

National Minorities in Inter-State Relations

Edited by

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Chapter Seven

The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, Minority Rights and Trends in Minority Protection

Mitja Žagar

I. INTRODUCTION

In contemporary diverse, multicultural and multiethnic societies (in Europe and worldwide) at the beginning of the twenty-first century, diversity management and ethnic and minority policies as well as the protection of national and other minorities remain important topics in public discourses and on political and social agendas. This paper focuses on the concept of diversity management as the broadest framework for addressing, regulating and managing all diversities and asymmetries within contemporary societies (at all levels, most notably local, sub-national/regional and national) as well as between these societies (at the international level, particularly taking into account bilateral and multilateral international relations and cooperation).

The concept of diversity management also provides the broadest conceptual framework for addressing minority issues and minority policies in general, and the actual situation, protection and full integration of national minorities and their members (persons belonging to them) in particular. In accordance with his mandate the OSCE High Commissioner on National Minorities (HCNM) focuses (as do his activities) on national minorities, their protection, predicament and integration, paying special attention to the prevention, management and resolution of possible minority related tensions and conflicts in countries monitored by the OSCE. In this context the role of the HCNM in the development of the protection of national minorities at the international and national levels should also be noted. Although all the HCNM thematic recommendations are legally non-binding documents and considered to be part of “soft” international law, they can contribute to the improvement of the international protection of national minorities. They can provide the basis for cooperation among states, resulting in the conclusion of new binding legal documents on the status

and protection of national minorities in the form of bilateral agreements between (usually neighbouring) states as well as in the form of multilateral treaties, particularly those regulating minority issues in certain regions. Consequently, the HCNM Recommendations could be observed as being a relevant factor and a useful step in the development of (legally) binding minority protection in international law.

II. THE CONTEXT

All contemporary societies, at least to a certain extent, are internally diverse and plural, but various (socially and politically more or less relevant) asymmetries can be found as well. In every environment one can find different views regarding the current and possible consequences and impact of the existing ethnic and cultural diversity as well as the role, consequences and impact of ever increasing (global) mobility and an intensification in migration that contribute to even greater diversity worldwide. Additionally, there are different views regarding (satisfactory) approaches to and concepts of the management of these diversities. The current financial and economic crisis brings new dimensions and a certain sense of unease to these discussions, in which minorities and migrants can be made scapegoats for many of the problems detected. If a few years ago it seemed almost certain that future developments would bring about continuous improvements in human rights, more favourable treatment of minorities and (im)migrants, resulting in the betterment of their (legal) protection as well as actual status and situation, now such developments might seem less certain. Regardless of all official statements, various political and awareness-raising campaigns that attempt to promote human rights, the recognition and respect of diversity, the rights and protection of minorities and all distinct groups, social inclusion and integration based on equality and (respect of) free will of individuals, in a time of crisis in many environments we might detect growing dissatisfaction and intolerance expressed in increasingly exclusivist and racist discourses and attitudes directed against the "others" (especially diverse minorities and immigrants), which in some cases might result even in xenophobic acts. Such tendencies can already be detected in media reports worldwide. From the perspective of the historical development of human and minority rights such setbacks and problems are not unknown.

A brief review of the historical development of the protection of minorities in international as well as domestic (national) law quickly shows that traditionally states have been reluctant to introduce and implement minority protection, often applying the lowest acceptable standards possible in a given period, and that the public has not always been particularly supportive either. However, one would

hope that the historical trend of development of minority rights in international and national law witnessed over the past two centuries, resulting in the improved standards of the protection of national and other minorities, will continue in the future and that its pace will not slow down substantially because of the current economic crisis or the diverse security concerns that have (re)emerged, especially after 9/11.¹ In a time of crisis it is even more important that all distinct (collective) entities have a sense of security and equality because such feelings and real voluntary inclusion and integration of all could ensure the necessary stability and cohesion of diverse societies. Consequently, it is even more crucial that in such circumstances states and their institutions develop and undertake all the necessary action and invest even more effort into consolidating and improving the standards of protection and the status of and the actual situation of national and other minorities.

In this context the importance of the HCNM and all the activities and documents of this institution, including the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (hereinafter Bolzano Recommendations), increase, although it is as yet impossible to predict their actual impact in specific environments and circumstances. All these activities and documents clearly demonstrate an approach that considers and treats diversities and minorities that exist in every environment as an accepted and important part of our lives. They are products of specific historical and contemporary developments (among which the establishment and redrawing of state and administrative

¹ For more on the development, concepts and current state of the protection of national minorities see e.g., Francesco Capotorti, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities* (United Nations, New York; 1991); Will Kymlicka, *Multicultural citizenship: A liberal theory of minority rights* (Clarendon Press, Oxford, 1995); Emma Lantschner, Joseph Marko and Antonija Petričušić (eds.), *European Integration and its Effects on Minority Protection in South Eastern Europe* (Minderheiten und Autonomien, Band 12) (Nomos, Baden Baden, 2008); Gaetano Pentassuglia, "The EU and the Protection of Minorities: The Case of Eastern Europe", in 12 *European Journal of International Law* (2001); Gaetano Pentassuglia, "Minorities in international law: An introductory study" in *Minority Issues Handbook* (European Centre for Minority Issues, Council of Europe Publishing, Strasbourg, 2002); Patrick Thornberry and Maria Amor Martín Estébanez, *Minority rights in Europe: A review of the work and standards of the Council of Europe* (Council of Europe Publishing, Strasbourg, 2004); Mitja Žagar, "Rights of ethnic minorities: individual and/or collective rights?: Some new(er) trends in development and the (universal) nature of human rights - the European perspective", 4 *Journal of International Relations* (1997), 29–48; Mitja Žagar, "Some newer trends in the protection and (special) rights of ethnic minorities: European context", in Miroslav Polzer, Liana Kalčina and Mitja Žagar (eds.) *Slovenija & European Standards for the Protection of National Minorities* (Zbirka Slovenija in Svet Evrope, št. 21). (Informacijsko dokumentacijski center Sveta Evrope pri NUK: Inštitut za narodnostna vprašanja: Avstrijski inštitut za vzhodno in jugovzhodno Evropo, Ljubljana, 2002), 77–104; etc.

borders and in particular increasing international migrations), which should be observed and evaluated as positive developments. Consequently, HCNM statements, activities and documents promote the view that minorities and distinct groups/communities contribute to the social and cultural richness of the continent, in every country, region and local community. In fact their very existence could and should be considered an absolute advantage to these environments, possibly opening up all kinds of opportunities.² Often these views contradict traditional and contemporary perceptions and views as well as the policies of European countries, which are often less enthusiastic and tolerant regarding the existence (and official recognition), position and (social) roles of diversities and minorities. Therefore the activities of the HCNM can also be viewed also as educational and awareness-raising.

At this point it should be stressed that although the HCNM addresses a wide range of important issues related to diversity, diversity management and minority protection his involvement and activities (especially quiet diplomacy) – in accordance with his mandate – focus on traditional national minorities and the prevention of possible escalations of (ethnic) conflicts, primarily in countries (at the “periphery” of the OSCE area) undergoing (democratic) transition. Although traditional national minorities account for only a small fraction of all diversities in contemporary societies, by listing and formulating the principles and present day standards of minority protection in the OSCE area, as is the case with the Bolzano Recommendations, and by placing them in the broader context, the HCNM can have a far greater and wider impact on the development of minority protection and diversity management concepts and policies than previously presented limitations would indicate. They contribute to the formulation of new paradigms that might slowly replace the traditional and (still) prevailing concept

² When I try to present the richness and comparative advantages that (constantly increasing) diversity brings to our lives in a simple way to my students, I ask them to study the traditional cuisine that existed in a certain environment a century ago. Coming from different regions, they discover some regional differences that they are required to explain. Usually, they find that these differences can be explained by specific geographic, climatic and other conditions, among which the existence of traditional minorities (and consequently the existence of ethnic and cultural diversity) should also be considered. Traditionally, local cuisines in regions where diverse, distinct groups lived (each of them contributing some specific dishes) were often richer than in areas where populations were more homogenous. When I ask them to compare the cuisine a century ago with what they can find today they find enormous differences. Technological advancement and development and globalization account for many of these changes, while other important factors are migration and diverse culinary customs the immigrants bring with them. In their evaluation of these developments, in most cases they conclude that they prefer the current diversity and rich choice of traditional cuisines and, consequently, recognize that there are positive ramifications of diversity and migration that they were previously unaware of.

of (single) nation-states. This concept is based on the myth that ideally states should be ethnically and otherwise homogenous and symmetrical entities (social organizations) that are dominated by and belong to the (dominant and internally homogenous) titular nations, within which diversities, asymmetries and all kinds of minorities might be seen as unnecessary and undesirable complications.³ By giving consideration to diverse realities in the contemporary world that contradict the myths of homogeneity, the traditionally predominant concept of (single) nation-states could ultimately be replaced or at least complemented by new inclusive concepts and paradigms of diversity management based on principles of justice and equality, the rule of law and the highest standards of human rights – including the rights of minorities, the recognition and respect of all diversities, full social inclusion and integration based on the free will of all individuals and distinct entities. Such alternative inclusive concepts require carefully designed constitutional, legal and political frameworks, policies, programmes and activities that stimulate participation and initiatives, and to realize the positive, often untapped, potential (individual and collective) that exists in diverse contemporary societies.⁴ Defined this way, integration is a complex ongoing process that demands active participation based on the equality, free will and participation of all participants, including minorities as collective entities and persons belonging to them, and is built on the principle of inclusion. Although integration might be seen as a two-way communication process, actually it has to be a multidirectional process based on formal and actual equality, and equality in the communication and participation of all (existing and interested) parties – individuals and distinct communities. When considering the situation in contemporary societies, of course, parties could and should be stimulated to participate. However, this stimulation should in no way be designed as an incentive for assimilation.

³ More see e.g., Mitja Žagar, “Nation-states, their constitutions and multi-ethnic reality: Do constitutions of nation-states correspond to ethnic reality?” 3 *The journal of ethno-development* (1994), 1–19; Mitja Žagar, “Constitutions in Multi-Ethnic Reality.” 29–30 *Gradiva in razprave/Treatises and Documents* (1994/1995), 143–164; etc.

⁴ See e.g., Tove H. Malloy, “Conceptualizing Democratic Diversity Management for Multicultural Societies: Theories of Society and Law” (C. Special Focus: Diversity Management and Integration), *European Yearbook of Minority Issues (EYMI)*, Vol. 6 (2006/7; © 2008), 281–306; Joseph Marko, “The Law and Politics of Diversity Management: A Neo-institutional Approach” (C. Special Focus: Diversity Management and Integration), *European Yearbook of Minority Issues (EYMI)*, Vol. 6 (2006/7; © 2008), 251–279; Merja Pentikäinen, “Creating an Integrated Society, Managing Diversity and Human Rights in Europe” (C. Special Focus: Diversity Management and Integration), *European Yearbook of Minority Issues (EYMI)*, Vol. 6 (2006/7; © 2008), 329–368; Mitja Žagar, “Diversity Management and Integration: From Ideas to Concepts” (C. Special Focus: Diversity Management and Integration), *European Yearbook of Minority Issues (EYMI)*, Vol. 6 (2006/7; © 2008), 307–327; etc.

Consequently, integration and integration policies as well as adequate legislation should provide for the preservation and development, and possible transformation, of all distinct cultures, languages, identities and communities if individuals belonging to them express (even if only implicitly) their desire to do so.

Although currently such alternative views and concepts might seem unrealistic or even utopian, they are considered to be the best (if not the only possible) way to address the main problems of today's world and to offer adequate and viable answers to global crises, such as ecological, and climate damage or food and water shortages, which in the long term could be bigger security risks than the current economic crises and certain security issues (like the threat of terrorism) to which politicians and the public alike usually pay most attention.

III. DIVERSITY MANAGEMENT: NEEDS, GOALS AND APPROACHES

Recent research and recorded experiences confirm that one of the main causes of the negative and biased view of minorities and migrants is a lack of information, knowledge and understanding as well as the inability and/or unwillingness of the public at large and individuals to comprehend and accept the nature and complexity of the world we live in. The complexity of realities and diversities that individuals encounter everywhere can easily confuse and can hide or distort the overall picture as well as the details – in our case the perception and understanding of minority and migrant communities and individuals belonging to these diverse minorities. To make sense of complex phenomena and realities every individual relies on inaccurate simplifications, stereotypes and myths. Although they are resorted to because they supposedly help us to understand complex realities, in fact these myths, stereotypes and simplifications can often blur our perceptions of actual individuals (persons belonging to diverse minorities and (im)migrants) as well as minority and migrant communities living around us. Consequently, these individuals are not seen as people, whom we know, understand and (dis)like and with whom we can develop truly personal relationship(s). Frequently, they and their distinct communities are perceived as the “others” who are (in this or that way) different from us and are as such disturbing factors in our daily environments, which – based on the myths, preconceptions and “traditional” views of (single) nation-states – still continue to be perceived as internally homogenous and symmetrical entities. Such perceptions, “traditional” views and myths that are in their nature exclusive and often hostile to the “others”, continue to be perpetuated and promoted by the exclusivist curricular of educational programmes (formal and informal) and institutions, by the media and political propaganda as well as by myths and stereotypes, and through politics, especially by nationalists, nationalist political parties and movements. In this context,

nationalist views, policies and interests are frequently declared to be national interests and policies that need to be recognized and followed by all members of a certain community, which in order to be strong and successful should be internally homogenous. Nationalist views and policies (particularly those that can be described as extreme and their promoters as extremists) often go further and may even demand absolute unity, calling those who question their views enemies or traitors. In this way they promote negative perceptions and images of the “others”; all those who are in any way different. Consequently, minority and (im)migrant communities, persons belonging to those minorities and (im)migrants are often made scapegoats for many (or even all) problems in their environments. Such treatment can result in their exclusion, in direct and indirect discrimination against them and, in extreme cases, in attempts to eliminate them.⁵ Considering these “traditional” views and practices in several nation-states, it is not surprising that negative perceptions and stereotypes of minority and migrant communities (as well as individual members of these groups) have become so strongly entrenched in many environments and minds.

In accordance with the views of the HCNM, the majority of scholars, human rights activists and minority populations believe the best way to combat and change these “traditional” exclusivist and often hostile views, perceptions and stereotypes is to provide accurate and adequate information about all these individuals and communities that are different/distinct – thereby changing (possibly exploding) the myth of the “others” as the unknown and threatening ones. Only when the “other” becomes a person with a face, with human problems, fears and desires; a person who each individual and the collective entity can relate to and possibly grow to like, will these “traditional” views, perceptions and stereotypes start to be questioned. Usually, the first step is the recognition and realization that there are individuals who do not fit the stereotypes within a faceless collective entity of “others”. The best strategy to bring this about is to create opportunities and conditions where people can meet and relate to one another. Slowly, while getting to know individual members of minority and migrant communities and seeing they do not match the “other” negative stereotype, we (as individuals that make up collective entities) will start to question the entrenched stereotypes and myths, realizing that they are in the main false. This is why awareness-raising campaigns promoting the positive dimensions of diversity, tolerance, (just, equal and voluntary) cooperation and inclusion, especially the

⁵ These usually violent practices of pushing out, expelling or possibly “exterminating” (by mass killings) such individuals and communities in past decades, sometimes described as “ethnic cleansing” (e.g., in Bosnia and Herzegovina), are in their nature genocidal, and should be considered and treated as crimes against humanity and their perpetrators should be adequately prosecuted and, when their individual responsibility is established, sentenced.

provision of adequate and accurate information and facts about the “others” to everybody through an inclusive (state and private) education system and the media, are so important for the recognition and acceptance of diversities and for the improvement of the status and situation of minority and (im)migrant communities and their members.

An additional problem in changing perceptions of minorities and the “others” is the lack or almost complete absence of any general knowledge about and understanding of the protection of minorities, and reasons for the introduction of minority protection as well as its historical development in Europe and individual states. Individuals and the general public know very little about the concepts behind or the aims, nature and content of minority rights or about the logical and social functions of minority protection. Consequently, it is not surprising that people often do not understand or misinterpret minority rights, considering them discrimination against the majority population as well as against persons belonging to other distinct communities in a certain environment who are not officially recognized and/or not granted minority status. They are not aware of the reasoning behind the introduction of (special) minority rights, which is to ensure equality and an even playing field to persons belonging to national (and possibly other) minorities and – in rare cases – to minority communities as distinct communities. Such an approach recognizes the fact that due to their marginalized positions and (direct and/or indirect) discrimination against them, persons belonging to national and other minorities as well as those collective entities cannot fully and equally enjoy all human rights that are formally guaranteed in a certain society. In individualistic, liberal traditions one can understand that some people question demands and attempts to introduce collective minority rights and argue that the collective dimension of minority rights is incompatible with the individualistic nature of human rights. However, some politicians, especially nationalists and some scholars deny the very existence of (special) minority rights even as individual rights, claiming they are an unacceptable form of legal discrimination that contradicts and violates the absolute principle of formal equality of everybody before the law. For this reason they also reject all individual minority rights, especially (so-called) “positive discrimination” with measures of the “affirmative action”, while claiming that the collective rights (or even the collective dimension of individual rights) should be considered incompatible with the very nature of human rights that in their nature are exclusively individual.⁶

Consequently, it is even more important to adequately and objectively present and promote (special) minority rights as a specific and, hopefully, effective means

⁶ Tibor R. Machan (1989), *Individuals and their rights*. La Salle, Illinois: Open Court, 1989.

to help decrease actual (direct and indirect) discrimination against persons belonging to minorities as well as an important aid in providing full, equal and voluntary integration of all individuals and distinct communities into plural and diverse contemporary societies. In this context there is the need to stress the importance of adequate research, so that research and educational institutions, diverse state institutions, professional associations and other associations and institutions of civic society can present accurate (research) findings regarding the existing (formal and practical) standards of minority protection as well as the status and actual situation of minorities.

In addition to having an impact on the views, perceptions, attitudes and behaviour of individuals and the public in general, it is extremely important that existing research and research findings are used by states and their institutions as well as by the international organizations to establish, formulate and execute (realize in practice) adequate standards of minority protection and minority policies, thereby improving the capacity of states in this field as well as the status and situation of minorities. It is the HCNM's traditional practice to directly involve scholars in the formulation and elaboration of standards and policies; this was the case in the drafting of the Bolzano Recommendations.

All these issues, fields, activities, policies and strategies – including minority policies and the protection of minorities as well as the prevention, management and/or resolution of crises and conflicts – should be considered important parts of successful diversity management in diverse, plural and asymmetrical societies. In other words diversity management can be seen as employing the broadest concepts, (social) strategies and ongoing processes to deal with existing pluralities, diversities and asymmetries in contemporary societies (at all levels, such as local, regional, subnational and national levels) as well as within the international community. Consequently, diversity management can be described as

[...] a social and normative framework in which all different existing and possible socially relevant diversities and asymmetries could be detected, expressed and recognized, but also taken into account in social and political processes when participating actors desire so and express their interests. In this process conditions, needs, interests, rights (including duties) and actions of every possible and detectable actor (mostly diverse collective entities with their formal or informal forms of organization, but also individuals) should be taken into account, however, in the context of global society taking into account specific and common conditions, needs, interests and rights of all other possible/detectable actors. Consequently, diversity management is a useful tool for the creation, promotion and strengthening of social cohesion in diverse societies, based on recognition and respect of existing and possible diversities – taking into account that societies (as well as all their components) rather than being static and permanent categories are processes with their temporal dimension in constant evolution and transformation. Diversity management should establish a normative and actual framework, and provide for democratic expression, reconciliation and coordination of all expressed interests and for the formulation of

common interests – shared by all or almost all members of a society – that are long term frameworks for internal cohesion and stable existence and development of diverse societies. If such shared common interests do not exist and do not bind together and lead collective actions of diverse collective entities and individuals the consequence might be lack of the necessary social cohesion and possible crises and escalation of conflicts, especially in cases when certain collective entities, most frequently distinct communities and individuals feel exploited and/or discriminated against. For this reason I would like to stress the social importance of the adequate protection of diverse minorities and distinct communities and rights of minorities as the necessary elements of diversity management in contemporary societies.

Considering that diversities, asymmetries, existence of diverse and sometimes conflicting interests, and consequently possibilities for escalation of conflicts are normal phenomena in plural societies, necessary components of diversity management should be also strategies and mechanisms for the prevention of escalation of crises and conflicts and for their management and/or resolution in cases, when preventive strategies, mechanisms and measures do not succeed in preventing their escalation. Additionally, specific strategies, approaches and policies are needed for the management of diversity in post conflict situations, where again special attention should be paid to the situation and protection of diverse minorities and distinct communities.⁷

The development and implementation of successful concepts, models, strategies, policies and programmes/activities of diversity management should be considered as an ongoing process that requires the close, all-encompassing and continuous involvement of all relevant social and political as well as economic actors, supported by research, education (educational institutions and programmes that are relevant for education and training, institution building, democracy, human rights, as well as sustainable economic, social and cultural development, for example) and the media in order to comprehend, consider and reflect on the immense complexity and multidimensionality of contemporary societies and the interdependence of the relevant actors, factors and processes.⁸

⁷ Mitja Žagar, "Diversity management – evolution of concepts", in Sara Brezigar, Peter Lavskis, Knut Erik Solem and Mitja Žagar (eds.) thematic issue: International, constitutional, legal and political regulation and management of ethnic pluralism and relations, including prevention, management and/or resolution of crises and conflicts as components of diversity management of *52 Razpave in gradivo/ Treatises and Documents* (2007), 23–24.

⁸ The recognition of the importance and complexity of diversity management was one of the reasons for the development of the (EU) 6th Framework Programme Research Project "Minority Rights Instruments and Mechanisms: Minority Protection along the Conflict Continuum" (STREP MIRICO) that established a network of several partners from Western and Central Europe as well as from the Balkans, coordinated by the European Academy in Bolzano/Bozen. (For more information on the MIRICO Project and its research findings see e.g. <<http://www.eurac.edu/Org/Minorities/MIRICO/index.htm>> accessed on 23 March 2009.) After the successful implementation this project it became the basis for the development of a broad

Additionally, one should be aware that developing adequate diversity management in individual environments requires taking into account specific

[...] circumstances, situation, needs and interests that exist there and should be adjusted to these specificities. For this reason it is essential that a strategy for every specific environment clearly defines and specifies and tries to establish the broadest possible consensus regarding the following:

- (1) General goals, especially long term goals;
- (2) Specific approaches and goals that are derived from general, long term goals and should be considered their concretization;
- (3) Institutional and organizational framework;
- (4) Relevant actors, their relations and cooperation, and their roles regarding general and specific goals in all relevant fields.

It is equally important that relevant actors agree on their strategy regarding the acquiring of necessary resources of all kinds (financial, material, human, etc.) that should make the common strategy feasible.⁹

Finally, it needs to be stressed that integration policies and a successful process of (social) inclusion and integration¹⁰ should be considered the key components and preconditions for successful diversity management in plural societies. In this context we could describe diversity management as a set of strategies, policies, concepts and approaches, programmes, measures and activities that should ensure equality, equal opportunities, participation and inclusion in all spheres of social, economic and political life (and public and private life) to all individuals and communities within a society, especially to immigrants, persons belonging to national and other minorities, marginalized individuals, minorities and other distinct communities. Adequate diversity management should promote the preservation, coexistence and development of these groups' specific characteristics, cultures and identities, but also their interaction, cooperation, transformation and the development of new cultures and identities. Consequently measures,

international network specializing in these issues. One of practical results and important initiatives deriving from this project and network is the Joint European Doctoral Program in Diversity Management and Governance that was developed by the Universities of Bologna, Graz and Primorska/Littoral (in Koper) and by the New Bulgarian University in Sofia and started in autumn 2009. The modules of this joint programme will address several dimensions of diversity and asymmetries in contemporary societies and will be an opportunity to share research results directly in postgraduate education.

⁹ See Žagar, *supra* n. 8, 25.

¹⁰ For more on integration and integration policies relevant for diversity management see e.g., Romana Bešter, "Integracijska politika – politika integracije imigrantov: Teoretični model in študija primera Slovenije" (Integration policy – policy of integration of immigrants: Theoretical model and a case study of Slovenia.), Doktorska disertacija, (PhD Dissertation) Ljubljana: Univerza v Ljubljani, Fakulteta za družbene vede (2006), 13–48, also 73–74.

programmes and activities should be developed and undertaken that, on the one hand, prevent social exclusion, negative stereotypes, discrimination, racism and xenophobia and similar negative phenomena and, on the other, stimulate and promote tolerance, equal treatment and mutual cooperation as well as inclusion, intercultural education and better knowledge of existing diversities and voluntary integration based on recognition and respect of diversities and distinct identities, and their economic and social development.

IV. THE BOLZANO/BOZEN RECOMMENDATIONS ON NATIONAL MINORITIES IN INTER-STATE RELATIONS

A very important aspect of successful diversity management in contemporary societies depends on adequate international and national regulation of the protection of persons belonging to national minorities and minorities as collective entities, which can be considered as the necessary legal basis for their successful protection, to establish equality, an even playing field and equal status, as well as to improve their circumstances and to achieve full voluntary integration based on equality. However, successful diversity management is possible only if adequate legal regulation of minority protection is supplemented by all the other necessary constituents. These include the actual implementation of minority protection regulations, adequate strategies, policies and measures for the regulation and management of migrations and full voluntary integration of all distinct communities and their members, particularly national minorities and their members as well as immigrants and their communities. Well-designed and -executed information and awareness-raising strategies, policies, programmes, campaigns and activities that promote and develop human rights, tolerance, coexistence, inclusion, mutual cooperation, equal treatment and integration of all individuals and distinct communities are also essential.

The HCNM's Bolzano Recommendations should be observed in this context. They address very sensitive and possibly volatile issues, especially those concerning the relationship of (nation-)states with their (ethnic) kin in other states. For example, historically the minority policies of states and their treatment of minorities in their territory as well as their policies on cooperation with their kin (ethnic) communities abroad – minorities in other countries – have often been sources of possible disputes and even conflicts, sometimes even pretexts for wars between states. The HCNM aims to reduce the possible volatility of such issues by clarifying the existing situation as well as recognized principles, arrangements, rules and standards regarding national minorities in inter-state relations that have been developed and exist in the international community, especially in Europe and in individual European countries. These Recommendations, being a political

document and establishing “soft” law, try to indicate and stimulate certain trends of development that one day will become, hopefully, binding law. In the European context such an attempt might seem minimal, while in the broader context this approach is not insignificant at all – especially if we take into account the situation in the (broader) OSCE area. We could consider their conflict prevention function, for example. By establishing and clarifying principles and standards that should be followed by states as well as minorities in their strategies, policies and actions, the HCNM Bolzano Recommendations could possibly reduce tensions and defuse the volatility of minority issues in individual countries.

In this context their predominantly political nature and the fact that they can be considered “soft” law not directly binding for states might be their main strength rather than their weakness. The nature of all the HCNM Recommendations as specific instruments of minority protection allows for a less restrictive approach and means that issues can be addressed that states would otherwise find unacceptable for inclusion in the drafting and adoption of “hard” international (public) law. This is especially important when considering the HCNM mandate and particularly in the execution of his preventive and conflict management activities, often by the means of quiet diplomacy and offering his good services.

As indicated at the beginning of this section, when describing the necessary components of successful diversity management in the contemporary world, one should also not underestimate the role of promotion campaigns and other activities accompanying the introduction of Recommendations such as these, which take (and will take) place in different environments, particularly in countries and regions where minority related tensions and conflicts seem more likely. The participation of (representatives of) states and their institutions, of diverse international organizations, of representatives of non-governmental organizations and institutions of civic society – including minority organizations as well as scholars, academia and the media – in these activities should not only promote the principles and standards listed in the Recommendations, but should – above all – contribute to the promotion of the relevant information, a positive perception and understanding of national (and other) minorities and their situation and position in societies, as well as their specific needs and interests. It should also be made obvious that minority interests, especially their needs and rights, are not incompatible with those of the majority, but rather a constituent part of common interests and needs. In this context, minority protection and minority protection standards should be seen as the necessary preconditions for equality, full respect of human rights and freedoms, prevention of any form of discrimination, improving human security and justice that are the foundations of true democracy in diverse societies. In my view these themes should also be at the heart of educational curricula at all levels of education as part of an ongoing

education for active democratic citizenship, which when adjusted to specific circumstances and needs and implemented in a suitable manner will address all segments of contemporary societies, thereby promoting inclusion and integration as described above.

The Explanatory Note to the Bolzano Recommendations offers background information and further explanation of each principle, established standard and recommendation, clearly indicating that they are based on existing international (both treaty and common) law while taking into account established practices, traditions and in some cases also political statements that in the view of the drafters of these Recommendations could be considered acceptable universally or have a strong potential to become accepted universally. Consequently, the Recommendations are more than just a summary of the existing principles and standards that determine obligations of states regarding persons belonging to national minorities that live in their territories. They are in fact a set of practical guidelines for states and minorities on the national regulation of the protection of minorities, minority and ethnic policies and the handling of minority issues in inter-state relations. As such they should reduce misunderstandings and conflicts, while possibly acting as a crisis and conflict prevention and/or management resolution tool. Additionally, they establish the parameters for the activities of the HCNM in this field.

One of the important features of these Recommendations is that they establish a proper balance between the rights and obligations/duties of states and those of minorities and persons belonging to minorities, on the one hand, and the framework and balance in relations (bilateral and multilateral) between states regarding minority issues, on the other, while they also determine the basis and framework for the relations between national minorities and their kin nations and states. Possibly the most important in this context is section *III. Benefits accorded by states to national minorities abroad* which establishes the criteria that clearly state that these benefits and (possible) rights should be granted on a non-discriminatory basis, that they should not interfere with the principles of territorial integrity and non-interference, while they should also be adequately balanced taking into account the protection and benefits granted by a respective state to minorities in its territory and benefits and rights that this state extends to its kin minorities abroad.

Section *IV. Multilateral and bilateral instruments and mechanisms* of the Bolzano Recommendations also provides practical guidelines for states regarding the regulation and management of minority issues encouraging the states not only to utilize and realize all existing principles, standards and rights determined by international law (i.e., customary law, bilateral and multilateral treaties and covenants) but also to make use of all bilateral and multilateral instruments that can further improve the situation, status and rights of national minorities and

persons belonging to them as well as help them to adequately communicate and share relevant information and “address possible disputes and avert conflicts over minority issues.” The practical options and principles for the implementation of these instruments and mechanisms listed in Recommendations 18 and 19 clearly show the document’s preventive approach and aim to regulate and manage minority issues. Furthermore, the spirit of the Recommendations indicates that ultimately minority issues could be the catalyst for the improvement of inter-state relations and cooperation in which minorities as (autonomous and possibly equal) partners can and should play an important and active role.

As “soft” law the HCNM Bolzano Recommendations can pave the way for the future development of standards in international law that can be introduced in binding international documents and thereby become binding “hard” international law. In a way, the recommendations can be seen as a guiding light to possible legal developments in this field, which by establishing the framework and conditions for successful integration and diversity management can benefit the countries where minorities live as well as the minorities and individual members of these minorities themselves. With the application and practice of the Bolzano Recommendations, one would hope that the standards and principles established by this document would be used by participating States in drafting bilateral and multilateral documents and treaties, which might be particularly welcome in the regions, such as the Balkans that in the past experienced tensions and conflicts in which minority issues were also misused. The Recommendations may in this way contribute to the stability and peace in these regions. In this context one should hope for cross-fertilization of all existing and relevant “soft” and “hard” law instruments, which participating States could utilize in developing new binding bilateral and/or multilateral documents, especially regional treaties.¹¹

¹¹ See for example Asbjorn Eide “The Oslo Recommendations: An Overview”, in 6(3) *International Journal on Minority and Group Rights* (1999), 319–328.