

NATIONAL MINORITY RIGHTS ENFORCEMENT IN EUROPE: A DIFFICULT BALANCING ACT

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Order Versus Right

In any system of enforcement there must be an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other (Higgins, 1984: 30-31). States agree to conduct their sovereign affairs in accordance with specified international standards; these include, for example, the requirements of equal sovereignty, nonintervention, *pacta sunt servanda*, the procedures of international law, the customs and conventions of war and the machinery of diplomacy. The common objective of these various rules is the preservation of international order, defined as the continued existence of international society as a whole—though not necessarily the independence of particular states (Bull, 1977: 16-17). By the mid-1990s, international society had come to include, alongside those rights which states could claim against one another, a growing number of human and national minority rights that men and women could claim against states. However, these humanitarian principles remained subordinate to the preservation of international order defined in statist terms. In other words, the society of states did not want humanitarian considerations to become sources of instability and conflict—hence the need to balance human and national minority rights against sovereign rights.

Consequently, the international enforcement of human and national minority rights is an extremely difficult process to master. Attempting to get the balance between sovereign and national minority rights correct was arguably the main challenge confronting both the Organization for Security and Cooperation in Europe (OSCE) and Council of Europe (COE) in their efforts to enforce the emerging European standard of state conduct towards national minorities between 1990-1995. This essay will describe and evaluate the various mechanisms of national minority rights enforcement in Europe at that time. In so doing, emphasis will be placed on the following question: did the balance struck on enforcement accord priority to the rights of states or to the rights of national minorities, and why? Unless this crucial relationship between sovereign state rights and national minority rights is fully understood, international efforts at conflict prevention in multi-ethnic states may exacerbate rather than ameliorate already existing tensions.

Post-1945 Enforcement Experience

There is a spectrum of potential options ranging from state self-reporting to outright military intervention which in theory could be used to enforce state compliance with international obligations regarding human and national minority rights. These possibilities include voluntary rapporteur missions, voluntary mediation, international review of a state's performance, public criticism, mandatory rapporteur missions or mediation missions, judicial review, withdrawal of membership

in international organizations, trade sanctions and humanitarian intervention. The less interventionist the type of enforcement, the greater the priority accorded to sovereign rights. Conversely, the more interventionist the measure, the greater the priority accorded to non-state, in this case national minority, rights.

Different examples will almost certainly yield equally different responses as to what constitutes generally acceptable and generally unacceptable enforcement (Higgins, 1984: 29-30). This sort of normative plurality is of course constitutive of international society and it is also what accounts for the necessity of balancing competing claims in any enforcement exercise. There is nevertheless an emerging history of international practices concerning human rights, and now also national minority rights, enforcement mechanisms in the post-1945 UN nation-states system. It is in the context of this larger body of practice that OSCE and COE enforcement mechanisms for national minority rights were adopted between 1990-1995.

The 1992 *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities*, which constitutes the global minimum standard of state conduct towards national minorities, did not itself contain any specific enforcement measures, despite initial proposals, because non consensus could be reached (Alfredsson and de Zayas, 1993: 1-9). Instead, Article 9 indicated that the UN system as a whole was expected to contribute to the fulfillment of the national minority provisions.

There were several pre-existing UN bodies whose monitoring activities with regard to other human rights treaties already gave them some role to play in scrutinizing the condition of national minorities. These included the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Elimination of Discrimination Against Women (CEDAW). Similarly, the ongoing activities of the Subcommittee on the Prevention of Discrimination and Protection of Minorities were also directly relevant. During the Cold War this body chose to ignore its second mandate in favour of the first. Following 1989, however, the subcommittee's activities showed renewed interest in the situation of national minorities.

In addition to these UN monitoring bodies and the self-reporting activities they encouraged, the *Optional Protocol to the International Covenant on Civil and Political Rights* (which entered into force in 1976) provided a quasi-judicial mechanism for alleged national minority rights violations. It gave the Human Rights Committee the authority to examine individual complaints and issue final decisions on their merits. It should however be pointed out that although these decisions read like judgements they are *not* legally binding. The committee examined a number of national minority cases between 1976-1995; both from the perspective of non-discrimination and the right to identity. These cases included *Sandra Lovelace v. Canada* (1977), *Chief Ominayak v. Canada* (1984), *A. Yilmaz-Dogan v. The Netherlands* (1984), *Ivan Kitok v. Sweden* (1985), *Dominique Guesdon v. France* (1986), *Bhinder v. Canada* (1986), and *Demba Talibe Diop v. France* (1989).

During the Cold War, both the OSCE (or Conference on Security and Cooperation in Europe (CSCE)) and the COE also made use of certain mechanisms to enforce human rights standards. However, the methods of enforcement favoured by these two institutions differed fundamentally. The CSCE, as a Cold War diplomatic conference, employed an ad hoc method of internal review of member states' conformity to their human rights commitments coupled with external criticism

designed to encourage compliance through the moral approbation of public opinion. In contrast, the COE, as an early embodiment of European federalist ideals, utilized a quasi-judicial system of enforcement.

Until the CSCE began its metamorphosis into the OSCE at the Paris Summit of 1990, it proceeded from conference to conference—Helsinki 1973-1975, Belgrade 1977-1978, Vienna 1986-1989—with no other institutional structures. These conferences covered the full range of CSCE commitments and were supplemented by specialized meetings, i.e., the Expert Meeting on Human Rights (Ottawa, 1985), and the Expert Meeting on Human Contacts (Bern, 1986). The main activity of such meetings was the discussion of member state's compliance with their undertakings in the human and other dimensions. The discussion of human rights records proved useful in publicizing violations and thus in providing political pressure for reform. This pressure was increased by the voluntary monitoring activities of non-state actors such as Helsinki Watch, the American based Commission on Security and Cooperation in Europe and the British based Helsinki Committee of the All-Party Parliamentary Human Rights Group. Unfortunately, during the Cold War there was no recognized procedure of following through on the questions raised during the follow-up meetings or by the various human rights organizations committed to increasing public awareness of the *Helsinki Final Act's* (1975) human dimension. This perceived shortcoming was a major impetus for the institutionalization of the CSCE following 1989 and its ultimate transformation into the OSCE.

In contrast to the CSCE's ad hoc review of participating states human rights commitments, the COE possessed a quasi-judicial system of enforcing its main human rights standard setting text, the *European Convention on Human Rights* (ECHR). The ECHR contained an elaborate formula for the arbitration and, if necessary, judicial review of disputes regarding the enforcement of human rights. It should be pointed out, however, that the Court of Human Rights itself had no direct powers of enforcement and that responsibility for implementing its judicial decisions ultimately rested with the Council of Ministers of the COE. If a political resolution between the parties concerned could not be reached, there remained one final enforcement mechanism at the ministers' disposal—expulsion from the organization. History has proven that expulsion from the COE is not an idle threat, as both Greece and Turkey were, in previous years, suspended from the council for human rights violations.

Following 1989, there was increased activity by international organizations regarding the enforcement of human rights. This was perhaps most strikingly evident in the number of UN interventions between 1989-1995—most notably with regard to the Kurds in Iraq, the wars in Croatia and Bosnia, and the anarchy in Somalia, which were authorized at least partly on humanitarian grounds. At the same time, however, a growing realization of the problems involved in intervening in ethnic conflicts, made clear by the Yugoslav case, also encouraged these organizations to make wider use of their activities in other areas, particularly with regard to preventative diplomacy and confidence building measures aimed at encouraging a climate of compliance.

Background

The fall of communism in East Central Europe and the former Soviet Union was accompanied by an explosion of antagonistic nationalism on the part of both national minorities and majorities. The dissolution of multinational states (Czechoslovakia, Yugoslavia and the Soviet Union) into their constituent federal units during the early 1990s confirmed that secession was once again a very real possibility in those states where national minorities were regionally concentrated and might therefore come to demand their own, independent political units: Romania, Bulgaria, Slovakia, Serbia, Croatia and the Ukraine—to name but a few other cases. At the same time, a new found freedom of mobility made it possible for members of national minority groups to join their ethnic kin in those states where they already formed the majority. Many thousands chose to make this move, and consequently the early 1990s saw the greatest movement of peoples in Europe since the end of the Second World War. Germany, Hungary and Turkey received the largest numbers of such ethnic migrants but significant numbers also fled to Austria, and the civil wars in Croatia and Bosnia dispersed huge numbers of ethnically cleansed refugees throughout the former Yugoslavia and beyond. For these reasons, between 1990 and 1995 the domestic condition of national minorities was identified as a potential threat to European order and stability. The situation of national minorities in East Central Europe and the former Soviet Union thus became a major focus of European international relations during this period (Gottlieb, 1993: 48-88; Miall, 1994: 1-7, 112-120; Moynihan, 1993: 143-174). The specific task of formulating European standards of national minority rights during 1990-1995 was taken on by the OSCE and the COE.

The OSCE was concerned with formulating codes of state conduct towards national minorities as a way of minimizing national minority/majority conflicts by preventing the oppression of individual members of national minority communities. The OSCE therefore included statements of national minority rights in all official documents—forming the basis of the organization's activities and embodying its transformation from a diplomatic conference to an international organization. These documents included the main OSCE human rights standard setting text of the period, the *Copenhagen Document* (1990), as well as the *Charter of Paris for a New Europe* (1990), the *Geneva Report on National Minorities* (1991), the *Moscow Document* (1991), the *Helsinki Document* (1992), and the *Budapest Document* (1994).

Because the national minorities problem resurfaced in European politics at precisely the moment at which the OSCE was itself undergoing rapid and far-reaching institutional change, the OSCE came to possess many more mechanisms for national minority rights enforcement between 1990-1995 than did the COE. The piecemeal nature of the structural transformation meant that each new adaptation incorporated certain elements designed to address the national minorities question in Europe. It was not until the December 1992 *Helsinki Document*, however, that a specific instrument for national minorities, the High Commissioner for National Minorities (HCNM), was created. The HCNM was intended to assist in member states' implementation of national minority standards and to help resolve national minority/majority conflicts.

The condition of national minorities was also examined by the COE between 1990-1995 as a potential obstacle to the democratic development of former communist states in the region and as an economic and social problem in those kin-states that were on the receiving end of national

minority migrations. Various COE bodies including the Parliamentary Assembly, the European Commission for Democracy Through Law, the Steering Committee of Human Rights and the Committee of Ministers examined national minority rights proposals between 1990-1995. However, since the COE was an established international organization (dating back to 1948), its response to the increasing number of national minority conflicts in East Central Europe during the early 1990s was generally to amend pre-existing institutional structures rather than create an entirely new enforcement apparatus.

The member states of the COE decided at their Vienna Summit Meeting on 9 October 1993 to adopt a national minorities protocol to the *European Convention on Human Rights* (ECHR) that would be open to ECHR signatories and a separate convention on national minorities which would be open to members and non-members of the COE. The Committee of Ministers, at its 93rd Session, adopted terms of reference instructing an ad hoc committee of experts to draft a framework convention and protocol. The *Convention on the Protection of National Minorities* was opened on 1 February 1995 and immediately signed by 22 countries: Austria, Cyprus, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. As of 31 December 1995 no protocol had yet been adopted. In November 1992, however, the *European Charter for Regional or Minority Languages* was made public. The charter was initially signed by eleven member states: Austria, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway and Spain. As of 31 January, 1995, however, it had been ratified only by Norway and Finland and therefore still required three more ratifications in order to enter into force.

Organization for Security and Cooperation in Europe

As indicated, by 1995 the OSCE had become a key institutional arena for the enforcement of national minority rights. The various OSCE mechanisms adopted in this capacity can be summarized and briefly analyzed to clarify the aims and scope of national minority rights enforcement in Europe immediately after the Cold War. They will be appraised as to their relative success or failure in a subsequent section.

The OSCE adopted three institutional arrangements aimed specifically at the enforcement of human and national minority rights commitments between 1990-1995 as part of its structural transformation from a diplomatic conference to an international organization. These mechanisms were in order of their adoption: (1) an intergovernmental complaints procedure known as the “human dimension mechanism” which could be utilized in crisis situations (adopted in stages between 1989-1993); (2) annual implementation review conferences wherein participating states collectively examined how agreed upon standards were being implemented (adopted January 1992); and (3) the High Commissioner on National Minorities (HCNM) whose mandate was to provide early warning and, where appropriate, early action with regard to tensions involving national minority issues that had the potential to develop into conflict situations (adopted December 1992). While all three of these structures had relevance for the national minorities problem, only the HCNM was explicitly

and indeed exclusively charged with national minority rights enforcement.

In addition, there were by 1995 four other OSCE institutional arrangements relevant to national minority standards even though they had not been adopted specifically to enforce these or indeed any other human rights commitments: (4) OSCE missions of long duration intended primarily to prevent the spread of an existing conflict; (5) the Valletta Mechanism, a non-binding procedure for dispute settlement; (6) the *Optional Convention on Conciliation and Arbitration* which included both non-binding and binding dispute resolution procedures; and (7) the Senior Council which could order action by other OSCE bodies when it deemed appropriate.

The Human Dimension Mechanism

The human dimension mechanism represented an early (and ongoing) attempt to come up with new institutional structures devised to meet the changed security requirements of the post-Cold War era. The human dimension mechanism was therefore designed as an intergovernmental complaint procedure that could be utilized in conflict situations. The procedure was the result of policies adopted in three different OSCE texts, the *Vienna Document* (1989), the *Moscow Document* (1991) and the *Decisions of the Rome Council* (1993). This evolutionary process was initially advantageous in that it facilitated OSCE responses to a number of new and unforeseen developments, such as the civil war in former Yugoslavia. At the same time, however, the very fact that adoption was piecemeal meant that the final mechanism was perhaps unduly complicated and time consuming to employ.

Under the human dimension mechanism, participating states eventually agreed to the following: (1) to exchange information and respond to requests for information made to them by other participating states within ten days; and (2) to hold bilateral meetings to examine matters relating to the human dimension with other states within one week of the request to do so.¹ Participating states could provide information on steps (1) and (2) at review conferences (see below). (3) A participating state could invite the assistance of an OSCE mission consisting of up to three experts to address or contribute to the resolution of questions on its territory relating to the human dimension. It was laid down that such a mission could gather the information necessary to carry out its task and, as appropriate, use its offices in mediation services to promote dialogue and cooperation amongst interested parties. It was also thought that the inviting state would cooperate fully with the mission and facilitate its work. (4) A rapporteur mission could also be initiated if a state considered that a particularly serious threat to the fulfillment of the human dimension had arisen in another participating state and it had the support of nine other participating states. Also upon the request of any state, the Senior Council could itself decide to establish a committee of experts or rapporteurs. The rapporteurs would then be responsible for establishing the facts, reporting on them and giving advice on possible solutions. This report would later be submitted to the states concerned and the ODIHR would then transmit it and any other observations made by the states involved to all participating OSCE states. The report could then be put on the agenda of the next Senior Council meeting which would decide on any follow up action.

The first two points of the human dimension mechanism, known as the Vienna mechanism, were used more than one hundred times, mostly between 1989-1990 (Miall, 1994: 103). During this

initial post-Cold War period, the situations discussed were understandably those primarily concerned with the collapse of communist rule in East Central Europe and involved complaints by Western states against the old communist regimes. For example, during 1989-1990, the UK invoked the Vienna mechanism in relation to human rights abuses in Romania, Czechoslovakia, the GDR, and Bulgaria. National minority rights questions also provoked some use of the mechanism—Turkey invoked it against Bulgaria over treatment of its Moslem minority and Hungary invoked it against Romania over treatment of the Hungarian minority in Transylvania. These national minority examples, however, account for only a small proportion of its overall use.

The remaining points, the so-called Moscow mechanism, were used far less frequently (Miall, 1994: 103). Up to September 1993, they were activated on only four occasions: (1) by the UK (with the support of Italy, Portugal, Denmark, the US, Greece, Spain, the Netherlands, Ireland and Germany) towards Bosnia and Croatia regarding attacks on unarmed civilians in 1992; (2) by Russia with regard to Estonia's citizenship law also in 1992—in the end, Estonia agreed to invite an OSCE mission of experts; (3) by Moldova in 1993 to invite an expert mission to Moldovan territory; and (4) by the Senior Council who in June 1993 decided to send a rapporteur mission to Serbia-Montenegro to investigate human rights violations—this mission was unable to fulfill its task because of Serbia-Montenegro's refusal to issue the necessary visas.

Annual Implementation Review Conferences

The annual implementation review conferences outlined in the *Prague Document* (January 1992) were very much in keeping with the OSCE's Cold War enforcement practices—whose efficacy was of course seemingly confirmed by the 1989/91 collapse of communism in the former Soviet Block. Such meetings essentially carried on the Cold War practice wherein participating states collectively examined how agreed standards were being implemented. The conduct of states with regard to their human and national minority rights undertakings thus came under regular scrutiny within OSCE institutional structures between 1990-1995.

In theory, this should have been an important opportunity for states to be made aware of their shortcomings and discuss ways to overcome them. In practice, however, the emerging democracies of East Central Europe were generally given the benefit of the doubt with regard to their human dimension undertakings. West European and North American member states were understandably loath to apply any political pressure that might unwittingly weaken the post-communist transformation then still in its early stages; once again, stability was a prior consideration. As a result, between 1990-1995 there was little hard hitting public criticism of the sort that in previous years was directed against members of the Soviet Block (Miall, 1994: 102-103). This made the 1990s review conferences generally far less effective than their Cold War counterparts. By 1995, however, this tendency to keep national minority rights criticisms behind the closed doors of international organizations was perhaps beginning to change—at least as regards those situations where “failing to speak out” was judged to be potentially more destabilizing than remaining silent. In November and December 1995, Slovakia was the target of three diplomatic notes (two from the EU and one from the United States) which expressed “grave concern” at domestic policies that showed “insufficient respect for democracy, human and national minority rights and the rule of law”

(*The Economist*, December 2, 1995: 42-45). This exchange was widely publicized in both the European and North American press.

The High Commissioner on National Minorities

The creation of the HCNM in December 1992 was the culmination of several years internal dialogue on the situation of national minorities in East Central Europe and how best to ensure that national minority/majority disputes did not escalate into armed conflict. The HCNM was therefore designed as a diplomatic instrument of conflict prevention and mediation rather than a more direct agent of enforcement. Underlying this mandate was the fact that OSCE member states were loath to commit themselves to the risks and dangers that might threaten both their own national interests and the interests of the nation-states system given actual humanitarian or military intervention in conflict situations. The decision was therefore made to try and prevent, or at least forestall, ethnic wars from developing.

The HCNM worked to implement the mandate of early warning and early action as set forth in the *Helsinki Document* (1992) in keeping with general diplomatic practice (i.e. independently of parties involved in potential national minority conflicts). To this end, the HCNM collected and received information regarding national minority issues from any source including the media and NGOs but excluding any person or organization which practiced or publicly condoned terrorism or violence. This restriction was included at the insistence of Turkey which was concerned about potential queries regarding its military rule in the Kurdish populated southeast—such policies being justified on the basis of anti-terrorist measures against the PKK and other Kurdish nationalist insurgents. This limitation, however, had equal relevance to British anti-terrorist measures against the IRA as well as Spanish responses to armed ETA separatists. Such restrictions were evidence of the primacy accorded to sovereign rights, such as territorial integrity and inviolability of borders, and against national minority claims to secession.

Once the HCNM had been informed of a potential national minority conflict he or she immediately assessed the role of the parties concerned, the nature of the tensions, recent developments on the matter, and any possible consequences for peace and stability within the OSCE area. To this end, the HCNM was entitled to visit any OSCE member state and communicate in person with parties (except terrorists) directly concerned so as to obtain first-hand information about a national minority's situation. Where appropriate during such a visit, the HCNM could promote dialogue, confidence and cooperation between the parties involved. If after having investigated the matter, the HCNM concluded there was indeed a prima facie risk of potential conflict he or she could issue an early warning to the Senior Council. The HCNM could also recommend that he or she be authorized to enter into further contact and closer consultation with the parties involved so as to discuss possible solutions in accordance with a prior mandate from the Senior Council. To this end, the HCNM could request assistance from experts with relevant expertise in specific matters on which brief, specialized investigations were required.

The activities of the HCNM were therefore based upon two fundamental principles of diplomacy—confidentiality and impartiality. At first glance, these guiding principles—as traditional components of interstate relations—might seem designed more to assuage the concerns of those

states that possessed substantial national minorities than to protect the national minorities themselves. Certainly, participating states were eager to ensure that their international reputations and also perhaps their legitimacy would not be jeopardized by frivolous or contrived grievances made by disgruntled and possibly secessionist national minorities. At the same time, such states also sought guarantees that kin-states would not be able to manipulate the HCNM. However, the requirements for confidentiality and impartiality were also to the benefit of affected national minorities in that they enabled the HCNM to act on his or her own initiative. As a result, the HCNM was not dependent upon political decisions by OSCE bodies which would have required consensus or consensus minus one and might thus have given: (1) those states that possessed national minorities the opportunity to block OSCE action within their domestic jurisdictions or (2) kin-states the opportunity to manipulate OSCE action so as to further either their own national interests or the political interests of their kin-minorities.

Max van der Stoel, former Dutch foreign minister, was appointed to the newly created office of HCNM in December 1992 and served in that capacity throughout the period under study. Between 1992-1995 he was involved in a number of potential national minority/majority conflicts in East Central Europe including, among others, situations in Albania, Estonia, Latvia, Lithuania, Macedonia, Moldova, Slovakia, Romania, and the Ukraine. However, because van der Stoel, as HCNM, was required to conduct his investigations in strict accordance with the principles of confidentiality, academic researchers are unavoidably somewhat handicapped not only in assessing the efficacy of his actions but even in determining what these were in all cases. Van der Stoel's efforts with regard to Russian minorities in the Baltic states and the Ukraine and Hungarian minorities in Romania and Slovakia illustrate the manner in which the HCNM sought to balance the interest of states with the rights of their national minority citizens. OSCE documents regarding these cases that have been made available to the public (with the agreement of the HCNM and the states involved), seem to suggest the following course of events.

The main concern with regard to the Russian minority in the Baltic states centered upon the various citizenship criteria adopted by the new states.² The Russian minority, backed by Russia, expressed concern over proposed legislation that would effectively prevent them from acquiring citizenship in the newly independent states owing to stringent language and/or residency requirements quota systems for the annual naturalization of those national minority members that did meet the citizenship criteria. Moreover, exemption from citizenship status would also potentially have limited the Russian minority's eligibility for state pensions and other welfare benefits. At the same time, however, Latvia, Lithuania and Estonia had good reason to fear that granting citizenship to their substantial Russian minorities would compromise their independence. Granting citizenship to an ethnic Russian community that was relocated to the Baltic states by Stalin in order to ensure Soviet political control and who received privileges during the Soviet era would be a threat to the national identities and independence of these states.

This tension between the Russian minority, Russia and the Baltic states flared up on a number of occasions between 1992-1995 and, as a result, led to the ongoing involvement of the HCNM. During the first six months of Van der Stoel's appointment, a potentially serious dispute arose between the Russian minority and the Estonian government over a draft of the Law on Aliens. The situation was further complicated by Russia's self-declared interest in the fate of Russian

minorities in the Baltic states. To recall, in September 1992, Russia had expressed an interest in activating the Moscow Mechanism with regard to Estonia's proposed citizenship law, which required a degree of proficiency in the Estonian language that few Russians were likely to satisfy in the short or medium term. Less than a year later, in July 1993, President Yeltsin and other Russian leaders were once again outspoken in their criticism of Estonia's treatment of its Russian minority. After an intervention by Max van der Stoep, the Estonian government agreed to modify its proposed law and opened round table talks with the Russian minority.

From 1993 onwards, the HCNM closely monitored proposed Latvian, Lithuanian and Estonian legislation on citizenship and the status of aliens and made recommendations regarding their compliance with OSCE national minority standards. The HCNM sought to provide members of the Russian minority with more certainty regarding their chances of acquiring citizenship. Moreover, he sought to give priority to those national minority members who were born in the Baltic states or who were married to citizens of those states. At the same time, however, the HCNM also recognized the need to balance this concern for national minorities with a concern for the continued independence and stability of the Baltic republics and to this end accepted the necessity of reasonable requirements for official language proficiency, basic knowledge of the state concerned, and even oaths of loyalty.

National minority/majority tensions in Ukraine centered upon demands for Crimean (which is majority Russian) autonomy and on the provision of language rights for the Russian minority.³ The Russian minority was eager to preserve its language and culture within the Crimea—which, as Russians pointed out, was only transferred to Ukrainian control under Khrushchev. The Russians in Crimea remained opposed to their incorporation into an independent Ukraine and feared Ukrainian language requirements were evidence of government plans for forced “Ukrainization.” In contrast, the Ukrainian government tended to view demands for autonomy as pretexts for the secession of Crimea or the intervention of Russia in Ukrainian domestic affairs.

In May 1994, the HCNM expressed the opinion that possibilities to use the national minority Russian language alongside the official Ukrainian in state organs should be widened. At his insistence, the OSCE sent a team of experts on constitutional and economic matters to facilitate negotiations between the central government in Kiev and the local Crimean authorities in Simferopol on proposals for greater Crimean autonomy. In July 1994 the Committee of Senior Officials adopted several key principles on Crimean autonomy at the recommendation of the HCNM. The OSCE recommended autonomy for Crimea while also requiring continued respect for the fundamental principles of the Ukrainian constitution and Ukraine's sovereignty and territorial integrity. Thereafter, the HCNM continued to pay close attention to developments in the Crimean peninsula and tried to encourage respect for the OSCE position on this question.

The HCNM was actively involved in trying to ameliorate tensions within both Slovakia and Romania and between these two states and neighboring Hungary between 1992-1995.⁴ As a result of the *Trianon Treaty* (1920) which established Hungary's present borders, a significant number of ethnic Hungarians were left just beyond the borders of the Hungarian body politic in adjacent areas of Slovakia and Transylvania. During the interwar period, Hungarian minority groups in these areas had of course acted with the support of Hungary to destabilize the then Czechoslovakian and Romanian states. Such efforts culminated in the 1939/40 transfer of these territories and their peoples

back to Hungarian control as a result of Hungary's alliance with Nazi Germany.

Following 1945, Hungary's interwar boundaries were restored—and with them the national minorities problem. Between 1989-1995, Hungarian minorities in both Slovakia and Romania came under increasing pressure from majority nationalist parties such as the Slovak National Party (SNP) and Vatra Romanescu which were hostile to a continued Hungarian ethnic presence. As a result, many members of the Hungarian minority fled to neighboring Hungary. Those that remained feared they would be compelled to assimilate. Thus, Hungarian minority associations began to lobby for greater national minority language education rights and greater autonomy over education and local administration in those areas where they predominated. Given the interwar history of the region, this of course only fueled the rhetoric of anti-Hungarian nationalist groups in both countries.

In attempting to diffuse these tensions, the HCNM stressed the importance of creating and developing instruments for dialogue between the relevant governments and the Hungarian minority as an essential component of democratization. He also called upon the Romanian and Slovakian governments to take action to combat expressions of ethnic hatred and to provide adequate facilities for national minority language instruction and administrative use. Moreover, van der Stoel emphasized the need for bilateral treaties of friendship between Hungary/Slovakia and Hungary/Romania that would include common principles regarding national minority treatment as an important means of ensuring international peace and stability in the Danube region.

However, all of van der Stoel's recommendations with regard to these and other national minority/majority conflicts were without binding force. Thus, in dealing with national minority questions, the effectiveness of the HCNM was unavoidably dependent upon the willingness of the parties involved to cooperate. Consequently, ultimate responsibility for the success or failure of the HCNM's initiatives lay with the leaders of the various groups involved in the dispute. This fact fundamentally limited the effectiveness of the HCNM. However, any more stringent powers of action were unlikely to be adopted by an organization such as the OSCE which was, and remains, based upon the premise of sovereign states' voluntary participation. Indeed, it could be argued, citing evidence from the League period, that any more intrusive HCNM involvement would not only be highly controversial but ultimately ineffective as well.

Other OSCE Measures

In addition to the three mechanisms outlined above, there were, by 1995, four other measures which, although not specifically designed for human dimension enforcement, could nevertheless be used with regard to national minority/majority conflicts. These measures were the OSCE missions of long duration, the Valletta Mechanism for the peaceful settlement of disputes, the *Optional Convention on Conciliation and Arbitration* and the activities of the Senior Council.

OSCE missions of long duration were intended primarily to prevent the spread of existing conflicts. Between 1990-1995, missions were established in Bosnia, Chechnya, Georgia, Estonia, Kosovo (expelled by Serbia-Montenegro in 1993), Latvia, Macedonia, Moldova, Sandjak (expelled by Serbia-Montenegro in 1993), Ngorno-Karabkh, Tajikistan, Ukraine, and Vojvodina (expelled by Serbia-Montenegro in 1993). Such missions monitored political developments in the various countries, provided advice and encouragement to local processes of conflict resolution and

conciliation, and kept the relevant OSCE political bodies up to date on events.

The so-called Valletta mechanism was a non-binding procedure for dispute settlement between participating states. If a dispute arose and could not be resolved within a reasonable period of time, any party to that dispute was able to activate the mechanism by notifying the other parties. The mechanism consisted of one or more members selected by common agreement who would then assist the parties in identifying suitable procedures for the settlement of the dispute. If the dispute was not resolved within three months, those members could be asked to provide comment or advice on the substance of the dispute. The parties involved were required to consider this advice in good faith and a spirit of cooperation. Yet despite its potential applicability, the Valletta mechanism was not used during the period under study—possibly because it excluded certain matters (e.g., territorial disputes) and lacked clear follow-up action.⁵

The OSCE agreed at its 1992 Stockholm Summit to establish a Court of Conciliation and Arbitration based in Geneva. The court itself was to function in two capacities, both as a Conciliation Commission that would provide an obligatory conciliation procedure leading to non-binding proposals for dispute settlement and as an Arbitral Tribunal whose judgements would be binding upon the parties to the dispute. The convention required twelve ratifications in order to enter into force. It was immediately signed by thirty-three participating states and came into effect in 1994. However, the court itself was not expected to be fully operational until September 1996.

The ongoing activities of the OSCE Senior Council, as outlined in the *Helsinki Document* (1992), were also an important means of enforcing national minority rights and other human dimension commitments.⁶ The Senior Council had the authority to order action that it considered appropriate in conflict situations. For example, the Chairman-in-office could designate a personal representative to carry out certain tasks. In most cases, this was the first step in OSCE involvement in conflict prevention. The Senior Council could also order fact finding and rapporteur missions as well as OSCE peace keeping.

At the same time, there were other OSCE bodies and resources which although not specifically designated as enforcement bodies, nevertheless contributed in other ways to the creation of a climate conducive to the implementation of national minority rights guarantees. For example, there were regular consultations and discussions concerning human dimension commitments in the Ministerial Council (which meet annually), the Senior Council (which meet every 2-3 months), the Permanent Council (which meet in formal session at least once a week and was designated in the *Budapest Document* (1994) as the OSCE institution where human dimension issues would be regularly dealt with) and the Parliamentary Assembly. In addition, the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw gathered information on human dimension issues from a wide variety of sources. It also organized round tables and seminars to stimulate dialogue on methods of carrying out human and national minority rights commitments and circulated regular publications that drew attention to the activities of the HCNM and the OSCE missions. And finally, the Forum for Security Cooperation based in Vienna, although formally charged with conducting regular consultations on security measures so as to reduce the risk of conflict, was nevertheless also relevant to national minority questions in so far as these were potential sources of international instability.

Council of Europe

Both COE national minority rights texts, between the period 1990-1995, contained specific enforcement machinery consisting of state self-reporting, the international review of states' performance, and potentially, public criticism. Obviously, this national minorities machinery was no where near as stringent as that required by the *European Convention on Human Rights* which was enforced by the European Court of Human Rights. The proposed national minorities protocol to the ECHR would of course have utilized this more experienced and rigorous system. However, no such protocol was adopted by the Council of Europe during the period in question. This failure resulted both from a prior commitment to amend the existing judicial procedure of the ECHR (which was itself a difficult and time-consuming task) and an inability to achieve consensus within the organization.⁷

This latter difficulty—lack of agreement—is evidence of a fundamental problem regarding international minority provisions. To recognize national minority rights, whether individually or collectively, would unavoidably strengthen potential national claimants to the territory of existing nation-states. An international system of national minority rights would not only limit state sovereignty by imposing international requirements on a state's treatment of its citizens, as any international rights regime would, but, even more controversially, it would grant international status of some kind, whether directly or through their members, to national units that could come to rival the power or authority of the nation-states affected, or, at the very least, would fit awkwardly into the nation-states system and thus create tensions and conflicts, etc. It is because of such possible repercussions that most statesmen and stateswomen have been extremely hesitant to adopt national minority rights. Until very recently, they have found it politically expedient to rephrase the problem in the language of individual human rights—hence the COE's failure to amend the ECHR.

The *European Charter for Regional or Minority Languages* required state signatories to present reports detailing the measures they had taken with regard to their national minority language commitments. These reports were to be submitted to the Secretary General of the Council of Europe once every three years. The reports themselves were both to be made public and examined by a committee of experts. Any legally established body or association within the state in question was permitted to draw the attention of the examining committee to matters it considered relevant to the charter's effectiveness. After consulting the state concerned, the committee would then decide whether or not to take such information into account when preparing its own report. The experts' opinion would then be submitted to the Committee of Ministers along with the state's own comments. The expert's report could also be made public at the discretion of the ministers. Finally, the Secretary General would make a two-yearly detailed report on the application of the charter to the Parliamentary Assembly.

The *Convention for the Protection of National Minorities* contained similar measures for the scrutiny of states' performance of national minority rights. The Committee of Ministers was given responsibility for monitoring the implementation of the convention. Each signatory was required to submit reports on its implementation to the Secretary General, both on a periodic basis and at the Committee of Ministers' request. In evaluating the adequacy of the measures taken by the various signatory states, the Committee of Ministers was to be assisted by experts in the field of national

minority protection.

In addition to these measures, various ongoing activities of the Council of Europe also contributed to the implementation and enforcement of standards of state conduct towards national minorities.⁸ National minority rights standards were regularly discussed in both the Council of Ministers and the Parliamentary Assembly. The latter also commissioned a number of reports—both on national minority rights in general and on the circumstances of particular national minority communities in East Central Europe. Activities sponsored under the auspices of the *European Cultural Convention* with regard to culture, education, architectural heritage and athletics during this time specifically aimed at, among other things, ameliorating tensions within multicultural societies. The Council of Europe also sponsored several pilot projects during the early 1990s designed to improve the circumstances of national minorities and ease tensions between national minorities and majorities. Similarly, the COE's Standing Conference of Local and Regional Authorities of Europe aimed to create conditions in which ethnic communities that straddled international frontiers might form Euroregions to bridge these jurisdictional divides on matters of common interest such as education, culture, science and the environment. Thus, for example, the Carpathian Euroregion, which included parts of Poland, Ukraine, Slovakia, Hungary and Romania, was established to help these countries rediscover their common heritage.

Most importantly of all, however, was the fact that by 1993, the condition of national minorities had become a determining factor in COE membership. Prior to admitting a new member state, the COE conducted an intensive examination of an applicant's constitution and laws as well as the conduct of its various officials to ensure that all of these gave due regard to national minority rights. The significance of this assessment was further enhanced by the fact that membership in the COE had become a tacit precondition for membership in the EU. The tripartite *Council-Commission-European Parliament Declaration on Human Rights* (1977) required EU applicant states to be parties to the *European Convention on Human Rights* (ECHR), which was only open to COE member states, and to accept the right of individual petition under the ECHR. This fundamental component of the *acquis communautaire* was reaffirmed in the *Maastricht Treaty* and the various *Europe Agreements* concluded with East Central European states in the 1990s.

Success or Failure?

As is apparent from the preceding discussion, both the OSCE and COE generally sought to bring about compliance with national minority rights standards through conflict prevention rather than more direct means of economic or military enforcement (the OSCE's involvement in former Yugoslavia and Chechnya being obvious exceptions). Instead of imposing economic embargoes or sending in peace keeping forces (which would have required a degree of financial and military involvement few member states were willing to accept) these organizations aimed to prevent potential conflicts from reaching the point at which such drastic measures might become necessary. Their goal therefore was to *encourage* democratization and respect for human and national minority rights within East Central European states by providing both timely expert advice and external mediation to help resolve national minority/majority conflicts at the earliest possible stage and

before they began to present any threat to international society.

This sort of enforcement policy has both its critics and its advocates. Some analysts have argued that international organizations lack credibility so long as they do not have the capacity to militarily impose compliance (Posen, 1993: 103-121). Others retort that regardless of an initiative's actual success or failure, its very existence is indicative of the priority accorded to international standards of state conduct: the mere presence of international monitors ensures the continued awareness of the conflict and facilitates political pressure (Walker, 1993: 165-180). Given the serious instrumental and normative difficulties associated with international enforcement—as outlined in the introductory section “Order versus right: a difficult balancing act”—the latter conclusion seems more plausible.

As a general rule, it is difficult for researchers and other outsiders to evaluate the relative effectiveness of mediation and other diplomatic activities which by their very nature occur, and indeed must occur, behind closed doors. There is nevertheless evidence of a certain, limited degree of success defined in terms of armed conflict prevention for OSCE and COE involvement in national minority/majority disputes. For example, in order to ensure COE membership, Bulgaria adopted measures that demonstrated a new found willingness to comply with national minority standards in the treatment of its Turkish minority. The HCNM was able to defuse several potential national minority/majority conflicts—the 1993 dispute between Russia and Estonia cited earlier being one such success story. The ongoing diplomatic efforts of both the OSCE and COE to resolve international tensions between East Central European states arising over national minority questions led to a number of bilateral treaties on good-neighbourliness and friendship signed under the auspices of the EU sponsored 1995 Stability Pact. These included agreements between Bulgaria and Turkey, Latvia and Russia, Lithuania and Russia, and Hungary and Slovakia. It must, however, be pointed out that ratification of this last agreement was jeopardized by the actions of Slovak's Prime Minister Meciar later on that year and was only ratified after much delay in March, 1996.

The most significant evidence, albeit speculative and thus based on counterfactual reasoning, for the benefits of this kind of preventative enforcement is the fact that most national minority/majority disputes did not escalate into violent conflicts between 1990-1995. In most cases, the parties concerned confined their actions to those forms of opposition permissible within a democratic system. This observation, even though it is counterfactual, *should* be taken seriously. Why? Because the code of international conduct

is not concerned with *promoting* certain types of action, but with *preventing* behaviour that would disrupt the system. In other words, structural principles [such as national minority rights standards] operate successfully if nothing is seen to happen, nothing, at any rate, that is not routine in character. As a result, the importance of these principles and even their very existence go largely unnoticed (Osiander, 1995: 6-7).

In those situations where armed force was employed by rival national groups, however, little was accomplished with regard to ending hostilities. The OSCE—which involved itself in “hot” conflicts such as Yugoslavia, Georgia, Ngorno-Karabkh, Tajikistan and Chechnya during the early

1990s—had little if any success in bringing peace to the various warring factions. Nevertheless, as Adam Roberts has made clear that “the historical record suggests that the management of communal conflicts is inherently difficult, whether it is attempted by states, empires, regional or global institutions. The UN (and by extension also the OSCE and COE) should not be judged harshly merely for running into difficulties similar to those encountered by other bodies” (Roberts, 1995: 389-410).

Certain characteristic features of communal or national minority/majority conflicts make them particularly difficult to resolve once fighting has begun. (1) A large number of combatants is usually involved and political control over them tends to be haphazard. (2) Since ethnic populations tend to be intermingled within the same territory, there are usually numerous points of friction between opposing groups rather than a clear line of battle. (3) Also, as a result of intermingled populations, the involvement of civilians, who may be attacked or ethnically cleansed, is almost unavoidable. (4) Moreover, regardless of the logistics involved, once communal leaders embark upon a militant course of action and commit the human, military and economic resources of their group to such an endeavor, changing course becomes fraught with political difficulty—particularly once soldiers and civilians have been killed, property destroyed, children orphaned and refugees forced to relocate to other areas, etc. In these circumstances, a cease-fire may appear to imply surrender unless at least some strategic gains are seen to justify the great human and other sacrifices made. So, it is all the more important to prevent such conflicts from developing, which arguably the OSCE and COE have done.

But this brings us to the very thorny problem of resolving national minority/majority conflicts which have deteriorated into violence. In the end, outsiders cannot resolve such conflicts: they can only encourage the insiders to do so. The willingness to respect national minority rights, uphold cease fires, enter negotiations and accept a peace settlement must come from the parties directly involved. As Jack Donnelly has noted, “stable regimes that protect internationally recognized human rights [and by extension also national minority rights] over the long run almost always have arisen, and must arise, from sustained national political struggle and vigilance” (Donnelly, 1995: 70).

This conclusion is normative as well as instrumental. Just as one cannot “force” an individual to be free, for such an imposition would not only be practically problematic to carry out but would itself constitute a denial of freedom, neither can one “force” a nation to be democratic or to respect national minority rights. Final responsibility for success or failure in the protection of national minorities rests with domestic rather than international actors. This instrumental and normative reality fundamentally limits all international action to enforce human and national minority rights.

Conclusion

Earlier on in this paper, it was suggested that the various possibilities for human and national minority rights enforcement could be plotted along a spectrum ranging from state self-reporting to outright military intervention. The less interventionist the procedure, the greater the priority accorded to sovereign rights; the more interventionist, the greater the priority accorded to human and national

minority rights. Clearly, the kinds of national minority rights enforcement mechanisms adopted by the OSCE and COE between 1990-1995—state self-reporting, international review of a states performance, rapporteur missions and mediation—err on the side of sovereign rather than national minority rights.

This particular balance between sovereign and national minority rights owes its existence to a number of factors. Both the OSCE and COE could adopt only those enforcement measures that were agreed upon by their various member states. This, in effect, gave states a veto over the proposals. And since it is a virtual axiom of international relations that states are loath to adopt measures which would be to the detriment of their own powers and prerogatives, it was only to be expected that sovereign rights would trump national minority rights in enforcement as well as standard setting. At the same time, however, there were other international concerns which also seemed to justify a more moderate course of action. Evidence of a “quagmire” in former Yugoslavia, whose peaceful resolution until 1995 seemed beyond the reach of any and all international actors, made states hesitant to adopt procedures that might require their involvement in similar conflicts. Such resistance was increased by the realization that international action of this nature would probably be long-term and thus requiring human and financial resources most member states were unwilling to commit.

Such considerations are, of course, the very stuff that power politics is made of. There is, however, an underlying normative consideration which also tilted the balance towards sovereign rights. International society remains, for better or for worse, comprised primarily of sovereign states. A mutual respect for the rights of states underscores this system. It is this reciprocity which makes international cooperation possible even in a condition of anarchy. If this reciprocity were called into question, international society itself, and with it all hope of securing greater respect for human and minority rights, might be jeopardized. This still appears to be “the bottom line” in international relations, and there is no evidence from the experience of the OSCE and COE between 1990 and 1995 that national minority rights are changing that.

Notes

1. Moreover, any participating state having put into effect points (1) and (2) could request through the Office for Democratic Institutions and Human Rights (ODIHR) whether another participating state would be willing to invite a mission. If a participating state made such a request and the requested state (a) did not establish a mission within ten days or (b) the question was not resolved by the mission could initiate with the support of at least five other participating states the establishment of up to three rapporteurs.

2. Evidence of the HCNM’s involvement in the Baltic case may be found in OSCE documents that have been made available to researchers: OSCE, *Recommendations by the HCNM upon his visit to Estonia, Latvia and Lithuania* (1993); OSCE, *Recommendations by the HCNM about the Latvian draft citizenship law* (1994); OSCE, *Recommendations by the HCNM on the question of the implementation of the Estonian law on aliens* (1994); OSCE, *Exchange of letters*

between the HCNM and the Minister of Foreign Affairs of the Republic of Estonia (1995).

3. Information regarding this particular OSCE intervention may be found in OSCE, *Recommendations by the HCNM to the Government of Ukraine* (1994).

4. For evidence of the HCNM's involvement, see: OSCE, *Letter of the HCNM to the Minister of Foreign Affairs of Romania* (1993); OSCE, *Letter from the HCNM concerning the Slovak national minority in Hungary* (1993); OSCE, *Letter from the HCNM concerning the Hungarian national minority in Slovakia and comments thereto* (1993).

5. These shortcomings are cited by Dr. Ari Bloed in an internal OSCE report on the various early warning mechanisms. OSCE, "Review of Existing Early Warning Mechanisms," report by A. Bloed in the *Consolidated Summary of the CSCE Seminar on Early Warning and Preventative Diplomacy*, (1994).

6. These points are made in an internal OSCE report by Ambassador R. Viemero entitled, "Early Warning Methods and Indicators Including CSCE Institutions," which can be found in the *Consolidated Summary of the CSCE Seminar on Early Warning and Preventative Diplomacy*.

7. These reasons are given by the COE's Committee of Ministers in a report to the Parliamentary Assembly. COE, *Communication from the Committee of Ministers 7316 Interim Report on the Rights of Minorities* (1995).

8. These activities are discussed in COE, *Parliamentary Assembly Report 7228 on the Protection of the Rights of National Minorities* (1995).

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