

Olivier A.J. Brenninkmeijer

Creating Conflict Prevention: Negotiating between Preconditions and Influences

Introduction

A little more than twenty years ago, a community of diplomats realized that an opportunity existed to create a conflict-prevention institution unlike any that had previously existed. They drafted a mandate and gathered support from many of their ministries of foreign affairs to engage in negotiations and obtain the necessary approval for the OSCE to establish the High Commissioner on National Minorities (HCNM).¹ This contribution presents a brief account of the diplomatic negotiations that led to the creation of the mandate of the HCNM and offers some insights into the influences, challenges, and preconditions that helped these negotiations to succeed.

The proposal was an original idea whose time had come, a time when multilateral leaders were beginning to speak about prevention rather than cure, and about early engagement to identify and reduce tensions rather than post-war peacekeeping and peacemaking. The time was ripe for change because certain crucial preconditions and contexts made this change acceptable. This change was initiated by the proposal presented by the Netherlands Ministry of Foreign Affairs (MFA) for a High Commissioner on National Mi-

Note: Historical research for this study was carried out in part for a PhD dissertation ten years ago. The author is particularly grateful to the present and past High Commissioners on National Minorities, beginning with the late Ambassador Max van der Stoep, who, as the first person to hold this office, provided perceptive remarks during interviews. Other individuals who contributed valuable comments and helped to locate important documents during various research phases from 2002 to 2008 were advisors to the HCNM, such as John Packer and Walter Kemp, as well as staff at the archives of both the Netherlands Ministry of Foreign Affairs and the OSCE. Of note in this regard are the contributions by Pauline Hoekx and P.L.G. van Velzen at the Ministry of Foreign Affairs in The Hague and Alice Nemcova at the OSCE in Prague.

The author also wishes to reiterate his appreciation for the invaluable help he received from members of the Netherlands Ministry of Foreign Affairs, including Hans van den Broek (who was minister of foreign affairs when the HCNM's mandate was being negotiated), Ambassador Bert Veenendaal (who was Head of the Netherlands delegation in Helsinki during the negotiations in 1992), as well as Hannie Pollmann-Zaal, Ambassador Karel Vosskühler, and Rob Zaagman (who were all three part of the team that contributed to drafting, negotiating, and developing the High Commissioner's mandate). Finally, this research benefitted from analytical contributions by Dr Wolfgang Zellner and the late Professor Victor Yves-Ghébali, to whom the author remains indebted.

1 The Organization for Security and Co-operation in Europe (OSCE) was previously called the Conference on Security and Co-operation in Europe (CSCE). The name was changed at the CSCE's Budapest Summit in December 1994. Apart from references to specific documents from before 1995, the name OSCE is used throughout this study. As regards the title of the "High Commission on National Minorities", the official name will be used in this study as well as the short form "High Commissioner" and the acronym "HCNM".

norities in February 1992. Through a process of gathering support from participating States, the mandate was accepted by all of the OSCE's then 52 participating States at the closure of the OSCE's Helsinki Follow-up Meeting in July 1992.² The favourable conditions that prevailed at the time were crucial to the diplomatic process; they made negotiated solutions possible against objections pushed forward on the heels of external pressures.

Two of the decisive external preconditions were the OSCE's capacity to accommodate such change and the pressure coming from the humanitarian crisis unfolding in the Balkans. The latter pushed governments to accept that new approaches to comprehensive security and prevention may be necessary. Other conditions that influenced the internal negotiation process were the manner in which the mandate for the High Commissioner was drafted, the way in which the diplomatic teams and their supporters negotiated the challenges posed by objections, and the looming deadline of the Helsinki Summit, by which time a mandate needed to be agreed upon.

The objections raised by OSCE participating States at various stages of negotiations against the proposal as such or against phrases in the draft mandate represented the strongest external influence on the negotiations. In the end, however, solutions to objections led to success. This was a unique achievement in international relations – unique because the idea for a multi-lateral conflict-prevention mechanism went against common perceptions and assumptions about state security and sovereignty over internal affairs and domestic governance – democratic or not. It was also unique because the essence of how conflict prevention is actually supposed to be carried out was never questioned or defined.

The Preconditions and Influences that Made Change Possible

Major institutional or organizational changes will only be accepted by stakeholders if specific preconditions are present. A favourable context is necessary to obtain the support of stakeholders – to find ways to overcome objections and create sufficient pressure from inside and outside to move the process to conclusion. These three sets of variables were present at the time and can be considered as external and internal independent variables that affected the negotiation process towards a final mandate (the dependent variable) for

2 Research for this contribution is based on the above-mentioned doctoral work done between 2002 and 2004, which analysed how the High Commissioner's mandate came into existence and how the first HCNM interpreted his mandate and thus set the tone for his office's operations. Previously published information for this chapter is borrowed from the author's two earlier publications (permission to use to this information is gratefully acknowledged). These publications are: Olivier A.J. Brenninkmeijer, *The OSCE High Commissioner on National Minorities: Negotiating the 1992 Conflict Prevention Mandate*, PSIO Occasional Paper 4/2005, Geneva 2005; and Negotiations and Engagements for Conflict Prevention: State Sovereignty and the OSCE High Commissioner on National Minorities, in: *Helsinki Monitor* 4/2006, pp. 327-336.

the HCNM. Then there were a large number of objections to the mandate drafts, which can be considered as intervening variables that injected unforeseen change into the process.

The two most important external and independent variables were also indispensable preconditions. These were, on the one hand, the normative and institutional developments within the OSCE at the time, which allowed for the introduction of a conflict-prevention mandate with a focus on minorities, and, on the other hand, the ensuing violent war and inter-ethnic conflict that tore Yugoslavia apart. Had either of these two preconditions not been present, the entire proposal for the HCNM would not have come to be what it is today. As disastrous as the war in the Balkans was, it also pushed diplomats and negotiators to look desperately for ways to prevent such calamities elsewhere.

Then there were a number of internal influences (independent variables) that characterized the negotiation process. These were, first, the ingenious formulation of the contents of the proposal for a mandate, which did not contradict the normative and institutional development of the OSCE; second, the manner in which the initiators of the mandate redrafted the text numerous times in response to objections; third, the growing group of supporting countries that jointly overcame the objections raised against the proposed mandate; and fourth, the ability to take advantage of the pressure to find solutions that the war in the former Yugoslavia placed on the diplomatic teams and their national ministries.

The negotiations over the HCNM's mandate were also dependent on some very sensitive and difficult issues that could not be planned for. An obvious one, as in all negotiations, was the "chemistry" of inter-personal relations among the diplomats at the negotiation meetings. While this topic is not taken up in this short study, it must be kept in mind that inter-personal relations form a very important independent variable in the process.

Another variable that could be foreseen was the sensitive issue of the national sovereignty of states over their internal security and governance affairs. The security problems emerging in many former communist or socialist countries, where members of minorities were now seeking a political voice, led many OSCE participating States in both East and West to fear that inter-ethnic tensions might also affect their own sovereign territorial integrity. While conflict prevention could be seen as a means of reducing tensions, and hence a solution to such problems, by its very nature it implies addressing security issues within the domestic affairs of sovereign countries. And besides internal security, issues that addressed the balance between local and central government and relations between minorities and a country's majority were bound to be a part of the package. Without it ever being stated explicitly during the negotiations, the creation of the HCNM implied the acceptance of the involvement of the High Commissioner in the internal security and gov-

ernance affairs of sovereign states. Furthermore, one of the most sensitive security issues was the question of “terrorism”, as will be shown later.

It is remarkable that the initiators of the HCNM idea, together with the group of countries that supported their proposal, were able to obtain consensus for this relatively independent conflict-prevention instrument. No other multilateral officer has ever been granted the green light from sovereign countries to investigate their internal affairs that the High Commissioner was given in 1992. It must be said that the oddest part of this entire process – as well as the most ingenious – was that the participating States were asked to agree on something they could not define. Difficult terminology was left unspecified – “terrorism”, “crisis”, “violence”, etc. Nor were key procedures explained, such as how the HCNM would know what an early stage of a conflict is when his mandate says “conflict prevention at the earliest stage possible”. Where is that stage on the continuum from mild tension to outright war or from street demonstrations to repeated terrorist attacks? All this remained vague and open-ended, and it was left up to the High Commissioner in person to define what he would do, when, and how.

Origins of the Proposal

Following on from earlier OSCE meetings, such as the Geneva Meeting of Experts on National Minorities in 1991, members of the Netherlands MFA drafted a mandate during the winter of 1991/92 for an officer – initially referred to as the “High Commissioner *for* Minorities” – who would involve himself in the internal affairs of participating States wherever he suspected that a potential inter-ethnic war could break out, which he could try to prevent. This proposal was first made public on 30 January 1992 by Hans van den Broek, the Dutch Minister of Foreign Affairs, at the Prague Meeting of the CSCE Council.³ He suggested that a High Commissioner should be appointed not only to issue early warnings, but also to contribute two novel approaches to preventing crises. These are: first, to be able to advise three types of groups – the Committee of Senior Officials (CSO), the individual participating States, and the minorities – about the implementation of relevant OSCE commitments. The aim of this would be to forestall violence where a disintegration of relations between minorities and governments might otherwise lead to conflict. The second approach would be to actively promote the integration of minorities in political processes. This has a direct bearing on the structure of government in participating States. It was in this tone that van den Broek said to his counterparts at the OSCE that:

3 The CSCE Council (now the OSCE Ministerial Council) is the meeting of all the foreign ministers of the OSCE participating States. The Council acts as the highest decision-making and governing body. It meets at least once a year, usually towards the end of the term of the Chairmanship of one of the foreign ministers.

[...] We must fear that ethnic tensions, most within and between nations, will prove the most dangerous threat to stability and the common security on our continent in the years to come. Nearly all of the newly independent republics are characterised by ethnic diversity. [...] The Yugoslav crisis has taught us that we cannot afford to remain idle. So how can our capacity to deal with these issues be enhanced?

[...] The protection of the rights of minorities requires *institutionalised attention within [the] CSCE*. What do I mean by that? Well, perhaps a *CSCE High Commissioner for Minorities*.⁴

It is no wonder that the dominant external influence came from the disintegration of the former Yugoslavia. Nineteen ninety-one saw the beginning of what became Europe's least-expected nightmare, and this at a time of great optimism about the new freedom that the end of the Cold War brought to former socialist or communist countries. What is more, fear set in among European governments and diplomats that increasing violent conflict would spread on the heels of politically-driven inter-ethnic animosity and grievance. Many feared that inter-ethnic tensions would be instrumentalized to promote political objectives through violent conflict across many more former communist countries.

This fear provided the opportunity to imagine a multilateral instrument that could help prevent such calamities from spreading. In his proposal for a High Commissioner, the Netherlands Minister of Foreign Affairs proposed a mechanism that would act where national provisions for the protection of minorities are insufficient. And, if necessary, the HCNM would bring the plight of minorities to the attention of the CSO and, thus, to the entire OSCE.⁵

Years later, van den Broek commented that with respect to the disastrous events in the Balkans:

It was clear to us that, after the end of the Communist Regime, intra-state (internal) conflicts could increase as a consequence of growing

4 Archive of the Netherlands Ministry of Foreign Affairs (hereinafter: Archive, NL MFA). "The Transformation of Europe and the Role of the CSCE", *Statement by Mr Hans van den Broek, Minister of Foreign Affairs of the Netherlands, at the Meeting of the CSCE Council of Ministers in Prague on 30 January 1992*, CSCE, Second Meeting of the Council, Prague, 30-31 January 1992 (emphasis in original). The speech is also mentioned as agenda item no. 4 under the sub-heading "The transformation of Europe – the role of the CSCE and the contribution of European and other institutions", Agenda for the Second Meeting of the CSCE Council of Ministers for Foreign Affairs, Prague, 30-31 January 1992, in: CSCE, *Second Meeting of the Council*, Prague 1992, Annex 2.

5 The CSO was the body to which the High Commissioner was made accountable. Today, the Permanent Council (PC) has de facto assumed the authority previously vested in the CSO. The PC was initially created as the Permanent Committee in 1993 and renamed the Permanent Council in December 1994. It meets once a week in Vienna and has become the OSCE's principal consulting and decision-making body, consisting of the participating States' ambassadors stationed in Vienna. They are responsible for all operational decisions that do not necessitate a meeting of foreign ministers.

nationalism often at the cost of national minorities. Considering the important role that was envisaged for the CSCE with regard to human rights, democracy and constitutional government, it seemed to us that the creation of an HCNM made sense and would find its place.⁶

Indeed, the war in the former Yugoslavia was the most powerful of the external independent variables that influenced the process. It focused the minds of diplomats and helped the Netherlands team to receive support for the proposal from a growing number of OSCE countries. But there is another external precondition that helped the negotiation process in an equally important way, namely the ability of the Dutch team to “fit” the proposal into the existing operational and normative framework of the OSCE as it was in 1991. This framework offered a supportive institutional and normative context in which the new mandate could be anchored. And according to some of the Dutch drafters of the High Commissioner’s mandate, without institutional reform in the OSCE, a conflict-prevention mechanism would have been impossible.⁷

In the years up to 1991, the OSCE participating States had already begun broadening their approach to comprehensive security to include respect for human rights and approval of the Human Dimension Mechanism. This instrument had been elaborated by both Eastern and Western participating States for the protection of human rights during the final years of the Cold War and immediately afterwards. It refers to principles that are considered the basis for democratic reform and the peaceful prevention of conflicts.⁸ These principles comprise a body of standards of good conduct for OSCE participating States and were first mentioned in the Concluding Document of the Vienna Meeting of 1989. The section of this document entitled “Human Dimension of the CSCE” implicitly defines it as concerning “all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character”.⁹

The special thing about this approach was that it provided a format for OSCE States to discuss human rights even when these touched on issues

6 Hans van den Broek, letter to the author, 29 July 2001 (author’s translation).

7 Some of the ideas that went into the drafts of the proposal were the fruit of earlier professional engagement on the part of members of the Dutch team. One of the team members had attended the Geneva Meeting of Experts on National Minorities in 1991 and had supported the OSCE’s new focus on the protection of minorities. Another member of this same team had worked at the Ford Foundation in New York with Brian Urquhart on peacekeeping, institutional reform at the United Nations, and on preventive diplomacy. (From author’s written and telephone communications with Hannie Pollmann-Zaal, 3 April 2003, and Karel Vosskühler, 2 April 2003).

8 The origin of the term “human dimension” is discussed in: Stefan Lehne, *The Vienna Meeting of the Conference on Security and Cooperation in Europe, 1986-1989. A Turning Point in East-West Relations*, Bolder 1991, p.170.

9 Concluding Document of Vienna, Vienna, 15 January 1989, in: Arie Bloed (ed.), *The Conference on Security and Co-Operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht 1993, pp. 327-411, here: p. 367.

within the internal affairs of participating States. It essentially allowed for a “pedagogical” rather than punitive approach to promoting the protection of human rights.¹⁰ To this can be added the originality of considering questions concerning minorities within the broad concept of security, which was accepted at the Copenhagen Meeting of the OSCE in June 1990.¹¹ At Copenhagen, the participating States agreed to recognize that issues concerning national minorities were relevant to international peace and stability in Europe,¹² and that the rights of persons belonging to national minorities are essential for peace, justice, stability, and democracy.

The Copenhagen Document also recognizes that non-governmental organizations can help in the resolution of problems that might be related to national minorities. This was an obvious response to the growing international awareness that security was not the sole domain of state governments, and that national security is also influenced by broader human security issues, in which non-governmental associations play a role.

Under the umbrella of the human dimension, the OSCE participating States also accepted that human rights concerns touching on the welfare of minorities within states could legitimately be raised by any participant at the multilateral level. This acknowledgement was arrived at in the Geneva meeting in 1991 when it was noted that:

human rights and fundamental freedoms are the basis for the protection and promotion of rights of persons belonging to national minorities.¹³

By extension, the same experts declared that, if the protection of minorities is to be a reality, then all participating States can express their concerns about the observance of human rights in other OSCE countries. Thus:

Issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective state.¹⁴

10 The expression “pedagogical” is borrowed from: Victor-Yves Ghébal, *L’OSCE dans l’Europe post-communiste, 1990-1996: Vers une identité paneuropéenne de sécurité* [The OSCE in Post-Communist Europe, 1990-1996: Towards a Pan-European Security Identity], Brussels 1996, p. 450.

11 See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, in: Bloed (ed.), cited above (Note 9), pp. 439-465.

12 Cf. Rob Zaagman/Hannie Zaal, The CSCE High Commissioner on National Minorities: Prehistory and Negotiations, in Arie Bloed, (ed.), *The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath*, Dordrecht 1994, pp. 95-111, here: pp. 95-96.

13 Report of the CSCE Meeting of Experts on National Minorities, Geneva, 19 July 1991, in: Bloed (ed.), cited above (Note 9), pp. 593-604, here: p. 595.

14 Ibid.

In 1992, the institutional and normative framework of the OSCE encompassed a body of human-dimension commitments that provided an accommodating environment in which thinking about conflict prevention and the international protection of minorities was acceptable to most, if not all, participating States. This can be considered one key precondition for the creation of the HCNM. A further key precedent was the novel provision for OSCE rapporteur missions that the OSCE had developed in 1990 and 1991.¹⁵ This mechanism was conceived of as a means to send experts with a specific mandate to investigate problems relating to the human dimension in individual countries and potentially to promote dialogue and co-operation among the relevant parties. Another institutional factor that favoured the creation of the High Commissioner was the concept of comprehensive security, in which democratic governance is considered an important means of providing protection for members of minorities.¹⁶

The declarations on rapporteur missions allow any OSCE participating State to make a request for a special mandate to investigate concerns about minority-related and human-rights problems in any other participating State. The states later reiterated this formula with reference to the entire body of human dimension commitments. Thus:

The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern [...] the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.¹⁷

This new legitimacy given to all participating States provided a solid foundation for the establishment of the mandate of the High Commissioner.

In parallel to these discussions under the human dimension, an earlier proposal for a mechanism with a mandate to deal with issues concerning minorities had already been put forward by the Swedish government in 1990. It suggested that a "Representative on National Minorities" could monitor pol-

15 The provision for rapporteur missions was agreed to at the Third Meeting of the Conference on the Human Dimension of the CSCE in Moscow from 10 September to 4 October 1991, cf. Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, in: Bloed (ed.), cited above (Note 9), pp. 605-629, here: pp. 607-609.

16 See further the Report of the CSCE Meeting of Experts on National Minorities, cited above (Note 13), Chapter II of which provides that the representatives of the participating States: "recognize that questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary."

17 The quote is from the Preamble of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, cited above (Note 15), p. 606.

itical tensions related to minority situations and warn the international community about impending security problems. The idea of “early warning” was then widely regarded as acceptable as it did not infringe on national sovereignty or security. The Swedish idea served as a backdrop to discussions at the Geneva Meeting of Experts on National Minorities, where a mechanism was suggested by which specialists would report on national-minority questions when requested by participating States.¹⁸ These early discussions within the OSCE paved the way for the Netherlands delegation to propose the creation of the High Commissioner on National Minorities.

Internal Condition and Influences

As outlined above, the emergence within the OSCE of a far broader consideration of human security, including a concern for minorities, was certainly the most crucial external precondition upon which the drafters of the HCNM’s mandate could base their proposal. But for a viable mandate to be adopted, a number of internal conditions (independent variables) needed to be in place as well:

- The proposed new conflict-prevention mechanism needed to “fit” within the normative and institutional framework of the OSCE.
- The initiators of the mandate redrafted the text numerous times to respond to and mitigate objections without losing sight of their original objectives.
- The growing group of supporting countries worked with the drafters of the mandate to overcome the objections raised against the proposed mandate.
- The war in the former Yugoslavia acted to push the process forward to conclusion.

These variables were all internal to the process and linked to the interpersonal ability of the diplomatic teams to be both pro-active and re-active in a fluid negotiation process in which they had to “make the most of the situation” as it evolved. And this they did by preparing numerous drafts of the mandate between February and July 1992. Most were drawn up for distribution to participating States or their delegations. Others were prepared for internal

18 These suggestions were made on the occasion of the CSCE Meeting of Experts on National Minorities in Geneva, 1-19 July 1991. Austria, Czechoslovakia, Hungary, Norway, Poland, and Sweden jointly proposed a rapporteur who would deal with minority questions that related to human-dimension commitments. Cf. Proposals CSCE/REM.N.19 and CSCE/REM.N.15 of 12 July 1991. See also Daniela Späth, *Effektive Konfliktverhütung in Europa durch den Hohen Kommissar für Nationale Minderheiten?* [Effective Conflict Prevention in Europe via the High Commissioner on National Minorities] In: *Die Friedens-Warte, Journal for International Peace and Organization*, 1/2000, pp. 81-99.

discussions only between the Dutch delegation based in Helsinki and the MFA in The Hague, and after the first draft of 14 February, the versions of 15 April, 3 June, 12 June, 20 June, and 24 June contained major modifications that either led to intensive rounds of negotiation or resulted from them. In all, fourteen drafts were prepared between February and July, with the final one being accepted on 4 July 1992 by all participating States in time for its inclusion in the Summit document.¹⁹

The Objectives and the Objections

Had it not been for the active support of the many OSCE participating States, some of whom joined as co-sponsors early on, the negotiations would most likely not have succeeded. For the Dutch team that drafted the various versions of the mandate for the High Commissioner, two basic questions had top priority, namely what the High Commissioner would be expected to do, and up to what stage in an emerging minority-related problem he could become involved. Interestingly, as will become clear below, the objections to the mandate concerned neither of these two priorities. Rather, they focused on controlling the High Commissioner and limiting his freedom to carry out his work.

As part of their strategy to obtain backing from participating States, the negotiators emphasized the urgent need to develop a new conflict-prevention mechanism to prevent the further spread of the inter-ethnic violence that was then occurring in the Balkans. At the same time, they avoided the issues of security and governance, as these touched the raw nerve of national sovereignty over domestic security and governance affairs. Thus they left the critical discussions of what exactly the HCNM would do as open and vague as possible.

The key objectives that the Dutch team and the supporting governments placed in the mandate drafts remained valid throughout the negotiation process and were accepted in the final version. These were:

- The High Commissioner will concern himself with minority-related tension situations that could, in his judgement, potentially lead to violent conflict.
- The HCNM will not promote minority rights nor will he concern himself with individual violations of human rights.
- The HCNM will decide which minority-related issue to become involved in, which issues to address, and when, so long as a given issue has not already developed beyond the early-warning stage into an overt crisis with regard to which issuing an early warning would be pointless.

¹⁹ See CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, in: Bloed (ed.), cited above (Note 9), pp. 701-777, here: pp. 715-721.

- The High Commissioner will have the freedom to travel and investigate any minority issue he chooses in any of the OSCE participating States so long as the issue has not already developed beyond the early-warning stage and so long as he informs and consults with the Chairperson-in-Office (CiO) of his intentions.²⁰
- The HCNM may receive information in confidence from any individual, group, or organization on questions he is addressing, and he will respect the confidential nature of the information. The people whom the HCNM meets cannot be punished or persecuted on account of having established contact with the High Commissioner.
- The High Commissioner will provide “early warning” when necessary and “early action” where appropriate. The latter implies that the HCNM can engage in diplomatic efforts to reduce tensions in situations that have not developed into an overt crisis beyond the early-warning stage.
- The High Commissioner’s independent work comes to an end when he decides that tensions are no longer at risk of escalating towards a crisis or violent confrontation, or when he finds that he is unable to diffuse tensions in accordance with his mandate. At this stage, he may issue an early warning and leave it for the OSCE to address the crisis.
- The High Commissioner’s mandate must be framed to ensure that he does not duplicate the work done by any other agency; he must be integrated in the OSCE, and receive support from it when needed.
- The High Commissioner must be able to call on external experts to help him in his work.
- The HCNM will be an outstanding international personality with relevant experience who can be trusted to respect the confidential nature of his work, maintain an essential independence from political interests, and work in a discreet diplomatic manner.

Despite the generally positive response from most participating States, some did not approve of the proposal as a whole or did not want to see specific elements negotiated. They objected for various reasons that were mostly specific to their own internal security concerns. However, all but one country did eventually begin to negotiate details in the drafts, which implied acceptance of the overall proposal. The strongest objections came from those Western countries that were dealing with internal terrorism or domestic racially-motivated violence. These were Turkey, Spain, the United Kingdom, and the United States, which faced long-running domestic issues with regard to the Kurdish community, the Basque community, the communities in Northern Ireland, and racial violence between the white and black communities, respectively.

20 The CiO is the foreign minister of one of the OSCE participating States who holds the position on an annual rotating basis.

Support from OSCE counties grew as an increasing number of participating States joined the Netherlands in officially submitting the proposal to the Helsinki Follow-up Meeting. This produced a diplomatic dynamic that was crucial to the negotiation process. As Hans van den Broek later commented: “The months of intensive consultations by our diplomatic staff at the time were to a great extent concerned with bringing CSCE participating States to accept the rationale for a HCNM and to support the elaboration of the mandate”.²¹ Once it appeared that the proposal would not be sidelined, the strongest objectors also accepted it in principle and began to suggest amendments to the draft mandate.

Most objections were levied against specific phrases in the mandate drafts, but some also challenged the entire notion of the High Commissioner on National Minorities. One that was raised frequently in the earlier months of the negotiations criticized the entire notion of focusing on minorities. The objectors argued that the rights of minorities are not to be elevated above human rights and, moreover, that their national laws recognized only equality for all people. This and other objections are grouped below in a succinct form.²²

The first group questioned the basic objective of focusing on minority-related causes of violent conflict. The fear was that a High Commissioner would work *for* minorities and encourage socio-political expectations of an eventual development of preventive measures that would systematically favour minorities. This was most strongly voiced by France, Turkey, and the United States. Instead, they argued, a commissioner should focus on all the causes of conflicts.

In fact, the term “minority” was a concept without a definition.²³ Participating States had to be reminded that the general agreement was that individual persons can choose to belong to a minority and that therefore governments cannot say they don’t have minorities on their territories. This would also render the need for a definition unnecessary.²⁴ However, vagueness can

21 From author’s written communication with former Minister of Foreign Affairs, Hans van den Broek, 29 July 2001.

22 These points are taken from documents consulted in the archives of the Netherlands MFA, as well as from two articles written by authors who took part in the negotiation process in 1992. These are: Hannie Zaal, *The CSCE High Commissioner on National Minorities*, in: *Helsinki Monitor* 4/1992, pp. 33-37; and Zaagman/Zaal, cited above (Note 12).

23 While not defining the term, the Copenhagen Document provides an agreement on how to understand the word: “To belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice. Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will”, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, cited above (Note 11), p. 456.

24 See, from the archive of the Netherlands Ministry of Foreign Affairs, *Openingszitting, Helsinki Follow Up Meeting – Hoge Commissaris voor de Minderheden (HCM). Dit Nederlandse voorstel is gebaseerd op een aantal overwegingen* [Opening Session, Helsinki Follow Up Meeting – High Commissioner for the Minorities. This Dutch proposal is

be unnerving, and Washington restated its wish to discuss a definition of the word “minority”, which it had failed to obtain at the 1991 OSCE meeting of experts in Geneva.²⁵

Some opposition was also based on well-founded concerns that the creation of an officer who focuses on minorities might inadvertently raise difficult queries about what an “ethnic group” represents. For example, would the term minorities also include diasporas of migrant workers in a host country? The United States also raised the argument that the High Commissioner might risk giving a false impression to minorities that they can bypass their own national governments to obtain concessions by presenting their demands directly to the High Commissioner and expecting to obtain special group privileges.

A second group of objections was based on the worry that a focus on minorities would worsen security or increase tensions by inadvertently emphasizing differences between minorities and majorities. Worse, it could lead to irredentism if the High Commissioner were to encourage closer links between a minority and a neighbouring kin state. Just as worrisome to some state governments, the High Commissioner’s involvement might encourage minority leaders to call for ever greater self-government, leading to secession.

The third group of concerns touched on the legal and normative questions of whether the High Commissioner would promote minority rights or otherwise bring about a confusion between human rights and minorities striving for group rights. Some participating States feared that a High Commissioner would merely be the first step towards the creation of rights for minorities as groups. They did not want to see a debate launched about group rights. According to a number of opponents, creating an office that looks exclusively at minorities contradicts the principle of equal rights; France in particular argued this point.

The supporters of the draft proposal provided three broad responses during the negotiations which were:

- The High Commissioner must not address individual human-rights violations; hence, he will not become an ombudsman for minorities.
- The High Commissioner will not provide grounds for a recognition of minorities as legal entities on their own and thus his office will not be the first step towards the development of rights for minorities as separate entities vis-à-vis states and human rights.

based on a number of considerations], The Hague, 24-26 March 1992, pp. 3-4 (document without signature or reference number).

25 See, from the archive of the Netherlands Ministry of Foreign Affairs, *Nederlandse Initiatieven in CVSE-kader* [Netherlands initiatives in the CSCE Framework], Ref.: wasi305/6554, 20 March 1992. The Geneva meeting referred to here is the CSCE Meeting of Experts on National Minorities, held in Geneva, 1-19 July 1991.

- The High Commissioner cannot offer privileges or rights to minorities that would constrain state governments in their dealings with a minority on their territories.

A fourth collection of objections were political, namely that the High Commissioner must never become a vehicle for political demands. Neither minorities nor governments should be able to treat the HCNM as a means to promote their political interests or publicly voice their grievances. Three types of concerns were expressed in relation to this objection:

- First, minorities might abuse the High Commissioner and demand he lobby on their behalf against a state government.
- Second, the High Commissioner could be exploited by minority groups or by their kin states to influence the state where the High Commissioner is mediating.
- Third, governments might also abuse the High Commissioner. While this objection was not voiced by any party to the negotiations, it was raised by non-governmental observers that supported the protection of minorities.

A fifth set of objections referred to the High Commissioner's freedom to choose which minority issues to be involved in. Several participating States questioned whether the High Commissioner should decide on his own which minority issues to involve himself in. The United Kingdom was particularly vocal in stressing this point, as it did not want an external diplomat to become involved in the Northern Ireland conflict, which was a highly sensitive political issue for London. Both Britain and the USA wanted the High Commissioner to enter a national territory only after obtaining permission and/or a special mandate from the OSCE or the potential host country. Of course, this was diametrically opposite to what the drafters of the mandate had in mind, which was confidential and discreet engagement to promote peaceful dialogue without soliciting political or media attention.

From the outset of the negotiations, the drafters and supporters of the mandate regularly reaffirmed both that the High Commissioner should be given complete freedom to choose which minority issues to address and that he would not be required to seek permission to do so. The fifth objection was met by stipulating that the High Commissioner cannot meet with parties that are already engaged in crisis-level issues or violence. Such situations would already be beyond the "early-warning stage" and therefore outside the remit of this mandate. Still, this was not sufficiently reassuring for some OSCE states such as the United Kingdom.

A sixth group of objections challenged the means by which the participating States would oversee the work performed by the High Commissioner. This focused on the integration of the mandate into the OSCE framework, as

well as on the issues of control and accountability. Who would supervise the HCNM's movements and contacts? Who would he be accountable to in the OSCE? This broad set of objections became a serious point of contention. First, some participating States wanted to ensure that the High Commissioner was institutionally embedded within an existing OSCE body over which a greater measure of control could be exercised. A few participating States suggested creating a link between the High Commissioner and the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw.²⁶ However, as this was not a politically sensitive issue, the majority of participating States accepted that the HCNM would become a separate office with its own budget. Second, the United States was adamant that some accountability should be built into the mandate. Through negotiations, a convenient solution to this set of objections was found in a provision that requires the HCNM to consult with the CiO before and after he concerns himself with a minority issue.²⁷ This provided a measure of accountability of the HCNM to the OSCE while preserving the essential discretion and confidentiality that the drafters of the mandate wanted to maintain to ensure that quiet preventive diplomacy could be effective.

A seventh set of objections concerned who the High Commissioner could speak to. Some participating States wanted to try to limit in writing who the High Commissioner would meet. Once more, this went directly against the objectives of the drafters of the mandate. Some countries feared that the High Commissioner could interpret his mandate as allowing him to meet with representatives of minority groups that condone violence or terrorism. As with the objection concerning the selection of minority issues, this was difficult to overcome during the negotiations. One reason for this obstacle was the link made by some between "terrorism" and "minorities". Are terrorists necessarily members of minorities? Can all minorities potentially harbour terrorists, and if so, does this mean that when a government calls an incidence of violence "terrorism" that the High Commissioner is therefore excluded from addressing the minority in question?

It was not difficult to see how this issue touched extremely sensitive political nerves. Several OSCE States expressed their doubts that the High Commissioner would be able to operate independently of political interests and remain neutral in his work. They argued that the HCNM could not remain impartial, even if his diplomatic style were "quiet", as the Dutch suggested. Media attention and the temptation by members of minorities to publicize their meetings with the HCNM could jeopardize discreet diplomatic efforts to prevent conflicts in politically sensitive situations.

26 The idea that, besides institutional support, the budget for the High Commissioner would also come from ODIHR was not accepted in the negotiations. The result was that a separate budget was elaborated only after the final mandate had been accepted.

27 The CiO is formally the only interlocutor of the HCNM vis-à-vis the OSCE during the pre-early-warning phase of the High Commissioner's operations.

This concern led to the eighth set of objections, which challenged the essential freedom of the High Commissioner to seek information wherever he wanted. Some countries wondered whether expert advice could be sought from non-governmental third parties. This was a serious challenge for the negotiations, as some countries felt that the HCNM must not base his understanding of a minority issue on information supplied to him by groups that follow a specific political agenda. This would reduce the confidence that the HCNM could remain unbiased and politically neutral. This question of who the High Commissioner could meet and obtain advice from was resolved by a reaffirmation of the passages in the draft mandate according to which the High Commissioner would work in confidence and would not acknowledge communications by parties that condone violence.

One might assume that the greatest number of objections would address what the High Commissioner could actually do, as provided in the core of the mandate, namely: “early warning” and “early action”. The drafters had written that the High Commissioner would be told to assess whether to provide “early warning” and/or “early action” where he suspects that “tensions involving national minority issues [...] have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States”.²⁸ It would have been natural to ask what these action-oriented expressions imply. But OSCE participating States did not bother so much about what the HCNM would actually do – what a “warning” should contain or achieve, and what the “action” should consist of.

The first part – issuing an “early warning” – was indeed not difficult to accept, because it had already been on the agenda in earlier OSCE forums. The more complicated part was the second one – “early action”. The notion that the High Commissioner would promote dialogue, confidence, and cooperation with a view to finding solutions in a confidential manner and independently of all parties directly involved in the tensions seemed to be satisfactory to most OSCE countries. No further definition of what all these provisions imply or leave out was demanded – “dialogue” about what? And what about parties not directly involved? Could they participate in “finding solutions”? These words and what remained unsaid were never seriously questioned. In other words, the essence of what conflict prevention is supposed to be was not taken up by any objector to the mandate.

Finally, a concern that was particularly sensitive for the drafters of the mandate and its original supporters was how to identify a candidate for the post of High Commissioner. This seemed a simple task at first, but became a serious worry as the negotiations drew to a close. No candidate was found, even though many requests had been made by the Dutch to other delegations to suggest suitable individuals. Shortly before the start of the Helsinki Summit, the Netherlands MFA made a formal request to OSCE delegations to

28 *CSCE Helsinki Document 1992: The Challenges of Change*, cited above (Note 19), p. 716.

help find a candidate, but none was proposed, and it was only after the Summit that Max van der Stoep was approached by the Netherlands MFA.

In conclusion, it is perhaps no wonder that all the principal objections during the negotiations challenged the autonomy of the High Commissioner. More than anything, it was the pressure stemming from the perceived need to do something to ensure that the upheavals in the former Yugoslavia were never repeated that pushed the diplomatic teams and their ministries to reach an agreement. It took great negotiating skill to make full use of the opportunity that the Balkan conflict provided to gain support from OSCE States for a proposed mandate that challenges multilateral traditions by giving such wide autonomy to this new conflict-prevention instrument.

Conclusion

The High Commissioner on National Minorities became a reality when the final version of the mandate was formally adopted at the Summit held in Helsinki on 9 and 10 July 1992. All OSCE Heads of State or Government signed the *Helsinki Document 1992: The Challenges of Change*.²⁹

Two countries that strongly objected to the proposed mandate from the start eventually accepted it and then endorsed it at the highest level. Thus, shortly before the Helsinki Summit opened, US President George Bush sent a letter to all the capitals of the OSCE participating States in which he expressed his hope that Helsinki would achieve agreement on procedures for “addressing the root causes of conflicts, such as the important Dutch initiative for a CSCE High Commissioner on National Minorities”.³⁰ At the Helsinki Summit, John Major, the newly elected British Prime Minister, fully endorsed the HCNM. Emphasizing the importance of conflict prevention, Major said that the OSCE “should not be a watching bystander, a hand-wringing on-looker to Europe’s quarrels. The CSCE must develop the means and the will to act before fighting begins. We welcome the important decision to establish a High Commissioner on National Minorities.”³¹

It was clear from the beginning of the negotiations process, however, that conflict prevention is by its very nature a complicated and often very

29 The mandate is contained in Chapter II of the Helsinki Document, cf. *ibid*. This Summit Document is the final version of the negotiated text of the Helsinki Follow-up Meeting. It consists of two main parts, the “Helsinki Summit Declaration” and the “Helsinki Decisions”, the latter which includes the mandate.

30 Archive of the Netherlands Ministry of Foreign Affairs, US President Bush, *letter to Netherlands Prime Minister Ruud Lubbers and all heads of CSCE participating governments in advance of the CSCE Summit in Helsinki*, Fax from USA embassy, The Hague, to MFA/DAV (Atlantic Co-operation and Security Affairs Department), The Hague, 6 July 1992.

31 Conference on Security and Co-operation in Europe (CSCE), *Speech by the Prime Minister, the Rt Hon. John Major MP, at the CSCE Helsinki summit*, Prague, Archive of the Office of the Secretariat of the Organization for Security and Co-operation in Europe, Friday 10 July 1992.

subtle affair. Critical here is how interpersonal relations between the parties are perceived and the key role played by negotiators in facilitating dialogue and in making use of external preconditions and internal influences to move the process forward. The quality of inter-personal relations can affect things for the better or the worse. By extension, we can conclude that for each of the HCNM's involvements in minority-related issues, he also will need to pay careful attention to identifying suitable external preconditions to refer to, and to make use of internal contextual influences to achieve his objective – a clearly dependent variable. The diplomats in Helsinki no doubt knew that once the High Commissioner began his work, he would also have to find creative ways to overcome intervening objections to his own conflict prevention negotiations and that the effort he would need to make to achieve peaceful dialogue and change would contribute to solidifying agreements between minorities and governance structures. To do so successfully, he would, once again, need to be aware of external and internal influences and make the best use of them in the process.

Creating a multilateral conflict prevention mechanism such as the HCNM was a remarkable accomplishment for many reasons, but a few stand out. Obtaining the approval of all OSCE participating States for such a major institutional change was only possible because specific preconditions and contexts were present in 1992. These included, first, an amenable disposition on the part of national diplomatic teams to support the proposed mandate; second, their ability to push the creation of the HCNM forward as a way to avoid minority-related crises of the kind that were present in the Balkans at the time; and third, their ability to realize that the crisis in the Balkans provided the pressure needed to move the process to a rapid conclusion.

The final mandate of the HCNM was the dependent variable – a clear final objective towards which the entire process was geared. The negotiation process was shaped and moulded by internal independent variables composed of the objectives the drafters had originally introduced and the manner by which they proceeded to garner support from other OSCE participating States. But the process was greatly influenced by the objections – a large number of intervening variables that demanded immense effort on the part of the supporters of the proposed mandate to overcome through negotiations. However, the challenge these objections posed was not an insurmountable problem but rather a useful part of the process. The struggle to overcome them through negotiations actually helped to solidify and anchor the HCNM's mandate in the OSCE framework as well as in the minds of the many stakeholders – the participating countries who ultimately approved the initiative and still today continue to support the High Commissioner well beyond the 1992 agreement in Helsinki.