Working without Sanctions: Factors Contributing to the (Relative) Effectiveness of the OSCE High Commissioner on National Minorities

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This article addresses the question of whether and to what degree an instrument of preventive diplomacy that does not have any coercive measures at its disposal, such as the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE), can become "effective". The paper explores key terms such as "national minority" and "preventive diplomacy" and examines the way in which these terms were conceptualized by the HCNM itself. Further on, it elaborates what constitutes effectiveness in an international institution such as the HCNM. The research design focuses first on the triangular primary conflict constellation among a national minority, a nationalizing State and a kin-state as the independent variable and its impact on the dependent variable, the level of escalation. In a second step, the focus is on the efforts of the HCNM as the intervening variable. Three types of HCNM effectiveness are conceptualized: operational, substantive and normative. Subsequently, the applicability of this research instrument is shown through the example of three (groups of) national minorities: three cases of Russian-speaking minorities (in Estonia, Latvia and Ukraine), one case of a Hungarian minority (in Romania), and another of an Albanian minority (in Macedonia). The empirical data on these cases, which cover the period from 1993 to 2001, are taken from a research project on the effectiveness of the HCNM, which the author directed from 1999 to 2002.[1] The purpose is not to carry out full-fledged country studies, but to demonstrate what kind of effectiveness the HCNM can achieve under which conditions, and where the limits of this effectiveness lie.

Keywords: national minorities; preventive diplomacy; OSCE High Commissioner on National Minorities; concept of effectiveness; types of effectiveness

1. The HCNM's preventive diplomacy – key terms and conceptual questions

As a rule, international organizations do not provide definitions for key terms that figure prominently in their basic documents. Thus, the United Nations (UN), the

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OSCE and the Council of Europe have all not given a definition of "national minority", although all of them work with this term. The OSCE does not have available definitions for "democracy", "early warning", "early action" or "preventive diplomacy", which are all key terms, both at its normative level and in the Organization's daily work.

In the following, key terms related to the activity of the High Commissioner will be explored against the background of selected literature, as well as the self-perception of the first HCNM, Max Van der Stoel, who, as the initial incumbent, framed the Office of the HCNM more than any of his followers.

The High Commissioner works on the basis of a distinctly security-related mandate. Article 3 of the mandate text, reads that 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. (CSCE 1992, Chapter II, CSCE High Commissioner on National Minorities)

The terms "early warning" and "early action" point to the key task of the High Commissioner, which is preventive diplomacy. The literature distinguishes between structurally-oriented general prevention and process-oriented special prevention (*cf.* Neukirch, 2003: 40-88). *Structural prevention* is of a long-term nature and deals with changes of the basic features of a society, particularly the introduction of increased social justice, the rule of law and democracy. The basic assumption is that these elements will have a civilizing impact on the conflict behavior of social groups and societies. One prominent example for such a strategy is the "civilizational hexagon" of the German peace researcher Dieter Senghaas, which comprises six elements: (1) the de-privatization of power by securing the monopoly of State power, (2) the control of State power by the institutionalized rule of law, (3) affect control of domestic actors, (4) democratic participation, (5) social justice and (6) a constructive conflict culture (*cf.* Senghaas, 1994). However, other scholars have rightly pointed to the fact that democratizing transformation States show an increased propensity to use force against external and also domestic adversaries (*cf.* Mansfield and Snyder, 1995: 81). *Process-oriented prevention* deals with the whole spectrum of contingencies from unstable peace through late crisis up to the point where the escalation from crisis to

war leads from conflict prevention to conflict management. As for the development of conflicts, I follow Lund and Mehler's categories of stable peace, unstable peace, crisis and war as increasing levels of escalation (*cf.* Lund and Mehler, 1999).

From this differentiation it is evident that the High Commissioner works in the realm of short-term process-oriented special prevention. Even if he considers the longer-term impact of his involvement, structurally-oriented general prevention is beyond his remit. Whereas special prevention moves within short- to mid-term timeframes, general prevention is a long-term effort; basic structural changes need decades. Therefore, it is impossible to explain the success or failure of the High Commissioner's preventive diplomacy through changes in structural variables, such as democracy or social justice. Rather, the relative effectiveness of the HCNM has to be explained by variables related to the political process, such as political interventions and the institutional capability of the High Commissioner, and variables related to power and institutions. However, norms and knowledge also play a role.

The first HCNM, Max Van der Stoel, followed this categorization of his activity to a surprising degree.

> As far as preventive diplomacy is concerned, I would say that it should contain particular disputes and threats and prevent them from escalating into armed conflict. If possible it should try to dissolve those disputes but that may be too much of a task for preventive diplomacy alone.[2]

Van der Stoel differentiated between early and late preventive diplomacy and saw a close relationship between early warning, preventive diplomacy and short-term conflict prevention, whereas long-term conflict prevention would need a more comprehensive approach.[3] The HCNM's mandate, as Van der Stoel said, 'puts me first and foremost in the category of short-term conflict prevention. At the same time, however, to be effective I cannot pass by the important longer-term aspects of the situations with which I have to deal.'[4] In the same way, Van der Stoel underlined the importance of a proactive preventive diplomacy role for the HCNM: 'Early action is required.'[5] It is particularly interesting to see how close to the political process Van der Stoel's understanding of preventive diplomacy was. Thus, the first and foremost objective of the HCNM's efforts is less to "resolve" ethno-political conflicts in an ideal way, and more to regulate them in a manner that the level of escalation does not rise, but rather declines. Of course, this necessitates the introduction of elements of substantial and sustainable solutions, but the measurable benchmark of the HCNM's

effectiveness is the decline of the level of escalation in a certain ethno-political conflict constellation.

The High Commissioner tries to influence actors who are in a position to have a certain impact on the development of conflict processes related to national minorities. Thus, a conceptual model linking individual as well as collective sub-State and State actors to ethno-political[6] conflict processes is needed. I start from Brubaker's model of a 'triadic nexus linking national minorities, nationalizing States and external national "homelands"' (Brubaker, 1996: 55), or kin-States,[7] which provides three key qualities: first, it includes all relevant State and sub-State actors; second, and decisively for understanding actors' multiple interrelationships, Brubaker understands actors not as unified actors—as "fixed and given" entities—but as 'variably configured and continuously contested *political fields*' (Brubaker, 1996: 60, emphasis in original). This understanding allows one to

> think of a national minority not as a fixed entity or a unitary group, but rather in terms of the *field of differentiated and competitive positions or stances* adopted by different organizations, parties, movements, or individual political entrepreneurs, each group thinking that it "represents" the minority to its own putative members, to the host state, or to the outside world, each seeking to monopolize the legitimate representation of the group. (Brubaker, 1996: 61, emphasis in original)

Brubaker suggests that national minority groups are characterized by three features:

> (1) the public claim to membership of an ethnocultural nation different from the numerically or politically dominant ethnocultural nation; (2) the demand for state recognition of this distinct ethnocultural nationality; and (3) the assertion, on the basis of this ethnocultural nationality, of certain collective cultural of political rights. (Brubaker, 1996: 60)

Finally, on this basis, the 'triadic relation between these three "elements" can be understood as "a *relation between relational fields*; and relations *between* the three fields are closely intertwined with relations *internal to*, and *constitutive of* the fields. (Brubaker, 1996: 67, emphasis in original).

For practitioners in the field of ethno-politics, this is not particularly new, but it is for theorists who have been used to dealing with categories such as ethnicity or nation in objectivist, subjectivist or communicative terms. It is clear that Brubaker's concept is completely incompatible with any "objectivist" or "primordial", but also with any "subjectivist" approach to ethnicity.

Van der Stoel also started from the model of a triangular relationship among majority, minority and kin-State and called this (conflict) constellation 'the classic case under my mandate'.[8] Consequently, although he issued two reports on their specific problems, the High Commissioner did not deal further with the plight of the Sinti and Roma. Instead, he recommended that the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) work on this matter.[9] Van der Stoel defined a national minority in the following way:

> First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity. (Brubaker, 1996: 67)

In addition, Van der Stoel frequently referred to paragraph 32 of the 1990 Copenhagen Document, which states: 'To belong to a national minority is a matter of a person's individual choice' (CSCE, 1990: para. 32). Thus, Van der Stoel combined three crucial elements in his definition of a national minority. *First*, every minority has characteristic features which, in the minority's self-perception, relate to its identity. *Second*, minorities strive to preserve these features and, along with that, the differences constituted by these features. And *third*, membership in a minority community is not an objectively given fact but an individual's personal choice. Although somewhat different in wording from Brubaker's, the High Commissioner's approach follows a modern understanding of ethno-political group identities, which are not seen as objectively given facts but rather as socially constructed and changeable institutions. It is important to see that Van der Stoel's definition of a national minority differs on two relevant points from the one presented by the UN Special Rapporteur Francesco Capotorti in 1979:

> A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language. (United Nations, 1979: 96)

First, the HCNM did not mention that a minority group must be numerically inferior; and indeed there are cases where a minority group represents the majority in a certain country or at least in a specific region (such as ethnic Hungarians in the Romanian

"Szèkely Land"). Second, the High Commissioner did not include the reference to the citizenship of members of national minorities ('being nationals of the State') in his definition. And for good reason—it is actually the lack of citizenship that has constituted the most important problem for the Russian-speaking minorities in Estonia and Latvia, which the High Commissioner has notably dealt with since 1993.

As the HCNM has to provide "early warning" and "early action" 'in regard to tensions involving national minority issues', he has to try to influence the triangular process among national minorities, nationalizing States and kin-States with the objective of deescalating, de-securitizing[10] and even de-ethnifying this process. That means that the High Commissioner, as a *secondary actor*, tries to assist the three groups of *primary actors* in transforming their conflictive relationship into one that is less so. While it is clear that lasting solutions can only be achieved by the primary actors themselves, the possibilities for assistance by the HCNM are manifold and involve the following more concrete tasks:

a) Strengthening lines of communication and negotiation among all groups of actors, or reconstituting lines of communication once they have been interrupted.
b) Managing acute crises, avoiding a further increase in the level of escalation, decreasing the level of escalation.
c) Introducing international minority rights' standards as the frame of reference for majority, minority and kin-States, and assisting actors in internalizing these norms and making proper use of them.
d) Facilitating substantive short-term solutions with a view towards sustainable long-term solutions under local ownership.

The first two tasks listed are of a procedural or operational nature, while c) is related to norms and d) to short-term or long-term solutions agreed upon among the parties. In the following, this list of tasks will serve as a reference point for a more detailed analysis of the High Commissioner's effectiveness.

2. The concept of effectiveness

A number of scholarly disciplines are tackling the complex problems of analyzing the impact of international institutions and organizations on the behavior of States and

sub-State actors. For those disciplines currently active, research on regime effectiveness is of particular relevance. However, most of these efforts deal with problem areas other than preventing and solving ethno-political conflicts, most prominently environmental regimes. The author is not aware of any study on regime effectiveness in the area of minority rights that might provide an example of a research design. Therefore, I am making use of the methodological and conceptual *acquis* of studies on regime effectiveness that deal with other issue areas. However, their research designs have to be adapted to my specific research questions.

2.1. *Research on regime effectiveness*

Before going into detail, key terms such as "institution", "international regime" and "organization" must be defined. According to Young, 'institutions, then, are sets of rules of the game or codes of conduct that serve to define social practices, assign roles to the participants in these practices, and guide the interactions among occupants of these roles' (Young, 1994: 3). From Krasner's classic definition of international regimes—'Regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations' (Krasner, 1982: 186)—it can be seen that international regimes can be conceived as a specific category of international institutions. Organizations, on the other hand, 'are material entities possessing offices, personnel, budgets, equipment, and, more often than not, legal personality. Put another way, organizations are actors' (Young, 1994: 3-4). Thus, institutions represent the broader category encompassing organizations, but not *vice versa*, with the status of being an actor reserved to the latter. The notions of "institutions" and "organizations" were linked by Underdal who, referring to March and Olsen (1989: 16), describes institutions as "arenas" in which actors, including organizations, pursue their politics (Underdal, 2002: 24*ff.*). The important point of these deliberations for constructing the present research design is that methodological approaches derived from the study of international institutions, namely regimes, can, in principle, be transferred to international organizations because both categories share the same basic qualifications as social institutions.

Following Krasner, the OSCE norms and rules related to national minorities, particularly those contained in the 1990 Copenhagen Document, can be perceived as the OSCE minority rights regime, and the High Commissioner as a related

organization that oversees the implementation of these commitments, even if this is done with a strong focus on international security. I agree with Estebanez that the fact that the High Commissioner is a person is not sufficient to call the institutional or more precisely organizational quality of the HCNM into question (*cf.* Estebanez, 1997: 157).

2.2. *A research design for analyzing the relative effectiveness of the HCNM*

To analyze the effectiveness of the High Commissioner in deescalating ethno-political conflicts, (1) the character of those conflicts, (2) the "problem-solving capacity" (Underdal, 2002: 3) of the HCNM and other actors supporting him, and (3) a notion of what is meant by "effectiveness" must be conceptualized and interrelated.

I conceive of the "character of the conflicts" as the *primary conflict constellation* that is the triadic relationship of national minorities, nationalizing States and kin-States described by Brubaker (*see* Part 1.). The primary conflict constellation comprises all primary agents of conflict, that is, all domestic, trans- and international actors (*i.e.* neighboring, regional and kin-States, transnational ethno-political groups) with a direct vested interest in the conflict. The primary conflict constellation represents the independent variable, which is qualified by two sub-variables—the State of the problem and the quality of the primary actors (*cf.* Section 2.2.1).

The variance of the independent variable, the primary conflict constellation, influences the variance of the dependent variable, which is the level of escalation with the (ideal-typical) forms of stable peace, unstable peace, crisis and war (*cf.* Section 2.2.2).

The intervention by the High Commissioner is conceived as the intervening variable that modifies the impact of the independent variable on the level of escalation. The HCNM and all actors supporting him, *i.e.* States, international governmental and/or non-governmental organizations, are seen as secondary actors, that is, actors without direct interests in specific conflict outcomes, but with a more general interest in solving the conflict for the sake of stability and security. Because the distinction between primary and secondary actors is frequently blurred in practice, the mutual interference of the interests and roles of primary and secondary actors has to be taken into account. The HCNM's effectiveness is defined and directly measured by his impact on reducing the level of escalation or blocking or slowing down any increase in the level of escalation. After consulting the literature, I conceive of three

types of the HCNM's effectiveness—operational, substantive and normative effectiveness—and identify two causes of its effectiveness: its own political weight and the political support it enjoys by other actors.

2.2.1. The independent variable—the primary conflict constellation

The independent variable, the primary conflict constellation, is itself the product of two sub-variables, the *State of the problem* and the *quality of the primary actors*. In order to understand how difficult the High Commissioner's task of early action related to national minority issues is, an understanding of how benign or malign the related problems are is needed. Three relevant approaches attempt to characterize the nature of problems: game theories, Underdal's incongruity approach (Underdal, 2002: 17*ff*), and the Tübingen research group's problem-structural approach (Efinger, Mayer and Schwarzer, 1993: 264-265). The most common differentiation made by game theories is the one between coordination and cooperation type games, with the former more easily resolved than the latter (Underdal, 2002: 17). Efinger, Mayer and Schwarzer use three types with rising problem malignancy—coordination, dilemma and Rambo games (Efinger, Mayer and Schwarzer, 1993: 265-266)—and hypothesize that no international regime is established in Rambo game types, and in dilemma game types only in case 'exogenous factors exert favourable influence' (Efinger, Mayer and Schwarzer, 1993: 265). As the empirical cases must be classified at least as dilemma, if not as Rambo game types, this approach would not provide sufficient variance to explain the different levels of effectiveness of the HCNM.

Beyond game theory, Underdal conceives of 'problem malignancy as a function of incongruity, asymmetry, and cumulative cleavages', with the first representing 'the principal criterion for classification' and the second representing two further qualifications (Underdal, 2002: 20). Underdal defines "incongruity" in such a way 'that the cost-benefit calculus of an individual actor is systematically biased in favour of either the costs or the benefits of a particular course of action' (Underdal, 2002: 17). This means, as he noted himself, that his approach is 'closer to the situation-structure approach' (Underdal, 2002: 17) based on actors' perceptions of their interests than to an approach based on the attributes of the problems themselves. Precisely this characterizes Efinger, Mayer, Schwarzer's problem-structural approach, which distinguishes between conflicts over absolutely assessed goods, conflicts over means, conflicts over relatively assessed goods, and conflicts over values and

hypothesizes a growing problem malignancy and decreasing accessibility for regulation through international institutions from the first to the last (Efinger, Mayer, and Schwarzer, 1993: 264-265). Whether formulated in Underdal's language of "incongruity" or in the categorization of the Tübingen group, the result is the same: national minority conflicts are among the (potentially) most malign types of conflicts. Or, as Zartman put it: 'Conflicts as deep and complex as ethnic disputes have, of course, no solution. [...] "Solutions" here will be used merely to indicate outcomes to which conflicting parties agree' (Zartman, 1998: 317). Hence, every "solution" or "success" is principally of transitory character and has to be qualified in terms of its local ownership and sustainability.

For the research design, I have combined a problem-structural (character of conflict) with a situation-structural (constellation of primary actors) approach. The *state of the problem* is operationalized by the distinction between divisible and non-divisible goods. Divisible goods mean any goods that can be divided up among the participants to the conflict, *i.e.* material goods, but also access to education and training as a prospect of future access to material goods. Non-divisible goods mean goods that, in the perception of actors, can only be held by one party to the conflict at the cost of the other. This primarily involves identity-related issues such as ethno-political self-determination, ranging from collective minority rights to secession, but also education as an expression of ethno-political identity. The example of education shows that divisible and non-divisible subjects of conflict are frequently interlinked and that the same subject can contain elements of both qualities and can have a completely different meaning in a different context. The starting hypothesis is that the more related to non-divisible subjects of conflict a conflict is, the more malign and difficult the conflict is to resolve. The state of the problem is further qualified by the degree to which there are common values and objectives among primary actors beyond the disputed subjects of conflict. This can either be related to the past, *i.e.* a long-standing tradition of good inter-ethnic relations, or, what is more important, to expectations of future gains, *i.e.* accession to the EU. I hypothesize that, for a given quality of subjects of conflict, a conflict will be more benign and easier to be resolved, the more common values and objectives there are.

The second sub-variable concerns the *quality of the primary actors*. I distinguish between more moderate or more radical actors. According to Doyle and Sambanis, the moderate versus radical actors balance is again decisively influenced

by two factors: the number of factions, and the level of their internal cohesion (Doyle and Sambanis, 1999: 19). I hypothesize that the more factions and the less internal cohesion there is in a conflict, the more malign it will be. Closely related to the Doyle and Sambanis criterion, I consider the specific type (not level) of conflict escalation as an operationalization of actors' activities, and distinguish between top-down escalation, typically by a government, horizontal escalation by competing actors and both horizontal trans-boundary escalation and bottom-up escalation by new, not-yet established actors. Whereas top-down escalation by governments can be curbed by international pressure, this is much more difficult with the other three types of escalation, which are closely linked to the degree of internal group cohesion. I hypothesize that the more types of escalation, apart from top-down escalation, that are involved in a conflict, the more malign it will be.

2.2.2. *The dependent variable—the level of escalation*

The variance of the independent variable leads to different expressions of the dependent variable that is the *level of escalation*. A rough approximation of the level of escalation is given by the widely accepted typology of Lund and Mehler who distinguish between two levels of non-violent conflict—stable peace and unstable peace—and two levels of violent conflict—crisis and war (Lund and Mehler, 1999: 37-44).

2.2.3. *The intervening variable—the activities of the High Commissioner*

According to its mandate, the goal of the intervening activity of the High Commissioner is directly focused on reducing the level of escalation. The mandate tasks the HCNM with:

> "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. (CSCE 1992, Chapter II)

Translated into action, this means, in the words of Max Van der Stoel, to 'contain particular disputes and threats and prevent them from escalating into armed conflict' (Van der Stoel, 19 January 1994, *see* note 2).

This raises three questions: First, what kind of problem-solving capacity makes the HCNM effective in lowering the level of escalation? Second, what are the factors that back up and support its capacity? And finally, the causality problem—how can it be proven that any decline in the level of escalation is the result of the High Commissioner's activity and not of any other factors that impact on the level of escalation? To answer these complex questions, it is worthwhile consulting the literature.

2.3. *Concept of effectiveness*

Young has introduced three "clusters" to describe the problem-solving capacity of international institutions that 'seem noteworthy as guides to our thinking about the determinants of institutional effectiveness: power factors, interest factors, and knowledge factors' (Young, 1994: 156). Power and interest, and, in an indirect way, knowledge, are also the basis of Underdal's concept of regime effectiveness:

> [r]egimes dealing with truly malign problems will achieve a high degree of effectiveness only if they contain one or more of the following: (1) selective incentive for cooperative behavior […], (2) linkages to more benign (and preferably also more important) issues, (3) a system with high problem-solving capacity. The presence of at least one of these factors is a necessary, but not a sufficient, condition for a high level of effectiveness. (Underdal, 2002: 22-23)

Both authors stress the importance of a "fit" between problems and problem-solving capacity. Underdal notes that 'notions of capacity will have to be matched with notions of problem type and task' (Underdal, 2002: 15), while Young 'focuses on the fit between the character of an international regime and the problem it is intended to solve' (Young, 1994: 159).

Underdal conceives regime effectiveness, on the one hand,

> in terms of the relative improvement caused by the regime. This is clearly the notion we have in mind when considering whether and to what extent a regime matters. The other option is to evaluate a regime against some concept of a good or ideal solution. This is the appropriate perspective if we want to determine to what extent a certain collective problem is, in fact, solved under present arrangements. (Underdal, 2002: 6-7)

Young works with a more differentiated set of types of effectiveness: 'I call them effectiveness as problem solving, effectiveness as goal attainment, behavioral

effectiveness, process effectiveness, constitutive effectiveness, and evaluative effectiveness' (Young, 1994: 143). Process effectiveness is related to the implementation of an international regime, constitutive effectiveness to the emergence of new social practices, and evaluative effectiveness to assessment needs of actors involved (Young, 1994: 146-149). In part, these categories seem to overlap, *i.e.* behavioral and constitutive effectiveness.

While the concept of problem-solving effectiveness is shared by both authors, Underdal's "relative improvement" effectiveness and Young's "goal-attainment" effectiveness indicate different dimensions. While relative improvement is related to a good or ideal solution in the sense that ever more improvement will lead the parties closer to an ideal solution, the relation between problem-solving and goal attainment effectiveness is clearly not one-dimensional. 'This distinction between effectiveness as problem solving and goal-oriented effectiveness becomes sharper when we broaden our perspective to consider unstated goals' (Young, 1994: 144). Beyond that, attaining stated or unstated goals of an international regime or an international organization's intervention can even be counterproductive in terms of problem solving or lack any impact. Consequently, the analytical value of Young's differentiation between problem solving and goal attainment lies in the fact that they may point in the same direction, but may also describe a field of (possible) tensions and contradictions. In this case, mainly because of the simplicity of the dependent variable, no such contradictions exist. The clearly stated objective is to decrease the level of escalation. This is by no means counterproductive for any kind of problem-solving. In addition— and this is key for the feasibility of the research design—'[t]he analysis of goal attainment has an advantage vis-à-vis the use of a pure problem-solving approach in that goals can be identified relatively easily and evaluation as to whether or not goals were achieved is not a pressing problem' (Breitmeier, 2013: 163).

Young's concept of process effectiveness, which I call operational effectiveness, is interesting for the present research design because a certain minimum of successful process control usually constitutes a necessary condition for attaining goals and solving problems. Thus I support Young's conclusion that

> [p]erhaps the most important of these interaction effects for scholars and practitioners interested in international environmental regimes are those involving causal links between effectiveness as problem solving on the one hand and effectiveness as goal attainment and process effectiveness on the other. (Young, 1994: 150)

While possible contradictions between goal attainment and problem solving always have to be kept in mind, it is equally important to realize that problem solving in the context of ethno-political conflicts must be understood more as permanent task of containment than as the search for a once-and-for-all solution. To differentiate both goal-attainment and problem-solving effectiveness from operational effectiveness, I will subsume the first two under the term of substantive effectiveness.

To make the research design more concrete and applicable, I relate the list of the High Commissioner's concrete tasks in Section 1 to the concept of substantive and operational effectiveness and will observe the following: whereas the points a) and b) nicely fit operational effectiveness and d) substantive effectiveness, a different dimension of effectiveness has to be found for point c) that deals with norms. While this dimension is called "constitutive effectiveness" by Young, I prefer the simpler term "normative effectiveness" in the sense of whether and to what degree the High Commissioner has been able to introduce and socialize norms at which 'actors' expectations converge' (Krasner, 1982: 186).

2.4. *Causes for the effectiveness of the HCNM*

In the following two paragraphs, I will focus on two causes of the High Commissioner's effectiveness—its own institutional weight and the support it enjoys from other actors.

2.4.1. The High Commissioner's institutional weight

It might sound trivial, but the first condition for the HCNM's institutional weight is *a functioning office*. It has been largely overlooked that the High Commissioner's mandate does not say anything about a "HCNM Office" or a comparable organizational unit. Former HCNM Van der Stoel remembered:

> There was even the question whether I needed a secretary. In fact I started with one secretary who was seconded by the Dutch government, which also provided me with a personal adviser. Then there was a NGO which provided me with another person in order to help me, that was it.[11]

Today, the HCNM's Office in The Hague employs about 30 staff members, who are perceived within the OSCE community as a kind of elite team. And even in times of the OSCE's nominal zero growth budget policy, the High Commissioner does not

have any difficulty getting the necessary funds both from the OSCE's Unified Budget and as voluntary contributions from a number of OSCE participating States. The financial support given reflects the great reputation that Van der Stoel and his successors have achieved among the OSCE States.

A second relevant element is *access to all relevant actors*. The High Commissioner works with a top-down approach. His interlocutors in a country where he is active include the foreign minister, other ministers, the prime minister, the president, the leaders of the minority communities, as well as civil society representatives as far as necessary. Thus, the HCNM needs access to the top political leadership. In most cases, this has been no problem, even if, as former HCNM Van der Stoel stated: 'the relationship with Slovakia under Meciar was a difficult one. There are also sometimes difficult moments with Estonia and Latvia […].'[12] The most prominent exception was and still is Turkey. At the end of 2000, the Turkish government bluntly rejected a demand by Van der Stoel for a meeting with the Turkish foreign minister and the minister for human rights, although the High Commissioner had not specifically asked for a discussion on the Kurdish question. As the HCNM had also had talks with the Greek government, Turkey was not the first NATO State he addressed. As Van der Stoel stated, the Turkish behavior 'violated one of the basic rules of the OSCE'.[13] The Turkish refusal to cooperate with the HCNM has basically not changed until the present day.

Another more complicated exception involved Kosovo. In the early 1990s, Van der Stoel wanted to become more active in Kosovo. However Ibrahim Rugova, the then leader of the Kosovo Albanians, opposed a formal engagement of the HCNM, using the argument that the Albanians in Kosovo were 'not minority, but a nation' (quoted in Kemp (ed.), 2001: 200[14]). Later, in February 1997, when Van der Stoel was appointed as Personal Representative for the OSCE Chairman-in-Office for Kosovo, the situation changed and this time the 'Belgrade authorities refused to grant him a visa to visit the country' (Kemp (ed.), 2001: 201). As a consequence, until 1999, the High Commissioner was unable to become active in Kosovo.

A third essential element of the HCNM's institutional weight is *support by the OSCE field operations*. In about two thirds of the States where the High Commissioner was or has been active, OSCE field operations were or have also been deployed. Whereas some mission mandates (OSCE missions to Estonia and Ukraine) explicitly referred to cooperation with the High Commissioner,[15] this stipulation is

lacking in the mandates of others (missions to Macedonia and Latvia).[16] In general, relations between the High Commissioner and the OSCE missions are described by Kemp as follows:

> In countries where he was actively engaged, missions gave him a valuable set of eyes and ears and were helpful in assisting with his visits on following up on his recommendations. This was particularly the case in Latvia, Estonia, Ukraine and the former Yugoslav Republic of Macedonia where there was frequent information exchange. (Kemp (ed.), 2001: 96)

Translated from diplomatic language this also means that there might have been cases where the cooperation with OSCE field operations was less productive.

Altogether, it may be concluded that the High Commissioner has at his disposal a small but high-quality team, is well-connected in the OSCE world and has, in most cases, access to the relevant actors. Thus, it fulfills at least the third of Underdal's three regime effectiveness criteria:

> Regimes dealing with truly malign problems will achieve a high degree of effectiveness only if they contain one or more of the following: (1) selective incentive for cooperative behavior […], (2) linkages to more benign (and preferably also more important) issues, (3) a system with high problem-solving capacity. The presence of at least one of these factors is a necessary, but not a sufficient, condition for a high level of effectiveness. (Underdal, 2002: 22-23)

The HCNM's office itself qualifies as a 'system with high problem-solving capacity'. And, as will be seen in the next paragraph, the two other criteria are also at least partially addressed.

2.4.2. *Support for the High Commissioner by other actors*

I identify three factors that contribute to the effectiveness of the High Commissioner, all related to the political process: the support by almost all relevant OSCE participating States, the cooperation with and support for the HCNM by the European Union in the course of the enlargement process and the cooperation with other international organizations, particularly the Council of Europe.

The support for the High Commissioner by the participating States is closely linked to the role Van der Stoel developed for his written recommendations, the passing of these documents and the responses to them by the respective States to the participating States and regular reports by the High Commissioner to the Permanent

Council (PC). Van der Stoel commented on the impact of this self-developed method, which is not prescribed by the HCNM's mandate:

> As a result the government involved, which may have been hesitant or even against all or part of my recommendations, began to realize that they not only had to take into account a vision of a certain Mr. Van der Stoel, but that it was supported by quite a number of OSCE member states. That strengthened my position.[17]

Van der Stoel added that the debates in the PC resulted in support for his recommendations '[p]ractically without any exception'. 'I was mostly supported by the EU and the US and also frequently by Russia'[18] , that is by those three (groups of) actors which exert the decisive influence within the OSCE.

The cooperation between the High Commissioner and the European Commission was mainly aimed at the 'drafting of progress reports on potential accession members', in which situation 'Van der Stoel was able to use the Commission for carrots as well as sticks' (Kemp (ed.), 2001: 99). Van der Stoel himself added:

> It should also be noted that the High Commissioner is in regular contact with the European Union, particularly before the conclusion of the annual reports. The EU showed special interest in solving the language problems in Estonia and Latvia. Those countries know of course that the successful resolution of that issue fulfils a role in their admittance to the EU.[19]

This account was confirmed by Hans Van den Broek, member of the EU Commission and responsible for enlargement from 1993 to 1999, who wrote:

> The EU benefited considerably from his [Van der Stoel's] professional opinions regarding the minority policies in Central and East European countries in their pre-accession period. At the same time EU backing provided the HCNM with broader acceptance for his assessments.
>
> The preparation of the Commission's progress reports regarding potential accession members included consultations with the HCNM about the general situation in those countries and the extent to which they adhered to international standards. (Van den Broek, 2011: 170)

Van der Stoel decisively contributed to the fact that Slovakia under a Mečiar government was not admitted as EU candidate in 1996 (*cf.* Kemp (ed.), 2001: 99; Van den Broek, 2011: 170). By contrast to this, the Minority Language Law of 1999, which was directly mediated by the High Commissioner, opened the way to EU candidate status for the Slovak Republic. Thus, the cooperation with the EU Commission and the fact that the High Commissioner could place many of his

recommendations in the EU progress reports, where they became conditions for the EU access of the respective State, became the most powerful force multiplier of the HCNM. Therefore, it is justified to distinguish between enlargement-related and non-enlargement-related cases in which the High Commissioner was or has been active.

With respect to the Council of Europe (CoE), the High Commissioner regularly participated in the so-called "2 + 2" meetings between the CoE and the OSCE and 'had frequent contacts with the Council of Europe's Director of Political Affairs'; the High Commissioner's advisers had contacts with the CoE at the working level.[20] A good example of the synergetic cooperation between the CoE and the High Commissioner is the case of the 1996 Hungarian-Romanian bilateral treaty. Even if the existence of a pre-agreed strategy cannot be proven, both organizations worked in a mutually reinforcing way: the CoE's Venice Commission interpreted the CoE's Parliamentary Assembly's Recommendation 1201 in a manner which enabled the High Commissioner to draft the decisive footnote in this treaty on the exclusion of collective minority rights and territorial autonomy, which opened the way for its conclusion (*cf.* Horvath, 2002: Chapter 1.2.2.2). The informal cooperation with the CoE's Venice Commission and with the Advisory Committee on the CoE's Framework Convention for the Protection of National Minorities has become a strong means for avoiding different positions between these two organizations dealing with national minorities in Europe.

3. Cases of effectiveness of the OSCE High Commissioner on National Minorities

The first part of this Section (3.1) assesses the High Commissioner's (relative) effectiveness in three key tasks of preventive diplomacy identified in Section 1, drawing on examples from Estonia, Latvia, Romania, Macedonia and Ukraine: (a) strengthening lines of communication and negotiation among all groups of primary actors; (b) managing acute crises, thereby avoiding a further increase in the level of escalation; and (c) facilitating substantive short-term solutions with a view towards sustainable long-term solutions in local ownership. Thus, I concentrate on operational and (short-term) substantive effectiveness. The main reason for leaving out normative effectiveness is that a different timeline and research design would be needed for the analysis of this kind of effectiveness. Concerning substantive effectiveness I differentiate between direct substantive effectiveness, when the HCNM directly achieves a success, and indirect substantive effectiveness, when the initiatives of the

HCNM contribute, together with other (f)actors to a process that in the end leads to success. The second Section (3.2) tries to explain the High Commissioner's relative effectiveness through the factors identified in Section 2.2.3.

3.1. *Assessment of the relative effectiveness of the HCNM - cases of the High Commissioner's operational effectiveness*

3.1.1. Strengthening lines of communication and negotiation among all groups of primary actors

The 1999 'Lund Recommendations on the Effective Participation of National Minorities in Public Life', initiated by the then HCNM Van der Stoel, recommend various forms of including minority representatives in advisory and governmental bodies. Paragraphs 6 and 12 read as follows:

> States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary.

> States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities.

Accordingly, the High Commissioner recommended that a number of countries establish consultative and/or governmental bodies dealing with national minority issues.

Romania. In the wake of Romania's efforts to accede to the Council of Europe, a "Council for National Minorities" was set up, tasked with examining and presenting draft laws dealing with minority issues (*cf.* Horváth, 2002: 65). HCNM Van der Stoel repeatedly urged the Romanian government 'to make full use of the potential of the Council on National Minorities'[21] and made recommendations 'on the importance of developing the Council for Ethnic Minorities into an effective body for inter-ethnic dialogue'.[22] Already this wording hints at the lack of progress and, in September 1993, the representatives of the RMDSZ (the Democratic Alliance of the Hungarians in Romania) left the Council (*cf.* Horváth, 2002: 66). 'Given the gradual negative development, the HCNM referred less and less to the Council for/of National Minorities' (*cf.* Horváth, 2002: 67). This situation changed only after the 1996 elections, when a government including the RMDSZ set up a "Department for the

Protection of National Minorities" directed by a Minister on National Minorities from the RMDSZ (*cf.* Horváth, 2002: 68). Horváth rightly judged:

> In contrast to the Council for/of National Minorities the department proved to be a rather effective construction for precisely the tasks which the High Commissioner had originally attributed to the Council: functioning as a forum for dialogue, initiating legislation and supervising its implementation. (Horváth, 2002: 69)

Thus, the Romanian Council for National Minorities is clearly not an example of the operational effectiveness of the High Commissioner.

Estonia and Latvia. At an early point of his engagement, HCNM Van der Stoel proposed to both the Estonian and the Latvian governments the establishment of a "National Commissioner on Ethnic and Language Questions". In a letter to the Estonian Foreign Minister Trivimi Velliste, dated April 6, 1993, the High Commissioner wrote:

> In my view, it could also greatly facilitate the relationship with the non-Estonian population, if the Estonian government would decide to set up the office of a "National Commissioner on Ethnic and Language Questions". His or her main task would be to look into relevant complaints which in the view of the complainants have not been correctly dealt with, […] and in a general sense, to act as a go-between to the Government and the community concerned.[23]

Basically the same proposal was made to the Latvian government,[24] which did not react to it (*cf.* Dorodnova, 2003: 131), whereas the Estonian government promised to consider it (*cf.* Sarv, 2002: 97). In the end, in neither of these two States was a "National Commissioner on Ethnic and Language Questions" established. However, in the course of the 1993 Narva crisis (*see* next paragraph), the Estonian President Meri 'responded to the High Commissioner's suggestion to set up an organ representing the national minorities of the country by establishing a "Round-table of Non-Citizens and Ethnic Minorities" headed by a Presidential Plenipotentiary' (Kemp (ed.), 2001: 143). Later, in 1999, an Ombudsman Office was created in Estonia (*cf.* Sarv, 2002: 96-99). In Latvia, at the initiative of the Latvian President Guntis Ulmanis, a "Consultative Council on Minority Issues" was established in 1993, and later (1995) the UNDP-inspired "Latvian Human Rights Office (*cf.* Dorodnova, 2003: 131). As the Latvian "Consultative Council" was modelled after the Estonian example (*cf.* Dorodnova, 2003: 131), the High Commissioner achieved a kind of indirect

effectiveness. Altogether, one can conclude that the proposals of the HCNM were not directly taken up, but the two presidents established functional equivalents. In the Estonian case this can be directly traced back to the HCNM's initiative, in the case of Latvia only in an indirect manner.

3.1.2. Managing and de-escalating acute crisis situations

Acute crisis situations, where the use of force could no longer be ruled out if an ongoing escalation process was not stopped, were fortunately limited to a few cases.

Estonia: the Narva referendum crisis in the summer of 1993. On June 21, 1993, the Estonian parliament passed a "Law on Aliens" that was very badly received by the Russian-speaking population (*cf.* Sarv, 2002: 40). A short time later, the towns of Narva and Sillamäe, largely populated by Russian-speakers, announced a referendum on autonomy scheduled for July 16-17, 2002 (*cf.* Sarv, 2002: 44). With that, all the elements of the worst-case scenario of an unpredictable escalation into a violent crisis with the potential involvement of Russia were in place: the possible use of force by the government and the involvement of the Russian Federation's armed forces, some of which were still present in Estonia. In this situation, on June 30, 1993, 'the Committee of Senior Officials took the unusual step of asking the High Commissioner to look into the situation, and for the Estonian Government to take appropriate action in response to the High Commissioner's recommendations' (Kemp (ed.), 2001: 143). The High Commissioner immediately became active, negotiated with both sides, and reached a compromise solution that was published on July 12, 1993 in a statement of the High Commissioner—also a quite unusual *modus operandi* for the HCNM. The Estonian government made a number of concessions and confirmed that it intended 'to ensure that the recommendations made on this subject by the High Commissioner on National Minorities […] will be put into effect'.[25] Furthermore, the government stated 'categorically that it does not intend to start a policy of expulsion of Russian residents from Estonia' and that it would not use force against the planned referenda in Narva and Sillamäe, although it considered them to be illegal[26]. On the other hand, the HCNM stated that the 'presidents of the City Councils of Narva and Sillamäe assured me that if the question of the legality of the referenda planned in Narva and Sillamäe is submitted to the National Court, they will abide by its ruling'.[27] . In the end, the referenda were implemented, ruled as illegal by the National Court, and the two city councils accepted this ruling (*cf.* Kemp, (ed.),

2001: 144). Thereby, the High Commissioner was successful in de-escalating the Narva crisis that could have triggered a much greater crisis involving Russia.

Ukraine: the 1995 Crimean crisis. In spring 1995, the long-running dispute between the Ukrainian government and the government and parliament of Crimea on the scope and parameters of Crimean autonomy intensified in a dangerous way.

> Despite the High Commissioner's appeals to both sides to exercise restraint, the Crimean Parliament announced on 25 April 1995 its intention to hold a referendum asking the Crimean population whether they supported reinstatement of the 1992 Crimean Constitution. The situation seemed to be coming to a head. (Kemp (ed.), 2001: 221)

This constitution had been abolished by the Ukrainian parliament, and the Ukrainian government threatened to dissolve the Crimean parliament should the referendum take place. In this situation, the High Commissioner invited those involved to a Round Table in Locarno on May 11-14, 1995. The meeting 'led to a breakthrough on a number of substantive points' (Kemp (ed.), 2001: 221). As a result, the High Commissioner, in a letter to the Ukrainian Foreign Minister Udovenko on May 15, 1995, 'urge[d] the Parliament of the Autonomous Republic of Crimea not to proceed with its plan to submit to a referendum the Crimean Constitution which was abolished by the Ukrainian parliament'.[28] At the same time, he expressed his view that dissolving the Crimean parliament would not facilitate a solution either. Rather, the HCNM advised building a solution on a 1992 'law of Ukraine on the demarcation of powers between the organs of state power of Ukraine and the Republic of Crimea'[29]. According to Kemp, many of the High Commissioner's recommendations were implemented (*cf.* Kemp (ed.), 2001: 222) and, as a result of the intervention by the HCNM, the 1995 Crimean crisis was able to be de-escalated. A comparable roundtable in Noordwijk on March 14-17, 1996 served the same purpose of de-escalating a situation that had meanwhile become tense again (*cf.* Kulyk, 2002: 55*ff*).

Altogether, it can be seen that the High Commissioner was clearly effective in de-escalating the two acute crises in Estonia 1993 and Ukraine/Crimea 1995, while his various attempts to set up minority advisory and consultative bodies were successful to a certain extent in Estonia and Latvia, but were significantly less successful in Romania. One factor responsible for these outcomes might be that in crisis situations, the High Commissioner enjoyed the attention and support of various

relevant States, while his attempts to establish consultative bodies largely remained below the governments' radar.

3.2. *Assessment of the relative effectiveness of the HCNM - cases of the High Commissioner's substantive effectiveness*

The following five cases of the High Commissioner's (relative) substantive effectiveness focus on those issues that were most prominent in Estonia, Latvia, Ukraine, Romania and Macedonia in the period 1993-2001.

Estonia: citizenship. Different to Lithuania, which granted citizenship to all residents at the time of independence, Estonia granted citizenship only to the descendants of the citizens of the inter-war Republic of Estonia. '[D]ue to the strict application of the principle of legal continuity, only about 80,000 of the approximately 600,000 non-Estonians living in Estonia automatically acquired Estonian nationality in 1992' (Sarv, 2002: 22). The High Commissioner basically accepted this legislation, enshrined in the 1992 Law on Citizenship (and later amendments) and concentrated on easing the conditions for achieving citizenship. One, if not *the* major issue was the obligatory language test. Whereas the law had asked for knowledge of 2,500 words, Van der Stoel took the position 'that a knowledge of about 1500 words is usually considered to be sufficient'.[30] Later on, the High Commissioner even thought 'that according to many linguists the knowledge of 800 words of a language is sufficient to conduct a simple conversation'.[31] In the end, the 1995 Citizenship Act lowered the language requirements substantially and Van der Stoel concluded that, all in all, 'after the various changes made to it, the language test could not reasonably be considered too high' (*cf.* Sarv, 2002: 64, with reference to Zaagman, 1999). Another key issue in the area of citizenship was the HCNM's recommendation to grant citizenship to '[c]hildren born in Estonia who would otherwise become stateless' (HCNM letter to Velliste, April 6, 1993). After years of controversial discussion, the 1998 Citizenship Act also followed this recommendation (*cf.* Sarv, 2002: 89-90). Having reviewed the whole history of the HCNM's recommendations to Estonia and their implementation, Sarv comes to the overall assessment 'that Estonian authorities implemented most of the recommendations made by the HCNM, at least partially, though this was always done with a great deal of grumbling' (Sarv, 2002: 108).

Latvia: citizenship. The Latvian case shares the same basic features with the Estonian one. The 1991 Citizenship Law granted citizenship only to the pre-1940 citizens of Latvia and their descendants, leaving out about 30 per cent of the population, roughly 700,000 persons (*cf.* Dorodnova, 2003: 19). As in Estonia, HCNM Van der Stoel accepted this legislation and focused on practical improvements. Apart from language requirements and the issue of stateless children, as in Estonia, the debate focused on the Latvian specifics of naturalization quotas and, later, the so-called "window system". Van der Stoel clearly opposed the system of an annual quota contained in the 1993 draft citizenship law: 'I feel bound to express my reservations about Article 9 which makes annual quotas […] a crucial element in the naturalization system.'[32] Instead of this, the HCNM proposed a kind of window system according to which persons who had resided in Latvia for a certain period would have the right to apply for citizenship within certain dates[33]. According to Dorodnova, 'this scheme would have allowed for the majority of non-citizens to apply for naturalization throughout the period of five years (1994-1998)' (Dorodnova, 2003: 38). Interestingly, the Latvian parliament's legal committee took up this proposal of a window system, however, in a much more restrictive manner[34]. After years of debate and lack of progress on naturalization, the High Commissioner repeatedly requested in 1996 and 1997 that the window system be abolished.[35] This was finally achieved by the 1998 amendments to the Citizenship Law which abolished the window system and granted citizenship to stateless children as well. However, opposition against these changes was strong, and the new draft law had to be confirmed in a national referendum before it could be enacted (*cf.* Dorodnova, 2003: 51-54). All in all, Dorodnova comes to the conclusion that

> the general impact of the High Commissioner on the Latvian minority politics has been very significant in all three dimensions analyzed above—with regard to operational, normative and substantive effectiveness. Although not all of the HCNM's initiatives were welcomed and not all of his specific recommendations were implemented, it is important that under the HCNM's influence, the crucial decision to make naturalization available to all non-citizens was finally taken. (Dorodnova, 2003: 150)

Ukraine: Crimean autonomy, Crimean Tatars, Russian-speakers in Eastern Ukraine.[36] According to Kulyk, in the case of the Crimean autonomy, the High Commissioner was less effective in translating his recommendations into reality

beyond the de-escalating impact of the two round tables in Locarno and Noordwijk mentioned above. Admittedly, the

> resulting deal, as embodied by the autonomy's constitution, which was finally approved by the Ukrainian parliament appeared thus to be close to the latest recommendations of the HCNM", however, "this accordance […] demonstrates Van der Stoel's realistic assessment of how an eventual compromise could look, rather than his ability to ensure its realisation. (Kulyk, 2002: 129)

This must be related to a situation where, apart from Russia, which represented an interested party to the conflict, no major State was engaged in the issue of Crimean autonomy. In the case of the Crimean Tatars, the HCNM took a proactive approach, despite even worse conditions, raising the issue again and again:

> The Tatars, and other smaller population groups who have returned from their deportation to Central Asia, are faced with considerable difficulties […] large investments are needed, for which the Ukrainian authorities lack the resources […] This means that the international community should be made aware of its responsibility […] So far, it has been very difficult to persuade a sufficient number of OSCE States about this necessity.[37]

Although the HCNM's recommendations on the Tatars 'were implemented in none of the four fields', his activities 'helped prevent the Tatars' escalating reaction' and 'it contributed to awareness of, and attention to, the problem on the part of other international organizations' (Kulyk, 2002: 130-131). As for the third agenda item in Ukraine, linguistic rights of Russian-speakers, the HCNM was the least active and also the least effective. Altogether, one can agree with Kulyk's assessment that the High Commissioner 'was more successful in identifying short-term compromises between the parties, than in promoting institutionalized dialogue which would enable long-term settlement of the conflicts dealt with' (Kulyk, 2002: 132).

Romania: minority-language education and the 1996 Hungarian-Romanian treaty.[38] The key ethno-political issue in Romania was minority-language education at the secondary and, especially, at the university level. Internationally, the main question dealt with was the conclusion of a bilateral Hungarian-Romanian treaty. While the Hungarian minority in Romania strove for different kinds of autonomy arrangements based on collective minority rights, the ethnic Romanian majority rejected these claims for fear of secession. Concerning minority-language education at the secondary level, the High Commissioner could not prevent the 1995 Law on Education, which was fiercely objected to by the Hungarian alliance. He could,

however, substantially influence its implementation, thus reducing the level of escalation and buying time.[39] After the Romanian government had changed in 1996, a new Law on Education was adopted in 1999, which, apart from one minor detail, completely solved the question of minority-language education at the secondary level. This can be assessed as a clear example of direct substantive effectiveness of the High Commissioner. As for the question of minority-language education at the university level, the situation is somewhat different. While the 1999 Law on Education allowed the foundation of organizational units of minority-language university education up to the level of faculties, concrete steps for founding such institutions were lacking. Thus, the law as such can be assessed as an example of a kind of indirect substantive effectiveness of the High Commissioner in the sense that it opened the way for founding minority-language university structures, but it did not directly achieve this goal. In the case of the reform of the multicultural Babeş-Bolyai University (BBU) in Cluj, the High Commissioner achieved a partial success in terms of direct substantive effectiveness. While the number of specializations which can be studied in Hungarian was increased and the rights of the Hungarian university teachers to participate were expanded, the question of separate Hungarian faculties and of strengthened rights of the academic self-government to offer Hungarian lines of study remained open.

According to Ratner, at the bilateral Romanian-Hungarian level, the High Commissioner reached direct substantive effectiveness by formulating the decisive footnote that made the conclusion of the 1996 Hungarian-Romanian Treaty possible.[40] The High Commissioner shares this success with the Council of Europe, which, through its Venice Commission's interpretation of Recommendation 1201, laid the normative ground on which the High Commissioner could perform his operative function. At the same time, this represents an example of extremely well done complementary and synergetic cooperation between two international organizations.

Macedonia: minority-language education.[41] The key ethno-political question in Macedonia was minority-language university education: first, confined to teachers' training, later expanded to general university education. The tension around this issue was much higher, as Yugoslav authorities had, in 1991, closed down the university at Prishtina in Kosovo where the Albanian elite of Macedonia had traditionally been educated. The dispute over Albanian-language teacher education in which the High Commissioner was heavily involved lasted from 1993 until 1997, when an Albanian-language pedagogical faculty at Skopje University was finally established. Although,

in and of itself, this can be assessed as an example of substantive effectiveness of the High Commissioner, it was a clear case of too little, too late. Already in December 1994, radical Albanian forces supported by both Albanian parties had founded the unrecognized Tetovo University, which was based on the model of parallel institutions in Kosovo. Violent clashes in February 1995 showed a significant rise in the level of escalation. A substantial compromise was finally reached with the 2000 Law on Higher Education, which allowed Albanian-language university education to be offered at private universities recognized by the State. This step opened the door for the foundation of the South East European University (SEE) at Tetovo, which started teaching in autumn 2001. Assessed by its own values, the 2000 Law on Higher Education must be seen as a clear case of substantive effectiveness of the High Commissioner. The adoption of this law kept in office the VMRO/DPA[42] government, which, in all probability, would have broken apart without it and thus prevented even more escalation of violence in late 2000. The successful founding of the SEE is also a clear case of the High Commissioner's direct substantive effectiveness. Beyond this, the High Commissioner achieved a new dimension of his activity with this university. He not only succeeded in securing the juridical conditions for such an institution, but also raised substantial funds and organized the whole founding process of the university. The small civil war in Macedonia in the spring/summer of 2001 was caused by factors outside of the reach of the High Commissioner. The fact that the 2000 Law on Higher Education and the subsequent founding of the SEE university at Tetovo did not prevent the conflict in 2001 are not grounds for denying that they are examples of the High Commissioner's substantive effectiveness. On the contrary, they represented achievements important for post-conflict peace-building in Macedonia.

4. Explaining the High Commissioner's relative effectiveness

The single most important explanatory factor for the High Commissioner's effectiveness is based on how high the chances were for a country to achieve Western integration, especially gaining EU accession. This factor took two forms: first, the political will of a country's political elite to aim at Western integration and their perception of the chances of achieving this goal and, second, the degree of specificity of the European Commission's recommendations on ethno-political conflicts. The more strongly the two factors were developed, the more support there was for the

implementation of the recommendations of the High Commissioner. Correspondingly, the probability that the High Commissioner would be effective increased. The prospects of accession to the Council of Europe and to NATO were able to create similar effects, however, at a lower level. This can be explained by the fact that the positive as well as negative incentives that these organizations could offer were considerably lower. In addition, NATO lacked those kinds of specific ethno-political recommendations, which both the EU and the Council of Europe had at their disposal. In the following paragraphs, the way in which the two forms of the explanatory factor for chances of Western integration were observed in the individual countries is analyzed building on the country studies by Arifi, Dorodnova, Horváth, Kulyk and Sarv, mentioned in notes 1 and 46.

Analyzing the development of the two sub-factors mentioned above, there is a clear hierarchy of countries. In the first place are *Estonia and Latvia* together, the latter falling somewhat behind. Both countries had clear prospects for EU accession; Estonia was accepted for accession talks in 1997; Latvia followed two years later. In both countries, the ethno-political majority elites strongly strove for Western integration and EU and NATO accession. This included parties that, in ethno-political terms, showed more exclusionist features. The aim of Western integration was shared by the vast majority of the Russian-speakers—the elite as well as the ordinary (non-)citizens. Thereby, the ethno-political majorities and minorities, despite all disputes, were united by the jointly shared objective of Western integration. The EU recommendations to Estonia and Latvia were highly detailed, specific and targeted, especially after both countries had been accepted for accession talks. Thus, it can be observed that both sub-factors of the explanatory variable "chances of Western integration" were highly developed. This explains the near-complete implementation of the High Commissioner's recommendations and, thus, his effectiveness in these two countries.

Although *Romania* was accepted for EU accession talks in the same group as Latvia, the country was, nevertheless, further away from EU membership, both in terms of its general chances and the time frame. On the other hand, apart from the extremist parties, the ethnic Romanian elite was strongly dedicated to the aim of Western integration, a course which was supported by more than three fourths of the broader population. The Hungarian and other minorities completely shared this objective. With respect to the second sub-factor, it must be said that the

recommendations of the EU concerning the conflicts with the Hungarian minority in Romania were not very specific and detailed. Although there were recommendations on specific issues, such as the Petőfi-Schiller University, they were neither continuous nor did the wording reflect strong urgency. What concerned the European Commission in Romania was less the Hungarian minority—which was seen as rather well integrated after 1996 when the RMDSZ joined the Romanian government—than the plight of the Roma. The recommendations of the European Commission clearly concentrated on this issue, both in terms of continuity and urgency. Therefore, it may be assumed that the first sub-factor was rather well developed. Less well developed was the second sub-factor; here, the EU's recommendations were, in most cases, rather unspecific. Consequentially, I come to the conclusion that the factor of Western integration supported the implementation of the High Commissioner's recommendations to Romania, but at a lower level than in Estonia and Latvia. Thus, the factor of the chances of Western integration, mainly, but not completely explains the High Commissioner's effectiveness in this country.

Analyzed in terms of the explanatory factor of the chances of Western integration, *Macedonia* would take the third place, followed by Ukraine in the fourth position. In Macedonia, the EU came into the game rather late. Since 1996, the country had been eligible for funding under PHARE (Poland and Hungary: Aid for Restructuring of the Economies), and, only in March 2000, did negotiations start on a Stabilization and Association Agreement (SAA), which were concluded in April 2001, when the violent conflict had already started. Although the SAA included the long-term prospect of EU accession, at that time this was a more theoretical perspective. The recommendations of the European Commission to Macedonia had been rather unspecific and not formulated as urgent. This only changed in 2000 when negotiations on the SAA started. At that point, the EU asked more urgently for a solution to the question of Albanian-language university education and, at the same time, started to provide funds for the establishment of the South East European University at Tetovo initiated by HCNM Van der Stoel.

Although *Ukraine* had a Partnership and Cooperation Agreement with the EU, which entered into force in 1998, the country did not and does not have even a long-term perspective of EU accession. While the majority of the Ukrainian political elite strove for Western integration, the more concrete objective was NATO membership. EU membership has been realistically seen as being out of reach. Correspondingly,

the recommendations of the European Commission to Ukraine covered many issue areas, but not the ethno-political agenda, not the question of Crimean autonomy, nor the Crimean Tatars, nor the language rights of the Russian-speakers. Comparing the cases of Macedonia and Ukraine against the background of the explanatory factor for chances of Western integration in its two forms, it must be concluded that the High Commissioner received more support for the implementation of his recommendations in Macedonia than in Ukraine. The next conclusion, however, that he was more effective in Macedonia than in Ukraine, in terms of the maintenance of stability and security, is apparently wrong. Macedonia experienced a small civil war in 2001, while, to a significant degree, the ethno-political conflict constellation successfully dispersed in Ukraine. Taking into account all five cases, I have to conclude that the chance of Western integration represents a necessary, but not always sufficient factor for explaining the High Commissioner's effectiveness. Therefore, other complementary as well as supporting factors must be introduced.

Up until now I have looked at the quality of the secondary actors' intervention to explain the relative effectiveness of the High Commissioner. Now, it is time to go back to the primary actors, because it is the quality of their conflict constellation that makes the HCNM's interventions easier or more difficult, and more or less effective. Among these factors I start with the quality of the primary actors and the level and type of escalation. Then I add the factors of the relative strength of moderate actors and the number and cohesion of factions. In Estonia, Latvia and Romania, the conflict constellations were rather simple, included the majority, minority and kin-State, and concentrated on one key ethno-political issue. The High Commissioner was able to cover all issues and actors included in the conflict constellation. In the case of Romania, this was facilitated by the fact that he also dealt with Slovakia and Hungary and thus with a substantial part of the Hungarian minorities' context. In the case of the two Baltic States, the High Commissioner had access to the Russian leadership and thus to the third primary actor involved in these cases. Although there were violent inter-ethnic incidents in Romania in 1990 and there was a threat that a violent stage might be reached in Estonia in 1993, the level of violent conflict was actually never reached in these three countries during the period analyzed.

In addition, the types of escalation observed were of a quality which can be more easily influenced by preventive diplomacy. Top-down escalation and escalation driven by party competition prevailed and were able, in most cases, to be successfully

contained. Over the period analyzed, the levels of escalation in each of the three countries decreased significantly to a point where the use of force could be almost ruled out. Against this background, it is not surprising that the relative strength of moderate actors gradually increased in each of the three countries. As the number of factions was high during most of the period analyzed and their cohesion frequently low, this process of increasing the strength of moderate actors took time. When the two groups of supporting factors are summarized, I conclude that, despite some restraining elements, both groups of factors supported the effectiveness of the High Commissioner. Conflict constellations were not too complex, access was assured, dangerous levels of escalation were not reached, the types of escalation were more manageable and moderate actors were gradually able to strengthen their positions. Because these processes were especially significant in Romania, it is fair to say that the High Commissioner was not much less effective there than in the two Baltic States, although there was significantly less specific support by the European Commission.

Compared with the three countries mentioned above, the conflict constellations were much more complex in Ukraine and Macedonia. In Ukraine, the High Commissioner had to deal with three distinct ethno-political issue areas; two of them—Crimean autonomy and the Crimean Tatars—were interlinked in such a way that solutions in one area made compromises in the other more difficult. In addition, the potential for escalation in the cases of Crimean autonomy, as well as the rights of the Russian-speakers, was directly linked to the interests of the Russian Federation (and their instrumentalization). The higher the level of escalation is, the higher the probability of cross-border escalation as well. Types of escalation varied from top-down escalation, both by the Crimean and Ukrainian leaderships, through bottom-up escalation by the Crimean Tatars to a kind of imported escalation, when Russia dealt with and instrumentalized the issue of the Russian-speakers' language rights. However, apart from occasional low-level violent incidents involving Tatars, escalation never reached a worrying level. As the whole institutional framework of a consolidated democracy, including a functioning party system, is lacking in Ukraine, it is methodologically difficult to speak of "moderate" actors in Ukraine. What can be said, however, is that the number of factions was sufficiently high and their internal cohesion sufficiently low to make the High Commissioner's efforts more difficult. When the factors supporting the effectiveness of the High Commissioner in Ukraine

are summarized, the result is meagre. A complex conflict constellation as well as the number of factions that made the High Commissioner's work more difficult. One single factor, which supported the High Commissioner's efforts remains: apart from some minor cases, escalation never was significantly violent. Therefore, it may be concluded that the relative effectiveness of the High Commissioner in Ukraine, where he achieved operational as well as indirect substantive effectiveness, can neither be plausibly explained by the factor of the chances of Western integration nor by the supplementary factors dealt with in this paragraph, nor by a combination of the two.

The conflict constellation in *Macedonia* was even more complex and more open to diverse escalation processes than the one in Ukraine. Although at first sight a classic case—majority, minority, kin-State plus one or two core ethno-political issues—the following characteristics of Macedonia's conflict constellation made it the most difficult case among this sample. First, for the kin-State function, Kosovo was more important than Albania. This was aggravated by the fact that the High Commissioner, although at times a Personal Representative of the Chairman-in-Office for Kosovo, had only limited access to that region and was at best partially accepted by the Kosovo-Albanian leadership (*cf.* Section 2.2.3 *supra*). This relative lack of access to relevant primary actors was aggravated by a lack of access to relevant issue areas. While the High Commissioner had complete access to the relevant ethno-political issues, he could not gain access to two issues which were closely interrelated with the ethno-political one: first, the worsening economic situation leading to a high level of corruption and organized crime, also involving governing parties, and, second, inner-Albanian competition and rivalry which led, among other things, to the creation of the Macedonian UCK (*Ushtria Çlirimtare Kombëtare*/National Liberation Army). While in the first case, the problems were outside the High Commissioner's sphere of competence, in the second case it was his mandate, which stopped him from communicating with persons involved in terrorism. To sum up, while fully engaged with the ethno-political issues in Macedonia, with an intensity unparalleled in any other country, the High Commissioner lacked access to relevant issue areas as well as to the actors of the broader conflict constellation.

The level and the types of escalation further aggravated these difficulties in gaining access. Small-scale violence of significant symbolic value was not unusual for Macedonia over the years—*see* the events in Tetovo in 1995 and Gostivar in 1997. The most important factor, however, was that escalation, driven by party competition,

had been complemented and enhanced since 1999-2000 by escalation imported from Kosovo. Members of the Albanian minority in Macedonia had participated in the fighting in Kosovo in 1998-1999. Their experience was that the use of force there represented a successful enterprise, greatly rewarded by the West. At the same time, these groups were rivals for political and economic resources with the two traditional Albanian parties in Macedonia, the PDP (Party for Democratic Prosperity) and DPA. As other avenues were closed, what remained was the transfer of the apparently successful model of Kosovo to Macedonia. This started the violent conflict in 2001 and simultaneously led to new escalation processes among the ethnic Macedonian players. Even more so than in Ukraine, it is difficult to identify long-term moderate actors in Macedonia. Parties in government were usually more moderate, parties in opposition more radical. The rather high number of factions and their low cohesiveness supported processes of ethnic outbidding, thus increasing the level of escalation. The founding of a third Albanian party in Macedonia (Democratic Union for Integration/DUI), which, apart from some intellectuals, mainly comprises ex-UCK fighters, is vivid proof in this respect. To sum up, every aspect of the two groups of domestic factors made the work of the High Commissioner more difficult. Together with the factor of the chances of European integration, it may be expected that the High Commissioner's effectiveness in Macedonia remained low, despite his energetic efforts. The High Commissioner's success, such as the 2000 Law on Higher Education and the founding of the SEE at Tetovo, can be partially explained by the growing role of the EU, but some explanatory gap still remains.

While the effectiveness of the High Commissioner, in the cases of Estonia, Latvia and Romania, can be plausibly explained by the main factor of prospects for Western integration and the two domestic factors dealt with in the paragraphs above, this is not the case for Ukraine and Macedonia. In Ukraine, the High Commissioner reached operational and indirect substantive effectiveness; in Macedonia, direct substantive effectiveness in one key issue. I trace these (relative) successes back to the High Commissioner's own institutional weight, his high acceptance among primary actors and his pro-active approach. In Ukraine, this is especially evident in the case of the Crimean Tatars, where all other factors, especially the positions of primary actors and the level of international involvement, were negative. In this case, it was the repeated attempts of the High Commissioner that increased awareness and led to at least partial solutions. The same is true for the interlinked issues of the Macedonian

Law on Higher Education and the founding of the SEE University. Without the reputation he enjoyed among all Macedonian actors, and without his continued efforts to get international funds, any effectiveness in either case would have been impossible to achieve. Methodologically, this means that, apart from the factors focused on in this subchapter, the institutional weight of the High Commissioner represents an explanatory factor in its own right. Politically, it can be concluded that the violent conflict in Macedonia might have been avoidable if all international organizations had worked with the far-sightedness and dedication that the High Commissioner displayed. Although he was unable to be effective in Macedonia in terms of preventing the violent conflict in 2001, the founding of the SEE University at Tetovo represented an important asset for the period of post-conflict rehabilitation.

What lessons can be learnt from this analysis of the (relative) effectiveness of the HCNM in five States? *First*, it is crucial to take all variables and sub-variables into account. Forgetting factors, including those of seemingly minor relevance, can substantially distort the picture. This applies both to the independent and the intervening variables. *Second*, it is important to assess the relative strength and the changes in the strength of the respective variables, even if this is very complicated and time-consuming. And *third*, the interdependence among all actors and factors has to be taken fully into account. Altogether, this requires detailed process-tracing, which is also necessary to decide whether certain changes were really caused by the activity of the HCNM or by some other factors.

Notes

1 Project: 'On the Effectiveness of the OSCE Minority Regime. Comparative Case Studies on the Implementation of the Recommendations of the High Commissioner on National Minorities (HCNM) of the OSCE' (*cf.* Zellner, 1999; Kulyk, 2002; Sarv, 2002; Horváth, 2002; Dorodnova, 2003).
2 Van der Stoel, January 19, 1994, in Van der Stoel, 1999: 63.
3 *Cf.* Van der Stoel, March 24, 1994, in Van der Stoel, 1999: 76; Van der Stoel, June 4, 1994: 3.
4 Van der Stoel, September 28-29, 1993, in Van der Stoel, 1999: 52.
5 Van der Stoel, May 13, 1994, in Van der Stoel, 1999: 80.
6 I use the term "ethno-political" and not "ethnic" to underline the man-made, changeable and not objectively fixed and given character of ethno-political relations.
7 As it is widely used in the English-language literature I use the term "kin-state" to designate a State which takes special care of the fate of its external minorities defined in terms of nation, culture or language. The disadvantage of this term is that it is reminiscent of the so-called "objectivist" strand of theories of nationalism. A more precise term is

Offe's "patronage State" ["Patronagestaat"] (Offe, 1994: 145) which, however, has not been taken up in the international literature.

8   Van der Stoel, March 17, 1997, in Van der Stoel, 1999: 134.

9   Van der Stoel, September 20, 1994, in Van der Stoel, 1999: 99.

10 *See* David Galbreath and Joanne McEvoy, 'European Organizations and Minority Rights in Europe: on Transforming the Securitization Dynamic'. *Security Dialogue* 43(3) 2012: 267-284.

11 Van der Stoel, interview with Zellner, May 28, 1999, in Van der Stoel, 1999: 14.

12 *Ibid.*: 19.

13 Van der Stoel, interview with Homan, in *Helsinki Monitor* 1 (2002): 9.

14 As the volume 'Quiet Diplomacy in Action' was 'written by Walter Kemp, a Senior Adviser to the High Commissioner, with the input of colleagues in the Office of the High Commissioner and in cooperation with Mr. Van der Stoel, as the book's preface outlines, it can be treated as a primary source representing Van der Stoel's views on a broad range of issues related to his activities as High Commissioner.

15 *Cf.* Decision on Estonia, 18-CSO/Journal No. 3, Annex 2, and CSCE/19-CSO/Journal No. 2, Annex 1; Mandate of the CSCE Mission to Ukraine, Permanent Committee, Journal No. 31, August 25, 1994, Annex.

16 *Cf.* Decision on the Presence of Observers in Countries Bordering on Serbia and Montenegro, 15-CSO/Journal No. 2, Annex 1, and 16-CSO/Journal No. 3, Annex 1; CSCE Presence in Latvia, 23-CSO/Journal No. 3, Annex 3, and Terms of Reference for the CSCE Mission to Latvia, CSO Vienna Group, Journal No. 31, Annex 1.

17 Van der Stoel, interview with Homan, in *Helsinki Monitor* 1 (2002): 6.

18 *Ibid.*

19 *Ibid.*

20 Kemp (ed.), 2001: 98. The "2 + 2" formula means meetings between the chairmen and secretaries general of the CoE and the OSCE.

21 HCNM letter to Romanian Foreign Minister Meleşcanu, September 9, 1993, in Bloed (ed.), 1997: 743.

22 Van der Stoel, October 28, 1994, in Van der Stoel, 1999: 103.

23 HCNM letter to Estonian Foreign Minister Velliste, April 6, 1993, in Bloed (ed.), 1997: 1067-1068.

24 HCNM letter to Latvian Foreign Minister Georgs Andrejevs, April 6, 1993 (on the archives of the author). Explanatory note: Almost all country-specific recommendations by the High Commissioner, usually in the form of a letter from the HCNM to the respective foreign minister, as well as the answers of these foreign ministers to the HCNM were available on the High Commissioner's website (www.osce.org/hcnm). Around 2002, all these letters were deleted from the HCNM's website and new ones have no longer been posted.

25 Statement of the High Commissioner on National Minorities, Mr. Max Van der Stoel, Tallinn, July 12, 1993, in Bloed (ed.) 1997: 670.

26 *Ibid.*: 671.

27 *Ibid.*

28 HCNM letter to Ukrainian Foreign Minister Hennady Udovenko, May 15, 1995 in Bloed (ed.) 1997: 792.

29 *Ibid.*: 792-793.

30 HCNM letter to Estonian Foreign Minister Trivimi Velliste, April 6 ,1993, in Bloed (ed.), 1997: 1067.

31 HCNM letter to Estonian Foreign Minister Siim Kallas, December 11, 1995 (in the archives of the author)

32 HCNM letter to Latvian Foreign Minister Georgs Andrejevs, December 10, 1993, in Bloed (ed.), 1997: 718.

33 *Cf. Ibid.:* 719-729.

34 Cf. Dorodnova, 2003: 38.

35 HCNM letter to Latvian Foreign Minister V. Birkavs, October 28, 1996 (on the archives of the author); HCNM letter to the Latvian Foreign Minister Valdis Birkavs, May 23, 1997, in *Helsinki Monitor* 1 (1998): 63.

36 This paragraph builds on Chapter 5.2 of Kulyk, 2002: 127*ff*.

37 Van der Stoel, July 5, 1996, in Van der Stoel, 1999: 125.

38 *Cf.* for this paragraph Horváth, 2002: 117*ff*.

39 'Clarifications and explanations which I received from the Government' were published in detail by the High Commissioner in a public statement, a *modus operandi* he used quite rarely (Statement by the High Commissioner on National Minorities on Romania, September 1, 1995, in Bloed (ed.), 1997: 751-753.

40 The footnote reads: 'The Contracting Parties agree that Recommendation 1201 does not refer to collective rights, nor does it impose on them the obligation to grant to the concerned persons any right to a special status of territorial autonomy based on ethnic criteria' (Quoted after Horváth, 2002: 44). According to Ratner, it was the HCNM who formulated this footnote (Ratner, 2000: 637-638). For further details *cf.* Zellner and Dunay, 1998: 290-291.

41 This paragraph builds on an unpublished study on the effectiveness of the OSCE HCNM in Macedonia by the-then staff member of the project referred to in note 1, Dr. Teuta Arifi.

42 VMRO-DPMNE: *Vnatrena Makedonska Revolucionerna Organizacija – Demokratska Prtija za Makedonsko Nacionalno Edinstvo*, The Internal Macedonian Revolutionary Organization—Democratic Party for Macedonian Unity; DPA: *Partia Demokratike Shqiptare*, Democratic Albanian Party.

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