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Organization for Security and Co-operation in Europe

The Relevance of International Standards

for the

Protection of Minorities

by

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Thank you Mr. Chairman.

Distinguished Colleagues, Ladies and Gentlemen:

I would like to contribute to our discussion on the present and future priorities for the rule of law by talking about international standards for the protection of persons belonging to national minorities. History, particularly recent history, has shown that minority and inter-ethnic issues affect peace and security. We should therefore do our utmost to protect minority rights and prevent inter-ethnic conflict.

Bearing in mind the subject of this programme, I should start by saying that as OSCE High Commissioner on National Minorities I am considered as an instrument of conflict prevention rather than a norm-setter or minority rights monitor. According to my mandate, my role is to provide early warning and, as appropriate, early action in regard to tensions involving national minority issues that I think could be a threat to peace and stability in the OSCE area. My focus is therefore mainly political, geared towards conflict prevention.

That being said, while my tools may be political, my blueprints are based on international legal standards. These standards map out the framework in

which political compromises can be made. They constitute the minimum level of acceptable behaviour concerning specific individuals.

I stress *individuals* rather than groups because as yet there are few group rights, and even these must, in the end, be enjoyed by individuals acting in community. That is why in the OSCE we always refer to persons belonging to national minorities as opposed to national minorities *per se*. That is not to deny the existence of groups. Indeed, in my function, because I do not consider individual cases, I am always looking at the situation of particular groups – usually those in a numerically inferior position; in other words a minority.

I do not want to go into the muddy waters of defining minorities, especially national or ethnic ones. I know that this is a problem in terms of international law and I will come back to it when I discuss self-determination later on. But I want to point out that definitions, as important as they are for legal clarity, are not essential for getting on with the job of pragmatically trying to prevent conflicts between groups.

Still, we need some sort of parameters. My view has always been that a minority is a collection of individuals who share linguistic, ethnic, or cultural characteristics which distinguish them from the majority. These individuals, acting alone or together, usually not only seek to maintain their identity, but

also try to give a stronger expression to those ethno-cultural and linguistic characteristics that give them a sense of individual and collective identity.

Minority rights are an integral part of human rights. Indeed, until recently the conventional wisdom was that particular concerns and interests of persons belonging to minorities could be served merely through the general regime of human rights, for example the Universal Declaration of Human Rights. Certainly, universal human rights go a long way to protecting persons belonging to minorities, in particular through the principles of equality and non-discrimination. If basic human rights are respected in a democratic political framework based on the rule of law, then all persons, regardless of ethnicity, language or religion, will have the opportunity and the equal right to freely express and pursue their legitimate interests and aspirations.

However, in quite a number of cases, additional rights are clearly necessary. These rights act as a safety net in cases when minorities are vulnerable to majority decisions that affect their interests, concerns and desires. These rights do not privilege persons belonging to minorities, but act to ensure equal respect for their dignity, in particular their identity. They serve to bring

all members of society to at least a minimum level of equality in the exercise and enjoyment of human rights and fundamental freedoms.

In the past few years important standards have been developed to set clearer guidelines for the protection of the rights of persons belonging to national minorities. I am thinking in particular of the OSCE's 1990 Copenhagen Document and the Council of Europe's Framework Convention for the Protection of National Minorities of 1994.

Of course, it is necessary to put these norms into practice. States are showing a greater understanding for the need to develop legislation to protect minority rights, devise mechanisms to facilitate dialogue with minorities, and build frameworks in which minorities can more fully participate in decisions and activities that directly affect them. This is increasingly the case for States in post-Communist transition. The fact that respect for human rights, including minority rights, is part of the European Union's criteria for admission of new Members has made an important impact on applicant States.

But we still have some way to go. To assist States in understanding and applying international standards concerning national minorities I have

commissioned international experts to come up with general recommendations regarding the education rights of national minorities, the linguistic rights of national minorities and the effective participation of minorities in public life. These are issues which I often encounter in my work. Focusing on the particular needs of minorities, these recommendations (which are known as the Hague, Oslo and Lund Recommendations) are designed to help governments to create conditions to allow for the full and free development of the individual human personality in conditions of equality.

After all, we live in a world of diversity. In order to be representative, democratic government and administration require structures and modes of societal interaction that satisfy the needs of all members of society. Since very few populations are ethnically homogeneous, it is almost inevitable that every State will have at least one minority. Depending on the size of the minority or minorities, this can affect questions like use of language, education, culture and participation in government. Fair and practical standards to protect minorities are therefore essential.

But standards will only take us so far. Although they are universal, the situations where they are applied are not. Don’t misunderstand me: I am not

trying to suggest that pragmatism should supersede principles, nor am I implying that the application of norms and standards is relative. As I noted earlier, international standards are minimum standards. We have to stick to these standards – indeed insist on them – and not allow for obligations and commitments to be interpreted in a restrictive manner. Nevertheless, experience has taught me that we can not look at standards in terms of pure law. One must be sensitive to the context in which one is working in order that the parties will see the logic and possibility of internalizing and applying the norms under discussion. The key is to move from the abstract to the concrete, to get States to take measures – legal and political – to create the types of conditions foreseen in the standards concerning minorities. My office has had considerable success in this field.

But let us be frank. There are inter-ethnic conflicts raging throughout the world. There are individuals whose rights and lives are threatened because of the colour of their skin, the language they speak, their faith, or their culture. We are emerging from a century marred by excessive nationalism, inter-ethnic and racial hatred, anti-Semitism, xenophobia and discrimination. When we ask, "What is the condition of the Rule of Law and What are the Priorities for the Future?", we must surely answer that one of our main goals should be to find

ways of promoting inter-ethnic harmony in order to avoid the types of conflicts that we have witnessed in the past – and, in some cases, are still witnessing.

This requires grounding our societies in a solid foundation of democracy based on the rule of law. At the heart of this vision of civil society is the protection of human rights, including the rights of persons belonging to national minorities. But as I have already noted, minority rights protection is only part, albeit the basic, element of fostering inter-ethnic accommodation. A second key consideration is the effective participation of minorities in public life. By this I mean that States should not only protect minority rights, but they should also establish specific arrangements for national minorities. Such arrangements enable minorities to maintain their own identity and characteristics while including them in the overall life of the State. This can promote good governance and maintain the integrity of the State.

Let me also caution that integrating diversity is not the same thing as assimilation. When integrating groups within society we must pursue equality, not in terms of sameness, but in terms of meaningful opportunities. This requires an attitude of mutual respect on the part of both the majority and minorities. It also requires a rejection of extreme nationalist views and policies.

We must also avoid disparities. Inequality – whether it be in terms of human rights, economic prosperity, access to education or employment and so on – can cause flash points that make "difference" look like threat. This can lead to conflict. A key to avoiding conflict is therefore to combat the worst excesses of inequality within and between States and to allow for the full flourishing of diversity.

In its most basic form, this means the creation of a level playing field. This involves combating discrimination and racism, reducing socio-economic cleavages and lowering real and psychological barriers between groups.

It also means recognizing, protecting and promoting the identity of minorities, creating possibilities for dialogue, effective participation in decision-making processes, and being responsive to the linguistic, educational and cultural needs of minorities. For example, States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. This also applies to regional and local levels of government. The electoral system should facilitate minority representation and influence. States should also establish advisory or consultative bodies with appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and minorities.

Another way of enabling effective participation of national minorities in public life is for States to devote resources to self-governance. Looking imaginatively at this issue can move us away from what is often seen as an irreconcilable dilemma, namely satisfying the desire for self-determination while maintaining the territorial integrity of States.

There is a vast literature on self-determination. International law has also given tentative yet rather vague blessing to self-determination of "peoples", although this does not help much when it comes to national minorities. More must be done to clarify and define what constitutes a minority under international law and, by extension, what is prescribed for such groups through self-determination. I leave this as an open challenge to you jurists.

For me, the fundamental issue of self-determination is that groups of people (however defined) are seeking control over their destiny. That is not the same thing as secession. Indeed, the sooner Governments realize this, the more likely it is that they will be able to find ways to address self-government aspirations without breaking up States. How can this be done?

Self-governance can take two forms. The least well-known is non-territorial self-governance or personal-cultural autonomy. This concerns issues

like the ability of minorities to use their own names in the minority language, to take decisions concerning the education of their children, to use minority languages in official communications, and to determine and enjoy their own symbols and other forms of cultural expression.

Territorial self-governance is a second option. It may be appropriate in certain situations to decentralize power to regions or the local level in order to improve the opportunities for territorially concentrated minorities to exercise authority over matters that affect them. In this way the state maintains sovereignty, while devolving some of its powers to a less-than-sovereign internal unit that gains considerable control over its own destiny without being sovereign. Of course, important powers of central control hold such a system together, in particular in guaranteeing the rule of law.

More must therefore be done to move away from the archaic notion of the nation-State towards a more modern view that reflects the multi-national reality of most contemporary States. There is a vast range of possibilities between assimilation on the one hand and secession on the other. International law, political science and practitioners must explore this space more vigorously. States must also be willing to look at creative solutions concerning so-called "internal" self-determination. Otherwise majorities and minorities will continue to strive for a mythical paradigm in which the nation and State overlap.

How can we help? Norm-setting is certainly crucial. As I noted earlier, we need to clarify, under international law, who constitutes a minority and what self-determination means. We should also encourage States, that have not already done so, to adhere to international standards and harmonize their legislation accordingly. We must also monitor compliance with the norms that are already in place. In this regard, there is now scope for the international community, at least in the OSCE area, to play a rather intrusive role in ensuring that standards are not violated. In the 1991 Moscow Document, OSCE participating States agreed [and I quote] that "commitments undertaken in the human dimension of the [O]SCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned." [unquote] This significant qualifier of the principle of non-interference has allowed the OSCE, including my office, to be constructively and legitimately engaged in the internal affairs of sovereign States on the basis of the common interest in security.

Unfortunately, it has not prevented States from hiding behind the argument of sovereignty when criticized for human rights violations. Mixed international responses to recent crises in East Timor, Kosovo, Rwanda and Chechnya have demonstrated that we have yet to satisfactorily resolve the criteria for legitimate humanitarian intervention. I am sure that this issue will be

a subject of discussion during this meeting and among legal experts in years to come. One thing is certain. We must do everything possible to prevent conflicts from erupting in the first place.

Mr. Chairman,

I would like to conclude by noting that there are now a number of international standards concerning the protection of persons belonging to national minorities. There are also institutions, like my Office, to assist States in implementing those standards and bodies like the Council of Europe to monitor compliance. What still needs to be done is to achieve a paradigm shift in the way that people look at the State. National law should be designed to equally protect the rights of all inhabitants of the State, not only the so-called "State forming" nation. International law should provide the overall framework and impulse for such a pluralistic vision and have mechanisms to protect those who fall through the cracks.

The greatest challenge is to make international standards relevant in people's everyday lives. I have witnessed too many situations where the rule of law is weak or even non-existent. In such cases, individuals or groups take

matters into their own hands. I have also witnessed too many situations where law is abused and twisted by central and local officials. This makes people skeptical about the rule of law and makes them feel that they live in an unjust society. This can have divisive consequences. Let us therefore not lose sight of the reasons why international standards are devised in the first place. And let us continue to ensure that the process of devising legal frameworks keeps up to date with the challenges of our time. We should also continue to look for ways to assist States to apply the norms that they subscribe to. This will not only prevent conflict, but should encourage the development of fair and civil societies.

Thank you for your attention.