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**High Commissioner and Permanent
Mission: The OSCE at Work in the
Latvian (-Russian) Conflict
on Citizenship and Human Rights**

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High Commissioner and Permanent Mission:
The OSCE at Work in the Latvian(-Russian) Conflict
on Citizenship and Human Rights

Latvia and Estonia are experiencing a tough conflict on the present and future status of the non-citizen residents in the respective countries, most of whom are of ethnic Russian origin and therefore Russia being involved as well. The activities which the OSCE High Commissioner on National Minorities has developed with respect to the dispute are often mentioned as a good example for successful influence on an ongoing conflict. Indeed, there have been neither physical violence nor open inter-ethnic clashes in these countries by now. However, it is rather difficult to assess to what extent namely the OSCE representatives' intervention provided this. As Konrad Huber pointed out, "it is often impossible to determine who actually did what in the course of a developing crisis".¹ In this article, we attempt to evaluate the adequacy of the OSCE bodies' activities from the "consumer's" point of view.

The OSCE High Commissioner and permanent missions: goals and strategy

According to his mandate, the OSCE High Commissioner on National Minorities has to provide "early warning" and "early action" in situations of ethnic tension that could lead to conflicts affecting peace, stability, or relations between states.² His main methods are of diplomatic kind: "The High

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- 1) Konrad J. Huber: *The OSCE's New Role in the East: Conflict Prevention*. RFE/RL Research Report, Vol. 3, No. 31, 12 August 1994.
- 2) Document of the Helsinki Follow-Up Meeting, Chapter II: Decisions, July 10, 1992. Published in A. Bloed (ed.), *The Conference on Security and Cooperation in Europe: Analysis and Basic Documents, 1972-1993*, Dordrecht-Boston-London, 1993. For more details see R. Zaagman, *The OSCE High Commissioner on National Minorities: An Analysis of the Mandate and the Institutional Context*, in: A. Bloed (ed.), *The Challenge of Change: The OSCE After the Helsinki Follow-Up Meeting*, Martinus Nijhoff Publishers, 1992.

Commissioner is not an instrument for the protection of minorities or a sort of international ombudsman who acts on their behalf."³ In particular in the "Baltic case" the OSCE High Commissioner addressed exclusively the official leadership of Latvia and Estonia: "Since early 1993 the High Commissioner has urged the Estonian and Latvian governments to make their policy confer with non-citizens, make serious efforts to integrate them, and extend citizenship to as many qualified applicants as possible."⁴

The same feature should be pointed out when speaking about the OSCE permanent missions. "In both cases (namely, missions to Estonia and Latvia - B.Ts.) the decisions were preceded by delicate consultations with the governments concerned."⁵

The OSCE mission to Latvia which was established in late 1993 was intended to fulfil a dual function: 1) to monitor how the situation with respect to the conflict on citizenship in Latvia develops, 2) to act as an impartial mediator/facilitator in the conflict. Its official mandate included the following elements:

- address citizenship issues and other related matters and be at the disposal of the Latvian government and authorities for advice on such issues;
- provide information and advice to institutions, organizations and individuals with an interest in a dialogue on these issues;
- gather information and report on developments relevant to the full realization of the OSCE principles, norms and commitments.⁶

The following main traits of the OSCE activities in Latvia could be pointed out:

1. Collected information is being forwarded merely to state actors: no opinions/appraisals have officially been made public (eg. through media), the High Commissioner consistently refused even from press conferences during his visits to Latvia.
2. Concentration on dialogue with solely governmental bodies of Latvia. Very broad communications with public bodies and individuals were rather of one-way kind, aimed to gain but not to distribute information/opinions. Eg., members of the OSCE mission receive and consider individual complaints but they do not forward them to Latvia's authorities nor help the applicants. Those complains are used only to gather and generalize information.

3) Max van der Stoel: *The Role of the OSCE High Commissioner on National Minorities in OSCE Preventive Diplomacy*, in: S. Carlsson (ed.), *The Challenge of Preventive Diplomacy: The Experience of the OSCE*, Ministry for Foreign Affairs of Sweden, 1994.

4) Konrad J.Huber, *ibid.*

5) W. Hoyneck: *OSCE Missions in the Field as an Instrument of Preventive Diplomacy - Theory, Origin and Development*, in: S. Carlsson (ed.), *The Challenge of Preventive Diplomacy: The Experience of the OSCE*, Ministry for Foreign Affairs of Sweden, 1994.

6) *The OSCE Mission to Latvia*. 23rd CSO meeting, 23 September 1993, Journal No.3, Annex 3.

3. The evaluation of the situation from the point of view of human rights is being avoided. As H.-M. Birckenbach mentioned, an "...open' approach characterizes the reports of the OSCE High Commissioner... and the reports of the OSCE permanent missions". They both "...keep silent on the question of whether it is a violation of human rights, or whether it is not".⁷ This consistently evasive attitude is not because of lack of the definite viewpoint, it is predetermined by the very mandate and strategy chosen. Meanwhile, it is quite widespread to believe that the very presence of OSCE missions guarantees a close monitoring of the human rights situation: "The presence of OSCE officials makes it clear... that these are issues that are taken seriously by the international community and reassures those in Russia who have a legitimate concern for the rights of their fellow countrymen abroad."⁸ However, as it was mentioned above, no definite conclusions on human rights situation should or could be expected.

Thus, one can say that the OSCE bodies in Latvia apply a political and diplomatic but not a legal, human-rights approach nor an approach of conflict-mediation.

Peculiarities of Latvian conflict situation

Post-soviet ethnopolitical conflict "of Baltic type" has a number of salient features to be distinguished from conflicts in other parts of the former Soviet Union.⁹ For the purpose of this article, two of them are worth to be pointed out. Both traits are closely interrelated.

1. Obviously, the citizenship problem is the core of the conflict. Persons who arrived in Latvia in full compliance with the laws which were de-facto valid at the time of arrival, or born in the country, have not been recognized as Latvian citizens. This exclusion is relatively well-reasoned from the historically-legal point of view. Nevertheless, it means that "usual" political tools of protection of their interests are not available for about a third of Latvian residents. Non-citizens are not represented at any level of the official political framework. Actually, the state's authorities, elected merely by citizens, represent one of the parties of the conflict, another party is in no way legally institutionalized. Naturally, exclusion from political decision-

7) H.-M. Birckenbach: **Fact-Finding as Part of Preventive Diplomacy: Experience of the Citizenship Conflicts in Estonia and Latvia.** Paper presented at the XVth IPRA Conference, Malta, November 1994.

8) C. Bildt: **The Baltic Litmus Test.** Foreign Affairs, Vol.73, No.5, Sept/Oct 1994.

9) B. Tsilevich: **Ethnopolitical Conflict in the Post-Soviet Space: the Baltic Version.** Presentation at the XVth IPRA Conference, Malta, November 1994.

making inevitably entails numerous restrictions in property, economic, social etc "non-political" rights of non-citizens.¹⁰

2. The conflict under consideration is of multi-dimensional nature. Along with several "internal" dimensions (ethnic-Latvians vs Russians, political-citizens vs non-citizens) the conflict has a clear "external" dimension: Latvia vs Russia. All these components are present, and each of them can prevail depending on many factors.

Adequacy of the OSCE's strategy on the features of conflict

1. The OSCE is an inter-governmental organization by definition. Taking into account the absence of an institutionalized "second party", as mentioned above, it is quite understandable why the OSCE's activities in practice come to constant dialogue solely with the government. Meanwhile, the "second party", i.e. non-citizens in no way represented by the government, are completely left aside as a partner and turn out to become only a kind of source of information. The main (and almost the only) method of influence on the part of the OSCE is low-profile, behind-the-scenes, off-the-record impact on governmental bodies.

This approach has some advantages, eg., it allows the government to "save the face" when it still has to change its attitudes. On the other hand, in no way does it facilitate establishing any kind of inner dialogue. Non-citizens are as if indirectly represented and protected by the OSCE, but they have neither authorized the body to speak on behalf of them nor are they aware of the content of negotiations between the OSCE and the Latvian government.

2. Exclusion of non-citizens from the discussion of their own destiny is certainly not the best solution in the face of Russia's possible involvement into the conflict. As mentioned above, the conflict has both internal and external components, and a reasonable policy on the part of the OSCE (as well as other international bodies) is crucial to make one of them dominating. Does the OSCE have a certain concept in his respect? In other words, to what extent might Russia be accepted as a legitimate representative of present Latvia's non-citizens? This has never been stated clearly and unequivocally, at least non-citizens are not informed about this. Still, the issue is of crucial importance.

Obviously, non-citizens perceive the possibility to be protected and represented as closely linked with obtaining citizenship. Because the recently adopted Latvian citizenship law is quite restrictive, one should expect many

- 10) **B. Tsilevich / A. Ruchkovsky: Difference in Status and Rights between Citizens and Permanent Residents (Non-Citizens) in Latvia. Promoting Human Rights and Civil Society in Central and Eastern Europe, Newsletter of International Helsinki Federation for Human Rights, April 1994.**

non-citizens to apply for Russia's citizenship instead. The presence of a big number of Russian citizens in Latvia will inevitably fuel aspirations of Russia's chauvinist forces and will create good preconditions for justified interference into Latvia's affairs "in order to protect Russian citizens abroad". Thus, stability in Latvia will be jeopardized, and the crisis can aggravate due to external factors. From this point of view, it would be much better if the conflict is treated as a purely internal one, and a process of stable internal dialogue is set up.

In this respect, it was highly reasonable to separate the problem of Russian troops withdrawal from the problem of non-citizens. The OSCE reacted properly to some of the attempts to link these issues - but only to those made by Russia. When similar attempts were made by Latvia (eg. when Latvian parliament adopted a Resolution permitting naturalization only after the complete withdrawal of all troops) the OSCE kept silence.

3. Thus, while it is hardly possible to make Latvia liberalize its citizenship policies, it is very essential to make non-citizens refrain from acquiring Russia's citizenship. The only chance to achieve this goal is to persuade non-citizens that they can feel secure and have certain firm guarantees of their rights even when residing in Latvia without citizenship. So, the problem of legal status of non-citizens is crucial in this respect. Nevertheless, up to April 1995 this status was in no way determined by Latvian legislation and the then adopted law "On the Status of the Former USSR Citizens Who Have neither Latvia's nor other State's Citizenship" also does not finally determine non-citizens conditions (in particular, the law keeps silence on differences in citizens' and non-citizens' economic, social, property and employment rights). This lack of clarity creates good room for bureaucratic arbitrariness, promotes insecurity among non-citizens and fosters intents to apply for Russia's citizenship. However, the OSCE has put up with the problematic by now.
4. The pivotal question is whether non-citizens can claim to be treated as stateless persons. By now, the OSCE never made public its opinions on the issue. Moreover, it seems to underestimate its importance, and to concentrate on naturalization conditions instead - though it is quite obvious that most of present non-citizens will never get a chance to be naturalized on feasible terms.
5. Generally, the OSCE seems to focus on laws and draft laws currently under consideration and ignore legislative gaps, i.e. vitally important issues still awaiting legislative decision. This wait-and-see attitude can be described as "no law, no problem". Still, often absence of a law is much worse than presence of a bad law (eg. the case on non-citizens' legal status).
6. One can conclude that the OSCE does not have incentives to make Latvia implement its recommendations. Particularly, the recently adopted citizenship law at a number of serious points clearly contradicts both,

published¹¹ and unpublished¹² recommendations. It seems that the OSCE High Commissioner has put up with this.

The same can be said about the cases when recommendations are introduced at the level of law but then eluded at the level of regulations of executive power, or in practice.

7. The influence of the OSCE activities on the process of formation of civil society is not less important, in long-term perspective, than the OSCE's dialogue with the government. However, this factor seems to be constantly underestimated. In particular, much more attention should be paid by the press to cover the OSCE activities.
8. Evasiveness of human rights assessments can hardly be admitted as a fruitful approach. The matter is that human rights instruments provide the only common basis for an elaboration of mutually acceptable solutions. Even taking into account the fact of controversial appraisals by different experts, it is not the best way simply to leave the issue aside.
9. Finally, an outside observer might draw the conclusion that the OSCE is often reluctant to call a cat a cat when speaking about Latvia's non-citizens in order not to provide Russia's extreme nationalists with additional trumps. This looks reasonable, but is painfully perceived by non-citizens themselves. Such a policy can entail total disappointment and skepticism concerning possible protection on the part of the OSCE. The slogan "we are not menaced because the OSCE will never tolerate any violations of our rights" was very popular during the first years of 'Awakening'. It has vanished today.

Conclusions and recommendations

The activities of the OSCE High Commissioner and the Permanent Mission to Latvia appear efficient to prevent violent clashes. However, it is difficult to assess to what extent the OSCE contributed to this and whether or not violence would break out without the OSCE interference. Apparently, these activities also provided the OSCE members with relevant information about the situation in Latvia.

Meanwhile, the OSCE advanced much less in facilitating the set-up of an internal dialogue in Latvia (unlike in Estonia), as well as in detecting and eliminating the deeper causes and preconditions of the conflict. To emphasize on

11) Recommendations by the OSCE High Commissioner on National Minorities, Human Rights Law Journal, 1993, Vol.14, No.5-6.

12) The OSCE High Commissioner on National Minorities' letter to Minister for Foreign Affairs of Latvia of December 10, 1993, ref. No.1463/93/L.

political and diplomatic tools rather than on human rights machinery seems sufficient in a limited degree.

The following recommendations can be derived from the conducted analysis.

1. The OSCE should strive for non-citizens having the chance to solve their problems by themselves with the OSCE's (and the Council of Europe's etc) mediating presence, and not under Russia's auspices. In particular, mass applications for Russian citizenship should be prevented.
2. In no case should the deliberate distortion of the OSCE's officials' positions and opinions by the Latvian press be left without feedback, as it used to be with the OSCE High Commissioner's visit in January 1994. Any distortions of such kind need immediate refutation.
3. It is necessary to remember that the official political structure of Latvia does not adequately reflect the whole spectrum of Latvian residents, because non-citizens have no right to participate in legal political activities. It is necessary to take special measures to involve the large groups of residents, which are not at all represented in official political structures, into negotiations and decision-making.
4. It might be reasonable to focus on a strict definition of the legal status of non-citizens.
5. Terms and notions describing the situation should be chosen scrupulously.
6. It is useful to organize in possible cooperation with NGOs constant activities of expert lawyers in Latvia for law implementation monitoring, consultations and practical help.
7. It is worth to recommend Latvian leadership to make steps ensuring the possibility for persons under Latvian jurisdiction to file individual complaints into international organizations.
8. In order to organize long-term negotiations, recognition by Latvian authorities of a representative non-citizens' body (eg. League of Stateless) should be promoted. A project of the body analogous to Nansen's Committee could be drafted.