

Politics and National Minorities: a trade-off between security and justice?^{1*}

Walter Kemp

Director, Europe and Central Asia, International Peace Institute

DOI: [10.1163/18750230-02404016](https://doi.org/10.1163/18750230-02404016)

¹ * This article is the text of a speech, given at the 20th anniversary of the High Commissioner on National Minorities, 16 December 2013.

Abstract

For twenty years, the OSCE High Commissioner on National Minorities has worked to prevent inter-ethnic conflict. While there are those that have argued that the High Commissioner has ‘securitized’ minority issues by putting too much emphasis on security rather than justice, the past 20 years of the High Commissioner have shown a track record characterised by conflict prevention and “desecuritization”.

Keywords

minority rights; desecuritization; OSCE High Commissioner on National Minorities

For twenty years, the OSCE High Commissioner on National Minorities has worked to prevent inter-ethnic conflict. There are those who have argued that the High Commissioner puts too much emphasis on security rather than justice. Indeed, some go so far as to say that the High Commissioner is guilty of “securitizing” minority issues. But since 1993, three successive High Commissioners have demonstrated that there is no need for a trade-off between justice and security. On the contrary, the two are complementary, even dependent on each other: justice is the basis of long-term security, and stability is needed for justice.

A justice-based conflict prevention instrument

While the High Commissioner is an instrument of conflict prevention (and therefore focused on security), her mandate is inspired by the need for justice and the rule of law. This idea is part of the OSCE’s genetic code. In the Copenhagen Document of June 1990, participating States recognized that “the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with functioning independent judiciary”. They further reaffirmed that “respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in participating States”.

The Report of the CSCE Meeting of Experts on National Minorities that took place in Geneva in July 1991 emphasized that “human rights and fundamental freedoms are the basis for the protection and promotion of rights of persons belonging to national minorities”. This was an end in itself (namely justice), but also because “friendly relations among their peoples, as well as peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected, and conditions for the promotion of that identity be created”.

In other words, the protection and promotion of the rights of persons belonging to national minorities is important both for the sake of the security and justice of individuals, and for the sake of national and international security. No contradiction there.

So where is the problem?

The High Commissioner “securitizes” issues

Critics argue that the High Commissioner’s mandate – adopted as part of the Helsinki Document of 1992 – creates “security drama”.² She is “an instrument of conflict prevention” who should reduce “tensions” involving national minority issues that could “develop into conflict” within the OSCE area, “affecting peace, stability or relations between participating States”. As such, the High Commissioner “securitizes” minority issues.

2 P. Roe, *Securitization and Minority Rights: Conditions of Desecuritization*, in *Security Dialogue*, 2004, no. 35, p. 292.

The main proponent of this view is the Canadian philosopher Will Kymlicka. In his book *Can Liberalism be Exported?* he suggests that the High Commissioner actually exacerbates rather than reduces tensions and that justice is sacrificed for the sake of security.

He argues that the OSCE is guilty of double standards for taking a justice-based track for Western European countries and a security-based track for Eastern European ones.

He regards as problematic the very act of labelling minority issues as “security-related”. He argues that “as long as states view minorities in the framework of loyalty/security, they are unlikely to understand or act upon notions of fairness or justice”. If the High Commissioner says that she is engaged in a situation because she has concerns about potential security problems, this, according to Kymlicka, “may simply confirm the state’s view that minorities are above all else a security problem.”

Furthermore, goes the argument, the High Commissioner’s intervention rewards bad behaviour. As the saying goes, the bad kids get the cookies. Yell loud enough for long enough and you will attract attention and people will try to appease you, whereas if you behave and are quiet you will be ignored. The case of Kosovo is a good example.

Compare the lack of support for Ibrahim Rugova’s campaign of peaceful resistance with the NATO intervention behind the KLA.

This tactic is particularly well-suited to a media and Internet-driven age of short news cycles, and even shorter attention spans. If you want to get the world’s attention, you need the big bang.

In Kymlicka’s opinion, “the security track approach provides a perverse incentive for both the state and the minority to escalate the conflict. It gives the state an incentive to invent or exaggerate rumours of kin-state manipulation of the minority, so as to reinforce their claim that the minority is disloyal and that extending minority rights would jeopardize the security of the state. It also gives the minority an incentive to threaten violence or simply to seize power, since this is the only way its grievances will reach the attention of the international community. Merely being treated unjustly is not enough to get Western attention or sympathy these days.³ “In short”, says Kymlicka, “the security approach rewards intransigence on the part of both sides”.⁴

I am reminded of an informal meeting that I had with some representatives from Cornwall when I worked for the High Commissioner’s office. They asked if the High Commissioner could take up their case because they were worried that their language was not being sufficiently protected. I said that this was certainly a just cause, but not one that would necessarily require the High Commissioner’s attention. “What do we have to do to get him involved, blow something up?”, they asked (fortunately in jest).

Clearly there is a link between minority issues and stability. But the fact that the High Commissioner has a security-related mandate does not mean that she “securitizes issues”. On the contrary, (to borrow a term from

3 W. Kymlicka, Reply and Conclusion, in W. Kymlicka and M. Opalski, *Can Liberal Pluralism be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe*, New York, 2001, p. 379.

4 W. Kymlicka, Reply and Conclusion, in W. Kymlicka and M. Opalski, *Can Liberal Pluralism be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe*, New York, 2001, p. 380.

Ole Waever and the the Copenhagen School) she tries to “de-securitize” them.⁵

Security requires justice

The problem with Kymlicka’s argument is that he sees security and justice as two distinct tracks. But suggesting that there is a trade-off between security and justice is a false dichotomy. Justice is vital for security, and without security there can be no justice. As the previous High Commissioner, Knut Vollebaek, pointed out, for example in the Ljubljana Guidelines on Integration of Diverse Societies (November 2012), inter-ethnic conflicts are frequently rooted in the denial of basic rights. “This is why the protection of human rights, including minority rights, is inextricably linked with the preservation of peace and stability within and between States”.⁶

This point was made clearly in the Moscow Document of October 1991. At the Moscow meeting, “participating States emphasized that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order.” Following on from this – more than a decade before the principle of the Responsibility to Protect (R2P) was agreed upon – in a revolutionary statement they categorically and irrevocably declared that “the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.” Why was this important? Because it suggested that justice is everyone’s business, and that injustice can cause insecurity.

Therefore, the reason that the High Commissioner gets involved at an early stage is precisely to prevent the “securitization” of minority-related issues. Furthermore, her mandate obliges her to work confidentially in order to avoid sensationalization that can inflame tensions.

The High Commissioner does not reward bad behaviour. Her mandate explicitly prevents her from considering minority issues in situations involving organized acts of terrorism. Furthermore, all three previous High Commissioners (Max van der Stoep, Rolf Ekeus and Knut Vollebaek) have steered clear of extremists so as not to legitimize the latter’s maximalist positions. Instead, the High Commissioner’s approach to conflict prevention is security through justice.

In their work, particularly in their recommendations, the High Commissioners have relied on international standards. As one observer put it, “he uses norms to achieve solutions, and he seeks solutions consistent with norms”.

But the High Commissioner is not a minority rights ombudsman. The name of the post was chosen carefully: she is the High Commissioner on not for National Minorities. As such, she does not have the luxury of philosophizing about ideal-type solutions that achieve the maximum possible independence for minorities. Rather, she works in the real world, and has to find solutions that are politically possible.

Anyway, it is naïve to think that a justice-based approach is somehow more valid than a security-based one (as if these two were competing rather than complimentary tracks). As Michael Ignatieff has pointed out,

5 P. Roe, Securitization and Minority Rights: Conditions of Desecuritization, in Security Dialogue, 2004, no. 35, p. 282.

6 Ljubljana Guidelines on Integration of Diverse Societies, November 2012, p. 2.

“The idea of rights as trumps implies that when rights are introduced into a political discussion, they serve to resolve the discussion. In fact, the opposite is the case. When political demands are turned into rights claims, there is a real risk that the issue at stake will become irreconcilable, since to call a claim a right is to call it non-negotiable, at least in popular parlance”.⁷

Even if one doesn't buy Ignatieff's argument, it must be recognized that human rights are necessary but not sufficient for resolving minority-related issues. As the first High Commissioner, Max van der Stoep, once observed, “the implementation of international norms and standards is essential for the protection of the identity of minorities, but will often not be sufficient to ensure an adequate solution to the specific problems with which a particular minority has to cope”.⁸ Therefore the High Commissioner needs political instincts, and the fairness and wisdom to balance competing claims. But isn't that what justice is all about anyway?⁹ That is why Lady Justice is usually depicted holding a scale.

So how has the High Commissioner tried to balance the demands of minorities and majorities?

A delicate balancing act

For twenty years, all three High Commissioners have consistently stressed the need for the protection and promotion of the rights of persons belonging to national minorities – for the sake of fairness and justice. At the same time, for the sake of security and social harmony, they have consistently stressed the need for minorities to integrate and to respect their obligations. This is a dual responsibility: states have a responsibility to respect and protect human rights, including minority rights; while minorities (like everybody else) have a responsibility to be loyal, law-abiding citizens.

The basic goal is to ensure equality in dignity and rights, as well as opportunities. But when we talk about national minorities what do we mean? The term is not defined in the High Commissioner's mandate. Furthermore, there is some confusion about whether she deals with national minorities (as a group) or as individuals who belong to national minorities. The relevant legal instruments refer to individual rather than group rights, in other words the rights of persons belonging national minorities. But her mandate explicitly says that she will not deal with individual cases.¹⁰ How does she square the circle? My reading of this – although I am not a legal expert – is that justice and human rights are designed to protect and enhance individual agency. Since individuals are part of communities and societies, and these societies require structure in order to function, the High Commissioner predominantly focuses on structural reforms that protect and promote the rights of persons belonging to national minorities.

This is not sensational work. It is slow, long-term inter-action that is usually based on a series of confidential recommendations and visits by the High Commissioner or his advisors. As Knut Vollebaek, has pointed out, “it is time consuming, often unrewarding and certainly yields few quick political dividends for state authorities”. But, as he said, “in an environment where the political attention spans are short and where superficial changes too often pass for real, I believe it is of fundamental importance that we do not allow ourselves to forget that the root causes still need to be addressed.

7 M. Ignatieff, *Human Rights as Politics and Idolatry*, Princeton, 2011, p. 20.

8 Report to the OSCE Implementation Meeting on Human Dimension Issues, Warsaw 2 October 1995.

9 J. Rawls, *A Theory of Justice*, Harvard, 1999, p. 9.

10 Mandate of the High Commissioner on National Minorities, para 5c, Helsinki July 1992.

And it is here that I see a valuable role for the quiet, old-school diplomacy of my Institution”.¹¹ Again, this shows the High Commissioner’s “desecuritization” approach – working to address the root causes, and to transform into the normal political process issues that could cause tensions.

Part of the balancing act between the interests of minorities and majorities is to ensure that the distinctive identity of the minority can be maintained while, at the same time, the minority is integrated into the society at large. The trick is to ensure that preserving and promoting the rights of persons belonging to national minorities does not threaten the integrity of the state, while the integrity of the state does not hinder the flourishing of national minorities.

Take the example of language. Minorities have a vested interest and an obligation to learn the state language. But this does not preclude them from using their own languages as well. Same with education: there may be state schools and national curricula, but (if there is sufficient demand) there is plenty of space for also enabling minorities to be educated in their mother tongue. The Hague and Oslo recommendations provide plenty of food for thought on how a balance can be struck.

Or take the example of so-called kin-states. A majority population in one state may have an interest in helping people of the same ethnicity in another (usually a neighbouring) state. But this should be done in a way that does not destabilize bilateral relations or inter-ethnic relations in the state where the minority lives. The Bolzano recommendations explain how this can be done.

The trickiest balancing act is reconciling two of the fundamental principles of the Helsinki Final Act, namely territorial integrity and self-determination. What if an ethnic group comprises a sizeable population, concentrated in a particular region, and wants greater self-government: does justice require them to have territorial autonomy? Territorial autonomy and/or devolution of powers are certainly options, as is independence under the right conditions. But this should not be the first resort. As the Lund Recommendations demonstrate, there is a wide range of options that exist to enable self-government for minorities.

As pointed out in the Ljubljana Guidelines, “the appropriate balance is different in each society and can never be achieved once and for all because societies are inherently dynamic. It rather needs constant monitoring and rebalancing through adaptation to changing circumstances”.¹²

The danger of national self-determination

Some have argued that the High Commissioner actively opposes the idea of territorial autonomy. This is not completely true. Rather, the High Commissioner has been against the idea of breaking up states in the name of ethnic purity.

As Max van der Stoel wrote in a letter to the editor in the International Herald Tribune in February 2001, “multi-ethnic states are the norm rather than the exception. Indeed ‘purity’ is a myth. One of the lessons of the 20th century is that attempts to create nation-states from multi-ethnic ones are usually conflict ridden. Besides, the new nations almost always contain minority communities. Should they have their own states?” He went

11 Building an HCNM for the Future, 24 February 2012.

12 Ljubljana Guidelines on Integration of Diverse Societies, November 2012, p. 2.

on: “Was it not the rhetoric of ‘one nation, one state’ that got us into this mess in the first place? And where do we draw the line? ... Is separation a panacea for the interest of all communities and if so, what would a map of Europe look like?”

As he pointed out, multi-ethnic states may be more prone to tensions, but these conflicts need not be violent. The key is to move away from the extremes of secession on one side or assimilation on the other. As he wrote: “A national group does not need independence to protect its interests. A majority does not have to suppress a minority in order to guarantee its security. Protecting minority rights, facilitating minority participation in the life of the state and allowing for a certain amount of self-government can balance the interests of nations within states.”¹³

In short, every nation does not need its own state in order to achieve justice, and attempts to create nation-states often undermine both security and justice.

As Ignatieff warns, “The painful truth is that national self-determination is not always favourable to individual human rights, and democracy and human rights do not necessarily advance hand in hand”.¹⁴

Keyword is integration

In van der Stoel’s letter to the IHT, he concluded by saying that “Recent history has offered enough evidence that ways have to be found of accommodating and integrating ethnic diversity rather than giving up on the multi-ethnic state. We should put more emphasis on preventing states from falling apart than on trying to put them back together again.”

The keyword here is integration – because the opposite is disintegration. Either we find ways to live together, or we risk that our societies will fall apart.

There are still plenty of places in the OSCE area where territorial autonomy is a hot issue – think of Catalonia, Kosovo, Northern Cyprus, Scotland, Transdniestria, and the list goes on.

But as great a challenge is to integrate diversity in multi-ethnic and multicultural societies in cases where territorial autonomy is not the issue. Frankly, this is one of the greatest challenges to all OSCE participating States, East but, perhaps even more so West of Vienna. It is therefore good that the High Commissioner has moved into this field through the Ljubljana Guidelines on Integration in Diverse Societies. These Guidelines provide a wide range of measures that can promote integration in diverse societies. As Knut Vollebaek has nicely put it, the benefactor of successful integration is neither the majority nor the minorities, but society as a whole.¹⁵

To conclude, the High Commissioner is an instrument of conflict prevention. He tries to “desecuritize issues”, and to promote structural reforms (based on international standards) that promote integration, and reduce the likelihood of inter-ethnic tensions in a discreet fashion and at an early stage.

13 Max van der Stoel, The Multi-ethnic State, International Herald Tribune, 2 February 2001.

14 M. Ignatieff, Human Rights as Politics and Idolatry, Princeton, 2011, p. 30.

15 HCNM and Integration of Diverse Societies, 7 November 2012.


As the former US Ambassador to the OSCE, John Kornblum said of Max van der Stoel, the High Commissioner was determined “to ensure that human standards of human dignity and justice remain the essential foundation of social relationships, both within states and between them”.¹⁶ I believe that this nicely captures the High Commissioner’s approach.

The proof of the pudding is in the eating. For the past twenty years, by promoting security through justice, three successive OSCE High Commissioners on National Minorities have managed not only to prevent ethnic conflicts, but also to strengthen integration in the countries where they have been active.

This approach is still needed in order to promote security and cooperation in the OSCE area, and beyond.



¹⁶ J. Kornblum, *Defending Human Justice*, in *Security and Human Rights*, 2010, no. 3, p. 201.



This article was first published with Brill | Nijhoff publishers, and was featured on the Security and Human Rights Monitor (SHRM) website.

Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

Netherlands Helsinki Committee
Het Nutshuis
Riviermarkt 4
2513 AM The Hague
The Netherlands

© Netherlands Helsinki Committee. All rights reserved.

www.nhc.nl