



Organization for Security and Co-operation in Europe
High Commissioner on National Minorities

STATEMENT

Informal Interactive Dialogue on “The Role of Regional and Sub-regional
Arrangements in Implementing the Responsibility to Protect”

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Mr. President, Excellencies,
Ladies and Gentlemen,

Thank you for the invitation. It is an honour to be here and to represent the OSCE in the discussions on the Responsibility to Protect [R2P], and regional and sub-regional organizations. I would like to share with you insights and lessons learned from the experience of the OSCE and, more specifically, from that of the High Commissioner on National Minorities. The OSCE has been at the forefront of bringing a human dimension into the understanding of security and of creating an extensive, as well as innovative, human rights framework. As a result, one can trace a considerable interconnection between the OSCE's normative and political instruments and the evolution of the UN's approach to the international responsibility to protect. For the purposes of this presentation, allow me to focus on three main areas:

1. The OSCE's conceptual contribution to the evolution of the R2P norm;
2. The role and weight of prevention in the implementation of R2P; and
3. The current relationship between the emerging norm of the R2P and the OSCE, as demonstrated in recent crises in the OSCE area.

When, in June 2010, intercommunal violence erupted in the south of Kyrgyzstan, advocates of international action appealed repeatedly to the responsibility of the international community to react and bring an end to the violence and displacement of people. In its Open Letter to the Security Council, the Global Centre for the Responsibility to Protect recommended the deployment of an international stabilization mission to Kyrgyzstan, noting that, "the Council cannot look the other way or hope that the situation will quickly disappear". While no action was taken in the case of Kyrgyzstan, to which I shall return later, the discourse surrounding the crisis indicated a growing acceptance, even expectation, that when atrocities on a mass scale take place, the international community not only has the right, but also the duty to act.

In February of this year, the Security Council for the first time made an explicit reference to the R2P in its resolution on Libya. This was taken by many as a decisive step on the way to accepting and legitimizing international action on the grounds of

R2P. How norms emerge and become accepted by the international community is an issue which goes beyond the intended scope of this presentation. It has to be mentioned, however, that emerging norms are normally built upon existing standards and principles, and represent an evolution of those. In the context of R2P, the contribution of the OSCE in developing an innovative approach to the relationship between human rights and sovereignty, and highlighting the multidimensional understanding of security, is particularly noteworthy. While established as a “security organization”, the OSCE considers protection of human, including minority rights as fundamental in upholding security in a broad sense. Furthermore, the participating States have stressed that issues related to human rights, fundamental freedoms, democracy and the rule of law are matters of international concern, since respect for these rights and freedoms constitutes one of the foundations of international order. Among the most prominent manifestations of this commitment is the Moscow Document of 1991, in which the participating States “categorically and irrevocably” declared that “the commitments undertaken in the field of human dimension of the OSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.” This means that since 1991 the OSCE participating States have not been free to invoke the principle of non-intervention in order to avoid discussions of human rights problems within their countries. This explains why the OSCE was conceived not only as a “community of values” but also as a “community of responsibility”. It has to be stressed, however, that this “responsibility” does not only focus on the right to criticize other States concerning violations of their human dimension commitments, but also on the duty to assist each other in solving specific problems and building up the capacity of States to fulfil their domestic obligations and international commitments.

Among the most practical manifestations of the above is the institution of the High Commissioner on National Minorities set up in 1992. It so happened that the OSCE witnessed, with particular frequency, the violence caused by ethno-communal frictions and State failures. The HCNM, therefore, was created to prevent conflict between majority and minority groups within States and to act as an early warning mechanism alerting the participating States to the potential for a deepening crisis. In fulfilling his mandate, the HCNM relies on a combination of operational and structural prevention, intervening in cases that, in his judgment, pose a threat to the

stability and security of the OSCE region. For this, the HCNM does not need the formal permission of the Permanent Council or the State concerned. The High Commissioner has the right and the opportunity to act independently. This is the cornerstone of his mandate without which, I dare say, it would have been an institution of only nominal effectiveness, the OSCE being a consensus-based organization.

The HCNM, therefore, represents an embodiment of international intervention. His engagement often touches upon the fundamentals of State sovereignty, influencing the processes of nation-formation and state-building, consisting mainly of advice, which takes the form of recommendations to the relevant authorities and follow-up visits. His purpose is to enhance the state capacity to deal with ethno-cultural diversity in a democratic way and to ensure that such diversity does not become a source of human suffering, violence and instability. At times, however, when a crisis appears imminent, the long-term, structural prevention will have to be supplemented with more immediate action, including mediation, facilitation of dialogue and other tools of preventive diplomacy.

So what does the experience of the HCNM have to offer for the current discussion of the responsibility to protect? I would single out three main conclusions. First, intervention and prevention are neither separate nor alternatives to one another, as it is often perceived. It so happens that intervention tends to be associated with the use of force while in reality force is, and should be, only the last resort. Peaceful intervention, if carefully designed, amounts to prevention. Second, intervention with the aim of prevention does not erode sovereignty, as it may appear at first sight. On the contrary, it strengthens sovereignty by enabling States to fulfil their basic duties and obligations. If we understand sovereignty not only as a right but also as a responsibility, then efforts to build state capacity, strengthen its institutions and develop mechanisms for accommodating different cultural and/or political interests translate directly into the strengthening of state sovereignty and viability.

Third, my experience shows that there is a direct link between state capacity and protection of human rights. It is the functioning and effective State that can best protect its citizens and respect fundamental rights, while weak and failing States pose

major risks to human security as well as to international stability. This is particularly evident in the context of multi-ethnic States, since effective protection and accommodation of minority interests requires an elaborate framework of minority rights and well-endowed institutions for their implementation. There is not much point asking failing States to ensure minority protection to international standards when their basic functions and capabilities are under threat.

There is a growing consensus that prevention is the most cost-effective and adequate way of dealing with potential conflicts and man-made catastrophes. It is therefore essential that both international and domestic mechanisms of conflict prevention are strengthened. The Secretary General in his report on “The role of regional and sub-regional arrangements in implementing the responsibility to protect” notes the need “to bolster preventive capacities of the United Nations”. Also, former Secretary General Kofi Annan has been underlining the importance of moving from what he calls “the culture of reaction” to “the culture of prevention”. As somebody who has been in the business of conflict prevention, I can assure you that this is easier said than done. Sometimes I think that the very logic of doing politics as we know it is inconsistent with that of long-term, root-cause prevention, partly because it is difficult to know when and which prevention strategy has been successful and who is to take credit for it. As a rule, it is a combination of actors, and even circumstances, that determine a positive outcome. In addition, such a positive outcome, i.e. successful prevention, is often a “non-event”. The whole rationale of prevention is to deal with a potential crisis before it erupts and hits the headlines. In the current political context, mobilizing human and material resources for a “non-event” is rather difficult. It simply does not pay off.

When prevention fails, however, it is essential for the international community to step in, but to do so with the utmost care for legitimacy and with a reasonable expectation for success. This is best ensured through multilateral efforts. We have seen that when States take unilateral actions to defend, protect or support their citizens or “ethnic kin” abroad, there is a risk of political tensions, including inter-State conflict and regional instability. This has demonstrated the dangers associated with unilateral intervention by a neighboring state. Multilateral action is essential for the effectiveness and

credibility of any humanitarian operation, even at the risk of being slow and less flexible.

However, the lack of response to last year's unrest in Kyrgyzstan was an example of where, although a Government requested intervention, the international community had little appetite, let alone felt responsibility to act. I had been following developments in Kyrgyzstan with great concern and had alerted both the authorities and the OSCE Permanent Council about the growing risk of violence. The inability of the Government to deal with the situation, which they admitted, contributed to the eruption of violence. I decided to issue a formal early warning, which is the last resort the HCNM possesses to draw attention to an imminent crisis. Early warning is to be used only when the HCNM sees that preventive measures have been exhausted and there is no longer a chance of averting crisis by means of quiet diplomacy. This has happened twice in the history of the institution, first in 1999 concerning the situation in the former Yugoslav Republic of Macedonia and then last year in Kyrgyzstan. For this reason, formal early warning by the HCNM tends to receive considerable attention and Kyrgyzstan was no exception. However, the attention came mainly from international NGOs that considered the June events to be a "classic case of R2P" and appealed to the attention and action of the international community. In contrast, the response of the OSCE participating States was rather muted. While many States were active in supporting efforts to organize humanitarian assistance to those affected by the violence, no State was prepared to tackle the political and logistical challenge of an operation on the ground. The absence of R2P both from the discussions within the OSCE and actions on the ground was noteworthy. The case also demonstrated that in the OSCE's own framework, the transition from early warning to early action is a grey zone. Assessing the scale of atrocities and deciding on action is ultimately a political decision. Once the crisis escalates to this level, the OSCE has little guidance to offer in terms of parameters and legitimacy.

It is striking that there is practically no debate on R2P in the context of the OSCE. This despite the fact that the OSCE, as I already mentioned, has made a considerable conceptual and practical contribution to the evolution of the international society that made it possible for a norm such as the R2P to emerge and become acceptable. There is no doubt that the idea of the responsibility to protect needs time to take root. It also

needs endorsement of regional and sub-regional organizations if it is ever to become operational. International politics is a web of contending normative principles and political interests, where finding its rightful place for an emerging norm may not be easy. I believe this dialogue could be an important step in this direction and I look forward to the discussion.