Chapter Six

The Rights of Minorities and their Interstate Dimension. Interrelationship between the HCNM Recommendations and the Framework Convention

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1. Introduction

This paper reviews the “OSCE HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations” with the approach of the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter the Framework Convention) towards this topic.

The author, alongside some former and current members of the Council of Europe, Advisory Committee on the Framework Convention (hereinafter Advisory Committee) and its Secretariat had offered their advice on the Recommendations on National Minorities in Inter-State Relations (hereinafter Bolzano Recommendations) and played a modest role in helping to shape this document. Regardless of all this, as the OSCE High Commissioner on National Minorities (hereinafter High Commissioner) points out correctly, these are his Recommendations.

The impact of national minorities on interstate relations was one of the crucial elements that led to the Council of Europe drafting the Framework Convention in 1994 and led to its ratification by 39 of its 47 Member States and its signature by a further four states. A significant number of these states had tense relations with neighbouring states, including those that had emerged from the violent conflicts in the Caucasus and former Yugoslavia in the 1990s. The Preamble to

1 The Author is the UK nominated expert to the Council of Europe Advisory Committee on the Framework Convention. However the Bolzano/Bozen Recommendations have not been discussed by the Advisory Committee and consequently anything written in this article represents the author’s own personal view and not that of the Advisory Committee. The author had the honour of being invited to one of the discussions in April 2008 in The Hague and enjoyed the constructive spirit of analysis, free thinking and dialogue.
the Framework Convention’ refers euphemistically to “the upheavals of European history” as well as to stability, democratic security and peace recognizing that this instrument of international human rights law is set within a security context.

This paper addresses some of the interrelationships between the Bolzano Recommendations and the experience of the Advisory Committee Opinions, an outcome of it’s monitoring of the implementation of the Framework Convention in the State Parties. It addresses the Framework Convention as a human rights instrument, considers the different but mutually reinforcing approaches of the OSCE High Commissioner and the Advisory Committee, while it comments on the importance of minority rights and state cooperation for the more effective realization of these rights. However a considerable emphasis is given to the Advisory Committee “doctrine” represented through its country Opinions on aspects of minority rights and interstate relations. These include crossfrontier contacts, bilateral treaties and agreements, cultural cooperation, the media and education. The paper concludes with some reflection on how the Bolzano Recommendations may be used by the Advisory Committee.

This paper does not attempt to explore in depth the situation of any particular national minority or the approach of a specific state in detail. Nor does this paper attempt to provide a comprehensive review of the approach of all the states that have ratified the Framework Convention, but it offers some insights based on a range of Opinions of the Advisory Committee. Furthermore the particular case of Hungarian minorities has been carefully dealt with in the scholarly analysis of the Council of Europe body, the Venice Commission3 and is not covered here.

2. The Rights Discourse

In the minority rights discourse, where minority rights are an integral part of human rights, states are viewed as duty bearers and persons belonging to minorities as rights holders. This is reflected in the Recommendations 5 to 8 of the Bolzano Recommendations, which have the subheading “State obligations regarding persons belonging to national minorities”, while Recommendations 9 to 15 are referred to as “Benefits accorded by States to persons belonging to national minorities abroad”.

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2 The full text of the Framework Convention, its Explanatory Report and most of the references in this paper can be found on the Council of Europe minorities website at <http://www.coe.int/t/dghl/monitorings/minorities/default_en.asp>.