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A Retrospective of My Time as OSCE High Commissioner on National Minorities

Major Events

From August 2013 to August 2016, I held the position of High Commissioner on National Minorities (HCNM). When history looks back on this period, two events that directly impacted the work of this institution will stand out. The first was the crisis in and around Ukraine and how it damaged some fundamental features of European security agreements. The second event was the large increase in the number of refugees coming to Europe from the summer of 2015. Of course, many other developments influenced the mood in participating States, including terrible terrorist attacks, new forms of hybrid warfare, and the ongoing difficult economic situation. But as events with direct relevance for the mandate of the HCNM, the two first mentioned were of major importance.

In parallel to these events, and, to a certain extent, as a result of them, an increase in nationalist rhetoric could be observed in almost the entire OSCE area. “Others” were portrayed as a danger, especially for so-called titular nations, and hate speech continued to be propagated. More and more emphasis was being placed on the importance of borders. Any talk of autonomy or increased self-administration was instantly labelled as separatism, with the effect of preventing meaningful discussions on inter-ethnic coexistence. Exclusivist historical narratives were promoted.

There were few positive developments regarding the situation of national minorities.¹ Some minorities had to accept inferior forms of multilingual education instead of more comprehensive models previously advocated by the HCNM. And while some newer EU member states started to behave according to double standards towards minorities, double standards were not restricted to EU member states. Countries that were not willing to discuss the situation of national minorities in their own country were very interested in the fate of their kin in other countries.

The adoption and preparation of integration strategies according to the Ljubljana guidelines could be seen as positive steps.² Some progress could also be seen in the opening of higher education to all minority groups living

Note: The views contained in this contribution are the author's own.

1 For the sake of brevity, I am using the term “national minorities” as shorthand where the formal OSCE language would talk about the rights of “persons belonging to national minorities”.

2 OSCE High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diverse Societies*, November 2012, at: <http://www.osce.org/hcnm/ljubljana-guidelines>.

in southern Serbia, which went hand in hand with a reduction of tensions in the area. The prospect of EU accession remained a positive incentive for reforms in candidate countries. The office started to prepare two new sets of recommendations or guidelines.

But before we consider these events in detail, I would like to briefly go over what the HCNM is and what he or she does.

What Is the HCNM for?

Because it is the least known instrument and institution of the OSCE, thanks to the fact that its main tool is “quiet diplomacy”, there is a constant need to remind external actors what the HCNM is for. In short: The HCNM is a conflict prevention instrument. The Commissioner is not an ombudsperson and does not have the task of promoting the situation of national minorities. This distinction was captured in the institution’s very name: the High Commissioner “on” and not “for” national minorities.³ But this is a difference that is not easily translated into the languages of all the different participating States, and thus, even in the Permanent Council, the wrong version could sometimes be heard. In Swedish, for instance, the translation “*angående nationella minoriteter*” (literally “regarding national minorities”), is clumsy, and the official Finnish translation, “*Vähemmistövaltuutettu*” is just the equivalent of ombudsperson and, thus, entirely misleading.

It is well-known that the OSCE works in three different dimensions: the politico-military, the economic and environmental, and, finally, the human dimension. The two other autonomous institutions of the OSCE, the Office for Democratic Institutions and Human Rights (ODIHR) and the Representative on Freedom of the Media (RFOM), are clearly human dimension instruments. Thus it is a challenge to get across that, unlike the other two, the HCNM has a cross-dimensional character. It is also important to stress that the HCNM is certainly not a monitoring body, but rather an honest arbiter that seeks to mediate and find solutions to inter-ethnic tensions. During my tenure, it was customary for me to appear in front of the Human Dimension Committee, but not the other committees, which was a pity.

During the 1990s, when there was a continual fear that new inter-ethnic conflicts could develop into serious challenges for the stability and prosperity in Europe, many critical situations merited the attention of the HCNM. The institution was also set up during what we now consider to have been the golden years of international co-operation. Almost all participating States had an appetite to listen to advice, and the Moscow Mechanism had been adopted.

3 For details of the negotiations on the name, cf. Olivier A. J. Brenninkmeijer, *The OSCE High Commissioner on National Minorities: Negotiating the 1992 Conflict Prevention Mandate*, PSIO Occasional paper 5/2005, Geneva 2005.

When it was established, the institution was given what is considered to be an unusually intrusive mandate. It is up to the High Commissioner's judgement whether the conflict potential of a situation is so great that the HCNM needs to become involved. Many have argued, as they did on the 20th anniversary of the institution's founding, that in today's world it would be virtually impossible to reach consensus around these formulations. However, the intrusiveness might have been slightly overestimated.

At a certain point the tide turned, and more and more countries had less appetite for international co-operation. This was also seen in a certain fatigue with monitoring duties in other organizations. National sovereignty was in fashion.

The Perception of a National Minority

It is a well-known fact that there is no definition of a national minority in the mandate of the HCNM, just as there is no such thing in other relevant international instruments either. We often quoted the first HCNM, Max van der Stoel's, famous statement that "even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one". As Walter Kemp remarks, this quote is quite often taken out of context, omitting Max van der Stoel's next sentence, in which he notes that a minority is a group with linguistic, ethnic, or cultural characteristics distinguishing it from the majority.⁴ He also made reference to such a group's efforts to maintain its identity and to give a stronger expression to that identity.

It appears to me that many people, perhaps because Europe's most recent violent conflicts around minority questions were the wars in the Balkans, tend to equate national minorities with ethnic groups, forgetting the other two characteristics mentioned above. In former Yugoslavia, there were also conflicts between groups that largely shared a common language but were divided by ethnicity and religion. Of course I cannot prove it, but sometimes I got the feeling that diplomats were more inclined to believe something like: "language, culture or religion – those are things you can change, but not your ethnicity." This is not correct in my view, and it contradicts one of the basic principles of human rights and the rights of persons belonging to national minorities – that an identity should never be imposed upon persons.

Of course, the existence of different conceptions of a national minority relates to the different use of words, such as nationality or national identity, in different languages. Max van der Stoel tried to distinguish between civic and ethnic nationalism. One could also distinguish between civic identity and national identity, with the former more applicable to multilingual and multi-ethnic countries.

4 Cf. Walter Kemp (ed.), *Quiet diplomacy in Action: The OSCE High Commissioner on National Minorities*, The Hague 2001, pp. 29-30.

The question of religion sometimes created discussions, such as whether we should work with religious minorities. The definitions provided by Max van der Stoep did not specifically mention religion but, on the other hand, the mandate is very clear in my view: in para. 26 (b) concerning provisions on who are parties directly concerned and, thus, can provide specific reports to the HCNM, religious groups are expressly mentioned.

During my years as the HCNM, a number of questions of religion merited attention, such as situations where conflicts inside the same Christian denomination could trigger a local conflict. However these questions included both national legislation and canon law – which are sometimes incompatible – and it was extremely difficult to see any progress or rapprochement.

However another trend could be observed, which was when a linguistic or ethnic minority would increasingly also take on a religious dimension in, for instance, cases where the religious space seemed to be the only area in which a minority felt safe. This entailed both a risk of radicalization of the minority and an intensification of the minority's feeling of isolation from the majority, thus making integration of society more difficult.

The Conflict Cycle from the Perspective of the HCNM

The well-known and central element of the mandate of the HCNM merits quoting once more. From Article 3:

“The High Commissioner will provide ‘*early warning*’ and as appropriate ‘*early action*’ at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO”.⁵

As can be seen from the text, there are two formal elements: early action and early warning. But for the HCNM, a great deal of “action” comes before a formal early warning is issued. As Sabine Machl has argued,⁶ an early warning is to be issued as a last resort for the HCNM, when a situation has gone beyond a level at which the HCNM is able to contain it (cf. articles 13-15 of the mandate). When the early warning is issued, the potential conflict is primarily in the hands of the Chairperson-in-Office (CiO). Thus, early action on the part of the HCNM is something different from what other actors

5 Helsinki Decisions, II. CSCE High Commissioner on National Minorities, in: Conference for Security and Co-operation in Europe, 1992 Summit, Helsinki, 9-10 July 1992, *CSCE Helsinki Document 1992, The Challenges of Change*, para. 3, at: <http://www.osce.org/mc/39530> (emphasis added).

6 Cf. Sabine Machl, Early warning – no action, in: *Security and Human Rights* 3/2010, pp. 170-175, here: p. 170.

perceive when discussing early action; for the HCNM it is early prevention. I feel the institution has developed over the years: The first HCNM acted as a kind of fire-brigade, but later there has been much more emphasis on activities that could well be described as structural prevention. Or to extend the metaphor: creating structures that prevent fire.

Prevention Is the Key in the Work of the HCNM

Early or structural prevention is the key word – whether we are dealing with the first time a conflict turns violent or a reoccurrence, the important thing is to put an end to the vicious circle of the conflict cycle. At the inception of the HCNM, this emphasis on prevention was unique, and it still is to some degree, as other regional organizations do not have a similar kind of emphasis on a tool designed to prevent ethnic conflicts – the form so many of the conflicts worldwide take – or are at least portrayed as taking.

Today, prevention is much more prominent on the international agenda. Intergovernmental organizations and many NGOs are now trying to make prevention more powerful, as it is so much more cost efficient than crisis management. The new United Nations Secretary-General (UNSG) has put prevention at the centre of his work, and one of the Special Rapporteurs at the UN Human Rights Council (UNHRC) is due, together with the Special Adviser of the UNSG, to present a joint study on the contribution of transitional justice to preventing gross violations of human rights and related crimes. Some hope that the Responsibility to Protect (R2P) doctrine (World Summit 2005) could also be interpreted as part of the prevention agenda.

What works in prevention? What factors uphold stability instead of triggering conflict? These questions are much studied and debated. Inequalities are said to lead to conflict, but recent research shows that it is horizontal more than vertical inequality that triggers conflict: when a person can see that, although their social and economic conditions are similar, they are treated differently because they belong to a disfavoured group. This can certainly be confirmed in cases from Central Asia to Western Europe.

The promotion of basic rights, to ensure that everyone feels secure, has access to justice, and can participate in society, whether as an elected official or in some other part of the public sector, is something we also saw as an important factor in prevention. This is why we drafted recommendations on access to justice.⁷

Transitional justice and truth and reconciliation commissions are important tools, but they are not really issues for the HCNM. On the other hand,

7 OSCE High Commissioner on National Minorities, *The Graz Recommendations on Access to Justice and National Minorities*, November 2017, at: <http://www.osce.org/hcnm/graz-recommendations>.

much of the HCNM's work could also be labelled as mediation in a non-conflict setting.

Sometimes we noticed that finding common development projects was a more useful form of prevention and of uniting societies than projects directed separately to different groups in society.

Power-sharing arrangements are often a part of peace treaties, but unfortunately there are plenty of examples where such arrangements might perpetuate divisions and lead to political clientelism, often making it more difficult to reform societies.

The HCNM originally dealt with education primarily in terms of the rights of persons belonging to national minorities, but later on, the institution has tried to tackle the features of education that separate people, as well as how national historical narratives can be detrimental for reconciliation. If different historical narratives are not allowed, if education does not promote critical thinking and listening to the history of other groups, then there is a risk of conflicts perpetuating.

The bilingual higher education established in Bujanovac, directed at Albanian-speaking, Serbian-speaking, and Roma youngsters in Southern Serbia, is a nice example of a successful project aimed at improving the prospects of economic development in the region and true interaction between youngsters of different backgrounds.

Early Warnings Should Be Used Carefully

As mentioned earlier, the HCNM was established to provide participating States with early warnings. Since those days, many other international organizations have developed early-warning mechanisms, including the OSCE, whose Vilnius 2011 Conflict Cycle decision was mentioned above. This decision led to further work inside the OSCE to conceptualize and organize the handling of crises that risked developing into conflicts, including the issuing of early warnings. However I sometimes feel that this work did not necessarily make the preventive work more efficient. Let us hope that the report on lessons learned from Ukraine will make a difference.⁸

The HCNM has only ever issued two early warnings, one in 1999 concerning FYROM/Macedonia and the second in 2010 on Kyrgyzstan, on which Machl⁹ can provide first-hand information. In her article, a certain kind of frustration can also be felt. The HCNM at the time, Knut Vollebæk, called in his 2010 early warning for the OSCE to bring the matter of Kyrgyzstan to the UN Security Council, but that did not take place. A certain response was

8 Cf. *Lessons learned for the OSCE from its engagement in Ukraine. Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project*, June 2015.

9 Cf. Machl, cited above (Note 6), pp. 170, 174.

given, but matters did not really go the way the HCNM suggested. Unfortunately, early warnings, alerts, or similar actions by many other organizations have also failed to result in follow-up action.

Although I did not issue any early warnings during my mandate, there were two cases where my office gave it very serious consideration. One concerned FYROM/Macedonia. For several months between 2015 and 2017, there was a political crisis that could have turned into an inter-ethnic conflict. An incident in Kumanovo, in the mainly Albanian part of the country alerted not only the HCNM, but also the OSCE Mission to Skopje. Other incidents happened regularly, though none was of the same magnitude. A close co-ordination in the spirit of the Vilnius decision took place between the different branches of OSCE.

But the HCNM was very careful to use correct language about the situation in the country. Our statements were that it was a political crisis that could turn ethnical if not resolved with political means. If an early warning had been issued, it could have diverted attention from the political process. The obvious conclusion as to early warning is that it is a tool to be used very carefully, not to give an excuse to political leaders for inaction.

The other case concerned Ukraine. The difficulties of conflict prevention and questions around the efficacy of early warning have been intensively debated in the Interim Report.¹⁰ Even though the actions of the OSCE institutions in Ukraine are accounted for only very, very briefly in the report, it does contain some frank descriptions of the possibilities and constraints that the OSCE faces in terms of prevention. It mentions one limitation of the OSCE, namely the mandates of the missions, which are becoming more restricted year by year, and exclude political reporting. In such a situation, the independence of the autonomous institutions is even more valuable in the mind of most participating States. Unfortunately, there are also participating States that do not see it this way.

Ukraine held the OSCE Chairmanship in 2013, and the HCNM observed how unwelcome any involvement was in Crimea. Then in 2014, under the Swiss Chairmanship, co-ordination started with a view of preventing escalation. But it must be admitted that events in February and March 2014 went with a speed few could have predicted. Both the rapid changes in the mood and government in Kyiv, as well as the events in Crimea can be described in this way.

No formal early warning was issued by my institution regarding mainland Ukraine, primarily because of the way the events developed. I do believe that the first actions taken against the new regime in some regional capitals were motivated primarily by politics and not inter-ethnic relations. However, false information regarding the nationalist intentions of the new

10 *Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project*, cited above (Note 8).

regime had been spread to inflate the opposition after Yanukovich fled the country.

A powerful tool was given to the “separatists” in the form of the hasty abolition of the 2012 language law, which had the potential to give Russian and other minority languages an official position in municipalities and regions. In a revolutionary mood, the Ukrainian parliament, the *Verkhovna Rada*, abolished the law, and I had no choice but to make a public statement – a kind of alert both to the Ukrainian acting president and to the participating States, that this move could increase the risk of a conflict.¹¹ Ultimately, the president did not sign the decree of abolition, but the damage was, in many ways, already done – the abolition was taken as a sign of the malign attitude of the new forces in power in Kyiv.

The events unfolded even more quickly in Crimea – from the seizing of Crimea’s parliament building in the early morning of 27 February, to the illegal referendum. With events unfolding at this pace, and with access to the territory restricted, an early warning would not have made a difference.

Ukraine – What Kind of Minority Questions Are There?

As a consequence of the crisis in and around Ukraine, I visited the country more than ten times from the start of 2014 and I was able to pay visits to nearly all areas where minorities live, including the western parts of the country. My first and last visit to Crimea took place in early March 2014, immediately after the transfer of regional power. After this visit I was not allowed back onto the peninsula. This is why I had to denounce the lack of respect for commitments in my statement to the Permanent Council in July 2015.¹²

My institution also participated in two assessment missions to Ukraine, the first in March-April 2014 and the second (to Crimea) in 2015.

The more the crisis developed, the less I felt there was an understanding of the linguistic and ethnic diversity in Ukraine. This was even evident in the OSCE context, where, for instance, I heard that “language is not always a reliable guide to ethnicity”, or that there is not really a minority question, as most people were considered ethnic Ukrainians. In some contexts, I had the feeling that, because the divisions in Ukraine were not only based on ethnic factors, some parts of the international community would not accept that the crisis built on identity grievances.

11 OSCE HCNM, *Restraint, responsibility and dialogue needed in Ukraine, including Crimea*, says OSCE High Commissioner on National Minorities, The Hague, 24 February 2014, at: <http://www.osce.org/hcnm/115643>.

12 Cf. OSCE HCNM, *Statement by Astrid Thors, OSCE High Commissioner on National Minorities, to the 1007th Plenary Meeting of the OSCE Permanent Council*, HCNM.GAL/2/14/Rev.2*, Vienna, 10 July 2014, at: <http://www.osce.org/hcnm/121065>.

One of the best descriptions of the diversity in Ukraine was written by Iryna Ulasiuk, legal adviser at the HCNM.¹³ In her article, she notes that most authors working on Ukraine agree that, since 1991, the country has been engaged in a linguistically oriented nation-building project and has pursued a policy of promoting a new national identity based on the titular language and culture. This partly explains why language has often been such a contentious issue. And, as the article also notes, the divisions in the country are not only based on ethnicity or language nor does ethnicity equal language. As we at the HCNM noted, religious adherence and different interpretations of history are also divisive factors.

The Many Years of Engagement in Ukraine

The HCNM has been working in Ukraine's complex environment for years. And alongside what Walter Kemp has written,¹⁴ the role of the HCNM in Ukraine has also been described and evaluated by many others, including Angela Kachuyevski¹⁵ and Volodymyr Kulyk.¹⁶

Over the years, three key questions have remained on the agenda: Relations between the Ukrainian-speaking majority and the minorities, the autonomy of Crimea, and the Crimean Tatars and other people formerly deported from Crimea.

Kachuyevski notes that, in the early days of the HCNM, the institution was unable to convince the national and regional authorities to implement the majority of its recommendations; the sticking block was the recommendations that would have run contrary to the policy of reviving the Ukrainian language and culture. It seems this difficulty has remained ever since. I also encountered it in Ukraine as in other countries that are trying to establish a new identity as independent states.

It is understandable that a country that gains or regains independence would want to promote its state language, but a patriotic or nationalistic ideology that emphasizes only one language can, on occasion, make a country unnecessarily vulnerable to propaganda from abroad when, for instance, minority groups do not even understand official information provided by the government. I often warned governments about this. It is not just a problem in Ukraine, but was also acute in Georgia, as I observed when changes to visa

13 Cf. Iryna Ulasiuk, *Europeanization of Language Rights in Russia and Ukraine: A Myth or a Reality?* Saarbrücken 2010.

14 Cf. Kemp, cited above (Note 4).

15 Cf. Angela Kachuyevski, *The Possibilities and Limitations of Preventive Action: The OSCE High Commissioner on National Minorities in Ukraine*, in: *International Negotiation* 3/2012, pp. 389-415.

16 Cf. Volodymyr Kulyk, *Revisiting a Success Story, Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001*, CORE Working Paper 6, Hamburg 2002.

requirements and residence permits were made and the minorities were targeted with disinformation.

Ukraine had been deeply divided in terms of language, history, economic development, and other factors for many years – even membership in the Orthodox Church. Language and identity questions have often been used to mobilize voters at elections. In 2012, the result of one such mobilization was the hasty adoption of the State Language Law – against which my predecessor warned. The warning was twofold – the adoption was very hasty, but it was also far from clear how the law would work in practice. During my mandate, we could observe that it had really not been implemented by many state authorities but, in areas of local self-government where the Hungarian minority was present, there had been concrete effects.

However, there is evidence that use of the Ukrainian language has expanded greatly over the 25 last years. Areas where Russian had dominated have become more bilingual, and many Russian speakers and persons identifying as of Russian ethnicity now consider themselves to be Ukrainian citizens.¹⁷ In the early phases of the demonstrations in Kyiv in 2013-2014, many reported hearing much Russian being spoken.

The terrible war, even if it is not formally called such, has led to more than 10,000 deaths, many more injured, extensive human rights abuses, and a huge population living in extreme difficulties in the vicinity of the line of separation in the east of Ukraine. Fortunately, a combination of skilful diplomacy and good leadership has been guiding the OSCE Special Monitoring Mission (SMM) to Ukraine. I highly regard the good co-operation we had with Chief Monitor Ambassador Ertugrul Apakan, Principal Deputy Chief Monitor Alexander Hug, and the entire Mission.

My prediction is that these events will have another casualty – a less obvious one – and that is the Russian language and culture, both in Ukraine and, possibly, in other parts of the OSCE. Many factors will contribute to this development. Since early 2014, Ukrainian legislators have weakened the position of languages other than Ukrainian in various sectors of Ukrainian society. These measures have not been sweeping, as was the effort to abolish the State Language Law, but have affected specific legislation. First, the law on higher education was amended to forbid tuition in languages other than Ukrainian, and, in the autumn of 2016, the law regulating primary education was amended. This change was itself motivated by the new provisions of the law on higher education. However, the Council of Europe Venice Commission (VC) did not endorse this law in a ruling in December 2017, finding it discriminatory against the Russian language, as it would only have permitted

17 Cf. Anna-Lena Laurén, *Frihetens pris är okänt* [The Price of Freedom is Unknown] Helsinki 2013, pp. 103-107.

teaching in EU languages in some circumstances.¹⁸ The VC also made many recommendations on how the law should be implemented.

The structures and resources devoted to minority questions are also very weak in Ukraine, despite numerous recommendations by the HCNM down the years. However, the Committee on Human Rights, National Minorities and Inter-ethnic Relations of the *Verkhovna Rada* has co-operated with the HCNM to strengthen these structures.¹⁹ It is always rather dangerous to compare figures between countries, but my impression was that even Lithuania had a stronger administration for minority issues, at least when counting the persons dealing with these issues in the central administration.

Crimea

My work as HCNM came to be closely associated with Crimea – partly because of the dramatic events during my tenure, but also because the institution was one of the few in Europe that kept a close eye on Crimea down the years, and especially on the situation of the Crimean Tatars. On the last day of his mandate, High Commissioner Vollebæk published the needs assessment the institution had drawn up concerning the Tatars and other groups that had been deported in 1944.²⁰ The report was not appreciated in Kyiv in the autumn of 2013 and the only authority that approved of the HCNM's views was the Ombudsperson. The report showed that support to reintegrating the Tatars was very low and that there was absence of legal security for many Tatars. Relations with the *Mejlis*, the Tatars' representative body, were also tense.

Max van der Stoep had been instrumental in de-escalating a crisis over a referendum on the status of Crimea in 1994. A solution including autonomy for the peninsula was established. It is interesting to note Angela Kachuyevski's observations regarding Crimea.²¹ She finds that, alongside the agility and skills of the first HCNM, the absence of Russian action in favour of separatists in Crimea was a further reason for the successful resolution of the crisis. We can see the strong difference in comparison to the present situation.

While a solution was found in 1994, even during my brief visit in March 2014, I was able to note that some of the provisions of the autonomy

18 Cf. European Commission for Democracy through Law (Venice Commission), *Ukraine – Opinion on the provisions of the Law on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education*, Strasbourg, 11 December 2017, CDL-AD(2017)030-e, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)030-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)030-e).

19 Cf. <http://www.osce.org/Hcnm/226841>, a roundtable organised together with the Committee on Human Rights, National Minorities and Interethnic Relations of the Verkhovna Rada.

20 Cf. OSCE HCNM, *The integration of formerly deported people of Crimea, Ukraine: Needs assessment*, available at: <http://www.osce.org/hcnm/104309>.

21 Cf. Kachuyevski, cited above (Note 15), p. 393.

arrangement were not being respected. But that was a situation that had occurred prior to 2014. Various appointments of officials in Crimea also showed how Kyiv wanted to hold a tight grip on the peninsula.

In spite of the attitude that Kyiv held towards them for many years, the Crimean Tatars and their leadership have come to represent a strong force to work internationally for the end of the illegal annexation of Crimea. I have also commended them for not resorting to violence and I hope that violence will be avoided in the future.

Now, unfortunately, Crimea can be added to the list of regions of conflict where international organizations have virtually no access – as is so often the case in precisely those places where one is needed.

Working Methods – Greatly Developed since the Original Mandate

Already following the term of the first High Commissioner, it was clear that the mandate had developed and been upheld in a way the drafters might not have imagined.

Also in this context, it is worth noting that personalities matter – particularly when it comes to personal relations. The institution owes so much to Max van der Stoep and his many skills, and, not least, to his good relations with many actors. A good example is his relationship with the former Swedish Minister for Foreign Affairs and the third-ever OSCE Chairperson-in-Office (CiO), Margaretha af Ugglas. The way the first High Commissioner interpreted his mandate in co-operation with af Ugglas has guided the institution ever since. Of course, their excellent co-operation was also partly due to the fact that Sweden had been the first country to suggest creating a position, such as the High Commissioner. Sweden maintained a keen interest in and a helpful attitude towards the institution during my years. That certainly also had something to do with the fact that the second High Commissioner was Rolf Ekéus, himself a Swede.

Over the years, the tradition had been established that the High Commissioner would appear twice a year before the OSCE ambassadors in the Permanent Council. We were very careful to ensure that we followed the letter of the law by presenting a statement by the High Commissioner, which stresses the independence of the institution, even though the OSCE document system always calls the statement a report. I tried to make the intervention more lively by making a presentation in addition to the statement. During my tenure, the Permanent Council did not adopt a text following these statements.

The most important characteristics of the work remain the same: The institution is an instrument of conflict prevention. It is not part of the human dimension of the OSCE, but cross-dimensional and quiet diplomacy is the working method with all the challenges that this entails.

The level of publicity around the institution has also varied over the years. The use of quiet diplomacy and the preventive aspect of the work make it hard to show evidence of efficacy. It is not possible to explain in detail all the factors that contribute to successes – and, even where the HCNM can be credited with a success, other actors are certainly also to be commended.

Although the HCNM is an instrument of quiet diplomacy, Max van der Stoep did not entirely rule out publicity as a last resort to influence parties to a conflict or to make his point clear to the participating States. Sometimes he published his recommendations to the states concerned. This was not a practice that has continued. The institution has worked more behind the scenes in later years. This contribution has also been written with restrictions stemming from our use of quiet diplomacy.

The educational work undertaken by the institution, both in The Hague and Vienna and in other capitals, cannot be underestimated. The office has some of the best experts on the former Soviet space, including Central Asia and I am very grateful to all of them. We made continual efforts to make that expertise available to all who needed it.

No Stick, Very Few Carrots

In diplomacy, there are many ways to reach results: Carrots and sticks, the sharing of information, and united efforts by many actors, among others. The HCNM does not have any sticks, but, in the best of worlds, he or she can convince a participating State that it is in its self-interest to respect the rights of minorities, thereby furthering harmonious relations, and integration.

As to carrots, during my tenure as HCNM, I continued to see that positive incentives related to EU accession and EU Partnerships consistently brought results, in spite of the fact that the Juncker Commission (2014-2019) declared that no accession would take place during their mandate.

In this context, it should not be forgotten that probably the single most important words for the improvement of the situation of national minorities in Europe are those contained in the 1993 Copenhagen Criteria. These rules define the conditions a country must fulfil in order to start negotiations with the EU. Contained in the conclusions of the European Council in Copenhagen, they state that “membership requires that the candidate country [...] has achieved stability of institutions guaranteeing [...] human rights, respect for and protection of minorities”.²²

22 *European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency*, SN 180 7 93 REV 1, p. 13, at: <http://www.consilium.europa.eu/media/21225/72921.pdf>.

Wolfgang Zellner undertook a very interesting evaluation of factors contributing to the effectiveness of the HCNM in 2013.²³ It considers the HCNM's work in Estonia, Latvia, Romania, Macedonia, and Ukraine from 1993 to 2001. Zellner finds that the possibility of a country's integrating into Western institutions and the willingness of the country's elites to seek to do so were important factors for the success of the institution in those years. Another factor was the specificity of the recommendations of the EU Commission on ethno-political conflicts. Very interestingly, Zellner notes the lack of specificity of the EU recommendations concerning Ukraine. I am not sure that that has changed over the years.

The work we conducted in Serbia and Albania was closely related to their EU aspirations. Albania took into consideration the EU Commission's assessment of the need for new legislation on minority issues and the HCNM worked together with the OSCE Mission in Albania to support Albania in preparing it.

There is an unfortunate tendency towards double standards on the part of newly ascended EU states. I observed that countries did not continue to implement strategies or commitments concerning inter-ethnic relations or minority protection after accession as they had promised in accession negotiations. In spite of that, the same countries were very eager to promote the situation of their kin in candidate countries. That is something that Serbia has experienced, as it has many neighbours who are already inside the "club".

Double standards is an issue not only in relation to the question of minorities in the accession procedure, as Emily von Sydow noted,²⁴ in reference to a discussion between Aldo Moro and Olof Palme, the prime ministers of Italy and Norway, respectively. Moro had explained that the European Community reminded him of the Catholic Church: You must be pure to enter, but when you are inside, you can commit sins and be forgiven.

The EU's Eastern Partnership

Association Agreements, which provide, among other things, increased political dialogue, are key instruments the EU uses to reach the objectives of its Eastern Partnership. Such agreements have been at the centre of political controversies, including at the start of the 2013-2014 demonstrations in Kiev, when President Viktor Yanukovich suddenly declined to sign the Ukraine-European Union Association Agreement. These instruments have been central to the EU's relations with Moldova, Georgia, and Ukraine.

23 Cf. Wolfgang Zellner, Working without Sanctions: Factors Contributing to the (Relative) Effectiveness of the OSCE High Commissioner on National Minorities, in: *Journal on Ethnopolitics and Minority Issues in Europe* 3/2013, pp. 25-62.

24 Emily von Sydow: *När Luther kom till Brussel, Sveriges första år i EU*, [When Luther Came to Brussels, Sweden's First Years in the EU], Stockholm 1999, p. 16.

Many factors have played a role in determining how the governments of EU partnership countries have dealt with minority issues. Sometimes, an integration strategy was politically and financially affordable, while other avenues had higher costs. The level of engagement of the head of the EU delegation may also have played a role as did the composition of the government and the balance between forces who understood the value of integration of the society and hard nationalists. The position previously taken by the EU Commission may also have played a role.²⁵

But the fact remains that two of the three countries with an Association Agreement, Moldova and Georgia, were among the first to adopt an integration strategy in accordance with the Ljubljana guidelines.²⁶ This is not to say that it was an easy process to get that far and Moldova finished the procedure after the expiration of my mandate.

As for Moldova, prior to the adoption, many international experts had to be brought in to explain the principles contained in the Ljubljana Guidelines. There were long debates about the meaning of the title – did the strategy concern the integration of the society or the integration of the minorities into the society? That debate really showed some fundamental differences about the role of minority groups in society as well as the role of the titular nation. Is integration seen as just a one way street, or is it understood that the majority should learn more about the history and the culture of the minority?

As the English proverb has it, “the proof of the pudding is in the eating”. The proof of any integration strategy is its implementation: Would it be adequately resourced? And is the political will behind it genuine? In the cases in question it is still too early to tell.

The Dramatic Increase of Refugees, a.k.a. the Migration Crisis

With the memory of the early warning in 1999 concerning the influx of refugees to FYROM/Macedonia still fresh, the institution was very attentive to what effects the steep increase in the number of refugees arriving in late summer and autumn 2015 via the “Balkan Route” might have on inter-ethnic relations and relations between countries. Would the situation merit action from our side in the short or longer term?

German Chancellor Angela Merkel’s “*Wir schaffen das*” (“We will cope”) alleviated our fear. Moreover, the countries we observed did not face situations reminiscent of the dramatic events in 1999, when the population in FYROM increased by more than ten per cent, the increase consisting of 250,000 ethnic Albanians, thereby changing the inter-ethnic balance in the country dramatically.²⁷ This is not to say that we were not aware of the suf-

25 Cf. Zellner, cited above (Note 23).

26 Cf. *The Ljubljana Guidelines*, cited above (Note 2).

27 Cf. Kemp, cited above (Note 4), pp. 191-192.

fering of asylum seekers and the hardship they endured, but that was a matter for other organizations. However, we were concerned about a number of strongly worded statements made by the authorities in the affected states, including several foreign ministers.

Our conclusion was that, in the short term, no action was needed from our side, but we noted with gratitude the interest in the Ljubljana Guidelines by many others who saw that the principles in those guidelines could also be applied to integration policies for new arrivals. I understand that the Ljubljana Guidelines were a source of inspiration when the Council of Europe elaborated the Guidelines of the Committee of Ministers to the Member States on the Protection and Promotion of Human Rights in Culturally Diverse Societies.²⁸

Already before this crisis, many observations had been made about how nationalistic rhetoric was on the rise and how various minority groups were being targeted as “other”. The refugee wave was used in the same way by many politicians. Hate speech was being tolerated in a way that had not been experienced for a long time.

It is self-evident that this atmosphere will make it harder to achieve good inter-ethnic relations, but let us hope that the result will not be conflict.

In the Best of Worlds

My years as the HCNM were extremely intense and gave me many insights into various participating States. I am also very grateful to all the dedicated experts and wonderful colleagues in the office of the HCNM for their industrious, intelligent, and insightful work and collaboration during my tenure. The office is a unique team of people devoted to conflict resolution and prevention. I have not been able to deal with many interesting matters here, including the autonomy of Gagauzia and several other questions in Moldova and the importance of co-operation in education in Central Asia, to mention but two.

My time in office also reminded me of how lucky my own country has finally been. I was recently reminded of that in a book by a great poet and historian from Finland, my home, who, in a textbook used by generations of people living in Finland from 1875 until the Second World War, formulated his thesis: “one people – two languages”.²⁹ Not only that, he also wrote that everyone who lived on the soil of the country, respected the laws, and wanted to contribute to the well-being of Finland was part of the country. In other words, a conception of civic identity could be found in his writings.

28 Cf. Council of Europe, *Human Rights in Culturally Diverse Societies*, Strasbourg, June 2016.

29 Zachris Zacharias Topelius, *Boken om vårt land* [The Book of Our Country], published in 1875.

Formulating the nationalities question in terms of “*One People – Two or More Languages or Ethnicities*” is not common in the OSCE area. It builds upon the notion of the civic identity of persons living in a country, not their ethnic, religious, or linguistic identity. But, of course, a prerequisite of civic identity is that all persons are treated as citizens, as persons with rights and duties. When the rule of law gets weaker, the notion of civic identity also vanishes.

This is how I would see the participating States in the best of worlds: a state of affairs where, in addition to a civic identity, all people would be allowed to have multiple identities from which they could choose. Let us hope that there will continue to be solidarity between people, and that borders will not be closed. Closed borders can also mean decreased possibilities for national minorities.

A lot of reconciliation and education is needed, beginning with combating hate speech. My dream is that other countries will not make the same mistakes that were made in 20th century Europe.