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The Use of the Framework Convention in the Activities of the OSCE High Commissioner on National Minorities
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The views expressed are those of the author only

Madam Chairperson, Mr Rapporteur,
Excellencies, Ladies and Gentlemen,

It is a great pleasure for me, on behalf of the OSCE High Commissioner on National Minorities (HCNM), to take part in this Conference marking the tenth anniversary of the entry into force of the Framework Convention for the Protection of National Minorities (FCNM). This Convention provides an indispensable basis for and gives valuable support to the work of the High Commissioner in reducing tensions arising from minority issues.

I appreciate particularly the opportunity to address this Workshop on behalf of the High Commissioner who until recently had intended to be here but due to an urgent issue arising had regrettably to change his arrangements.

I must admit that the task given to the HCNM is a very challenging one. The High Commissioner has been asked to analyse the relevance and use of the Framework Convention for the Protection of Minority Rights and to identify its complementarities, added value or possible overlap with other instruments, mechanisms and international actors. Before embarking upon this task I would like to make three introductory remarks.

The first comment is to point out the formal position of the Framework Convention in the light of the High Commissioner's mandate and practice. The Convention has become from its very outset one of the most essential instruments which the High Commissioner makes a regular use of. All the sets of instruments available to him has been characterised pertinently by the first HC – Max van der Stoel - as a 'toolbox' for the achievement of his conflict-prevention mandate. What constitutes the content of the 'toolbox' has been broadly defined by the mandate of the High Commissioner in the 1992 'CSCE Helsinki Document: The Challenges of Change'. Paragraph 6 of the document states that

In considering a situation, the High Commissioner will take fully into account the availability of democratic means and ***international instruments*** *to respond to it, and their utilization by the parties involved*. [emphasis added].

Consequently, international instruments have been explicitly mentioned as reference points for the HCNM's consideration and action. That these would notably include such treaties as the European Convention on Human Rights and the Framework Convention stems from the OSCE philosophy recognized in 1989/1990 whereby questions relating to national minorities '*can only be satisfactorily resolved in a democratic political framework*' (see Copenhagen Document and Charter of Paris for a New Europe, of 1990).

My second comment is to emphasise well-known differences in the status between the Council of Europe's legal rules of the FCNM and political commitments of the OSCE. This difference is sometimes confused by equating legal standards with their binding character and political commitments with their alleged absence of a binding nature. Both sets of standards are binding: the FCNM as a legally binding instrument, while OSCE commitments as politically binding commitments.

My third comment concerns what is described in legal terms as the temporal dimension. The extensive list of national minority commitments of the OSCE has been in force since its adoption by the Copenhagen Document in 1990 (the so-called 'shopping-list'). The post of High Commissioner was established in 1993 and he started to operate at the beginning of 1993, so we are celebrating our fifteenth anniversary this year. For its part the Framework Convention of 1995 entered into force in 1998, ten years ago. The supervisory mechanism under the FCNM needed a few more years to be fully set in motion and to develop its potentials. The first reporting cycle was largely completed in 2004/2005 and the second is fairly advanced. They have brought about altogether about a hundred of country opinions, while the first general commentaries appeared in 2006 and 2008, respectively on the education rights of national minorities and those in the field of participation. Thus when the HCNM asked experts to draw up thematic recommendations on the education and linguistic rights of national minorities in 1996 and 1998 they could not yet refer to the final text of the FCNM. It can therefore be safely concluded that it is quite early to have a fully-fledged perspective of ten years examination of the FCNM. Therefore, the impact of the Framework Convention on the HCNM can only be assessed with these temporal limitations in mind. This impact is discernible in dimensions of standard-setting, interpretation and implementation.

As far as standard-setting for both arrangements (the FCNM and HCNM) is concerned we have to do with both a far reaching substantive overlap and interrelationship. One should not overlook that the normative content of the Framework Convention has largely been based upon the set of national minority provisions negotiated and adopted by consensus in the 1990 Copenhagen Document and Report of Geneva Meeting of Experts of 1991. These documents created altogether a sort of 'mini-treaty of political standards on national minorities' for the OSCE area. As was emphasised in the Explanatory Report to the Framework Convention, the reference to the OSCE commitments reflected the desire that

"*the Council of Europe should apply itself to transforming, to the greatest possible extent, these political commitments into legal obligations. The Copenhagen Document in particular provided guidance for drafting the Framework Convention"*.

Without dwelling upon the exact proportion and scope of OSCE commitments transformed into legal provisions of the Framework Convention one may safely conclude that an absolute majority of the latter stem from the formulations of the former. This interpenetration causes significant effects. A good part of the Copenhagen provisions received in addition legally binding formulations (mirror reflection). In his conflict prevention mission the HCNM can refer in his talks with domestic public authorities to the Framework Convention with an additional strength of persuasion. On the other hand, a difficulty could arise in a dialogue with states if a Convention's provision reflects a standard lower than those of the OSCE commitment (cf. Para. 34 of the Copenhagen Document with Art. 14 Para. 2 FCNM).

With a sense of possession in the Framework Convention the HCNM has also shown his co-responsibility in regard to promoting its ratification as well as ratification with as little as possible recourse to declarations and reservations. It is also a part of the impact on the HCNM that he has been vigorously promoting the Framework Convention among the states which are not parties to it. The HCNM actually fulfils a role of bridge between the Framework

Convention and states which participate in the OSCE but are not members of the Council of Europe. Political commitments, as reflected in the legal language of the Framework Convention, allow him to strengthen his country recommendations addressed to those States.

Within standard-setting activities both instruments have been commendably playing their roles for ensuring coherence and further preventing risks of serious divergence between the emerging national minority standards. This achievement has been secured due to a regular consultation between the HCNM and the Advisory Committee on thematic recommendations or guidelines of the latter and general commentaries of the former. Moreover similar consultations take place on more individualised national minority issues, opinions, recommendations and other endeavours.

The impact of the Framework Convention has also been perceptible in strengthening the conflict-prevention mission of the High Commissioner. A reporting mechanism under FCNM brings about improvement in legislation on minorities, thus in substantive and procedural standards as well as domestic implementation. And this is what gradually improves and facilitates opportunities for effective conflict prevention by the HCNM.

One can conclude that the two arrangements – the FCNM with its Advisory Committee and the High Commissioner – have become the most advanced bodies on minority issues in Europe. Instead of competing, they accepted their responsibilities to contribute jointly to further development, interpretation and implementation of minority standards, which for years were regrettably underdeveloped. They have successfully shared these tasks despite their different perspectives: the FCNM focusing on protecting minority rights, and the HCNM on preventing ethnic-based conflicts.

All in all, under the impact of the Framework Convention, the High Commissioner together with Advisory Committee are emerging as the most active and coherent custodians of modern international law on minority rights, contributing thus to the common goal – stability and democratic security in Europe.

Thank you for your attention.