

Conflict Prevention in the OSCE

An Assessment of Capacities

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1 Introduction

The Development of the OSCE: Practical and Conceptual Underpinnings

Since its inception the OSCE¹ has been an inter-governmental forum to promote security in Europe by eliminating barriers. The OSCE has been a process in which diplomatic practices and the rules of international political behaviour have evolved, creating a web of obligations and interdependencies among a wide range of states. Throughout its existence the prevention of conflicts has been a significant structural component and philosophical underpinning of the OSCE. The prevention of conflict was central to the Helsinki Final Act. The result of a diplomatic conference convened in Geneva and Helsinki between 1972 and

1) In this study I will generally refer to the OSCE, the name assumed in 1995 as a result of a decision at the Budapest Summit in December 1994. According to the Budapest Decisions, Chapter I, paragraph 29: 'the change in name from CSCE to OSCE alters neither the character of our CSCE commitments nor the status of the CSCE and its institutions. In its organizational development, the CSCE will remain flexible and dynamic.' Budapest Decisions, Strengthening the CSCE, in Arie Bloed, ed., *The Conference on Security and Co-operation in Europe: Basic Documents, 1993-95*, The Hague, 1997, p. 156.

1975, the Final Act established basic principles for behaviour among the participating states and of governments towards their citizens. The principles were spelt out in the so-called 'Decalogue'.² Most importantly the process provided an agreed set of standards for countries from a politically, culturally and ideologically heterogeneous region, which at the time was riven by the bi-polarity of the Cold War.

The end of the Cold War impelled the OSCE participating states to redefine the focus of the OSCE, both as an inter-governmental process and with regard to the rules and procedures that had evolved to govern its operation. Conflict prevention in the bi-polar Cold War world was primarily concerned with the problems of an accidental or inadvertent war: a form of military diplomacy focused on crisis prevention. The 1990 Charter of Paris³ marked the transition from the OSCE's role as a forum for negotiation in this confrontational era to an organisation for security through cooperation and the promotion of democracy. The optimistic tone of the Charter, reflecting the 1989-90 political watershed in Europe, was rebuffed by subsequent events in Europe, which saw instability and violent conflict become the characteristic experiences of parts of Central and Eastern Europe. The disintegration of multinational states, political and economic transitions towards democracy and the market economy, social trauma experienced in the wake of these processes, and the reemergence of nationalism, all served to make Europe a less stable region than it was when subject to its Cold War straightjacket.

In the early 1990s, and especially in view of the conflict in the former Yugoslavia, it became clear that the apparatus at the disposal of the CSCE for preventing or resolving conflicts was inadequate. The need to develop a more sophisticated conflict prevention capacity necessitated a strengthening of the political instruments and organs of the CSCE and a reconsideration of the types of intervention that would be feasible. This was necessary to address conflicts arising in the wake of the disintegration of multinational states which were generally of an

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2) The ten principles are: sovereign equality, respect for the rights inherent in sovereignty; refraining from the threat or use of force; inviolability of frontiers; territorial integrity of States; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion and belief; equal rights and self-determination of peoples; co-operation among States; and fulfillment in good faith of obligations under international law. See Final Act of Helsinki, 1 August 1975, in Arie Bloed, ed., *The Conference on Security and Co-operation in Europe: Analysis and Basic Documents, 1972-1993*, Dordrecht, 1993, pp. 143-149.

3) Charter of Paris for a New Europe, Paris, 21 November 1990, in A. Bloed, 1993, op.cit., pp. 537-566.

ethno-political character, occurring within states, involving unrecognised political entities. The international community had only limited scope for action in such cases.

The Budapest Summit Meeting in 1994, cast the OSCE as 'a primary instrument for early warning, conflict prevention and crisis management',⁴ with a 'flexible and dynamic' approach.⁵ New mechanisms, procedures and political instruments have been established to facilitate this role. The emphasis has shifted from the regulatory mechanisms of inter-state conflict, based on military security issues, to a preoccupation with those factors that generate conflicts within states.⁶ This shift has encompassed an attempt to respond more flexibly but also more effectively (than the various formalised mechanisms allowed) to conflicts. To this end 'second generation'⁷ instruments, the High Commissioner on National Minorities and the missions of long duration, were created. Both are new forms of international intervention into potential conflict situations, and as such change the relationships between the states involved.

Despite the enhanced focus on early warning, conflict prevention and preventive diplomacy, these concepts are not clearly defined in OSCE documents or by OSCE practitioners.⁸ Preference is given to distinctions between short and long term, and light and deep conflict prevention.⁹ The avoidance of precision in the OSCE's usage of the concepts possibly emanates from the political nature of the organisation. Max van der Stoel has stated that early warning and conflict prevention are not abstract goals in themselves but are modes of operation that are dependent upon the behaviour of political actors and in the

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- 4) Budapest Document 1994, Budapest, 6 December 1994, Budapest Summit Declaration, 'Towards a Genuine Partnership in a New Era', paragraph 8, in A. Bloed, 1997, op.cit., p. 146.
 - 5) Budapest Decisions, Strengthening the CSCE, Chapter I, paragraph 29, in A. Bloed, 1997, op.cit., p. 156.
 - 6) Jeannie Grussendorf, 'Theory, the OSCE and Social Change' in *Issues in Peace Research: Theory and Practice*, L.-A Broadhead, ed., forthcoming 1998.
 - 7) Berthold Meyer, 'Dispute Settlement Procedures and Crisis Management', pp. 53-81 in Michael Bothe, Natalino Ronzitti and Allan Rosas, eds., *The OSCE in the Maintenance of Peace and Security: Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes*, The Hague, 1997, p. 80.
 - 8) See the discussion of the imprecision of the definitions in *Conflict Prevention and Early Warning in the Political Practice of International Organizations*, Clingendael, 1996, pp. 9-11.
 - 9) Rob Zaagman, 'Some Reflections on OSCE Conflict Prevention and the Code of Conduct', pp. 29-39 in *Helsinki Monitor*, Vol. 7, 1996, No. 2, p. 30 and Keynote Speech by Max van der Stoel, to the CSCE Seminar on Early Warning and Preventive Diplomacy, Warsaw, 19-21 January 1994, in *CSCE/ODIHR Bulletin*, Spring/Summer 1994, Vol. 2, No. 2, pp. 7-13.

OSCE context of the participating states themselves.¹⁰ Concepts have been used as markers to facilitate political action and it has served the purpose of the OSCE to make them vague and inclusive signals that would not inhibit action.

This is mirrored in the general interpretation of the security risks and factors that the OSCE has assigned to the generation of conflicts. These factors are grouped together without priority being established, and distinctions regarding background conditions, structural factors and proximate causes of violence are absent. Instead, the OSCE takes a broad view of the potential causes of conflict, with the Helsinki Summit Declaration emphasising that, 'Economic decline, social tension, aggressive nationalism, intolerance, xenophobia and ethnic conflict threaten stability in the CSCE area. Gross violations of CSCE commitments in the field of human rights and fundamental freedoms, including those related to national minorities, pose a special threat to peaceful development ... [and the States] reject racial, ethnic and religious discrimination in any form.'¹¹ Creating a specific instrument, the High Commissioner on National Minorities, to address one potential cause of conflict is the most significant statement the OSCE has made regarding the factors that generate conflict. Beyond this the participating states of the OSCE have preferred to stick to general approaches, providing mandates and terms of reference for specific purposes and avoiding the creation of a more generalised approach.

A Conflict Prevention Ethos: Characteristics of the OSCE

The OSCE has developed characteristics that orientate the organisation towards conflict prevention. In order to frame the operation of specific instruments and mechanisms, these characteristics will be outlined in brief.

Linking all European states as well as the United States and Canada, the OSCE has created a forum with an inclusiveness unrivaled in other European security and political bodies. While the heterogeneity can create difficulties, in regard to achieving political consensus, all participating states are signed up to a body of standards. Allied to this inclusive membership is the fact that states participate on the basis of equality. There is no hierarchy in relations between participating states. Inevitably there is a power dynamic in which equal access is not matched by equal influence, but no states are excluded from the fora which make the OSCE tick. Equality as a promoter of inclusiveness is reflected in the

10) Keynote Speech by Max van der Stoep, *ibid.*

11) CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, Helsinki Summit Declaration, paragraph 12 in A. Bloed, 1993, *op.cit.*, pp. 703-704.

consensus decision-making process, the rotating chairmanship (of the OSCE in general and of bodies such as the Forum for Security Cooperation) and by and large the absence of political organs of limited composition (although some such organs have been created, for instance the Minsk Conference). Equality of participation means that all states have been engaged in dialogue over security issues, not just more powerful states. Equality has another important aspect in that all OSCE commitments have been accepted by all and apply in their entirety and equally to all participating states.

The political character of norms and activities provides an important flexibility. The Helsinki Final Act was not legally binding, nor was it a treaty under international law, rather it was and continues to be a comprehensive code of conduct, 'a politically binding statement of principles and commitments by states to their behaviour towards their citizens and each other.'¹² The nature of political rather than legal commitments enables participating states to respond to altered circumstances relatively quickly. In practical terms, this has meant that commitments could accumulate without having to jump the hurdle of ratification in each participating state. It has, however, made the task of securing proper respect for commitments more challenging since the OSCE has neither enforcement powers nor any recourse to legally bind its members. This has required the OSCE to give consideration to methods to induce compliance with its principles, based on persuasion and not coercion.

The procedural rather than institutional character of the OSCE in its formative period made it a persistent diplomatic forum able to address problems from a long-term perspective. Furthermore, process orientation has been critical in preventing the OSCE from evolving into a rigid structure with immutable interests, a bureaucratic agenda and a large institutional structure. Its 'quiet' approach has been key to this evolution. Obligations have expanded as and when states have been able to or needed to develop new relations. A drawback of this light structure, however, has been that the OSCE has not always been able to keep pace with the conflict agenda in Europe. The OSCE has developed a range of institutional and political options for dealing with different conflict situations, but political will is what makes the difference. If states are not committed to or capable of being persuaded of the necessity of a course of action, then regardless of the institutional structures available, inertia will be the result.

The rule of consensus has been essential to the inclusiveness of the OSCE. Together with sovereign equality of the participating states, it facilitates a process of dialogue that promotes broad political support for decisions taken by the

12) Walter Kemp, *Making Sense of the CSCE*, Federal Trust Discussion Paper, April 1994, London, p. 3.

OSCE. It could be argued that this process presents a danger of decision-making in accordance with the lowest common denominator, with inclusiveness leading to compromises. It is however a stimulus to find common solutions, through negotiations, and not the imposition of stifling conformity. In conflict prevention this is an effective starting point because cooperation is an integral part of a mutual prevention and resolution process. More coercive measures are not conducive to a cooperative preventive approach that has the potential to be sustained by its own dynamic rather than enforcement.

One of the defining characteristics of the OSCE is its comprehensive approach to security, relating peace, security and prosperity directly to human rights and democratic freedoms, the existence of a market economy and military transparency. This provides a framework for addressing multifaceted conflicts and security issues. Particularly important is the way in which the human dimension operates: the commitments and responsibilities apply in their entirety and equally for each participating state; and the commitments are matters of direct and legitimate concern to all participating states and do not belong to the internal affairs of the state concerned. This provides for an intrusiveness that enables the OSCE to play a proactive role in the prevention of internal conflicts.¹³

Comprehensive security is matched by a cooperative security policy which aims at preventing emerging conflicts from escalating, emphasising improved predictability by increased openness and transparency. The OSCE is a co-operative security forum 'proceeding from the assumption that nations, even adversaries, have an interest in reducing each other's insecurity ... cooperative security refrains from the very idea of enforcing stability in a confrontational way. By promoting the ideas of mutual reassurance instead of deterrence, and cooperation instead of confrontation, cooperative security arrangements seek to prevent crises from happening and/or reducing the risk of already existing situations from getting worse.'¹⁴

Cooperation as a mode of inter-action expands beyond the security dimension to cooperative implementation. Implementation is regarded as not only the

13) See Merja Penikainen, 'The Role of the Human Dimension of the OSCE in Conflict Prevention and Crisis Management' pp. 83-122 in M.Bothe, N. Ronzitti and A. Rosas eds., op.cit., pp. 88-89 and pp. 102-107 for a discussion of the Office of Democratic Institutions and Human Rights and its role in supporting conflict prevention and standard setting in the human dimension within the OSCE. The role of ODIHR will not be dealt with extensively in this report: although its remit is to contribute to the promotion of peace, security and stability, assigning this a specific role in conflict prevention would risk rendering conflict prevention, as a category of analysis, too broad.

14) W. Kemp, op.cit., p. 2.

responsibility of individual states but also a common and cooperative responsibility. As such the OSCE sanctions the legitimacy of international interference in the internal developments of states, a step of critical importance in the evolution of approaches to conflict prevention. The interventions of the OSCE in the internal affairs of a state are generally presented in terms of offering assistance to the state, thereby the mechanisms at the disposal of the OSCE wield few sanctions but rather espouse cooperative solutions as a means to be helpful. This is a limited interventionism.

The above characteristics predispose the OSCE, structurally and conceptually, to an active conflict prevention role. Nevertheless, despite the proliferation of specific conflict prevention instruments and mechanisms the number of disputes and conflicts within the OSCE region has increased and not decreased. As events in Kosovo in 1998 suggest, despite several years of institutional and practical evolution, the fundamental roots of these conflicts are not necessarily amenable to the modes of intervention at the OSCE's disposal. In the following sections the primary institutions and mechanisms in the OSCE's conflict prevention regime will be examined. The main focus of attention will be on innovative instruments such as the High Commissioner on National Minorities and the long-term Missions, the structures that are most engaged in operative conflict prevention. Before turning to these, the institutional structures which are responsible for coordinating the activity of the High Commissioner and the Missions will be assessed for their contribution to conflict prevention, as will the options available within the context of the human dimension and the Peaceful Settlement of Dispute Mechanisms.

2 The Main Political Bodies of the OSCE and their Contribution to Conflict Prevention

Growing from an ongoing diplomatic conference into a more institutionalised body the OSCE has maintained two key characteristics that condition the way in which the decision-making structures operate to facilitate the prevention of conflicts. As a forum for enhanced political consultations among foreign and other high level ministers as well as permanent delegations in Vienna, the OSCE acts as a primary location for dialogue and hence the prevention of conflicts. Dialogue within the OSCE is a process that in itself is also a goal, on the assumption that if parties keep talking they are less likely to start fighting.

The second characteristic, which conditions the operation of the OSCE from its Summits of Heads of State or Government, through the Ministerial Council, Senior Council and Permanent Council, is the consensus decision-making procedure. In the context of the OSCE, consensus is considered to mean the absence of an expressed objection by a participating state to taking a decision.¹⁵

15) Kari Mottola, 'The OSCE: Institutional and Functional Developments in an Evolving Security Order', pp. 1-34 in M. Bothe, N. Ronzitti and A. Rosas, 1997, *op.cit.*, p. 7.

This rule provides legitimacy and acceptability for joint decisions, fostering a sense of responsibility among all states, thereby encouraging them to consider their own interests in the context of the security of the whole region. Former OSCE Secretary General Wilhelm Hoyneck has commented, ‘The right to block any decision is a powerful form of leverage. The OSCE “institutional culture” teaches us to use it in a responsible way ... a common, although unwritten, understanding exists that a single State may block decision-making only when vital interests related to the issue justify it.’¹⁶

Consensus decision-making can be a time consuming way to ensure agreement. There is a limit to the degree to which the persuasion of states can influence a state to act contrary to its perceived interests. To facilitate efficiency there have been procedural additions to the rule allowing for the activation of certain mechanisms by a limited number of sponsors. Furthermore, in cases of ‘clear, gross and uncorrected violations of relevant [OSCE] commitments’¹⁷ the Ministerial Council and Senior Council can take decisions based on consensus-minus-one, or in regard to directed conciliation consensus-minus-two. Bloed has called these possibilities largely theoretical since the political will to use these options has been conspicuously lacking.¹⁸ Modifying the cumbersome aspects of the process in search of more efficiency has not been resolved. The essence of consensus remains: the approach harnesses the political process as an instrument of preventive diplomacy, rather than suppressing the member states’ pursuit of their own interests. This is an essential component emphasising a persuasion-based rather than a coercion-based approach to conflict prevention.

The structures of the OSCE can be split in two. There are the political decision-making structures: the Summits, Ministerial Council, Senior Council, Permanent Council and the Forum for Security Cooperation. In addition there are more operational structures: the Chairman-in-Office, the Troika, the Secretary General (in a limited sense), the High Commissioner on National Minorities, the Missions and the Office of Democratic Institutions and Human Rights. The operational structures have assumed increasing importance in the context of conflict prevention. The operation of the political bodies as consultation mechanisms placing conflict prevention at the heart of the OSCE is examined below. Since the Permanent Council ‘is undoubtedly the core political (inter-governmental) body of the OSCE in the field of early warning, conflict prevention and

16) Speech by Wilhelm Hoyneck at the seminar on the ‘Contribution of the OSCE to Security of Smaller States’, Nicosia, 15 January 1996.

17) Prague IV, paragraph 16.

18) Arie Bloed, ‘The OSCE Main Political Bodies and their Role in Conflict Prevention and Crisis Management’, pp. 35-52 in M. Bothe, N. Ronzitti and A. Rosas, 1997, *op.cit.*, p. 40.

crisis management¹⁹ it receives most attention. The Chairman-in-Office is examined in this section since it is so closely intertwined with the Permanent Council.

2.1 The Decision-Making Structures

The decision-making structures of the OSCE have evolved during the course of the 1990s. The Summits of Heads of State or Government set the priorities and provide orientation at the highest political level. A number of commentators consider that there is no need for the summits to be held routinely on a bi-annual basis, but rather as the need arises.²⁰ The central decision-making and governing body of the OSCE is the Ministerial Council. Meeting once a year, towards the end of every term of chairmanship, it has the capacity to provide guidelines for the more operational or constant bodies, but in itself does not have a significant role in terms of actual conflict prevention, although it may increasingly do so through the work of Special Representatives. The role of the Senior Council, the next body in the hierarchy of decision-making, is also limited by the infrequency of its meeting – twice a year. It is responsible for the overview, management and coordination of OSCE activities, in particular discussing and setting forth policy and broad budgetary guidelines. Both Bloed and Ghebali recognise the importance of the Senior Council in its broad policy agenda and convening of high level representatives, but question the extent to which its work is increasingly a duplication of the Permanent Council.²¹

The Permanent Council: Institutional Relevance

The Permanent Council, based in Vienna and comprising permanent representatives of the OSCE participating states, is responsible for the day-to-day operational tasks of the OSCE and as such is ‘the king-spider in the OSCE’s web of conflict prevention.’²² As the regular body for political consultation and decision-

19) A. Bloed, *ibid.*, p. 39.

20) See Victor-Yves Ghebali, ‘CSCE Basic Needs Before the 1994 Budapest Review Meeting’, pp. 71-80 in *Studia Diplomatica* XLVII 4, 1994, p. 72 and Arie Bloed ‘De OVSE na de top van Lissabon. Gebrek aan visie’, pp. 156-160 in *Internationale Spectator* 51(3) 1997, p. 160.

21) A. Bloed in M. Bothe, N. Ronzitti and A. Rosas, *op.cit.*, pp. 35-52, and Victor-Yves Ghebali, *op.cit.*, p. 72.

22) A. Bloed, *ibid.*, p. 35.

making, meeting weekly it is chaired by a representative of the Chairman-in-Office. The Permanent Council acts as a forum for discussing developments pertinent to conflict situations in the OSCE region where declarations are adopted and decisions taken.

The predecessor of the Permanent Council was the Permanent Committee. Its establishment in December 1993 considerably enhanced the capacity of the OSCE for early warning of potential conflicts through regular in depth political consultations. It was created to ensure improved capabilities for day-to-day operational tasks to be fulfilled. Renamed the Permanent Council at the Budapest Ministerial Meeting in December 1994, the remit was widened to include greater authority in regard to emergency situations. This was mainly a result of the restructuring of the Committee of Senior Officials as the Senior Council, which meets less frequently than its predecessor. In view of the infrequency of meetings of the Ministerial Council and Senior Council, the Permanent Council has evolved into the core political organ within the OSCE. This also reflects the increasing confidence of state sin dealing with issues in such a forum.

Mandate

In as much as the Permanent Council has a specific mandate it is provided by the Rome Council Decisions of December 1993, which established the Permanent Committee. The relevant clause establishes that:

In order to enhance the capacity of the CSCE to respond to challenges in the CSCE area, the Ministers decided to create a permanent body consisting of representatives of the participating states for political consultations and decision-making in Vienna. The new body will be responsible for the day-to-day operational tasks of the CSCE under the chairmanship of the Chairman-in-Office and will meet under the name of the Permanent Committee of the CSCE. The Permanent Committee will conduct comprehensive and regular consultations and, when the CSO is not in session, take decisions on all issues pertinent to the CSCE. The Permanent Committee will be responsible to the CSO, and undertake preliminary discussion of items suggested for the agenda of the CSO. The CSO will continue to lay down political guidelines and take key decisions between Council meetings.²³

The Budapest Document of December 1994 added another element to the role of the Permanent Council by stipulating that: "The Permanent Council will be

23) Rome Decisions, Chapter VII, paragraph 7.1. Text in *Helsinki Monitor*, Vol. 5, 1994, No. 1, p. 106.

the regular body for political consultation and decision-making. It can also be convened for emergency purposes.²⁴

The general mandate of the Permanent Council therefore allows for a flexible operation and critically provides the basis for the political consultations that have been instrumental in making the Permanent Council a crucial conflict prevention structure. Furthermore, the decision-making capacity provides direct political competence. As a result the Permanent Council is empowered to address tensions or conflicts in any way it sees fit, as long as it conforms to the consensus condition of operation. Consensus itself is not mentioned in the mandate but operates by extension of its centrality to all political decision-making in the OSCE, except where explicitly stated. The way in which the Permanent Council has operated in practice, in relation to the other decision-making structures of the OSCE, is what has made it so instrumental.

Working Methods, Procedures and Practice

The mandate of the Permanent Council was not specifically articulated to create an instrument for conflict prevention or crisis management. With these issues increasingly dominating the OSCE's agenda it has assumed a pivotal role in this regard. As a permanent forum for dialogue and decision-making, this is shown in a number of ways.

The participation of all states, usually represented at the level of Ambassador, in the Permanent Council makes it an inclusive body. It enables the Permanent Council to exist as a forum for frank and open multilateral dialogue and therefore as the primary forum for regular political consultations. States can bring any issue that they consider relevant to the Permanent Council. The agenda is established by the Chairman-in-Office, and to function effectively it has to include those issues that actively concern states. Thus the agenda is constructed partly in response to pressing issues as identified by the Chairman-in-Office, partly to accomplish necessary ongoing tasks and partly in response to requests from states to put issues on the agenda. The agenda conforms to a regular format, with headings covering a review of current issues, a report on the activities of the Chairman-in-Office and a report on the activities of the Secretary General, as well as periodic reports on missions, the High Commissioner on National Minorities, personal representatives of the Chairman-in-Office, organisational issues and budgetary matters. There is always scope for specific issues to be brought up in the 'any other business' section of the session. In this sense the Permanent Council is an ongoing security council without privilege. If a

24) Budapest Document 1994, Chapter I, paragraph 18.

small country continuously chooses to raise an issue the major players can not avoid it.

By providing such a forum the ongoing weekly consultations afford an opportunity to discuss and address at an early stage all situations which have the potential to degenerate into crisis. Discussion can facilitate broad understanding of the problems and mobilise unified action. This is therefore a readily available instrument for early warning and early action, since political dialogue acts both as a source of information and a method for determining action. Discussion also provides a low-key and non-confrontational form of scrutiny of state behaviour and existing tensions as well as a means to clarify misconceptions. Repeated appearance of an issue on the agenda will sensitise states to the importance of the issue. The Permanent Council is also able to issue clear official statements in closed meetings, either for public or restricted distribution, when it feels that it is useful to do so.

Additionally, the Permanent Council is a forum in which information about OSCE norms and standards can be disseminated and discussed. Reference to these norms and the concomitant expectations can have a sobering affect on states, and serve to remind them of their commitments. This is essentially a transparency function, aided by the drafting of consensus statements which provides an impetus to states to comply with OSCE standards.

As a political decision-making organ, deciding on actions and to a large extent determining the use of other instruments and mechanisms, the Permanent Council has a pivotal role in regard to OSCE conflict prevention instruments. In structural terms the available conflict prevention options focus upon the establishment of ad hoc fact-finding or rapporteur missions or missions of long duration. The long-term missions are particularly relevant since the Permanent Council drafts their mandates and is responsible for their prolongation. Additionally, the Permanent Council has the authority to refer conflicts to procedures of peaceful settlement of disputes.

The Permanent Council, or as it was at the time the Permanent Committee, is not in fact mentioned in the mandate of the High Commissioner on National Minorities.²⁵ The High Commissioner is accountable to the Chairman-in-Office and the Senior Council (at the time the mandate was written the Committee of Senior Officials). In view of the more circumscribed operation of the Senior Council vis-à-vis the Committee of Senior Officials, the Permanent Council has in practice assumed a more important role in the operation of the High Commissioner. The nature of the High Commissioner is that of a more independent

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25) Helsinki Decisions 1992, Chapter II. See the section on the High Commissioner for a more detailed examination of the mandate.

instrument, and the Permanent Council's approval is not required by the High Commissioner in order to become active in a situation, rather involvement is in practice at the discretion of the High Commissioner, although the Permanent Council could request the High Commissioner to investigate a situation. The Permanent Council plays a crucial role in securing the accountability of the High Commissioner and in providing political support to his initiatives. The High Commissioner presents reports and recommendations to the Permanent Council, which is in a position to coordinate pressure that might need to be exerted to achieve goals. Furthermore, in view of the role the Permanent Council has assumed, if the High Commissioner were to issue an early warning it is likely that due to the frequency of its meetings the Permanent Council and not the Senior Council would be the body to respond.

The presence of a mission on the ground or the visits of the High Commissioner are two means through which sensitive issues can be addressed, but political support from Vienna will add weight to the actions, recommendations or advice of these instruments. To a large extent coordination is facilitated by written reports, visits to Vienna and presentations by relevant personnel (the High Commissioner and Heads of Missions). But the operation of the Permanent Council is instrumental in providing political backing.

Conditions of Success and Failure

The OSCE provides an environment in which corridor diplomacy flourishes in an informally structured consultative process. Discussion in the Permanent Council is to an extent an orchestrated debate, dependent upon the informal consultations which take place around the sessions of the Permanent Council. This informal process hones the major issues of concern for a focused discussion in the Permanent Council. The corridors and the coffee bar in the Hofburg Congress Centre, where the Permanent Council meets in Vienna, see important discussions around the Permanent Council. The many bilateral and multilateral meetings that occur also facilitate the informal exchange of information and a process by which positions "emerge". Decisions are prepared behind closed doors and the public discussion forum is there to be used as much or as little as states wish.

States recognise that to achieve a decision, through consensus, or even to raise an issue with appropriate gravity, it is necessary to consult in advance with all those with an interest in the matter. There are three main actors in the operation of the Permanent Council: the United States, the Russian Federation and the states of the European Union, often but not always acting in unison. They are constantly seeking to harmonise their interests. Increasingly, therefore, the tendency is for a round of bilateral and multilateral negotiations to take place in advance of the Permanent Council and drafts of decisions are subsequently

presented to the Permanent Council.²⁶ As a result of the intensive caucusing prior to Permanent Council discussions many diplomats consider that there is in fact less discussion in the Permanent Council than previously. This is partly because the Permanent Council is a decision-making body with an increasingly full agenda and array of decisions to be taken. It is also due to recognition by diplomats that in the interests of effectiveness issues for discussion need to be well prepared. There is a danger that by reducing dialogue in the Permanent Council divisions can be created through excessive caucusing. However for the caucusing to be effective it has to be inclusive and ensure that consultations do not exclude interested parties.

A factor that has had an impact on the operation of the caucusing is the evolution of the European Union's common foreign and security policy. This in itself has required a high degree of caucusing among EU states in order to negotiate positions in advance. The EU does, however, attempt to broaden its internal discussions, or at least prevent the EU position from being a cause of exclusion. This is achieved through a follow up meeting immediately after its twice-weekly meetings between the EU troika and the EU associate members. There is also a constant throughway of meetings between the EU and other players, in particular the United States and Russia. In addition the larger EU states conduct bilateral meetings with other key protagonists. These meetings help to focus the debate of the Permanent Council as well as building coalitions for action beyond the confines of the Permanent Council.

Some countries do not fall into the more influential or obvious categories of caucuses, such as the EU or NATO, and therefore other groupings form their own caucuses, such as the Baltic states, the Central Asian states or the Vishegrad states. These tend to operate less regularly than the EU and NATO caucuses. In addition less obvious groupings have come into being, for instance a grouping which has been named 'GUAM', consisting of Georgia, Ukraine, Azerbaijan and Moldova. The operation of such caucuses facilitates the expression of views by the states involved as well as enhancing solidarity.²⁷ The extensive range of groups bring together different interests and present a challenge to the Chairman-in-Office, whose task it is to facilitate the arrival at decisions in the Permanent Council.

Fluid multi-layered dialogue and frequent consultations are critical starting points for conflict preventing behaviour to be established. The conditions of success for the operation of the Permanent Council are to an extent those of the OSCE at large. Its all-inclusive composition allows for the main issues of inter-

26) Author's interview with a member of the OSCE Secretariat in Vienna, February 1998.

27) Author's interview with member of an OSCE Delegation in Vienna, February 1998.

national relations to be addressed on a weekly basis, thereby allowing all problems that could cause conflicts to be dealt with collectively. The sometimes-maligned consensus decision-making process provides for considerable political weight for those decisions that are taken.

To be effective, however, the Permanent Council is no more than the sum of the commitment of the participating states themselves. To judge the effectiveness of the Permanent Council as the starting point for conflict prevention is therefore to judge its ability to encourage the willingness of participating states to use the instruments at their disposal. The powers of the Permanent Council are in some ways rather limited, covering the adoption of political statements, the establishment of missions and following up the reports and recommendations of the High Commissioner. The Permanent Council has no sharper teeth in its own right. There are no specific, pre-determined sanctions which it can impose, but the political responses that it can reach through consensus do have weight and can serve to influence states on their own or can be utilised as means to stimulate the action of other inter-governmental bodies which do possess sharper teeth.

The Chairman-in-Office: Institutional Relevance

The position of the Chairman-in-Office is held by the Foreign Minister of one of the OSCE participating states on an annually rotating basis. The Chairman-in-Office is responsible, on behalf of the participating states, for coordination of and consultation on current OSCE business. In addition the Chairman-in-Office is responsible for coordinating relations with other international bodies such as the United Nations and the Council of Europe. As a result of having responsibility for chairing the Permanent Council the Chairman-in-Office has developed into the central political actor of the OSCE.

The Chairman-in-Office is assisted in its role by the Troika (a body consisting of the preceding, present and succeeding Chairman-in-Office), by ad hoc steering groups that can be established on a case by case basis and by Personal Representatives. In addition the Chairman-in-Office is closely supported by the Secretary General who is appointed by the Ministerial Council for a period of three years. The Secretary General is the Chief Administrative Officer of the OSCE and is responsible for the management of OSCE structures and operations. In this sense the Secretary General works closely with the Chairman-in-Office in the preparation and guidance of OSCE meetings and ensures the implementation of OSCE decisions.²⁸ In regard to conflict prevention the Secre-

28) *OSCE Handbook 1996*, Vienna 1997, p. 12.

tary General plays an advisory not a political role, seeking to support the Chairman-in-Office. The State visits conducted by the Secretary General contribute additional access to high level contacts. This could provide scope for a conflict prevention role, but this would assume a more political function and at present it is not foreseen that this will develop alongside the administrative functions of the position.

Important factors in the operation of the Chairman-in-Office are the character of the foreign minister and the ability to combine two onerous roles; the breadth of experience, the commitment of his or her government to the tasks at hand; and the quantity of resources at the disposal of the Chairman-in-Office's Ministry of Foreign Affairs. A weak Chairman-in-Office could jeopardise the effectiveness of the Permanent Council and nullify the use of Personal Representatives, which have become increasingly important in the OSCE's conflict prevention toolkit.

In addition to this role at the heart of the OSCE's political and administrative apparatus, the Chairman-in-Office has a number of functions that explicitly pertain to conflict prevention. The Chairman-in-Office is formally the only interlocutor of the High Commissioner on National Minorities during the pre-early warning phase of operation.²⁹ The Chairman-in-Office is responsible for the day-to-day management of the long-term missions. Additionally, the Chairman-in-Office is in a position to travel to areas of tension (alone or accompanied by members of the Troika); can send Personal Representatives; can put issues on the agenda of the Permanent Council and provide discussion papers; and can act as an informal channel for communications prior to an issue being brought into the more public light of the Permanent Council.

These functions give the Chairman-in-Office responsibility and scope for engagement in the realm of conflict prevention. The Chairman-in-Office acts as a political executive and in order to be effective requires the political backing of the Permanent Council. The independence of the Chairman-in-Office is, however, constantly with reference to the Permanent Council, to which the Chairman-in-Office is accountable, and it can only function effectively with the political support of the participating states. The Permanent Council is prepared to give this because it is always in a position to rein in the Chairman-in-Office and because the rotating nature of the position and the existence of a Troika mean that no Chairman-in-Office will be able to act in a maverick fashion or seek to impose too specific an agenda.

29) Helsinki Decisions 1992, Chapter II, paragraphs 17-20.

Mandate

The Chairman-in-Office's mandate, laid out in the 1992 Helsinki Document is rather general, with an emphasis on coordination and consultation with regard to current OSCE business. The pertinent clause with regard to the Chairman-in-Office states that: 'The Chairman-in-Office will be responsible on behalf of the Council/CSO for the coordination of and consultation on current OSCE business. The Chairman-in-Office will be requested to communicate Council and CSO decisions to the OSCE institutions and to give them such advice regarding those decisions as may be required'.³⁰ The Budapest Summit Document of December 1994 provided some extra insight in stating that: 'Overall responsibility for executive action will remain with the Chairman-in-Office (CIO). The CIO will continue to take full advantage of his/her mandate, *inter alia*, by dispatching personal representatives. The CIO will be assisted by the Troika. The term of the chairmanship will normally last one calendar year.'³¹

Working Methods and Practice

The Chairman-in-Office plays a crucial role in marshalling the necessary political support for operations to prevent conflicts and galvanizing the OSCE into action. Prompt action by the Chairman-in-Office, arising from consultations with the OSCE community, should be the driving force in all OSCE endeavour. The degree to which the Chairman-in-Office is proactive depends upon the person of the Chairman-in-Office and the strategy of his/her government, as well as the extent to which participating states are prepared to make demands on the Chairman-in-Office.

The Chairman-in-Office can act independently and judge the scope that the Permanent Council will allow for such action. One example of this was the exploratory role of the Hungarian Chairmanship in preparing the ground for further OSCE involvement in Chechnya. Through a persuasive consultation process the Hungarian Chairman-in-Office secured the readiness of the government of the Russian Federation to cooperate with the OSCE in regard to the conflict there. This was an effective response within certain limitations and, as shall be discussed in the concluding section of this report, the conflict in Chechnya in fact raises more questions than it answers with regard to the ability of the OSCE to respond effectively to imminent crises.

There are certain means at the disposal of the Chairman-in-Office in initiating a process of conflict prevention. One is the very nature of consultation itself – by ensuring that issues are on the agenda of the Permanent Council the

30) Helsinki Decisions 1992, I.12 and I.13.

31) Budapest Document 1994, Budapest Decisions I.19, in A. Bloed, 1997, op.cit., p. 155.

Chairman-in-Office is initiating the first step on the ladder to a collective OSCE response. Beyond this the Chairman-in-Office can issue statements which operate in the absence of consensus or serve to emphasise the Chairman-in-Office's concern with regard to a specific issue. Statements are a form of censure, but beyond the actual censure there are no teeth to them and they have no binding competence. An example of the latter is the way in which the Chairman-in-Office issued two statements to emphasise concern over events in Kosovo in March 1998.³² The first statement urged the parties to refrain from acts of violence and to start meaningful dialogue; instructed the Chairman's Personal Representative on Kosovo to increase efforts; and drew the attention of the Permanent Council to the gravity of the situation. The second statement announced a new mission by Felipe Gonzalez as Personal Representative on the Federal Republic of Yugoslavia; and stated that the crisis in Kosovo was not solely an internal affair for the Federal Republic of Yugoslavia because of violations of OSCE principles and commitments on human rights, and the impact on security in the region.

The Troika is more of a mechanism providing diplomatic support than an actual tool. Its functioning provides a means for a state to be involved in the work of the Chairman-in-Office for three years, ideally providing support, consistency and coordination of approach over a period of time. The Troika can be used as a preliminary advisory body in which initiatives can be discussed prior to their presentation to broader OSCE fora. Whether it assumes a role in the ongoing consultation round as a sounding board for the Chairman-in-Office depends upon the working relations among the Troika states. The Troika can also be used as a means of direct intervention. At the instigation of the Chairman-in-Office missions can be undertaken by representatives of the Troika at an Ambassadorial level or on the part of country based representatives of the Troika, as was the case of a mission to Belgrade in early February 1998 as a result of rising tensions in Kosovo. Such missions are a means to demonstrate concern and to act as a signalling device to participating states. It is not necessary to go through the full Permanent Council in order for such a mission to occur, but important and interested delegations are consulted.

There are two more specific and proactive forms of intervention that the Chairman-in-Office can utilise. These are ad hoc steering groups and Personal Representatives. Ad hoc steering groups can provide support in cases of conflict prevention and crisis management. The instrument was elaborated upon in the sub-chapter on the functions of the Chairman-in-Office in the Helsinki Deci-

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32) See the Chairman-in-Office press releases no. 15/98 and no. 18/98, which cite the Chairman-in-Office Statements of 2 March and 10 March respectively.

sions (paragraphs 16-21 of Chapter I in the 1992 Helsinki Decisions), although in Chapter III (paragraph 9) the Council and the CSO were explicitly granted the competence to establish steering groups.³³ The rules provided in the Helsinki Decisions enable the Chairman-in-Office to initiate an ad hoc steering group in particularly urgent cases. Such groups have limited composition and apart from including the Troika there are no rules regarding the composition other than the need for impartiality and efficiency. Ad hoc steering groups are intended to be temporary but can be prolonged for a specific time period, even assuming a more or less permanent status in the case of the Minsk Group.

The Minsk Group, dealing with the conflict in and around Nagorno Karabakh is in fact the principal example of the use of an ad hoc steering group. It has operated with only limited success since 1992. It is a crisis management rather than a conflict prevention steering group. Bloed notes that other examples of ad hoc steering groups relate to the former Yugoslavia, but their impact has been minimal and the instrument seldom used. One explanation is that the Troika has become more active as a support for the Chairman-in-Office. Furthermore, states that are interested in a particular situation regularly convene in informal ways to discuss specific problems. Bloed, in fact, conjectures that the use of ad hoc steering groups could enhance the efforts of interested states to address specific problems since such groups avoid the 'often cumbersome procedure of plenary discussions at (regular) meetings of the OSCE permanent political bodies.'³⁴

Personal Representatives of the Chairman-in-Office

The Chairman-in-Office is empowered to appoint Personal Representatives to address specific issues at his or her own discretion, as a means to complement the Chairman-in-Office's own field visits. The regulations concerning this instrument are contained in the Helsinki Document 1992 and state the following:

When dealing with a crisis or a conflict, the Chairman-in-Office may, on his/her responsibility, designate a personal representative with a clear and precise mandate in order to provide support. The Chairman-in-Office will

33) A. Bloed in M. Bothe, N. Ronzitti and A. Rosas, op.cit., p. 42.

34) A. Bloed *ibid.*, p. 44.

inform the CSO of the intention to appoint a personal representative and of the mandate. In reports to the Council/CSO, the Chairman-in-Office will include information on the activities of the personal representative as well as any observation or advice submitted by the latter.³⁵

The mandate of the Personal Representative is at the discretion of the Chairman-in-Office. This provides considerable leeway for the Chairman-in-Office to identify a problem and decide how best to address it, making the Personal Representative a flexible means of intervention, the tasks of which will vary according to circumstance. Having said this the overriding task is to provide the Chairman-in-Office with advice on further measures based upon field visits. Informally the Personal Representative acts as an instrument of early warning, both signalling that a situation already merits attention but also in a position to identify any escalation. Furthermore, the designation of a Personal Representative is a means of early action, initiating a process to identify options for further action. Depending upon the mandate a Personal Representative can engage in action on the Chairman-in-Office's behalf.

Since 1992 Personal Representatives of the Chairman-in-Office have visited, Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Chechnya, Croatia, Estonia, Georgia, Latvia, Macedonia, Moldova, Nagorno Karabakh, Russia, Tajikistan, Ukraine, Uzbekistan, and the Federal Republic of Yugoslavia with particular regard, but not exclusively, to Kosovo. In a number of cases the visit of a Personal Representative has helped to prepare the way for the deployment of a long-term Mission or field presence. A well documented case is that of Moldova where the mandate of the Personal Representative was to consult with the parties concerned and present the Chairman-in-Office with relevant suggestions and recommendations as to how the CSCE could contribute to the solution of the conflict there.³⁶ Albania and Belarus have been more recent examples in which the designation of a Personal Representative led to the deployment of an ongoing field presence.

The Chairman-in-Office's facility to dispatch Personal Representatives goes some way towards providing the OSCE scope for direct action thereby circumventing some of the inherent caution involved in a consensus decision-making procedure. Indeed the designation of a Personal Representative has become the primary means for the Chairman-in-Office to respond to a situation quickly without being bogged down in the formal procedures of Vienna. For example, Franz Vranitzky was operational and visiting Albania within a couple of

35) Helsinki Document 1992, Paragraph I.22.

36) See Adam Daniel Rotfeld, 'In Search of a Political Settlement. The Case of the Conflict in Moldova', pp. 100-137 in *The Challenge of Preventive Diplomacy. The Experience of the OSCE*, Ministry of Foreign Affairs, Stockholm, 1994.

days of having been appointed. A field presence takes longer to put in place both in terms of logistics but also in regard to agreeing a mandate. Yet while enhancing the role of the Chairman-in-Office the instrument does not undermine the pivotal position of the Permanent Council because it could not work if the Chairman-in-Office did not undertake an adequate consultation process with key actors in the Permanent Council. Therefore, the Personal Representative is not an instrument to bypass the Permanent Council or other instruments but rather a specific and quick response to particular circumstances, which might not be addressed as effectively if left to the other instruments available, and with fewer constraints involved than in establishing a mission or field presence.³⁷

Since the instrument is the individual selected to perform the function, even more than other instruments a great deal rests upon the selection of an appropriate figure. In many instances the Personal Representative has been an Ambassador appointed from the ranks of the state holding the Chairmanship. In other cases it has been deemed necessary to appoint a more high profile figure. Belarus and Albania are instructive cases. The Danish Chairman-in-Office appointed Ambassador Thorning-Petersen as Personal Representative in response to concerns about Belarus' compliance with internationally accepted democratic and constitutional principles and practices and other OSCE commitments such as freedom of the press and freedom of movement.³⁸ Appointing a professional diplomat rather than a more visible international personality signified a low-key approach commensurate with the need to establish a diplomatic channel for negotiations. This was intended to offer Belarus a way out without losing face. It also offered the Chairman-in-Office the opportunity to raise the stakes by subsequently appointing a higher profile figure if no progress was made, thereby escalating the pressure.³⁹

The task of the Personal Representative in Albania was of a different order. In the face of the breakdown of law and order and a serious political crisis, it was deemed necessary to appoint a figure with the profile to coordinate the varied international efforts and able to exert authority over other participating organisations. This task was given to former Austrian Chancellor, Vranitzky. Likewise in the case of the Personal Representative of the Chairman-in-Office to Belgrade it was considered that a high profile figure with the eminence of former Spanish Prime Minister Gonzalez would have more leverage, both in terms of influencing the Belgrade authorities but also in reporting back to the OSCE.

37) Author's interview with the head of a delegation to the OSCE in Vienna, February 1998.

38) *Annual Report 1997 on OSCE Activities*, Vienna 1998, p. 17.

39) Author's interview with a member of a delegation in Vienna, February 1998.

The person of the Personal Representative can also complicate matters. Some delegations have argued that this was the case with regard to the appointment of Max van der Stoel as Personal Representative for Kosovo in early 1997.⁴⁰ The view expressed was that van der Stoel's position as High Commissioner on National Minorities presented a complication in that the Kosovo Albanians refused to be viewed as a national minority and therefore would not engage with him. Furthermore, it was argued that van der Stoel's involvement brought with it the perspective and mode of operation of the High Commissioner and there are those that feel the engagement should have been more public and not characterised by the quiet diplomacy that generally signifies the High Commissioner's work. It is difficult to assess the extent to which these factors determined the difficulties that van der Stoel faced in the capacity of Personal Representative for Kosovo. It is arguable whether the almost year-long delay in visiting Kosovo was related to the dual role or whether the more critical factor was the general geopolitical situation of the Federal Republic of Yugoslavia, its refusal to engage on the issue and the question of the country's suspension from the OSCE. Nevertheless, even if geo-political factors were more instrumental, the potential for confusion was increased by the appointment of van der Stoel and the fact that it took a year before the Personal Representative was able to visit Kosovo did not aid the OSCE in being able to prevent a deterioration of the situation there. It should be emphasised that it was van der Stoel's own initiative, in the absence of other action by the OSCE, to become active in regard to Kosovo. Furthermore, the Personal Representative is the Personal Representative of the Chairman-in-Office, therefore it is incumbent upon the Chairman-in-Office to reconsider the mandate if, for whatever reason, the issue is not addressed adequately.

Conditions of Success of the Chairman-in-Office

Bloed comments that it is striking that the responsibility entailed in the position of Chairman-in-Office has often be borne by smaller states (Hungary, Switzerland and Denmark). Furthermore, he adds that 'For reasons of political effectiveness, it is advisable that major OSCE States should also regularly accept the Chairmanship ... Although there is an understanding within the OSCE that a major OSCE State should always be part of the Troika, so far this unfortunately is not always the case.'⁴¹ So-called smaller states have, however, made a significant contribution as Chairman-in-Office. The Swedish chairmanship was marked by an expansion in the number of field missions and flexible encouragement

40) Author's interviews with the Ambassadors of three delegations in Vienna, February 1998.

41) A. Bloed in M. Bothe, N. Ronzitti and A. Rosas, op.cit., p. 47.

for the work of the High Commissioner on National Minorities, which put conflict prevention at the heart of the work of the OSCE.⁴² As Chairman-in-Office Switzerland was also very supportive, in political and financial terms, of the OSCE's endeavours in the realm of conflict prevention, and post-conflict reconstruction in Croatia and Bosnia and Herzegovina. One way in which this manifested itself was in direct support of the activities of the High Commissioner on National Minorities. This has occurred through ad hoc ways, for instance the provision of a plane to facilitate the High Commissioner's travel in Central Asia in September 1996, the funding of a round table on multicultural and multiethnic issues in Kazakhstan, which took place in Locarno in December 1996⁴³ and through the support of a number of projects carried out by the Foundation on Inter-Ethnic Relations in Albania, Kyrgyzstan and Ukraine, under the auspices of the High Commissioner. Swiss support for such initiatives has continued since the end of tenure as Chairman-in-Office, especially with regard to initiatives in Croatia.

Some so-called smaller states, such as Poland and Hungary have seen the opportunity of assuming the Chairmanship as a means to show that they are responsible partners. It could also be argued that smaller states often have no major interests on many of the issues that surface within OSCE discussion and practice, in the way that larger states do, and are thus more impartial, and perceived so. Indeed, assuming the Chairmanship can be the only diplomatic forum within which such countries can play such a role. Furthermore, it could even be argued that if a major power, particularly the United States or Russia, were to assume the position, instead of bringing added influence to the position, national agendas would enter the domain of the Chairman-in-Office to a much greater, and potentially damaging, extent. The influence of the Chairman-in-Office is dependent upon the resources, energy and intellect that the state concerned is prepared to lend to the office. It is also partly a question of gaining the confidence of the Permanent Council, including smaller states and coalitions of states as well as the major powers, in order to be able to act flexibly and proactively.

Although each Chairman-in-Office is part of the Troika for a year before assuming the Chairmanship, a dilemma which has to be faced is that the circle of problems widens constantly – the Chairman-in-Office inherits the baggage of previous crises as well as those which arise during the course of its own tenure.

42) See Margaretha af Ugglas, 'Conditions for Successful Preventive Diplomacy', in *The Challenge of Preventive Diplomacy, The Experience of the CSCE*, Ministry for Foreign Affairs Stockholm, 1994, pp. 11-32.

43) *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention*, The Foundation on Inter-Ethnic Relations, 1997, The Hague, pp. 63-64.

This raises the question as to whether or not one individual state will be capable of filling this role in the future.

As with all conflict prevention instruments the effectiveness of Personal Representatives can be evaluated from two perspectives: on the one hand whether they have addressed the particular task that called for the designation of the particular Personal Representative, and on the other hand what has been the contribution to the longer-term situation not only in terms of security and stability but whether root causes of a potential conflict are being addressed. Gonzalez's mission is of interest in that his intervention and recommendations, in conjunction with increasing domestic and international pressure, led to the acknowledgment of the municipal election results in the Federal Republic of Yugoslavia, which had initially been annulled. In broader terms, however, it can be argued that the twenty-four hour fact-finding visit paid by Gonzalez to Belgrade and the stinging report, while contributing to the international pressure which led to the overturn of the annulled results, aggravated the authorities to the extent that it made them more obdurate in dealing with other issues, such as Kosovo, and therefore less receptive to treat with the Personal Representative on Kosovo.

The suspension of the Federal Republic of Yugoslavia presents severe limitations on the ability of the OSCE in general and Personal Representatives in particular to be effective in terms of conflict prevention there. In regard to the designation of two Personal Representatives to the country, in the view of one diplomat, the preparation of mandates for both has been complicated by the absence of the Federal Republic from the Permanent Council and it diminished the scope for the Personal Representatives to act cooperatively. Having said this, that the Personal Representatives were designated indicates the flexibility of the instrument, enabling intervention, however limited, even in a suspended state.

Personal Representatives can accomplish little in isolation. Acting on behalf of the Chairman-in-Office it is necessary for the Chairman-in-Office to respond and take matters further. The responses of the Chairman-in-Office can include utilisation of the various mechanisms which will be discussed in subsequent sections, or seeking to exert political pressure by issuing a Statement or bringing the issue to the attention of the Permanent Council.

Effectiveness in this context presents one link in a wider chain. Recent experiences in regard to Kosovo are instructive about the effectiveness of Personal Representatives but also the OSCE in general. As the violence in Kosovo escalated from February/March 1998 concern among participating states grew, but other than issue statements of concern the Chairman-in-Office and the Permanent Council were limited in their scope for action. Felipe Gonzalez was nominated 'as the Personal Representative of the Chairman-in-Office for the

FRY which would include a mandate for addressing the problems in Kosovo'.⁴⁴ Max van der Stoep stood down from his position as Personal Representative for Kosovo in the wake of this appointment. Gonzalez was additionally supplied with an EU mandate to mediate in the Kosovo conflict. The key role in the appointment of Gonzalez was played by the Contact Group (France, Germany, the Russian Federation, the UK and the USA) which, despite internal divisions, recognised the need to be seen to be doing something. The evolution of the crisis in Kosovo has, however, been such that despite ten years of recognition that the situation was potentially explosive no measures have been applied effectively to prevent the escalation of the conflict, which has ultimately rendered the role of Personal Representatives and even that of the OSCE marginal.

2.2 Military Security Instruments

There are also a number of instruments in the OSCE which deal with the military security field. These will only be touched on briefly since they do not form a central part of this study. Structurally, the Conflict Prevention Centre has been important in the development and management of the bodies and practices in this field. This body 'has from the beginning been poised precariously between a political function – consultation among the representatives of all participant states on situations of crisis and potential conflict in Europe – and a more strictly technical-operative one – support of the actions undertaken for conflict prevention and crisis management.'⁴⁵ The institutional restructuring of recent years has emphasised the latter function above the former. This Centre also plays an important role in mission support and support for the Chairman-in-Office as discussed elsewhere.

The Forum for Security Cooperation

The Forum for Security Cooperation was established by the 1992 Helsinki Summit (Helsinki Decisions, Chapter V). In 1994 it took over several tasks which had previously been fulfilled by the Consultative Committee of the Conflict Prevention Centre. In the FSC the emphasis is on the military aspect of actual and potential conflicts, dealing with threat perceptions, the structure of

44) Permanent Council Journal No. 156, Agenda item 3, Decision 218, 11 March 1998.

45) Ettore Greco, 'The Role of the Conflict Prevention Centre in the Security System of the OSCE', pp. 5-15 in *Helsinki Monitor*, Vol. 5, 1994, No. 1, p. 14.

armed forces, the military code of conduct, conversion and arms control, as such it is a consultation forum in the field of security issues with politico-military implications. The *raison d'être* is to provide a forum in which states can raise issues which they consider to have military security implications and to provide scope for dialogue on security perceptions and policies and the military's role in a democracy. Negotiations for the code of conduct, prescribing the limits on a government's use of force on its own territory, have been a key component of this. In addition the FSC has assumed responsibility for some of the OSCE's confidence and security building measures, for instance dealing with the 'mechanisms for consultation and cooperation as regards unusual military activities' and another concerning 'cooperation as regards hazardous incidents of a military nature'. Although used in the context of the conflict in the former Yugoslavia these mechanisms have been assimilated into the OSCE's existing permanent political consultation machinery.⁴⁶

The FSC meets on a weekly basis in Vienna, and although it plays a role in regard to political consultations in the field of conflict prevention and crisis management, the major body in this field is the Permanent Council. Apart from the fact that the states themselves give precedence to the political forum, the biggest problem for the FSC is the institutional one that the chair rotates monthly. A number of delegations feel that this makes coordination very difficult, especially given the burden it imposes upon some of the smaller states with more limited representation in Vienna. The benefit of this is that it keeps everyone involved and through participation in the FSC's Troika it provides experience to all states.

The Code of Conduct on Politico-Military Aspects of Security

The Code of Conduct is aimed at enhancing cooperation between states in the field of politico-military security.⁴⁷ The Code of Conduct 'is designed to promote security and cooperation by placing the activities of armed forces of participating states explicitly within the OSCE's politically binding framework of human-dimension, security-related, and other norms and obligations.'⁴⁸ The

46) Arie Bloed in Bothe, Ronzitti and Rosas, *op.cit.*, pp. 44-45.

47) For further information see Rob Zaagman, 'Some Reflections on OSCE Conflict Prevention and the Code of Conduct', pp. 29-39 in *Helsinki Monitor*, Vol. 7, 1996, No. 2, and Gert de Nooy ed., *Cooperative Security, the OSCE and its Code of Conduct*, The Hague, 1996.

48) See M.R. Lucas, 'The War in Chechnya and the OSCE Code of Conduct', pp. 32-42 in *Helsinki Monitor*, Vol. 6, 1995, No. 2, p. 32.

Code's central aim is to prevent the misuse of military, paramilitary and internal security forces for political ends. The use of the Russian Army in Chechnya demonstrated one of the critical problems with the Code, namely whether the participating states, having created a sophisticated tool, are prepared to use it. With regard to Chechnya it has been apparent that civilian control of the Russian armed forces is far from being stable and guaranteed as requested by the Code of Conduct. The issue of the Code of Conduct and Chechnya presents a very important case and will be returned to in the conclusion of this study.

Confidence and Security Building Measures

The development of Confidence and Security Building Measures has been part of the OSCE since its inception, as a typical instrument of preventive cooperative security policy. The concept was introduced in the Helsinki Final Act⁴⁹ as a means to build trust through increased transparency and predictability of military activities. The concept has evolved into a system of measures relating to defence planning, information on armed forces, risk reduction, military contacts, notification and observation of military activities, verification and evaluation, constraints and communication.⁵⁰

The system of CSBMs operating within the CSCE framework was developed to prevent military border attacks and was very much part of the bipolar Cold War world. The system was less transferable to the internal conflicts that arose after the Cold War. These conflicts emphasised that the protection of human rights is also a security issue and as such indicate that old style CSBMs are not redundant in that internal security destabilisation can lead to cross-border conflicts. Therefore, the programme approved at Helsinki in 1992 sought to emphasise the need for a comprehensive human rights regime as a major component of the prevention of conflicts – both internal but also external conflict that may be spillovers of internal ones.⁵¹

49) Final Act of Helsinki, in Bloed *Basic Documents*, op.cit., pp. 151-155.

50) For a brief summary of the Confidence and Security-Building Measures in the OSCE see the *OSCE Handbook 1996*, Vienna 1996, pp. 63-67.

51) Ettore Greco, 'The Role of the Conflict Prevention Centre in the Security System of the OSCE', pp. 5-15 in *Helsinki Monitor*, Vol. 5, 1994, No. 1, pp. 5-6.

3 OSCE Mechanisms and Instruments of Peaceful Settlement of Disputes

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This section explores the OSCE mechanisms functioning at an operational level in cases requiring rapid reaction to tensions as well as the instruments for peaceful settlement of disputes. Conceptually, these comprise a significant component of the OSCE's early warning and conflict prevention architecture. Practically, they present a body of formalised instruments and mechanisms, some of which (the Berlin, Vienna and Moscow Mechanisms) are not dispute settlement mechanisms in the narrow sense and were applied during a short phase, others of which are highly formal and have yet to be activated.

The fifth principle of the Helsinki Final Act raises the issue of the peaceful settlement of disputes, advocating the use of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means to settle disputes so that they do not threaten international peace, security and justice.⁵² From 1975 to 1989 all efforts to develop means of operating in the field of local and regional conflicts were limited by the ongoing bi-polarity of the Cold War, when time most participating states were not inclined to look for or establish

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52) See Arie Bloed, *From Helsinki to Vienna: Basic Documents of the Helsinki Process*, 1990, Dordrecht, p. 46.

procedures and mechanisms for the settlement of smaller conflicts. During the period of change following the end of the East-West confrontation 'cautious diplomats invented the complicated system of CSCE Mechanisms'.⁵³ The limitation of these political mechanisms was revealed by the crises erupting in and around the disintegration of Yugoslavia in the early 1990s.

Concurrent with the development of operational political mechanisms, dubbed emergency mechanisms, there has also been an evolution in structural rather than political methods for dealing with disputes. The emergency mechanisms and the instruments and procedures of peaceful settlement of disputes and their application are examined separately, but their effectiveness is considered jointly.

3.1 The Political, Military and Human Dimension Mechanisms

The OSCE operates on the premise that energy spent on building consensus is an important investment. Nevertheless, states recognise that joint political decisions taken in accordance with the consensus rule can only be one form of action and need to be complemented by direct action through agreed mechanisms activated by a limited number of states, facilitating prompt and direct contact between parties. This realisation led to the creation of a series of mechanisms to address different types of emergency situations in the military field, in the field of general political crises, and in the human dimension.

The Berlin Emergency Mechanism

This is a 'mechanism for consultation and cooperation with regard to emergency situations'. It was adopted in June 1991 at the Berlin meeting of the CSCE Council of Ministers for Foreign Affairs. The procedure, which may be used in crisis situations regarding all four security dimensions (military, economic, environmental and societal) provides for the possibility of emergency meetings of the Ministerial Council.⁵⁴ As such it is an early warning mechanism. The Mechanism applies to a serious emergency which may arise from a violation of one of the Principles of the Final Act or as a result of major disruptions endangering peace, security or stability. The consensus principle is restricted in a procedural

53) Berthold Meyer, 'Dispute Settlement Procedures and Crisis Management' pp. 53-81 in M. Bothe, N. Ronzitti and A. Rosas, op.cit., p. 63.

54) The text of the mechanism is in A. Bloed, 1993, op.cit., pp. 811-813.

sense. Until the Budapest Meeting in 1994 it was necessary for 12 states to declare their support for the mechanism to activate a meeting of the Committee of Senior Officials (now the Senior Council). Since then all that is required is for the concerned state and the Chairman-in-Office to request an Emergency Meeting.⁵⁵

The Mechanism has been used on few occasions: in 1991 in regard to the former Yugoslavia, in 1993 in regard to Nagorno Karabakh and in 1993 Hungary tried to have an Emergency Meeting regarding the Gabcikovo Dam on the Danube, but failed to gain the necessary support of twelve states.⁵⁶ The meetings which were convened had marginal impact on the parties to the conflicts.⁵⁷ The Mechanism has been made redundant by the partial institutionalisation of the OSCE in Vienna, particularly in regard to the role of the Permanent Council, which supplants the need to have a special mechanism to raise an issue at the highest political level. Urgent security questions can be brought up by any participating state at the weekly meetings of the Permanent Council, which can also be convened for extraordinary meetings at any time without formally triggering the Berlin Mechanism.

Vienna Mechanism on Unusual Military Activities

This is a 'mechanism for consultation and cooperation as regards unusual military activities'. It was established in November 1990 as part of a series of new confidence and security building measures, together with the related mechanism on 'Co-operation as regards hazardous incidents of a military nature'.⁵⁸ These mechanisms may be used to alert the international community in case of specific emergency situations, they include a right of information at short notice and consultations if requested, and are located in the Conflict Prevention Centre. Like the Berlin Mechanism, the mechanism on unusual military activities can be activated in two phases, the second of which can encompass the request of an emergency meeting in the framework of the Conflict Prevention Centre. The

55) See Berthold Meyer in Bothe, Ronzitti and Rosas, *op.cit.*, pp. 67-68.

56) Torsten Lohmann, 'Dispute Settlement Procedures in the OSCE – Genesis and Overview', pp. 343-366 in Bothe, Ronzitti and Rosas, *op.cit.*, p. 358.

57) Berthold Meyer, 'Dispute Settlement Procedures and Crisis Management', *op.cit.*, pp. 67-68.

58) The mechanism is laid down in the Vienna Document on Confidence and Security-Building Measures, formally adopted at the CSCE Summit of Paris. The text is in A. Bloed, 1993, *op.cit.*, pp. 656-658. The text of the related mechanism on 'Co-operation as regards hazardous incidents of a military nature' is provided on p. 658.

primary focus of the Vienna military-behaviour mechanism is to detect military activities of member states which deviate from agreed customary military behaviour. The consultation mechanism was activated on three occasions during the Yugoslav crisis, but in no case did the consultations achieve a decrease of the scope of violence in the then Yugoslavia. The mechanism was not intended to address internal conflicts and only did so when such a conflict manifested a direct external threat.⁵⁹

Meyer suggests that since the 1992 Prague Council Meeting of the Foreign Ministers there has been a connection between the 'Vienna Mechanism' or consultation and cooperation concerning unusual military activities and the deployment of fact-finding and monitoring missions. In this sense he considers that it is possible to speak of an indirect use of the Vienna Mechanism.⁶⁰ Nevertheless, this Mechanism has also been supplanted by developments in the political bodies of the OSCE. The fact that neither the Russian entry into Chechnya nor the military re-occupation of the Krajina by Croatia during the summer of 1995 triggered this mechanism is indicative of its marginalisation. Menacing developments can now be discussed regularly in the weekly meetings of the OSCE bodies in Vienna.

The Human Dimension Mechanisms

The adoption of the wide ranging set of human dimension commitments within the OSCE has created a framework for the behaviour of states that is intended to contribute to stability, peace and security. The implementation of the human dimension commitments therefore has a direct bearing upon the maintenance of peace and the prevention of conflicts. The 'Human Dimension Mechanism' was established at the Vienna Follow-Up Meeting (1986-89) and further elaborated at the meetings of the Conference on the Human Dimension in Copenhagen (1990) and Moscow (1991). The so-called Vienna and Moscow Mechanisms comprise a permanent means of supervising the implementation of the OSCE human dimension commitments.

The Vienna Mechanism consists of four separate phases: the exchange of information relating to the human dimension; bilateral meetings between participating states with a view to examine and resolve situations and specific cases relating to the human dimension; notification of all OSCE states of situations

59) Heinz Vetschera, 'European Conflict Prevention: The Role of the CSCE', pp. 72-112 in *The Art of Conflict Prevention*, Werner Bauwens and Luc Reyckler eds., Brasseys, 1994, p. 85.

60) Berthold Meyer, 'Dispute Settlement Procedures and Crisis Management', op.cit., p. 54.

and cases in the human dimension; and the discussion of issues, raised under the mechanism, at Review Conferences, Human Dimension Implementation Meetings, meetings of the Senior Council or Permanent Council.⁶¹

The Moscow Mechanism further elaborated the Vienna Mechanism as well as introducing new supervisory procedures. It is a complex mechanism presenting five separate procedures which may be used independently to establish missions of experts or rapporteurs. Two of the new procedures in the Moscow Mechanism are linked to the Vienna Mechanism: after the request for information or for a bilateral meeting under the Vienna Mechanism, the requesting state may suggest that the other state should invite a mission of experts 'to address a particular, clearly defined question on its territory related to the human dimension.'⁶² If the state refuses to establish such a mission within ten days, or if the requesting state judges that the issue in question has not been resolved, then the requesting state may initiate the establishment of a mission of rapporteurs. This requires the support of at least six OSCE states and the consent of the requested state is not necessary.⁶³ This created the possibility of an independent investigation into violations of human dimension commitments.

The Moscow Mechanism introduced three other procedures not linked to the Vienna Mechanism. These are: the voluntary invitation of a mission of experts by an OSCE state; the establishment of a mission of experts or rapporteurs following a decision of the Permanent Council or Senior Council, upon the request of any participating state; and the establishment of an 'emergency' mission of rapporteurs in cases of 'a particularly serious threat' to the fulfillment of human dimension provisions if at least ten OSCE states agree. The missions are composed of independent experts selected from the resource list of the OSCE maintained by the ODIHR and comprising the names of experts appointed by the OSCE states.

The powers of missions of experts are more extensive than those of rapporteurs. Firstly, they are established in cooperation with the host state. Secondly, whereas missions of rapporteurs have a fact-finding mandate combined with the possibility to give advice on possible solutions, expert missions have a broader mandate. They may facilitate 'resolution of a particular question or problem relating to the human dimension' by gathering information, 'and, as appropriate, use their good offices and mediation services to promote dialogue and co-operation among interested parties.' The state concerned participates in the agree-

61) See Pentikainen in Bothe, Ronzitti and Rosas, *op.cit.*, pp. 95-96.

62) Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE, Moscow 3 October 1991, pp. 605-629, in A.Bloed, 1993, *op.cit.*, paragraph 8, p. 609.

63) Moscow Document, paragraph 9, p. 610, *ibid.*

ment of the precise terms of reference of the mission of experts. The missions are required to submit reports to the Permanent Council (or the Senior Council), which may decide on any follow-up action.

The Moscow Mechanism, thus, provides for missions which have to be admitted even without the consent of the state concerned in cases of internal violations of human dimension commitments in the spheres of human rights, fundamental freedoms, democracy and the rule of law. Pentikainen comments, the mechanism 'is applicable in respect of any OSCE state on the basis of the mere adherence of all OSCE states to the entirety of the human dimension provisions.'⁶⁴

The Vienna Mechanism was activated extensively between January 1989 and April 1990. The mechanism was predominantly invoked in the context of East-West relations, most often by Western states against Eastern states.⁶⁵ From 1991 onwards the mechanism was rarely invoked. In 1991, for instance the mechanism was used to draw attention to the civil war in Yugoslavia and military actions by Soviet forces in Lithuania. In 1992 Austria used the mechanism with respect to the treatment of Kurdish civilians by Turkish security forces in South Eastern Turkey. In Spring 1992 the Russian Federation activated the first phase of the mechanism (exchange of information) with regard to Estonian citizenship legislation.⁶⁶

As opposed to the Vienna Mechanism the Moscow Mechanism has only been activated a few times. A mission of rapporteurs was sent to Croatia and Bosnia and Herzegovina in September/October 1992 under the so-called 'emergency procedure'; Estonia (December 1992) and Moldova (January/February) invited missions of experts to study legislation and its implementation with regard to citizenship and language in Estonia and legislation, the implementation of minority rights and inter-ethnic relations in Moldova. There have also been a number of failed attempts to activate the Moscow Mechanism, in regard to Russia and Estonia in 1992, Turkey and Austria in 1992, the Committee of Senior Officials and Serbia and Montenegro in 1993, and Turkey and the Nor-

64) Pentikainen, in Bothe, Ronzitti and Rosas, op.cit., p. 99.

65) See Arie Bloed and Pieter van Dijk, 'Supervisory Mechanism for the Human Dimension of the CSCE: its setting up, its present functioning and possible development towards a general procedure for peaceful settlement of CSCE disputes', pp. 74-108, in Bloed and van Dijk, eds., *The Human Dimension of the Helsinki Process: The Vienna Follow-Up Meeting and its Aftermath*, Dordrecht 1991, pp. 79-80.

66) Pentikainen in Bothe, Ronzitti and Rosas, op.cit., p. 100.

dic countries in 1994.⁶⁷ No activation of the Human Dimension Mechanism has taken place in recent years.

3.2 The Formalized Mechanisms for the Peaceful Settlement of Disputes

It took almost 20 years to produce a convention which formalised dispute settlement procedures, from the initial Swiss proposal on dispute settlement in 1973. Many states refused to countenance any mandatory third party involvement inherent in this idea and the concomitant impingement upon state sovereignty in such a procedure. A number of OSCE meetings were held on the general problem of peaceful settlement of disputes (Montreux 1978, Athens 1984 and La Valletta 1991). The prospects for a generally acceptable method for the peaceful settlement of inter-state disputes changed as a result of the political changes in Eastern Europe and the Soviet Union.⁶⁸ A significant landmark was the 1989 Vienna Concluding Document which contained an explicit reference to the acceptance, in principle, by the participating states of 'the mandatory involvement of a third party when a dispute cannot be settled by other peaceful means.'⁶⁹

Valletta Dispute Settlement Mechanism

The Valletta Mechanism, created as a result of a meeting of experts in January/February 1991, was the first formal CSCE procedure for peaceful settlement of disputes. The mechanism, which provides for the possibility of appointing a conciliatory mechanism to prepare non-binding recommendations, can be characterised 'as a form of binding conciliation even though of a very soft nature.'⁷⁰ It enables any state party to a dispute to call for a third-party mechanism. This is limited to third-party comment or advice, and does not involve concrete recom-

67) Pentikainen, *ibid.*, pp. 100-101, for further information regarding Estonia and Moldova see Michael R. Lucas, 'Russia and the Commonwealth of Independent States: The Role of the CSCE', pp. 5-37 in *Helsinki Monitor*, Vol. 5, 1994, No. 4.

68) Gerard Tanja, 'Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water', in *Helsinki Monitor*, Vol. 4, 1993, No. 1, pp. 22-33.

69) Concluding Document of Vienna, Vienna, 15 January 1989, Principles 6, in A. Bloed, 1993, *op.cit.*, p. 331.

70) Lohmann in Bothe, Ronzitti and Rosas, *op.cit.*, p. 345.

mentations. The mechanism can only be applied ‘when a dispute cannot be settled by other peaceful means’. It provides an initial stage to help parties select an adequate procedure rather than immediately look into the substance of the dispute and contains specific and broad escape clauses.⁷¹

The Valletta Mechanism is a complicated and multiphase political, not legal, mechanism with only limited chance of being applied in practice. The non-usage of the Valletta Mechanism can be attributed to several factors. The Mechanism is itself a compromise which requires extremely complicated and time consuming procedures if it is to be initiated. Consensus was only possible at the expense of an exception clause which provides states ample excuse to object to the establishment or continuance of the mechanism if the dispute ‘raises issues concerning its territorial integrity, or national defence, title to sovereignty over land territory, or competing claim with regard to jurisdiction over other areas.’⁷² Furthermore, the Mechanism is limited to inter-state disputes in an era in which intra-state disputes are more common.⁷³ Meyer considers that by accepting the sophisticated procedure of the Valletta Mechanism, the states ‘deliberately invented an instrument which could not be used against its creators.’⁷⁴

The Convention on Conciliation and Arbitration

The adoption of the Convention on Conciliation and Arbitration within the CSCE (signed 15 December 1992) signified a break with previous practice. It goes beyond the level of politically binding agreements and enters the domain of legally binding ones. It is the first OSCE document adopted to which not all states are bound. This resulted in a number of objections, specifically that it could undermine existing obligations and alter the political, flexible and subtle OSCE process by introducing a rigid legal instrument.⁷⁵

Institutionally, the Convention provides for the establishment of a Court of Conciliation and Arbitration composed of Conciliation Commissions and Arbitral Tribunals, which will be created if necessary for each dispute with headquar-

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71) For more detail concerning the Valletta Mechanism see Susanne Jacobi, ‘Subsidiarity and Other Obstacles to the Use of the OSCE Dispute Settlement Procedures’, pp. 425-458 in M. Bothe, N. Ronzitti and A. Rosas, op.cit., pp. 426-433.
72) Section XII of the Provisions for a CSCE Procedure for Peaceful Settlement of Disputes, in A. Bloed, 1993, op.cit., p. 576.
73) Meyer ‘Dispute Settlement Procedures and Crisis Management’, op.cit., p. 66.
74) *ibid.*, p. 67.
75) Jacobi, op.cit., p. 433.

ters in Geneva, able to draw on a number of possible conciliators and arbitrators nominated by the parties to the convention. The Convention came into force in December 1994 after the deposit of the twelfth instrument of ratification or accession.⁷⁶

The main pillar of this Convention is obligatory conciliation. If it has not been possible to settle a dispute by other means, any party to the Convention may require that the dispute be brought before a Conciliation Commission. The other party is not entitled to block this procedure. The recommendations of the Conciliation Commission are not binding. The Convention also introduced an arbitration procedure. This is optional, however, and cannot be brought into play without the agreement of both parties to the dispute. In contrast to the recommendations of the Conciliation Commission, the decision of the Arbitration Tribunal is binding.⁷⁷

In establishing the Convention, 'mindful of the all-pervading dogma of sovereignty, [the States] strove to avoid settlements *imposed* by third parties.'⁷⁸ The effectiveness of the instruments for the settlement of disputes largely depends upon their acceptance by the states. Therefore, while the Convention is far reaching in what it provides in theory and this in itself is meaningful as a sign of what many states are prepared to accept, its real importance will only come if it is implemented. This is predicated upon the political will of the states concerned. That 34 of the 55 participating states have signed and 22 ratified/acceded to it is not a bad record, but some of the main OSCE actors have not yet adhered (the United States, the United Kingdom and Turkey) and do not intend to do so, thereby undermining the possibility of it being utilised.⁷⁹ Jacobi considers that the possibility of the Court being used is not high since non-participation in the Convention by certain states as well as participation in other legal instruments by a majority of states, will likely prove obstacles to its use.⁸⁰

A Directed Conciliation Procedure was introduced by the United States as a counter proposal to the draft Convention. It aims to strengthen the possibilities for political settlement of disputes within the OSCE, without resort to the Convention, empowering the Permanent Council to direct disputing states to seek conciliation to assist them in resolving a dispute if they are unable to resolve it

76) Lohmann, *op.cit.*, pp. 346-7.

77) *OSCE Handbook 1996*, pp. 49-50.

78) Lucius Cafilisch, 'The OSCE Court of Conciliation and Arbitration: Some Facts and Issues', pp. 381-408 in Bothe, Ranzitti and Rosas, *op.cit.*, p. 396.

79) Jacobi, *op.cit.*, p. 441.

80) *ibid.*, pp. 441-544.

themselves 'within a reasonable period of time'. Decisions may be taken, if necessary, without the consent of the two parties to the dispute in question (the so-called consensus-minus-two rule).⁸¹

Conditions for Success or Failure

The instruments and mechanisms for peaceful settlement of disputes are formalised and complicated and as a result have seldom been used, or in the case of the Valletta Mechanism not at all. Likewise the Conciliation Commission and the OSCE Court of Conciliation and Arbitration have remained inactive. This would suggest that the mechanisms and instruments have a limited utility. In practical terms even when the mechanisms were utilised their effectiveness was limited by the narrowness of their ambition and the inherent caution of states.

The peaceful settlement of dispute mechanisms are classic examples of how the compromise nature of decision-making can so water-down a decision as to render it impotent through multiple escape clauses. From a procedural perspective the exception clause in the Valletta Mechanism is perhaps most significant since it excludes the sources of some of the major conflicts that have bedeviled the OSCE region in the past decade. One commentator, however, sees in this a degree of realism: 'The history of the peaceful settlement of disputes shows that a dispute cannot be settled peacefully against the will of one of the parties even if the legal question forming the basis of the dispute may be decided.'⁸² It is argued that the mechanism not only respects political realities but the guarantee to exclude certain disputes from the dispute settlement mechanism procedure can only enhance the preparedness of states to apply the method. To date this has not proved the case.

More fundamentally the Convention, the Valletta Mechanism and the Conciliation Commission procedure have been reproached for being too traditional given that new approaches are required to address many of the current conflicts in the OSCE region. These conflicts increasingly arise out of intra-state and not inter-state disputes, over claims of minorities to seek protection against repression or to seek autonomy/secession. 'The question is whether the OSCE dispute settlement procedures will be able to deal with (these) "modern" conflicts [protection of the environment and natural resources, the economic transi-

81) A. Bloed, ed., 1993, op.cit., p. 34, and Lohmann, op.cit., p. 346.

82) Karin Oellers-Frahm, 'The Mandatory Component in the CSCE Dispute Settlement System', pp. 195-211 in *International Courts for the Twenty-First Century*, edited by Mark W. Janis, 1992, pp. 200-201.

tion and trans-border economic relations] because a number of them do not necessarily involve States as parties to a conflict ... and/or may arise within the territory of a participating State.⁸³ In procedural terms non-state parties have no capacity before OSCE dispute settlement mechanisms.

Another limitation is that the instruments are of a static nature, which to a certain extent goes against the grain of the OSCE process to date. The flexibility of the OSCE process has been one of its main tools for promoting peaceful change. Conflict prevention in the OSCE is less oriented towards straightforward answers and legally binding commitments and more towards questions of process, confidence and cooperation. It is characterised by a political-diplomatic approach rather than a legalistic one (although this does not imply that standards do not matter in problem-solving). This is partly due to the types of conflicts that have arisen, particularly relating to ethnic identity, but also social, political and economic problems arising out of the process of democratization which are less amenable to comprehensive legally binding agreements. It is also a factor of inter-state relations in that with the development of an interventionist capacity on the part of the OSCE states are less inclined to subject themselves to the conclusive arbitration of third parties. The instruments of peaceful settlement of disputes represent a different element in the political process, since they 'do not share the cooperative, informal and flexible character of the CSCE/OSCE due to the confrontational character that is inherent in any such formalized procedure.'⁸⁴ The fact that influential states have not acceded to the Convention also limits the scope of the Court. As one West European diplomat commented, 'Arbitration is dangerous – if you engage in it you are committed to the outcome. But the parties to a conflict or dispute have interests and if they submit to arbitration they realise that they might lose.'⁸⁵

The lack of willingness on the part of states to activate the inter-state supervisory mechanisms or to submit to third-party jurisdiction is reflective of the inherent caution of states. States tend to evaluate such procedures in terms of the risks they entail should they be used against their own problems, rather than a means of expanding the resources at the disposal of the international community to resolve a problem. Primarily they are concerned that the involvement of a third party could diminish their control over the process. This is particularly reflected in the attitude of Western states that have demonstrated a clear unwillingness to apply international supervisory mechanisms in their mutual relationships. This reluctance is explained by referring to the existence of other human

83) Jacobi, *op.cit.*, p. 448.

84) *ibid.*, p. 453.

85) Author's interview, Vienna, February 1998.

rights mechanisms (such as the mechanism of the European Convention on Human Rights) and their better suitability in the resolution of human rights problems. But as Pentikainen comments, this argument 'is seriously undermined by the fact that the Western states are clearly not prepared to activate even these other mechanisms in their mutual relationships.'⁸⁶

It is argued that the non-utilisation of these mechanisms undermines their utility and credibility. Zaagman comments that 'an instrument which is not used loses its power.'⁸⁷ That the emergency mechanisms and the instruments for the peaceful settlement of disputes appear unlikely to be used in the foreseeable future can in part be attributed to the changed nature of the OSCE since they were formulated. It has transformed into a permanently functioning apparatus and therefore the limited use of specific instruments does not necessarily mean that the issues are not addressed. This is particularly the case with regard to the Berlin Mechanism and the Vienna Military Mechanism, which have been superseded by the manner in which the political bodies, and especially the Permanent Council, are increasingly preoccupied with dispute settlement and conflict prevention from a political perspective. Furthermore, by helping to ensure the implementation of Human Dimension commitments before a conflict escalates, primarily through the work of the ODIHR but also the Missions, the High Commissioner on National Minorities and the dialogue in the Permanent Council, the OSCE may have to resort to its crisis procedures far less often. The Human Dimension Mechanism did not live up to its potential to be widely used as an instrument of early warning and conflict prevention, but the Human Dimension itself has, in that monitoring compliance is a central means of assessing the extent to which states are prepared to take on board commitments, and, if not assessing the possible consequences.

The effectiveness of the human dimension rests on the notion that political pressure can be applied to states by other participating states to encourage them to abide by their obligations. The issue of pressure within the OSCE context, related to the use of carrots and sticks, has considerable limits due to the cooperative ethos which is one of the instrumental characteristics of the OSCE. The peaceful settlement of dispute instruments, particularly the advent of the Convention and legally binding obligations, could be regarded as one way to overcome the limitations of persuasion, but politically speaking this is something that states appear loathe to take on board.

86) Pentikainen, op.cit., p. 102, note 62.

87) Rob Zaagman, ed., 'Focus on the Future: A Contribution to Discussions on a new OSCE,' pp. 40-51 in *Helsinki Monitor*, Vol. 6, 1995, No. 3, p. 47.

Although the Moscow Mechanism was not conceived as a confrontational device but as a means of drawing another country's attention to an apparent lack of implementation of human dimension commitments (and only if a country's response to the activation of the Mechanism in its bilateral, confidential phase was judged unsatisfactory would recourse be made to the multilateral elements of the Mechanism⁸⁸), it began to be perceived as a confrontational, unfriendly act. The Vienna Mechanism was certainly perceived as a weapon in the political confrontation between the Cold War blocs. The perception of the mechanisms as unfriendly or even hostile acts has damaged their application.⁸⁹

Nevertheless, the principle that commitments accepted in the area of the human dimension constitute a direct and rightful concern of all participating states and are not exclusively an internal affair of the state concerned, constitutes a milestone for the OSCE. It opens the way to a right of oversight for the community of OSCE states in questions relating to the practical application of human dimension commitments. A participating state can not appeal to its sovereignty in order to reject questions, complaints and recommendations of other OSCE states concerning its fulfillment of these commitments as an inadmissible interference in its internal affairs. However, the practical exercise of this right has turned out to be extremely difficult. So far the Moscow Mechanism has rarely been applied. All elements of compulsion – for example the sending of an expert mission against the will of the receiving state – are extremely problematic in a security organisation which relies so heavily on cooperation. Participating states prefer to achieve practical implementation of human dimension commitments on the basis of cooperation. Most important in this regard have been implementation meetings and assistance with implementation as well as dialogue concerning the observance of OSCE commitments, which increasingly takes place under the auspices of the political bodies.

The fact that the mechanisms and instruments have not proved particularly effective in practice should not diminish the importance of the issues they address. The instruments do perform a cautionary function in the sense that their existence may encourage states to settle their disputes through a political process rather than with reference to third party intervention via a more legalistic process. From a positive perspective it could be argued that the importance of these instruments is that a community of diverse states has been able to reach minimal

88) Thomas M. Buchsbaum, 'The Future of the Human Dimension of the CSCE' pp. 5-24 in *Helsinki Monitor*, Vol. 4, 1993, No. 2, pp. 16-17.

89) 'Seminar on Early Warning and Preventive Diplomacy', summary of Workshop B 'Review of Existing Early Warning Mechanisms', pp. 116-118 in, *Helsinki Monitor*, Vol. 5, 1994, No. 2, p. 117.

agreement. In this sense modest instruments have a confidence building effect. It has to be noted that the mandatory component of the instruments is solely the requirement of the formal involvement of a third party in the settlement of a dispute, the instrument itself has no power to render an obligatory judgement. Despite this 'soft' component states have nevertheless preferred to stick to political rather than juridical means to resolve disputes.⁹⁰ Political means are considered to be less confrontational and certainly less restrictive in that they do not involve the same binding force on states. Such concerns have led to the evolution of flexible third party mechanisms such as the High Commissioner and missions, the mandates of which are the product of mutual agreement.

90) Oellers-Frahm, op.cit.

4 The High Commissioner on National Minorities

The Institutional Relevance of the High Commissioner on National Minorities

The office of High Commissioner on National Minorities was created in 1992 with a remit to focus explicitly on conflicts relating to national minorities.⁹¹ This was a reflection of the experience since 1990 that ethnic conflicts, frequently rooted in conflictual perceptions of minority rights and their maintenance or violation, carry the danger of violent conflict and international escalation. In particular the experience of the violent dissolution of the former Yugoslavia was a stimulus to establish an early warning security instrument to focus on preventing such potential conflicts from escalating into violence.⁹²

The High Commissioner was established as ‘an instrument of conflict prevention at the earliest possible stage’ and as such is expressly an instrument

91) See *Bibliography on the OSCE High Commissioner on National Minorities: Documents, Speeches and Related Publications*, The Foundation on Inter-Ethnic Relations, March 1997, The Hague.

92) On the origins of the mandate see Rob Zaagman and Hannie Zaal, ‘The CSCE High Commissioner on National Minorities: Prehistory and Negotiations’ in Arie Bloed ed., *The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath*, Dordrecht, 1994, pp. 95-111.

linking security and the respect of human rights as a root cause of conflict. The instrument was designed to facilitate the role of the OSCE in managing change resulting from transition in Central and Eastern Europe – essentially to address the relationship between minorities and majorities as part of the political process in the broadest sense.⁹³ Given the OSCE’s comprehensive approach to security, this has meant that although the High Commissioner is primarily a security instrument and not an instrument of the human dimension, the importance of the latter can not be detached.

The establishment of a security instrument devoted to potential conflicts involving non-state entities is a significant achievement of the OSCE’s approach to conflict prevention. Nevertheless, the general framework of the High Commissioner’s activity is determined by the prevention of inter-state disputes, as indicated by the direction that the High Commissioner is to address ‘tensions involving national minority issues which ... have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between the participating States.’⁹⁴

In this context the High Commissioner is a very flexible instrument of conflict prevention. Structurally it is a highly autonomous body. The primary contact point within the OSCE for the High Commissioner, as indicated in the mandate, is the Chairman-in-Office. This relationship is crucial in regard to the duties of consultation and reporting concerning the High Commissioner’s activities. The High Commissioner is required to consult with the Chairman-in-Office prior to visiting a participating state and to submit confidential reports following a visit and on termination of his involvement.⁹⁵ Furthermore, consultations under the auspices of the Chairman-in-Office are a means by which support can be gathered for the High Commissioner’s activities.

Contact with the political bodies of the OSCE occurs through invitations to address the annual meeting of the Ministerial Council and periodically the weekly meetings of the Permanent Council at the initiative of the Chairman-in-Office. The periodic reports to the Permanent Council allow for issues to be addressed directly to this key political body. Furthermore, the visits furnish the High Commissioner with the opportunity to consult delegations, thereby joining the process of consultations and lobbying that lubricates the OSCE. Informal consulta-

93) John Packer, ‘Conflict Prevention by the OAU: The Relevance of the OSCE High Commissioner on National Minorities’, pp. 279-291, in *The African Yearbook on International Law*, Vol. 4, 1996, p. 285.

94) CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, Chapter II, paragraph 3 in A. Bloed, 1993, op.cit., pp. 715-721.

95) Chapter II, paragraphs 17-20, ibid.

tions have in fact allowed the avoidance of formal petitions to the Permanent Council as the mandate originally proposed. Another structural relationship of the utmost importance is that with the missions of long duration, which will be considered below.

According to the mandate the High Commissioner should be ‘an eminent international personality with long-standing relevant experience from whom an impartial performance of the function may be expected’.⁹⁶ This places an onus on the participating states to appoint a candidate with appropriate skills and background. Max van der Stoep, the former Dutch Foreign Minister, was appointed High Commissioner in December 1992 and his office began operating in January 1993. Initially appointed for 3 years, his mandate has been renewed for a second term until the end of 1998, with a subsequent one year extension until the end of 1999. The position required a mediator able to act on the basis of substantial knowledge while at the same time being perceived as an impartial interlocutor by parties involved in a dispute. The mandate calls for an independent, unbiased individual of high stature, capable of exercising discretionary judgement and to maintain the confidential nature of the office. A number of diplomatic interlocutors in Vienna perceive van der Stoep’s intuition, gained over a political career spanning some fifty years, as critical in navigating the pitfalls presented by potential conflict situations and balancing the need for quiet or more assertive and public diplomacy.

The Mandate of the High Commissioner on National Minorities

The mandate provides the framework for the operation of the High Commissioner. It reflects an attempt to initiate a new approach to addressing conflicts through intervention, containment and if possible resolution at the stage of tension rather than outright conflict. Its underlying premises is that an external third-party can play a preventive role, that this can come at the third-party’s own discretion, that the third-party can have far-reaching competencies as an independent non-state entity and that it has a specific focus as an early warning mechanism dealing with the area of national minorities in the context of comprehensive security.⁹⁷ The mandate is based on the assumption that the protection of minorities enhances stability.

96) Chapter II, paragraph 8, *ibid.*

97) For analysis of the mandate see Rob Zaagman, ‘The OSCE High Commissioner on National Minorities: An Analysis of the Mandate and the Institutional Context’, pp. 113-175 in A. Bloed, 1994, *op.cit.*

According to the mandate the High Commissioner 'will provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, 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 the CSO'.⁹⁸ The mandate indicates the means at the High Commissioner's disposal. These include the collection of information on national minorities from reliable sources; the assessment of the nature of tensions and their potential consequences; authorisation to visit participating states to obtain first-hand information, and 'where appropriate promote dialogue, confidence and cooperation between' parties.

The High Commissioner has a dual function involving both early mediation and early warning. The primary task is designed to contain and deescalate tensions (involving national minorities). The second function is to act as a 'trip-wire'. If the High Commissioner concludes that a situation is likely to escalate an 'early warning' may be issued, with the possibility of alerting the OSCE, via the Chairman-in-Office and the Permanent Council of tensions that could lead to conflict. The High Commissioner is also empowered to recommend that a special mandate be provided for further contact and consultations with the parties concerned with a view to finding possible solutions. In the mandate this is termed 'early action'.

Important restrictions and exclusions are contained in the mandate. The High Commissioner is excluded from considering national minority situations involving organised acts of terrorism and as a corollary should not communicate with persons or organisations practising or publicly condoning terrorism or violence. The inclusion of a terrorism clause, at the insistence of Turkey and the UK, was viewed by some observers with considerable concern in that it 'could tie the hands of the High Commissioner permitting him/her to deal only with less important simmering conflicts, thereby not adequately fulfilling the "early warning" function, and thus casting doubt on the credibility of the new institutions and on the CSCE as a whole'.⁹⁹ One observer presents a case for the High Commissioner's involvement in situations involving such acts, partly because other OSCE instruments are not directly engaged, partly because such acts often occur in the context of situations which would otherwise be within the remit of

98) CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, Chapter II, pp. 715-721, in A. Bloed, *op.cit.*, 1993, Chapter II, paragraph 3.

99) Alexis Heraclides, 'The CSCE and Minorities: The Negotiations between the Commitments, 1972-1992', pp. 5-18, in *Helsinki Monitor*. Vol. 3, 1992, No. 3, p. 17.

the High Commissioner's operation and also because the 'characteristic low-key, confidential and impartial character of the High Commissioner's preventive diplomacy would favour its involvement over other possible types of OSCE involvement in this kind of situation.'¹⁰⁰ However, engagements in such situations would require an approach that many states would be unlikely to accept.

The High Commissioner is also prohibited from considering violations of OSCE commitments with regard to an individual person belonging to a national minority. It is important to see the High Commissioner as being 'on' and not 'for' national minorities – the High Commissioner is neither an ombudsman dealing with specific cases, nor a rapporteur on violations of OSCE commitments, nor an advocate for minorities, but an interlocutor mediating over disputes concerning national minorities. In this capacity violations are relevant in that they may indicate potential instability but the High Commissioner's perspective is that of a security instrument and not a human dimension one.¹⁰¹

Two other restrictions, which have not proved of consequence in the operation of the mandate to date, are the following. Firstly, the High Commissioner is prohibited from addressing a national minority issue which has already been brought to the attention of the CSO unless he requests and is granted a specific mandate to do so. No such mandate has been requested to date. Secondly, in the event that the High Commissioner requests advice from experts the mandate restricts his choice to those on the ODIHR list under the Moscow Mechanism. The High Commissioner has utilised experts from this list on occasion and while this provision formally limits the ability of the High Commissioner to extend his reach through the use of expert delegations, in practice means have been found to engage expert analysis and insight without having to go through any bureaucratic procedures.

Perhaps the key restriction for the activity of the High Commissioner as a security instrument concerned with preventing conflicts is contained in the title, namely focusing on 'national minorities'. The OSCE assumes a broad interpretation of national minorities in its documents, including ethnic, cultural, linguis-

100) Maria Amor Martin Estebanez, 'The High Commissioner on National Minorities: Development of the Mandate' pp. 123-166 in Bothe, Ronzitti and Rosas, 1997, op.cit., p. 130.

101) An example of the High Commissioner addressing a situation in which concern over individual cases could have wider ramifications is that of the Greek minority in Albania in relation to the arrest and subsequent trial of five members of the Greek minority association Omonia. *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention: An Introduction*, The Foundation on Inter-Ethnic Relations, The Hague, June 1997, p. 45.

tic and religious elements,¹⁰² nevertheless, the High Commissioner is not mandated to engage in potential conflict situations that are not related to national minority issues. This is not a restriction in the mandate, which is designed to address those situations concerning national minorities, but it has allowed a lacunae in the operation of the OSCE's conflict prevention regime, which will be examined below in regard to the conflicts in Albania and Chechnya.

The above outline highlights two key aspects of the High Commissioner's third-party involvement. Firstly, the involvement is designed to be at the earliest possible stage; and secondly, the involvement is at the discretion of the High Commissioner, without the need for approval from the political bodies of the OSCE. A wide margin is provided for the High Commissioner to determine the areas, nature and timing of engagement. Critically, the High Commissioner does not require the prior consent of the state in question in order to pursue the mandate, since the consent of all participating states for the High Commissioner to enjoy free movement within states and unrestricted contacts (apart from specified exclusions), is provided by the existence of the mandate itself, which was approved by consensus as part of the Helsinki 1992 Decisions.

Issuing a formal early warning is the most direct step the High Commissioner can take if he considers a situation to threaten imminent escalation. Therefore what constitutes an early warning is critical. The mandate does not define criteria for when an early warning should be issued. The High Commissioner is empowered to issue a 'formal early warning' if he concludes that a direct risk of potential conflict exists. The assessment of this risk is left to the High Commissioner's judgement as to whether the factors impinge upon issues of peace, stability or relations between participating states and if so whether they require the attention of the political bodies of the OSCE.¹⁰³ The mandate requires that once a formal early warning is issued the High Commissioner's further involvement is dependent upon the decision of the political bodies. 'The transfer of a pre-conflict situation to the OSCE's political bodies and procedures through the provision of an "early warning" would entail the recognition that the High Commissioner has reached the limit of its ability to deal with this pre-conflict situation using the means at its disposal.'¹⁰⁴

In more than five years of operation no early warning has been issued. Van der Stoep has intimated that issuing an early warning could in fact exacerbate a fragile situation, although ultimately this is not a reason for not utilising the

102) Martin Estebanez, *op.cit.*, p. 130 cites the 1989 Vienna Concluding Document, Cooperation in Humanitarian and Other Fields, paragraphs 59 and 68.

103) Helsinki Decisions 1992, Chapter II, paragraph 3.

104) Martin Estebanez, *op.cit.*, pp. 132-133.

mandate to its full if the need existed. Rather, the suggestion is that the competencies provided in the mandate have enabled the High Commissioner to engage sufficiently early and with sufficient leeway, providing scope for action in advance of an 'early warning'. Indeed there seems to be some overlap. The process of early warning not only encompasses obtaining information from parties directly involved, but also empowers the High Commissioner, 'where appropriate [to] promote dialogue, confidence and co-operation between' the parties¹⁰⁵, which is manifestly a form of action. In this light, although formal 'early action', as defined by paragraph 16 of the mandate,¹⁰⁶ has not occurred, early action has been an integral part of the High Commissioner's activities, since the High Commissioner has actively promoted a range of activities designed to facilitate dialogue and problem solving between parties. Furthermore, the nature of the High Commissioner's regular reports to the Chairman-in-Office, in writing following each visit to a country and periodic oral presentations to the Permanent Council, means that there is an ongoing assessment of specific situations designed to keep the political bodies of the OSCE apprised of situations which could at a later date demand their more specific attention. This could be classified as an informal early warning process.

That the High Commissioner has not issued a formal early warning might be an adequate institutional assessment of effectiveness, but it does not address two key issues of effectiveness with regard to the operation of the instrument. The first is the operational effectiveness of the High Commissioner in preventing relations between parties from deteriorating and concomitantly contributing to an improvement in these relations. This issue will be examined in the section below dealing with the actual practice of the High Commissioner. Secondly, the construction of the mandate poses a question as to whether or not there have been conflict situations that have fallen through the net. The issue is whether situations such as those which arose in Albania or Chechnya were outside the remit of the High Commissioner, and if so which other instruments could or should have been utilised in an early warning and conflict prevention capacity.

105) Helsinki Decisions 1992, Chapter II, paragraph 12.

106) 'The High Commissioner may recommend that he/she be authorized to enter into further contact and closer consultations with the parties concerned with a view to possible solutions, according to a mandate to be decided by the CSO.' Helsinki Decisions 1992, Chapter II, paragraph 16.

The Theory and Practice of the High Commissioner's Interventions

When Does an Intervention take Place and Why?

The mandate provides minimal guidance as to when the High Commissioner should become engaged in a situation, when an early warning should be issued or how and when the High Commissioner should 'promote dialogue, confidence and co-operation'¹⁰⁷ among parties. The High Commissioner is therefore given considerable leeway in deciding which situations he will address and at what stage it might be appropriate to seek assistance from the political bodies of the OSCE or particular participating states. As a result van der Stoep has evolved his own style and approach. This has involved intensive and extensive consultations (in the countries concerned and with other relevant experts and political actors), fact-finding, the promotion of dialogue, producing recommendations for the governments concerned, and routinely informing the OSCE political bodies of his activities.

The fact that the High Commissioner can operate independently, but with the backing of the political bodies, is of utmost importance to his operation as an effective instrument of conflict prevention. The relationship of independence and accountability is important in allowing the High Commissioner to take a number of steps without consensus being needed. Thereby the timing and method of the High Commissioner's involvement in any given situation is at his discretion and does not need approval from the political organs. Nevertheless, this latitude of activity can not negate the need to act with the political support of the participating states, and it is to these states that the High Commissioner is accountable, initially through the Chairman-in-Office but also through the Permanent Council.

In addition to being independent in his relations to the political bodies and the states, the High Commissioner is independent of the minority populations in the situations to which he attends. Although the High Commissioner is an instrument established by a body of states, the High Commissioner is not the instrument of these states, but rather is mandated by the states to act as an impartial third-party facilitating enhanced relations between governments and minorities. Despite the independence from the states and political bodies of the OSCE, from the perspective of non-state entities and often the minorities with which the High Commissioner intercedes, this impartiality is conditioned by the fact that the instrument was created by an inter-governmental process. Therefore, however independent or impartial the High Commissioner might be, there is a perceived baggage, particularly with regard to the emphasis placed by the

107) Helsinki Document 1992: II, paragraph 12.

OSCE community on the issue of territorial integrity. Nevertheless, more than other instruments the High Commissioner is able to play a third-party facilitative role.

Confidentiality is stated as an operational priority for the High Commissioner in the mandate. The low-key operational approach has been designed to present a non-threatening image to interlocutors: 'Parties directly involved often feel they can be more cooperative and forthcoming if they know that the content of their discussions will not be revealed to the outside world.'¹⁰⁸ Furthermore, informal facilitated dialogue avoids conferring recognition and status on communal groups, and this can remove a constraint which states often place on dialogue with such groups. Consultation with the Chairman-in-Office is in strict confidence. Criticism has been levelled at the High Commissioner for not utilising public opprobrium as a means of exerting pressure on states, thereby limiting the OSCE's ability to persuade governments to change policies that cause tensions. However, such an approach would severely limit the High Commissioner's ability to engage parties in a productive cooperation.¹⁰⁹

These points and a reading of the mandate indicate that the answer to the key question, when does an intervention take place and why, lies very much in the realm of the discretion of the High Commissioner. The High Commissioner determines which situations he addresses based on his own judgement within the context that the High Commissioner is a security instrument mandated to address tensions that 'have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States'.

The High Commissioner's starting point has been an application of the OSCE notion of comprehensive security, creating an interdependent framework linking peace, security and justice. In this context the High Commissioner regularly employs existing human rights standards as a barometer, since many problems concerning national minorities involve non-respect of human rights, including the rights of persons belonging to national minorities. In particular the High Commissioner has seen a range of substantive issues as determining the potential for whether or not a situation could deteriorate, thus warranting his intervention. Issues which have frequently drawn the High Commissioner's attention and around which tensions can escalate can be divided into several categories, including the following: identity (including the status and use of language, of names and of symbols); citizenship (particularly the extent to which it has functioned as an inclusive or exclusive element in the provision of rights); political

108) *The Role of the High Commissioner in Conflict Prevention*: 1997, op.cit., p. 22.

109) Diane Chigas, 'Bridging the Gap between Theory and Practice: the CSCE High Commissioner on National Minorities', pp. 27-41 in *Helsinki Monitor*, Vol. 5, 1994, No. 3, pp. 35-36.

participation (especially the existence or otherwise of effective participation in decision-making and the ability of minorities to enjoy adequate say over the development of national policies in which they hold an interest and will be expected to conform); education (as a transmitter of identity, as well as a mode of socialisation, education has been a highly sensitive issue including control over its form and content, languages of tuition, curricula and private versus public educational facilities); and access to resources (including resources in educational and cultural spheres as well as employment within public service, access to governmental contracts and an equitable share of government financed investment and development projects).¹¹⁰

In this light it is important to examine how the High Commissioner perceives the scope for his intervention. An important point is that although the mandate has created, first and foremost, an instrument for short-term conflict prevention, the High Commissioner can not overlook the long-term aspects of the situations he addresses if he wishes to be effective. This is essential if sustainable solutions are to be achieved. Drawing a distinction between short-term and long-term conflict prevention, van der Stoel himself has indicated that in the short-term the High Commissioner's role is to prevent acute escalation of tensions while seeking to set in motion a longer-term process of dialogue between governments and minorities that will address their on-going relationship and underlying causes of the tensions.¹¹¹

Furthermore, the High Commissioner has pointed to the importance of the human dimension in conflict prevention: 'Human dimension concerns are often a critical component of conflict prevention in the short term, although it is in particular from the longer-term perspective that the intimate relationship between conflict prevention and the human dimension becomes apparent. Violations of human dimension commitments lead to tensions, social conflicts and distrust. At times they may have cross-border consequences, such as involuntary

110) These categories are taken from John Packer, 'The OSCE High Commissioner on National Minorities', a contribution to the *Liber Amicorum* for Jacob Moller, to be published by Kluwer Law International, The Hague, 1999.

111) Intervention by Max van der Stoel at the Human Dimension Implementation Meeting, Warsaw, September 28-29, 1993. Cited by Chigas in A. Chayes and A. Handler Chayes eds., *Preventing Conflict in the Post-Communist World: Mobilizing International and Regional Organizations*, 1996, Washington, D.C. p. 52.

migration. Especially if large groups, such as minorities are affected, the stability of States or even a region may be at risk.¹¹²

In accordance with the mandate the majority of the High Commissioner's interventions have occurred when the High Commissioner has judged that action is required and opportune. That is to say if combinations of the criteria indicated above suggest that there is a potential threat to peace and stability and if the High Commissioner feels that he is in a position to make a contribution to addressing the challenges, then he will seek to become involved. This is often intuitive rather than systematic. Additionally, the High Commissioner has become involved in situations at the request of the Chairman-in-Office (his first visit to Central Asia) and at the request of Heads of State (at the Lisbon summit van der Stoel received an invitation from President Shevardnadze to visit Georgia).

How Does the Intervention Occur?

The High Commissioner seeks to facilitate the conditions in which the parties themselves can address the root causes and the real or perceived conflicting values and interests that generate conflicts. To meet this objective the High Commissioner needs to operate on the basis of clear and concise information. The mandate indicates the sources of information about national minority issues that the High Commissioner should utilise as well as indicating both governmental and non-governmental interlocutors.

Fact finding in the High Commissioner's context encompasses a number of activities, not all outlined in the mandate. Field visits provide the High Commissioner and advisers opportunities to meet with governmental and non-governmental interlocutors as well as representatives of international organisations in situ. During field visits the High Commissioner meets with a range of officials from presidential apparatuses, governments and their bureaucracies, parliaments, political parties and non-governmental organisations. Field schedules often reflect the fact that there is a great heterogeneity both within the authorities and minority communities and that it is important to be aware of the subtleties of different positions within each so-called 'party'. Not only do visits provide first-hand information but they enable personal relations to develop with the major interested parties, thereby providing the foundation for trust and confidence. Even in those circumstances in which the High Commissioner's repeated visits or efforts to bring attention to specific issues, have led to some antagonism,

112) Max van der Stoel, 'The Role of the CSCE High Commissioner on National Minorities in CSCE Preventive Diplomacy', pp. 33-54 in *The Challenge of Preventive Diplomacy. The experience of the OSCE, the Swedish Ministry for Foreign Affairs*, 1994, Stockholm, p. 35.

parties are assured that the High Commissioner's attention is constant and not fleeting. This reflects the High Commissioner's attempt to facilitate sustainable solutions based on consent and that 'cooperative implementation of commitments and recommendations will in the end be more fruitful than enforcement.'¹¹³

The mandate provides scope for experts to travel on behalf of the High Commissioner. Expert teams have visited Ukraine, Slovakia and Hungary on behalf of the High Commissioner, however the High Commissioner has not made extensive use of this tool.¹¹⁴ Instead, the advisers of the High Commissioner often travel to areas of interest, either to prepare visits by the High Commissioner or to continue dialogue with interlocutors in the absence of the High Commissioner. This is a more informal means of continuing an on the ground process of fact finding and while not provided for by the mandate such trips have been on the increase.

An additional form of fact finding that the High Commissioner has utilised has been to engage a local NGO in Kyrgyzstan to initiate an early warning reporting network. Beginning operation in 1996 the Kyrgyz Peace Research Centre provided regular reports on the situation in Southern Kyrgyzstan. In late 1997 it was decided to extend the report writing to include the conduct of a sociological survey on inter-ethnic attitudes in Southern Kyrgyzstan. The objective of the reports and the survey has been to provide clearer information about sensitive issues, initially for the High Commissioner but also to be shared with the authorities in Kyrgyzstan as a means of highlighting that there is a common perception of the issues to be addressed. In both cases the initiatives were discussed with representatives of the authorities in Kyrgyzstan in order that the exercise could have a bearing on policy development. In the wake of these projects a similar process has been initiated in Kazakhstan in collaboration with the Assembly of the Peoples of Kazakhstan.¹¹⁵

113) Max van der Stoep, Keynote Speech to the OSCE Seminar on Early Warning and Preventive Diplomacy, Warsaw, January 1994, p. 10.

114) A team of three minority rights experts made several visits to Hungary and Slovakia between September 1993 and May 1996. The High Commissioner used their reports to make specific recommendations. For more detail on the work of the team of experts see *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention*, op.cit., pp. 59-61 and pp. 72-73. The High Commissioner also advised the dispatch of a team of experts on constitutional and economic matters to Ukraine in 1994, p. 75.

115) In Kyrgyzstan the work was managed by the Office of the High Commissioner. The initiative in Kazakhstan, to get under way in 1998, will be conducted by the Foundation on Inter-Ethnic Relations in liaison with the Office of the High Commissioner.

Field work is complemented by extensive review of local and international media conducted by the High Commissioner and advisers. Additionally the High Commissioner has convened expert consultations, generally utilising the Foundation on Inter-Ethnic Relations, an NGO established in 1993 to support the activities of the High Commissioner. The consultations convene experts with the High Commissioner and his staff to provide a forum in which to explore issues he is addressing at any one time. Initially the consultations assumed a wide ranging approach, exploring how the High Commissioner could most effectively contain, deescalate, and resolve inter-ethnic tensions that might eventually threaten peace and stability in the region.¹¹⁶ Subsequently, consultations focused either on particular regions prior to the High Commissioner's visits there (for instance Central Asia and Ukraine in 1994), or more thematic issues such as explorations of the roles of kin-states; bilateral treaties with minority-related provisions for moderating ethnic tensions and improving bilateral relations; the education and linguistic rights of persons belonging to minorities; and governance and participation in relation to minorities.

On the basis of analysis the High Commissioner utilises a range of tools to act as an interlocutor between parties, promoting dialogue and confidence, as well as contributing to the development of policies and practices which address actual or potential tensions. These include issuing recommendations; the promotion of mechanisms to advance government-minority dialogue on underlying causes of tension; specific interventions as a mediator regarding issues of particular tensions, a kind of crisis prevention diplomacy; and attention to what have been termed tension reducing projects of a more developmental kind.¹¹⁷

It should be noted that in carrying out the mandate the activities of the High Commissioner touch on a number of aspects of the transition processes current in Central and Eastern Europe and the former Soviet Union. Engagement has been designed to be most directly concerned with the political and legislative processes of the states concerned. Martin Estebanez points out that in order to facilitate their integration into 'Western' structures, OSCE participating states have occasionally incorporated the texts of international standards directly into national legislation but that this does not necessarily provide for an adequate adaptation of policies and practices. As a result 'the High Commissioner has often been faced with the complex task of determining the scope and the content

116) See *Methods and Strategies in Conflict Prevention*, Conflict Management Group, Boston, 1994.

117) The term tension reducing projects is taken from ongoing research conducted by Olivier Brenninkmeijer, into the 'Lessons Learned from the Activities of the OSCE High Commissioner on National Minorities for the New Common and Comprehensive Security Model for Europe for the 21st Century'.

of international standards in practice, their applicability to minority tensions and the possibilities they provide for adequate solutions.¹¹⁸ Indeed, some states have approached the High Commissioner for an opinion on legislation regarding national minorities prior to its promulgation in order to ascertain whether or not the legislation conforms to international standards.¹¹⁹

Recommendations as a Tool for Intervention

Although not provided for in the reporting procedures outlined in the mandate, written recommendations have evolved into one of the main tools of the High Commissioner. This evolution has occurred on the basis of positive experience, not as the result of a specific strategy. Following his initial visits to states in 1993, the High Commissioner considered that it would be appropriate to convey his considerations of the situation to the states concerned in the form of a letter to the Minister of Foreign Affairs.¹²⁰ The practice has developed that following receipt of a response the High Commissioner shares the correspondence with the Permanent Council, and is available to discuss the recommendations at the Permanent Council. When the High Commissioner verbally presents his recommendations to the Permanent Council it has generally been the case that a representative of the country concerned can provide comments.

Several months generally elapse between the communication of the correspondence to the Chairman-in-Office and the Permanent Council and its publication. There is no formal period and this has been more a result of administrative practice than policy. An adviser to the High Commissioner has commented that this 'now established practice affords the parties adequate time without public scrutiny in which to act in good-faithThe system of delayed publication thus maintains the space necessary to conduct quiet diplomacy, but ultimately invites the public scrutiny which is some times necessary to keep parties to their words.'¹²¹ That the correspondence between the High Commissioner and states can and does become public has led to a criticism from some quarters that the diplomacy is not in fact as silent as is purported.¹²²

The recommendations have come to serve a variety of functions, with regard to the political bodies of the OSCE, individual states and governments, and minority actors. The circulation of the correspondence to the OSCE delegations, at the initiative of the Chairman-in-Office, allows the OSCE community

118) Martin Estebanez, op.cit., p. 145.

119) This has been the case with Kyrgyzstan and Georgia.

120) Author's interview with Max van der Stoep, The Hague 10 February 1998.

121) John Packer, 1996, op.cit., p. 288.

122) Author's interview with delegations in Vienna, February 1998.

to become acquainted with the High Commissioner's concerns regarding the security situation in those countries in which the High Commissioner is active and as such they can be regarded as an informal early warning mechanism. The High Commissioner also uses the recommendations as a way to lobby participating states for support in specific cases.

The recommendations tend to be precise and detailed in substantive terms rather than providing a general commentary. The High Commissioner uses them to spell out his concerns with regard to issues that are either the matter of existing tensions or could develop in that direction. Issues examined frequently include domestic legislation, language usage, education and citizenship, as well as policy approaches. In examining specific issues the High Commissioner generally suggests options for governments to consider. In this way they are designed to aid policy makers in developing feasible policy responses. They provide a framework within which governments and minorities can address general and specific legal, policy, institutional and process issues.

Recommendations also have a cautionary function. They can be used to make states aware that the ratification of international instruments is itself not an adequate means of ensuring compliance with the duties they establish.¹²³ They can serve to counsel governments about the attendant risks of following a particular path of action. For example, in Estonia and Latvia the High Commissioner emphasised the risk of treating non-citizens, predominantly ethnic Russians in both cases, as less than full members of a society. The High Commissioner emphasised that by excluding a large segment of society from access to political rights could alienate and radicalise a marginalised community and have negative repercussions for the security of the countries.¹²⁴ The High Commissioner also remarked that a reduction of tensions would require an equal 'contribution on the part of the non-Estonian population'.¹²⁵ This indicates a frequent tendency of the High Commissioner to impress upon minorities the responsibility they can have in exacerbating or deescalating tensions. In this light recommendations serve to encourage reflection by the parties as to whether their

123) See 'Letter from the OSCE High Commissioner to the Minister of Foreign Affairs of the Slovak Republic regarding the Law on State Language', dated 13 November 1995 REF/HC/11/95.

124) 'Recommendations by the CSCE High Commissioner on National Minorities upon his visits to Estonia, Latvia and Lithuania', CSCE Communication 124/93, April 23, 1993, and 'Recommendations by the CSCE High Commissioner on National Minorities about the Latvian Draft Citizenship Law', dated 10 December 1993, CSCE Communication 8/94.

125) 'Recommendations by the CSCE High Commissioner on National Minorities upon his visits to Estonia, Latvia and Lithuania', CSCE Communication 124, April 23, 1993, op.cit.

course of action is best served to meet their needs, but also those of the society in which all parties are members. Recommendations aim to lubricate this process, in themselves they might offer suggestions as to how to address specific bottlenecks, but they do not pretend to provide all-encompassing answers.

The recommendations are diplomatically phrased, not seeking to apportion blame but rather to make constructive contributions to and analyses of sensitive issues. The recommendations are non-binding and there exists no enforcement mechanism but they are accompanied by political pressure. The degree to which they are implemented is entirely at the discretion of the recipient state. As a result there has been no formal monitoring of their implementation, although informally the High Commissioner, missions and the political bodies of the OSCE do heed the extent to which recommendations influence policy. It could be argued that the non-binding quality of the recommendations weakens them because there is no obligation to act on them. However, were they to be binding the likelihood is that states would be less receptive to the High Commissioner and be less likely to engage in a process of dialogue, seeing them in a censorious light. The recommendations have weight in that they provide an informal means to convey insight and suggestions without committing the parties to detailed legal negotiations nor threatening them with sanctions in the event of non-compliance. Their perspicacity can be heeded by the governments and minorities concerned and utilised if deemed pertinent.

The High Commissioner has generally focused on the dynamics of a particular situation rather than following a legalistic approach, employing OSCE commitments and legal obligations in the field of human and minority rights as the basis for recommendations. Reference to international commitments serves to remind governments and minorities of the substance of international standards which pertain in regard to specific situations. Nevertheless, the recommendations are not in themselves commitments, but an added means of facilitating compliance and implementation. Extra credibility is provided by bedding the recommendations in the framework of international law. This means that the recommendations can not be dismissed as merely the whim of one observer. In general there has been a trend for the recommendations to be based increasingly on international legal norms and standards. The author's discussions with a number of delegates in Vienna indicate that this could be perceived as a result of the reluctance of some states to accept the content of the recommendations.

The political reality is that the High Commissioner on occasions needs to lobby in order to gain support for his recommendations. This is accomplished through frequent visits to Vienna to present his recommendations to the Permanent Council and to discuss matters with more influential delegations there. But the High Commissioner has also deemed it necessary on occasion to visit major

capitals in order to discuss his recommendations (and general views) with Foreign Ministries as a means to gain political backing for his actions.

The fact that the High Commissioner feels the need to gain support for his recommendations indicates that although they are intended as a cooperative instrument, they are not always perceived as such. The response of the Estonian government to recommendations concerning Estonia has been instructive. In March 1997 Foreign Minister Ilves sent a Ministry of Foreign Affairs analysis to the High Commissioner in which he presented an overview of Estonia's fulfillment of the High Commissioner's recommendations since 1993. The intention was to assert the extent to which Estonian law and practice conforms with international commitments and possibly to try to undermine the vigour with which the High Commissioner persistently addressed the issue of the citizenship of stateless children. This stimulated the High Commissioner through his office to undertake a review of his recommendations to Estonia. Further exchanges occurred when a team of the High Commissioner's advisers visited Tallinn in August 1997 in order to discuss the issue of the citizenship of stateless children. While it reflects the political sensitivities in the relationship between the High Commissioner and the Estonian government, the detailed exchange it produced was a means of ensuring a mutually comprehensive understanding of the issues and according to an Estonian diplomat was a good means of developing confidence.¹²⁶

Monitoring the degree to which recommendations are implemented, or whether they have an impact upon either government policy vis-a-vis minorities or the way in which minorities seek to attain their goals, has been sensitive. For the recommendations to be effective there needs to be follow up, but formal monitoring of a non-binding third-party contribution could be seen as an attempt to scrutinise or threaten states. The High Commissioner himself generally follows up each set of recommendations with subsequent visits and or correspondence if it is deemed politically appropriate. Added assistance is provided in those countries where missions are located since the missions are able to track the response of governments and in the cases that recommendations concern specific legislation they can follow it through committee stages and parliament. This enables them to inform the High Commissioner and the Permanent Council of the extent to which questions at issue are being addressed. A number of delegations in Vienna indicated in interviews with the author that they request their embassies in certain countries to attend to the degree with which recommendations are complied, thereby the recommendations can serve to stimulate a broader, although generally informal, political pressure.

126) Author's interview conducted in Vienna February 1998.

The recommendations are the product of dialogue with the parties. Dialogue serves to sensitise interlocutors to the needs of the other parties and to what support they might expect from the international community. Frequent visits to a country, occasional recommendations and dialogue with the interlocutors serve to have a cumulative impact. Since recommendations become a public tool the High Commissioner needs to judge when it is most appropriate to wield them. Not every visit results in the drafting of a recommendation, but in the recommendations the High Commissioner is in a position to put difficult issues on the table which one or other party might prefer to avoid, but which will have to be addressed at some point. Thus parties are not pressured into hasty responses, but have less recourse to brush an issue under the carpet.

Recommendations have made specific contributions to revisions of national legislation and the establishment of consultation mechanisms between minorities and majorities. In Estonia, for example, expressions of concern and recommendations contributed on three occasions to revisions of provocative laws which had already been passed by parliament. On these occasions international assistance was instrumental in refocusing debate in order to stave off potentially antagonistic measures. Furthermore, the involvement of the High Commissioner assisted in identifying appropriate face saving compromises as well as in an informal way acting as a guarantor of the good will of the parties.¹²⁷ The contribution of the High Commissioner must be seen in conjunction with that of the mission of long duration and other IGOs as well as an evolution in the behaviour of the parties – in part influenced by the activities of third parties, but also by broader geo-political and economic circumstances. Paramount among these being the issues of EU and NATO membership.

Recommendations have looked at the institutionalisation of dialogue through the establishment of round tables, ombudsmen, minority rights offices and at the way in which governments can furnish themselves and minorities with a better understanding of inter-ethnic relations through more effective research and analysis.

In addition to the body of recommendations, which have become a practical commentary on the way in which international commitments relate to the implementation of policy, van der Stoep has commissioned recommendations to provide practical guidelines on specific issues. From 1995 to 1997 he directed the Foundation on Inter-Ethnic Relations to convene expert consultations examining first the education rights of national minorities and subsequently the lin-

127) Hanne-Margret Birkenbach, *Preventive Diplomacy Through Fact-Finding: How international organisations review the conflict over citizenship in Estonia and Latvia*, Lit Verlag, Hamburg, 1997, pp. 44-46.

guistic rights of national minorities. In both cases the objective was to develop policy guidelines to which the High Commissioner could refer when addressing these often sensitive issues. The guidelines were not intended to be new standards, rather they are expert interpretations of existing standards which the High Commissioner can present to interlocutors (both governmental and the representatives of minority organisations) in order to facilitate the development of appropriate policies.¹²⁸

The Promotion of Mechanisms to Advance Government-minority Dialogue

The mandate explicitly assigns the promotion of dialogue between parties to the High Commissioner. This has taken different forms: the promotion of dialogue as a process to enhance mutual understanding; the promotion of mechanisms which advance dialogue in a more institutional way; and facilitating dialogue with regard to specific contentious issues.

The High Commissioner's frequent visits to a country establish an ongoing dialogue with relevant interlocutors. These focus on dialogue and information gathering 'as a means of establishing a safe space to engage the parties in an effort to deescalate tensions.'¹²⁹ From this basis dialogue between the parties can develop. The nature of the situations in which the High Commissioner is engaged is such that there is rarely a complete absence of communication between parties, but there is often an absence of constructive dialogue.

The lack of dialogue between governmental authorities and minority representatives has been identified by the High Commissioner as a factor contributing to potential conflict. Nascent democracies in central and eastern Europe have been seen by many as the rule of the majority, implying the exclusion of minorities. Dialogue mechanisms that attempt to build bridges and prevent prejudicial and often inaccurate perceptions from dominating public and policy discourses can be of great benefit in establishing democratic processes. As such the High Commissioner has encouraged the establishment of round tables, ombudsmen (in Lithuania) or minority rights offices to hear individual complaints (a National Commissioner on Ethnic and Language Questions in Estonia and Latvia,

128) *The Hague Recommendations Regarding the Education Rights of National Minorities* and *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* were published by the Foundation on Inter-Ethnic Relations in October 1996 and February 1998 respectively. See *International Journal on Minority and Group Rights*, Vol. 4, No. 2, 1996/97, for a Special Issue on the Education Rights of National Minorities in which there are a number of papers concerning the origin, development and substance of The Hague Recommendations.

129) Diane Chigas, 'Bridging the Gap Between Theory and Practice: The CSCE High Commissioner on National Minorities pp. 27-41, in *Helsinki Monitor*, Vol. 5, 1994, No. 3, p. 29.

and a Special Office for Minority Questions in Albania). Some processes have assumed structured formats leading to the convening of councils or assemblies in Estonia, Kazakhstan, Kyrgyzstan, Latvia or Romania. The High Commissioner has provided support to existing or nascent institutional dialogue mechanisms through the Foundation on Inter-Ethnic Relations. Seminars have been organised to bring together governmental and non-governmental participants in such dialogue processes to provide an environment in which experiences can be exchanged, seeking to enhance the policy relevance of the processes and the skills and resources available to participants. Some meetings have been for representatives from several countries at once and others on a country specific basis.¹³⁰

These mechanisms have stuttered on their way to providing a procedural confidence and to date have not in themselves inspired a sense that the states are promoting dialogue as a top priority. In some instances mechanisms have been used as window dressing, providing a token excuse for not making other responses to minority-related problems. In other cases the root cause of the problems are more related to an absence of state-society dialogue and national minorities find themselves as one set of communities among a series of excluded communities. The High Commissioner has attempted to stimulate processes of dialogue whilst recognising that success is conditional on the political will of the government. The High Commissioner has commented that 'dialogue itself must not become a surrogate for action, indeed empty dialogue structures can become a starting point for alienation on the part of groups that feel marginalised. Therefore, dialogue as a component of conflict prevention should have real content, and it can also function to identify problems and initiate means to solve them.'¹³¹

More ad hoc dialogue processes have involved round tables addressing specific issues. Such round tables have been akin to problem-solving workshops structured to allow a free flowing dialogue around a series of pressing issues, generally under the chairmanship of the High Commissioner. Round tables of this sort have addressed situations in Croatia, Estonia, Kazakhstan, Macedonia, Ukraine and with regard to the situation of Meskhetian Turks in Georgia and the Russian Federation.¹³² Workshops have aimed at enhancing opportunities for

130) See the annual reports of the Foundation on Inter-Ethnic Relations for 1994 and 1995. Meetings in Prague (1994) and Tallinn (1995) brought together participants from several countries.

131) Speech by the High Commissioner to the Tenth Annual Conference of the International Association for Conflict Management, Gustave-Stresemann-Institut e.V., Bonn (Bad Godesberg), 16 June 1997.

132) For introductory comments on such meetings see the relevant country sections in *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention*, op.cit.

communication between parties, removed from the glare of the media or their constituencies at home. The workshops have sought to move from the basis of mutual suspicion by overcoming reciprocal infringements to produce practical proposals and recommendations that allow the parties to see ways of satisfying their basic needs without infringing those of the other party/ies. This is very much a process oriented approach and requires a preparedness to 'keep going back' on the part of the third party, rather than expecting one-off solutions. The High Commissioner's workshops in this sense have been an innovative adaptation of different types of second-track problem-solving approaches addressing factors critical to identity, security and participation. Pioneered by academics like Burton and Kelman¹³³ the second-track approach has traditionally worked with 'influentials', individuals close to but not directly engaged in decision-making processes, with the objective of influencing first-track negotiation processes. Van der Stoel has straddled the tracks by bringing together high level political and governmental representatives, but maintaining an informal facilitative approach. In this way van der Stoel has attempted to use his authority as a leverage to bring government officials, parliamentarians and minority leaders together in order to facilitate discussion. In addition the High Commissioner has had the leverage of being a representative of a political community to which the state parties are affiliated. This role brings a degree of authority to the proceedings, but in itself it bestows no official status to any agreements that are reached. The critical aspect of such workshops has been the High Commissioner's ability to instill confidence in the parties that they have something to gain by participating, even if for the state representatives this might be a sense that non-participation could lead the situation beyond the 'soft' leverage of the High Commissioner and towards the more political leverage of other bodies within the OSCE. On the part of the minorities, participation in such processes has offered an opportunity to voice positions and interests in anticipation that the participation of the High Commissioner will give more weight to the proceedings, which will thereby influence government responses more directly.

Crisis Prevention Diplomacy

The High Commissioner has noted that there is a need 'to enable societies to develop the means to address conflicts in a timely fashion before they escalate into violence. This requires a long-term perspective that includes notions of

133) Norbert Ropers and Peter Schlotter, 'The CSCE: Multilateral Conflict Management in a Transforming World Order: Future Perspectives and New Impulses for Regional Peace Strategies', *Interdependence*, 1993, No. 14, Foundation Development and Peace, Bonn, and the Institute for Development and Peace, Duisburg, p. 31.

social justice. Nevertheless, while the long-term perspective governs the broader strategy of my engagement, there are frequently immediate needs that have to be addressed.¹³⁴ As part of this short-term approach to conflict prevention the High Commissioner has engaged in crisis prevention diplomacy. This can be termed an intervention at a point at which tensions are escalating and the High Commissioner is able to engage with the parties to address a specific cause of contention and thereby have a calming affect. It is generally a very short-term measure, and if not accompanied by other steps, both by the High Commissioner but also by other actors engaged in conflict prevention and conflict resolution initiatives, it is akin to using a band aid to stem the flow of blood after major surgery. The High Commissioner's intervention at such times is, as with his other engagements, a matter of his personal judgement.

For such interventions to occur the High Commissioner has to be able to travel to a region at short notice. Effective intervention is predicated on being familiar with the issues and already having access to the parties and a degree of trust. One such intervention that has been documented is with regard to Estonia in July 1993 when the High Commissioner intervened to facilitate the resolution of an impending crisis sparked by the call for a referenda on 'national-territorial autonomy' by the Russophone-dominated city councils in Narva and Sillamae.¹³⁵ The High Commissioner has also intervened in Albania, Macedonia and Ukraine in similar fashions – addressing very specific points of tension between governments and minorities that have produced a stand-off. Crisis prevention diplomacy of this kind is based upon the prior establishment of credibility by the High Commissioner with the appropriate interlocutors.

It is difficult to evaluate the specific contribution of such quiet diplomacy. The High Commissioner's visit to Gostivar in Macedonia in July 1997 presents a good example. The Albanian community hoisted an Albanian flag on the town hall despite the fact that such an act was prohibited by law. A ruling by the constitutional court decided that the law had to be upheld and the police removed the flag. This sparked violent clashes during the course of which two people died. In an attempt to halt the cycle of escalation van der Stoel travelled to Gostivar and following discussions with the government authorities and the Albanian community he issued a statement in which he observed that the law under which the flag was removed conformed with international standards

134) Speech by the High Commissioner to the Tenth Annual Conference of the International Association for Conflict Management, *op.cit.*

135) See Konrad Huber, 'Averting Inter-Ethnic Conflict: an Analysis of the CSCE High Commissioner on National Minorities in Estonia, January-July 1993', Working Paper Series, 1994, Vol. 1, No. 2, The Carter Center of Emory University, Atlanta 1994.

(thereby backing the government) but that the issue warranted an independent investigation to identify those responsible for the violence (thereby seeking to assuage the concerns of the Albanian community that the perpetrators of violence should be held to account). The High Commissioner effectively backed the government but also criticised the government in an attempt to calm the situation. By visiting the region, and in particular visiting the local Mayor in prison, the High Commissioner was able to disclaim rumours that the Mayor had been subject to physical abuse.¹³⁶

Although the root causes of the escalation were not addressed by this particular intervention, the High Commissioner was able to contribute (along with others) to a de-escalation of the immediate crisis, enabling the search for more sustainable options to continue via other initiatives.

Tension Reducing Projects

These projects can be classed as small scale projects that seek to target aid to address specific issues that seem to be the causes of friction. The High Commissioner tends to approach issues from a very pragmatic perspective and therefore if he identifies specific measures that could contribute to the resolution of particular problems he will seek to identify some assistance.¹³⁷ The High Commissioner has utilised the Foundation on Inter-Ethnic Relations to perform tasks in this area at his behest. The Foundation has implemented initiatives to address concerns identified by the High Commissioner in a range of countries and fields. Facilitating improved opportunities in the field of minority education has been an ongoing area of work, with initiatives at a policy level as well as programmes addressing curriculum development (Albania), the access of students from minorities to higher education (Macedonia), text-book production and design (Kyrgyzstan and Ukraine), and the provision of 'home school' education (Crimea).¹³⁸ Projects have been designed in collaboration with local interlocutors

136) Information provided in private communication to the author. A report by Human Rights Watch, *Macedonia: Police Violence in Macedonia*, Vol. 10, No. 1, April 1998, is critical of van der Stoep's role, commenting that he did not question the behavior of the police in the violence. p. 37.

137) This is a point made by an adviser to the High Commissioner in private discussion, but can also be inferred from the High Commissioner's speech to the conference on 'Governance and European Integration', Rotterdam, May 1997.

138) Reference to these projects can be found in the annual reports of the Foundation on Inter-Ethnic Relations for the years 1993-1996.

from the appropriate government departments and NGOs, including those representing minorities and in liaison with the High Commissioner and his advisers.

In addition to educational projects others have addressed issues such as public administration skills (Macedonia), legal aid (Croatia), the production of materials concerning citizenship exams (Estonia and Latvia) and the training of government officials dealing with inter-ethnic relations (Romanian and Kazakhstan). The development of these have been statements of concern by an NGO linked to, and seen by local interlocutors as being closely associated with, the High Commissioner. The Foundation's engagement in project development of this kind allows the High Commissioner to maintain an involvement and to enhance relations with interlocutors and key communities but at one remove.¹³⁹ In this sense it has been part of a confidence building process, enabling the High Commissioner to show his ongoing concern for matters arousing tension, often at a community or societal level, whilst his main focus has been on the political process.

There is a delicacy in the High Commissioner becoming perceived as a humanitarian donor since this could alter the perception of his role as an impartial mediator. Such assistance is not excluded from this role, but rather it is imperative that the parties to the project are aware of the engagement in this form so that at a later date it is not possible to use the action as an example of partiality. Given the limited resources that the Foundation channels into such projects it is more appropriate and strategic for the High Commissioner to liaise with humanitarian assistance organisations (UNHCR, aid agencies) or development institutions (World Bank, EBRD, UNDP, the Asian Bank for Development) in order to influence their approach and mode of operation. The High Commissioner has been active in developing relations with some of these bodies, particularly UNHCR and UNDP, and has chaired UNHCR meetings seeking to influence donor agendas in Crimea. Nevertheless, there is scope for further

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139) It should be noted that the Foundation pursues projects specifically designed to aid the work of the High Commissioner, with a budget of approaching \$1million a year. Some funds are restricted to specific projects but there are also unrestricted funds from some donors, providing considerable leeway. In practice the use of these funds has been almost entirely influenced by the priorities of the High Commissioner. This is a substantial addition to the funds at the High Commissioner's disposal. For more information on the relationship between the Foundation and the High Commissioner see Jonathan Cohen, 'A Case Study of NGO-IGO Collaboration in the field of conflict prevention: the Foundation on Inter-Ethnic Relations and the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe', forthcoming chapter in a compilation on the civilian role in peacemaking edited by the Austrian Study Centre for Peace and Conflict Resolution.

developing relations with development and financial institutions in order to assist in the instrumentalisation of conflict prevention in the strategies of institutions wielding significant resources and engaged in broader socio-economic development.

Engagement in the developmental sphere raises the question of the feasibility of isolating such issues from broader development or assistance agendas. Do such projects merely become symbolic carrots that a community will accept out of need but nevertheless recognise as a palliative rather than a strategic attempt to address the underlying causes of a conflict? Discussion of the carrots and sticks available to the OSCE is addressed below, but it should be pointed out that the High Commissioner and the OSCE in general are not disposed to use conventional sticks. On the part of the High Commissioner there are no sticks that can be wielded other than the concern a state might feel with regard to a negative recommendation or an early warning – although it would be wrong to construe an early warning as being ‘against’ a state, rather if issued it would indicate the measure of gravity a state is confronting. With regard to wider OSCE practice the only substantive sticks are the implementation of sanctions imposed by other bodies or suspension as in the case of the Federal Republic of Yugoslavia. Such a step is far from ideal since it removes the opportunity for the OSCE’s brand of inclusiveness and cooperative adherence to commitments being met. Compliance is therefore not compelled, but encouraged.

Conditions for Success or Failure and the Characteristics of Effective Intervention

Success in conflict prevention is always difficult to attribute since it is generally the result of multiple interventions as well as internal changes which are influenced by a whole gamut of social, economic and political processes. Furthermore, successes are not always visible since the absence of conflict is not sufficient to conclude that a conflict has been prevented. Failure, on the other hand, tends to be more visible and intervenors scurry to avoid the limelight of association.

The High Commissioner on National Minorities presents an instrument of intervention which is deployed in a ‘quiet’ manner, potentially obscuring any contribution to ‘success’. In addition failure, as perceived by the High Commissioner, that is the issuing of an early warning, could be interpreted as a successful utilisation of the instrument within the terms of reference of the mandate. In the conclusion to this section on the High Commissioner I will briefly examine what can be termed successes and, if not failures, then problems, in the operation of the instrument. I will then comment on the characteristics of the instrument which pave the way for its potential effectiveness.

As indicated in the text above the High Commissioner has served to facilitate precise changes in legislation and at times political relations by offering options for the consideration of disputing parties. Recommendations have been the means to deliver these suggestions and facilitate changes as in the case of legislation on citizenship and stateless children in Estonia and Latvia. Contributions have also been made through timely interventions in negotiations between states. For instance a couple of visits to both Hungary and Romania in summer 1996 gave the opportunity to the High Commissioner to influence the bilateral Treaty on Friendship and Cooperation between the two countries, in particular in regard to article 12, emphasising how critical the issue of minorities is to broader reconciliation. The drafting of such a good neighbour treaty involved a variety of governmental and non-governmental actors, both internal and external. This makes it very difficult to qualify the precise input of the High Commissioner, however, he was thanked for his intervention by the Romanian Foreign Minister, who described his activities as a ‘catalyst’ in the negotiating process.¹⁴⁰ The very fact of an international engagement itself widened the perspective of the discussions.

Diplomatic observers in Vienna comment that it is often such behind the scenes interventions that are the most influential aspects of the High Commissioner’s functioning. In this sense the High Commissioner is able to prompt parties through informal discussions that are not necessarily part of a public discourse on a sensitive issue. Such interventions are difficult to demonstrate since their very nature is part of an off the record process, either in frequent meetings during High Commissioner visits to a country, through phone conversations with key interlocutors or during discussions during or at the margins of round table meetings organised by or for the High Commissioner.

The operation of the High Commissioner has also provided scope for an educative role. Reflection on broad ranges of options have been provided by round tables, seminars and publications. The most visible example has been the aforementioned *Hague Recommendations*, which has initiated much discussion within countries, both as a result of seminars organised by the Foundation on Inter-Ethnic Relations, but also through discussions at the United Nations Working Group on Minorities in 1997, and the publication of the recommendations in the press at the instigation of representatives of minorities, for instance in Latvia. The *Hague Recommendations* together with the *Oslo Recommendations*, have been translated into several languages, and can be seen as attempts to

140) *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention*, op.cit., p. 71.

address some of the more enduring issues that provoke tensions in Europe, going beyond a focus on short-term escalatory factors.

One of the achievements of the OSCE in creating the instrument of High Commissioner has been that it emphasises the point that sovereignty and exclusive rights in internal affairs are more malleable in political terms than previously was the case. This represents an achievement of the early 1990s, that intervention in internal affairs is permissible. Whether or not the High Commissioner produces tangible results, that he is accepted as an interlocutor, as an impartial outsider, is a major first step. The need to establish this first step conditions the High Commissioner's approach. Criticism has been levelled at the High Commissioner for not criticising states with records that leave much to be desired in terms of human rights or minority rights observance. However the task of the High Commissioner is not an advocacy one, rather it is to act as an interlocutor, a mediator, with all relevant parties. The task is to keep the parties on board in a process of dialogue, and only in the event of a manifest security threat would a formal early warning be activated, thereby altering the role of a mediator. It is a task for other instruments or bodies of the OSCE to condemn publicly or reprimand states for non-compliance or violations. That this does not always happen when there are good grounds for it to do so is a comment on the OSCE in general, not the High Commissioner in particular.

As an often cited success story for the OSCE during a period when many were questioning the ability of the organisation to be an effective proponent of conflict prevention as a result of the debacle in former Yugoslavia, states have been reluctant to voice criticisms in public. Those criticisms that have been levelled often relate to the instrument rather than the way in which it has been operated. One relates to a perception on the part of states from eastern Europe that a double standard operates. Despite the fact that the High Commissioner is competent to act throughout the OSCE region, the exclusive focus of activities has been on central and eastern Europe and not western Europe and states feel that this is politically motivated.¹⁴¹ OSCE officials argue that, firstly, the High Commissioner is an instrument of conflict prevention and violent conflicts arising out of inter-ethnic tensions are less a feature in western European states. Secondly, those situations in western Europe where there are tensions around minority issues have already experienced violence in a manner that precludes the High Commissioner's involvement or there is the engagement of terrorist organisations (PKK in Turkey, ETA in Spain, various para-militaries in the UK). Certain states clearly wielded their influence in pursuit of their national interests in the construction of the mandate.

141) Author's interviews with diplomats in Vienna, February 1998.

The High Commissioner is himself sensitive to concerns that his focus is a politically expedient one. In one initiative to address a significant root cause of tensions, a questionnaire on the use of minority languages was sent to all OSCE participating states. This corresponds with the wish expressed by a number of countries that comparative studies would be made on the situation of minorities in all OSCE states. The replies to this questionnaire will be used to draw conclusions with a view to determining common practices and to revealing the variety of existing approaches from which each state may wish to draw in relation to particular situations.¹⁴²

To date the High Commissioner has been involved in situations in fifteen countries, but no longitudinal surveys have been done to assess the precise impact of his involvement in each state. Despite frequent interventions the root causes of many conflict situations persist, but these root causes are often of a broader dimension than the position of national minorities in the societies. In terms of the specific issues that the High Commissioner has addressed, frequently there has been movement that could presage a positive contribution in both the short and long-term. As is discussed elsewhere in regard to Estonia and Latvia it is difficult to dissect the multiple interventions and ascribe which has been of greatest influence. Therefore, it is easier to pinpoint those situations that have not improved as a result of the High Commissioner's involvement – although the involvement still has to be seen in the context of multiple actors. In Macedonia, for example, according to an NGO representative,¹⁴³ despite many constructive suggestions by the High Commissioner with regard to the volatile issue of education entitlements, none of the High Commissioner's proposals have been adopted. Nevertheless, it would be premature to label this as failure since these interventions could be a contributory factor in the climate of negotiations around other issues.

The greatest concern regarding the operation of the High Commissioner is that some conflicts have slipped through the net of OSCE conflict prevention. There is room to question to what extent the High Commissioner could or should have played a role in these situations. This will be addressed in the conclusion.

There are certain features of the High Commissioner's practice that have been essential to the operation of the office as an instrument of conflict prevention. Firstly, independence with accountability has been central. Despite having discretion over which situations to address the High Commissioner remains

142) See speech by Max van der Stoep to the conference on 'Governance and European Integration', Rotterdam, May 1997.

143) Communication with the author, March 1998.

accountable to the political organs of the OSCE. The High Commissioner has kept this in mind and utilised opportunities for consultation and cooperation with the political bodies and individual states to his advantage.

Secondly, being a cooperative instrument and not a coercive one has given scope to provide access to durable options or solutions based upon the consent of all parties. The mandate gives the High Commissioner no power to bind the parties to any process or recommendation or to impose any solutions. This has required van der Stoep to develop constructive relations through which advice can be offered. It would be wrong to idealise the situation: the High Commissioner does have a role in advising the political organs of the OSCE which might choose to censure a state as a result of information or advice received, and states are aware of the role of such advice. On occasion the High Commissioner has sought support from the political organs of the OSCE and individual states or other international bodies, such as the European Union, to undertake parallel contacts with the state(s) concerned in order to achieve particular objectives.

Confidentiality and discretion can facilitate the establishment of trust and openness with the parties, providing the opportunity for dialogue on difficult issues without the participants having to be concerned about the immediate reaction of the media or more radical constituencies. It would be mistaken to assert that such relations have always been the case in the operation of the High Commissioner. On occasions relations with representatives of certain states or minority organisations have been frosty. In such cases the High Commissioner has used other channels to exert pressure, bearing in mind that the task of the High Commissioner is not to shame parties and hence make it more difficult to interact with them, but to prevent tensions becoming security risks. Conversely, the High Commissioner has stepped outside the realms of confidentiality to publicise some positive informal commitments and assurances that he considered would enhance reconciliation and prevent escalation. Occasional use has been made of the media to publicise the assurances given by the parties, as a confidence building measure or as a means to encourage the parties to adhere to agreements that have been reached. For example in Estonia, statements have been issued to clarify public misconceptions about the government's or minority's intentions and to create public pressure for the parties to maintain their engagement in a process of dialogue.¹⁴⁴ In some instances the parties themselves have publicised the visits of the High Commissioner. This has particularly been the case in Kazakhstan and Kyrgyzstan where the authorities have used the visits as a means of impressing upon the general public that the governments are engaging actively with the international community.

144) Chigas 1996, op.cit., see note 23, p. 35.

This leads to the conclusion that the High Commissioner's work is about process and keeping issues on the agenda, or putting them there, but not in itself producing concrete outcomes. Hence frequent assertions that dialogue is the best means to address tensions. This presupposes a continuing involvement. Multiple visits allow the High Commissioner to be an interlocutor able to act on the basis of detailed insight, reinforcing his capacity by facilitating more intimate and insightful relationships.

Van der Stoel has, to an extent, operated with a flexibility that the mandate does not specifically grant. A couple of examples indicate this. The mandate requires that experts will only visit a participating state at the same time as the High Commissioner. This has not always been the case, for instance the expert team to Slovakia and Hungary was on occasion accompanied by an adviser and not the High Commissioner. Furthermore, the High Commissioner has used experts not on the Office of Democratic Institutions and Human Rights' list by directing initiative through the operation of the Foundation on Inter-Ethnic Relations. Frequent trips have been made by advisers without the High Commissioner, which is neither sanctioned nor precluded by the mandate. With regard to liaison with the Chairman-in-Office, theoretically the High Commissioner is supposed to inform the Chairman-in-Office prior to all visits. This has not been the case – the frequency of High Commissioner visits and the tendency for plans to change depending upon new priorities arising, could be impeded by the practice of seeking clearance prior to all visits.

An ambassador in Vienna commented that states are inclined not to be disturbed that the High Commissioner follows the spirit rather than the word of the mandate, as long as he consults widely and acts quietly. The High Commissioner therefore needs to be aware of building confidence with the states through adequate consultation. For this to be successful much is personality dependent – an individual with extensive political experience, knowing how to forge and maintain relations is required. This means that the ongoing effectiveness of such an instrument is based on the credibility of operation to an even greater extent than other instruments, since it is so dependent upon one individual. In this light it is difficult to institutionalise such an instrument. Nevertheless, this is an issue which has to be addressed, especially since van der Stoel is approaching the end of his second term in office, and although a further one year extension of his mandate has been given, in itself this will not address the long-term needs of the instrument.

Flexibility is reflected in another important area. By definition the High Commissioner is concerned with conflicts dealing with national minorities.

However, no OSCE document attempts to define what a national minority is.¹⁴⁵ In constructing the mandate the position was taken that ‘the majority of potential conflicts that can be identified at present appear to be rooted mainly in questions concerning national minorities.’¹⁴⁶ But the OSCE used the term ‘national minority’ quite loosely, providing a framework for discussing a broad range of inter-ethnic and inter-religious relations between minorities and majorities.

The High Commissioner’s first mission was to the Baltic states to investigate the security implications of a situation in which members of the minorities were not normally citizens of the respective states. The High Commissioner has employed a flexible understanding of the concept of minority, addressing the issue from the perspective of politics and the implications of the situations of minorities for security, rather than being hidebound by conceptual delimitations. In this way he has bypassed some of the discussions regarding the meaning of the term ‘national minority’ and whether or not it comprises only persons of a minority having the citizenship of the state where they live. This has been relevant for interventions in Estonia, Latvia and Kazakhstan with regard ethnic Russians, and in Ukraine with regard to Crimean Tatars.

Having said this, the designation of the object of attention as ‘persons belonging to a national minority’ implies that the OSCE treats national minorities in the context of human rights for individuals within the collectivity rather than rights for the collective, and this is a stance which is not appreciated by representatives of many minority communities.

The mandate of the High Commissioner not only has a high degree of flexibility, but it encourages a breadth of engagement in terms of the contacts the High Commissioner should pursue in the fulfillment of the mandate. In particular the mandate not only encourages but sanctions contact with ‘representatives of associations, non-governmental organization, religious and other groups of national minorities directly concerned in the area of tension.’ This recognises that the types of conflict which have arisen and are likely to do so are influenced in their escalation and in their resolution, as much by non-state actors as by state parties.

While issues such as independence, process orientation, personality, continuity, confidence-building, impartiality and flexibility, are necessary they are not

145) For a discussion of the lack of a general agreement on the definition of what constitutes a minority see John Packer and Kristian Myntti eds., *The Protection of Ethnic and Linguistic Minorities in Europe*, Institute of Human Rights, Abo Akademi University, 1993.

146) Hannie Zaal, ‘The OSCE High Commissioner on National Minorities’, pp. 33-37 in *Helsinki Monitor*, Vol. 3, 1992, No. 4, pp. 33-34.

sufficient. As Ropers and Schlotter have commented, ‘the mediator should have resources at his disposal with which he can change the framework of the conflict in so far as the conflicting parties recognize that a violent enforcement of their interests would be to their own disadvantage.’¹⁴⁷ Such an approach on the part of an intermediary such as the High Commissioner requires action in concert, backed by a preparedness to invest financially to support political capital.

The political backing the High Commissioner receives from the OSCE political bodies and individual states provides critical leverage. Both states and minorities recognise the High Commissioner as a channel to other structures which have both political power and access to resources. As the High Commissioner has stated this requires the maintenance of good relations with the political bodies and individual states through effective reporting and consultation in order that issues which could generate conflict receive the requisite attention, and those recommendations that require political backing receive this, both within the OSCE but also from other relevant international bodies or individual states.¹⁴⁸ To garner such support requires an effective political operator, able to lobby effectively as well as prioritise issues to attract the attention and action of powerbrokers who are invariably confronted by a mass of high-priority issues. The High Commissioner has to recognise that it is necessary to be strategic in seeking the political backing of states for particular causes. Short of issuing an early warning the High Commissioner has to utilise the influence of strategically placed states. For example, in regard to citizenship issues in Estonia the High Commissioner has actively lobbied the Nordic states and the EU for support of his position. In this context, individual states are in a position to provide political influence to encourage states to address minority questions as well as specific financial support for the implementation of the High Commissioner’s initiatives.

In as much as the High Commissioner has to refer back to the political bodies of the OSCE for support if action is to be taken, he is obliged to weigh the likely support that will be received for involvement in each situation. While it is the responsibility of the High Commissioner to ensure that sensitive issues that might not attract much attention are not brushed under the carpet, by the same token, those issues for which the High Commissioner will not receive political backing might be left unattended. One could speculate that this was one factor in the non-involvement of the High Commissioner in Chechnya in the period prior to the outbreak of the conflict there in December 1994.

147) Norbert Ropers and Peter Schlotter, *op.cit.*, p. 21.
148) See the Speech by Max van der Stoep to the conference on ‘Governance and European Integration’ in Rotterdam, May 1997.

The need for political backing has gained a new impetus as the situations which the High Commissioner is addressing themselves evolve. It has been apparent that throughout much of van der Stoep's second three year mandate the honeymoon period has been over. Initially, states in the region were more receptive to the engagement of an international mediator in assisting in the development of policy and practice in relation to minorities and conflict prevention. This was part of an open door policy to aid integration into a variety of European institutions. Many of these states have grown in confidence and sophistication and become more bullish, both in terms of their relations to the outside world and in terms of dealing with minority situations internally. Some states in which the High Commissioner has been active are now preparing for European Union membership. This aspiration provides considerable leverage over their policies and practices in a number of areas, including the handling of diversity and minority rights. To an extent the prospect of EU membership has made states more receptive to the recommendations of the High Commissioner, recognising that the High Commissioner's input was requested by EU officials in evaluating certain of the criteria for membership, especially the Copenhagen criteria of 1993. Leverage of this sort serves to focus the attention of the state concerned and other EU member states. Once it is clearer which states will be in the first round for accession and what the timetable will be it will be all the more important for the collaboration between the High Commissioner and the EU to continue. This will help prevent lapses in adherence to commitments, and to encourage those countries that are not in line for the first round of membership to continue in their efforts to enhance policy and practice in this area and not drift towards more intolerant regimes.

5 Missions

The Institutional Relevance and Role of Missions

This section will focus on long-term missions, but it should be noted that missions have taken different forms in the practice of the OSCE. Fact-finding, rapporteur or expert missions have been dispatched on a short-term basis to investigate specific situations of a human dimension or military nature. In addition the Chairman-in-Office can dispatch a personal representative with investigative tasks, or missions of the Chairman-in-Office and his representatives, including the Secretary General or the Troika, can be utilised, and Sanctions Assistance Missions have also been deployed in the field.

According to former Secretary General Wilhelm Hoyneck missions of long duration were 'strictly speaking, not provided for by the inventory codified at the Helsinki Summit Meeting of July 1992. But there was a growing need for an international presence in areas of potential or actual conflict.'¹⁴⁹ A series of long-term missions filled the gap between the short-term missions and traditional

149) Wilhelm Hoyneck, 'CSCE Missions in the Field as an Instrument of Preventive Diplomacy – Their Origin', paper distributed by the Centre for Conflict Prevention, p. 4.

peacekeeping and as such carved out a new preventive mode of operation. Between 1992 and 1996 eleven long-term missions were established. Each of these is still operational except the first one which was established in Kosovo, Sanjak and Vojvodina¹⁵⁰ and the Mission to Sarajevo which was reorganised as a distinct section of the new Mission to Bosnia and Herzegovina in 1995.¹⁵¹

Until the establishment of the Mission to Bosnia and Herzegovina the size of missions had been relatively small, no mission exceeding 20 members and generally being composed of fewer than ten. The Missions to Bosnia and Herzegovina and Croatia dramatically changed this. The former was created with 246 international staff and the latter was given a ceiling of 250 expatriates.¹⁵² This has had a tremendous impact on the financing of the missions, and the OSCE in general. In 1997 OSCE tasks in Bosnia and Herzegovina accounted for 37% of the OSCE's budget, the Mission in Croatia accounted for 12% and the other missions accounted for only 16%. The Mission to Bosnia and Herzegovina is clearly exceptional in its nature. Nevertheless, missions accounted for over 65% of the OSCE's budget for 1997 (to November), and a planned expansion in the budget for Croatia means this figure will increase to almost 75% of the OSCE's budget in 1998. This is an indication of the importance of the OSCE field activities.¹⁵³

Missions are subject to a chain of command that leads back to the Permanent Council through the Chairman-in-Office. The fact that mandates are provided or extended by the Permanent Council means that they are subject to the consensus procedure. As a result terms of reference are adopted by consensus and all OSCE states can be regarded as politically committed to support the

150) This mission was withdrawn in June 1993 owing to the fact that the Federal Republic of Yugoslavia made the renewal of its mandate conditional on the restoration of its status in the OSCE.

151) The other OSCE missions are (in order of establishment) the Spillover Monitor Mission to Skopje (1992), and missions to Georgia (1992), Estonia (1993), Moldova (1993), Latvia (1993), Tajikistan (1994), Sarajevo (1994), Ukraine (1994), Bosnia and Herzegovina (1995), and Croatia (1996). For details of the mandates and technical data relating to missions see 'Survey of OSCE Long-Term Missions and other OSCE Field Activities', The OSCE Secretariat, 7 October 1997, Vienna. In addition there are a number of OSCE field presences that are not classified as missions: the OSCE Liaison Office in central Asia (1995), the OSCE Assistance Group to Chechnya (1995) and the OSCE Advisory and Monitoring Group in Belarus (1997).

152) Details of the composition of all missions is available in 'Survey of OSCE Long-Term Missions and other OSCE Field Activities', The OSCE Secretariat, 7 October 1997, Vienna.

153) *Annual Report 1997 on OSCE Activities (1 November 1996 – 30 November 1997)*, OSCE, The Secretary General, 18 December 1997, Vienna, pp. 49-51.

work of the mission, including the host country. This has been particularly important in relation to the Russian Federation, given the number of missions located in the former Soviet Union. In practice mandates are generally reviewed by the Permanent Council on a six-monthly basis.

As the missions have developed from ad hoc arrangements into a regular OSCE instrument the nature of the support they receive has evolved. The first missions drew on the resources and organisational capabilities of individual participating states. The Stockholm Council Meeting in December 1992 established a special mission support unit within the Conflict Prevention Centre to provide technical preparation and logistical support. It is increasingly well resourced and more professional, currently having a staff of about 30.¹⁵⁴ The support section deals with personnel, procurement, and logistics for missions. In addition to the administrative tasks the section has assumed a role in briefing prospective mission members and providing relevant information about in-country situations. Diplomatic advisers provide the political background. Political guidance comes from the Chairman-in-Office who is also responsible for facilitating a common approach, in as much as this is possible across such a variety of regions and situations. At present there are twice yearly meetings of all Heads of Mission to share information, discuss problems and refine approaches.

A handicap is that there is limited institutional memory. This is influenced by the fact that the OSCE has maintained a policy of staffing all field positions via official secondment from participating states (seconded personnel have not always been diplomats). The deployment of appropriate mission members has proven a problem at times, not only because of the absence of language or technical skills or relevant experience, but also because it touches upon the delicate issue of patronage or quota politics that international institutions have to face. Finding a balance between diplomats from 'East' and 'West' has also been an issue, as has the fact that some states have used missions as a way to 'farm out' difficult diplomats from their own service.¹⁵⁵ Furthermore, there are allegations that some mission members simply receive their relatively large daily standard allowance but do little to justify this. These problems can alienate both the public and officials in host countries.

Better training is regarded as a means to address this problem, especially in light of the increased numbers deployed in the field. There is currently discussion about developing a more general approach for field operations. A proposal submitted to the Secretary General in February 1998 advocates a more systematic preparation prior to deployment in the field. The objective is to increase

154) Interview with a member of the OSCE Secretariat, February 1998, Vienna.
155) Interview with a diplomat in Brussels, September 1997.

professionalism and 'to secure the sustainability of the impact of OSCE involvement in local situations.'¹⁵⁶ A training regime could help to weed out bad cases and therefore training should not only be national but also on an OSCE wide level. States themselves have to exercise greater responsibility in deploying personnel to missions, but direct responsibility lies with the Heads of Mission in that they are able to remove bad mission members, although this can be a highly political measure depending upon which country the mission member is from.

Much of the success of missions depends upon the background and qualifications of the Head of Mission. There is no formal procedure for recruitment or selection, Heads of Missions are essentially political appointees, selected by the Chairman-in-Office in consultation with delegations in Vienna and confirmed by the Permanent Council. States do exercise the power of suggestion by putting forward candidates. Inevitably those delegations with a greater interest in the operation of a particular mission will have more of a say. A host government could reject a nomination, and although there have been occasions when states have been unhappy with the Head of a Mission (there have been rumours of highly inappropriate activities in some instances), no Heads of Mission have been officially opposed or removed as a result of a protest. To date mission heads have nearly always been serving diplomats. According to the Ambassador heading one major delegation in Vienna, 'the more seriously the host country takes a mission the more likely it is to get a good Head of Mission.'¹⁵⁷

Missions are a good example of how the OSCE delegates the implementation of conflict prevention strategies. While the larger political questions and guiding frameworks are decided in the Permanent Council or Senior Council, day-to-day implementation is left to the Head of Mission who has to refine the mandate on the ground. In operational terms the Head of Mission is accountable on a day-to-day basis to the Chairman-in-Office. A mission's relationship with the Chairman-in-Office provides a channel for maintaining constant dialogue between the missions and the participating states. Heads of Mission confer with the Chairman-in-Office on a frequent basis but the core of their accountability is provided through written reports and periodic presentations to the Permanent Council allowing for consultation and debriefing, and an opportunity for the political preferences, priorities and sensitivities of the OSCE community in general and of individual states in particular to be communicated to them. The current practice is that Heads of Mission report back to the Chairman-in-Office with fortnightly written reports. In such reports the mission will convey insight into matters of a general nature, as mandated, but also with specific concern to

156) 'OSCE Field Office Training: A New Concept', unpublished paper, February 6, 1998, p. 5.
157) Author's interview with the head of a delegation, February 1998, Vienna.

issues that are particularly sensitive. These reports are a critical form of early warning within the OSCE system, being circulated to the Permanent Council, the Chairman-in-Office, the High Commissioner on National Minorities and the Office for Democratic Institutions and Human Rights. These reports can play an instrumental role in enabling the political bodies of the OSCE to be in tune with developments that might have an impact on the fulfillment of the mandate and hence on any factors that could have a destabilising affect. The quality of the reports is therefore of paramount importance. They are not publicly available.¹⁵⁸ In addition Heads of Mission present oral reports to the Permanent Council on a periodic basis. When a Head of Mission is in Vienna there is an informal ad hoc meeting of the Permanent Council on Wednesday afternoons, prior to the formal meeting of the Permanent Council on Thursdays, at which states with special interests in a particular mission meet to discuss issues related to its operation.

While the above relationships are pivotal in terms of the management of missions, missions also interact with and have structural relations with other OSCE bodies. All missions are mandated to address human dimension, democracy and rule-of-law issues. By necessity this brings the Office for Democratic Institutions and Human Rights into a close orbit. On the basis of the Budapest Decisions, the Office for Democratic Institutions and Human Rights must be consulted on an OSCE mission's mandate before adoption and the office will also contribute to the follow-up of the mission reports as decided by the Permanent Council.¹⁵⁹ Furthermore, the Office for Democratic Institutions and Human Rights' knowledge of experts on the human dimension should be utilised to help staff missions, which are obliged to designate a mission member to liaise with the Office for Democratic Institutions and Human Rights and NGOs on human dimension issues.¹⁶⁰

Missions play a complementary role to the High Commissioner on National Minorities in conflict prevention, although having a wider remit of action than the High Commissioner, not solely dealing with national minorities. Importantly, the existence of armed conflict does not preclude the dispatch of a mission, unlike the High Commissioner. In a sense missions are more intrusive

158) There has been strong criticism of reports, for instance in regard to Macedonia. Human Rights Watch in its April 1998 report on *Police Violence in Macedonia* criticised the mission's fortnightly reports for failing to condemn human rights abuses committed by the government, arguing that this 'serves to increase the government's sense of impunity, as well as the sense of abandonment by those whose rights have been violated.' Human Rights Watch Press Statement, 28 April 1998.

159) Chapter VIII (Human Dimension) of the 1994 Budapest Decisions.

160) Chapter VIII (Human Dimension) of the 1994 Budapest Decisions, paragraph 11.

than the High Commissioner in that they are resident in a country. Unlike the High Commissioner, however, the missions do not have independent authority.

In those countries where missions are located and the High Commissioner is engaged they are able to provide assistance in substantive and logistical terms. Reporting and assessment of the political situation by the mission gives easy access to up-to-date, detailed information about current developments and can help the High Commissioner in formulating his recommendations. The ongoing presence of a mission can provide a means to follow-up responses to the High Commissioner's recommendations and the various undertakings and assurances given to him by the government. The former Swedish Chairman-in-Office, Margaretha af Ugglas, has described missions as operating as 'the eyes and ears of the High Commissioner'.¹⁶¹ Missions can also benefit from the activity of the High Commissioner, whose recommendations can provide clear-cut guidelines for their work. The relationship between the High Commissioner and the Head of Mission is important for ensuring cooperation.

The task of a Head of Mission is not straightforward. With mandates being relatively open-ended, Heads of Missions have to glean from the general atmosphere of the Permanent Council which lines of action they should follow. Often they complain that they have too many bosses: the Conflict Prevention Centre, the Permanent Council, the High Commissioner on National Minorities, the Office for Democratic Institutions and Human Rights, and the Chairman-in-Office (both from Vienna and the capital).¹⁶² In addition the Head of Mission has a delicate relationship with the host country. Missions are creations of the political process and depend upon the continuing consent of the host country. This requires missions to work cooperatively with the government concerned. A negative effect of this is that it can curtail the ability of missions to criticise the government for fear of a loss of support and subsequent expulsion or non-renewal of the mandate. The task for the mission head, therefore, is to navigate the different constituencies without blunting or compromising the potency of the mission. Ultimately, although the Permanent Council wrote the mandate there is reluctance for there to be too much central control because this could limit the scope for action; this gives the Head of Mission some leeway.¹⁶³

161) Margaretha af Ugglas, 'Conditions for Successful Preventive Diplomacy', in *The Challenge of Preventive Diplomacy, The Experience of the CSCE*, Stockholm 1994, p. 26.

162) Interview with a diplomat representing a previous Chairman-in-Office, February 1998, Vienna.

163) Interviews with diplomats, February 1998 in Vienna.

Mandates: What are the Competencies and Powers of Missions?

While all mission mandates are produced by the political bodies of the OSCE, they do not conform to a uniform pattern, but are characterised by a flexibility arising out of their ad hoc nature – being designed to confront specific issues and situations.¹⁶⁴ The political will of states to address the circumstances is paramount. There is no defining general mandate. Rather each is formulated through consultations in the Permanent Council. As a result there are no general exclusion clauses that prevent mission engagement in particular circumstances – they are an instrument with as much flexibility as the Permanent Council, including the host country, is prepared to negotiate.

The mandate has to be negotiated so that it is acceptable to all states concerned. Its formulation is a highly sensitive process, especially since states are very reluctant to admit that there are problems of a security nature within their state, or to admit that they may not have the means at their disposal to address problems. A successful mandate needs to be a common effort on the part of the host government and the OSCE. The mandate needs to be elaborated cooperatively and not imposed since missions are often seen by the host state as an intervention in internal affairs and not as a normal instrument of the international community.¹⁶⁵

A number of diplomats in Vienna articulated the view that mandates will never be especially precise. Firstly, because many states are involved in negotiating the mandates, the outcome will always be the result of a compromise. Secondly, states are reluctant to impose too rigid a framework; allowing scope for a broad interpretation enables a range of activities to take place under their umbrella.

The long-term missions and field presences which have been deployed to date have had various orientations: conflict prevention/preventive diplomacy tasks as their priority (Estonia, Latvia, Ukraine, the Former Yugoslav Republic of Macedonia, Belarus and the Kosovo, Sanjak and Vojvodina mission); a crisis management orientation (Georgia, Tajikistan, Moldova and Albania); and those engaged in post-conflict reconstruction (Bosnia and Herzegovina and Croatia).

It would be over-schematic, however, to represent all missions as falling neatly into one category or another. The changing dynamic of conflicts means that roles evolve. For instance the Moldova and Georgia crisis management missions (which have functions in the realm of mediation) have assumed more preventive characters (preventing re-escalation) than crisis management, as the

164) *OSCE Handbook 1996*, p. 18.

165) Author's interview with the Head of a Delegation, February 1998, Vienna.

original situation has evolved. In Moldova, there is an element of post-conflict rebuilding involved as the mission has set about addressing issues of economic reconstruction as well as civil society development in the form of assisting local NGOs. In a number of cases, therefore, the tasks of the missions can be said to have a more complex profile, which depends upon the nature of the situation that needs to be addressed and the terms of reference and hence the mandate that is produced by the Permanent Council.

It is clear that all missions are engaged in some activities that have a preventive function. A brief examination of the mandates reveals this from the perspective of two issues that are pertinent to conflict prevention: the promotion of dialogue and engagement in human dimension issues. The human dimension issues will be broken down into reference to issues of human rights and fundamental freedoms, and explicit reference to developing the capacities of societies to regulate their own dysfunctions through democratisation, adherence to the rule of law and other appropriate measures.

The promotion of dialogue features in the mandates of many of the missions. This is critical in providing the missions with the competence to contribute to conflict prevention processes. In Kosovo, Sanjak and Vojvodina the mission was required to 'promote dialogues between authorities concerned and representatives of the populations and communities in the three regions'.¹⁶⁶ The mandate of the Mission to Estonia places the emphasis on the need to 'contribute to the efforts of Estonian national and local authorities to re-create a civic society, inter alia through the promotion of local mechanisms to facilitate dialogue and understanding'. In Latvia the mission has the role to 'provide information and advice to institutions, organizations and individuals with an interest in a dialogue on these issues' (principally citizenship). In Ukraine the tasks of the mission include 'establishing contacts with all authorities concerned, relevant institutions, representatives of various communities and non-governmental organisations, with the aim of collecting information as well as helping to prevent tensions and improve mutual understanding'. There is explicit reference to the need to promote and intensify dialogue in the mandates of the missions to Georgia, Moldova, Tajikistan and the Assistance Group to Chechnya.

The above excerpts from mission mandates indicate that the promotion of dialogue and/or understanding between the parties is often linked to the task to gather or disseminate information. This is of importance with regard to the human dimension activities of missions.

166) Citations are taken from the *Survey of OSCE Long-Term Missions and other OSCE Field Activities*, produced and updated by the OSCE Secretariat. I refer to the 7 October 1997 version.

Almost all missions refer in one way or another to the fulfillment of human dimension tasks. In some cases the reference to human dimension activities is straightforward. In Kosovo, Sanjak and Vojvodina the mission was tasked to 'collect information on all aspects relevant to violations of human rights and fundamental freedoms'. The mandate of the Mission to Ukraine states that the mission should engage in 'preparing reports on the situation of human rights and rights of persons belonging to national minorities in the Autonomous Republic of Crimea (Ukraine)'. In Belarus the Advisory and Monitoring Group is to 'assist the Belarussian authorities in promoting democratic institutions and in complying with other OSCE commitments'. In the case of Estonia the relation to the human dimension is less overtly stated, but nevertheless can be inferred as being relevant, since the mission is to act 'as a clearing house for information, technical assistance and advice on matters relating to the status of communities in Estonia and their rights and duties'. In Latvia the mandate delegates the mission to 'gather information and report on developments relevant to the full realization of CSCE principles, norms and commitments.' The Mission to Skopje which has no reference to the human dimension nevertheless performs a human dimension role in practice in regard to human rights monitoring.¹⁶⁷ The missions to Georgia, Moldova, Tajikistan and the presences in Chechnya and Albania also refer to the human dimension, through the promotion of respect for international obligations and commitments regarding human rights, fundamental freedoms and minority rights. This confirms the flexibility of the operation of the missions in relation to their mandates.¹⁶⁸

In a number of mandates reference to human rights and democratization fall in the same clause. The Mission to Kosovo, Sanjak and Vojvodina had the task to 'assist in providing information on relevant legislation on human rights, protection of minorities, free media and democratic elections.' In Ukraine the

167) This is a good example of the way in which practise evolves in ways not laid down in detail in the mandate. Although set up to guard against a spillover of the conflict from the former Yugoslavia into Macedonia, as the military activities there decreased the greater threat of instability in Macedonia became the tense relations between the Macedonian majority and the Albanian minority. As a result the mission shifted its monitoring priorities from the border situation to internal developments, primarily inter-ethnic relations but also the economic situation and the rising levels of crime. The mission has also acted as a focal point for OSCE activities in Macedonia, assisting the High Commissioner on National Minorities and the ODIHR in conflict prevention and human dimension initiatives respectively. This change of focus was not accompanied by any rewriting of the mandate, but was a response to changing priorities and needs.

168) Allan Rosas and Timo Lahelma, 'OSCE Long-term Missions', pp. 167-190 in M. Bothe, N. Ronzitti and A. Rosas, *op.cit.*, p. 176 and pp. 183-186.

mission has been mandated to monitor and promote 'free media principles' whereas in Bosnia and Herzegovina the mission's mandate has been particularly concerned with democracy building in terms of the role of the Ombudspersons and the conduct of elections. The mandate of the Mission to Croatia links the protection of human and minority rights to broader issues in that the mission is 'to promote reconciliation, the rule of law and conformity with the highest internationally recognized standards, the Mission will also assist and advise on the full implementation of legislation and monitor the proper functioning and development of democratic institutions, processes and mechanisms.' The mandate of the Mission to Georgia is quite specific in how the mission should 'assist in the development of legal and democratic institutions and processes, including advice on the elaboration of a new constitution, the implementation of legislation on citizenship and the establishment of an independent judiciary as well as monitoring elections'. Clearly these tasks make this more than a mission engaged in crisis management. The same is the case with Moldova.

It is clear that there is much common ground in the tasks which the missions are mandated to fulfil. The array of tasks points to a comprehensive approach, not only over all, but the specific mission mandates tend to be comprehensive as well. This would suggest that formulation of the mandates is broad to enable missions to function in line with the changing dynamic of the specific country situations as well as to address unexpected developments without the mandate having to undergo revision. Mandates also extend the roles of missions to performing functions such as being information contact points, or in some circumstances containing reference to the military dimension through monitoring arms control and peacekeeping, or with regard to addressing humanitarian crises.

The comprehensive remits of the mandates lead to the conclusion that it is what is excluded from them which raises the most pressing questions about the capacity of missions to be effective. Only in the case of the Mission to Estonia does the mandate actually refer directly to the 'temporary nature of the Mission'. While all the mandates are established for a set period, usually six months, the practice has been for them to be renewed every six months.¹⁶⁹ The mandates do not, however, consider what sort of exit strategies would be necessary for their termination. Again the mandate for the Mission to Estonia is instructive on this point. While many of the missions are mandated to promote, assist or enhance

169) In some cases mandates have been renewed for longer, for instance the mandate of the Mission to Croatia, consisting of two Permanent Council Decisions Nos. 112 (18 April 1996) and 176 (26 June 1997) has been extended until 31 December 1998. See *Annual Report 1997 on OSCE Activities (1 November 1996 – 30 November 1997)*, Vienna, p. 14.

capacities of individuals, institutions and organisations in the countries concerned to address the problems they face, only with regard to Estonia does the mandate refer to the need for the mission to 'consider ways and means of transferring its responsibilities to institutions or organizations representing the local population'.

Underpinning competencies of the missions is the cooperative nature of their operation. As cooperative instruments they do not have 'powers' as such, rather the missions seek to influence relations between parties in the field and are able to report back to the political bodies of the OSCE in order to encourage specific actions to be taken. However, the missions themselves wield no power of sanction over parties with whom they engage.

The Theory and Practice of Missions as a Means of Intervention

A key premise in understanding the role of missions and their intended contribution to OSCE conflict prevention is that they are intended to provide information for early warning and deterrence. One of the missions' primary tasks is to maintain transparency by gathering and disseminating accurate information for the political bodies of the OSCE. Reliable and timely information provides the basis upon which the political bodies can act in any given situation. By being located in a country missions are able to provide more dedicated information than individual states receive from embassies which have a wider remit. Therefore, the key to the operational effectiveness of the missions is their capacity to establish and maintain good and varied contacts with all parties and groups, as a basis for understanding processes within the state.

In order to be able to do this missions draw upon the fact of their on-going presence in the field. This enables the missions to develop contacts with a broad spectrum of interlocutors, develop relations and in theory be privy to insights that enhance analysis and hence action. At the least ongoing presence facilitates a familiarity with the political dynamics of a society. Presence has another critical function, acting as a reminder that the international community is not only concerned about a situation but is also monitoring its development. This can have the effect of deterring escalation or violations of rights.

Acquiring reliable information is of central importance. The provision of this information to each party is a means of facilitating communication and decisions about negotiations. This role seeks to prevent information becoming the victim of prejudices, distortions and misperceptions between the parties. Dissemination of information concerning OSCE commitments and principles is also important. On the one hand information needs to be provided to primary interlocutors, in the government and also the representatives of other groups,

communities or organisations within society which are potential conflict agents. As states become increasingly familiar with the standards and norms to which they are committed as a result of their participation in the OSCE, the dissemination of such information to the politically active strata might become less necessary. On the other hand, disseminating information to the public about existing rights and procedures for minorities or about legislative changes, and to specific professional groups remains important.

A role of the missions most directly related to conflict prevention is with regard to local crisis diffusion: 'As an on-the-ground presence with extensive contacts, the missions are in the best position to detect developments that might lead to escalation of tensions and to intervene quickly and effectively with all sides as a moderating influence.' Chigas cites as an example a situation between the Albanian community in Macedonia and the authorities in 1992.¹⁷⁰

In many ways the missions are advantageously placed to be able to play instrumental roles in laying the groundwork for negotiation and conflict resolution processes. In the context of conflict prevention, missions are able to assist in facilitating relations between the parties by changing parties' perceptions and reducing fears, exploring options for settlement, and helping governments to set up legislative and regulatory frameworks ... in short, opening a space in which the forces of moderation might eventually take hold.¹⁷¹ The performance of this facilitative or mediatory role by the mission is to a large part dependent upon the confidence the mission is able to instill in the parties. Ultimately this confidence will be derived from the extent to which the practical endeavours of missions match the aspirations which have been set.

When Does an Intervention take Place and Why?

Long-term missions came into being as a cooperative instrument to support states undergoing the travails of transition which had become subject to violent conflicts or the threat of violent conflicts. In this sense they were intended as a form of intervention that was a sign of solidarity with the state concerned, bearing in mind that all long-term missions were dispatched to states which had recently become participants in the OSCE process and with their approval.

Unlike the interventions of the High Commissioner on National Minorities, which take place on the basis of the High Commissioner's judgement, missions

170) D. Chigas, E. McClintock and C. Kamp, 'Preventive diplomacy and the Organization for Security and Cooperation in Europe: Creating incentives for dialogue and cooperation', in *Preventing conflict in the post-communist world*, A.H. Chayes and A. Chayes, Washington, D.C. The Brookings Institute, 1995, p. 61.

171) *ibid.*, p. 62.

are the creation of the political bodies of the OSCE. The establishment of some long-term missions have followed short-term expert or rapporteur missions. Exploratory missions have been used in several cases, for example under the Moscow Mechanism to Croatia, Estonia and Moldova. Personal representatives of the Chairman-in-Office have also been instrumental in determining OSCE action in particular cases and advised the establishment of missions or field presences, such as in Moldova¹⁷², Georgia and Chechnya.¹⁷³ Short-term missions can therefore help to lay the basis for a long-term mission, but as Timo Lahelma, Head of Mission to Estonia from August 1993 until February 1995, has indicated, discussions were necessary between Estonia, as prospective host state and representatives of the Chairman-in-Office before a decision was taken at the level of the Council of Ministers.¹⁷⁴

One of the reasons that interventions have taken place is that states have recognised that their self-interest is at stake. In the case of Estonia and Latvia the creation of missions can be considered to have facilitated the reconnection of the countries to Europe and at the same time acted as a form of solidarity and a guarantee against any possible threat from Russia. The establishment of missions has indeed had broader strategic implications than a literal reading of mandates suggests. The mandates are often superseded by geo-political concerns. At the time of the establishment of missions to Estonia, Latvia and Ukraine, a particular concern on the part of Western states was to provide a buffer to protect the states vis-a-vis the instability and unpredictability of the Russian Federation. The wider jigsaw of relations with Russia also influenced the deployment of a field presence in Belarus. This was subject to prolonged and delicate negotiations both with Belarus and with Russia. Diplomats have conjectured that the reason for final acquiescence on the part of Belarus was a combination of the prospect of isolation and the threat of losing financial assistance from European financial institutions, as well as a delaying tactic.¹⁷⁵ Russia had to be assured that this was not an excessive infringement of its sphere of influence.

172) For a detailed account of the way in which the Personal Representative of the CSCE Chairman-in-Office advised and contributed to the establishment of a long-term mission in Moldova see Adam Daniel Rotfeld, 'In Search of a Political Settlement. The Case of the Conflict in Moldova', pp. 100-137 in *The Challenge of Preventive Diplomacy: The Experience of the CSCE*, Ministry of Foreign Affairs, Stockholm, 1994.

173) L. Kovacs, 'The OSCE: Present and future challenges', in *Helsinki Monitor*, Vol. 6, 1995, No. 3, pp. 7-10.

174) Timo Lahelma, 'The OSCE's Role in Conflict Prevention: the Case of Estonia', 20 February 1996, unpublished paper, p. 4.

175) Interview with a member of the OSCE Secretariat in Vienna, February 1998.

These very different motives suggest that if the state concerned does not perceive a benefit from the deployment of a mission it might resist. The most obdurate case has been the Federal Republic of Yugoslavia and its refusal to readmit missions to Kosovo, Sanjak and Vojvodina.

Missions, therefore, come into operation as a result of a combination of factors: the analysis and interpretation of political circumstances by individual states; their collective decisions as the political bodies of the OSCE; and their political will to act on the basis of these decisions. In terms of the preventive missions circumstances have had to be such that concerns regarding potential deterioration have been met by a perception that an international presence has the potential to make a constructive contribution to alleviating these concerns. Furthermore, the deployment tends to coincide with a recognised weakness on the part of the recipient state. The degree to which the prospective host views the field presence as beneficial can have an influence on the speed with which a mission is deployed, the nature of its mandate and its prospects for success as a cooperative security instrument. If a mission is to be effective in terms of conflict prevention it is commonly agreed that the earlier the deployment the more chance it has of having an impact.

Certainly the deployment of long-term OSCE missions is a measure which can be taken before the necessity to consider the more complex step of a preventive deployment of military forces. Deployment of military forces itself sends an important message, but as one commentator states with regard to the deployment of UN forces in FYROM '(I)ts deterrent value has been mainly symbolic, since the number of troops deployed could not stop an attack on any significant scale.'¹⁷⁶ Such a deployment was effective because it was perceived by the parties as a tangible sign of commitment to a peaceful resolution to tensions. This is instructive, because it points to the fact that the effectiveness of an action is also related to the perception of its credibility as a measure that could make a contribution to prevention by the parties to the dispute. The effectiveness of a preventive deployment will also depend upon the degree to which the dispute has escalated. In the context of the OSCE any preventive deployment of a more 'muscular' nature would have to take place under the auspices of NATO or WEU.¹⁷⁷

176) Gabriel Munuera, *Preventing Armed Conflict in Europe: Lessons from Recent Experience*, Chailiot Papers 15/16, June 1994, p. 83.

177) The OSCE has sanctioned the deployment of a peacekeeping force in Nagorno Karabakh, but the deployment of this force remains unlikely and its peacekeeping mandate is qualitatively different from an early preventive deployment of military or police force. See Heikki Vilen, 'Planning a Peace-keeping Mission for the Nagorno Karabakh Conflict', *Security Dialogue*, Vol. 27, No. 1, March 1996.

What have Been the Actual Practices with Regard to the Use of Missions?

Mission mandates provide details concerning general tasks, deployment (geographical scope within a particular country), duration, composition and financial implications, but there are no explicit guidelines as to how they should operate. This provides the Head of Mission with scope to interpret the most effective way to undertake the tasks the mission has been given.

In practical terms Margaretha af Ugglas has described missions as having one or several of the following objectives: to be an ‘ombudsman’ for aggrieved parties, able to listen to complaints and channel these to the authorities; to be the political antennae for the OSCE, picking up the first tremors of an impending political upheaval or military confrontation; to act as an intermediary in arranging contacts between the parties concerned and external actors; to become a trusted partner in dialogue with the parties and to act as an adviser on specific issues; or to be a mediator.¹⁷⁸ Subsequently, missions have acquired other tasks. Partly this has been a result of the expansion of needs addressed as missions have been mandated and deployed in a growing number of countries, but also through practice the tasks of missions have evolved.

Mission engagement in the field will be reviewed in the following categories: facilitating dialogue and negotiations; providing advice on legislative measures and monitoring implementation; providing technical assistance, including in the realm of elections; and defusing specific tensions. Although activities have touched on other spheres, these encompass the main fields of engagement.

Facilitating Dialogue and Negotiations

As indicated above many missions have been mandated to engage in activities related to dialogue. This can be regarded from different perspectives. Missions engage in dialogue with different parties separately as a means of both understanding the situation but also in order to convey information about OSCE norms and standards. This enables the missions to share ideas about options available to the parties and by doing so in a confidential manner they can stimulate thought without exposing the party to the risks of public disclosure at a premature time. In addition when called upon the missions are also able to play a direct mediatory or facilitative role, bringing the parties together.

In Estonia the mission has worked in close collaboration with the High Commissioner on National Minorities to urge the establishment of, and subsequently support, the Presidential Round Table of Non-citizens and Ethnic

178) Margaretha af Ugglas, op.cit., p. 23.

Minorities as a means to institutionalise dialogue, especially since the large Russophone population had no representation in Parliament in the early 1990s. The establishment of the Round Table was an important conciliatory step in its own right and the mission was able to assist both as an official observer and informally as a legal adviser.¹⁷⁹

The Round Table has had a chequered track record. Its very existence was a positive sign of a process of institutionalised dialogue and it initiated discussion of legislation as well as sociological studies concerning attitudes of Estonian residents on inter-ethnic relations. It also developed the confidence to call for the relaxation of the country's language and citizenship laws in 1995; 'This call was underpinned by the argument that these laws do not contribute to the integration of the Russian speaking population, but on the contrary create obstacles to the integration process.'¹⁸⁰ The absence of concrete results, the lack of prominence in the media, parliament and public debate of the Round Table's recommendations and, more damagingly, a sense on the part of the Russophone community that the Round Table has been marginalised has, however, undermined its integrity as a dialogue body, reducing the confidence of the Russophone community in it as an instrument of dialogue.¹⁸¹ This indicates that although the mission can play a supportive role it can be difficult for the mission to play an instrumental role in matters of internal politics and policy.

The Mission to Estonia has also acted to facilitate cross-border dialogue by assisting in the establishment of the Narva Forum which took place 31 October – 1 November 1997. Convening members of NGOs, Estonian and Russian government officials (national, regional, municipal), representatives of international organisations and other interested parties from the Estonian-Russian border area, discussions focused on social questions and problems exacerbated by the border crossing arrangements. The objective was to inform the authorities about the problems faced by the local population as a result of the border regime.¹⁸²

The existence of the Round Table in Estonia for some time presented a marked comparison with Latvia, where no such mechanism existed. This led one observer to state that, in the absence of an 'institutionalized second party' (since non-citizens were not represented at any level of the official political framework) the OSCE failed to facilitate any kind of 'inner dialogue'. Instead the non-citizens were represented by the OSCE in dialogue with the authorities, without

179) T. Lahelma, unpublished paper, op.cit., p. 12.

180) Hanne-Margret Birckenbach, *Preventive Diplomacy Through Fact-Finding: How international organisations review the conflict over citizenship in Estonia and Latvia*, Lit Verlag, 1997, p. 47.

181) Interview with a Russophone participant in the Round Table, September 1997.

182) *OSCE Newsletter*, Vol. 4, No. 10, October 1997, p. 11.

having authorised it to perform this role and not being informed of the content of dialogue between the OSCE and the Latvian government.¹⁸³ A National Council was established in 1997 with both the mission and the High Commissioner on National Minorities stimulating the process, and convening a seminar to assist it. It has not yet played an effective role as a dialogue fora. In both Latvia and Estonia experience has been that 'intervention did not succeed in creating a dialogue within civil society on the disputed issues.' Birckenbach cites the Representative of the Estonian President at the Round Table to emphasise this point.¹⁸⁴

The Mission to Ukraine has concentrated much effort on the legislative and administrative disputes between the authorities in Kiev and Simferopol regarding the status of the Autonomous Republic of Crimea. In May 1995 at the joint initiative of the mission and the High Commissioner a Ukrainian Round Table was organised in Locarno, Switzerland to promote dialogue and discuss the future status of Crimea. The Mission and the High Commissioner also collaborated in organising a Round Table in Yalta in September 1995 regarding the situation of the Crimean Tatars¹⁸⁵ and a further Round Table in Noordwijk (the Netherlands) in March 1996 on the constitutional relationship between Kyiv and Crimea.¹⁸⁶ Together with the ongoing presence of the mission and the frequent visits by the High Commissioner, the round tables contributed to an atmosphere of dialogue, led to concrete proposals that influenced constitutional relations (particularly the meeting in Noordwijk) and acted as statements of international concern.

The Mission in Moldova has been deeply engaged in conflict resolution, facilitating negotiations between the parties to the conflict,¹⁸⁷ as has the Mission in Georgia with regard to South Ossetia.¹⁸⁸ In both instances proposals have been drafted by the missions with regard to the future status of the disputed territories. These proposals have provided food for thought for the participants

183) Boris Tsilevich, *High Commissioner and Permanent Mission: The OSCE at Work in the Latvia (- Russian) Conflict on Citizenship and Human Rights*, Projektverbund Friedenswissenschaften Kiel, 1995, pp. 4-5.

184) H-M. Birckenbach, op.cit., 1997, pp. 54-55.

185) *OSCE Handbook 1996*, p. 33.

186) See *The Role of the High Commissioner on National Minorities in Conflict Prevention*, Foundation on Inter-Ethnic Relations, The Hague, 1997, p. 76 and John Packer, 'Autonomy within the OSCE: the case of Crimea', pp. 295-316 in Markku Suksi, ed., *Autonomy: Applications and Implications*, The Netherlands, 1998, pp. 306-311.

187) *OSCE Handbook 1996*, p. 25, *OSCE Newsletter*, February 1998, Vol. 5, No. 2, p. 6.

188) *OSCE Handbook 1996*, p. 23.

in negotiation processes. They have been able to encourage the participants to address the hard realities of their situations and to acknowledge the key issues that have to be addressed for a settlement to proceed. In Moldova, for example the mission presented 'Report no.13' in December 1993, outlining a framework for a future status for Transnistria, emphasising the Transnistrians' separate feeling of identity, a sensitive issue that can not be ignored in searching for a settlement, but suggesting that the introduction of three levels of jurisdiction in Moldova – central, regional and mixed – could contribute to a reconceptualisation of relations.¹⁸⁹ The mission's input in the negotiations process has been intensive, particularly in the search for a new constitutional status and has involved the Head of Mission chairing meetings of the teams of experts delegated by both parties to push forward the exploration of solutions.¹⁹⁰ The Mission has had to balance the active participation of Russia and subsequently Ukraine as mediators. In 1997 further documents were drafted by the mediators defining the status of Transnistria and dividing competencies.¹⁹¹

In Moldova and South Ossetia the OSCE missions have worked alongside NGO initiatives that have tried to contribute problem-solving and confidence building approaches. Examples of such relationships include an initiative in Moldova orchestrated by a community development activist from Belfast and the Centre for Conflict Analysis at the University of Kent, another involves the European Centre for Minority Issues and a third the Conflict Management Group.¹⁹² CMG has also been active in South Ossetia working with the Norwegian Refugee Council. The British NGO Links has also been active in South Ossetia, initially working as a project of the NGO VERTIC. The engagement of these NGOs has been particularly useful in assisting the parties to broaden their perspectives of the options available to them. The OSCE mission in Moldova has been an important interlocutor for the Belfast/Kent group and the ECMI and has participated as an observer in some of the processes, recognising that it can itself benefit from the input of informed outsiders. These relations can be delicate since inter-governmental organisations do not always respond positively

189) *Conflicts in the OSCE Area*, PRIO, 1997, Oslo, p. 92.

190) *OSCE Handbook 1996*, p. 26.

191) *Annual Report 1997 on OSCE Activities*, p. 8.

192) See Joe Camplisson and Michael Hall, *Hidden Frontiers: Addressing deep-rooted violent conflict in Northern Ireland and the Republic of Moldova*, Island Publications, 1996, Co. Antrim for comments on the work of the Centre for Conflict Analysis; *From Ethnopolitical Conflict to Inter-Ethnic Accord in Moldova*, European Centre for Minority Issues, 1998, Flensburg on the ECMI's work; CMG brought representatives (including the Presidents) of Moldova and Transnistria to meetings in The Hague in January 1995 and January 1996.

to the role of NGOs seeking to play a facilitative role in confidence-building, mediations and negotiations processes. The OSCE has been more responsive than many other IGOs to the sort of informal contact that such initiatives have involved.

The continuing presence of missions gives representatives the opportunity to understand the actors involved and the dynamics of the conflicts as well as developing relations with actors. There is concern, however, that dialogue is focused at a narrow spectrum within society (decision-makers and opinion formers), and that dialogue within civil society or between authorities and representatives of civil society remains more limited. Dialogue alone (facilitated by missions, the High Commissioner on National Minorities or the Office for Democratic Institutions and Human Rights, as well as non-governmental organisations) may not be intended as a means to change attitudes and behaviour in society at large, although depending upon how ideas are disseminated this can be an indirect effect. As such dialogue is one component in a wider strategy – although to what extent a strategy is coherently elaborated by the different actors is another question.

Advice on Legislative Measures and Monitoring the Implementation of Legislation

In Estonia and Latvia the OSCE missions have been one of a number of interlocutors addressing the respective governments on the process and content of the implementation of legislation concerning the non-citizen population and citizenship. The Mission to Estonia has actively sought to provide advice and assistance in integrating the non-indigenous population¹⁹³ and the Mission to Latvia has stressed the need to concentrate on effective implementation of the laws¹⁹⁴ and its main activity throughout 1997 remained the monitoring of the implementation of laws in regard to these issues.¹⁹⁵

In both countries the advice of the missions was effective in giving priority to the political dynamics instead of following a more legalistic approach. This was also the path followed by the High Commissioner on National Minorities.¹⁹⁶ Neither sought to establish that the denial of citizenship to the majority of the Russophone populations in Estonia and Latvia was a human rights violation,

193) *OSCE Handbook 1996*, p. 29.

194) *OSCE Handbook 1996*, p. 31.

195) *Annual Report 1997 on OSCE Activities*, p. 9.

196) H-M. Birckenbach, *op.cit.*, p. 36.

rather the emphasis was placed upon the necessity to consider the political and security implications of not resolving the issue in an inclusive fashion.¹⁹⁷

In Estonia concerns and recommendations led at least three times to revisions of provocative laws which had already been passed by successive Estonian parliaments. Following the adoption of the Law on Aliens in June 1993, which triggered a crisis, the President of Estonia requested international expert legal opinions. Within weeks the government had at its disposal comments by the High Commissioner on National Minorities, the Mission and the Council of Europe which enabled the President to return the law to Parliament with suggested amendments and subsequently promulgate an amended law.¹⁹⁸ To some extent the role of the mission as an adviser in the field of legislation has diminished since the 1995 elections which produced a Russian parliamentary faction enabling Russians to participate in the legislative process.¹⁹⁹

While international assistance was important in refocusing debate in order to stave off potentially antagonistic measures, the contribution of the mission and the High Commissioner on National Minorities must be seen in conjunction with that of other international bodies. Equally important was an evolution in the behaviour of the parties themselves – in part influenced by the activities of third parties, but also by broader geo-political and economic circumstances. Paramount among these being the issues of EU and NATO membership, as well as increased experience of being involved in the process of government (the youth of the newly sovereign states can easily be forgotten).

In addition to providing timely advice and exerting pressure, missions' activities helped Latvia and Estonia to rebut Russian accusations that they were massively violating human rights: the missions provided the international community and the parties themselves with detailed and shared information, as well as external facilitators and formal and informal assistance. Missions also served national NGOs as sources of information: 'missions have made up for lack of domestic support for reforms and for lack of consultative functions, in democracies, roles usually played by social groups, which, for the time being, have not appeared in either country.'²⁰⁰

While the missions to Estonia and Latvia represent two of the most visible and possibly instrumental examples of advice on legislation being proffered, it has also been a common feature in regard to the activities of other missions. For example the Mission to Ukraine has sought to make a contribution to facilitate

197) *ibid.*, p. 38.

198) T. Lahelma, unpublished paper, *op.cit.*, p. 15.

199) *ibid.*, p. 5.

200) H-M. Birkenbach, *op.cit.*, p. 43.

the acquisition of Ukrainian citizenship by the approximately 100,000 Crimean Tatars who have yet to do so. Additionally, working with UNHCR it has been seeking to publicise the new citizenship law among deportee communities in Crimea.²⁰¹

Technical Assistance

Missions have provided assistance in a number of practical or technical initiatives, as well as in some ad hoc ways. Such assistance has responded to the most pressing needs of the states in which they are located.

In Latvia and Estonia two of the most pressing concerns regarding the large non-citizen population have been speeding up the process of naturalisation and assisting in the provision of language training opportunities. Endeavours have been in collaboration with other international governmental and non-governmental bodies. In Estonia the mission has collaborated with the Council of Europe in providing assistance to establish a system of language training for aliens living in Estonia²⁰² and in channeling foreign aid into language training projects.²⁰³ Lahelma comments that ‘The Mission and the High Commissioner on National Minorities have campaigned vigorously in order that the government increase opportunities for the non-native population to learn the state language.’²⁰⁴ Sponsoring low-cost effective language training programmes is perceived by both as a means to promote integration. Nevertheless as Lahelma commented in 1996 there ‘is still a long way to go before the programs will be functioning effectively on a nation-wide scale’²⁰⁵ and even then the elderly, less-educated and those living in mono-lingual residential areas will struggle to gain full mastery of Estonian. The Mission to Latvia is also involved in activities relating to language training in cooperation with other international organisations.²⁰⁶ In both countries the efforts and financial contribution of UNDP and the Open Society Institute have outweighed those of the OSCE. What has been important however is the concerted message conveyed by the international community that this is a priority issue.

201) *Annual Report 1997 on OSCE Activities*, pp. 10-11. Missions in Moldova (language legislation), Tajikistan (constitutional advice) and Georgia (constitution and citizenship legislation) have also contributed in this sphere. See the *OSCE Handbook 1996*, p. 25 and p. 27, and *Annual Report 1997 on OSCE Activities*, p. 8.

202) *OSCE Handbook*, 1996, p. 29.

203) *Annual Report 1997, OSCE Activities*, p. 9.

204) T. Lahelma, op.cit., p. 10.

205) *ibid.*, p. 10.

206) *Annual Report 1997 On OSCE Activities*, p. 31.

This activity is complemented by attention paid to the naturalisation process, particularly with regard to the standardisation of the language test for the citizenship and naturalisation exams in Estonia and Latvia respectively.²⁰⁷ The Mission to Latvia has observed that the pace of progress in the conduct of these exams has been sluggish,²⁰⁸ but has been unable to contribute to a speeding up. In Estonia the mission placed an advertisement in the press encouraging non-citizen residents to register to vote in the local elections in October 1994.²⁰⁹

The provision of advice and recommendations to Governments has been an important area of Mission activity. Although missions are not directed to address individual cases in regard to the human dimension, in some cases the practice has developed that missions accumulate considerable information regarding the general situation through attention to individual cases. This proves to be of assistance in engaging with the authorities.

In Estonia individuals seeking to air grievances and receive personal advice took advantage of the mission and became 'drop-in clients'. As one Head of Mission has commented 'Helping individuals from the street involved the Mission partly with functions similar to those of public legal assistance or an ombudsman's office. Visits by the clients have also proved to be a valuable source of information indicative of the problems in the society.'²¹⁰ Lahelma argues that through its flexible operation the Mission was able to gain insight into ongoing social, economic and political processes from across the spectrum and gain the confidence of members of the Russophone community, while being able to share its reflections with the authorities to contribute to the legislative process. The *OSCE Handbook* reports that in Latvia by examining patterns of rigid and at times arbitrary administrative practices the mission has been able to share its insights with the authorities in an attempt to ameliorate some of the less constructive practices.²¹¹ Likewise, this role has enabled missions to act as a safety valve for non-citizens often not aware where to turn with their problems, allowing grievances to be aired even if there are no specific mechanisms for redressing them. Although this is not a long-term solution to a problem, the Mission is in a position to share its conclusions with the authorities and thereby in an informal capacity ensure that the authorities are aware of concerns experienced by segments of the population.

207) *Annual Report 1997 On OSCE Activities*, p. 8 and p. 9.

208) *Annual Report 1997 On OSCE Activities*, p. 9.

209) D. Chigas et.al., in A. H. Chayes and A. Chayes op.cit., p. 60.

210) T. Lahelma, op.cit., p. 5.

211) *OSCE Handbook 1996*, p. 30.

This has been contested by a representative of the Russophone community in Latvia, who comments that, ‘Very broad communications with public bodies and individuals were rather of one-way kind, aimed to gain but not to distribute information/opinions. E.g., members of OSCE mission receive and consider individual complaints but they do not forward them to Latvia’s authorities nor help the applicants. Those complaints are used to gather and generalize information.’²¹² The importance of this different opinion on the role of the mission is not only whether it is more accurate than the comments by Lahelma or those in the *OSCE Handbook*, but that there is a perception that the missions are not doing something when the OSCE considers that they are.

Often the activities of the missions seek to build confidence between communities. This is not only done through the formal or informal dialogue processes mentioned above. Examples of initiatives in Macedonia indicate this. In 1994 the mission contributed to building a broad political acceptance of the census which was a means of clarifying disputes concerning the exact proportion of the population the Albanian minority constituted. The successful implementation and acceptance of the results required an ongoing international presence to guarantee credibility. The mission was able to assist the authorities and the Council of Europe as a result of its ongoing presence.²¹³ Although still focusing its attention on the continuing risk of ‘spillover’ the Mission to Skopje has increasingly attended to the deterioration of the internal situation with regard to inter-ethnic relations. In an attempt to address issues relating to security and stability the mission has made specific efforts to promote economic growth, despite the fact that there is no explicit reference to such activity in the mission’s mandate. The mission has sought to perform this task by focusing on the issue more in its reports, acting to facilitate the involvement of potential donors and working with aid providers, international organisations and financial institutions in identifying sectors for development.²¹⁴

The only Mission explicitly mandated to attend to economic issues is that in Ukraine. The mandate includes the stipulation that the mission should ‘contribute to the development of economic programmes’ in Crimea on the basis of recommendations by the OSCE Experts team which had been established to address constitutional and economic matters with regard to the status of the Autonomous Republic of Crimea. Indeed the mission was established to support the work of the experts and report on the situation in Crimea. In 1997 the focus of Mission activity shifted to the unresolved economic and social problems of the

212) B. Tsilevich, op.cit., p. 3.

213) *OSCE Handbook 1996*, p. 21.

214) *Annual Report 1997 on OSCE Activities, 1 November 1996-30 November 1997*, Vienna, p. 6.

Crimean peninsula and in particular the return of some 250,000 formerly deported Crimean Tatars. A number of inter-agency donor meetings facilitated by UNDP and UNHCR, with OSCE involvement, did not lead to significant contributions and as a result initiatives on the ground were initially slow-paced. An international donor conference in June 1998, chaired by Max van der Stoep raised several million US dollars for use in assisting with the reintegration of former deportees.²¹⁵ In view of the situation on the ground this contribution was an important but modest part of a long-term assistance process.

In Bosnia and Herzegovina practical assistance has encompassed democratisation initiatives in three main areas: confidence-building aimed at developing dialogue between ethnic groups; civil society development programmes aimed at increasing participation, strengthening the media and NGOs; and democratic institution building, particularly with regard to educational institutions and the promotion of an independent judiciary, as well as support to a legal aid programme.²¹⁶ The role of the mission is highly complex given its close but distinct relationship from the Office of the High Representative. The success of the Mission in implementing its tasks since the Dayton Agreement has yet to be evaluated. The effectiveness with regard to the broader geo-politics of the region has been questioned since the tasks the mission addresses in Bosnia and Herzegovina are currently far from being met.

Missions in a number of countries have been able to contribute to the conduct and monitoring of parliamentary and presidential elections and referenda. The ongoing presence of missions has made them ideal for contributing to the coordination of international observers. This has been the case in Moldova in 1994, in Georgia in 1995, in Macedonia in 1996/7, in Bosnia and Herzegovina in 1996 and 1997, in Croatia in 1997, in Chechnya in 1997 and in Albania in 1997. The primary role of the missions in this context has been to facilitate the engagement of the Office for Democratic Institutions and Human Rights. Elections have not always been endorsed without reservation, for instance the election in Croatia was regarded as 'free but not fair' and in Albania they were declared as 'adequate and acceptable'.²¹⁷

215) *Annual Report 1997 on OSCE Activities*, p. 10 and communication with the author following the June conference.

216) *Annual Report 1997 on OSCE Activities*, pp. 12-13.

217) See the *OSCE Handbook 1996*, p. 25 and *Annual Report 1997 on OSCE Activities*, pp. 6, 11, 14, 15, 16.

Defusing Tensions

The ongoing presence of a mission enables it to perform an early warning role by understanding the tensions and analysing the potential these might have for destabilising a situation and then acting in specific ways to address the tension. A good example of how this has defused a potentially destabilising situation took place in 1994 in northeastern Estonia in Narva. The mission and the High Commissioner became aware of a planned civil disobedience campaign and by discussing the potential consequences with both the Russophone activists behind the campaign and the Estonian authorities they were able to assist in averting the campaign and hence the potentially dangerous situation. Other areas where advice from the mission to Estonia was able to defuse sensitive issues include proposals to safeguard the availability of candidates legitimately representing the Russophone population in municipal elections in 1993 and advice concerning the travel documents of aliens.²¹⁸ These are concrete examples indicating that the input from an external interlocutor can contribute to an evolution of policy that seeks to address the concerns of communities. The discrete nature of advice proffered by the mission enabled changes in policies in a way which did not undermine the authority of the government but at the same time met some of the needs of the Russophone community.

Another example of a mission's ability to act to alleviate tensions was in Macedonia during the unrest in February 1995. The mission was actively involved in defusing the tensions that arose in connection with attempts to establish a private Albanian university in Tetovo, which was regarded as illegal by the authorities of FYROM.²¹⁹

Conditions for Success or Failure: Evaluation of Effectiveness

In the preceding sections I have addressed the institutional context within which the long-term missions operate; the institutional practices and assumptions which underpin their deployment and operation; the mandates of the missions; and experiences of how the missions intervene and operate in practice. This assessment gives rise to a number of observations concerning the degree to which long-term missions can be considered effective, and which conditions influence the success or failure of their operation.

In evaluating the input of long-term missions to the prevention of conflicts in those countries in which they have been deployed there are a number of

218) T. Lahelma, op.cit., p. 15.

219) *OSCE Handbook 1996*, p. 21.

obstacles. A first obstacle is that many mission mandates have a process orientation, in the sense that important aspects of the mandate focus on the fulfillment of tasks which it is difficult to quantify, both in terms of the time frames involved but also in terms of the quality of a product. The establishment and promotion of dialogue or mutual understanding are prime examples of this difficulty: it is one thing if a dialogue mechanism has been established, but how can the quality of dialogue or mutual understanding be evaluated or fulfilled?

A second obstacle is the fact that long-term missions do not operate in isolation. The involvement of a range of actors makes it difficult to single out the instrumental role of one or another actor. Coordination with other OSCE bodies and other international organisations is crucial. Yet since missions have acted together with other international agencies, non-governmental organisations and initiatives undertaken at a bilateral level, it is difficult to assess the specific contributions of any one actor. Furthermore, different OSCE instruments have been at work in several situations and therefore there is a cumulative affect that can be difficult to disentangle. Moreover, it is important not to overlook the input of local players when analysing the role of international interventions.

The roles of different institutional actors also has to be correlated with geopolitical influences. The degree to which governments are amenable to outside influence not only depends upon the way in which the influence is exerted. In the cases of Estonia and Latvia despite reluctance arising out of a deep historical antipathy, the admixture of pressure and advice has been sufficient to influence modifications in legislation. Although some human rights organisations have seen the moderating influence of the OSCE and the Council of Europe as too accommodating, significant amendments were made to legislation, which could otherwise have had a significant affect in aggravating relations between communities.²²⁰ Earlier controversial legislation on citizenship adopted in 1991-92 could not be influenced by the missions or the High Commissioner on National Minorities, since neither was in operation at the time. The array of suggestions and recommendations that have been provided have met with a degree of receptiveness. One of the principal reasons for this can be located in the desire of Estonia and Latvia to reconnect with Europe in order to benefit in economic terms from the EU and security terms from NATO. These carrots have produced a degree of responsiveness to external advice.

Duration is a useful criterion for evaluating the effectiveness of missions that have been in the field for a number of years. The continued prolongation of these missions, with the exception of the first missions dispatched to and subse-

220) Graham Smith, 'The Ethnic Democracy Thesis and the Citizenship Question in Estonia and Latvia', pp. 199-216 in *Nationalities Papers*, Vol. 24, No. 2, 1996, p. 205.

quently removed from Kosovo, Sanjak and Vojvodina, also presents an obstacle to the evaluation of success. That missions continue to be located in the field could suggest that they have not fulfilled their tasks. The ongoing work of conciliation and monitoring means that although some incremental results can be identified, more concrete long-term results are premature. This is partly due to the nature of conflict prevention. The fact that conflicts have not escalated into violence in those states where long-term missions have been deployed as a preventive measure is one crude barometer of their success, but it is not an indicator that can be used to reflect with accuracy upon the particular contribution of a mission.

The argument can also be approached from another perspective: while conflict has not arisen, to what extent have the social and political tensions that warranted the dispatch of the mission in the first place been ameliorated or addressed, or do the sources of conflict persist? Objectively speaking the potential for conflict appears to be less likely in the late 1990s than it did when the missions were deployed in Estonia, Latvia and Ukraine: that is the explicitly conflict prevention missions. Tensions still remain regarding the issues which gave rise to the missions, but the level of these tensions and the general evolution of the societies (particularly an improved, although still fragile, economic situation) suggests that there is not a sense that violent conflict might be imminent. The Spillover Mission to Skopje finds itself in a continuing unstable environment. While this is influenced by the inability to address the underlying frictions in inter-ethnic relations, the fundamental driver of instability remains the location of the country and the fragility of stability among its neighbours.

Having said this the roots of the potential conflicts still persist and have not been 'resolved'. In Estonia, Latvia and Russia much emotionally loaded rhetoric not oriented to harmonising relations continues to be used by politicians on both sides of the divide. Additionally disputes have continued regarding the process, speed and demands of naturalisation as well as the situation of stateless children. In March 1998 language legislation in Latvia once again caused considerable tensions between communities. In other cases similar assessments are pertinent, for instance in Ukraine the issue of citizenship for Crimean Tatars and the social and economic hardships the Tatars confront remain acute, but these issues do appear much less likely to spark conflict than might have been the case in the early to mid 1990s.

The lack of a comfortable resolution to these problems lies in the nature of conflict and the fact that potential conflicts of the sort that the missions address are rarely amenable to short-term solutions and therefore require significant social, political and economic processes to evolve before they are transformed into tensions or disputes that will be addressed through the ongoing functioning of stable political systems. One could question whether or not the resources of

OSCE participating states have been deployed in a sufficiently targeted or proactive fashion, for example in providing assistance to language training in the Baltics or addressing economic underdevelopment or hardship in Crimea or Macedonia. However, the strategy of seeking to address these underlying issues and provide information to the political bodies of the OSCE, thereby maintaining the profile of the potential conflict, seems to be sound, if incomplete. This does not however answer the question about whether long-term missions are the appropriate means to address these problems.

Another related obstacle is that, while the complexity of many of the scenarios with which missions deal is an inherent and expected burden, the difficulty of changing the perceptions of parties to one another, in the context of often grievous historical legacies, has sometimes been underestimated by traditional approaches to diplomacy. Missions are not a traditional diplomatic instrument, but they have been established by state actors and are staffed, by and large, by diplomats and therefore they operate in the context of their diplomatic heritage, even if they are in the process of changing this context.

In view of the panoply of tasks which most missions have, including information gathering, human rights monitoring, maintaining contacts with political and popular movements, governmental authorities at central and local levels and NGOs, providing assistance in the range of human dimension and political areas mentioned above (including high level mediation in some cases), their size will undoubtedly have an impact upon their ability to function effectively. It seems reasonable to suggest that missions are at times inadequately staffed in terms of number and the requisite expertise to fulfil their mandates. Although some assistance is forthcoming from outside, particularly with regard to the Office for Democratic Institutions and Human Rights' work in the realm of technical assistance and the contribution of the High Commissioner's office in terms of guidance provided by recommendations, the perception is that the mandates demand more than a small team of seconded, ad hoc staff is likely to accomplish.

This is of consequence in terms of the fulfillment of mission tasks and the termination of mandates. To date no mission is considered to have fulfilled its mandate. The regular prolongation of mission mandates suggests that the OSCE still regards them as an appropriate tool to address the issues at hand. Yet there is no formal evaluation procedure to facilitate a performance review, other than the regular review of mandates for the purpose of prolongation. Rather, missions are evaluated informally, often through bilateral meetings between interested parties and the Chairman-in-Office. This informal process makes it difficult for

smaller states to fully engage and the focus is often on the regional political priorities.²²¹

Some states, which no longer welcome the presence of missions, pose the question that with such broad mandates, frequently couched in vague language, how is it actually possible to fulfil the mandate and hence close down the mission? The dilemma of developing an exit strategy is that it would require a clear definition of the criteria which signalled the intervention in the first place. As has been seen in the analysis of the mandates above, the missions were given broad fields of operation which intimated but did not clarify the criteria for intervention. An assumption in the establishment of missions is that they are not intended to be permanent fixtures. Great sensitivity therefore, surrounds the prospective termination of missions. For the sake of the integrity of all missions it is regarded as imperative that no mission is seen to close in the face of overt political pressure. Nevertheless, some states have lobbied for the closure of the missions they host and it is of importance that all host countries see the termination of missions as a realistic prospect. They accepted missions as instruments to address specific problems in a transition phase. Without a notion of how missions might be wound up it could be argued that they do not contribute to a process of development, but rather are a mark of dependency or lack of confidence. Additionally, perpetual missions risk a bureaucratization of the OSCE itself.

The difficulty is in assessing how long a security risk persists. With regard to the missions in Estonia and Latvia, it seems that there is an unspoken consensus that missions will come to a conclusion when the Atlantic community no longer feels the need to have the degree of access to facilitate support and when the host country no longer feels the need to have the particular buffer against the Russian Federation. While these host countries may increasingly feel that the missions represent a stigma, the broader security architecture and politico-economic relations have yet to reach a point to convince the West that these states are at the point of comprehensive integration.

Conversely, Birckenbach highlights the dilemma in terms of the potential for abuse of the intervention by the parties concerned. In an ironic way 'international intervention [in Estonia and Latvia] within the framework of preventive policy accompanied by financial aid may have encouraged certain kinds of interests in preserving existing problems related to the integration of non-citizens, instead of solving them.'²²² The contention being that perpetuating the issue secures an intensive protection of the Baltic states, vis-à-vis Russia, by the inter-

221) Author's interview with a member of a delegation to the OSCE in Vienna, February 1998.

222) H-M. Birckenbach, op.cit., p. 59.

national community, allied with financial support, that might otherwise not be forthcoming. This would suggest a sophisticated counter-usage of the missions by the host state. At the same time effectiveness of the mission is however challenged if not undermined through internal criticism that there is an absence of an articulated view as to when the intervention will or should be concluded.

Furthermore, sustainable conflict prevention requires a degree of autonomy on the parts of actors themselves and not the constant attention of an international presence. The timing of any withdrawal is critical, but constant engagement, seemingly in perpetuity, could act to contain a potential conflict but not necessarily enhance a society's capacity to deal with the causes of conflict itself. This also risks a dependency. As Birckenbach comments, 'patience, may become exhausted, if the long term approach becomes an endless one.'²²³

The presence of missions presents the problem that host states feel they indicate instability to the outside world. Therefore some states are keen to terminate the mandate of the missions they host. Yet the political threshold for requesting the withdrawal of an OSCE long-term mission seems to be rather high. Complacency would seem to be wholly out of order given the increasing disenchantment on the part of several host states. States not happy with the continued presence of missions on their territory have periodically raised the issue of the amendment of the terms of reference of the mission in the Permanent Council. Ukraine is a good example. Following the Permanent Council decision to extend the mandate for a further six months in June 1996, the delegation of Ukraine issued an interpretative statement. This commended the contribution the mission had made to the settlement of problems associated with Crimea, but made it clear that the government of Ukraine was of the view that a long-term mission was no longer the optimal means to address those problems that persisted, since the outstanding issues lay under the prerogative of the High Commissioner on National Minorities and it would be a costly duplication to maintain a mission as well. The statement therefore argued for the winding up of the mission.²²⁴ Since then the mandate of the mission has been extended on three occasions but with the office in Simferopol closing and its size being reduced.²²⁵

223) *ibid.*, p. 90.

224) Interpretative Statement by the delegation of Ukraine, Annex to PC.DEC/131, *OSCE Decisions 1996 Reference Manual*, Vienna, 1997, pp. 196-198.

225) In December 1997 the mission was reduced from six to four members as part of the prolongation of the mandate until 30 June 1998. The implication being that there are now fewer tasks for the mission. See Decision 204, Permanent Council Plenary Meeting no. 143 11 December 1997.

Nevertheless, despite Ukraine's insistence that the mission be terminated it remains.

The fear that the presence of a mission is damaging to a country's image has also been strong in Latvia and Estonia. Representatives of these states have argued that the missions label them as potential crisis areas. Therefore, they are reluctant to be associated with regions of instability in which manifest human dimension violations occur and violent conflicts persists, fearing that they could be tainted as 'members of the same club'. They perceive this as having a damaging affect upon their international image, questioning the level of their development and frightening away investment.²²⁶ Therefore they seek a differentiation and further clarification of the tasks of missions.²²⁷ The views of such states are possibly a contributory factor to the recent field deployments not being termed missions. In Chechnya there is an Assistance Group, in Albania a Presence and in Belarus an Assistance and Monitoring Group. While the hosts of already existing missions might be reluctant to see the proliferation of the instrument, the host countries for these new field operations have little interest in receiving missions because there is a feeling that 'once you get a mission you can't get rid of it.'

That states willingly accept field operations that do not have the perceived longevity and intrusiveness of missions reflects concerns that have arisen over the functioning of missions. Although missions were intended to be security instruments that were a sign of solidarity, receptivity towards them has changed and now they are perceived by some states as intrusive rather than cooperative structures. On the one hand this suggests an effectiveness in the ability of the missions to engage in matters of internal significance. On the other hand it reveals a considerable cautiousness on the part of host governments concerning the degree of intrusiveness that the missions allow.

Regardless of the nomenclature of OSCE field presences, the role they play in wider political relationships should not be lost. The reluctance on Estonia's part to the continued presence of the mission has been met by a European Union

226) The claim that the presence of a mission detracts from international investment is regarded as an overestimation of the impact of missions and an avoidance of strictly economic factors, in the view of one OSCE official. Far more important than the presence of a mission is the absence of sufficient legal and institutional frameworks to make investment secure. It is argued that missions are used as excuses for not addressing other issues. Furthermore, it could be argued that since each situation is very different the presence of a mission, as a sign of solidarity and preventive diplomacy, could just as well provide investors with confidence.

227) Author's interviews in Vienna. Such views were also presented by representatives of other States where missions are located.

response making it clear that it attaches great importance to the consolidation of security in the Baltics and that although the region is not a crisis area the mission is important to the reduction of tensions between different communities.²²⁸ If Estonian accession to the EU does go ahead then the issue of the continuation of the mission will certainly have to be reviewed.

Diplomatic advocates of the continuing presence of missions in those countries which are increasingly reluctant to host them, emphasise that the mandates of missions need to be read in the context that they are primarily security instruments seeking to address broad security risks by preventing or managing conflicts. Facilitating dialogue and endeavours in the realm of the human dimension contribute to the practical definition of the missions' role.²²⁹ Missions, therefore, are political and not legal instruments and while certain milestones can be used as criteria to evaluate the extent to which missions have fulfilled their roles, it is the political judgement of the community of states that is the final arbiter. By the same token it is the political support of the states that will determine the extent to which host states will take on board the messages that the missions are communicating.

228) T. Lahelma, *op.cit.*, pp. 4-5.

229) Author's interview with an OSCE official, Vienna, February 1998.

6 The Effectiveness of the OSCE in Conflict Prevention

Conflict prevention has increasingly become a strategic priority for the OSCE and its participating states. The OSCE has transformed itself from a bipolar dialogue forum to a multilateral structure with semi-autonomous institutions, displaying an extensive operational capacity in conflict prevention and crisis management. Its theoretical competence in this sphere has increased substantially. This concluding section examines the extent to which there remain gaps in the existing conflict prevention net and some of the limitations that inhibit the functioning of the OSCE in this regard.

Gaps in the OSCE Conflict Prevention Net?

In terms of conflict prevention, judgement of the efficacy of the OSCE depends less on the body of commendable norms and standards that have been amassed, than on how the organisation operates in those areas where OSCE principles are threatened and tensions could escalate into violent conflict. If the wars in the former Yugoslavia in the early 1990s, Nagorno Karabakh, Abkhazia and Tajikistan are discounted as having arisen when the CSCE was developing its conflict

prevention focus and mechanisms, there are other situations which reflect on the comprehensiveness of the OSCE's conflict prevention architecture.

Chechnya

It has been common, and appropriate, to condemn Russia's conduct in Chechnya since the commencement of the war in December 1994.²³⁰ It has been less common to assess the extent to which the OSCE should have taken action prior to the full military conflict. The question at hand is not whether the OSCE acted effectively once the Russian military intervention had commenced, and certainly the issue is not to diminish the contribution of the Assistance Group to Chechnya in facilitating a negotiations process, but rather to assess the degree to which the OSCE failed to engage in any preventive action in Chechnya.

Discussions with OSCE officials and delegations in Vienna reveal arguments explaining the lack of a preventive intervention in Chechnya. One explanation argues that this was an internal conflict in the most self-protective state in the OSCE and it was hardly likely that Russia would have countenanced any intervention during the course of 1994. An additional perspective is that the escalation of hostilities in December 1994 was more a question of power politics and internal divisions in Moscow than events in Chechnya and therefore would hardly have been amenable to the interventions at the disposal of the OSCE. A further argument is that despite the manifest tension it was unexpected that the war escalated in the way that it did. Diplomats suggest that the fact that the OSCE was allowed to develop the role that it did in early 1995 was a testimony to the comfort the Russian government felt with the organisation.

The fact remains, however, that several of the OSCE's early warning, early action and conflict prevention mechanisms could have been utilised prior to the Russian invasion of Chechnya. The Vienna Mechanism for Consultation and Co-operation on Unusual Military Activities could have been invoked during troop movements or other stages of military preparation for the invasion by Russian forces. The Vienna Human Dimension Mechanism could have been used to obtain information on human rights abuses prior to the commencement of hostilities. The Moscow Mechanism could have been activated to send a mission to Moscow and/or Chechnya. Russia was not held to account for its actions either by use of these mechanisms, nor by the Code of Conduct which was signed just three days before President Yeltsin issued the order for Russian armed forces to enter Chechnya. As Lucas states 'the failure to act in a more decisive fashion had the effect of granting the Russian government a *de facto*

230) Rachel Denber 'The Legacy of Abuse in Chechnya and the OSCE Intervention' in *Helsinki Monitor*, Vol. 8, 1997, No. 1, pp. 59-74.

license to flagrantly disregard the most basic principles of international law, including those reiterated in the Code [of Conduct], before and during the first stages of the conflict.²³¹ Not only does this jeopardise the credibility of the Code, but it risks compromising the OSCE as a whole, since if the participating states are not prepared to act in the face of such violations its inclusiveness, broad membership and profession of common values are merely token.

In addition to the failure of the mechanisms to be operated it is also necessary to consider whether other instruments could have signalled a potential crisis. The Chairman-in-Office did not nominate a Personal Representative or employ other discretionary powers, such as dispatching a mission, until the crisis had turned into a full blown armed struggle. At no point did the High Commissioner on National Minorities address the potential for conflict, although in its nascent phase the conflict in Chechnya involved a minority which had had some similar experiences to the Crimean Tatars (a situation with which the High Commissioner was engaged) and was situated on the border of the Russian Federation and therefore could have been seen to be a threat to regional peace and stability. It could be argued that the High Commissioner was excluded because of the incidence of violence. This was, however, of a sporadic nature in 1993 and the first half of 1994. By comparison, the High Commissioner has become attentive to the situation in Georgia/Abkhazia in 1997 and 1998 (paying visits to Georgia in June 1997 and June and August 1998) despite sporadic violence there (which in May 1998 was of a greater degree than in Chechnya prior to late 1994), the engagement of armed guerrilla formations, which could be labelled terrorists, and the existence of other international attempts at mediation.²³²

The lack of intervention in Chechnya was, therefore, not so much related to an absence of mechanisms or instruments. It could be argued that there was a lack of information concerning a small and distant potential conflict zone, but to do so is self-defeating: early warning, to be effective, should encompass just such situations. Although not a high profile issue, the potential for conflict in Chechnya had been indicated by NGOs and information circulated to international organisations including the OSCE.²³³ Therefore the absence of an inde-

231) Michael Lucas, 'The Code, Early Warning, and Conflict Prevention', pp. 57-74 in Gert de Nooy ed., *Cooperative Security, the OSCE, and its Code of Conduct*, The Hague 1996, p. 67.

232) For an analysis of the situation in Abkhazia and the role of guerrilla/terrorist formations see Jonathan Cohen, 'Peace Postponed: The war continues in Abkhazia' in *Transitions*, Vol. 5, No. 7, July 1998, pp. 66-73.

233) See International Alert, *Chechnya: A Situation Report*, London, September 1992 as an early example of information being circulated concerning the situation in Chechnya.

pendent analytical capacity in Vienna could be cited as a gap in the conflict prevention armoury of the OSCE.

A more plausible explanation for the lack of action relates to the fact that the Chairman-in-Office, the High Commissioner on National Minorities and the participating states of the OSCE did not consider that they would be able to exert much influence over the Russian Federation and were therefore reluctant to intervene in the internal affairs of Russia. Realpolitik held sway. This was borne out by the minimal success of western states in influencing Russia once the conflict had begun in earnest. This reveals flaws in the conflict prevention operation of the OSCE, but it does point to a fundamental lesson of conflict prevention in the OSCE, namely that the political will of participating states to hold other states accountable for their actions, and be prepared to act correspondingly, is paramount.

The above factors indicate the limited options available to the OSCE to engage in conflict prevention activities in the face of a powerful but 'rogue' state, thereby confirming some of the concerns of Central and East European states which have been subject to OSCE interventions, that Russia receives separate treatment. This is worrying in view of other potential conflict situations in the Russian Federation, such as Dagestan or North Ossetia/Ingushetia. It does bring one back to the purpose of the OSCE, which is to tie states into a web of cooperative security. Of course power politics can never be ignored in such webs. Chechnya is not the only example of the OSCE being undermined by Russia's maverick activities, but it is the most blatant.

Albania

The key question with regard to Albania is whether the OSCE could have acted in a consolidated fashion at an earlier point in order to stave off the near collapse of the state in early 1997. Once Vranitzky was appointed as Personal Representative of the Chairman-in-Office and the international operation on the ground developed, the effectiveness was high. In managing the crisis, which was a manifest breakdown of peace and security, it was prevented from escalating into a considerably more serious one. Nevertheless, this does not camouflage the tardiness of the response from a conflict prevention perspective. At best, in the context of Miall's distinction between light and deep conflict prevention the OSCE's intervention in Albania at this time can be regarded as a success for light conflict prevention. It would perhaps be more appropriate to characterise the intervention as an early crisis management, and the fact that the crisis escalated to the point that it did reflects a failure in policy to address deep conflict

prevention.²³⁴ Indeed, the intervention became effective when a coalition of the willing was led by the West European state, Italy, whose interests were most directly affected by the chaos and ensuing flows of refugees.

Miall identifies four dimensions of potential conflict in Albania in the mid 1990s. These were the political polarisation between the two major parties; the economic turmoil of the transition and the rapid social stratification that emerged; the status of the Greek minority in the south of the country; and the diversity of religious identity groups.²³⁵ The OSCE had a clear mandate for intervention in regard to the status of the Greek minority and the High Commissioner on National Minorities made several trips to Albania prior to October 1994.²³⁶ However, the ethnic issue was not an immediate cause of the escalation of tension in the latter part of 1996, thus involvement by the High Commissioner was precluded. In regard to the political process in Albania the OSCE's criticism of the 1996 elections was the most strongly worded judgement the OSCE had given on a participating state's elections.²³⁷ Nevertheless, despite the backing of the EU and the United States, the OSCE was able to do little to influence the obdurate President Berisha, who had previously been the recipient of western plaudits and assistance.

An additional and central element to the final escalation of the tensions in Albania, reflecting on the failure of the OSCE is emphasised by the Secretary General: 'What the crisis in Albania highlighted, however, was the failure of Europe's security organizations to tackle economic and social crises at an early stage. The early warning was there – the collapse of the pyramid schemes and the resultant discontent were front page news. What was lacking was co-ordination between economic organizations, security organizations and the Albanian authorities to address the simmering problem before it boiled over.'²³⁸

The proximate sources of the conflict, lying in the fraudulent elections and the economic disaster of the collapse of the pyramid schemes, did not necessarily presage the type or scale of societal collapse that occurred. Nevertheless, the

234) Hugh Miall, 'The OSCE Role in Albania: A Success for Conflict Prevention?' *Helsinki Monitor*, Vol. 8, 1997, No. 4, pp. 74-85.

235) *ibid.*, pp. 76-78.

236) *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention*, The Foundation on Inter-Ethnic Relations, The Hague, June 1997, pp. 44-48.

237) *Observation on the Parliamentary Elections held in the Republic of Albania*, May 26 and June 2, 1996, ODIHR, Warsaw, 11 June 1996.

238) Speech by Ambassador Giancarlo Aragona, Secretary General of the OSCE, 'Preventive Action in Europe: The Role of the OSCE', at the International Conference on Preventive Strategy, Tokyo 13 January 1998, p. 11.

acuity of Aragona's statement does not divert attention from the more fundamental failing of the OSCE in regard to Albania. Namely, there was an insufficient response to the structural causes of the breakdown, which had deeper roots, especially the weak governance, political polarisation and inadequate and chaotic economic institutions. Aragona highlights the lack of attention to the final point, but too many western governments had seen Berisha as the person who had brought democracy to Albania, and thus were disinclined to respond to his increasingly dictatorial style of rule sufficiently early. Miall cites as an example the West's inaction concerning the struggle over the independence of the judiciary as allowing Berisha to perceive that democratic deficits would be excused as long as he conformed in terms of the foreign policy the West desired.²³⁹ This reveals a typical fault in western policy towards Eastern Europe and the former Soviet Union in the post-communist period, that of investing in individuals as much if not more than structures, institutions and processes of change. A large part of the problem was Berisha's unwillingness to co-operate, and this underlines the limitation of the OSCE in influencing, or twisting the arm, of a government or President not inclined to comply.

Kosovo

Ever since the break-up of Yugoslavia commenced, the international community has feared the spread of conflict to the southern Balkans. At the root of the concern was that if fighting broke out and the Serb authorities began the expulsion of Albanians from Kosovo, the scale of the forced displacement could have a significant impact on regional security. Tensions in Kosovo have been on the international agenda for at least a decade, since the autonomy of the region was revoked by the Yugoslav authorities in 1988. Despite this tensions escalated to the verge of all out war in the summer of 1998. The international community in general, and the OSCE in particular, must reflect upon why efforts at preventive diplomacy have uniformly failed to restrain the escalation.

The first long-term mission of the OSCE was sent to Kosovo (as well as Sanjak and Vojvodina) in 1992, an early recognition of the frailty of stability in the region. The mission was withdrawn in 1993 owing to the refusal of the Federal Republic of Yugoslavia to prolong the Memorandum of Understanding. A watch-group was established in Vienna to examine events in the areas formerly covered by the mission. In 1997 a Personal Representative of the Chairman-in-Office was appointed, although as noted above was only able to play a limited

239) Miall, op.cit., p. 84.

role.²⁴⁰ The escalation of the tensions since early 1998, including heavy handed and brutal police action by the Serb authorities, effectively oriented towards a policy of 'ethnic cleansing', and an increasingly military response from the Kosovo Liberation Army, have demanded a more urgent response from the OSCE.

Despite the efforts of the Chairman-in-Office (who has issued a number of statements, such as one on June 11 deploring 'the excessive and indiscriminate use of force by Serb military and police units which has brought the crisis to the brink of war and threatens international peace and security'²⁴¹) and the appointment of a new Personal Representative, the OSCE's efforts have taken a back seat, with the Contact Group playing a more instrumental role. Nevertheless, the Contact Group is struggling to grapple with the resolute decision of President Milosevic not to accept international involvement on the Kosovo issue, since in his view it is an internal affair.

A number of factors appear to have limited the effectiveness of engagement. The prioritisation of the war in Bosnia crippled the OSCE, both conceptually and in terms of resources. The fear was that if secession was allowed in Kosovo, nothing would prevent the Bosnian Serbs from seceding from Bosnia, thereby undermining Western policy. However, such a cautious policy effectively assumed that secession was an inevitable consequence of autonomy, and by not pushing for a meaningful autonomy at an earlier stage the escalation of the conflict has undermined the credibility of the OSCE's preferred solution, namely autonomy (regardless of whether or not this would have actually succeeded in addressing root causes of the conflict). The OSCE's strategy was passive, emphasising the need for Serbia to respect human rights and minorities and to grant autonomy to Kosovo within the Yugoslav Federation. The insistence that Kosovo belongs within the frontiers of Serbia and Yugoslavia left the international community seeking to maintain the same position it had held at the beginning of the break-up of the former Yugoslavia, with the same lack of effect. The approach effectively appeased Serbia with regard to Kosovo in order to keep Serbia on board in the resolution of the Bosnian conundrum. As Miall com-

240) A detailed account of OSCE involvement in Kosovo is provided in Stefan Troebst, *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*, ECMI Working Paper # 1, 1998, pp. 26-32. For a specific discussion of the role of Max van der Stoep see John Packer, 'The Role of the OSCE High Commissioner on National Minorities in the Former Yugoslavia', pp. 169-184, in *Cambridge Review of International Affairs*, spring/summer 1999, Vol. XII/2, pp. 176-178.

241) Statement by the Chairman-in-Office of the OSCE, Bronislaw Geremek, 11 June 1998, reported in *OSCE Newsletter*, Vol. 5, No. 6, June 1998, p. 2.

ments, '[T]he interests of conflict prevention in Kosovo were therefore sacrificed in order to achieve a conflict settlement in Bosnia.'²⁴² Inevitably the issue did not remain suppressed for long and returned to the agenda in a far more sensitive format.

The failure of the Kosovar Albanian's policy of non-violence to produce any results tilted them towards a policy of violence, which they had seen rewarded elsewhere in the Balkans. As a result the international community is now faced with the dilemma of whether to launch a more rigorous and possibly military intervention before the war has developed further or wait until later to do the same. The parties are being urged to negotiate, but outcomes are already prescribed before they reach the negotiating table (namely enhanced autonomy is the limit of the resolution of the status issue) and thus the party whose aspirations are ruled out has little incentive to negotiate.

The failure of conflict prevention in Kosovo has not been the OSCE's alone, but it does suggest that the mechanisms and instruments at the disposal of the OSCE can not always carry out their functions without a favourable international climate. In this instance the OSCE's options for action are severely circumscribed by the unwillingness of the Serbian authorities to engage in a process of dialogue. Milosevic has been masterful in the cat and mouse game that has delayed more stringent intervention. The OSCE has had little impact in redefining the nature of the process. The suspension of the Federal Republic of Yugoslavia from the OSCE has both diminished the scope for engagement and meant that the toughest measure in the OSCE's arsenal has already been exhausted. A large part of the problem has been that the participating states have been locked into the thinking that drove policy towards the Yugoslav debacle in the early 1990s. This is a question of state policy and the failure of co-operative approaches. The escalation of the conflict therefore suggests that the OSCE is only able to play a constructive role when there is an inclination on the part of both parties to engage in a process. At present this is not the case in Kosovo, where one party believes it can spurn international pressure and the other feels betrayed by the international community and perceives itself as having been driven into a position of self-help.

242) Hugh Miall, 'Kosovo in Crisis: Conflict Prevention and Intervention in the Southern Balkans', forthcoming in *Peace and Security*, October 1998.

Limitations in the OSCE's Conflict Prevention Endeavours

The examination of experiences in Chechnya, Albania and Kosovo, suggest that there are clear limitations in the OSCE's conflict prevention endeavours. With some additional concerns these can be broken down into the following categories: political will; the nature of the instruments and mechanisms; the question of the universality of standards; early warning; the internal operation of the OSCE; and the public profile of the OSCE.

Political Will and how it is Wielded

The key commodity in promoting effective multilateral conflict prevention is political will. The underlying question is whether the community of states has the political will or interest to act in the face of a potential conflict. If states exercise excessive restraint in the application of OSCE mechanisms and instruments, these will lose their potency and ability to address conflicts. To a large extent political will is a balance of considerations that a particular conflict might actually go away and all the effort and implications of direct intervention could therefore be avoided. It takes serious violence, or the manifest prospect of this, with the resultant strategic implications, to tip the scales in favour of intervention. As an inter-governmental body, although the OSCE has developed its own identity through the process of gradual institutionalisation, it continues to represent the collective will of the participating states and can act only within the limits of the means (financial, conceptual and contractual) afforded to it.

Certain constraints confront the collective operation of political will. The relationship between national policy and multilateralism is particularly delicate in that double agendas are often at play. In the case of the former Yugoslavia, despite the emphasis on territorial integrity and national sovereignty over self-determination, the renationalisation of foreign policies helped to legitimate principles (territorial partition along ethnic, religious and cultural lines) in conflict with the process of integration and enlargement that was occurring at the time within the EU.²⁴³ This has also been noticeable in the case of Nagorno Karabakh in the roles of Russia, the United States, Turkey and France. The balance between national interest and common security always has realpolitik weighing heavily on the scales.²⁴⁴ The nature of intervention is qualified by the degree to which an issue impinges on wider issues of security and stability. In

243) Sophia Clement, *Conflict Prevention in the Balkans: Case Studies of Kosovo and the FYR of Macedonia*, Challiot Papers 30, Institute for Security Studies, December 1997, pp. 47-49.

244) Heather Hurlburt and David Storr, 'A Gesamtkonzept for Conflict Management: Bringing Capabilities into Line with Exigencies' in *Helsinki Monitor*, Vol. 5, 1994, No. 3, pp. 55-62.

this context the Balkans was a lot closer to home for West European states which had to deal with the prospect of refugee flows and the 'CNN factor', whereas Chechnya was a more distant concern and the situation in Dagestan, for example, even more so.

The OSCE disposes of 'soft' measures that depend upon compromise between the parties in the conflict as much as international pressure. The OSCE's task is to avoid the need to raise the stakes towards 'hard' intervention. This questions the extent to which the OSCE has sufficient teeth, to act in those instances when the mechanisms and instruments themselves are unable to prevent an escalation. The OSCE possesses limited sanctions. It has no enforcement mechanisms and is not in a position to compel states to follow a particular line of action. The objective of its approach has been to assist states, through a web of mechanisms, to avoid conflicts or confrontations rather than forcing them to do so.²⁴⁵ But such approaches require sufficient interest on the part of all parties to engage and this is a fragile diplomacy, since obdurate parties can choose to ignore it. One response growing out of, but also threatening, the co-operative approach is the imposition of sanctions, from application in the economic sphere to expulsion. To have an impact sanctions have to be backed by significant political will. As a coercive instrument sanctions are unlikely to foster long term prevention, rather they contain and threaten.²⁴⁶ In Yugoslavia sanctions initially were imposed in line with the EU and UN. Subsequently the OSCE resorted to the sanction of exclusion as a means to exert influence over the behaviour of a state. However, suspending Yugoslavia from the OSCE deprived it of what meagre means it possessed to monitor and influence events. An organisation which legitimises interference in the internal affairs of its participating states diminished its capacity to do so through this decision.

Clearly exclusion is not a co-operative means with which to solve problems, but is rather a display of power. In other cases compliance is pursued more co-operatively and is aided by a 'carrot and stick' policy. The OSCE has some carrots and sticks at its disposal, but for sticks to be effective there has to be a sense that they encompass a range of actions that precede a more coercive intervention. It is not categorical that the OSCE itself disposes of coercive sanctions. After all, participating states are linked in the operation of other multilateral bodies. It is, however, imperative that there is a commitment and a means to utilise coercive measures as and when necessary. This demands a multilayered and co-ordinated approach.

245) Walter Kemp, *Making Sense of the CSCE*, Federal Trust Discussion Paper, April 1994, p. 12.

246) See Renee de Nevers, 'Democratization and Ethnic Conflict', *Survival* Summer 1993, pp. 31-48.

This is seen in regard to prospective membership of other international bodies. The EU, for example, has established a rigorous threshold for membership, including fiscal, governance and human rights criteria. From the outset the OSCE has had an inclusive approach to participation: the OSCE's approach has been to bring states on board and to assist participating states with flawed records to improve their compliance with commitments from within. The underlying assumption is that through support programmes the roots of societal instability will be addressed. Participation in such a club can help to change motivations and interests regardless of the presence or absence of pressure to conform. The more onerous criteria for EU membership have been a means to exert influence over states to comply with OSCE commitments. EU enlargement, and the carrot of accession, is a distinct process, a trump card that can only be played once for each state. However, fulfillment of criteria along the road to accession are an important means through which to have a sustained impact upon both the behavioural and structural evolution of states.

Political will is crucial to the preparedness of states to act in concert in the face of potential conflicts. This requires action not only in cases of manifest violations of commitments or highly visible escalatory tensions. A bottom up approach to prevention encompasses the will to ensure the implementation of OSCE standards and commitments. Failure in this is also an indicator, not necessarily of imminent conflict but certainly that the mode of governance which the OSCE as a community has agreed to, is not being undertaken and the potential for discord within society rises. The degree to which standards are implemented at a national level offers 'yardsticks by which states can gauge developments regarding their potential for conflict.'²⁴⁷ Leverage only comes in the wake of a preparedness to ensure that participating states realise that commitments are real (and as such intended to be beneficial for development) and not merely for window dressing.

Insufficient implementation or outright violations require a prompt response. If OSCE states are unwilling to challenge those states which are seen to transgress in the implementation of norms, then the commitments themselves are undermined. For example, states were very cautious in their response to the conflict in Chechnya, refraining from using the Code of Conduct as a means to assess the 'quality' of Russian behaviour.²⁴⁸ However, during the Permanent Council's discussions of Croatia's operations in Western Slavonia and the

247) Rob Zaagman, 'Some Reflections on OSCE Conflict Prevention and the Code of Conduct', pp. 29-39, in *Helsinki Monitor*, Vol. 7, 1996, No. 2, p. 31.

248) See Michael Lucas, 'The War in Chechnya and the OSCE Code of Conduct' pp. 32-42 in *Helsinki Monitor*, 1995, No. 2, pp. 35-37.

Krajina, provisions of the Code were invoked. As Zaagman points out, ‘the legitimacy of international commitments and monitoring thereof is under threat if “big boys” can consistently violate such commitments and get away with it.’²⁴⁹ This points to one of the critical dilemmas faced by the OSCE community. Much of the evolution of the OSCE in the post-Cold War period has implicitly been to socialise Russia. The OSCE has been used as a forum to constrain Russia’s excesses and at the same time to integrate Russia into the common practice of the wider European community – a balance which has rarely been easy.

The Nature of Formalised Dispute Settlement Procedures

In general, states have been reluctant to create mechanisms to address internal conflicts because they prefer to avoid the prospect of intervention in internal affairs which could compromise their own national sovereignty. Those instruments which do sanction internal intervention were established, by and large, at a time when Central and East European states have been weak and prepared to open themselves up to scrutiny as part of the process of gravitating toward the West. This is less the case today.

In inter-state relations sophisticated procedures can take priority over the search for simple, pragmatic and workable solutions. To a certain extent this appears to have been the case with the OSCE in regard to its formalised mechanisms for peaceful settlement of disputes, which as one commentator states, betrays the way in which ‘States develop complex mechanisms to protect their complex interests’.²⁵⁰ The non-usage of these mechanisms within the OSCE indicates the reluctance of states to accept formalised third party intervention that is based on legal rather than political criteria. This reluctance imposes a limitation on the possibility for effective multilateral conflict prevention. Nevertheless, while parties might resist outside interference they cannot necessarily resolve issues without some level of intervention. This reveals the adaptability of the OSCE, since in practice a shift from over-complicated mechanisms to the use of politically designed instruments such as the High Commissioner on National Minorities, the missions and the Personal Representatives of the Chairman-in-Office has occurred. Despite the trend for integration (primarily economic but also political) within the EU it is difficult to envisage circumstances in which OSCE participating states will be prepared to lower the thresh-

249) R. Zaagman, ‘Some Reflections ...’, op.cit., p. 35.

250) Heather Hurlburt, ‘CSCE Conflict Resolution in Practice: A work in progress’ pp. 25-38 in *Helsinki Monitor*, Vol. 5, 1994, No. 2, p. 36.

old for internal intervention and the subjugation of sovereignty to the extent that the legalistic mechanisms will perform instrumental roles.

Universality or Double Standards

One of the defining characteristics of the OSCE is the equality of all participating states: equal access exists for all and commitments apply equally to all. The operation of the OSCE, however, leaves room for concern that instruments are applied by one half of a continent to another half. A number of diplomats in Vienna expressed the view that the touchstone of whether the OSCE is inclusive and co-operative rather than a stick with which to beat transitional states will be when the OSCE addresses an issue in a west European state, intimating the existence of politically motivated double standards. One argument is that it would be warranted for OSCE conflict prevention instruments to operate in regard to situations such as Corsica, the Basque region, Italian separatism or Quebec. Another is that the non-operation of instruments in regard to Russia or Turkey, indicates a lack of commitment to apply standards universally.

This evaluation emanates from representatives of states for whom 'joining the West' has been an important stimulus. They can be prone to judging the effectiveness of the OSCE from the perspective of whether or not it has helped meet this goal. In pursuit of this goal states were initially more amenable to measures that might impinge upon their sovereignty, but saw this as a necessary first step to the structural adjustment that was required for EU and NATO membership. Undoubtedly this has afforded considerable leverage for influence over internal legislation and the general orientation of these states. A counter argument, suggests that, although there are tensions and actual crises in Western Europe these are either outside the parameters of OSCE engagement (for instance the intervention of the High Commissioner on National Minorities requires a situation to pose a threat to broader security issues) or the EU is more likely to become involved at an early stage.

A cause for concern in these perceptions of double standards is that the objective of much of the conflict prevention work is to be inclusive, to draw states into a wider community. Yet in being drawn in some states feel patronised. As a result of being interpreted as one condition of a wider political manoeuvre, the hurdles to be negotiated could actually serve to alienate states and cease to influence their behaviour, especially those that might be left on the outside of the EU or NATO.

Early Warning

Of utmost importance to a commitment to conflict prevention is a capacity to detect potential conflicts at an early stage and to respond appropriately as early as possible. The OSCE possesses a number of antennae which in theory play an

early warning role: the High Commissioner on National Minorities, the long-term missions, the monitoring of structural factors within the human dimension and the existence of a permanent political consultation process in Vienna. Early warning is only effective if it leads to an understanding of how the root causes of conflict should be identified and then dealt with. If the analysis of the roots of conflict are limited then the range of actions are also limited. Although it is not necessarily systematic the OSCE's approach emphasises the need for political appreciation of potential security risks, through the co-ordination of the political bodies of the OSCE, but there is not an internal analytical capacity. The OSCE's dilemma is more in the realm of translating early warning into appropriate action and intervention. Coalitions of action have to be built. Strategies which substantively contribute to change (not simply at the level of rhetoric) need to be considered. Financial resources have to be available. Early intervention, which can be perceived as an affront to a state's sovereignty and independence, has to be set in train.

An area which suggests that there have been gaps in the OSCE's approach to conflict prevention is the economic dimension. Although the second basket of the OSCE put economic issues among the founding priorities of the CSCE, these have received marginal attention as the OSCE has developed. The OSCE has not been sufficiently attentive to the political consequences of economic irresponsibility. That a close link exists between security and economic and social stability in the participating states has become increasingly apparent, since the economic weakness of any state can damage other aspects of its stability and have an impact on the stability of sub regions as well as individual countries. As a result of this recognition, and with the precipitous events in Albania in late 1996 and early 1997, serving to emphasise the need, an OSCE Co-ordinator on Economic and Environmental Activities has been established.

This instrument will not be an information accumulator, which would duplicate roles played by international financial institutions that compile detailed reports on the viability and sustainability of individual countries' financial systems. The OSCE's need is for economic analysis to contribute to assessments of internal and external security concerns and for more effective liaison with international financial institutions in order to maximise the impact of intervention.²⁵¹

The Internal Operation of the OSCE

Participating states have long been concerned that the OSCE should not amass its own bureaucracy, bedevilled by internal institutional needs. Questions have

251) See Speech by Ambassador Giancarlo Aragona, 'Preventive Action in Europe: The Role of the OSCE', op.cit., p. 12.

been posed concerning how well different OSCE offices and missions are run, in relation to secondments and personnel matters, whether or not field staff have appropriate skills and experience, management structures and administrative processes within offices, the use of new technologies to facilitate communication and information gathering, and fiscal rectitude. The relevance is twofold: first, good practice in internal management is germane to an organisation seeking to promote good practice in issues of governance and rights as a cornerstone of conflict prevention; second, inefficient management can only hamper the efficacy of operations.

This raises the issue of personalities. The efficacy of a number of conflict prevention instruments depends upon the way in which individuals (Heads of Mission, the High Commissioner on National Minorities, Personal Representatives of the Chairman-in-Office, as well as the Chairman him or herself) perform their roles. The operation of these instruments allows scope for individual discretion as to how and when to become engaged in preventive activities. This is inevitable since conflict escalation and conflict prevention are about politics. It can lead, however, toward intuitive rather than systematic conflict prevention. It is not only the diplomatic skills with regard to the exercise of mandates and developing the confidence of government and non-governmental interlocutors, which count. It is also important that the instruments collaborate effectively with one another. Accountability to the political bodies of the OSCE and a preparedness to scrutinise the operation of institutions is the only means to surmount friction that inevitably exist between them.

An area in which the operation of the OSCE is often far from transparent is in the appointment of senior officials to positions within the organisation. Deliberations for such positions are not conducted openly and the criteria for appointments are not always clear. Officials and representatives of individual states or groups of states engage in back room deals that are often a question of bargaining over political turf and claims to prominent international positions. As a result compromise appointees are not always the ablest and this has an impact on the competence of the organisations operation.

Public Profile

The public profile of an organisation engaged in conflict prevention work can both contribute to and diminish the effectiveness of its work. Confidentiality is an important element which often conditions the way in which OSCE officials operate, especially the High Commissioner. Therefore, reports are often not released to wider audiences. But as a result the findings can be used by politicians in a selective form, and the failure of missions to counter the selective use of

material has led, in some cases, to a loss of credibility.²⁵² This can be detrimental since public awareness and public pressure can be effective tools. If local and international opinion is oblivious to the activities of the OSCE in the realm of conflict prevention governments might feel less motivated to follow through with the hard decisions that invariably accompany conflict scenarios.²⁵³

A former Head of Mission to Estonia has commented that the public image of missions and their ability to swing public debate has not always been positive.²⁵⁴ There appears not to be a strategy on the part of the OSCE to address the local and international media as a means to disseminate information about conflict prevention or human dimension commitments. It would be difficult to prove the impact a media strategy could have. Nevertheless, allowing mistaken rhetoric to dominate public discourse not only damages the credibility of the organisation but it fails to impact on broader social attitudes allowing discordant perceptions to be entrenched. There is a need for serious presentation to the public for the purpose of initiating 'myth-free public debates'²⁵⁵.

Is There an Adequate Framework for Conflict Prevention?

The levels of tensions in those states in which the OSCE has been active, before and after the commencement of an intervention, is a measure of the extent to which effectiveness can be judged. Assessing levels of tension is an imprecise art. Nevertheless, there are certain features that shed light on the question. In a number of countries the institutions and experience of statehood are more entrenched now than in the early 1990s when the OSCE began to deploy its instruments of conflict prevention. This is reflected in a number of ways: constitutions have been rewritten and bodies of laws put on the statute books; governments have been removed through electoral processes which have not drawn the ire of the international community; integration into the international community through participation in, membership or associate membership of a range of international bodies has enhanced the status and profile of many states; and states which were newly independent or released from the constraints of an immobilising bloc system, have become more confident in their dealings with the international community and more sophisticated, if not aggressive, in fending off

252) H-M. Birckenbach, op.cit., pp. 55-60.

253) H. Hurlburt, 'CSCE Conflict Resolution ...', op.cit., pp. 25-38.

254) T. Lahelma, op.cit., p. 16.

255) H-M. Birckenbach, op.cit., p. 87.

perceived infringements of their sovereignty. Thus the character of states has undoubtedly changed.

This evolution suggests that some of the states in which the OSCE has most actively pursued a conflict prevention agenda, despite not having passed completely beyond human dimension concerns or violations of human and minority rights, are distant from the prospect of any violent conflict. In Estonia and Latvia debates persist about the content of legislation on language and education and concerns are aired about the prospects of integrated multicultural societies, but the potential for intervention by the Russian Federation seems much less likely. The cumulative interest of the international community, often in ways that has tried the patience of the Estonian authorities, appears to have set out a marker restraining the Russian Federation, if not some of the more volatile voices within. In Ukraine, the fundamental questions relating to the status of the Autonomous Republic of Crimea took a long time to be resolved. The debate has now moved beyond the question of Crimean secession and threats to Ukrainian sovereignty. With regard to the Crimean Tatars, they remain a community in need, but not one which is likely to spark a wider conflagration, given that there are international attempts to meet their needs, co-ordinated by the OSCE (mission and High Commissioner on National Minorities), UNHCR, UNDP and the Ukrainian Government. These examples suggest that the OSCE, in collaboration (actively or incidentally) with other international organisations, NGOs and political and economic circumstances, has contributed to a lessening of tensions.

Macedonia presents a somewhat different case and hence a different perspective on conflict prevention. The international community's priority was the interposition of forces (UNPREDEP) and the provision of good offices (the High Commissioner on National Minorities and the long-term mission) as a reaction to concerns that the Balkan conflicts could spillover and ignite internal tensions. The international presence provided several signals: as an indication of a determination to be involved; the combination of military and civil components to the engagement provided a deterrent and a persuasive capability; and the early deployment of resources meant that there was scope for adapting the role in advance of any potential conflict. Internal factors also had a major impact: the level of violence at the time of deployment was low and the agreement of the authorities concerned was unanimous. Nevertheless, Macedonia has remained in a precarious state. Internally, ethnic relations remain tense and society remains polarised along ethnic lines, with issues over autonomy, education and status still

unresolved, and leading to periodic flare ups.²⁵⁶ Externally, the deterioration of the situation in the southern Balkans has added to international fears of a spillover and consequently led to a reinforcement of the international presence on Macedonia's borders with Albania and Kosovo.

These factors suggest that the OSCE's capacity for conflict prevention must be seen in a broader context than the operation of its own instruments. The OSCE's effectiveness is conditioned both by the complementary roles of other agencies and wider economic, political and social circumstances. Nevertheless, the functioning of the OSCE's instruments and its political structures, as a dialogue forum, are inextricably linked to the wider canvass. Through the operation of the instruments and mechanisms examined in this report, despite the problems that have been outlined, the OSCE remains well-placed to act early. In doing so it has begun to change the way states perceive the potential to prevent conflicts.

The OSCE's comprehensive approach allows for a broad remit of concern and intervention. The human dimension, protocols regarding human rights and specific political commitments have legitimised interference in the domestic jurisdiction of participating states, although many governments remain nervous about the implications of this. Encompassing issues relating to good governance, the rule of law, strengthening civil society, and respect for human and minority rights, the human dimension is critical to the development of societies capable of addressing the dysfunctions that could generate violent conflicts.

The co-operative ethos of the OSCE provides an innovative basis for engagement. The operation of the High Commissioner on National Minorities, the long-term missions and the Personal Representatives of the Chairman-in-Office have 'turned away from the view of the third party as a "resolver" of conflict. They are ... concerned less with using power than with using persuasion as a means for inducing changes of policy, less with judging compliance with legal obligations than with generating practical decisions, and less with formality than with acting with the flexibility needed to address the situation at hand and as a facilitator and adviser over the long term.'²⁵⁷ Their limited mandates, exploratory and non-binding nature enables parties, especially governments, to feel that they remain in control and are not forced or humiliated into compromises. Utilising non-coercive instruments at the point of departure in conflict prevention is an attempt to address conflicts co-operatively.

256) See Hugh Miall, 'Kosovo in Crisis: Conflict Prevention and Intervention in the Southern Balkans', forthcoming in *Peace and Security*, October 1998.

257) D. Chigas et al., in A. H. Chayes and A. Chayes, op.cit., p. 63.

Prioritising process and policy rather than substance and settlement, these instruments of the OSCE give precedence to the need to address the interests, needs and fears of parties, thereby assisting them towards mutually acceptable ways of satisfying these. Primary responsibility for resolving problems nevertheless lies with the actors concerned. The process orientation is based on the assumption that if better relationships can be facilitated (between the parties to the dispute/conflict themselves, and between the third party and the other parties) then the scope for a more productive outcome will be greater. While emphasising process over substance is in theory an important step it is not always the case in practice, as the example of negotiations over Kosovo indicates. The process orientation remains founded on certain common precepts, principally maintaining a particular balance between territorial integrity and self-determination, and it remains the case that the OSCE has not proved effective in facilitating political solutions to deep rooted conflicts.

The political bodies of the OSCE, and hence the participating states, have delegated the right of independent initiative to conflict prevention instruments, particularly the High Commissioner, but also missions. This provides flexibility and scope for quick responses to changing circumstances. Host governments retain a right to influence the use of these instruments, even if this is subject to political pressure exerted by the Chairman-in-Office, the Permanent Council or leading states. The implication drawn from experience to date is that the input and control governments retain does not inhibit the leeway for operation possessed by the instruments. Host governments have to calculate to what extent it is in their interests to push to curtail an engagement. Such calculations are bound up in other political processes and decisions, most notably for a number of states the issue of accession to the EU.

The OSCE has been obliged to take on board new scenarios. This has been necessary given the changed nature of conflict in post Cold War Europe, which has challenged the state centred orientation of the OSCE. One response to the growth of internal conflicts has been to build a regime of minority protection. Another has been a recognition that such conflicts are not merely the domain of traditional diplomacy and peacekeeping. The OSCE has acted to address this by creating instruments with an interventionist capacity. It has been difficult to apply these conclusively since resolving ethno-political conflicts has proven to be less a question of procedure and law, although undoubtedly these are necessary, and more a factor of societal relations and the politics of recognition combined with finding ways to reconcile the real or perceived grievances of communities between which harsh barriers of hatred and violence have been established.

New types of conflicts have required the OSCE to reconsider the role of sub-state entities and non-state parties. In Crimea, South Ossetia, Chechnya, Nagorno Karabakh and Kosovo the OSCE has experience in dealing with sub-

state actors. The instruments, mechanisms, principles and decision-making procedures of the OSCE traditionally have been oriented towards conduct between states. Hence the OSCE continues to grapple with means to involve such entities in political processes. These entities are less inclined to consider themselves subject to international sanction than recognised states, since they do not necessarily feel obliged to adhere to the norms and commitments of international bodies to which they are not affiliated. Inevitably these parties have to be included to achieve durable solutions based on peaceful relations and not violence.

Nevertheless, sub-state actors are only able to inform the OSCE and its bodies of concerns, as they possess no official designation within the OSCE. Responsibility lies with the OSCE, in the guise of its various instruments and the Permanent Council, to pursue matters further. This requires a calculation of the opportunity cost of inaction. While all conflict prevention involves this calculation there is a risk involved when states and their instruments are able to overlook the claims of non-state actors. For the OSCE to be effective it must rely on the participating states being prepared to address such problems. Addressing them through political means, rather than in ways which have been codified by law, provides a flexibility which is theoretically less threatening. While the sub-state actors might not be able to initiate OSCE mechanisms for conflict prevention per se, the OSCE does have recourse to intrusive action in the event that a state itself does not draw a problem to the attention of the OSCE, to attempt to prevent an escalation in tensions. Whether these actions have been applied sufficiently is another question, as the escalation of the conflict in Kosovo has demonstrated.

One form of non-state actor to which the OSCE has been increasingly receptive has been non-governmental organisations. Increasingly, there has been an appreciation of the multifaceted roles necessary in the prevention and resolution of conflicts, and that NGOs contribute to this.²⁵⁸ The relationship between the OSCE instruments which address conflict issues and NGOs remains complex, in some instances being mutually supportive and in other instances being more cautious if not suspicious, with some of the newly independent states regarding NGOs more as a form of internal opposition.

258) Paula Gutlove and Gordon Thompson, 'Conflict Management and the OSCE', in *OSCE/ODIHR Bulletin*, Vol. 5, No. 3, Fall 1997.

Conclusion

During the past twenty-five years the OSCE has helped to introduce new forms of intervention in regard to potential conflicts in Europe. Its mode of operation has been the product of a particular time and specific geo-political circumstances. These would suggest that caution needs to be applied in drawing lessons from the applicability of the OSCE's conflict prevention endeavours for other regions, where there might not be cultures of political consensus or bodies of specific standards applying to a political community.

Despite the existence of a range of conflict prevention mechanisms and instruments, tensions can still evolve into violent conflicts within the OSCE, suggesting that its influence is at times more aspirational than de facto. Although in some circumstances and in some ways the OSCE can act effectively its architecture is far from complete. This is not a new assessment. In 1994 prior to the Budapest Summit, Austria and Hungary put forward a proposal aimed at increasing the ability of the CSCE to address sources of instability by establishing the function of a CSCE Adviser on Issues of Stability and Security. It was conceived 'with a mandate modelled on that of the CSCE High Commissioner on National Minorities – which meant a quiet, low profile mediator for the prevention of tensions not related to national minority issues'.²⁵⁹ The proposal was not adopted. It can be assumed that this was partly because most conflicts were perceived as having their origins in ethnic factors and therefore would be addressed by the High Commissioner, and also because the proposal would have given rise to an instrument of intervention with too broad a remit.

The effectiveness of the OSCE's conflict prevention architecture as it stands derives from the political flexibility of a body that provides a forum for continuous review. This flexibility has allowed specific instruments to evolve, while at the same time allowing states to retain influence over them. Indeed, the OSCE has expanded its means of engaging in situations which could degenerate into conflicts (most recently the appointment of a Representative on Freedom of the Media and a Co-ordinator of OSCE Economic and Environmental Activities are designed to expand capacities with regard to a comprehensive approach) but it has not found ways to overcome the political reticence of some of the participating states. This reticence will be part of the ongoing balancing process that constitutes the OSCE. The fact that conflict prevention processes are bedded in political relations has its drawbacks. One of the paramount problems that has been highlighted is that for the OSCE to intervene in a meaningful way requires

259) Victor-Yves Ghebali, 'After the Budapest Conference: The Organisation for Security and Cooperation in Europe', in *NATO Review*, Vol. 42, No. 2, March 1995, p. 25.

the parties to a potential conflict to support the intervention, or at least not be antagonised by it to the extent that they withdraw from the process. If the parties are not disposed to a process of dialogue and negotiation with the intervention of a third party mediator, the lack of teeth renders the OSCE less than effective. Ultimately, therefore, the OSCE is only as effective as the participating states want it to be, for it is the states which carve out the compromises, provide the ideas and the resources which fuel the OSCE.

Postscript (August 1999)

This study was completed in September 1998. Events in and around Kosovo since that time warrant a brief commentary, as do two other events with implications for the OSCE's conflict prevention capacities: the change of status of the OSCE representation in Ukraine and first use of a formal early warning by the High Commissioner on National Minorities.

Kosovo

The events of 1999 in the Balkans serve as one of the clearest illustrations of the lack of a concerted conflict prevention strategy or policy among inter-governmental bodies and the international community in general. The NATO bombing campaign in Serbia and Kosovo represents a failure to act early or seriously enough in Kosovo. Despite warning signs throughout the 1990s,²⁶⁰ international engagement did not progress beyond the formula 'human rights, yes; restored

260) For an overview of interventions in Kosovo see Stefan Troebst op.cit.

autonomy, yes; independence, no.²⁶¹ Satisfying neither party to the conflict the lack of deep engagement sufficiently early enabled an escalation to occur that comprehensively polarised communities and reduced the space for dialogue and compromise.

Heightened diplomatic activity in 1998 led to the acceptance by the Federal Republic of Yugoslavia of the possibility of diplomatic monitors to be deployed in Kosovo in July 1998. Under the threat of NATO bombing agreement was reached in October 1998 for the deployment of an OSCE Kosovo Verification Mission (KVM) of 2,000 unarmed 'verifiers' in October 1998. This was the largest mission the OSCE had undertaken. The verifiers were deployed to verify the Federal Republic of Yugoslavia's compliance with UN Security Council resolutions 1160 and 1199; to verify the maintenance of the cease-fire, monitor movement of forces, provide assistance in the return of refugees and displaced persons, supervise elections, help in forming elected bodies of self-administration and police forces and promote human rights and democracy building.²⁶² Intended as a restraining mechanism and a means to check the extent to which agreements were being complied with in a highly volatile situation, this was an innovative departure for OSCE conflict prevention.

The likelihood of success for the KVM was conditioned by two sets of factors: first, the broader political environment over which it had little sway and second, its mode of deployment and operation. The broader political environment has been referred to in the text of this study. For the purposes of considering the role of the KVM as a new departure for OSCE conflict prevention the manner of its deployment and operation is more relevant. This is especially so since the OSCE is beginning a new engagement with a post-conflict deployment. In the aftermath of NATO's military campaign the KVM has been replaced by a Transitional Task Force which is likely to be a precursor for an OSCE mission that will constitute a distinct component within the framework of the United Nations Interim Administration Mission in Kosovo. The OSCE Mission will focus on matters relating to institution and democracy building and human rights,²⁶³ thereby seeking to contribute to the prevention of a return to violence. Furthermore, experience in Kosovo will be relevant should the OSCE seek similar deployments elsewhere in the future.

A number of problems arose specific to the internal operation of the KVM. The deployment, once agreed, was not rapid, thereby undermining its effective-

261) Howard Clark, 'Kosovo: Preparing for After the War'. A report for The Committee for Conflict Transformation Support, London, April 1999, p. 1.
262) *OSCE Handbook*, 3rd Edition, Vienna 1999, pp. 46-49.
263) *OSCE Newsletter*, Vol. 6, No. 6, June 1999, pp. 1-2.

ness from the outset. Since the security vacuum was not filled quickly, militarised groups were able to become entrenched and extend their reach throughout the province. One observer points to two specific problems: recruitment and local impact.²⁶⁴ The mission suffered from the lack of availability of appropriately trained personnel and the inconsistent recruitment policies of participating states. It was not able to recruit staff with significant local knowledge and did not last long enough for them to acquire such knowledge. In particular there was a predisposition to underestimate the level of local self-organisation among Kosovo Albanians. Few of the international personnel deployed had training or experience of unarmed conflict management or the relationship between democracy building and security as elements of conflict prevention. Certain countries prioritised personnel with military experience and the United States reserved the right to act separately, which led to some speculation that the deployment was in fact an information gathering operation on behalf of NATO. Subsequently, pulling out the KVM a few days before the NATO bombing commenced in March 1999 acted as a virtual green light for the ethnic cleansing of Kosovar Albanians to begin in earnest.

The short duration of the KVM detracted from a meaningful conflict prevention role, although it achieved a great deal in terms of publicising and documenting human rights violations. Political and military events beyond its control simply swamped the mission and prospects for conflict prevention. This highlighted that ‘experience in the former Yugoslavia as elsewhere shows the need and value of comprehensive approaches and consistent action. It seems clear that half-measures will give rise to recurrent conflict and jeopardise confidence in declared values.’²⁶⁵

Ukraine

As indicated in the study, the Government of Ukraine had advocated the termination of the mission for some time. On 31 December 1998 the Ukrainian Parliament approved a Constitution for the Autonomous Republic of Crimea, consistent with the Ukrainian constitution and earlier adopted by the Supreme Soviet of Crimea. The improvement in the situation in Crimea following the ratification of the Agreement of Friendship and Co-operation between Ukraine and the Russian Federation and further measures to address the question of

264) Howard Clark, *ibid.*, p. 5.

265) John Packer, ‘The Role of the OSCE High Commissioner on National Minorities in the Former Yugoslavia’, *op.cit.*, p. 182.

citizenship and the integration of the Crimean Tatars reflected the considerable improvement in relations between the Government of Ukraine and the local authorities in Crimea. With the achievement of structural changes in governance and a qualitative development in policies regarding the situation in Crimea adequate grounds were presented for the mandate of the Mission not to be renewed at the end of April 1999.²⁶⁶

As a result the mission was terminated and a new form of co-operation between Ukraine and the OSCE is under preparation to be confirmed by a Memorandum of Understanding. For the purposes of instituting the new co-operation an OSCE Project Co-ordinator in Ukraine is being established, on the basis of the former mission.²⁶⁷ The ongoing presence of the OSCE in Ukraine in its new capacity partly reflects the institutional difficulty of completely winding up a presence, but also indicates that states can also perceive some benefits in retaining some form of multilateral international presence on their territory.

The former Yugoslav Republic of Macedonia

The military campaign in Kosovo and the massive influx of Albanian refugees into the former Yugoslav Republic of Macedonia, increasing the population by more than ten per cent, caused the High Commissioner on National Minorities to issue his first formal early warning in May 1999. The purpose of the early warning was to alert the international community to the urgent need to significantly increase its assistance to the country in order to avoid destabilisation in the realisation that 'the economic crisis in the FYROM caused by the conflict in the Balkans increases the risk of social discontent and interethnic tensions.'²⁶⁸ It could be argued that the fact that open conflict did not erupt would suggest that the early warning was not needed. To argue this would be self-defeating. Had violence erupted it would have been a failure for early warning, since the early warning would then have been shown to have been too late. It is unlikely that the early warning on its own was a key factor in the avoidance of a violent conflict in FYROM (the return of refugees to Kosovo at the conclusion of the bombing campaign went a long way towards defusing the situation). Nevertheless, it served to concentrate attention at a time when the main focus of the international community was Serbia and Kosovo. For the early warning to serve a long-

266) *OSCE Newsletter*, Vol. 6, No. 4, April 1999, pp. 2-3.

267) Permanent Council Decision No. 295, PC Journal 231, Agenda item 1, 1 June 1999.

268) High Commissioner on National Minorities, *Press Release* addressed to the permanent Council on the situation in the Former Yugoslav Republic of Macedonia, 12 May 1999.

term purpose sustained attention will need to be devoted to the situation in FYROM, not just by the High Commissioner but perhaps more importantly by those members of the international community able to institute substantial and practical measures to alleviate the roots of the tension.

Conclusion

Both the changing of status of a mission and the issuing of an early warning (despite the gravity of the situation this represents) are positive events for the OSCE and its conflict prevention portfolio. These steps affirm the organisation's ability to respond to change and utilise the tools at its disposal to address certain potential conflicts. Reviewed in tandem with the military escalation and the widespread instability generated by the war in Kosovo, however, the past year offers a sobering lesson for the OSCE, and the community of states it represents, as it seeks to enhance its capacity to prevent political, social and economic conflicts from degenerating into violence and the consequent instability against which the OSCE community is motivated to act.

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