The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note

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Introduction

In its Helsinki Decision of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities (HCNM) to be an instrument of conflict prevention at the earliest possible stage in regard to tensions involving national minority issues. In the course of 15 years of sustained activity, the institution of the HCNM has gained a unique insight into identifying and addressing potential causes of conflict involving national minorities. In this context, the HCNM has devoted much attention to those situations involving persons belonging to ethnic groups who constitute the numerical majority in one State but the numerical minority in another (usually neighbouring) State. This issue engages the interest of government authorities in several States and constitutes a potential source of inter-State tension, if not conflict. Indeed, such tensions have defined much of modern and contemporary European history.

Ethno-cultural and State boundaries seldom overlap. Almost all States have minorities of some kind, with many belonging to communities which transcend State frontiers. These communities often serve as a bridge between States, contributing to prosperity and friendly relations, and fostering a climate of dialogue and tolerance. For this reason, persons belonging to national minorities should be able to establish and maintain free and peaceful contacts across State borders and to develop cultural and economic links. When transfrontier cultural ties, however, take on political significance and States unilaterally take steps to defend, protect or support what they describe as “their kin” outside their sovereign jurisdiction, there is a risk of political tension or even violence.

In the past, the HCNM has confronted such tensions in many regions of the OSCE area and remains acutely aware of potential dangers associated with excessive politicization of minority issues in inter-State relations. In the view of the HCNM,

there is a need for greater clarity on how States can pursue their interests with regard to national minorities abroad without jeopardizing peace and good neighbourly relations. It is for this reason that these Recommendations have been elaborated, guided by principles of international law and based on the extensive experience of the HCNM. They are intended to clarify how States can support and extend benefits to people belonging to national minorities residing in other countries in ways that do not strain interethnic or bilateral relations.

The Recommendations build on the experience of Rolf Ekéus (HCNM 2001-2007), as set out in his 2001 statement on "Sovereignty, Responsibility and National Minorities", and on the "Report on the Preferential Treatment of National Minorities by their Kin-State", issued by the Council of Europe's Commission for Democracy through Law (Venice Commission) in the same year. Both documents explain the conditions under which and the limitations within which States may support citizens of another country based on shared ethnic, cultural or historical ties. These documents underline the dual responsibility of States, which is to protect and promote the rights of persons belonging to national minorities under their jurisdiction and act as responsible members of the international community with respect to minorities under the jurisdiction of another State.

The main tenets of the Recommendations on National Minorities in Inter-State Relations echo the two documents mentioned above and stipulate firstly, that under international law, the respect for and protection of minority rights is the responsibility of the State where the minority resides. Secondly, other States may have an interest in the well-being of minority groups abroad, especially those with whom they are linked by ethnic, cultural, linguistic or religious identity, or a common cultural heritage. This, however, does not entitle or imply a right under international law to exercise jurisdiction over people residing on the territory of another State. Finally, States can pursue this interest through extending benefits to minorities abroad only in consultation with the State of residence and with due respect for the principles of territorial integrity, sovereignty and friendly, including good neighbourly, relations. States should ensure that their policies with respect to national minorities abroad do not undermine the integration of minorities in the States where they reside or fuel separatist tendencies.

The 19 individual Recommendations are divided into four sections: general principles, State obligations regarding persons belonging to national minorities, benefits accorded by States to persons belonging to national minorities abroad and

multilateral and bilateral instruments and mechanisms. They provide both normative and practical guidance to States in accordance with the general principles of sovereignty, human and minority rights and international responsibility. A more detailed explanation of the Recommendations is provided in an accompanying Explanatory Note which contains express reference to the relevant international standards. Each recommendation is intended to be read in conjunction with the specifically relevant paragraphs of the Explanatory Note and within the context of the document as a whole.

It should be noted that the question of national minorities in inter-State relations has often featured between the States of residence and the so-called "kin-States". This term has been used to describe States whose majority population shares ethnic or cultural characteristics with the minority population of another State. These Recommendations focus on the relationship between such States to a large extent, but not exclusively. They are also applicable to a broader category of States that may have an interest in minorities abroad with bonds such as a shared history, religion or language, which may or may not be considered as constituting kinship. In addition, "kin" is regarded as one of the essentially contested concepts that lacks agreed scientific or legal definition. For these reasons, the term "kin-State" is not used in the text of the Recommendations and is referred to only sparingly in the Explanatory Note when it has an added explanatory value.

The term "national minorities" as used in this document encompasses a wide range of minority groups, including religious, linguistic and cultural as well as ethnic minorities, regardless of whether these groups are recognized as such by the States where they reside and irrespective of the denomination under which they are recognized. These Recommendations are relevant for all these groups. In addition, the word "minorities" is often used in the Recommendations as a convenient abbreviation of the phrase "persons belonging to national minorities".

In preparing the Recommendations on National Minorities in Inter-State Relations, the HCNM received valuable input and support from staff members, including Dr. Natalie Sabanadze, Professor Francesco Palermo, Dr. Annelies Verstichel and Mr. Bob Deen. Former HCNM staff members Dr. Walter Kemp, United Nations Office on Drugs and Crime, Professor John Packer, University of Essex, and Mrs. Dzenana Hadziomerovic, Office of the High Representative in Bosnia and Herzegovina also assisted in the drafting of the document.

In addition, the HCNM consulted the following experts: Professor Gudmundur Alfredsson, Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund University; Prof. lect. Bogdan Aurescu, University of Bucharest and Substitute Member of the Venice Commission; Mrs. Ilze Brands-Kehris, Director, Latvian Centre on Human Rights, Riga; Professor Vojin Dimitrijevic, Director, Belgrade Centre for Human Rights; Professor Asbjørn Eide, Senior Fellow at the Norwegian Institute of Human Rights, Oslo; Ms. Simona Granata-Menghini, Head of Constitutional Co-operation Division, Secretariat of the Venice Commission, Strasbourg; Professor Jan Erik Helgesen, President of the Venice Commission, Strasbourg; Professor Kristin Henrard, Erasmus University Rotterdam; Dr. Enikő Horváth, independent expert, Paris; Mr. Antti Korkeakivi, Centre for Human Rights and Global Justice at New York University School of Law; Dr. Emma Lantschner, European Academy Bolzano/Bozen and University of Graz; Mr. Mark Lattimer, Executive Director, Minority Rights Group International, London; Professor Joseph Marko, University of Graz; Dr. Anna Matveeva, London School of Economics and Political Science; Mr. Alan Phillips, President of the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe, Strasbourg; Professor Eduardo Ruiz-Vieytez, Director, Human Rights Institute, University of Deusto, Bilbao; Professor Levente Salat, Babeő-Bolyai University, Cluj-Napoca; Professor Pieter van Dijk, President of the Administrative Jurisdiction Division, Council of State of the Netherlands, The Hague, and Member of the Venice Commission; Professor Mitja Žagar, Institute for Ethnic Studies, Ljubljana.

The purpose of these Recommendations is to provide representatives of States, national minorities and international organizations with guidance on how to address the questions concerning national minorities that arise in the context of inter-State relations in a way that protects and promotes the rights of persons belonging to national minorities, prevents conflict, maintains interethnic harmony and strengthens good neighbourly relations. By encouraging States to make the right policy choices and take measures to alleviate tensions related to national minorities abroad, it is hoped that the ultimate conflict prevention goal of the HCNM mandate will be served.

Knut Vollebaek
OSCE High Commissioner on National Minorities
The Hague, 20 June 2008

Recommendations on National Minorities in Inter-State Relations

I. General principles

1. Sovereignty comprises the jurisdiction of the State over its territory and population, and is constrained only by the limits established by international law. No State may exercise jurisdiction over the population or part of the population of another State within the territory of that State without its consent.

2. Sovereignty also implies the obligation of the State to respect and to ensure the protection of human rights and fundamental freedoms of all persons within its territory and subject to its jurisdiction, including the rights and freedoms of persons belonging to national minorities. The respect for and protection of minority rights is primarily the responsibility of the State where the minority resides.

3. The protection of human rights, including minority rights, is also a matter of legitimate concern to the international community. States should address their concerns for persons or situations within other States through international co-operation and the conduct of friendly relations. This includes the full support by States of international human rights standards and their agreed international monitoring mechanisms.

4. A State may have an interest – even a constitutionally declared responsibility – to support persons belonging to national minorities residing in other States based on ethnic, cultural, linguistic, religious, historical or any other

ties. However, this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State without that State's consent.

II. State obligations regarding persons belonging to national minorities

5. States should guarantee the right of everyone, including persons belonging to national minorities, to equality before the law and to equal protection under the law. In this respect, discrimination based on belonging to a national minority or related grounds is prohibited. Achieving substantive equality may require special measures and such measures should not be regarded as being discriminatory.

6. States should respect and promote the rights of persons belonging to national minorities, including the right freely to express, preserve and develop their cultural, linguistic or religious identity free from any attempts at assimilation against their will.

7. States should promote the integration of society and strengthen social cohesion. This implies that persons belonging to national minorities are given an effective voice at all levels of governance, especially with regard to, but not limited to, those matters which affect them. Integration can only be achieved if persons belonging to national minorities, in turn, participate in all aspects of public life and respect the rules and regulations of the country they reside in.

8. States should not unduly restrict the right of persons belonging to national minorities to establish and maintain unimpeded and peaceful contacts across frontiers with persons lawfully residing in other States, in particular those with whom they share a national or ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

III. Benefits accorded by states to persons belonging to national minorities abroad

9. States may extend benefits to persons residing abroad, taking into account the aforementioned principles. Such benefits may include, *inter alia*, cultural and educational opportunities, travel benefits, work permits and facilitated

access to visas. They should be granted on a non-discriminatory basis. The State of residence should not obstruct the receipt or enjoyment of such benefits, which are consistent with international law and the principles underlying these Recommendations.

10. States should refrain from taking unilateral steps, including extending benefits to foreigners on the basis of ethnic, cultural, linguistic, religious or historical ties that have the intention or effect of undermining the principles of territorial integrity. States should not provide direct or indirect support for similar initiatives undertaken by non-State actors.

11. States may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad. States should, however, ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship *en masse,* even if dual citizenship is allowed by the State of residence. If a State does accept dual citizenship as part of its legal system, it should not discriminate against dual nationals.

12. States may offer assistance to support education abroad, for example, with regard to textbooks, language training, teacher training, scholarships and school facilities. Such support should be non-discriminatory, have the explicit or presumed consent of the State of residence and be in line with applicable domestic and international educational standards.

13. States may provide support to cultural, religious or other non-governmental organizations respecting the laws and with explicit or implied consent of the country in which they are registered or operating. However, States should refrain from financing political parties of an ethnic or religious character in a foreign country, as this may have destabilizing effects and undermine good inter-State relations.

14. The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, may not be prohibited on the basis of ethnicity, culture, language or religion. Limitations are restricted to broadcasts that use hate speech or incite violence, racism or discrimination.

15. When granting benefits to persons belonging to national minorities residing abroad, States should ensure that they are consistent in their support for persons belonging to minorities within their own jurisdiction. Should States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question.

IV. Multilateral and bilateral instruments and mechanisms

16. States should co-operate across international frontiers within the framework of friendly bilateral and multilateral relations and on a territorial rather than an ethnic basis. Transfrontier co-operation between local and regional authorities and minority self-governments can contribute to tolerance and prosperity, strengthen inter-State relations and encourage dialogue on minority issues.

17. In dealing with issues concerning the protection of persons belonging to national minorities, States should be guided by the rules and the principles established in international human rights documents, including those multilateral instruments and mechanisms which have been created specifically to support the implementation of standards and commitments relating to minorities.

18. States are encouraged to conclude bilateral treaties and make other bilateral arrangements in order to enhance and further develop the level of protection for persons belonging to national minorities. These mechanisms offer vehicles through which States can share information and concerns, pursue interests and ideas, and further support minorities on the basis of friendly relations. A bilateral approach should follow the spirit of fundamental rules and principles laid down in multilateral instruments.

19. States should make good use of all available domestic and international instruments in order to effectively address possible disputes and to avert conflicts over minority issues. This may include advisory and consultative bodies such as minority councils, joint commissions and relevant international organizations. Mediation or arbitration mechanisms should be established in advance through appropriate bilateral or multilateral agreements.

Explanatory Note to the Recommendations on National Minorities in Inter-State Relations

I. General principles

1. Sovereignty comprises the jurisdiction of the State over its territory and population, and is constrained only by the limits established by international law. No State may exercise jurisdiction over the population or part of the population of another State within the territory of that State without its consent.

The principle of State sovereignty is a cornerstone of international law, as codified in Articles 1 and 2 of the Charter of the United Nations (hereinafter: "UN Charter") and reaffirmed in several other international documents. These include the 1975 CSCE Helsinki Final Act (Principle IV), the 1990 Charter of Paris for a New Europe, and, in particular with regard to national minorities, the 1990 CSCE Document of the Copenhagen Meeting on the Human Dimension (hereinafter: "Copenhagen Document") (paragraph 37), the 1995 Framework Convention for the Protection of National Minorities of the Council of Europe (hereinafter: "FCNM") (Preamble and Article 21), the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter: "UN Declaration on Minorities") (Article 8 (4)), and the 1994 EU Concluding Document of the Inaugural Conference for a Pact on Stability in Europe (hereinafter: "Stability Pact") (paragraph 1.6). International law provides for extraterritorial jurisdiction for specific cases and in certain situations, but in a restricted form.

2. Sovereignty also implies the obligation of the State to respect and to ensure the protection of human rights and fundamental freedoms of all persons within its territory and subject to its jurisdiction, including the rights and freedoms of persons belonging to national minorities. The respect for and protection of minority rights is primarily the responsibility of the State where the minority resides.

Since the Second World War, a legal regime has been developed following the principle that protection of human rights and fundamental freedoms, including those of persons belonging to national minorities, is the responsibility of the State that has jurisdiction over the persons concerned. Under international law, therefore, States are obliged to secure to everyone within their jurisdiction the enjoyment of human rights and freedoms, including minority rights. This responsibility to protect is included in, among others, the Helsinki Final Act (Principle VII, para.4), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "ECHR") (Article 1), and with regard to national minorities in particular, in the 1966 UN International Covenant on Civil and Political Rights (hereinafter: "ICCPR") (Article 27), the UN Declaration on Minorities (Article 1(1)), the CSCE Copenhagen Document (paragraphs 33(1) and 36(2)) and the FCNM (Article 1). Consequently, the protection of minority rights is primarily but not exclusively the responsibility of the State where the minority resides: it is also a matter of legitimate concern for the international community, as further elaborated in Recommendation 3 below.

The preservation of peace and stability requires that persons belonging to minorities are treated and protected in an integrated way to the extent that their special status and situation allows this. The fundamental link between protection and promotion of minority rights and the maintenance of peace and stability has been emphasized a number of times by the OSCE participating States, beginning with Principle VII of the Decalogue of the Helsinki Final Act. This link has been reiterated in subsequent documents such as the 1983 Concluding Document of Madrid (Principle 15), the 1989 Concluding Document of Vienna (Principles 18 and 19) and the 1990 Charter of Paris for a New Europe, as well as in the OSCE's Summit Documents, including the 1990 Copenhagen Document (Part IV, paragraph 30), the 1992 Helsinki Document (Part IV, paragraph 24) and the 1996 Lisbon Document (Part I, Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century, paragraph 2). A more specific link is established, *inter alia*, in the preamble to the 1992 UN Declaration on

Minorities, in the preamble of the FCNM and in the Final Declaration of the 1993 OSCE Vienna Summit. Protection of minority rights by the State in which minorities reside is, therefore, not only one of the cornerstones of international law but also a precondition for peace, security and democratic governance, especially in multi-ethnic States.

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3. The protection of human rights, including minority rights, is also a matter of legitimate concern to the international community. States should address their concerns for persons or situations within other States through international co-operation and the conduct of friendly relations. This includes the full support by States of international human rights standards and their agreed international monitoring mechanisms.

While the protection of human rights, including minority rights, is primarily the responsibility of the State where the minority resides, it is also a matter of legitimate international concern. This has been emphasized, *inter alia*, by the OSCE participating States in the 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, as respect for these rights and freedoms constitutes one of the foundations of international legal order. With regard to minority rights in particular, this has been underlined in Section II, paragraph 3 of the 1991 "Report of the CSCE Meeting of Experts on National Minorities in Geneva", which states that "issues concerning minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State".

As the protection of human rights, including minority rights, falls within the scope of international co-operation, the concerns of States for people or situations within other States must be expressed within the framework of the basic principles of international law, including the conduct of friendly relations. While pursuing bilateral agreements, States should ensure that these do not undermine or contradict international standards set out in multilateral instruments. This issue is elaborated in Section IV of these Recommendations. States should co-operate on questions relating to persons belonging to minorities, *inter alia*, by exchanging information and experiences, including for example through joint commissions, in order to promote mutual understanding and confidence. The procedural principles of good neighbourliness, friendly relations and international co-operation are stated in, *inter alia*, the UN Charter (Article 1(2)), the 1970 Declaration on Principles of

International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and the CSCE Charter of Paris for a New Europe. These principles, in particular regarding minorities, are reaffirmed in the UN Declaration on Minorities (Articles 6 and 7), in the CSCE Copenhagen Document (paragraph 36(1)), in the FCNM (Articles 1, 2 and 18) and in the Stability Pact (paragraph 1(5)).

In the context of international responsibility to respect and protect human rights, including minority rights, States are obliged to fulfil their reporting obligations to international supervisory bodies and to ensure that the rights of communication to international courts and tribunals are observed. Supervisory and advisory bodies play an important role in promoting transparency, understanding and goodwill, and ensure that international legal norms are upheld; States should support, develop and fully participate in these mechanisms.

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4. A State may have an interest – even a constitutionally declared responsibility – to support persons belonging to national minorities residing in other States based on ethnic, cultural, linguistic, religious, historical or any other ties. However, this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State without that State's consent.

This principle points to the distinction between rights and interests, as well as between international and domestic law. A State may have an interest in supporting persons living abroad sharing ethnic, cultural, linguistic, religious, historical or other characteristics with its majority population and this may even be enshrined in its constitution. This interest, however, even if laid down in domestic law, does not imply, in any way, a right under international law to exercise jurisdiction over these persons. A State cannot exercise its powers, in any form, on the territory of other States without the consent of those States. International law only provides for strictly defined exceptions to this rule, such as the exercise of jurisdiction related to States' embassies, ships or citizens abroad.

As a rule, a State may provide consular protection to its citizens abroad only after consultation and agreement with the State of residence or sojourn, with the exception of the most urgent humanitarian circumstances when such consultation is not possible or stands in the way of effective protection. This requirement of previous consultation applies *a fortiori* if the person abroad is not a citizen of the

intervening State. The fact that the State considers a person abroad to be one of its "kin", does not justify any unilateral intervention on that person's behalf.

II. State obligations regarding persons belonging to national minorities

5. States should guarantee the right of everyone, including persons belonging to national minorities, to equality before the law and to equal protection under the law. In this respect, discrimination based on belonging to a national minority or related grounds is prohibited. Achieving substantive equality may require special measures and such measures should not be regarded as being discriminatory.

The principles of non-discrimination and equality are expressed in virtually all international human rights instruments, including notably the 1948 Universal Declaration of Human Rights (Article 2 and 7), the ICCPR (Articles 2, 26 and 27) and the 1966 International Covenant on Economic, Social and Cultural Rights (Article 2). Article 1 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination makes clear that this instrument also prohibits discrimination on the basis of "descent, or national or ethnic origin". Article 14 of the ECHR also expressly extends the principle of non-discrimination to cover grounds of "national or social origin, [or] association with a national minority" and Protocol 12 additional to the ECHR establishes a general clause against discrimination.

In more recent times, the principle of non-discrimination on grounds of, *inter alia*, national and ethnic origin has been codified by the European Union in the 1997 Amsterdam Treaty (Article 13 TEU), the 2000 Charter of Fundamental Rights of the European Union (Article 22) and the Directives 2000/43/EC and 2000/78/EC. The OSCE has also included the principles of non-discrimination and equality in the Helsinki Final Act (Principle VII), in the 1989 Concluding Document of Vienna (paragraphs 13.7 and 13.8) and in the Copenhagen Document (paragraphs 5.9, 25.3 and 25.4). With regard to minorities in particular, the enjoyment of minority rights without discrimination is contained in the UN Declaration on Minorities (Article 2.1) and in the CSCE Copenhagen Document (paragraph 31). Not least, most OSCE participating States incorporate these principles and standards in their constitutions.

The FCNM (Article 4) specifically prohibits discrimination based on belonging to a minority in paragraph 1. Paragraph 2 also specifies that additional and adequate measures may be required to promote the full and effective equality between persons belonging to minorities and those belonging to the majority. Such measures need to be in conformity with the proportionality principle in order not to be considered discriminatory. This issue is further elaborated in Recommendation 10.

6. States should respect and promote the rights of persons belonging to national minorities, including the right freely to express, preserve and develop their cultural, linguistic or religious identity free from any attempts at assimilation against their will.

Lessons from the past have shown that respect for minority rights is essential for peace and stability within and between States. Persons belonging to minorities have the right to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. This right can only be exercised if States abstain from any attempts to assimilate minorities against their will.

International law affirms the obligation of States to promote the right of persons belonging to minorities to maintain their identity by providing adequate opportunities to develop their culture, to use their language, to practice their religion and to effectively participate in public affairs. This obligation is laid down in, *inter alia*, the ICCPR (Article 27), in the 1960 UNESCO Convention against Discrimination in Education (Article 5.1.c.), in the UN Declaration on Minorities (Articles 1, 2(2) and 2(3)), in the CSCE Copenhagen Document (paragraphs 33 and 35) and in the FCNM (Articles 5(1), 8 and 10-15). Specific recommendations and guidelines on the effective implementation of these rights have been published by the HCNM, including in regard to education (The Hague Recommendations regarding the Education Rights of National Minorities, 1996), use of language (Oslo Recommendations regarding the Linguistic Rights of National Minorities, 1998) and effective participation in public life (Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999).

7. States should promote the integration of society and strengthen social cohesion. This implies that persons belonging to national minorities are given an effective voice at all levels of governance, especially with regard to, but not limited to, those matters which affect them. Integration can only be achieved

if persons belonging to national minorities, in turn, participate in all aspects of public life and respect the rules and regulations of the country they reside in.

Based on the experience of the HCNM, peace, stability, security and prosperity can only be achieved in societies promoting the integration of minorities while respecting their diversity. Integration with respect for diversity is not a matter of "either/or", but a question of finding the appropriate balance, acknowledging the right of minorities to maintain and develop their own language, culture and identity and at the same time achieving an integrated society where every person in the State has the opportunity to take part in and influence the political, social and economic life of mainstream society. This principle is underpinned, *inter alia*, by the FCNM (Articles 5 and 6).

A well-integrated society in which all participate and interact is in the interest of both States and minorities. It is the result of a continuous and democratic process that contributes to good governance and requires commitment from both sides. Separation between communities and groups is not usually a good basis on which to build a well-functioning society with good prospects of future stability. Integration involves interaction, not just tolerating a plurality of cultures.

Against such a background, persons belonging to minorities not only have the right to opportunities to develop their identity (as reiterated in Recommendation 6 above), but also a responsibility to participate in cultural, social and economic life and in public affairs, thus integrating into the wider national society. This includes, for instance, the need to learn the State language while at the same time enjoy adequate opportunities for learning of, and in, the minority language, as put forward in the Copenhagen Document (paragraph 34), The Hague Recommendations Regarding the Education Rights of National Minorities (no. 1) and the Explanatory Report to Article 14 of the FCNM. Integration also implies that national minorities should participate in all aspects of governance of their country of residence; their involvement should not be restricted to those areas that specifically concern them.

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8. States should not unduly restrict the right of persons belonging to national minorities to establish and maintain unimpeded and peaceful contacts across frontiers with persons lawfully residing in other States, in particular those with whom they share a national or ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

Establishing and maintaining unimpeded and peaceful contacts across frontiers with people lawfully residing in other States, with whom they share a common national or ethnic origin, a cultural heritage or a religious belief, is a fundamental right of persons belonging to minorities. This fundamental minority right is stipulated in the UN Declaration on Minorities (Article 2(5)), in the CSCE Copenhagen Document (paragraph 32 (4)), and in the FCNM (Article 17 (1)). This Recommendation therefore concerns an individual right and States should refrain from interfering with it except in situations where there is a substantiated overriding security risk. Multilateral and bilateral instruments and mechanisms for transfrontier co-operation among States are dealt with in Section IV of the Recommendations.

III. Benefits accorded by states to persons belonging to national minorities abroad

9. States may extend benefits to persons residing abroad, taking into account the aforementioned principles. Such benefits may include, *inter alia*, cultural and educational opportunities, travel benefits, work permits and facilitated access to visas. They should be granted on a non-discriminatory basis. The State of residence should not obstruct the receipt or enjoyment of such benefits, which are consistent with international law and the principles underlying these Recommendations.

States may have an interest in supporting persons residing abroad, including by according benefits to them. According to the 2001 "Report on the Preferential Treatment of Minorities by their Kin-State" adopted by the European Commission for Democracy Through Law (hereinafter: "Venice Commission Report" - CDL-INF (2001) 19), the possibility for States to adopt unilateral measures on the protection of "kin-minorities", irrespective of whether they live in neighbouring or in other countries, is conditional on respect for the following principles: a) the territorial sovereignty of States; b) *pacta sunt servanda*; c) friendly relations amongst States, and d) the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination. The mere fact that the beneficiaries of this kind of support are foreigners does not constitute an infringement of the principle of territorial sovereignty of other States.

The same report acknowledges that a State can legitimately issue laws or regulations concerning citizens of other countries without seeking the prior consent of

the State in which they reside, as long as the effects of these laws or regulations are to take place within its own borders only. For example, a State can unilaterally decide to grant a certain number of scholarships to meritorious foreign students who wish to pursue their studies in the universities of that State.

However, when a law is specifically directed at foreigners residing in a foreign country and the effects of this law are to take place abroad, the State of residence of the individuals concerned should be consulted. In this regard, a distinction should be made between situations in which the consent of the State affected is implied, namely in the fields covered by treaties or international customs, and those in which consent should be explicit (Section D.a.i. of the Venice Commission Report).

Peace, stability and friendly relations between States require that the State of residence does not obstruct the receipt or enjoyment of benefits as long as they comply with international law and standards. These provide that benefits should be non-discriminatory, i.e. they should pursue a legitimate aim and be proportionate.

As set out in the Venice Commission Report, a legitimate aim can be the fostering of cultural links between the target population and the population of the "kin-State". The promotion of educational or personal links could also constitute a legitimate aim. Benefits extended by States therefore may include cultural and educational opportunities, travel benefits, work permits, facilitated access to visas and acquisition of property.

The enjoyment of such benefits is frequently made conditional on the possession of identity documents issued by the "kin-State". These documents should only be a proof of entitlement to the services provided for under a specified law or regulation. They should not aim at establishing a political bond between its holder and the "kin-State" and should not substitute for an identity document issued by the authorities of the State of residence.

To be non-discriminatory, preferential treatment must target and affect persons in the same circumstances equally. This requires that the impact of measures granting preferential benefits to certain foreigners is proportionate, i.e. the least limiting on the formal equal treatment of all persons belonging to the same category. For example, as pointed out in the Venice Commission report, differential

treatment in granting benefits in education may be justified by the legitimate aim of fostering the cultural links of the targeted population with the population of the "kin-State". In order to be acceptable, however, the benefits accorded must be genuinely linked with the culture of the "kin-State", be open to all interested and qualified individuals, irrespective of their ethnic background and be proportionate. For instance, educational benefits provided on a non discriminatory basis such as linguistic proficiency can legitimately be used as a precondition for the enjoyment of such a benefit.

10. States should refrain from taking unilateral steps, including extending benefits to foreigners on the basis of ethnic, cultural, linguistic, religious or historical ties that have the intention or effect of undermining the principles of territorial integrity. States should not provide direct or indirect support for similar initiatives undertaken by non-State actors.

Extending benefits to particular groups abroad that could fuel separatist tendencies and have a weakening or fragmenting effect in the States where the foreigners reside, violates the principles of sovereignty and friendly relations between States. Unilateral steps of this kind may include selective financing of foreign political parties based on ethnic, cultural, linguistic or religious ties, distribution of identity papers certifying ethnic origin, or granting citizenship en masse to citizens of another State, as further elaborated in Recommendation 11.

Furthermore, international peace and security can be threatened by acts that undermine the societal integration and social cohesion of other States. Article 1 of the UN Charter underlines the importance of preventing and removing threats to peace. History shows that when States pursue unilateral policies – including those of a symbolic nature – on the basis of national kinship to protect minorities living outside of the jurisdiction of the State, this sometimes leads to tensions and frictions; even violent conflict.

The same effect can be caused by initiatives with the same aim taken by non-State actors, including religious institutions, with direct or indirect support from State authorities. In addition, States should take preventive and remedial action against non-State actors within their borders who introduce measures or support initiatives in relation to minority groups abroad that incite violence or fuel separatist tendencies. This must be read in close connection with Recommendation 3, which

stresses the importance of international co-operation and the conduct of friendly relations in dealing with concerns about people or situations in other States.

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11. States may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad. States should, however, ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship *en masse,* even if dual citizenship is allowed by the State of residence. If a State does accept dual citizenship as part of its legal system, it should not discriminate against dual nationals.

The conferral of citizenship is generally considered to fall under the exclusive domestic jurisdiction of each individual State and may be based on preferred linguistic competencies as well as on cultural, historical or familial ties. When this involves persons residing abroad, however, it can be a highly sensitive issue. Contested claims or competing attempts by the States concerned to exercise jurisdiction over their citizens, irrespective of the place of residence, have the potential to create tensions. This is particularly likely to happen when citizenship is conferred en masse, i.e. to a specified group of individuals or in substantial numbers relative to the size of the population of the State of residence or one of its territorial subdivisions. States should therefore refrain from granting citizenship without the existence of a genuine link between the State and the individual upon whom it is conferred, as ruled by the International Court of Justice in the *Nottebohm Case* (1955 I.C.J. 4).

Even though States have the right to freely determine who their citizens are, they should not abuse this right by violating the principles of sovereignty and friendly, including good neighbourly, relations. Full consideration should be given to the consequences of bestowing citizenship on the mere basis of ethnic, national, linguistic, cultural or religious ties, especially if conferred on residents of a neighbouring State. It could for example lead to differential treatment for these individuals as compared with other residents of the "kin-State" who may be denied access to citizenship. Article 5 of the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination and Article 5 of the 1997 European Convention on Nationality provide that the rules of a State on citizenship must not contain distinctions or include any practice that constitutes discrimination on the grounds of, *inter alia,* national or ethnic origin.

It should be noted in this regard that while States have limited jurisdiction over their citizens residing abroad, this should be exercised with respect for the principles of sovereignty and friendly, including good neighbourly, relations. Moreover, the State of residence holds primary responsibility for the protection of its residents, including persons belonging to minorities, even though they may hold multiple citizenship, and should not discriminate against dual citizens. To avoid conflict of loyalties, a State can legitimately ask its citizens to rescind other citizenships before taking up high political positions such as Head of State or a member of government.

12. States may offer assistance to support education abroad, for example, with regard to textbooks, language training, teacher training, scholarships and school facilities. Such support should be non-discriminatory, have the explicit or implied consent of the State of residence and be in line with applicable domestic and international educational standards.

Culture does not stop at State borders. Assistance and support in educational matters abroad can contribute in a constructive way to the development and the promotion of linguistic and cultural pluralism. States may express their interest in specific linguistic, cultural or ethnic groups living abroad by assisting them with cultural initiatives. This could include for instance the provision of textbooks, language training, teacher training, scholarships and school premises and facilities, support for libraries, museums, the arts and the like. Such support should wherever possible be provided by involving the authorities of the State of residence. With regard to textbooks, States should ensure that all educational materials, including those provided by other States, correspond to their domestic and international educational standards and provide a balanced picture that respects commonly accepted values of tolerance and a plurality of views and cultures.

The UN Convention against Discrimination in Education (Article 5) stipulates, on the one hand, that education shall promote understanding, tolerance and friendship among all nations, racial or religious groups. On the other hand, it acknowledges that persons belonging to minorities have the right to carry on their educational activities without prejudice to national sovereignty. The importance of international co-operation in the field of education is recognized, *inter alia*, in the Hague Recommendations Regarding the Education Rights of National Minorities (Recommendation nos. 1-3) and in the 1989 UN Convention on the Rights of the Child (Article 28.3). The function of education to foster tolerance and intercultural

understanding is acknowledged in the same Convention (Article 29.1 lit b-d / (b), (c), and (d)).

Following the principle of good relations, cultural and educational support to particular groups abroad should be provided with the explicit or implied consent of the State where the beneficiary group resides. According to the Venice Commission Report, when benefits provided by "kin-States" have an obvious cultural aim such as promoting the study of their national language and culture, consent of the State of residence can even be presumed. In this case, "kin-States" may take unilateral administrative or legislative measures that should not be unduly restricted by the State of residence, as long as their effect is compatible with the principles set out in Recommendation 10 and does not violate the principle of non-discrimination as set out in Recommendation 9.

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13. States may provide support to cultural, religious or other non-governmental organizations respecting the laws and with explicit or implied consent of the country in which they are registered or operating. However, States should refrain from financing political parties of an ethnic or religious character in a foreign country, as this may have destabilizing effects and undermine good inter-State relations.

Support for civil society abroad can take many forms. In fields other than education and culture, the preferential treatment of minority groups residing in another State is more problematic and, as pointed out in the Venice Commission Report, should be considered to be the exception rather than the rule. Measures that have extraterritorial effects in fields other than cultural and educational support should only be undertaken with the explicit consent of the States in whose jurisdiction such effects would occur.

As mentioned in Recommendation 10, support by a foreign State must not have destabilizing or fragmenting effects. Assistance to organizations abroad should be provided in the spirit of good neighbourliness and enhance regional co-operation without jeopardizing sovereignty or cohesion within multi-ethnic States. In this context support and financing of political parties and movements abroad with an ethnic or religious character should be discouraged, as this has an impact on the domestic political processes and often contributes to excessive politicization of minority issues to the detriment of societal integration and good inter-State relations.

14. The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, may not be prohibited on the basis of ethnicity, culture, language or religion. Limitations are restricted to broadcasts that use hate speech or incite violence, racism or discrimination.

States should not obstruct the free reception of transfrontier broadcasting. This would be an encroachment on freedom of expression, as guaranteed by international human rights instruments and, with regard to transfrontier television in particular, by Article 4 of the 1989 European Convention on Transfrontier Television (hereinafter: ECTT). Recommendation 13 of the Guidelines on the use of Minority Languages in the Broadcast Media (hereinafter: Media Guidelines) underlines that the free reception of transfrontier broadcasts "shall not be prohibited on the basis of language". In addition, Article 9 (1) of the FCNM states that freedom of expression includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. States should, therefore, ensure that persons belonging to national minorities are not discriminated against in their access to domestic and foreign media. Moreover, Article 11(2) of the 1992 European Charter for Regional or Minority Languages, while permitting regulation, states that "[t]he Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language".

The States where minorities reside can impose limitations on foreign print, broadcast and other, including new, media that advocate national, racial or religious hatred that constitute incitement to discrimination, racism, violence and hostility or use hate speech. Article 20 of the ICCPR is express in this regard (including prohibition of any propaganda for war). The ECHR (Article 10) affirms that the right to freedom of expression includes "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". The same article provides that the exercise of these freedoms "may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime […]". According to the European Court of Human Rights, restrictions must be proportionate to the legitimate aim pursued (see for example *Handyside v. UK*, judgment of 7 December 1976, Series A, No. 24).

At the same time, the availability of foreign broadcasting in a minority language does not exonerate the State from fulfilling its obligation to facilitate domestically produced broadcasting in that language nor does it justify a reduction of the broadcast time in that language. This principle is set out in the HCNM's Media Guidelines (Recommendation 13(2)) and in the Oslo Recommendations regarding the Linguistic Rights of National Minorities (Recommendation 11). The same principle is reaffirmed by the Advisory Committee on the FCNM (ACFC/INF/OP/I(2003)004, paragraph 50), which states that "availability of […] programmes from neighbouring States does not obviate the necessity for ensuring programming on domestic issues concerning national minorities and programming in minority languages". In order to foster social cohesion and the promotion of integration of minorities into the wider society, it is important that they have access not only to foreign broadcasting in their language, but also to the media in their country of residence. States should therefore facilitate both domestically produced broadcasting in minority languages and the accessibility of mainstream media.

15. When granting benefits to persons belonging to national minorities residing abroad, States should ensure that they are consistent in their support for persons belonging to minorities within their own jurisdiction. Should States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question.

The protection and promotion of the rights of persons belonging to minorities is first and foremost the obligation of the State in whose jurisdiction these persons reside. Consequently, there is a logical expectation that when a State offers, pursues or promotes rights or policies concerning the situation of certain minorities abroad, this same State will also protect and promote the rights of persons belonging to minorities within its own borders in a proportional way. States should also be consistent in their treatment of "kin-minorities" in the different countries in which they reside and avoid overt discrepancies between similar situations. The State where the minority in question resides may draw attention to such discrepancies and question the underlying motives.

Under no circumstances should this example be read as a pretext to deviate from the principles contained in Recommendations 2, 5 and 6 or, more generally, from the international standards concerning the protection of persons belonging to minorities. States that refrain from pursuing active policies with regard to

minorities abroad are not entitled to neglect the minorities residing in their territories. Conversely, this Recommendation should not be interpreted as encouraging full reciprocity in inter-State relations regarding protection of minorities, since domestic standards set by individual States are not always applicable to the situation in other States.

IV. Multilateral and bilateral instruments and mechanisms

16. States should co-operate across international frontiers within the framework of friendly bilateral and multilateral relations and on a territorial rather than an ethnic basis. Transfrontier co-operation between local and regional authorities and minority self-governments can contribute to tolerance and prosperity, strengthen inter-State relations and encourage dialogue on minority issues.

As reaffirmed in the Preamble of the FCNM, "the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State". An increasing number of international and supranational instruments have been developed over recent decades to promote transfrontier relations. The first was the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols. More recently, the European Union also made an important contribution in developing the legal instruments for transfrontier co-operation by adopting the 2006 Regulation (EC) No. 1082/2006 of the European Parliament and the Council on a European Grouping of Territorial Cooperation (EGTC).

With regard to minorities in particular, Articles 17 and 18 of the FCNM encourage States to take measures to promote transfrontier co-operation as a means to implement the protection and promotion of the identity of persons belonging to national minorities. Transfrontier co-operation should, however, take place on a territorial rather than an ethnic basis: it should be designed for the benefit of the whole population residing in the territory of a sub-State entity. Moreover, such co-operation should be conducted on the basis of friendly bilateral and multilateral relations, stemming from the general international legal principle of friendly and good neighbourly relations, already elaborated in Recommendation 3.

17. In dealing with issues concerning the protection of persons belonging to national minorities, States should be guided by the rules and the principles established in international human rights documents, including those multilateral instruments and mechanisms which have been created specifically to support the implementation of standards and commitments relating to minorities.

As part of international human rights, the rights of persons belonging to national minorities are universal. Against this background, it is important that these rights are interpreted in a uniform way and according to the standards contained in multilateral instruments, notably of the United Nations, the OSCE, the Council of Europe and the EU. As stated in Recommendation 3, minority rights are a matter of international concern. States may therefore prefer to voice their concerns through multilateral mechanisms, as bilateral relations may be affected by unequal negotiating positions and may overlook minorities without a "kin-State".

It should be noted that transparency helps to promote understanding and goodwill, and that independent monitoring helps ensure that international legal norms are upheld. States could, therefore, benefit from reporting consistently on all their activities involving national minorities abroad to international bodies such as the Committee on Elimination of Racial Discrimination (CERD) or the Advisory Committee on the FCNM.

18. States are encouraged to conclude bilateral treaties and make other bilateral arrangements in order to enhance and further develop the level of protection for persons belonging to national minorities. These mechanisms offer vehicles through which States can share information and concerns, pursue interests and ideas, and further support minorities on the basis of friendly relations. A bilateral approach should follow the spirit of fundamental rules and principles laid down in multilateral instruments.

In recent times there has been a considerable increase of bilateral treaties on transfrontier co-operation in inter-State relations that aim to improve minority protection through, *inter alia*, the establishment of joint commissions. Within the framework of international standards, bilateral treaties and the mechanisms they envisage can serve a useful function in respecting and promoting the rights of persons belonging to minorities. Article 18 of the FCNM encourages States to conclude such agreements. They can offer a vehicle through which States can

share information and concerns, pursue interests and ideas, and further protect particular minorities on the basis of the consent of the State in whose jurisdiction the minority resides. Articles 26 and 31 of the 1969 Vienna Convention on the Law of Treaties stipulate that treaties should be implemented and interpreted in good faith. Bilateral treaties should not fall below and preferably should go beyond and complement international minimum standards. They should not be formulated in such a way that gives rise to interpretation divergent from the multilaterally set standards and should supplement rather than substitute the obligations of the State of residence.

19. States should make good use of all available domestic and international instruments in order to effectively address possible disputes and to avert conflicts over minority issues. This may include advisory and consultative bodies such as minority councils, joint commissions and relevant international organizations. Mediation or arbitration mechanisms should be established in advance through appropriate bilateral or multilateral agreements.

Bilateral agreements for the protection of the rights of persons belonging to minorities on the territory of both States often provide for joint commissions to monitor and implement such agreements. Moreover, legislation in many States provides for advisory bodies on minority issues. In order to be effective, these bodies should include minority representatives and others who can offer specific expertise, be provided with adequate resources and be given serious attention by decision makers. This has been affirmed by the UN Declaration on Minorities (Articles 2(2) and 2(3)), the Copenhagen Document (paragraph 35), the FCNM (Article 15) and, with regard to advisory and consultative bodies in particular, by the Lund Recommendations on the Effective Participation of National Minorities in Public Life (12 and 13).

Advisory and expert bodies such as the Venice Commission may offer useful guidance and legal advice to the States on contentious legislative initiatives and should be consulted prior to their adoption. Moreover, such legislation should be subject to domestic periodic review and may include sunset clauses.

In the case of disputes, international experience, including that of the High Commissioner on National Minorities, has revealed the value of the involvement of independent third parties or multilateral mediation and arbitration mechanisms in

finding peaceful and viable solutions. The combined use of multilateral and bilateral instruments can also be useful and lead to a more dispassionate discourse and remedial action.