

# Quiet de-escalation: Van der Stoel in Ukraine

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Max van der Stoel's involvement in minority-related problems of post-Soviet Ukraine illustrates both the possibilities and limitations of 'quiet diplomacy' which he considered an essential activity of the OSCE High Commissioner on National Minorities (HCNM).<sup>2</sup> By skilfully using his mandate, Van der Stoel significantly contributed to the de-escalation of the most dangerous conflicts between the Ukrainian government and (elites of) major national minorities. At the same time, his intervention did not lead to long-term solutions to the respective problems in the state-minority relations as the relevant actors did not want to make efforts, let alone concessions, to find such solutions. Nor was this deficit of the HCNM involvement overcome by the activities of other institutes of the OSCE or other international organisations.

## **Status of Crimea**

Van der Stoel first became involved in Ukraine several months after assuming the office of the HCNM in January 1993. At that time, the most pressing minority-related problem pertained to attempts by the leadership of the Crimean autonomous republic to assert the republic's sovereignty and the Ukrainian government's resolution to retain the territorial integrity of the newly independent state. The autonomy which was abolished after the deportation, in 1944, of the Crimean peninsula's indigenous population, the Crimean Tatars, was re-established in 1991 as a territorial formation dominated by ethnic Russians who constituted the majority of post-World War II settlers. In the meantime, the peninsula was transferred in 1954 from the Russian to the Ukrainian republic within the USSR, and Crimean Tatar deportees started returning en masse to their homeland in 1989 after the Soviet leadership lifted the ban on their residence in Crimea. Following similar moves by the autonomies in other post-Soviet states, the Crimean parliament declared the republic's independence in May 1992, to be confirmed by a popular referendum. This claim to independence was perceived by the Ukrainian authorities and politicians as being very dangerous, all the more so because some Russian leaders' statements

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<sup>2</sup> For a detailed account of the HCNM involvement in Ukraine's minority problems, see V. Kulyk, *Revisiting a Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994–2001*, Hamburg: Centre for OSCE Research, Institute for Peace Research and Security Policy at the University of Hamburg, 2002.

questioned the legality of the 1954 transfer and the Russian leadership's resolution to retain control over the Black Sea Fleet which was located in Crimea and was thus claimed by Ukraine. The Ukrainian parliament immediately annulled the Crimean declaration and demanded its revocation. Although the Crimean parliamentarians complied, the separatist movements on the peninsula did not abate in the following months, despite the central authorities' attempts to strengthen their control over the peninsula and, at the same time, to reward moderate Crimean elites by broadening the autonomy's scope of powers. In early 1994, the separatists won the elections of both the autonomy's parliament and its first president. The newly elected President Yurii Meshkov rushed to issue acts and statements aimed at the far-reaching independence of Crimea, which were resolutely rejected by the president and parliament of Ukraine.

It is at this time of the rapid escalation of the conflict between the centre and the autonomy that the HCNM gave his first recommendations to the parties. He encouraged them to reach a settlement 'which, on the one hand, would reaffirm the need to maintain the territorial integrity of Ukraine but which, on the other hand, would contain a complete programme of steps to solve various issues concerning the implementation of substantial autonomy for Crimea, especially in the economic field'.<sup>3</sup> By then, however, the separatist Crimean leaders were far from ready for his mediation in reaching such a settlement. They reinstated the 1992 constitution and ignored Kyiv's demand that the move be revoked as they did not believe the latter would resort to radical measures which seemed likely to evoke a sharp reaction from Moscow. It is only in the spring of 1995 when the infighting among the separatists weakened and discredited them that the Ukrainian authorities abolished the office of the Crimean president and annulled the restored constitution, while imposing in a new law on the status of the autonomy a much more limited scope of its powers. The Crimean separatists could not really fight back, given that Russia turned out to be reluctant in resolutely interfering, but they were still not ready to admit failure concerning the independence project. Van der Stoel considered this a right moment for his intervention, so he invited relevant actors from the centre and the autonomy to discuss possible solutions at a round table in Locarno, Switzerland, in May 1995 where their dialogue would be facilitated by the physical proximity of the parties and advice from the High Commissioner and OSCE experts.

The implementation of the main recommendations of the round table, including the autonomy's cancellation of the intended referendum to confirm the 1992 constitution and the centre's refraining from the dissolution of the Crimean parliament, created a momentum which both parties and the mediator could use in a further search for compromise. However, the process of formalising this compromise in a new constitution of the autonomy which would be approved by the Ukrainian parliament took three more years, several visits by the HCNM to

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<sup>3</sup> Letter by van der Stoel to the Ukrainian Foreign Minister Anatoly Zlenko, 15 May 1994, <http://www.minelres.lv/count/ukraine/940515r.htm>, accessed on 25 August 2011.

Kyiv and the Crimean capital of Simferopol and another round table which was held in the Dutch town of Noordwijk in March 1996, soon after the conflict escalated once again. The text adopted by the Crimean deputies in November 1995 turned out to be unacceptable to the central authorities because of its references to Crimean statehood (albeit within Ukraine) with the concomitant institution of citizenship, the right to collect taxes and so on. The adoption in June 1996 of Ukraine's post-Soviet constitution exacerbated the Crimean problem as the autonomy's constitution now had to correspond to the new fundamental act. It was only after the parliamentary elections of 1998 that more moderate deputies of the Crimean parliament revised the autonomy's constitution largely in agreement with Kyiv's demands and the Ukrainian parliament agreed to confirm it in spite of the retention of some problematic provisions. While giving up symbolic attributes of statehood, even the status of Russian as an official language, the new constitution insisted on rather broad powers for the autonomy in the formation of its executive bodies and the implementation of economic policy. The main problem, however, consisted of the centre's reluctance to heed this demarcation of powers. Once the demobilisation of separatist-minded Crimean Russians weakened the political power of their leaders, Kyiv could, in effect, rule the autonomy as it saw fit, thereby rendering its legal status largely meaningless. This is all the more so because the political regime in Ukraine was increasingly authoritarian in the last few years of the presidency of Leonid Kuchma and, after a relatively democratic intermezzo brought about by the Orange Revolution, is reverting to this pattern under Viktor Yanukovich.

### **Social and political problems of the Crimean Tatars**

Another problem that Van der Stoel repeatedly addressed was that of the integration of Crimean Tatar returnees into Crimean and Ukrainian society. Unlike the problem of the Crimean autonomy which primarily had to do with the relations between the central and regional elites, the Crimean Tatar problem more directly concerned the interests of that minority as a whole. Upon their return to the peninsula, Crimean Tatar deportees and their descendants were met with severe social problems such as a lack of housing, land plots, jobs, and schools with instruction in the group language as well as hostile or indifferent treatment by many regional and local officials who were reluctant to solve these problems. Moreover, nearly half of the returnees who settled in Crimea after November 1991 could not take advantage of the automatic recognition of all permanent residents of the Ukrainian SSR as citizens of an independent Ukraine and were left with the prospect of acquiring citizenship through the cumbersome naturalisation procedure. Forced to settle dispersedly in various parts of the peninsula, the Crimean Tatars constituted a minority even at the local level and thus could not achieve adequate political representation to influence decision-making on relevant issues.

Therefore, not only did their leaders demand that the authorities solve the

returnees' pressing social problems, but they also sought institutional arrangements that would ensure the implementation of the political and cultural rights of the still discriminated group. First and foremost, the Mejlis of the Crimean Tatar people (a standing representative body of their national assembly, the Kurultai) called for legal recognition of the Crimean Tatar's status as an indigenous people of the peninsula and, accordingly, their guaranteed representation in the autonomy's parliament and local councils as well as the use of Crimean Tatar as one of the official languages in the autonomy. However, the local Russian leaders flatly rejected these demands; they did not even recognise the Mejlis itself as a legitimate representative of the Crimean Tatar people. Although the central Ukrainian authorities were more sympathetic to the former deportees' problems, they did not want to further antagonise the peninsular Russian majority and felt apprehensive about the ethnicisation of politics. They were ready to help Crimean Tatars as former deportees (together with members of several other groups who had also been deported from the peninsula, albeit in much smaller numbers) but not to recognise them as an indigenous people and thereby to treat them differently from other national minorities. In view of the authorities' reluctance to solve their problems, the Mejlis repeatedly mobilized its supporters for mass rallies, pickets, roadblocks and other protest activities which significantly contributed to social tensions on the peninsula.

From the very beginning of his involvement in Ukraine, the HCNM did his best to help the government in alleviating the returnees' social problems and, at the same time, to pressure the central and Crimean authorities to ensure the political and cultural rights of Crimean Tatars. To the former end, he sought to internationally publicise the situation of the former deportees and encourage international organisations, governments and private donors to provide financial or other help. In September 1995 Van der Stoel, together with the OSCE Mission to Ukraine, convened a round table in the Crimean city of Yalta where the majority and minority politicians, officials, academics and international observers discussed the problems of the formerly deported peoples. In 1996, he took an active part in a donor conference held by the United Nations Development Programme (UNDP) in Geneva, and in 1998 and 2000 he organised, in a co-operation with the UNDP, the United Nations High Commissioner for Refugees (UNHCR) and the OSCE Mission, two follow-up donor conferences in Kyiv. The HCNM also initiated some programmes aimed at the educational problems of returnees, such as creating multi-cultural home schools in remote settlements with no regular schools that Crimean Tatar children would be able to attend.

Simultaneously with this widely publicized humanitarian effort Van der Stoel was quietly mediating between the authorities and the Crimean Tatar leaders in political matters of equal importance for the group. He paid most attention to the problems of the legal status of the Mejlis, political representation of the group, the official use of its language and, last but not least, the acquisition of Ukrainian citizenship by late returnees. The HCNM raised these problems in

virtually all his letters to the Ukrainian government and provided rather detailed recommendations based on his numerous discussions with majority and minority actors. Most of these recommendations were never implemented, although his intervention contributed both to the authorities' search for acceptable solutions and to the Mejlis' refraining from more radical protest actions. Having refused to recognise the Mejlis as an ethnic representative body, Kyiv eventually engaged it in a seemingly institutionalised dialogue by including its members in an advisory council under the president whose activities, by its very status, depended on the will of its patron and were thus rather decorative. Similarly, the High Commissioner's repeated calls for an electoral formula which would ensure the Crimean Tatars 'a number of seats in the future Crimean Parliament broadly commensurate to their percentage in the total population of the [autonomy]',<sup>4</sup> such as the preservation of a quota applied in 1994 or the introduction of a proportional system, were ignored by the Ukrainian parliament which retained a majoritarian system. This resulted in the complete loss of the group's representation on the autonomy level in 1998 and a limited representation in 2002 when some Crimean Tatar figures were supported by majority parties. Nor was the Crimean Tatar language granted significant rights in the autonomy's new constitution which did not, however, prevent the Ukrainian parliament from approving it.

The only issue where an adequate solution was found, even if somewhat different from the one suggested by the High Commissioner, was the acquisition of citizenship. The Ukrainian government refused the suggested formula of granting citizenship to former deportees and their descendants based on their application and the renunciation of their citizenship of another post-Soviet state where they had resided since deportation and had automatically acquired citizenship after the dissolution of the USSR. Instead, it reached an agreement with Uzbekistan from where most post-1991 Crimean Tatar returnees came to Ukraine, in order to synchronize the renunciation of one state's citizenship with the acquisition of the other's and thus to avoid creating double citizens or stateless persons. The agreement which was facilitated by the mediation of the HCNM and the UNHCR came into effect in September 1998 and set a pattern for agreements with some other Central Asian states whose citizens many Crimean Tatar returnees still were. Other political problems of the Crimean Tatar people remained largely unresolved but Van der Stoel could not do much about that as his suggestions had been persistently ignored. In his last year in office, he focused his activities in Ukraine on the problem of the linguistic rights of the Russian-speaking population which acquired new prominence due to Moscow's attempt to use it as a means to pressure Kyiv.

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Letter by van der Stoel to the Ukrainian Foreign Minister Hennady Udovenko, 14 February 1997, <http://www.minelres.lv/count/ukraine/970214r.htm>, accessed on 25 August 2011.

### **Linguistic rights of Russians**

Moscow's close attention to this issue and its interest in having it dealt with at international forums made the High Commissioner's involvement different from those concerned with the two above-discussed conflicts. He had to mediate not only between the government and a group of citizens and between the national and regional elites but also between the two governments, each seeking to use the High Commissioner's authority for its respective purposes while preventing any similar use by the other. For his part, Van der Stoel sought to contribute to international security and the protection of minority rights without being used by the governments in their conflict that had little to do with Ukraine's Russians.

Having said that, there was real ethnopolitical substance to the conflict, as the language policy pursued by the Ukrainian government ran counter to the accustomed language practices of Russians, many of whom, instigated by their local leaders and supporters in Russia, interpreted this policy as violating their rights. Although Russian, despite having been legally demoted to the status of a minority language, continued to be used above and beyond any minority standards, the enhancement of the role of Ukrainian as the only state (official) language inevitably led to the decreased use of Russian. Since the first years of independence, in addition to the symbolic blow of the legal downgrade of their language, Russians also experienced the curtailment of its use in some domains such as education, official discourse and state-controlled media. In particular, while recognizing ethnic Russians' right to have their children taught in Russian, the government sought to switch the schooling of Russian-speaking Ukrainians to Ukrainian which both the state and many people in question considered to be their native language. Given the scale of Soviet russification, this meant the imposition of Ukrainian on millions of those preferring Russian in everyday life, particularly in the east and south of the country. Not surprisingly, the predominantly Russian-speaking elites of those regions tried to mobilise the population against 'forced Ukrainianisation' which they wanted to counter by means of the legislative recognition of Russian as a second official language and thus perpetuating its virtually unlimited use in all domains. This mobilisation played an important role in the parliamentary and presidential elections of 1994, with the confrontation between the two parts of the country being seen by many in Ukraine and abroad as the beginning of the end of the new state. It is this prospect that made the High Commissioner's involvement particularly appropriate.

Although the east-southern elites and their supporters in Moscow spoke of the discrimination against the 'Russian-speaking population' constituting more than a half of Ukraine's citizens (with Moscow defining this group as all persons who used Russian as their main language of every day use rather than as the ethnic Russian minority in Ukraine), Van der Stoel saw his task first and foremost as protecting ethnic Russians who were more than twice fewer nationwide and only constituted a majority in Crimea. At the same time, in his letter of May 1994 he suggested that the Ukrainian government initiate an



amendment to the legislation which would allow the use of minority languages not only on those territories where the respective minority amounts to a majority of the residents but also on those where it constitutes a 'substantial part of the population'. This would legalise the use of Russian in the predominantly Russian-speaking regions where most residents supported the demand for such a change. Moreover, the HCNM recommended refraining from 'curtailing the position of Russian schools and the position of Russian as the language of education in these schools' and 'to make it clear to the Russian population in the east that for those who have not had the opportunity to learn the Ukrainian language in the schools, this will have no negative consequences for their job opportunities, and that there are no reasons for them to fear a process of forced Ukrainisation'. He even distinguished between popular fears and political 'demands from regions where Russians constitute a strong minority', and recommended the central authorities to consider meeting the regional elites' 'demands for greater economic latitude' in order to prevent these demands from having a 'negative effect on inter-ethnic relations'.<sup>5</sup> No legislative amendments were made in response to his recommendations, and neither did the gradual expansion of the use of Ukrainian in education and in some other domains stop or even slow down in the following years. However, the change of central government in the aftermath of the 1994 elections significantly enhanced the role of east-southern elites in national policy-making and thus made them unwilling to mobilise the residents of their regions against the alleged linguistic discrimination. Accordingly, for a long time the issue all but disappeared from the High Commissioner's agenda.

Its reappearance in 2000 was caused by the rather aggressive Ukrainianisation policy of the then Ukrainian government in some domains where Russian continued to dominate, such as the media, and vehement protests by the Russian leadership under the newly elected President Vladimir Putin who sought to assert the role of Russia as a hegemonic power in the post-Soviet space and of the Russian language as its unifying force. Since Moscow wanted to use the HCNM to internationally condemn the perceived violation of Russian speakers' rights in Ukraine and Kyiv reciprocated by drawing his attention to the much more disadvantageous position of Ukrainians in Russia, Van der Stoel decided to undertake a 'symmetrical' investigation of the respective minorities' situations in the two countries. After visiting, in the company of two international experts, several relevant regions in each country, in January 2001 he sent his recommendations to both governments. As far as Ukraine was concerned, Van der Stoel found its minority-related legislation to be in conformity with international standards but emphasised the necessity of its consistent implementation and the inadmissibility of its revision in the nationalising direction for which supporters of the wider use of Ukrainian called. Moscow's hopes to use the HCNM as a means to pressure Kyiv were thus frustrated, which

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<sup>5</sup> Letter by van der Stoel to Zlenko, 15 May 1994.

contributed to the weakening of the pressure and, therefore, the de-escalation of tensions between the two countries. However, the deeper problems of the arbitrary implementation of the legislation in question and a conflict between the role of Ukrainian as the only state language and the accustomed language preferences of Russian speakers were not resolved and continued to plague Ukraine's ethno-political situation in the following years.

To summarise, Van der Stoel's involvement in Ukraine was more successful in terms of the de-escalation of conflict between the state and minorities opposing the perceived violation of their rights than in terms of protecting minority rights themselves. But then this was largely predetermined by his mandate which was more oriented towards security than democracy.