonia.” He then wrote that his recommendations were intended to help the Government achieving that aim; and, finally and most importantly,

- the non-Estonian population was there to stay and the Estonian Government and population would have to come to terms with that fact.

The first statement was a message to three different parties:

- the Estonian Government was reassured that the HCNM would not be an “Estonia-basher” or be focusing exclusively on protecting the human rights of persons belonging to minorities. This has to be seen against the background of the considerable number of visits by international human rights missions to the Baltic states, which had led to a sort of “human rights mission fatigue” on the part of their Governments, and the stream of criticism emanating from Moscow regarding the treatment of the “Russian-speaking” population in the Baltic states;
- the OSCE states were told that there was no reason to treat Estonia as a state with serious human rights problems; as the HCNM would make clear later on, the challenges lay elsewhere; and
- Russia received the signal that its assessment of the situation as one of massive human rights abuses was not shared by the HCNM. (Russia reacted rather low-key to this message and supported the recommendations made by Van der Stoel.)⁸¹ At later occasions, HCNM Van der Stoel would reiterate this point or refer to the overall inter-ethnic situation in positive terms.⁸²

The second statement reinforced this message, but it also tied Estonia to the commitment to implement its international obligations, including OSCE commitments. This was apparently meant to rule out the—albeit unlikely—possibility of an eventual later rejection by Estonia of the latter on the grounds that OSCE commitments are not legally binding. (A variation on this theme are the references the HCNM repeatedly makes to earlier promises or policy statements by Estonian cabinets, also useful in view of the frequent changes in government in Estonia.)⁸³

Thirdly, the HCNM had concluded that the great majority of non-Estonians would probably prefer to stay in Estonia because they had been living there for a long time or had been born

⁸¹ CSCE Communication No. 125 / Add. 1 of 26 April 1993.

⁸² E.g. in his letter of 21 May 1997 to Estonian Foreign Minister Toomas Hendrik Ilves: “Regarding the opinion of non-citizens on their present position in Estonia I have noted the findings of the survey conducted in the autumn of 1996 by the International Organisation for Migration (IOM) and UNDP [the United Nations Development Programme], which show that 6.5% of the non-citizens of Estonia consider their relations with Estonians as very good, 37.4% as good, and 50% as satisfactory. Only 6.2% of this group describe their relations as bad or very bad. These figures demonstrate convincingly that inter-ethnic relations in Estonia are, on the whole, good.”

⁸³ For the political fragility of Estonian and Latvian coalition governments see *Estonia and Latvia: Citizenship, Language and Conflict Prevention*, pp. 13-14.

there and because they would see no prospect of finding homes and jobs in the Russian Federation or another CIS state.⁸⁴ For him, the fact that only a limited number of the non-Estonians residing in Estonia who were eligible to apply for Estonian citizenship had done so was not a sufficiently reliable indication of a lack of interest in acquiring Estonian citizenship. Non-Estonians had either insufficient knowledge of the opportunities which the Estonian legislation offered them or they feared that the language requirements might be too difficult.

The proposition that the non-Estonians were there to stay—for many Estonians hard to come to terms with—in the view of the High Commissioner necessarily led to the conclusion that the Estonian Government would have to work towards the integration of large numbers of non-Estonian non-citizens and giving them a fair deal. In the words of the HCNM, to try to assure a privileged position for the Estonian population vis-à-vis the non-Estonian population would be incompatible with the spirit, if not the letter, of various international obligations Estonia had accepted. It would also involve a considerable risk of increasing tensions with the non-Estonian population. This in turn could lead to a destabilisation of the country as a whole and would have a strongly negative effect on relations between Estonia and the Russian Federation.

Furthermore, the HCNM pointed to the additional, complicating factor that most of the non-Estonians had been living in Estonia for many years and had their roots there, preferring to continue to live there. Indeed, many of them had voted for its independence in the referendum of 1991. Formerly citizens of the Soviet Union living in Estonia, they were now considered aliens. This inevitably caused—sometimes strong—emotions and concerns.⁸⁵

The HCNM concluded that the Government should aim for the integration of the non-Estonian population by a deliberate policy of facilitating the chances of acquiring Estonian citizenship for those who would express such a wish, and of assuring them full equality with Estonian citizens. He then employed a straightforward conflict-prevention argument: Such a policy would greatly reduce the danger of destabilisation because it would considerably enhance the chances of the non-Estonian population of developing a sense of loyalty toward Estonia. This policy would not mean the end of the ethnic Estonians or lead to a clash of interests (which is another point the HCNM often makes), but would be compatible with the wish of the Estonians to ensure and strengthen their political, cultural and linguistic identity.

On a final note, the High Commissioner advocated that humanitarian considerations and reasonableness should be the guiding principles regarding those persons who did not qualify for citizenship nor had the status of permanent residents.⁸⁶

At the same time, from the beginning the HCNM made it clear that a policy of integration could only succeed if the non-Estonian population would also make a determined effort at

⁸⁴ A point also borne out by various sociological surveys. See for example *Estonia's Experiment – The Possibilities to Integrate Non-Citizens Into Estonian Society*, Tallinn 1997 (Tallinn: Open Estonia Foundation, 1997).

⁸⁵ Letter of 1 July 1993 to Estonian President Meri.

⁸⁶ Letter of 6 April 1993 to Estonian Foreign Minister Velliste.

integration. In his view, the adaptation to the reality of the re-emergence of Estonia as an independent state required that at any rate those who had not yet retired from work and did not yet speak the Estonian language would make a determined effort to learn that language to such a degree that they would be able to conduct a simple conversation in Estonian. In this way they would, without having to sacrifice their cultural or linguistic identity, provide a convincing proof of their willingness to integrate. (While Van der Stoel was right in pointing this out, it should be recalled that, strictly speaking, as High Commissioner he can only address governments, not individuals or groups such as minorities.)

In this context, he again made a reference to the issue of troop withdrawal: “The required psychological adaptation [by the non-Estonians] to the reality of the re-emergence of Estonia as an independent state would also be enhanced if it would be possible to ensure rapid implementation of paragraph 15 of the 1992 Helsinki Summit Declaration, calling for ‘the conclusion, without delay, of agreements, including timetables, for the early, orderly and complete withdrawal of foreign troops from the territories of the Baltic states.’”⁸⁷

3. *Recommendations*

The recommendations by the High Commissioner to the Estonian and Latvian Governments fall into two general categories, those on overall government policy towards the non-Estonians and non-Latvians and those regarding specific pieces of legislation or initiatives. The section on general policy focuses on the issues of information and transparency, legal certainty and the establishment of channels of communication. With regard to the latter, I have concentrated on the main issues relating to the position of non-Estonians and non-Latvians in Estonia and Latvia, respectively: citizenship, naturalisation, stateless children and aliens’ legislation. While issues such as cultural and linguistic rights and education are also of importance and would certainly have been dealt with in a more extensive treatise of the Baltic situations, the problem areas selected would for the time being seem to be key to a resolution of the tensions in Estonia and Latvia. The High Commissioner, as well, has given first priority to them.

a. *General policy*

From the very beginning, a constant element has been the HCNM’s emphasis on the need for *information, transparency and visibility*. In his view, non-citizens’ concerns and misunderstandings about the intentions of the Government could be taken away or at least mitigated if they would know what their rights are, what the procedures are, what the Government intends to do regarding new legislation, regulations and practical questions concerning citizenship, language requirements, the status of aliens, etc.⁸⁸ In his letter of 1 July 1993 to President Lennart Meri, the HCNM recommended that the Government announce publicly concrete steps to implement a number of the recommendations he made in April to convince especially the Russian residents of Estonia that the Government of Estonia wants to

⁸⁷ Idem.

⁸⁸ In his letter of 6 April 1993 the HCNM recommends that the Government ensure maximum publicity for the Law on Estonian Language Requirements for Applicants for Citizenship and for the government regulations to implement it, especially amongst the Russian population.

co-operate and does not intend to begin a process of expelling a large number of them. The Government should continue its efforts at informing the non-Estonian population about the legislation (aliens' legislation is mentioned several times), regulations and practical questions concerning citizenship, language requirements, etc.⁸⁹ Apart from the psychological effects—understanding that government actions were aimed at integrating the non-Estonian population and were not the beginning of a process of expulsion—the High Commissioner argued that such publicity measures would also stimulate non-citizens to apply for citizenship or to register.

Initially, the results were mixed. On the one hand, the Estonian Government stated that it fully supported the recommendation of the High Commissioner “to take early action to improve a visible policy of dialogue between the Government of Estonia and the non-citizen population”, including “providing better and more comprehensive information to the non-Estonian population on their rights and obligations, pertinent legislation and regulations as well as on practical matters concerning citizenship application, language instruction and examinations and other issues affecting their integration into Estonian society.”⁹⁰

Four years later, however, the need to provide non-citizens with timely information regarding matters of direct interest for them was apparently still of great concern to the HCNM, i.e. that not enough had been done.⁹¹ The Government apparently also recognised this and made it one of the main tasks of the Minister for Inter-Ethnic affairs whose function was established in 1997. The HCNM made his own contributions to spreading relevant information by commissioning the publication of two brochures on the naturalisation process, in both the Estonian and Russian languages. The first brochure contains the list of questions which can be put during the test on the Constitution. The second provides, *inter alia*, information on procedures of application for citizenship and information on language courses.⁹²

In the correspondence between the HCNM and the Government of Latvia, too, this issue kept cropping up.⁹³ Van der Stoel recommended the production and wide distribution of a simple brochure providing information on citizenship legislation and regulations plus the posting at public places and streets of posters and placards carrying the most important passages or a summary of the main points of the brochure. In the end, the HCNM commissioned the production of an information brochure for distribution among non-citizens.⁹⁴

In this context, the HCNM repeatedly stressed the need to avoid or clarify misunderstandings. For example, with regard to Article 22 of the draft Latvian law on citizenship (25 November 1993), he noted that the notion of “state and nation of Latvia” in the proposed oath would

⁸⁹ E.g. in the letter of 9 March 1994 to Foreign Minister Jüri Luik.

⁹⁰ Comments by the Ministry of Foreign Affairs of Estonia (April 1993) and Statement of the High Commissioner of 12 July 1993 in connection with the crisis in the Northeast.

⁹¹ Letter of 21 May 1997 to Minister Ilves.

⁹² Funded by the Foundation on Inter-Ethnic Relations, which supports the work of the HCNM and is co-located with his office in The Hague, the Netherlands.

⁹³ Letter of 10 December 1993 to Latvian Foreign Minister Georgs Andrejevs.

⁹⁴ Letter of 28 October 1996 to Latvia.

cause “confusion”, meaning that non-Latvians would read it as excluding them. To avoid misinterpretations, he suggested to use the notion “state and people of Latvia”.⁹⁵

In several instances, the High Commissioner has urged the governments in question to ensure that legislation would be *uniformly interpreted and implemented*, e.g., with regard to the Law on Estonian Language Requirements for Applicants for Citizenship (in particular Article 3, paragraph 1)⁹⁶ or the Law on Aliens (Article 21 of which gives a key role to the local government in implementing the law).⁹⁷ Apart from underlining the normal legal requirement that similar cases in similar circumstances be treated similarly—a principle of legal security—these exhortations would also seem to have another objective: to point out to the Government that it is responsible for the actions of lower authorities and that the adoption of legislation is only part of the implementation of measures. (While central governments may be willing to do their best, local officials may not. Most people will deal—will have no choice in dealing—with lower-level officials. Perceptions of progress or the lack thereof will often be determined by local official behaviour.)

Partly against the background of his wish for greater transparency, partly because he is generally in favour of structured government-to-minority dialogue, the High Commissioner has been an ardent supporter of the decision of Estonian President Meri to create a *roundtable of non-citizens and ethnic minorities*. The establishment of the Roundtable had been announced by the President in his communiqué of 25 June 1993: “In order to secure domestic peace and a balanced policy essential for the reconstruction of the Republic of Estonia, the President of the Republic has decided to initiate a Round Table of non-citizens and ethnic minorities. The Round Table will present the conclusions of their discussions to the President in written form. Depending on the nature of each problem, the President of the Republic will forward them for examination to the Council of Europe, the CSCE, the *Riigikogu*, or for settlement by the pertinent state bodies.”

The mandate of the Roundtable is to work out recommendations and proposals concerning, *inter alia*, “the integration into Estonian society of all people who have linked their lives to Estonia or wish to do so”, “the resolution of the social-economic, cultural and legal problems of aliens and stateless persons permanently residing in Estonia as well as of ethnic minorities”, “support for persons seeking Estonian citizenship”, and “the resolution of questions related to the learning and use of the Estonian language.” The members of the Roundtable are appointed by the President, “taking into account the need to have as many different national minority associations and political parties represented as possible.” (There are, however, indications that some minorities are not very satisfied with its results.)⁹⁸

In the view of the HCNM, the Roundtable should also develop into a channel for bringing

⁹⁵ Letter of 10 December 1993 to Foreign Minister Andrejevs.

⁹⁶ Letter of 6 April 1993

⁹⁷ Letter of 1 July 1993 to President Meri.

⁹⁸ The current *Statutes of the Presidential Roundtable on National Minorities*, which were adopted on 11 February 1998, can be found at “<http://www.president.ee/est/office/yl/statutes.htm>”; the composition of its membership is at “[--/members.htm](http://www.president.ee/est/office/yl/members.htm)”.

specific concerns and problems facing non-citizens and ethnic minorities to the attention of the authorities. He recommended to use the first meeting of the Roundtable to emphasise that non-Estonians who have legally resided in Estonia for more than two years and who want to acquire Estonian citizenship would be free to do so. Furthermore, the Roundtable could be used to assuage fears that the language requirement for citizenship would be too high by making it clear that the ability to conduct a simple conversation in Estonian would be sufficient. The High Commissioner at the time offered his help to develop the Roundtable (which was accepted),⁹⁹ continued to follow its activities and development¹⁰⁰ and was from time to time invited to participate in its meetings.

Similarly, Van der Stoel welcomed the initiative of Latvian President Guntis Ulmanis to establish a Consultative Council on Nationalities which according to him could be an important forum to discuss the moral and human aspects of the integration process. He supported its mandate “to gain comprehensive information concerning various ethnic groups in Latvia, and to discuss their most essential problems so as to promote their solution at the level of legislative or executive powers”. He also thought it should discuss ways to remove the causes of the stagnation in the naturalisation process.¹⁰¹ On 16 May 1996, Van der Stoel participated in a seminar in Riga aimed at promoting government-minority dialogue, *inter alia* by promoting the establishment of such a presidential roundtable.¹⁰²

Inspired by the Scandinavian examples, the High Commissioner proposed to both the Estonian and the Latvian (and Lithuanian) Governments the establishment of the office of an independent “*National Commissioner on Ethnic and Language Questions*”.¹⁰³ The main task of this Commissioner would be to take up with government agencies complaints, answer questions, help clarify grey areas in legislation and practice such as possible diverging interpretations of the same laws by different authorities, and in general to act as a go-between to the Government and the community concerned. He or she would also have to actively find out about uncertainties and dissatisfaction involving minorities. In this way, he or she could help to prevent tensions from arising or to reduce or eliminate them. He or she should focus his/her activities primarily on the North-eastern region of Estonia, specifically including the Estonian minority there. Finally, the National Commissioner should have the general confidence of all parties concerned. If it should prove impossible to find one person meeting this criterion, then a commission of three could be established to perform the same tasks, e.g., one Commissioner with two deputies, a triumvirate based on the structure of many ombudsman offices. The HCNM offered his assistance in developing this idea.¹⁰⁴

⁹⁹ Letter of 1 July 1993 to President Meri.

¹⁰⁰ E.g. his letter of 28 October 1996 to Foreign Minister Siim Kallas.

¹⁰¹ Letter of 28 October 1996 to Latvia.

¹⁰² It was organised by the Latvian Centre for Human Rights and Ethnic Studies with the support of the Foundation on Inter-Ethnic Relations and the Soros Foundation in Latvia.

¹⁰³ Letter of 6 April 1993.

¹⁰⁴ The text of the letter and the text of the recommendations are not entirely consistent. The presentation in the main text is an amalgamation of both texts.

In its reaction of April 1993, the Ministry of Foreign Affairs of Estonia commented that the Estonian Constitution already included the post of ombudsman. (Strictly speaking, this was incorrect. The Constitution only provides for the office of the Legal Chancellor who shall analyse national and local legislation to check its “conformity with the Constitution and the laws” and proposals concerning the activities of state agencies.)¹⁰⁵ Nevertheless, it thought that the recommendation merited examination to determine how such an office could most beneficially be established in Estonia. However, matters did not progress much and were eventually subsumed under the general heading of an ombudsman dealing with all human rights-related complaints. In May 1997, the HCNM responded that “If the Ombudsman would be able to deal with the complaints of all residents of Estonia, and not exclusively its citizens, he could in effect fulfil the role of the National Commissioner on Ethnic and Language Questions (...).”¹⁰⁶ Estonian Foreign Minister Toomas Hendrik Ilves reacted affirmatively.¹⁰⁷

(So far, this office has not been established. Apparently, the Estonian Government has decided to expand the mandate of the Legal Chancellor to include ombudsman-type activities, probably including cases involving non-citizens. However, this office is not independent but is filled by a government official.)

b. Citizenship

Estonia and Latvia were annexed by the USSR in 1940 and regained their independence only in 1991. As a result of the massive Russification during the Soviet period, “Russian-speakers” and their descendants now account for about 35 percent of the population of Estonia and for 44 percent in Latvia (as opposed to about 8-10 percent in the pre-war period). Fearful of losing their identity, after the resumption of independence in 1991 the Estonian and Latvian Governments decided not to give automatic citizenship to those people who had settled in the country during the Soviet period.

Instead, the Estonian parliament, or *Riigikogu*, on 26 February 1992 re-adopted Estonia's pre-war Law on Citizenship (adopted in 1938 and amended in 1940). As a result, only those people who had lived in Estonia prior to 1940 or their descendants received Estonian citizenship automatically, while some 400,000 Soviet-era settlers and their offspring found themselves without citizenship.

The Law on Citizenship also laid down conditions for naturalisation, stating that aliens wishing to obtain Estonian citizenship must live in Estonia on the basis of a permanent residence permit for no less than two years before and one year after applying for citizenship; they were also required to demonstrate a knowledge of the Estonian language. A parliamentary decision of 26 February 1992 determined that the time period for permanent residence was to be calculated from 30 March 1990. A non-citizen who had taken up residence in Estonia on or before that date and had lived there continuously ever since became

¹⁰⁵ Chapter XII of the Constitution of the Republic of Estonia. The English translation of the Constitution can be found at: <http://www.rk.ee/rkogu/eng/epseng.html>.

¹⁰⁶ Letter of 21 May 1997 to Minister Ilves.

¹⁰⁷ Reply of 4 June 1997.

eligible to apply for Estonian citizenship, therefore, as of 30 March 1992. The Law on Language Requirements for Applicants for Citizenship, adopted in 1993, required applicants for citizenship to pass a test in the Estonian language.

The implementation law allowed the Government to waive requirements for applicants who were ethnic Estonians or who had performed valuable service to Estonia but prohibited the naturalisation of (1) foreign military personnel on active service; (2) persons who had been in the employ of the security and intelligence services of the USSR; (3) persons who had been convicted of serious criminal offences against the person or who had a record of repeated convictions for felonies; and (4) persons without a legal steady income. Those whose applications for naturalisation were rejected did not have the right of appeal.

The Law on Language Requirements for Applicants for Citizenship, adopted in 1993, required applicants for citizenship to pass a test in the Estonian language. This created problems for some non-citizens, particularly in places where Russians made up the majority of the population.

In Latvia, a similar development took place. A Supreme Council Resolution was passed on 15 October 1991 declaring that only citizens of the interwar republic (1918-1940) and their direct descendants could automatically become Latvian citizens. The rest (who amounted to almost 30% of the population) would have to wait for the adoption of legislation on naturalisation. The October Resolution also listed the conditions for naturalisation—16 years of residence, knowledge of the Latvian language and swearing an oath of loyalty to the Republic of Latvia—and impediments to acquiring citizenship, i.e. service in the Soviet military or secret police and membership of the Soviet Communist Party.

In the analysis of the High Commissioner, the fact that in both countries the majority, if not the vast majority, of non-citizens wanted to stay inevitably led to the conclusion that these people would have to be integrated, meaning that they would have to feel secure in Estonia or Latvia and develop ties of trust and loyalty to these states. Concerns that non-citizens had about their present and future status would have to be dispelled. Naturalisation, the acquisition of Estonian or Latvian citizenship, was—and still is—in his view the one major factor facilitating such a process.

Otherwise, non-citizens might apply for Russian citizenship, to which virtually no requirements are attached except former Soviet citizenship, which would increase the already large group of people with civic loyalties to the Russian Federation (at present about 130,000 or almost ten percent of the overall population of Estonia, far less in Latvia). Moreover, since under international law a state has certain rights regarding the protection of its citizens abroad, the presence of hundreds of thousands of Russian citizens in Estonia or Latvia would lead to strongly increased Russian attempts at interference in the internal affairs of these states.

(Strangely, the Estonian Government did not seem too worried about this: “That individuals living in Estonia continue to apply for Russian citizenship should not be a cause for concern. As you yourself have emphasised, the main goal should be to decrease the number of stateless

individuals. The granting of Estonian citizenship depends in large part on the willingness of the applicant him- or herself to complete the naturalisation requirements, a factor which is difficult for the Government to influence. The decision by some individuals to take Russian citizenship until such time as they are ready to decide to apply for Estonian citizenship, and take the requisite tests, should not be viewed as a negative development.”¹⁰⁸

In the case of Latvia, High Commissioner Van der Stoel warned that the reputation of Latvia as a democratic state was at stake: “(...) within the community of CSCE states, the solution of the citizenship issues is seen as being closely connected with democratic principles. If the overwhelming majority of non-Latvians in your country is denied the right to become citizens, and consequently the right to be involved in key decisions concerning their own interests, the character of the democratic system in Latvia might even be put into question. In this connection I refer to the 1990 CSCE Copenhagen Document which states that the basis of the authority and legitimacy of all governments is the will of the people.”¹⁰⁹

As a consequence of Van der Stoel’s insistence on the centrality of naturalisation to the solution of the ethnic issues in Estonia and Latvia, many of his recommendations are aimed at facilitating and promoting the acquisition of Estonian or Latvian citizenship by the stateless in those countries. In his view, requirements should not be unreasonably difficult and the Government would have to provide for the possibility to take language training. Apparently, many non-Estonians and non-Latvians were unaware of the possibilities for applying, doubted that they would be able to pass the required tests, or simply preferred sitting on the fence and to wait and see what would happen. A major challenge therefore is to convince the non-citizens that it is worthwhile investing time, energy and money in the naturalisation process. After all, they would have to make the choice to apply for citizenship and to prepare for the naturalisation process, including the language and constitutional knowledge tests.

Furthermore, for those who had not, or not yet, acquired citizenship, the HCNM argued that their status as residents and aliens would have to be defined and protected in such a way that fears of expulsion and economic discrimination would be groundless.

Addressing these major issues entails tackling a great number of sub-issues: questions concerning statelessness, in particular of children; the high level of language and knowledge requirements, examination fees (too high for many), the possibility of repeat examinations (originally not foreseen), the requirement of a lawful income (unemployment benefits now count as such), non-discrimination and the period of required residence; aliens’ passports, (temporary and permanent) residence and employment permits for aliens; proper appeals procedures and the role of courts, concerns about safeguarding a uniform interpretation of the law; and the position of army and security services personnel and their families. Each of these sub-issues has been the subject of a number of HCNM recommendations.

¹⁰⁸ Letter of 27 November 1996 by Acting Foreign Minister Sinijärv.

¹⁰⁹ Letter of 10 December 1993 to Minister Andrejevs.

In the following I will concentrate on the central issues only, many of which have been the subject of long and sometimes difficult consultations between the High Commissioner and the Governments of Estonia and Latvia.

c. Naturalisation

From the very beginning of his involvement in Estonia and Latvia, the High Commissioner has recommended that the *language requirements* should not exceed the ability to conduct a simple conversation in the national language (a knowledge of about 1500 words) and that the requirements would practically be waived for persons born before 1 January 1930 and for disabled persons. In 1997,¹¹⁰ the HCNM concluded with regard to Estonia that after the various changes made to it the language test could not reasonably be considered too high. Nevertheless, it was still a formidable barrier. When the written test was abolished for applicants born before 1 January 1930, the HCNM recommended that for them the oral test also be abolished.¹¹¹

Both with a view to the language test as part of the application procedure for citizenship and for the integration in society as a whole, the HCNM deemed essential the promotion of the *knowledge of the national language*.¹¹² He has continually encouraged both Governments to enhance their efforts aimed at the acquisition by non-indigenous residents of a reasonable level of knowledge of the language. He therefore welcomed the decision of the Estonian Government to make an effort to increase the number of qualified teachers in the Estonian language, especially in those areas of Estonia where Russian speakers constitute the majority of the population (i.e. the North-east). The problem of resource constraints was discussed with other governments, in particular in Scandinavia and with the European Commission, and a number of governments have assisted Estonia (and Latvia) in these efforts.¹¹³

According to the new Estonian Law on Citizenship which came into force on 1 April 1995, applicants for citizenship would also have to pass an *examination on the Constitution of Estonia*. The HCNM agreed that persons who want to enjoy the benefits of citizenship should also show their willingness to integrate by acquiring a certain knowledge of the official language of the State and of the principles of the State structure. However, he thought that many questions were too difficult, e.g., who decides the question of handing over a citizen of Estonia to a foreign state, who has responsibility for securing (people's) rights and freedoms, and naming three basic obligations of each citizen established in the Constitution of the Estonian Republic. Moreover, applicants would have to use the Estonian language in answering the questions. The HCNM therefore suggested making the examination concerning the Constitution considerably easier. Although the Government of Estonia has indeed made a number of changes to the examination, discussions are still ongoing.

¹¹⁰ Letter of 21 May 1997 to Minister Ilves.

¹¹¹ Letter of 28 October 1996 to Foreign Minister Kallas.

¹¹² *Idem*.

¹¹³ *Inter alia* EU-PHARE assistance of 1.4 mECU.

The *required period of residence* before one could apply for citizenship also raised concerns. In December 1994,¹¹⁴ the HCNM advocated that the draft Law on Citizenship which was then under consideration in the *Riigikogu* make it very clear that the criteria of five (plus one) years of permanent residence—counted from 30 March 1990—would be based on the time of actual residence in Estonia,¹¹⁵ and that the period spent in Estonia would be calculated both on the basis of permanent registration in the former Estonian SSR and on the basis of residence permits, permanent or temporary, under the new Law on Aliens. (Non-citizens who had been residing in Estonia since at least 30 March 1990 would fulfil the residence requirement on 30 March 1995.)

Of particular concern to Van der Stoel in the case of Latvia were the steps taken to limit the number of possible applicants for naturalisation in order to prevent a situation in which too many non-Latvians would be naturalised at the same time: *the quota and windows systems*. Apparently, the Latvian Government feared that its administration would be overwhelmed by the number of applications and that society would be swamped by people who were not sufficiently able to integrate.

Article 9 of the draft Law on Citizenship of 25 November 1993 established annual naturalisation quotas, the size of which would be decided upon by the Government and approved by the Latvian parliament, or *Saeima*, “taking into consideration the demographic and economic situation in the country, in order to ensure the development of Latvia as a single-nation state.” Van der Stoel feared that the phrase “single-nation state” would lead to concerns about the rights of non-Latvians. Furthermore, the Government and Parliament would have such latitude in determining the size of the annual quotas that they could decide not to allow any naturalisation or very small quotas for a considerable number of years. This would lead to considerable and long-term uncertainty, even among persons who had been living in Latvia for a long time or were born there. (Van der Stoel implied that this legal uncertainty was incompatible with a society based on the rule of law in which the people know about their rights and the rights are established and granted in clear terms by the law.)

Instead, HCNM Van der Stoel recommended replacing the quota system by a system which would give precedence to four categories such as persons married to a Latvian citizen and persons born in Latvia. Thereafter, naturalisation would start in 1996 for persons having resided in Latvia for 20 years, in 1997 for those with 15 years of residence, and in 1998 for all those with 10 years of residence. (In addition to the residence requirement, applicants would have to demonstrate a basic knowledge of the Latvian language and swear an oath of loyalty to the Republic of Latvia.) In this way, a gradual system of naturalisation would be maintained but non-Latvian residents would have certainty about their chances of acquiring citizenship.¹¹⁶

¹¹⁴ Letter of 8 December 1994 to Minister Luik.

¹¹⁵ The requirement is that an applicant for citizenship must have had permanent residency in Estonia for at least five years before the moment of application and one additional year after the application has been registered. This requirement does not apply to those who lived in Estonia before 1 July 1990 and applied before 30 April 1996.

¹¹⁶ Letter of 10 December to Minister Andrejevs.

Indeed, the final text of the Law on Citizenship did not include a system of annual quotas. Then, however, the so-called “window system” was introduced which did not allow all those interested in citizenship to apply at the same time but gave priority to those born in Latvia over those born outside Latvia and priority to the younger age groups in each of a number of special categories over the older ones. Thus, the right to apply for naturalisation was spread over 7 years, beginning in 1996 (instead of the three years proposed by the HCNM). Van der Stoel noted that only very few applicants had made use of the “window” which was open in 1996. He concluded that the problem confronting Latvia was not the danger of being swamped by a great number of applicants at the same time, but the risk that the process of naturalisation was moving much too slowly. He therefore recommended the abolishment of the “window system”.¹¹⁷

After a lengthy discussion with the Government, a difficult struggle developed within the *Saeima* which eventually adopted the necessary amendments to the Latvian Law on Citizenship (on 22 June 1998). However, political parties opposed to the amendments (which also involved granting citizenship to all stateless children born in Latvia; see below) managed to force a national referendum (which coincided with the political atmosphere of a national election being held on the same date). On 3 October 1998 the referendum was decided in favour of the retention of the amendments and as a consequence the “window system” was abolished. (It is interesting to note how closely this process was followed by the EU, which issued congratulatory statements on 25 June and 5 October 1998, praising Latvia for its “farsighted” and “courageous” decisions. In its 5 October statement, the EU concluded that the outcome of the referendum was “consistent with the principles and aims of the European Union”—which in view of Latvia’s aspirations to become an EU member can also be construed as a warning not to deviate from the right path.)

d. Stateless children

From the beginning, the High Commissioner has recommended specifically that children born in Estonia who would otherwise become stateless should be granted Estonian citizenship.¹¹⁸ Although the Ministry of Foreign Affairs seemed to respond positively, apparently little concrete action was taken on this issue. (In Latvia, the same problem existed, addressed by the High Commissioner in almost exactly the same terms.)

With a view to stimulating a then stagnant process (and hopefully spurring the overall integration process), HCNM Van der Stoel wrote extensively on 21 May 1997 to Estonian Foreign Minister Ilves on the issue. He presented first an elaborate legal argument why Estonia is obliged to grant citizenship to children born on its territory who would otherwise be stateless. He then argued that there were equally strong political arguments for doing so. The vast majority of the younger generation were eager to integrate and learn the Estonian language, supported in this by their parents. The risk would be very small that the group of

¹¹⁷ Letters of 28 October 1996 and 23 May 1997 to Minister Birkavs.

¹¹⁸ The HCNM made reference to Article 15 of the Universal Declaration of Human Rights; Article 3, paragraph 6, of the Estonian Citizenship Act; Article 24, paragraph 3, of the International Covenant on Civil and Political Rights; and Article 7, paragraph 2, of the Convention on the Rights of the Child.

children who should automatically receive Estonian citizenship would have inadequate knowledge of the Estonian language. Concluding, the HCNM stressed that he did not argue for an automatic granting of citizenship to this category of children. Parents would have to apply and they would have to have had lawful and habitual residence for a period of five years immediately preceding the lodging of such an application.

At first, the Estonian Government rejected the reasoning of the High Commissioner, arguing that commitment would have to be shown by taking the language and constitutional tests.¹¹⁹ However, later it changed its course and amendments to the citizenship law concerning stateless children were submitted to Parliament in December 1997. Minors born after 26 February 1992 would be given citizenship if they otherwise would have no citizenship at all. In the *Riigikogu*, however, matters did not go smoothly and, despite efforts by the HCNM and pressure by the EU, dragged out almost twelve months, the main resistance coming from the Reform Party. Eventually, during a meeting with experts sent by the HCNM at the request of the Constitutional Committee of the Parliament, the Committee—dominated by more parliamentarians of the Reform Party—agreed not to submit its own proposals but to accept the government bill amending the Citizenship Law according to the High Commissioner’s recommendations. (A not too substantial change was made to the bill.) The amended text provides that a stateless child born in Estonia after 1992 will be granted Estonian citizenship upon application by its parents if it is under the age of fifteen and if its parents are stateless and have legally resided in Estonia for at least five years prior to the moment the application is made. On 8 December 1998, the bill was adopted by parliament and will enter into force on 12 July 1999. As a result, citizenship can be conferred in a simplified way to about 6,500 stateless children born in Estonia.

The problems surrounding this issue are probably an indication of the strength of the emotions which are involved in the Estonian-Russian inter-ethnic relationship and also of the insecurity of a still fragile nation. Apparently, granting citizenship even to a relatively small group of non-Estonian children (about 6,500 in all) without a language test (although they will be obliged to learn the Estonian language at school) raised acute fears of irreversible, fundamental changes in society to the detriment of Estonians.

e. Aliens’ legislation

According to Estonia’s 1993 Law on Aliens, an alien is defined as a person who is not a citizen of Estonia, i.e. a citizen of another state or a stateless person. The majority of non-citizens in Estonia are ethnic Russians. The law provided a one-year period during which non-citizens who came to Estonia prior to 1 July 1990 and were permanent residents of the former Estonian SSR could apply for temporary residence permits. They could also apply for permanent residence at the same time. Following delays and confusion in implementation as well as international criticism, including comments from the HCNM, the application deadline was extended several times. As of 1 January 1997, the number of those who had received temporary residence status was given as 335,368.

¹¹⁹ Letter of 4 June 1997 by Minister Ilves.

As described above, it was the issue of the status of aliens which in 1993 demonstrated how the relationship between the Estonian Government and the ethnic Russian minority could quickly worsen because of basic distrust, lack of information and measures which were not well thought through. Initially, the High Commissioner had not made recommendations regarding aliens' legislation as a new law was in preparation. After the tense stand-off between the central authorities and local authorities in the Russian-dominated Northeast of Estonia was resolved through mediation by the High Commissioner, Van der Stoel wrote a letter to the President on 1 July 1993, in which he expressed his opinion that the draft law should not be promulgated in its present form and suggested amendments, most of which were incorporated into the new law.

One of the contentious issues the HCNM raised on a number of occasions was the issuance of *aliens' passports*, a necessity for those non-citizens of Estonia who wanted to travel to other states. He addressed some unclarities in the law regarding those travel documents and the procedure by which they could be obtained and argued that all aliens should have the right to apply for such a passport. He also pointed out that the introduction on a larger scale of alien passports could help to avoid a situation in which an increasing number of non-citizens would apply for Russian citizenship in order to solve their travel problems, even if they intended to continue to live in Estonia, an argument he also used when expressing concern over the delays in the process of issuance of aliens' passports. In response, the Estonian Government decided to enlarge the categories of people eligible to receive an alien's passport by those who possessed permanent registration in the former Estonian SSR and did not have a valid passport or a similar document. At the request of the Estonian Government, the HCNM appealed to all OSCE states who had not yet recognised the Estonian Alien's Passport as a legal travel document to do so "at their earliest convenience."¹²⁰

Residence and employment permits for aliens was another source of unrest among the non-citizen population of Estonia and remained so even after its revision by the *Riigikogu* on 8 July 1993. Initially, the requirement that non-Estonian residents who had entered the country before 1 July 1990 had to apply for residence permits under the new Law on Aliens was interpreted by them to mean that they would have to remain non-citizens. After the revision, the Law on Aliens provided for the possibility of permanent residence permits for persons who settled in Estonia prior to 1 July 1990 and who continued to reside in Estonia on the basis of permanent registration in the former Estonian SSR. However, since those persons would only be granted temporary residence permits, which after a period of three years would be exchanged for permanent residence permits, fears arose that acquired rights might be endangered during the period of temporary residence. (In the event, the Government started issuing permanent residence permits sooner.) These fears included possible negative consequences affecting the right to work, to pensions and other state support payments, to participate in the privatisation process and to family reunification. In both cases, the Government assured Van der Stoel that these fears were groundless and accepted his recommendation to improve the clarity of the law on these issues.

¹²⁰ Letter of 14 February 1996 to the Permanent Council.

4. *Reactions by the Governments*

After all the international attention to the contentious human rights situations in Estonia and Latvia, the declarations by the HCNM referred to above were naturally very welcome. The first reaction by the Estonian and Latvian Governments was therefore positive. The Estonian Government remarked that “the High Commissioner [had] demonstrated great knowledge and a clear understanding of the complex situation in our country” and that he had “compiled what we deem to be a fair and accurate analysis of the current situation, together with valuable recommendations for its improvement.”¹²¹

The initial response by the Latvian Government (18 April 1993) was also positive, noting that “Most of your conclusions appear to be reasonably grounded, especially those concerning the lack of a new citizenship law in Latvia.” The Latvian Foreign Minister did not fail to point out that the situation the HCNM studied was “a consequence of the long years which Latvia suffered under Soviet occupation.”

Nevertheless, thereafter the continuous attention by the HCNM was not always welcomed by the Estonian and Latvian Governments, and there were even times when the HCNM was not welcome, although he was never refused access. In general, the Latvian Government seems to have been slower in responding than its Estonian counterpart and less inclined to make concessions, perhaps because Latvians felt more threatened in their identity than the Estonians. (The non-Latvian population was larger in proportion to the Latvian population than the non-Estonian to the Estonian population.) In both cases, however, changing policies, amending legislation and monitoring developments required continuous attention by the High Commissioner and numerous follow-up visits and discussions.

Estonian Foreign Minister Ilves gave a brief look behind the scenes when in April 1997 he had the following to say to the OSCE Permanent Council: “Estonia became one of these regions [of OSCE attention] for reasons unconnected to its own actions, and quite honestly, we were in no way thrilled to see this imposed upon us.” However, the Minister’s final judgement is very positive: “Fortunately, a great deal has changed since that time. And here we would like to commend and recommend to others the work of the High Commissioner. Over the course of several years, Mr. Max van der Stoel’s judicious suggestions have been of great use to us in making Estonia a successful European country in handling minority affairs.”¹²²

The Estonian Government had also learned how to use the High Commissioner’s attention to its advantage in its continuous public-relations struggle with the Russian Federation. Minister Ilves announced to the Permanent Council that the Government had decided to circulate the High Commissioner’s recommendations and Estonia’s response to each of them, “so that everyone may ascertain for themselves how Estonia has followed those suggestions. Thus,

¹²¹ Comments by the Ministry of Foreign Affairs of Estonia of April 1993.

¹²² Address by Minister Ilves to the Permanent Council on 10 April 1997. (This positive tone is also apparent in his response to the HCNM of 4 June 1997.)

notwithstanding the confidentiality within which the High Commissioner works according to his mandate, the practical results of his work will be visible and verifiable to all. Nevertheless, from time to time voices can be heard which claim that Estonia has refused to follow the suggestions of the High Commissioner. This may be simply due to an unwillingness to keep abreast of the current situation, or it may also be a deliberate attempt to weaken the institution of the High Commissioner.”¹²³

At the time of Minister Ilves’ intervention before the Permanent Council Estonia had already accepted most recommendations by the High Commissioner. Since then, matters have progressed. In 1997 a Minister for Inter-Ethnic Relations was appointed, which drew praise from Van der Stoel as a demonstration of the importance the Government attached to the inter-ethnic issue.¹²⁴ Another welcome development was the adoption on 10 February 1998 of Estonia’s integration strategy—a government plan. According to a resolution of the President’s Roundtable of 10 March 1998, it aims at the reduction of the number of stateless persons in Estonia and a focus of its aliens’ policy on children and young people. A notable exception to these positive developments was the resistance to the suggestion regarding the conferral of citizenship on stateless children born in Estonia—an issue which has only recently been resolved.

Generally, the impression seems to be that with the adoption by the Estonian Parliament of amendments to the Citizenship Law simplifying the granting of citizenship to stateless children, Estonia has now implemented most, if not all, HCNM recommendations. On 9 December 1998, the EU issued a statement in which it welcomes the amendments and “acknowledges that Estonia has now fulfilled the OSCE recommendations with regard to citizenship.”¹²⁵ The High Commissioner himself seems to have indicated that he does not see the need for additional recommendations—at least with regard to the Citizenship Law. However, the focus will now shift more towards the actual and continuing implementation of the recommendations.

The overall relationship between the High Commissioner and the various Latvian governments has also had its ups and downs. While all stated repeatedly that they took the recommendations of the HCNM seriously, at times there seem to have been more frictions than with the Estonian Government. However, over the past few years, Foreign Minister Valdis Birkavs in his replies has given the impression of real appreciation for the work of Van der Stoel. Moreover, in an address to the North Atlantic Council on 6 May 1998—over a year after Minister Ilves’ remarks quoted above—he referred to the “useful collaboration” with HCNM Van der Stoel: “thanks to his tireless efforts and pointed advice, my Government was able to make profound changes in an endeavour to achieve a more stable and integrated society within Latvia.” (A reflection, *inter alia*, of the difficulties the Government still faced at that moment with regard to amending Latvia’s citizenship legislation, he warned that “I wish also to stress that in adopting the recommendations made, we trust that the goal posts will

¹²³ *Idem*.

¹²⁴ Letter of 21 May 1997 to Minister Ilves.

¹²⁵ Issued in Brussels and Tallinn in the afternoon of 9 December 1998.

not be moved and that other new measures will not now be proposed by international organisations.”)¹²⁶

However, these positive comments notwithstanding, it should not be assumed that matters can be left to themselves. A case in point is the recent controversy over amendments to the Estonian Law on Parliamentary Elections, Law on Local Elections and Law on the State Language. These amendments introduced the requirement that members of Parliament and members of local representative bodies possess a knowledge of the Estonian language in conformity with criteria enumerated in the law, e.g., that they be able to understand the content of legal acts and ask questions and submit proposals and communicate with the electorate in Estonian. These amendments were passed by the *Riigikogu* on 15 December 1998 and promulgated by President Meri on 31 December despite an appeal made by High Commissioner Van der Stoel to reject them. (There are indications that these measures were part of a package deal within the *Riigikogu* which also included the adoption of the law on stateless children.) They are to take effect on 1 May 1999, i.e. after the 7 March 1999 parliamentary elections but before the local elections planned for the Autumn.

In a letter to the President of 19 December 1998,¹²⁷ the HCNM argued that the required knowledge of written and spoken Estonian as a condition for being a member of the *Riigikogu* or a local governmental council was “in accord neither with the Estonian Constitution [which, he wrote, “stipulates no linguistic requirement as a condition to vote or to stand for office”] nor with Estonia’s international obligations and commitments”, in particular Article 3 of Protocol I of the European Convention on Human Rights and Article 25 of the International Covenant on Civil and Political Rights. He also drew attention to the Council of Europe’s Framework Convention for the Protection of National Minorities and the 1990 OSCE Copenhagen Document. Moreover, Van der Stoel wrote, the promulgation of the amendments “would not constitute a constructive contribution to the national integration process.”

This controversy would seem far from over. According to the OSCE Mission to Estonia, several Russian-speaking members of parliament were considering turning to the Office of the Legal Chancellor to have the constitutionality of the provisions examined. It also reported that the full text of the letter of 19 December was published on 4 January 1999 in the Russian-language daily *Estonija*.¹²⁸ (As a result, there have been articles in Estonian newspapers accusing the HCNM of collusion with Moscow.) In the second week of January 1999, the legal adviser of the HCNM and other experts travelled to Tallinn to discuss these matters with the authorities from a legal point of view. It seems that the EU is also discussing the matter with the Estonian authorities.

¹²⁶ Text at “<http://www.mfa.gov.lv/MFA/PUB/RUNAS/VB/Vb980506.htm>”.

¹²⁷ Although on 11 September 1998 the HCNM had stated in writing his intention not to come forward with new proposals regarding the Law on Citizenship if the *Riigikogu* were to amend that law as requested, that did not preclude him from commenting on new legislative initiatives if he thought it necessary. The letter of 19 December 1998 by the HCNM to President Meri is reproduced in Annex 4.

¹²⁸ OSCE Mission to Estonia, Spot Report 1/99 (4 January 1999).

VI. THE HIGH COMMISSIONER AND LITHUANIA

In marked contrast to Estonia and Latvia, the inter-ethnic situation in Lithuania has been much less tense. During his first and only visit to Lithuania from 21 to 23 January 1993 HCNM Van der Stoel found no domestic or international tensions to speak of. As the situation has remained relatively relaxed, the High Commissioner has not returned for follow-up visits to Lithuania. In general, it seems that Lithuania has reacted promptly and favourably to recommendations by international organisations in the area of human rights, including the rights of persons belonging to national minorities.

Importantly, the demographic situation in this south-western Baltic state is quite different from those in Estonia and Latvia with the non-Lithuanian component of the population not exceeding twenty percent, mainly ethnic Poles (9%) and Russians (8%). The Government of Lithuania had decided to solve the citizenship question on the basis of free choice of citizenship, the so-called “zero option”. All permanent residents, except Soviet military and security personnel and their families, could acquire Lithuanian citizenship regardless of nationality, political views, duration of residence, or knowledge of the Lithuanian language. The vast majority of permanent residents seemed to have opted for Lithuanian citizenship in the period in which that choice had to be made (November 1989 – November 1991). The new Citizenship Law which was adopted in December 1991 introduced the following requirements for naturalisation after that period: at least 10 years’ residence in Lithuania, fluency in the state language and knowledge of the Constitution. Citizenship was granted automatically to those who had it before 15 June 1940 and to their descendants.

An important factor contributing to the absence of international tension has been the attitude of the Polish Government, which in conversations with the HCNM and in its behaviour showed itself quite aware of the historical delicacy of its relationship with its Lithuanian neighbour. In addition, most persons belonging to the Polish minority appeared to have a political orientation more towards communist Moscow circles—as had become apparent in their positive reaction to the coup of 1991—than to Warsaw.

Van der Stoel made only one recommendation.¹²⁹ He noted that the problem of citizenship for members of the Russian and Polish minorities had been virtually resolved. In his analysis, the relationship between the various population groups seemed on the whole to be harmonious, even though a number of desiderata apparently remained unfulfilled. Van der Stoel had heard complaints of the Polish minority concerning registration procedures for regional elections. In that connection, as in Estonia and Latvia he recommended the creation of the office of an Ombudsman which would have as its main task to address in a non-judicial way complaints concerning administrative decisions and practices. To make the suggestion more acceptable, Van der Stoel referred to the model of the office of Ombudsman as it had developed in the Scandinavian countries. Such an office would serve the population as a whole, but it could also play a useful role in addressing complaints concerning administrative decisions and practices relating specifically to members of the Russian and Polish minorities.

¹²⁹ Letter of 5 March 1993 to Foreign Minister Povilas Gylys.

Foreign Minister Gylys thanked the HCNM for his “sympathetic evaluation” of the situation in Lithuania but did not embrace his recommendation. With regard to the suggestion to create the office of an Ombudsman, the Minister referred to Article 73 of the Lithuanian Constitution according to which offices of *Seimas* “controllers” would be established with the mandate to “examine complaints of citizens concerning the abuse of powers by and bureaucracy of, State and local government officers (with the exception of judges). Controllers shall have the right to submit proposals to the court to dismiss guilty officers from their posts”. According to the Minister, the drafters of the Constitution had been “very impressed” by the Scandinavian experience of Ombudsmen activities, and Article 73 was an attempt to reflect this. Article 73 also stated that the competencies of the “controllers” “shall be established by law”. The Minister expressed confidence that Parliament would “not allow [the adoption of this law] to be delayed”. He promised that as soon as the first draft would appear, it would be sent to the HCNM for his comments.¹³⁰ (It is unclear whether this has indeed happened.)

¹³⁰ Reply of 16 April 1993.

CONCLUSION

After six years of High Commissioner Van der Stoel's involvement in Estonia and Latvia, quite naturally the question of what the effect has been arises. Regarding his primary task, has he prevented or helped prevent, directly or indirectly, a situation or a development towards a situation in Estonia or Latvia in which violence would have been likely or even probable? It has almost become commonplace to state that the results of conflict prevention are impossible to measure because, after all, who knows whether violence would have broken out if this or that measure or range of measures had not been taken? Not much easier to answer is the question of what is needed to stave off an escalation before the point is reached beyond which it cannot be stopped anymore. In Macedonia, inter-ethnic Albanian-Macedonian tensions are such that violence could be around the corner, depending on developments in and around Kosovo. This may well become an important test-case to see whether and under which circumstances the involvement of an international mediator such as High Commissioner Van der Stoel does make a crucial difference in a really volatile situation.

In Estonia or Latvia, no such explosive situations exist or existed, except perhaps for the brief crisis of the Summer of 1993 in the Estonian Northeast. With regard to that crisis the answer would seem to be that, indeed, the involvement of the High Commissioner, acting as the representative of the OSCE, was instrumental in dissolving a potentially dangerous stand-off and preventing an escalation with unforeseeable consequences. As far as the overall situation is concerned, it would seem fair to say that Van der Stoel has been able to convince various Estonian governments about the implications of the continued presence of (ethnically) non-Estonians, in particular Russians, in Estonia and of the necessity of finding an equilibrium between the desire to protect Estonian identity and the need to give non-Estonians a fair deal. As a result, a good number of amendments to minority-relevant legislation and administrative practices have been adopted which address many fundamental concerns on the part of non-citizens, in particular with regard to the naturalisation process and the status of aliens. However, this may be seen to be a necessary but not sufficient step towards overall integration. Of equal significance (and possibly of greater concern and potential tension) are issues of maintenance and development of identity both for majorities and minorities, including issues of education and use of language. Concerns in these areas remain.

Overall, as the recent developments with regard to the election laws in Estonia have demonstrated, the legal foundations for a *modus vivendi* between majority and (national) minorities have yet to be completed. Even then, they will need amendments in constant adaptation to an evolving society and there will be the possibility, even the probability, of conflicts of interest. Moreover, the political-psychological undercurrents which are the results of fifty years will not disappear in five years, nor will they simply be neutralised by acts of parliament. Thus, it remains an open question not only whether the legislation and administrative rules and regulations, once enacted, will be faithfully and fully implemented at all relevant levels of government, also under governments of a more ethnic Estonia-centric persuasion, but also whether the minorities in question will make use of the possibilities offered—in particular with regard to naturalisation—and will accept that the steps taken are

sufficient. Moreover, in all likelihood the Russian Federation in the coming years will continue to take an active interest in the domestic Estonian and Latvian situations, if only for geostrategic reasons. Under these circumstances, the OSCE and its High Commissioner should continue to play its conflict-prevention role in Estonia and in Latvia in one way or another for a number of years to come.

ANNEX 1

Mandate of the High Commissioner

The following is the full text of the mandate of the OSCE High Commissioner on National Minorities as contained in the Helsinki Document 1992, Decisions, Chapter II. Since its adoption, there have been no amendments to the mandate.

II

CSCE HIGH COMMISSIONER ON NATIONAL MINORITIES

- (1) The participating States decide to establish a High Commissioner on National Minorities.

Mandate

- (2) The High Commissioner will act under the aegis of the CSO and will thus be an instrument of conflict prevention at the earliest possible stage.
- (3) The High Commissioner will provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO.
- (4) Within the mandate, based on CSCE principles and commitments, the High Commissioner will work in confidence and will act independently of all parties directly involved in the tensions.
- (5a) The High Commissioner will consider national minority issues occurring in the State of which the High Commissioner is a national or a resident, or involving a national minority to which the High Commissioner belongs, only if all parties directly involved agree, including the State concerned.
- (5b) The High Commissioner will not consider national minority issues in situations involving organized acts of terrorism.
- (5c) Nor will the High Commissioner consider violations of CSCE commitments with regard to an individual person belonging to a national minority.

- (6) In considering a situation, the High Commissioner will take fully into account the availability of democratic means and international instruments to respond to it, and their utilization by the parties involved.
- (7) When a particular national minority issue has been brought to the attention of the CSO, the involvement of the High Commissioner will require a request and a specific mandate from the CSO.

Profile, appointment, support

- (8) The High Commissioner will be an eminent international personality with long-standing relevant experience from whom an impartial performance of the function may be expected.
- (9) The High Commissioner will be appointed by the Council by consensus upon the recommendation of the CSO for a period of three years, which may be extended for one further term of three years only.
- (10) The High Commissioner will draw upon the facilities of the ODIHR in Warsaw, and in particular upon the information relevant to all aspects of national minority questions available at the ODIHR.

Early warning

- (11) The High Commissioner will:
 - (11a) collect and receive information regarding national minority issues from sources described below (see Supplement paragraphs (23)-(25));
 - (11b) assess at the earliest possible stage the role of the parties directly concerned, the nature of the tensions and recent developments therein and, where possible, the potential consequences for peace and stability within the CSCE area;
 - (11c) to this end, be able to pay a visit, in accordance with paragraph (17) and Supplement paragraphs (27)-(30), to any participating State and communicate in person, subject to the provisions of paragraph (25), with parties directly concerned to obtain first-hand information about the situation of national minorities.
- (12) The High Commissioner may during a visit to a participating State, while obtaining first-hand information from all parties directly involved, discuss the questions with the parties, and where appropriate promote dialogue, confidence and co-operation between them.

Provision of early warning

- (13) If, on the basis of exchanges of communications and contacts with relevant parties, the High Commissioner concludes that there is a prima facie risk of potential conflict (as set out in paragraph (3)) he/she may issue an early warning, which will be communicated promptly by the Chairman-in-Office to the CSO.
- (14) The Chairman-in-Office will include this early warning in the agenda for the next meeting of the CSO. If a State believes that such an early warning merits prompt consultation, it may initiate the procedure set out in Annex 2 of the Summary of Conclusions of the Berlin Meeting of the Council ("Emergency Mechanism").
- (15) The High Commissioner will explain to the CSO the reasons for issuing the early warning.

Early action

- (16) The High Commissioner may recommend that he/she be authorized to enter into further contact and closer consultations with the parties concerned with a view to possible solutions, according to a mandate to be decided by the CSO. The CSO may decide accordingly.

Accountability

- (17) The High Commissioner will consult the Chairman-in-Office prior to a departure for a participating State to address a tension involving national minorities. The Chairman-in-Office will consult, in confidence, the participating State(s) concerned and may consult more widely.
- (18) After a visit to a participating State, the High Commissioner will provide strictly confidential reports to the Chairman-in-Office on the findings and progress of the High Commissioner's involvement in a particular question.
- (19) After termination of the involvement of the High Commissioner in a particular issue, the High Commissioner will report to the Chairman-in-Office on the findings, results and conclusions. Within a period of one month, the Chairman-in-Office will consult, in confidence, on the findings, results and conclusions the participating State(s) concerned and may consult more widely. Thereafter the report, together with possible comments, will be transmitted to the CSO.
- (20) Should the High Commissioner conclude that the situation is escalating into a conflict, or if the High Commissioner deems that the scope for action by the High

Commissioner is exhausted, the High Commissioner shall, through the Chairman-in-Office, so inform the CSO.

- (21) Should the CSO become involved in a particular issue, the High Commissioner will provide information and, on request, advice to the CSO, or to any other institution or organization which the CSO may invite, in accordance with the provisions of Chapter III of this document, to take action with regard to the tensions or conflict.
- (22) The High Commissioner, if so requested by the CSO and with due regard to the requirement of confidentiality in his/her mandate, will provide information about his/her activities at CSCE implementation meetings on Human Dimension issues.

SUPPLEMENT

Sources of information about national minority issues

- (23) The High Commissioner may:
 - (23a) collect and receive information regarding the situation of national minorities and the role of parties involved therein from any source, including the media and non-governmental organizations with the exception referred to in paragraph (25);
 - (23b) receive specific reports from parties directly involved regarding developments concerning national minority issues. These may include reports on violations of CSCE commitments with respect to national minorities as well as other violations in the context of national minority issues.
- (24) Such specific reports to the High Commissioner should meet the following requirements:
 - they should be in writing, addressed to the High Commissioner as such and signed with full names and addresses;
 - they should contain a factual account of the developments which are relevant to the situation of persons belonging to national minorities and the role of the parties involved therein, and which have taken place recently, in principle not more than 12 months previously. The reports should contain information which can be sufficiently substantiated.
- (25) The High Commissioner will not communicate with and will not acknowledge communications from any person or organization which practises or publicly condones terrorism or violence.

Parties directly concerned

- (26) Parties directly concerned in tensions who can provide specific reports to the High Commissioner and with whom the High Commissioner will seek to communicate in person during a visit to a participating State are the following:
- (26a) governments of participating States, including, if appropriate, regional and local authorities in areas in which national minorities reside;
- (26b) representatives of associations, non-governmental organizations, religious and other groups of national minorities directly concerned and in the area of tension, which are authorized by the persons belonging to those national minorities to represent them.

Conditions for travel by the High Commissioner

- (27) Prior to an intended visit, the High Commissioner will submit to the participating State concerned specific information regarding the intended purpose of that visit. Within two weeks the State(s) concerned will consult with the High Commissioner on the objectives of the visit, which may include the promotion of dialogue, confidence and co-operation between the parties. After entry the State concerned will facilitate free travel and communication of the High Commissioner subject to the provisions of paragraph (25) above.
- (28) If the State concerned does not allow the High Commissioner to enter the country and to travel and communicate freely, the High Commissioner will so inform the CSO.
- (29) In the course of such a visit, subject to the provision of paragraph (25) the High Commissioner may consult the parties involved, and may receive information in confidence from any individual, group or organization directly concerned on questions the High Commissioner is addressing. The High Commissioner will respect the confidential nature of the information.
- (30) The participating States will refrain from taking any action against persons, organizations or institutions on account of their contact with the High Commissioner.

High Commissioner and involvement of experts

- (31) The High Commissioner may decide to request assistance from not more than three experts with relevant expertise in specific matters on which brief, specialized investigation and advice are required.
- (32) If the High Commissioner decides to call on experts, the High Commissioner will set a clearly defined mandate and time-frame for the activities of the experts.

- (33) Experts will only visit a participating State at the same time as the High Commissioner. Their mandate will be an integral part of the mandate of the High Commissioner and the same conditions for travel will apply.
- (34) The advice and recommendations requested from the experts will be submitted in confidence to the High Commissioner, who will be responsible for the activities and for the reports of the experts and who will decide whether and in what form the advice and recommendations will be communicated to the parties concerned. They will be non-binding. If the High Commissioner decides to make the advice and recommendations available, the State(s) concerned will be given the opportunity to comment.
- (35) The experts will be selected by the High Commissioner with the assistance of the ODIHR from the resource list established at the ODIHR as laid down in the Document of the Moscow Meeting.
- (36) The experts will not include nationals or residents of the participating State concerned, or any person appointed by the State concerned, or any expert against whom the participating State has previously entered reservations. The experts will not include the participating State's own nationals or residents or any of the persons it appointed to the resource list, or more than one national or resident of any particular State.

Budget

- (37) A separate budget will be determined at the ODIHR, which will provide, as appropriate, logistical support for travel and communication. The budget will be funded by the participating States according to the established CSCE scale of distribution. Details will be worked out by the Financial Committee and approved by the CSO.

ANNEX 2

Correspondence of the HCNM - Latvia, April 1993

HCNM letter of 6 April 1993

Dear Mr Minister,

Following my visits to Latvia on 15-20 January and 1-2 April 1993, I take the liberty of sending you, annexed to this letter, a number of recommendations concerning mainly the non-Latvian population of your country. I restrict myself to this question because I would go beyond my mandate if I would comment on other problems concerning your country. On the other hand, I can assure you that, in making these suggestions, I have been fully aware of the political and psychological background of many of the questions I am referring to. I think for instance of the long years Latvia suffered under Soviet occupation, the bitterness caused by what is perceived as a deliberate policy of Russification during those years, and your concerns about the continued, though greatly reduced, presence of Russian troops on your territory. I also recall the way you and your colleagues have repeatedly stressed the determination of the Latvian people firmly to establish its national identity in various fields. Finally, I have registered the concern felt by the Latvian Government about the situation of the Latvians living on the territory of the Russian Federation.

I am fully aware of the fact that there is no evidence of persecution of the non-Latvian population since the reestablishment of Latvian independence, and moreover, that there have virtually been no incidents pointing to interethnic violence. My hope is that the ideas I am submitting to you - inspired as they are by the various CSCE documents to which Latvia, together with all other CSCE participating States, has subscribed - can contribute to the promotion of harmony and dialogue between the various population groups in your country.

When I drafted my recommendations, my basic assumption has been that, though a number of non-Latvians have returned to their native country and more might follow, it would be unrealistic to expect that such a return will be on a massive scale. The great majority will probably prefer to stay in Latvia, partially because they have been living there for a long time or have been born there, and partially because they feel that they have no prospect of finding homes and jobs if they would move to the Russian Federation or any other CIS state.

During my visits, I was told by officials of the Citizenship and Immigration Department that according to their estimates the number of non-Latvians that will have acquired Latvian citizenship before June and who will therefore be able to participate in the parliamentary elections scheduled for that month will not exceed 50%. As 98% of all non-Latvians have been living in Latvia for more than 5 years and 93% even for 16 years or more and as the prospects of finding jobs and apartments in the Russian Federation or other CIS republics have to be considered very small, it can be assumed that most of those who so far have not been able to acquire Latvian citizenship will sooner or later apply for it. This conclusion is

supported by official data which show that per March 22nd out of a total of 617,443 persons registered as inhabitants of Latvia who are not Latvian citizens 593,008 want to acquire citizenship.

On the basis of my conversations, I assume that the Government of Latvia, confronted with this situation, will not decide to oblige this group or parts of it to leave the country. Although every Government has the right to remove from its territory persons whose continued presence could be damaging to vital interests of the state, it is also obvious that expulsions on a massive scale would be contrary to generally accepted international humanitarian principles and would, moreover, probably have very serious international repercussions.

From the point of view of harmonious interethnic relations, it would in my view also be undesirable that Latvia would insist on such high requirements for citizenship that a great number of applicants would not be able to meet them. As a consequence, the percentage of citizens of Latvian origin would be higher and that of citizens of non-Latvian origin lower than would be the case if Latvia would follow a more liberal line. However, the disadvantage of such a very strict policy would quite probably be that there would be considerable dissatisfaction amongst the very many who would then not have the chance of obtaining Latvian citizenship. Even though, as you pointed out in your speech before the UN Commission on Human Rights in Geneva on February 15, these persons would be free to choose their place of employment, to engage in professional activities and private enterprise, to receive pensions and unemployment benefits and to have access to health care and housing, they would not have the right to make their views known by participating in the election process.

Another solution would be that Latvia would restrict itself to requirements for citizenship which, broadly speaking, would not go beyond those used by most CSCE states. In my recommendations I have tried to elaborate this formula in somewhat greater detail. It is my opinion that such a policy would be the most effective way to ensure the loyalty of non-Latvians towards Latvia. I do understand that the Latvian Government feels the need, especially in the light of the demographic changes brought about in Latvia during the years of the Soviet period, to take measures to strengthen the Latvian identity. However, there are other instruments than the citizenship law to promote and strengthen the Latvian identity, especially in the cultural, educational and linguistic fields.

I am fully aware that the policy I advocate does not only require an effort on the part of the Latvian Government, but equally a contribution on the part of the non-Latvian population. Adaptation to the reality of the re-emergence of Latvia as an independent state requires that at any rate those who have not yet retired from work and who do not yet speak the Latvian language make a determined effort to master that language to such a degree that they are able to conduct a simple conversation in Latvian. In this way they would, without having to sacrifice their cultural or linguistic identity, provide a convincing proof of their willingness to integrate. The required psychological adaptation to the reality of the re-emergence of Latvia as an independent state would also be enhanced if it would be possible to ensure rapid implementation of paragraph 15 of the 1992 Helsinki Summit Declaration, calling for "the

conclusion, without delay, of agreements, including timetables, for the early, orderly and complete withdrawal of foreign troops from the territories of the Baltic states."

In a policy aiming at the promotion of continued harmonious relations between Latvians and the non-Latvian population the most important element would, of course, be the passing of legislation which demonstrates that the Latvian Government is taking the interests of the non-Latvians living in Latvia fully into account. It would be especially conducive to harmonious relations if the present uncertainty amongst non-Latvians about the forthcoming legislation concerning their position in Latvia could be brought to an end as soon as possible. In this connection, I should like to mention the need for the speedy adoption of a citizenship law.

Experience shows that lack of information about government policies can lead to serious and perhaps often unnecessary misunderstandings. Against this background, I am making some recommendations concerning the problem of communication with the non-Latvian communities.

In my view, it could also greatly facilitate the relationship with the non-Latvian population, if the Latvian Government would decide to set up the office of a "National Commissioner on Ethnic and Language Questions". His or her main task would be to look into complaints by persons which, in their view, have not been correctly dealt with, to signal possible diverging interpretations of the same laws by different authorities, and in a general sense, to act as a go-between to the Government and the community concerned. In this way, he or she could help to prevent tensions from arising or, if they already exist, to reduce or eliminate them. I would be willing to offer you any assistance you might find desirable in developing this idea.

In addition to the recommendations I have mentioned, you will find some others which are self-explanatory in the text which follows. Even though Russians constitute the largest non-Latvian population group in Latvia, I use the term "non-Latvian" in my recommendations in order to make it clear that they do apply equally to Russians and non-Russians amongst the non-Latvian population of your country.

Finally, permit me, Mr Minister, to thank you once again for the kindness shown to me during my visits to Latvia. I was especially struck by the openness with which you and your colleagues answered my questions.

Yours sincerely,

(Max van der Stoel)

Latvia – Conclusions and recommendations

- 1) A new citizenship law should be speedily adopted, in order that the conditions for naturalisation be clearly defined.
- 2) Children born in Latvia who would otherwise be stateless should be granted Latvian citizenship taking into account Article 24, paragraph 3, of the International Covenant on Civil and Political Rights and Article 7, paragraph 1, of the Convention on the Reduction of Statelessness.
- 3) As far as the requirement of a minimum period of residence in Latvia is concerned, such period should not exceed 5 years. This is the period frequently adopted by states and in this case there do not seem to be good reasons not to adopt it. In terms of non-citizens eligible for citizenship, the difference between 16, 10 or 5 years period of required residence is not great (93 percent, 96 percent and 98 percent respectively). Adopting a shorter period would also be a good decision for psychological reasons, since it would be seen as proof of the Government's determination to resolve the citizenship issue.
- 4) For those who are already residents of Latvia, the period of 5 years mentioned in Recommendation No 3 should be reckoned from the date they came to Latvia or were born there, whichever may be the case.
- 5) In order to reduce as much as possible the uncertainty prevailing in the non-Latvian communities, once applicants fulfil the legal requirements for citizenship they should be granted citizenship without delay and no further waiting period should be introduced.
- 6) If the new citizenship law would include a requirement that basic elements of the Constitution should be known, the requirement should be formulated in such a way that different interpretations are not possible. Generally speaking, the requirement that basic elements of the Constitution be known should not be a major obstacle to the acquisition of citizenship.
- 7) Whatever language requirements are chosen, they should not exceed the level of "conversational knowledge" which was required by the Supreme Council Resolution of 15 October 1991. The Government, administrative authorities and courts should be lenient in the application of this requirement as far as citizenship is concerned.
- 8) A clause exempting elderly persons (60 years and over) and disabled persons from language requirements when they apply for citizenship should be introduced.
- 9) It should be made explicit that any eventual requirement that applicants should have a steady legal income in order to qualify for citizenship should not apply to unemployed persons.

- 10) If certain persons would be explicitly excluded by law from acquiring citizenship, the law should stipulate that the validity of any allegation that a person would be the subject of such exclusion would, if denied, have to be established by court, in order to forestall any attempt at improper use of such provision.
- 11) In enacting or implementing legal provisions concerning nationality, citizenship or naturalisation, Articles 1 (3) and 5(d) of the International Convention on the Elimination of All Forms of Racial Discrimination, prohibiting any discrimination based on national or ethnic origin, have, of course, to be fully respected.
- 12) The effective and uniform implementation of the citizenship law should be assured by appropriate review or appeals procedure. A rejection of an application for citizenship, for instance because of a failure to meet language requirements, should not preclude the applicant from applying again. These procedures should be widely publicized.
- 13) In the end, a number of persons will neither qualify for citizenship, nor have the status of permanent residents. The High Commissioner would recommend that humanitarian considerations and reasonableness be the guiding principles regarding those persons.
- 14) The legislation on language should be made more precise. E.g. Article 7 of the Language Law of 5 May 1989, as amended on 31 March 1992, appears to require the use of the Latvian language in the internal affairs of all private enterprises and organizations. However, this had not been the intention of the legislator.
- 15) The Latvian authorities should enhance their efforts at helping non-Latvians to acquire a reasonable level of knowledge of the Latvian language. More use should be made of the mass media, in particular television.
- 16) The Government should enhance its efforts aimed at informing the non-Latvian population about the legislation, regulations and practical questions which concern citizenship, language requirements et cetera. An information brochure providing this information should be written in such a way that it can be comprehended even by persons with no more than a basic education. The brochure should be distributed in large numbers, not only to households but also to places where larger groups of non-Latvians can be expected, such as certain factories, associations and the like. Second, posters and placards could be positioned at public places and in streets, carrying the most important passages from the brochure or a summary of the main points.
- 17) The office of a "National Commissioner on Ethnic and Language Questions" should be established. The National Commissioner should be competent to take up any relevant complaint which he/she considers to require further attention with any government agency. He/she would have to actively find out about uncertainties and dissatisfaction involving minorities, act speedily in order to clarify grey areas, answer to questions within a specified period of time (e.g., two months) and finally act as a channel for information and as a go between to the Government and the minorities in Latvia.

The National Commissioner should have the general confidence of all parties concerned. If it should prove impossible to find one person who would meet this criterion, then a commission of three could be established to do the same thing (one Commissioner with two deputies, a triumvirate, like many ombudsman offices are structured).

- 18) In general, it is recommended that the Government consistently implement a visible policy of dialogue and integration towards the non-Latvian population, which should incorporate the above-mentioned recommendations. In the High Commissioner's opinion, early government action in this regard is indispensable.

The Latvian National Minorities department, which is currently part of the Ministry of Justice, should be made an independent body, so that it could act with more authority.

Latvian reply of 18 April 1993

Dear Mr. van der Stoel,

The Republic of Latvia Ministry of Foreign Affairs presents its compliments to the Office of the CSCE High Commissioner on National Minorities and has the honour to refer to the following issue.

We appreciate the great interest expressed by the CSCE High Commissioner on National Minorities which is carried out in accordance with the relevant provisions of the Helsinki Document, 1992 and the Summary of Conclusions of the Stockholm Council Meeting, 1992, as well as your great personal interest, as expressed during your visit of April 1 & 2, 1992, concerning the current situation in Latvia which is a consequence of the long years which Latvia suffered under Soviet occupation.

The evaluations and suggestions which you have provided in your introductory letter and the attached conclusions and recommendations are carefully being examined by the respective Government institutions of Latvia.

Most of your conclusions appear to be reasonably grounded, especially those concerning the lack of a new citizenship law in Latvia. As you know, the current Latvia Supreme Council is a transitional parliament and has no legal mandate under the restored 1922 Latvia Constitution to change the body of Latvia citizenship through naturalization or other means. This legal mandate will be held by the newly-elected Saelma which is being elected on June 5 and 6 1993. Thus, one of the most urgent tasks for the new Saelma will be to adopt a complete citizenship law which will include provisions for naturalization. Your recommendations will certainly be presented to the Saelma members.

Regarding the proposal for the establishment of a "National Commissioner on Ethnic and Language Questions" Office, it should be noted that this question involves careful examination and probably cannot be implemented until the new Government is formed. However, we

would like to mention that the existing system of human rights protection in Latvia has not been exhausted and provides, in our opinion, sufficient avenues for problem-solving in this area.

We are confident that our further cooperation with the CSCE High Commissioner on National Minorities will be fruitful and valuable for all CSCE member states.

Please accept my highest considerations.

Sincerely yours,

(Georgs Andrejevs, Minister of Foreign Affairs, Republic of Latvia)

ANNEX 3

Documents on the 1993 Crisis in Estonia

*Statement of the High Commissioner on National Minorities, Mr Max van der Stoep
(Tallinn, 12 July 1993)*

On July 10-12, 1993, I visited Estonia again. I had meetings with President Meri and Prime Minister Laar. I also met with the chairmen of the City Councils of Narva and Sillamae, Mr Chuikin and Mr Maksimenko, and with Mr Yugantsov and Mr Semjonov of the Representative Assembly. Main subject of discussion was the development of the situation now that the Riigikogu has adopted a revised version of the Law on Aliens and the President has decided not to promulgate the law on education, but to send it back to Parliament for further consideration.

In conversations with the Prime Minister, I received the following assurances:

- 1) The Estonian Government is determined to develop a relationship of friendship and cooperation with the Russian community in Estonia, expecting loyalty towards the Republic of Estonia in return.
- 2) To promote such a relationship, the Government of Estonia is determined to have an intensive and continuous dialogue with representatives of the Russian community, during which they will be free to raise any question about which they feel concerned.
- 3) The fact that non-Estonian residents who entered the country before 1 July 1990 must apply for residence permits under the new law on aliens, must not be interpreted as an obligation for the residents concerned to accept that in future there will be no other possibility for them than to remain non-citizens. In principle, any non-citizen residing in Estonia for more than two years can apply for citizenship of Estonia if he or she wishes to do so.
- 4) As far as the requirements for citizenship are concerned, the Government intends to take concrete steps in the near future to ensure that the recommendations made on this subject by the High Commissioner on National Minorities last April will be put into effect. Directives will be issued to ensure that the language requirements will not exceed the ability to conduct a simple conversation in Estonian and that the requirements will be even lower for persons over 60 and invalids.
- 5) The Government of Estonia wants to restate categorically that it does not intend to start a policy of expulsion from Estonia of Russian residents. This also applies to persons who are unemployed. As far as former members of the Soviet armed forces and their families are concerned, humanitarian considerations will determine the attitude of the Estonian Government. Those who received some kind of military training during their university

studies but have not actively served in the Soviet armed forces will not be considered as belonging to the category of former members of the Soviet armed forces.

- 6) The Government of Estonia will implement article 8:4 of the law on aliens, concerning aliens' passports in such a way that no complicated procedures are needed in order to get an alien's passport.
- 7) The Government of Estonia will examine the possibilities of facilitating the naturalisation of residents non-citizens who will be presented as candidates in the forthcoming local elections.
- 8) The Government of Estonia intends to make a special effort to improve the economic situation in Northeastern Estonia.
- 9) The Government of Estonia, even though considering the referenda planned in Narva and Sillamae as illegal, will not use force to prevent them from being held.
- 10) The statement of the Committee of Senior Officials of the CSCE of June 30 supporting the continuous involvement of the High Commissioner on National Minorities in Estonia is welcomed by the Government of Estonia.

In conversations with the representatives of the Russian community in Estonia I received the following assurances:

- 1) The representatives of the Russian community on their part will play an active and constructive role in the dialogue with the Government.
- 2) They will fully respect the Constitution and the territorial integrity of Estonia.
- 3) Moreover, the presidents of the City Councils of Narva and Sillamae assured me that if the question of the legality of the referenda planned in Narva and Sillamae is submitted to the National Court, they will abide by its ruling.

I am aware that in the dialogue between the Government and the Russian community many difficult questions still have to be solved. However, I am also convinced that the assurances I have received provide a solid basis for a fruitful dialogue.

OFFICE OF THE PRESIDENT REPUBLIC OF ESTONIA - COMMUNIQUE

'The Law on Aliens', adopted by the Riigikogu on June 21, has given rise to various interpretations. The situation that has emerged around it is partly accounted for by inadequate information among the Russian-speaking population or, here and there, by misinformation.

In this connection the President of the Republic deems it wise to announce that before taking a decision in favour or against the promulgation of the said Law, he will apply to the Council of Europe, the CSCE and other organisations for an expert opinion in order to obtain an unbiased professional assessment of the said Law. The President of the Republic refers to the Constitution of the Republic of Estonia, which grants everybody rights and liberties in conformity with European norms.

In order to secure domestic peace and a balanced policy essential for the reconstruction of the Republic of Estonia, the President of the Republic has decided to initiate a Round Table of non-citizens and ethnic minorities. The Round Table will present the conclusions of their discussions to the President in written form. Depending on the nature of each problem, the President of the Republic will forward them for examination to the Council of Europe, the CSCE, the Riigikogu, or for settlement by the pertinent state bodies.

At Kadriorg June 25, 1993

Annex 4

Correspondence of the HCNM - Estonia, December 1998

HCNM Letter of 19 December 1998 to President Lennart Meri

Excellency,

I have the honor to address you with regard to the adoption by the Riigikogu on 15 December 1998 of an amendment to the Estonian Laws on Parliamentary Elections, Local Elections and the State Language according to which “knowledge of written and spoken Estonian” would be required in order to be a member of the Riigikogu or a local governmental council.

As you know, I issued a statement recently confirming my intention not to come forward with new proposals regarding the Law on Citizenship after adoption by the Riigikogu of the recent amendments to that Law in relation to otherwise stateless children. I wish to reiterate that this is still my intention. However, the issue at hand relates to the use of language, about which I have made a number of recommendations in the past. It is against this background that I should like to submit to you the following considerations.

In my view, the amendment to the Estonian Laws on Parliamentary Elections, Local Elections and the State Language is in accord neither with the Estonian Constitution nor with Estonia's international obligations and commitments. Moreover, I believe that promulgation of the law amending the Laws on Parliamentary Elections, Local Elections and the State Language would not constitute a constructive contribution to the national integration process.

With regard to the law applicable in Estonia, the amendment in question is in my view not compatible with specific requirements of the Constitution which, *inter alia*, stipulates no linguistic requirements as a condition to vote or to stand for office. Moreover, the Constitution stipulates the supremacy of international treaties binding on Estonia over Estonian laws which contradict such obligations. This leads me to draw your attention to the requirements of Article 3 of Protocol 1 of the European Convention on Human Rights and Article 25 of the International Covenant on Civil and Political Rights which stipulate that the will of the People (i.e. the citizenry) is to be the basis of government. It is to be noted that Article 3 of Protocol 1 of the European Convention on Human Rights is to be read in conjunction with Article 14 of the same Convention which forbids discrimination on the basis of language. Article 25 of the International Covenant on Civil and Political Rights is even more explicit in providing as follows:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

“(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

“(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

“(c) to have access, on general terms of equality, to public service in his country.”

The destinations mentioned in Article 2, referred to above, are as follows:

“1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (emphasis added)

It is clear from the above that there is to be absolutely no distinction regarding the language of a candidate for election nor any “unreasonable restriction”; in relation to this last point, it is further to be noted that only prescription of a minimum age, legal competence, non-incarceration and non-judicial service are generally accepted as the very few reasonable restrictions.

The rationale for the above-noted absolute entitlement to stand for office to be enjoyed by citizens (without unreasonable restriction) is rooted in the essence of the democratic process, i.e. they should be essentially free to decide among themselves who they would wish to elect, and each citizen should be equally free to present themselves for elections. Linguistic or other proficiency is fundamentally irrelevant to this process or objective. Should the electorate so choose, they should be free to elect persons who may enjoy their confidence but who may not in the opinion of others possess relevant or desirable skills or abilities, much less purported “proficiencies”. The critical matter is that the elected person is deemed by the electorate (through the secret ballot) to represent them. There is no other matter of relevance. To require anything more would be to interfere with the basic democratic process and undermine the will of the people as the basis of government.

Permit me to note that the above arguments are not merely academic. By way of citing more extreme examples, the current Minister of Education in the United Kingdom, Mr. David Blunkerr, is blind; as such, he is unable to read or write in the English language. As another example, a current Member of Parliament in Canada is deaf, as such, he is unable to read or write in either of the official languages, nor is his spoken “proficiency” necessarily at the highest level (he is provided with a signer to assist him in his work as Member of Parliament). In neither of two aforementioned cases may it be said that the elected persons do not serve their electorate, the citizenry at large or the State: in each case they have been specifically elected by their immediate constituents according to the constituency system. Indeed, in the British case, the person has been included within the Government and accorded Ministerial responsibilities. By reference to these extreme cases, it is evident *a fortiori* that “proficiency” in the State language cannot be a requirement for public service as an elected representative and that to require such could interfere with the will of the people being the basis of government.

Allow me, Mr. President, also to draw your attention to the requirements of the Council of Europe's Framework Convention for the Protection of National Minorities which provides in Article 4 that States Parties are "to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities." In addition, Article 15 of the same Convention provides that "The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." In my view, excluding such persons without "proficiency" in the Estonian language would in effect exclude them from the possibility to participate in the most fundamental aspects of political life and public affairs, i.e. to stand for elected office.

Finally, as High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe, permit me to draw your attention also to the requirements of (among other relevant OSCE documents) the 1990 Copenhagen Document through which Estonia has committed itself to the principle of fully democratic elections and to ensure the effective participation of persons belonging to national minorities in public decision-making processes. In my view, to exclude persons without "proficiency" in the Estonian language from holding elected office would be in contradiction with Estonia's OSCE commitments.

As a consequence of the above arguments, I appeal to you not to promulgate the amendments in question as adopted by the Riigikogu. In so doing, I wish to stress that maintaining the fully open and democratic nature of the Estonia representative political institutions in no way undermines the preservation and protection of the Estonian language. I am confident that the Republic of Estonia possesses, within the wide scope of its sovereignty the means to protect, promote and develop the use of the Estonian language—including through prescription of the Estonian language as the language of Parliament and public administration in general. I am fully committed to supporting the Republic of Estonia in this objective.

Yours respectfully,

(Max van der Stoel)