

CSCE High Commissioner on National Minorities

June 1993



1993

**A Report Prepared by the Staff of the
Commission on Security and Cooperation in Europe**

ABOUT THE ORGANIZATION (OSCE)

The Conference on Security and Cooperation in Europe, also known as the Helsinki process, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. Since then, its membership has expanded to 55, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia. (The Federal Republic of Yugoslavia, Serbia and Montenegro, has been suspended since 1992, leaving the number of countries fully participating at 54.) As of January 1, 1995, the formal name of the Helsinki process was changed to the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is engaged in standard setting in fields including military security, economic and environmental cooperation, and human rights and humanitarian concerns. In addition, it undertakes a variety of preventive diplomacy initiatives designed to prevent, manage and resolve conflict within and among the participating States.

The OSCE has its main office in Vienna, Austria, where weekly meetings of permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations and periodic consultations among Senior Officials, Ministers and Heads of State or Government are held.

ABOUT THE COMMISSION (CSCE)

The Commission on Security and Cooperation in Europe (CSCE), also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance with the agreements of the OSCE.

The Commission consists of nine members from the U.S. House of Representatives, nine members from the U.S. Senate, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair are shared by the House and Senate and rotate every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

To fulfill its mandate, the Commission gathers and disseminates information on Helsinki-related topics both to the U.S. Congress and the public by convening hearings, issuing reports reflecting the views of the Commission and/or its staff, and providing information about the activities of the Helsinki process and events in OSCE participating States.

At the same time, the Commission contributes its views to the general formulation of U.S. policy on the OSCE and takes part in its execution, including through Member and staff participation on U.S. Delegations to OSCE meetings as well as on certain OSCE bodies. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from OSCE participating States.

CSCE'S HIGH COMMISSIONER ON NATIONAL MINORITIES

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THE HIGH COMMISSIONER'S MANDATE

The CSCE created the post of High Commissioner on National Minorities at its July 1992 summit meeting in Helsinki, in response to the emergence of minority-related unrest as one of the main sources of conflict in Europe. Originally proposed by the Netherlands, the proposal received wide support as an innovative approach to national minority problems unleashed by the disappearance of superpower confrontation in Europe.

The High Commissioner is envisioned as an independent, unbiased individual of high stature, who can investigate national minority-related problems confidentially, before they reach crisis proportions. These are to be problems which, in the opinion of the High Commissioner, have the potential to develop into conflicts endangering international peace and security. The High Commissioner is empowered to gather information, including through visits, and to promote dialogue.⁽¹⁾

Before beginning a visit, and again after consideration of an issue is completed, the High Commissioner must consult with the CSCE's Chair-in-Office. If the issue is deemed to be of grave concern, an "Early Warning" of a threat to peace and security may be issued by the High Commissioner and discussed by the CSCE's Committee of Senior Officials (CSO), CSCE's central political body including representatives of all 53 participating states.⁽²⁾

LIMITATIONS

Some of the most innovative aspects of the original proposal for a High Commissioner were substantially watered down in response to individual state's concerns. The High Commissioner may not become involved where armed conflict has already broken out or in areas already under consideration by the CSO, unless the permission of the CSO is given. Communication with or response to communications from organizations or individuals who practice or publicly condone terrorism is prohibited, as is involvement in situations "involving organized acts of terrorism."

The High Commissioner's mandate is constructed with emphasis on quiet diplomacy. This choice was deliberate in order to avoid pressuring governments or inflaming delicate situations, but it also deprives the High Commissioner of certain tools. Not only could this prestigious position exert considerable moral authority and pressure on governments and groups, but its potential for public diplomacy could be a boon for the little-known and less-understood CSCE. Additionally, quiet diplomacy also justifies the strictly limited reporting to participating States envisioned by the mandates. The High Commissioner is only required to report to the CSCE's Chair-in-Office and through the Chair to the participating States; even a report to CSCE's bi-annual Human Dimension Implementation Meeting must be requested by the CSO.

ACTIVITIES TO DATE

Former Dutch Foreign Minister Max van der Stoel was appointed the first High Commissioner in December 1992; his office began to function in January 1993, with premises donated by the Dutch government and a staff of three diplomats seconded from the Dutch, Polish and Swedish foreign ministries.

Van der Stoel chose for his first mission Estonia, Latvia and Lithuania, three small countries whose emancipation from Russian occupation left large Russian minorities with uncertain legal status. Estonia had previously requested and received a mission under the CSCE's Human Dimension Mechanism to consider whether its citizenship law met international standards; shortly after van der Stoel's visit, the CSCE placed a long-term mission in Estonia to help stimulate dialogue between the Estonian and Russian-speaking communities. Both in statements to press, government, and public in the three countries, and in a subsequent report presented to the CSO, van der Stoel chose to avoid direct criticism of any of the governments. His recommendations included pragmatic steps such as increasing availability of language instruction and the establishment of Ombudsmen or National Commissioners and other institutions to further dialogue and consideration of concrete problems.

Subsequently, van der Stoel turned to the prickly question of ethnic Hungarians in the newly-independent Slovak Republic, whose concerns had been a topic of much discussion in non-governmental circles. In his reporting to the CSO (subsequently made a publicly-available CSCE document, as were the Baltic reports), van der Stoel avoided any judgements on the situation of Hungarians in Slovakia.⁽³⁾ Instead, he developed a dual-sided approach which considered Slovaks in Hungary as well as Hungarians in Slovakia -- to the surprise of experts, who have not considered Slovaks in Hungary as a problem of major proportions.

Acknowledging that the question needed further surveillance, van der Stoel proposed to the CSO a program of visits to Slovakia and Hungary by experts affiliated with his office -- not to exceed four to each over two years. After some discussion, the plan was adopted by the CSO and will require reporting from the High Commissioner after each visit, with a final report at the end of the two-year period.

The CSO at its April 26-28, 1993 meeting also tasked the High Commissioner to study the problems of Roma (Gypsies) and their relevance to his mandate, in response to concern for the situation of Roma voiced in the report of the rapporteur mission to the newly-admitted Czech and Slovak Republics. The High Commissioner visited Romania in June 1993, at the invitation of the Romanian government, and is working with Macedonia and Albania as well.

EARLY ASSESSMENT

While six months is evidently too short a period of time to pass judgement on the success of the High Commissioner's efforts toward early warning, conflict prevention, and problem solving, it is not too soon to note certain trends. Most significant are the results of the limitations imposed by the mandate. These include the High Commissioner's half-constrained relations with participating States; the restrictions on his activity, limiting his ability to address many pressing minority issues; and the difficulty in coordinating his work with other initiatives.

First, the High Commissioner's independence effectively separates him from CSCE deliberations, activities, and structures, permitting a situation in which he traveled to Estonia precisely between a CSCE rapporteur mission and the establishment of a CSCE long-duration mission to that country. One wonders whether some of the resources could not have been re-focused elsewhere, or at least better coordinated, particularly as the High Commissioner's mandate precludes activity in areas where the CSO is already engaged. Follow-up might be better coordinated with the participating States as well, increasing the role of the High Commissioner, and the profile of his issues, within CSCE's structures.

The limitations on High Commissioner activity are subject to some interpretation. The interpretations which van der Stoel has chosen to make so far lead, in the view of the Commission, to some unfortunate anomalies. For example, it is regrettable that the High Commissioner's office has remained entirely silent to date on the problems of Turkish Kurds, thus seeming to brand all Kurds with the terrorist label which prohibits High Commissioner activity, and displaying indifference to one of Europe's major human rights tragedies. Given the troubling handling of this serious human rights issue by the CSCE community to date, it seems to the Commission that the High Commissioner has abdicated what could be a leading role. Likewise, attention to the problems of Roma has thus far been limited to a study of their "relevance to the mandate of the High Commissioner," and that only after a decision by the CSO mandating him to do so. Arguments have been made that Roma issues do not "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 CSO."⁽⁴⁾ While wars over Roma may well be unlikely, ignoring the problems of a group as badly mistreated and forgotten as the Roma casts favorable light neither on the High Commissioner nor on the participating States who have let it be known that Roma are not a fit topic for the High Commissioner's work.

A further consequence of the High Commissioner's limited mandate is the difficulty in connecting treatment of national minority issues with other economic or social problems that may increase or even underlie national minority tensions. For example, van der Stoel's initiatives cannot address the delays in Russian troop withdrawal that have done so much to poison ethnic relations in the Baltics; nor can they address general human rights shortcomings affecting all citizens of a given state. Thus far, van der Stoel's interpretation of his mandate has led him to function at a considerable mental as well as physical distance from CSCE's other activities. More efforts to be involved in CSCE activities relating to early warning and conflict prevention would improve CSCE's ability to address security comprehensively and to polish its image as a protector of human rights.

On a positive note, fears that the High Commissioner's separate role would further marginalize human rights issues within the CSCE have not materialized. Participating States' desire to scrutinize his work has ensured discussion of his activities in the CSO and the human dimension seminars of the CSCE Office for Democratic Institutions and Human Rights (ODIHR). His presentations at both types of meeting have been well-received (he delivered the keynote address at ODIHR's May 1993 Seminar on Case Studies on National Minorities Issues: Positive Results).

In his first report to the CSO, in April 1993, van der Stoel presented his proposals for follow-up in Estonia and Slovakia/Hungary that were mentioned above. Although they may be viewed as modest or disappointingly so, they were carefully prepared to be acceptable to the states concerned and were accepted without controversy. In the field of national minorities, this may in itself be regarded as something of an achievement. His success in visiting states and crafting reports which treat issues seriously without meeting vocal objections also casts a positive light on van der Stoel himself and the respect shown his post.

This being said, some might have hoped that the office of the High Commissioner would take a more aggressive approach. Van der Stoel has clearly chosen, however, to maximize his role as a governmental insider, slightly distanced from CSCE governments but acting on their behalf rather than as a voice in the wilderness. An early positive result is the acceptance he has won; more concretely, at least one country, Canada, has responded positively to his appeal for language teachers for Estonia.

As long as the High Commissioner remains such an "insider," it is particularly to be hoped that he can cooperate more broadly with CSCE structures to maximize the impact of CSCE's limited resources and to inject

valuable human rights perspectives into as broad a spectrum of CSCE concerns as possible. The Commission looks forward to further developments, including the chance at the 1994 Budapest Review Conference to review and revise the High Commissioner's mandate in ways that would allow him to address more completely and openly the problems of minorities in CSCE countries.

FOR MORE INFORMATION

The mandate of the High Commissioner is printed in the Helsinki Document 1992; the decisions to name van der Stoep to the post and set up his office are appended to the decisions of the 18th CSO, December 11-13, 1992, and the Stockholm Meeting of the CSCE Council of Ministers, December 14-14, 1992. Analyses of the mandate and of his role include:

Conflict Management Group/Harvard Negotiation Project, *Early Warning and Preventive Action in the CSCE: Defining the Role of the High Commissioner on National Minorities*, Cambridge, MA: Conflict Management Group, 1993.

Staff of the Commission on Security and Cooperation in Europe, "The High Commissioner on National Minorities," in *Beyond Process: The CSCE's Institutional Development, 1990-92*, Washington, D.C.: The Commission on Security and Cooperation in Europe, 1992, pp. 27-28.

Hannie Zaal, "The CSCE High Commissioner on National Minorities," in *The Helsinki Monitor*, Utrecht: Netherlands Helsinki Committee, 1992, no. 4, pp. 33-37.

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ENDNOTES

1. The High Commissioner's mandate is Section II of the *Helsinki Document 1992: Challenges of Change*.

2. CSCE's members include the United States and Canada and all the states of Europe and the former Soviet Union, except Macedonia, which has observer status. The "Federal Republic of Yugoslavia" (Serbia-Montenegro) has been suspended since July 1992.

3. The relevant decisions are available in the Journal of the 21st CSO, April 26-28, 1993. This and other CSCE documents referred to, including the High Commissioner reports, are available through the CSCE Secretariat in Prague, Czech Republic.

4. Section II, paragraph 3 of the 1992 Helsinki Document.