



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

ADDRESS

by
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to the
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(the Venice Commission)

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Mr. President, Distinguished Commission Members,

Thank you for the invitation to address this session of the *European Commission for Democracy through Law*. I am both honoured and happy to be here with such a distinguished group of representatives of the legal profession. Since its foundation in 1990, the Venice Commission has set the golden standard for providing balanced and first-rate legal advice across Europe and beyond.

As the 1990 Document of the Copenhagen Meeting rightfully points out, the questions relating to national minorities can only be satisfactorily resolved in a democratic framework based on the rule of law, with a functioning independent judiciary. These issues are of course your bread and butter.

Our two Institutions share a common interest on an extensive list of topics, themes and country situations. This is a clear sign of how much work still lies ahead of us but I take great comfort in the knowledge that we shall work hand in hand. As High Commissioner, I look forward to cementing our partnership and developing new ideas in the years to come. I am therefore grateful that both our Institutions, established in the early 1990s, have succeeded in having established a model for collaboration.

Let me mention just a few recent manifestations of our co-operation. It has been regular practice for me and my legal advisers to be given the opportunity to comment on a number of country and thematic opinions, studies and reports concerning national minority issues. Significantly, these are usually complex, controversial and difficult issues, as was the case with the Report on Non-Citizens and Minority Rights, adopted by the Venice Commission at its 69th plenary session in December 2006. I believe that broad consultation with different stakeholders can better identify the scale of the problem and also legitimizes final conclusions issued by the Commission. Our co-operation is not a one-way traffic, however. In debating matters remaining within my responsibility, I appreciate the fact that I can take advantage of the support and advice given by Venice Commission members. Recently, I had the pleasure of inviting your President, Professor Jan Helgesen, to join a small group of experts whom I tasked to draw up a new set of recommendations entitled “Recommendations on National Minorities in Inter-State Relations”. This is an issue on which the Venice

Commission has also regularly debated. These and other examples demonstrate how beneficial our co-operation is, bringing about not only feedback but also bringing synergy.

Today, I understand that we are about to celebrate another success. If I am correctly informed the Commission will during this session adopt the study on dual voting rights for persons belonging to national minorities based on contributions by Professor Sergio Bartole and Senator Josette Durrieu, and following discussions at the joint meetings of the Council for Democratic Elections and the Sub-Commission for the Protection of minorities. This study will be a helpful tool in my work to further promote the rights of persons belonging to national minorities to participate in electoral processes. I am convinced that this will contribute to more effective conflict prevention.

Mr. Chairman,
Ladies and Gentlemen,

Let me take this opportunity to share a few observations with you on the issues currently on my agenda and which require profound reflection.

The first is the question of the changing relationship between security and the human dimension within the OSCE. It is well known that, under the 1992 Helsinki Document, the post of the High Commissioner was envisaged as "an instrument of conflict prevention". Therefore, my mandate is first and foremost a conflict-prevention instrument rather than a human dimension instrument. This means that I am in no way a human rights ombudsman. Security considerations remain at the core of my mandate. Fortunately, however, there has been a reduction of high-level tensions in recent years compared to the 1990s, and this has given me an opportunity to address issues of more long-term prevention.

The focus of the mandate on conflict prevention has never prevented the HCNM from becoming involved in a concomitant monitoring of human dimension commitments, most notably those regarding minority rights. This largely stems from the interpretation of Paragraph 6 of the Helsinki mandate, whereby the High Commissioner "will take fully into account the availability of democratic means and international instruments to respond to it, and their utilization by the parties involved". The HCNM's thematic recommendations in regard to minority commitments in the fields of education, use of languages, participation in

public life, access to the broadcast media and, recently, policing in multi-ethnic societies can also be seen from this perspective.

Furthermore, this new role of integrating conflict-prevention with human dimension commitments was boldly demonstrated by the successful diplomatic advocacy that eventually culminated in the introduction of a clause on minority rights into the Draft European Constitution, which was accepted in the EU Lisbon Reform Treaty. This is testimony to the wider potential of my mandate to implement the concept of “comprehensive security” and brings my work even closer to that of the Venice Commission. This modern security concept goes beyond the purely politico-military dimension and considers democratic governance, including human rights and the rule of law, to be as equally important in maintaining peace and security.

Another challenge relates to the situation of minority groups or communities in certain parts of Europe where problems with integrating these groups into the majority societies become more discernible on a wider scale. Within my mandate, I continue to advocate the broader idea of “integration with respect for diversity”. My mandate focuses on the more traditional notion of national minorities and not on migrant communities, or new minorities. However, I am convinced that instruments and approaches that have been developed over the course of the years (for example in education, public participation, use of languages) to meet the needs of “old” minorities can equally be applied to integration of migrant communities with longer residence.

As mentioned earlier, I am about to launch a new set of thematic recommendations on “National Minorities in inter-State Relations”. The Recommendations are intended to clarify how States can support and extend benefits to people belonging to national minorities residing in other countries in ways that do not strain inter-ethnic or bilateral relations. The document underlines the dual responsibility of States, which is to protect and promote the rights of persons belonging to national minorities under their jurisdiction, on the one hand, and to act as responsible members of the international community with regard to minorities under the jurisdiction of another State, on the other.

The Recommendations on National Minorities in Inter-State Relations stipulate firstly, that under international law, the respect for and protection of minority rights is the responsibility

of the State where the minority resides. Secondly, other States may have an interest in the well-being of minority groups abroad, especially those with whom they are linked by ethnic, cultural, linguistic or religious identity, or a common cultural heritage. This, however, does not imply a right under international law to exercise jurisdiction over people residing on the territory of another State. Finally, States can pursue this interest through extending benefits to minorities abroad only in consultation with the State of residence and with due respect for the principles of territorial integrity, sovereignty and friendly, including good neighbourly, relations. States should ensure that their policies with respect to national minorities abroad do not undermine the integration of minorities in the States where they reside, or fuel separatist tendencies.

It is my hope that the Recommendations will provide some guidance on how to address the questions concerning national minorities that arise in the context of inter-State relations in a way that protects and promotes the rights of persons belonging to national minorities, prevents conflict, maintains inter-ethnic harmony and strengthens good neighbourly relations.

Your work is certainly vital to Europe's national minorities, their freedoms and rights. As the guardian of the European constitutional heritage, the Venice Commission has a key role to play in the preservation of the hard-fought achievements of the minority rights movement in Europe's constitutional patchwork. Through your legal assessments you ensure that sufficient guarantees to accommodate all ethnic, cultural and linguistic communities are enshrined in the legislation. Your opinions, while often annoying the recipients and sometimes polarizing the sides involved, just as happened when the judgment was meted out in the *Merchant of Venice*, never fail to pass the impartiality and quality test. As one renowned judge once said, "It is easy to be popular. It is not easy to be just."

Thank you for your attention.