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Democracy and Human Rights. On the Work of the High Commissioner on National Minorities of the OSCE¹

My Mandate

I was asked to write on the subject of "Democracy and Human Rights. On the Work of the High Commissioner on National Minorities". Permit me to pause for a moment over this formulation in order to avoid, right at the beginning, a misunderstanding that often occurs. It is true that in the German language I am called "Hoher Kommissar für Nationale Minderheiten" ["High Commissioner for National Minorities"]; that does not mean, however, that it is my job to act as an ombudsman for minorities, i.e. to accept individual complaints and pursue them. The English characterization of my office - "High Commissioner on National Minorities" - is more precise because it makes clear that I have to act in an impartial way. I am not a High Commissioner *for* minorities and of course also not *against* them. The most accurate description might be: "High Commissioner for Minority Issues".

What are my responsibilities? The Helsinki Summit of OSCE Heads of State or Government of 1992 called upon me to identify tensions involving minority issues which threaten to develop into an acute conflict. The High Commissioner's office is thus an instrument for conflict-prevention which, as the mandate says, should become involved "at the earliest possible stage". The starting point for my work is therefore regular monitoring of political developments in all 55 OSCE States. When I decide that I ought to take action in a particular country of OSCE I try first to analyze the interests of all parties involved in a particular tense situation. As an impartial outsider I try to participate actively in the search for solutions that are acceptable to all. But before I go on describing my work I would like to add a few thoughts on the first part of today's subject: "Democracy and Human Rights".

Democracy and Human Rights

The reciprocal relationship between human rights and democracy is evident: respect for human rights is an essential condition for a functioning democracy and

¹ The article is based on a speech given by the High Commissioner at the Institute for Peace Research and Security Policy, Hamburg, 17 March 1997.

a democratically constituted society provides room for the development, promotion and, if necessary, enforcement of human rights. The last-mentioned aspect, which refers to the enforcement of rights by legal means, emphasizes the nature of human rights as the right of citizens to defend themselves against the state. The citizens are protected by rights which derive from the human dignity inherent in every individual and whose granting does not lie in the discretion of state authorities. Respect for human rights is rightly regarded as a part of the modern security concept, which goes beyond the classic, purely military, dimension and includes internal components such as the observance of human rights, of which we are speaking.

Where human rights are not observed by a state, or are even deliberately, arbitrarily or systematically abused, there can be no question of a truly democratic and pluralistic society. As a matter of course the citizens of such a state turn away from it or even against it. The potential for conflict that arises from such a situation is clear. In the case of minorities it can become even more acute if a minority residing in a certain state constitutes the titular nation in another state and minority-related issues lead to conflicts of interest between these two states. This is, so to speak, the classic case under my mandate.

Minority Rights as Part of the Concept of Human Rights

Let me take a closer look at the relationship between human rights and minorities. The first issue here is the concept of minorities on which my activity is based. As you know, there is even today no generally accepted definition of the minority concept which is binding under international law. The UN General Assembly in 1992 adopted a "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities". The Council of Europe and the OSCE speak of "persons belonging to national minorities". This terminology raises two further questions that are of fundamental importance: first, what a national minority is and, second, the question of who is the holder of minority rights. Is it the minority as a whole or is it the "persons belonging to it", i.e. the individual members? And how is membership in a minority determined? Finally, is there a difference between minority rights and human rights generally?

You will understand that I can only pose these questions here, not answer them exhaustively. That would call for several semesters of academic lectures and even then there would be no guarantee of arriving at generally valid and comprehensible concepts. What I want to do, therefore, is simply to point out the framework in terminology and international law within which my activity takes place. As just mentioned, there is no internationally binding definition of the "minority" concept. Thus it is up to every country to establish the definitions

that it will apply on its own territory. In fact, there are substantial differences between such definitions in the OSCE area. The following criteria are used in Germany, for example: a) members of a "national minority" must first have German citizenship. Then they must b) have specific cultural characteristics that distinguish them from the other members of the society. And c) they must live in a unified settlement area. These three criteria are met only by the Sorbs and the Danes. In other OSCE States, by contrast, other minorities are recognized, e.g. on the basis of historically varying circumstances, international law treaties, peace settlements that followed the First World War, and so forth. If one takes a look at the multiplicity of circumstances which in the nature of things are very different from each other it becomes clear why no general international settlement of this matter has so far been achieved.

As far as the legal character of minority rights is concerned I would like to cite the "Copenhagen Document" of 1990 which represents the most important document on minority protection within the OSCE framework. This document provides for an objective hierarchy: first it assures the members of national minorities of their right to "exercise (...) their human rights and fundamental freedoms without any discrimination and in full equality before the law". Thus individual human rights are the point of departure. Then the states commit themselves, where necessary, to take "special measures" in order to ensure this equality. The Copenhagen Document thereupon sets up a list of rights which, through their collective exercise, take on a specifically minority rights character. Among these are the free use of the mother tongue in both private and public life; the establishment of their own educational, cultural and religious institutions; freedom of religion; and the right to establish unimpeded contacts with members of the same minority within their country as well as across frontiers - to name only a few.

In addition, the OSCE countries undertake to protect "the ethnic, cultural, linguistic and religious identity of national minorities". This touches on the same categories which were to be found two years later in the Declaration of the UN General Assembly. Of the utmost importance is the provision that belonging to a minority is a matter of a person's individual choice and that no disadvantages may arise from the exercise of such choice.

In summary, I would like to emphasize the following: the concept of minority rights rests on the concept of individual human rights but it is only the joint exercise of certain rights in the fields of language, culture and religion that enables the persons belonging to a minority to preserve their identity. While it is up to the individual states to define what a minority is, the question of who belongs to a minority can be determined only by the subjective feelings of its members.

The Relationship between Minorities and the State

At this point I would like to delve a little more deeply into the concept of identity. To be more precise, it is a pair of concepts that are at issue - identity and identification, namely, the identification of the persons belonging to a minority with the state on whose territory they live. The state's respect for the identity of a minority entails the need for a special level of protection. In contrast to the well-known democratic principle that an elected majority - say, in a parliament - decides in the name of all, there must be assurances that an ethnic, cultural, linguistic or religious national minority is not constantly outvoted on the basis of a purely mathematical majority. It is only when the members of a minority feel that they are represented in the political bodies of the state at all levels and can be heard there that they will identify with the state and regard it as theirs. In turn, the exclusion of a minority by the majority and/or decisions made by governmental bodies will lead to a breach between the two sides. That cannot be in the well-understood self-interest of a state, however, because nothing could be more dangerous over the long term than a cohesive group of dissatisfied citizens held together by their common ethnic origin who see no point in showing loyalty - in itself a perfectly natural thing - to a state which they feel is foreign to them. Unhappily there are even worse situations in which irresponsible governments deliberately use their power to exacerbate existing differences - to group their followers more tightly around them, for example, perhaps with a view to a forthcoming election. In the worst case it is then not much farther to a situation in which minorities are, so to speak, pictured as a common enemy against whom the people must unite for purposes of self-defence. It is obvious that societies which proceed in this way can hardly be described as democratic in the sense of providing for the representation of the people and even less as pluralistic in the sense of providing for the representation of all. On the other hand, it becomes clear in such cases that the instruments of preventive diplomacy must be employed.

There is no generally applicable remedy for this because, in my experience, every case is different. Most nearly, the deliberate attempt I have described to create a rift between majority or government and a minority can be defined as a characteristic phenomenon. It is often radical political forces which exploit nationalist feeling to stimulate anti-minority feelings in the people. But I have noticed that this does not always work right away because the citizens are often much more reasonable than the politicians who claim to represent them. In a number of cases I have had to conclude that problems and tensions were identified at the so-called political level which were not seen as such by ordinary citizens. Anyone who makes the effort to look at the subject we are discussing today not just at the conference table or on the shelves of a well-stocked library but by travelling to places where minorities actually live will discover, more of-

ten than might have been expected, that the members of the so-called majority population and the minority (or minorities) are living together peacefully and with mutual respect. The official view frequently represents only *one* aspect of actual conditions.

Neutral third parties like myself, the OSCE, the Council of Europe, the European Union and other international organizations whose responsibilities include the furthering of democracy and democratization are thus forced to identify moderate forces and, as far as possible, to do what they can to ensure that further radicalization and disintegration of the body politic is avoided.

Approaches to a Solution in Constitutional Law and in Individual Laws

Now I would like to talk about concrete options for strengthening the protection of minorities through appropriate governmental structures. I do not mean by this the creation of appropriate constitutional provisions and laws, nor do I refer to the implementation of international law and other international obligations. I have already taken a stand on those issues. Rather, I am referring to a phenomenon I have encountered with equal frequency in my negotiations with government and minority representatives and in my evaluation of scholarly works on our subject. I mean the tendency to ascribe general validity to certain internal rules. Again and again we hear that autonomy should be granted to a minority living together in a compact settlement, as though that would solve all the problems. The examples cited most frequently, in my experience, are the Åland Islands and South Tyrol. I am sure that everyone who knows the history of these autonomy arrangements can confirm that these two cases themselves are very different. That is all the less reason why they could be automatically applied to other regions. Of course it is not reprehensible, when one is seeking solutions, to look for models that appear to work elsewhere. On the other hand, even the discussion of the extent and design of an autonomy arrangement can lead to differences of opinion. Is it territorial autonomy that is wanted? Is this politically acceptable to the country as a whole? Or is cultural autonomy the objective? What precisely should it involve? For example, does the cultural sovereignty of the German federal states represent a form of autonomy? As you can see, the mere mention of the term "autonomy" leads to a large number of concepts that may underlie it, but unfortunately it does not lead directly to a solution. One serious problem lies in the fact that the granting of an autonomy regime of whatever kind can be felt by some governments to amount to admission of a loss of power. Viewed under the aspect of international law, this fear leads in the end to the tense relationship between autonomy and the right of self-determination - an issue that has still not been satisfactorily solved. A government may feel - whether rightly or wrongly - that a minority's demand for autonomy is only the

first step towards realization of a claimed right of self-determination and consequently that more than autonomy is involved, namely, withdrawal from the structure of the state. Imputations and accusations along these lines are quickly formulated and are easy to use for a presumed political advantage, especially when historical experiences are brought into the discussion which might lead to the conclusion that efforts at political union with a titular nation in another state are under way. It should not be forgotten that many states in Central, Eastern and South-eastern Europe as well as the successor states to the Soviet Union are political structures of very recent origin. Many of them will feel that calls for autonomy are a threat to their search for political identity, a search which is still going on.

My Methodology

I hope that I have been able to portray clearly certain problem areas that come up repeatedly and with which I must deal. Perhaps I have succeeded in anticipating a question which is asked again and again as to the criteria I apply in selecting the countries where I consider it appropriate to become active. I think the problem areas I have just described speak for themselves. Here I might remind you that as High Commissioner on National Minorities I am an instrument of conflict prevention and that the danger of an armed conflict is the most essential criterium for my involvement. Thus when I act it is on the basis of a political decision, not just legal analysis.

But let us now go on to an explanation of the methodology I use and which, for lack of more precise terms in my mandate, I have in part developed myself. I have already mentioned that every case has to be investigated separately and that for this purpose I have to travel to the regions in question to talk with all of the parties involved. In this, as so often in life, there is no substitute for seeing things with one's own eyes. Now, as you know, my office is in The Hague and even with the best will in the world I can only devote a certain portion of my time to consultations on the scene. I depend, therefore, on a regular flow of substantial and trustworthy information. My advisers and I evaluate a large number of the most varied sources of information. This includes contacts with specialists, e.g. at universities and other research institutions. Within the OSCE, the High Commissioner is tied into the decision-making process that leads from the level of Heads of State or Government to the Ministerial Council and the Senior Council and down to the weekly meetings of the Permanent Council. There are regular contacts with other international organizations such as the United Nations, the Council of Europe, the EU and NATO for the purpose of co-ordination and comparison of information. In addition, there are numerous informal contacts with diplomatic representatives of the OSCE States which help both

sides in their efforts to deal with each other against a background which is not always free of problems.

When I started my work in 1993 I set up an office right in The Hague to support me in the work I have described. At the present time there are, in addition to administrative and secretarial personnel, six advisers there with an international make-up: a Dutchman, a Pole, a Canadian, a Bulgarian, a Briton and a German.

My work on minority issues in the countries where I am active takes the form of recommendations which I communicate to the government of the country in question. As soon as I have an answer from the government both the recommendation and the reply, which at this point are still confidential, are sent to the Permanent Council in Vienna. The Ambassadors of the OSCE States then have the opportunity to take note of the problems I have raised as well as of my proposed solutions and to send them on to their respective capitals. I myself visit Vienna about once every two months, *inter alia* in order to report on my work to the Permanent Council. After my report has been delivered the Permanent Council decides to authorize publication of my most recent written exchanges with the affected governments. In concrete terms that means that any interested party can turn to the OSCE office in Prague and obtain access to my recommendations and the replies. The main purpose of this procedure is to promote transparency which, after all, is one important objective of the whole OSCE process. This makes it possible for the representatives of minorities to find out about written material that is of immediate concern to them. The result is that governments and minorities are on an equal footing with regard to the information available to them, which would not always be the case without the procedure I have described.

My recommendations often have to be very detailed; again and again they contain suggestions for promoting education in the mother tongue and for holding training seminars for representatives of both the government and the minority. In many cases such projects are carried out by the "Foundation on Interethnic Relations" which I founded when I took over this job and which is also located in The Hague.

With regard to another form of support for my recommendations, namely, the provision of assistance that directly affects the situation of minorities, all I can do is appeal to the OSCE States. I would like to mention the example of the Tatars of the Crimea who, when they returned home after decades of exile, had to rebuild their economic basis and, in fact, their whole lives. They returned to Ukraine as a country which was itself in a difficult economic situation. Material assistance from abroad is needed to deal with potential frustrations which could degenerate into struggles over resources and, given the specific ethnic background, carry the potential for political conflict. For this reason I saw it as my duty to call the attention of the OSCE States to this problem and to call upon

them to grant material assistance. Although this example may be of limited geographic significance and of direct concern "only" to a relatively small number of people it is impossible to predict how many people would be affected by a possible conflict. Hence it is my firm conviction that capital invested in conflict prevention (and it is with intention that I say "invested" and not merely "spent") is capital well and meaningfully invested. Conflict prevention, after all, is cheaper than peacekeeping measures, which in turn are cheaper than war.

Regarding my methodology I should not forget to mention that I have, with the assistance of knowledgeable scholars, already set up a number of round tables and expert teams which have frequently made valuable contributions in the search for solutions to problems acceptable to all sides. Just for the sake of completeness I would like to add something you surely already know: my mandate does not provide for me to accept individual complaints; it also expressly forbids me to enter into contact with people who have either committed acts of terrorism themselves or approve of them.

The View Ahead

In conclusion, I would like to offer a summary of my observations in short propositions based on a term of office that has now exceeded four years:

- Every minority situation is different owing to historic, cultural and other circumstances. There is therefore no universally applicable patent recipe.
- Nevertheless, similar constellations of problems appear from time to time in different states clearly calling for a willingness to compromise on both sides.
- The tendency to exclude minorities and to exploit for political purposes an artificially created or already existing disagreement within society carries with it a potential for conflict that is hard to estimate.
- Support from the community of states and from the instruments of preventive diplomacy can only be effective if it is provided at the earliest possible stage. Once emotions run high and prestige is at stake the positions harden and de-escalation becomes much harder.
- Inter-ethnic tensions often have causes that lie deeper. Thus it is not enough to combat symptoms; rather, their causes must be discovered.
- States ought, in their own enlightened self-interest, to seek a reasonable balance of interests between the majority and minorities.
- Respect for the identity of minorities makes it more likely that their members will identify with the state and exhibit loyalty to it.
- In the long run minorities can only flourish when they are not only tolerated but are accepted by the majority as having equal value and equal rights.

This thought should be firmly established in the heads of politicians and in the hearts of the people.