In: IFSH (ed.), OSCE Yearbook 2000, Baden-Baden 2001, pp. 257-271.

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The Lund Recommendations on the Effective Participation of National Minorities in Public Life

"The Lund Recommendations on the Effective Participation of National Minorities in Public Life" were published in 1999 by the Foundation on Inter-Ethnic Relations.[1] They were developed by 18 experts on international law, political science and sociology illustrating ways to improve participation of national minorities in public life and hence strengthen domestic stability in states with minority populations as well as international security in general.[2] It is certain these Recommendations will not fail to gain the attention of other experts in the field. Its authors are leading authorities on minority problems, who have incorporated their experiences from many different parts of the world in this document. They represent the current position on what is "feasible" in implementing contemporary policies for minorities. However this alone does not justify reporting on the recommendations of a non-governmental organization (NGO) in the OSCE Yearbook. There are much better reasons for pursuing this endeavour. For one thing the "Foundation on Inter-Ethnic Relations" was created in 1993 as an NGO whose sole task was to support the OSCE High Commissioner on National Minorities (HCNM).[3] This meant they had close links with his office, in other words, an OSCE body. A second point is that the HCNM commissioned the experts with the development of the Lund Recommendations personally. He was continuing a practice he had started in 1996 with the "The Hague Recommendations Regarding the Education Rights of National Minorities" followed by the "Oslo Recommendations Regarding the Linguistic Rights of National Minorities" in 1998.[4]

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1 The Lund Recommendations on the Effective Participation of National Minorities in Public Life are reprinted in this volume, pp. 445-469. References to specific passages of the Lund Recommendations are noted in parentheses with Roman and Arabic numerals as well as capital letters.

2 The conference in which agreement was reached upon a final text for the Recommendations was conducted under the chairmanship of Professor Gudmundur Alfredsson at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund. Thus this document is named after that Swedish university city. The author of this article was a member of the group of experts.

3 This foundation was dissolved at the end of 1999 because the office of the HCNM was enlarged.

4 These Recommendations can be found at the following website: www.osce.org/inst/hcnm/index.html. Cf. also J. Packer/G. Siemienski, Integration Through Education: The Origin and Development of The Hague Recommendations, in: Int`l Journal of Group Rights 4 (1996/97), pp. 187-198, and J. Packer/G. Siemienski, The Language of Equity: The Origin and Development of the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, in: Int´l Journal of Group Rights 6 (1999), pp. 329-350.

The remarkable thing about the HCNM's approach is that he has directed his attention to the general problems of protecting minorities. In this respect he has to a certain extent changed the focus of his activities, which since the inception of his office on 1 January 1993 were almost solely concerned with the circumstances of national minorities in individual states. Because each minority situation differed substantially in practice, it was nearly impossible to come to general conclusions. One common fundamental point was merely that in those states where there were minorities, there were usually other states where these were majorities. The HCNM was often forced to put great effort into furthering his proposals for solutions to such minority problems. In the meantime these proposals have provided a foundation and the initial efforts have produced some results. They have lead to practical improvements in some states and in others to at least psychological ones.[5]

Of course, one must admit that these activities have been carried out predominantly in the "new" (or re-established) states in the former Soviet sphere of influence. This gave the impression that minority problems in the West had been overlooked. And this perception is not without a certain basis, because Western states where violent minority problems exist (e.g. Great Britain, Spain and Turkey) contributed to creating the High Commissioner's mandate to a considerable extent - and this mandate prohibits dealing with conflicts in which organized acts of terrorism are involved.[6] The fact that this regulation leads to inequality in the treatment of real or potential pressure cookers by the HCNM has been criticized in the literature repeatedly, also in this Yearbook.[7] In the long run, this procedure can certainly not be justified. Therefore it is a welcome development that with the publication of general recommendations on basic issues in minority policy, now a cross-section of the issues on minority protection in *all* OSCE States has been taken into consideration. In addition these recommendations fulfil the HCNM goals of conflict prevention and co-operation between minorities and majorities in a special way. In fact, these proposals are designed to illustrate ways of avoiding and settling minority conflicts. The Lund Recommendations contain important suggestions especially with respect to the HCNM's contribution to post-

5 Because we are dealing with preventive measures here, success cannot be calculated precisely. Relevant reference: Rob Zaagman, Conflict Prevention in the Baltic States, ECMI Monograph 1, Flensburg 1999, p. 51.

6 Cf. Rob Zaagman/Arie Bloed, Die Rolle des Hohen Kommissars der OSZE für nationale Minderheiten bei der Konfliktprävention [The Role of the OSCE High Commissioner on National Minorities in Conflict Prevention], in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH [Institute for Peace Research and Security Policy at the University of Hamburg] (Ed.), OSZE-Jahrbuch [OSCE Yearbook] 1995, Baden-Baden 1995, pp. 225-240 (the 1995 Yearbook is available as German version only).

7 Cf. Hans-Joachim Heintze, Minorities in Western Europe - (Not) a Subject for the OSCE?, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 1997, Baden-Baden 1998, pp. 215-226, and for an even more critical view, see Berthold Meyer, Zwischen Souveränitätsvorbehalten, Selektions"zwängen" und Selbstüberschätzung [Between Reservations on Sovereignty, Selective "Forces" and Self-Misjudgement], in: Friedensbericht 1999, Chur 1999, p. 255.

conflict rehabilitation in re-establishing circumstances so that different ethnic groups can live together in a tolerable manner.[8] The comprehensive participation of minorities in public life is probably one of the most promising methods of decreasing their disadvantages and the tensions surrounding them.

Finally it must be mentioned that the creation of a catalogue of possible measures to combat minority issues is by no means a new method of solving these problems. On the contrary, the Council of Europe has also decided upon *à la carte* agreements[9] like the European Charter for Regional or Minority Languages[10] and "catalogue" agreements like the Framework Convention for the Protection of National Minorities.[11] These allow member States the option of which articles in the treaties they would implement according to their specific regional requirements. Although one cannot underestimate the fundamental difference between these conventions and the Lund Recommendations - both Council of Europe instruments are treaties under international law with (weak) enforcement procedures - the approaches in a framework convention and a set of recommendations like the Lund document are still very similar.

The Value of the Lund Recommendations

The Lund Recommendations are not an international OSCE document. They are a set of opinions by independent experts and are neither politically nor legally binding. Nevertheless there is a connection to the OSCE States. In 1998 in Locarno at the OSCE conference on "Governance and Participation: Integrating Diversity", the participating States expressly called upon the HCNM to further develop the concepts of the participation of minorities in responsible governance. Thus the Lund Recommendations are to be seen as an "assignment" and not "simply" commentary by experts.

Moreover the HCNM aspires to use the Lund document in a manner, which underlines this special characteristic. Most probably it will be utilized in a manner similar to that of the The Hague and Oslo Recommendations. In his dealings with states, the HCNM has frequently made references to these documents and encouraged the application of the proposals in them. Because

8 The activities of the HCNM in Greece should be mentioned in this context, cf. his statement in: Helsinki Monitor 4/1999, p. 78.

9 Cf. Heinrich Klebes, Minderheitenschutz durch den Europarat: Richtungswechsel durch "Entrechtlichung" von Verträgen? [Protection of Minorities through the Council of Europe: A Change of Direction through the "De-legalization" of Contracts?], in: Hans-Joachim Heintze (Ed.), Moderner Minderheitenschutz [Contemporary Protection of Minorities], Bonn 1998, p. 156.

10 Council of Europe, European Charter for Regional or Minority Languages, Strasbourg, 5 November 1992, European Treaty Series No. 148.

11 Council of Europe, Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995, European Treaty Series No. 157.

of the confidentiality in the discussions between the High Commissioner and governments, there is of course not always evidence of this. There is however clear proof when it comes to the linguistic rights of minorities. In a report written by the HCNM on guaranteeing these rights in the OSCE area, not only international law agreements and customary international law but also "other documents" are dealt with in the illustration of existing international standards. These "other documents" include the much cited UN Minority Rights Declaration (Res. 47/135)[12] as well as the The Hague and Oslo Recommendations. Specifically the report states: "Although these Recommendations are formally non-governmental in origin and have not been accepted by States through the mechanisms of the OSCE, they nonetheless have been presented to participating States by the High Commissioner as a point of reference and have generally been received positively by them."[13] This approach by the HCNM is no doubt covered by his very extensive mandate. At the end of the day, it is left up to his discretion, which issues he handles and which documents he uses to back up his work.[14]

There is another reason why the Lund Recommendations are not just another set of expert opinions among many. This is due to their contents which many of the states view as a "hot potato". After all, participation in public affairs is a basic problem in any democratic system and poses a range of difficult questions. For example there are issues of the development of participation as a group right, reverse discrimination as well as whether self-government should be in the form of territorial or personal autonomy. All these questions have been discussed in the literature for some time now yet have not been reflected in the development of international law.[15] The fact that the HCNM has requested proposals encouraging "participation" is evidence that in the long run actual practice must include consideration of the basic conceptual issues in protecting minorities.[16]

The Lund document is also important because in the explanatory notes to the actual recommendations the extensive commitments by the states to institute the effective protection of minorities, which inevitably must include the political participation of persons belonging to minorities, are stated clearly. Particularly in OSCE documents, there is a large range of relevant provisions.

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12 Cf. Allan Phillips/Alan Rosas (Eds.), The UN Minority Rights Declaration, Åbo 1993, pp. 11ff.

13 OSCE (Ed.), Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area, The Hague 1999, p. 7.

14 Cf. Jakob Haselhuber, Der Hochkommissar für nationale Minderheiten der OSZE [The OSCE High Commissioner on National Minorities], in: Erich Reiter (Ed.), Grenzen des Selbstbestimmungsrechts [Limitations on the Right of Self-Determination], Graz 1996, pp. 109ff.

15 One of the leading experts in the area of the protection of minorities put this in a nutshell: "It is difficult to say where minority rights begin and end." Patrick Thornberry, Introduction: In the Strongroom of Vocabulary, in: Peter Cumper/Steven Wheatley (Eds.), Minority Rights in the "New" Europe, The Hague 1999, pp. 3f.

16 These practical questions are handled impressively by Javaid Rehmann, The Weakness in the International Protection of Minority Rights, The Hague 2000, pp. 4ff.

The carefully compiled list of - according to OSCE practice - "politically binding" commitments by the OSCE participating States[17] alone would have been enough to justify publishing the Lund document, all the more true for the expert proposals going above and beyond this, striving for further development of OSCE standards as well as stating them more precisely.

General Aspects of Human Rights

It is inherent in the preamble of the Lund Recommendations that minority rights come under the category of human rights. This implies that these rights are viewed as individual rights - i.e. the rights of an individual member of a minority group - and not group rights. In this respect the Lund experts were following the traditional approach in international law that was accepted in 1966 in Article 27 of the International Covenant on Civil and Political Rights.[18] Also the Council of Europe took the path of individual rights in 1995 in its Framework Convention for the Protection of National Minorities.[19] Finally the Lund group of experts also had limitations on an innovative approach to group rights because the CSCE/OSCE itself had indicated "respect for the rights of persons belonging to national minorities as part of universally recognized human rights" in paragraph 30 of its fundamental Document of the Copenhagen Meeting from 29 June 1990.[20]
This integration of minority rights in human rights places the Lund Recommendations on secure legal ground. Nevertheless, this approach is surprising because the HCNM's mandate explicitly is not aimed at the individual rights of persons belonging to a minority. He is even prohibited from accepting individual petitions. Instead the HCNM usually negotiates with representatives of minority parties and organizations so that *de facto* his approach is more geared towards group rights. Despite these systematic contradictions, which tend to raise questions of legal theory, the established human rights approach of the Lund document has the advantage that one of the basic elements of contemporary protection of minorities can be dealt with first: The decision as to whether an individual belongs to a minority or not rests with that individual (I 4). In this manner the commitment is fulfilled that each individual can

17 Especially since some of these - according to OSCE standards - politically binding provisions already fall under international law in bilateral agreements, Cf. Hans-Joachim Heintze, The International Law Dimension of the German Minorities Policy, in: Nordic Journal of Int'l Law 2/1999, pp. 117ff.
18 International Covenant on Civil and Political Rights of 19 December 1966 (UNTS Vol. 993), p. 171.
19 Framework Convention for the Protection of National Minorities, cited above (Note 11).
20 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, in: Arie Bloed (Ed.), The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993, Dordrecht/Boston/London 1993, pp. 439-465, here: p. 456.

define his identity himself and that no person shall suffer any disadvantage as a result of such a choice or refusal to choose.

The Significance of an Active and a Passive Right to Vote

The individual rights approach also makes it possible to demand all other human rights for persons belonging to minorities. However, the Recommendations place special emphasis on equality and non-discrimination. It is just as important that all the norms of the UN Covenant on Human Rights are automatically applied to persons belonging to minorities. Article 25 is particularly relevant in ensuring the right to effective participation in public life. It expressly stipulates participation in public affairs especially by means of free elections. The primary responsibility of a state is to carry out elections and make it feasible for its citizens to use their right to an equal, secret and free vote. This is the ideal public law procedural guarantee for the implementation of political rights.[21] Without a doubt Article 25 is the most decisive international law norm on the subjects dealt with in the Lund Recommendations.

However the UN Covenant on Human Rights is not the only international instrument emphasizing the importance of elections. In the words of Article 21(3) of the Universal Declaration of Human Rights of 10 December 1948: "The will of the people shall be the basis of the authority of government."[22] Article 3 of Protocol I additional to the European Convention on Human Rights also articulates this concept.[23] On the whole, in all the relevant documents, elections play a central role towards the right of participation in public life. Thus the election topic is the focus of section II in the Lund Recommendations (Participation in Decision-Making). It is instructive here that the opportunities available to minorities to organize are treated first. Compliance with the "international law principle" of freedom of association is stipulated in this section. Although the term "principle" is rather surprising (it should read "international law norm"), the core of this concept is that minorities are entitled to establish political parties. However one should not forget that this right is embedded in the catalogue of other human rights. Thus the rights of others, non-violence and non-discrimination are also to be respected. This means ultimately that a purely ethnic orientation could under certain circumstances be in conflict with the ban on discrimination. However because a number of states prohibit the creation of minority parties in general, the emphasis on freedom of association seems necessary even though it should not be made absolute.

The experts in Lund were in agreement that there is no such thing as a neutral electoral system. Thus there can be no one system, which meets the needs of all interests groups equally. Because this is true, states have been called upon to find the most representative governmental form for their particular situa-

21 Cf. Manfred Nowak, CCPR Kommentar [CCPR Commentary], Kehl 1989, p. 467, margin no. 1.

22 Reprinted in: Rudolf Bernhardt/John Anthony Jolowicz (Eds.), International Enforcement of Human Rights, Heidelberg 1987, p. 166.

23 Ibid., p. 216.

tion.[24] In many cases this may lead to giving minorities special privileges, e.g. in the form of lower numerical thresholds for representation in the legislature to be able to secure their inclusion in governance (II B 9). In the past, effective protection of minorities was evaded by a discriminatory representation system in constituencies. In light of these experiences, it is recommended that geographic boundaries of electoral districts should facilitate equitable representation of national minorities (II B 10).

However the Lund Recommendations are in general vague about the active and passive right to vote (II B) even though this is *the* fundamental issue in rights of political participation. The reason for this is easy to determine: It is due to the question of citizenship. The Lund experts made a detour around this problem as it is controversial whether international law protection of minorities can only be applied to a country's citizens or whether it may also be applied to foreigners living in the country. The UN International Covenant on Civil and Political Rights stipulates that Article 27 protects *all* persons belonging to linguistic, religious and ethnic minorities. Citizenship is not a prerequisite to belong to these categories of the regulation. This has been repeatedly confirmed by the Committee for Human Rights[25] and eventually led to General Comment 23 (50) of 1994 which states: "A State party may not (...) restrict the rights under article 27 to its citizens alone."[26] This requirement is emphasized in the professional literature, which also calls for including the so-called new minorities in the categories covered in Article 27.[27]

Although this interpretation can certainly not be contested from a legal theory angle, it is in striking contradiction to state practice. The interpretation of the law in many European states is that to enjoy protection persons belonging to a minority must be citizens of the state concerned. The German government for instance has emphasized this repeatedly. Upon adopting the UN Declaration on Minorities as well as the Council of Europe's Framework Convention for the Protection of Minorities, they explicitly stated that persons belonging to a minority must have citizenship.[28] In view of this apparent contradiction between theory and practice, it is understandable that the Lund Recommendations do not include the subject of citizenship with respect to persons belonging to a minority.

Despite this unresolved dispute, the protection of stateless persons belonging to a minority has played an outstanding role in HCNM's activities, for exam-

24 Cf. Dieter Blumenwitz, Volksgruppen und Minderheiten - Politische Vertretung und Kulturautonomie [Ethnic Groups and Minorities - Political Representation and Cultural Autonomy], Berlin 1995, pp. 129ff.

25 UN-Doc. CCPR/C/23/CPR.1. This interpretation has been criticized by Deschenes in the respect that "the use of the word 'persons' appears equally natural, even given the underlying concept of citizenship". UN-Doc. E/CN.4/Sub.2/1985/31, p. 8.

26 In: Human Rights Law Journal 15/1994, p. 235.

27 Cf. Rüdiger Wolfrum, in: Caterine Brölmann et al. (Eds.), Peoples and Minorities in International Law, Dordrecht 1993, pp. 153ff.

28 Cf. BT Drs.12/6330, p. 8 and BGBl. 1997 II, p. 1418. Cf. also Peter von Jagow, Minderheitenschutz in der außenpolitischen Praxis [Protection of Minorities in the Implementation of Foreign Policy], in: Heintze (Ed.), cited above (Note 9), pp. 76f.

ple in Estonia.[29] Each statement in the Lund document on the relationship between citizenship and the rights of minorities should have taken this into consideration. However, this would have overcharged the already explosive topic of the rights of participation of minorities. Nevertheless one must consider whether the issue of citizenship in conjunction with the rights of minorities should not be analysed by experts at some point in the future. Perhaps this could be a topic for forthcoming recommendations to be commissioned by the HCNM.
One advantage of the approach in the Lund Recommendations was the consideration of all relevant documents on the political participation of minorities. The variation in their legal or political character did not play a role. On the contrary, the main goal in this document was to illustrate developmental tendencies in the states as well as in international relations. In addition to international law treaties and political agreements, other documents like the General Comments of the UN Human Rights Committee - i.e. a treaty enforcement body - were brought into play. Although these instruments are unquestionably of differing legal value and acceptance, it is only this kind of approach that allows a comprehensive analysis of complex questions.

Democracy and Participation

More than the UN, the OSCE is a "community of values". Since the adoption of the Charter of Paris on 21 November 1990[30] it has been based, *inter alia*, on the values of democracy, market economy, human rights and minority rights. In the development of this Charter, the states were able to fall back on the pioneering Copenhagen Document (1990), which lists the basic elements of a democratic society and combines them with the requirement of effective protection for minorities. At the time this should have received more attention because the topic, protection of minorities, had been a taboo up until the end of the East-West conflict. The other European community of values based on a democratic state order - the Council of Europe - considered protection of minorities a "shady business" up until the nineties.[31] They only began dealing with the topic after the OSCE got the ball rolling.
In view of the commitments of the OSCE to democracy and the protection of minorities, it is a matter of course that the Lund Recommendations are based on democracy (I 1). Only in a democratic society can there be effective participation of minorities in public life and in fact, this is a prerequisite. De-

29 Cf. Timo Lahelma, The OSCE and conflict prevention: The case of Estonia, in: Helsinki Monitor 2/1999, pp. 27-28.
30 Charter of Paris for a New Europe, Paris, 21 November 1990, in: Bloed (Ed.), cited above (Note 20), pp. 537-566.
31 See the Austrian international law specialist, Felix Ermacora, in: Der Minderheiten- und Volksgruppenschutz vor dem Europarat [Protection of Minorities and Ethnic Groups in Connection with the Council of Europe], Vienna 1972, p. 75.

mocracy lives from the participation of all people, but it does require good governance, tolerance and the rule of law (I 1; I 2). This is closely linked to the fact that minorities must be able to form organizations. However the Lund Recommendations do not state whether minorities should or could create institutions. This could be a result of the fact that they have an approach based on individual rights. Instead the experts assume that states may have an obligation to create their own institutions to "ensure" the participation of minorities in public life. This is the experts' approach to encouraging "affirmative action". Of course they were perfectly aware of the dangers of these supportive measures. Thus in the same recommendation (I 3), they expressly emphasized the obligation to respect human rights of those persons who have not been the beneficiaries of such affirmative action. This proposal is also linked to the requirement that a climate of confidence be created by governments and minorities. Transparency is the first prerequisite for this as it is essential for a democratic society. There is also a reference to the importance of the mass media.

The subsidiarity principle plays a special role in states with minorities. This principle is to ensure that decisions are made not through anonymous and distant central authorities, but at a local administrative level in the lowest echelons. This can for example be of crucial importance for regionally concentrated linguistic minorities.[32] The subsidiarity principle raises practical questions on what forms of self-governance would be necessary to guarantee comprehensive participation of minorities in public life.

Self-Governance

The central statements of this document can be found in Part III of the Lund Recommendations titled "Self-Governance", which could also be paraphrased as autonomy. This topic has been taboo for so long that it is impossible to avoid this assessment. Therefore, up to now there has been no international document, which treats international law obligations in this area in an all-inclusive manner.[33] Despite the widely accepted positive moments in the protection of minorities, which have been achieved through autonomy regulations, there is no willingness on the part of the states to consider this concept as a general solution for minority conflicts. This has been made clear through various initiatives, which were aimed at enhancing the value of autonomy models. Thus Recommendation 1201 was passed by the Parliamentary As-

32 Cf. Michael Brems, Die politische Integration ethnischer Minderheiten [The Political Integration of Ethnic Minorities], Frankfurt/M. 1995, pp. 46ff.

33 However, there are a series of regulations on individual cases. Cf. the survey by Hurst Hannum (Ed.), Documents on Autonomy and Minority Rights, Dordrecht 1993. In the past few years there have also been many additional provisions, see Markku Suksi, On the Entrenchment of Autonomy, in: Idem (Ed.), Autonomy: Applications and Implications, The Hague 1998, pp. 151ff.

sembly of the Council of Europe in 1993, but found no approval in the Committee of Ministers. One of the reasons for this was certainly that in Article 11 a "right to have at their disposal appropriate local or autonomous authorities or to have a special status" had been stipulated.[34] This example proves that "the sensitivity on autonomy is still very intense in certain member States no matter what shape it takes".[35] How strong the reservations were can be seen by Slovakia's refusal to ratify the treaty on good-neighbourly relations with Hungary in 1995[36] because there was a reference to the legally binding character of Recommendation 1201 in it.

The reason that there are widespread reservations on the part of the states about autonomy is because the granting of state authority to self-governing institutions of minorities is often considered as a step towards secession.[37] Thus despite differing assertions in the literature,[38] international law does not recognize a legal claim guaranteeing autonomy. This becomes particularly clear in view of the Copenhagen Document with its in general extremely far-reaching provisions on minority issues (therefore the document has been mentioned numerous times in this article). Although bold and extensive statements have been made in it on the role of minorities in democratic societies, paragraph 35 carefully mentions autonomy "as one of the possible means" of developing regulations on minorities: "The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned."[39]

However it is very positive that autonomy was mentioned at all in the Copenhagen Document. This made it possible in the Lund Recommendations to pick up where was left off in Copenhagen. Analogous to the general paraphrasing of autonomy in international law, the Lund experts based the Recommendations on the following understanding of autonomy: Parts of a state could have the authority to regulate certain affairs through self-governance, in particular by passing laws, without acquiring the quality of being a state.

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34 Recommendation 1201 can be found in the list of adopted texts at the following web site: http://stars.coe.fr/index_e.htm.

35 Heinrich Klebes, Rahmenübereinkommen des Europarats zum Schutz nationaler Minderheiten [The Framework Convention of the Council of Europe for the Protection of National Minorities], in: Europäische Grundrechte-Zeitschrift 10-12/1995, p. 266 (translation).

36 On the importance of these agreements cf. Arie Bloed//Pieter van Dijk (Eds.), Protection of Minority Rights Through Bilateral Treaties, The Case of Central and Eastern Europe, The Hague 1999, p. 8.

37 Cf. Stefan Oeter, Minderheiten im institutionellen Staatsaufbau [Minorities in State-Building Institutions], in: Jochen A. Frowein et al. (Eds.), Das Minderheitenrecht europäischer Staaten [The Minority Right in European States], Part 2, Berlin 1994, p. 494.

38 Cf. Douglas Sanders, Is Autonomy a Principle of International Law?, in: Nordic Journal of Int'l. Law 1/1986, p. 17.

39 Copenhagen Document, cited above (Note 20), p. 458.

When minorities live in demarcated territories, regional autonomy regulations are the obvious solution. If this is not the case, then the individuals belonging to a widely dispersed minority are the holders of autonomous rights. In light of these two different situations, the experts speak of territorial and non-territorial measures, which may be required for the effective participation of minorities in public life. The states should devote adequate resources to such measures (III 14).

Special emphasis has been placed on the fact that there is no standard model for all minority situations. Individual regulations are necessary which may include asymmetrically allocated functions. In the commentary to this recommendation there is an explicit reference to the fact that the experts are against ethnic criteria for territorial measures. The reason for this stance is their rejection of a misuse of autonomy regulations for "ethnic cleansing".

With respect to non-territorial forms of self-governance, personal autonomy, reference is made primarily to the traditional field of culture and its potential to encourage the identity of minorities. The approval that minorities can determine and enjoy their own symbols and other forms of cultural expression is a welcome addition (III 18). Until only very recently the perception of these cultural rights caused certain states substantial problems.[40] This estimation is even more true when it comes to territorial measures, which often make states very suspicious. Thus the Lund Recommendations have been expressed very carefully. Even in the introduction (III 15), states have been placated through the confirmation of functions generally exercised by central authorities including defence, foreign affairs, immigration and customs, macroeconomic policy and monetary affairs, to prevent all separatist movements. In contrast areas like education, culture, language, environment, local planning, natural resources, economic development, local policing functions, housing, health and social services are seen as being part of territorial self-government.

The Lund experts purposely fall short of what is legally "feasible" in these situations. After all, in the meantime certain autonomy regulations have come into existence, which transfer a much higher degree of authority from central government to local autonomous administrations.[41] Nevertheless the Lund Recommendations can only be seen as an initial impulse showing fields of territorial self-government, which are relatively straightforward. States that have shown hesitation can thus gain initial experience with the principle of subsidiarity before other areas are incorporated into the autonomy regime. The functions, which could be managed jointly and fall under both central

40 Cf. Dieter W. Bricke, Slowakisch-Ungarische Minderheitenprobleme [Slovakian-Hungarian Minority Problems], in: Hans-Joachim Heintze (Ed.), Selbstbestimmungsrecht der Völker - Herausforderung der Staatenwelt [The Right to Self-Determination of the Peoples - A Challenge for the World of States], Bonn 1997, pp. 274ff.

41 The best example of this can be found on the Åland Islands. Cf. Sten Palmgren, The Autonomy of the Åland Islands in the Constitutional Law of Finland, in: Lauri Hannikainen/Frank Horn (Eds.), Autonomy and Demilitarisation in International Law: The Åland-Islands in a Changing Europe, The Hague 1997, pp. 85ff.

and regional authority are stated in III B 20 of the Lund Recommendations: taxation, administration of justice, tourism and transport.
The developments in Kosovo after the NATO intervention, where there is now clear dominance by the Albanian majority, have shown once again that the regulations of self-government built entirely on ethnic criteria are always tied to the misuse of power. Acts of revenge against persons belonging to the group of Serbs[42] who had prevailed before are a constant threat. They are easier to commit because the power relationships in the autonomous area have been reversed. The previously (suppressed) minority - in relation to the whole state of Serbia - takes power and the relationship between majority and minority is for practical purposes inverted. In light of relevant experiences the Lund Recommendations emphasize that the authorities of an autonomous region must respect and ensure the human rights in particular of "new" minorities (III B 21). This must be seen as a basic rule of any autonomy regulations whatever its nature.

The Enforcement of Minority Rights

It is common knowledge that the proclamation of rights by states is not enough in itself, but that enforcement mechanisms are necessary. The most important instrument to achieve this is the law. Therefore the last section of the Lund Recommendations is devoted to constitutional law and other legal safeguards of the rights of participation by minorities. The difficulty in the development of particularly this section is the tremendous variety in the legal systems of OSCE States. Nevertheless it emerged from the discussions that special attention must be given to measures that would change the rights of participation of minorities. In practice there seems to be a tendency for governments to restrict those rights of participation when they lead to "unpleasant" results. For that reason the Lund document suggests instituting a higher threshold for changes in this area. As a rule they recommend approval by a qualified majority in Parliament, the legislative organ, or the implementation of a plebiscite (IV A 22). Furthermore periodic reviews of different forms of participation are suggested.
It is to be seen as state-friendly that provisional arrangements may be "considered" or could be established to be able to test their usefulness. Particularly the latter recommendation shows caution on the part of the experts, who refrain from the use of any "confrontational" undertone and instead make

42 The attack on the Serbian people after the NATO Kosovo intervention is one of the most heart-rending examples of this because it occurred after the "humanitarian intervention" and in the presence of troops for the "protection of human rights". Cf. Peter Glotz, Gewaltiger Hass, in: Die Woche of 18 June 1999, pp. 8f., and Matthias Z. Karádi/Dieter S. Lutz, Der Preis des Krieges ist seine Legitimität. Zu den Kosten und Folgekosten des Kosovokrieges [The Price of War Is Its Legitimacy. On the Costs and Post-War Costs of the Kosovo War], in: Vierteljahrsschrift für Sicherheit und Frieden (S+F) 3/1999, p. 159.

proposals geared completely towards co-operation between states and minorities. This is also expressed in the last paragraph with regard to enforcement mechanisms, in which they explicitly not only rely on legal remedies, but give priority to consultation mechanisms. The prevention concept is behind this idea, which emerges from the fact that after the outbreak of (especially violent) conflict, co-operative settlement of the dispute is most often no longer feasible.[43] This recommendation, of course, also has its origins in the HCNM's mandate, which requires him to act preventively. [44]
Nevertheless, and this is something you would expect of a group of experts who are predominantly jurists, the Lund Recommendations advocate that an opportunity should be opened up to settle conflicts legally. In particular they favour procedures for the judicial review of legislative or administrative actions (IV B 24). Of course, the prerequisite for this is the existence of an independent judiciary. Here the circle is complete: Although the Lund Recommendations initially assume the necessity of democratic structures in the OSCE States, at the end of the day they again state that the indispensable criteria for real participation of minorities in public life is to be seen in the rule of law and the separation of powers.

Conclusion

The Lund document is a set of recommendations. It is not expected that they will be implemented in their entirety in all states. However, they are to be seen as suggestions, of which one or the other could offer a meaningful opportunity for a state to achieve more effective participation of minorities. This could be necessary to be able to fulfil international commitments adequately or to eliminate deficits, which impair the inner stability of a society. There is no doubt that each situation involving minorities is different and consequently unique solutions must be strived for. Thus there is no universal remedy. The Lund Recommendations also allow states the required freedom to go their own way in finding an optimal solution for the specific minority in each individual state. Their goal is clearly the prevention of conflict. Especially in ethno-political conflicts, when bloody hostilities have occurred and the peaceful co-existence of majorities and minorities is disturbed for long periods of time or even impossible without foreign intervention. As the HCNM has repeatedly and adamantly pointed out: "It is evident from the experience of Bosnia, of Chechnya, of Nagorno-Karabakh, of Georgia and elsewhere, that once a conflict has erupted, it is extremely difficult to bring it

43 Cf. P. Terrence Hopmann, The OSCE Role in Conflict Prevention before and after Violent Conflict: The Cases of Ukraine and Moldova, in: Studien und Berichte zur Sicherheitspolitik 1/2000, pp. 25ff.

44 Cf. Daniela Späth, Effektive Konfliktverhütung in Europa durch den OSZE-Hochkommissar für nationale Minderheiten [Effective Conflict Prevention in Europe through the High Commissioner on National Minorities], in: Die Friedens-Warte 1/2000, pp. 81ff.

to an end. In the meantime, precious lives have been lost, new waves of hatred have been created and enormous damage has been inflicted. It is my firm belief that money spent on conflict prevention is money well spent, not only because it is cheaper, but especially because it saves so many lives."[45]

The Lund document is the work of independent experts whose statements do not represent the opinions of states, politicians or the HCNM. These experts were asked to participate in the elaboration of these recommendations based on their personal knowledge and their long years of experience in the field of minority protection. Ultimately, these recommendations serve to fill the gap in the legal and political grey areas, which the general international instruments on the protection of minorities inevitably exhibit to be able to deal adequately with the variety of situations in each individual state. Opinions may differ on the validity of one or another of the recommendations, but one cannot dispute that *all* OSCE participating States have a legal and political commitment to guarantee the effective participation of minorities in public life. In conclusion, it must be recognized as historical progress that today the discussion does not revolve around whether the protection of minorities is a necessity, but "how" they are to be protected. This includes the possibility of an increasingly comprehensive guarantee that the identity of minorities will be promoted, which must also include participation in public life. The continuing and serious dialogue between states and their minorities is a prerequisite for this and the goal behind the Lund Recommendations is to promote this dialogue. A dialogue can only exist under the assumption that no insurmountable hurdles will be constructed. The experts have without a doubt held to this simple insight and on various occasions could have created the impression that the Recommendations were formulated with too much orientation towards the states. Of course this is only a superficial assessment of the situation. At any rate, addressing self-governance means addressing problems which not so many years ago were taboo. The step-by-step, voluntary implementation of the proposals relevant to each individual state will be a learning process for the states as well as the minorities. The increase in the influence of civil society, which can be observed worldwide, will make the reservations held on both sides more relative and these new experiences will encourage a sequel to the Lund Recommendations based on actual practice.

45 Max van der Stoel, Minorities in Transition, in: War Report No. 48, January/February 1997, p. 16.