

policy paper

minority
rights
group
international

The Framework Convention for the Protection of National Minorities: A Policy Analysis

by Alan Phillips

Contents

1. Introduction

2. The Convention

- 2.1 The architecture of the FCNM
- 2.2 Definitions and Declarations on National Minorities
- 2.3 Ratifications of the FCNM
- 2.4 The Advisory Committee's role and composition
- 2.5 Committee of Ministers

3. Monitoring procedures and practices

- 3.1 State reports
- 3.2 'Additional Sources' of information
- 3.3 Advisory Committee Opinions
- 3.4 Visits to States
- 3.5 State Comments on Opinions
- 3.6 Committee of Ministers' Resolutions
- 3.7 Differences in interpretation
- 3.8 Analysis to action

4. The process of monitoring and implementing the Convention

- 4.1 Ownership of the Convention
 - 4.1.1 Governments
 - 4.1.2 Civil society
 - 4.1.3 The Council of Europe
- 4.2 The monitoring cycle crisis
- 4.3 Developing the process

5. Conclusions

6. Recommendations

Notes

Recommended reading and websites

Annex: Text of the FCNM

1. Introduction

In the 1990s, major wars erupted in the former Yugoslavia and in the Caucasus, while violence continued in the Basque Country, Corsica and Northern Ireland. In other parts of Europe, serious political tensions have developed around minority issues, for example, between ethnic Russians and ethnic majorities in a number of countries of the former Soviet Union, and between ethnic Hungarians and ethnic majorities in Romania and Slovakia. Distrust between different ethnic groups has been used by political leaders to reinforce their positions of power and, on occasion, this has resulted in conflict between ethnic groups. The major conflicts have subsided but latent tensions exist in many places.

In most countries there is intolerance and prejudice towards asylum-seekers, immigrants and towards certain ethnic minorities. In particular, discrimination against the Roma has continued across Europe at government and community level. Xenophobic political parties of the right have attracted growing support in parts of Western Europe and their attitudes are often left unchallenged by the State.

In Central and Eastern Europe, some States often place Roma children in schools for those with severe learning difficulties. Many Roma children come from poor families, and some do not speak the official language well, but excluding them from mainstream education exacerbates their problems rather than addressing them. In southern Europe, some States deny the existence of whole communities. If the Framework Convention on National Minorities (FCNM) is properly applied, it will put an end to this, and to many other injustices and humiliations.

The FCNM was designed to create a legally-binding Convention to protect national minorities, and to promote tolerance throughout society. The FCNM's Preamble refers to the protection of national minorities as being essential to stability, democratic security and peace. It emphasizes the components of a pluralist and genuinely democratic society. It also identifies the need for tolerance and dialogue to enrich society. Today, many people, both individually and collectively, are excluded politically, socially, economically and culturally. The effective implementation of the FCNM is essential for the development of a stable and inclusive Europe.

Minority Rights Group International (MRG) has played an active role in promoting international standards to protect minorities and to foster intercommunity harmony.¹ These are identified in the FCNM's Preamble as sources of inspiration for the Convention. Consequently, MRG became actively involved with the FCNM – the first legally-binding, multilateral instrument devoted to the protection of national minorities – lobbying States to ratify the Convention and in 1998 published a critique of the FCNM.² MRG believes that the FCNM is important for minority protection in Europe, and also creates a valuable global precedent.

The fifth anniversary of the Convention's entry into force is now approaching. The monitoring cycle has been completed for many States, follow-up initiatives have begun and a major second round of reporting will begin in 2004. This policy paper reviews developments, examines how far MRG's recommendations of 1998 were met and identifies key recommendations for the future. The initial draft of this

paper was circulated to MRG's partners and was a focus of a regional policy workshop on the FCNM held in Budapest in April 2002. Consequently, the recommendations in section 6 of this paper already enjoy broad support.

2. The Convention

2.1 The architecture of the FCNM

The aim of the FCNM is to specify the principles which States undertake to respect to ensure the protection of national minorities. It contains mostly programme-type provisions setting out objectives that States must fulfil. These are State obligations, not individual or collective rights, leaving the States a measure of discretion in the implementation of the objectives.

In 1998 MRG and others identified this issue as a potential problem, i.e. that these vaguely-worded objectives and principles would be interpreted restrictively, and could be used by State Parties to escape their obligations.

The structure and the dynamics of the monitoring process in the Advisory Committee (AC) and the Committee of Ministers (CoM) have helped to create vigilance over this concern. Harmonization and consistency have been key elements in these bodies' Opinions and Resolutions. Additionally, the link with the European Union (EU)'s accession monitoring process has provided an incentive to some States to be more proactive in implementing the FCNM.

The FCNM covers a wide range of issues:

- the right to self-identification;
- development of culture;
- full and effective equality;
- tolerance and inter-cultural dialogue;
- freedom of association;
- right to religious belief and practice;
- access to the media;
- use of minority languages;
- use of minority names;
- inter-cultural education;
- minority education establishments;
- learning of and in minority languages;
- effective participation in public affairs;
- effective participation in economic, social and cultural life;
- prohibition against altering proportions of population;
- cross-frontier contacts;
- bilateral treaties.

Only in Article 3 of the FCNM is there a clearly expressed right. This is for every person to freely choose whether or not to be treated as a national minority. Furthermore, the provisions are worded in general terms and contain qualifications such as 'substantial numbers' (Articles 10.2, 11.3 and 14.3); 'sufficient demand' (Articles 11.3 and 14.2); 'a real need' (Article 10.2); 'where necessary' (Article 4.2, 18.1 and 19); 'where appropriate' (Articles 11.3 and 12.1); and 'as far as possible' (Articles 9.3, 10.2 and 14.2).

The language focuses on persons belong to national minorities and the Explanatory Report makes it clear that no collective rights of minorities are envisaged. However, most of the Convention's Articles have a collective dimension (e.g. Article 5 on culture or Article 15 on participation) and, in practice, can only be enjoyed as a joint exercise by persons belonging to a national minority. The Convention has been

described as a frame containing an incomplete painting, while others have asked if it is a piece of art or a tool for action.³

Therefore, careful monitoring by the Council of Europe (CoE) is essential to ensure that the Convention is being implemented in good faith; and the FCNM's imprecision has provided an opportunity for non-governmental organizations (NGOs) to have a dialogue with governments and the AC on its implementation. This has placed a greater emphasis on the AC's role. It is important to scrutinize how States, the AC and the CoM have interpreted the Convention.

2.2 Definitions and Declarations on National Minorities

As with other international instruments for the protection of minorities, the FCNM does not define a 'national minority'.⁴ It was clear from the outset⁵ that the approach of those States that had entered Declarations on whom they declared to be a national minority could be problematic. Some States may try to restrict the scope of application of the Convention, which could lead to different standards. Declarations were entered by 14 States.

Declarations from three States – Azerbaijan, Bulgaria and Russia – reinforced certain aspects of the Convention, while those from Liechtenstein and Malta said that their States had no national minorities.⁶ To date, none of these five Declarations have been a cause of concern for the AC. Five states – Denmark, Germany, Slovenia, Sweden and Macedonia – provided a list of national minorities, which they declared as protected under the Convention; while four States – Austria, Estonia, Poland and Switzerland – provided definitions of national minorities linked to citizenship, a qualification not referred to in the FCNM or its Explanatory Report.

The AC noted these Declarations, but also recognized that the FCNM is a multilateral Treaty owned by the Member States of the CoE, consequently the State cannot be the sole arbiter of the Convention by entering a Declaration. Any Declaration must be made in good faith, while it must also adhere to and be consistent with the objectives and purposes of the Convention, as expressed in the Preamble, the Articles and the negotiated Explanatory Report of the Convention.⁷ The AC interpreted the applicability of the Convention on an Article by Article basis, as both the Preamble implies that the Convention covers more than national minorities and certain Articles apply to different groups – such as new minorities – e.g. Article 6, or minorities who inhabit areas traditionally or in substantial numbers, e.g. Articles 10, 11 and 14. The AC also recognized that identities and the protection needed may change over time and that it would be incorrect to take an inflexible position. However, rather than determine a State to have failed to have applied the Convention, the AC took a more subtle approach of strongly encouraging dialogue to see if other groups might benefit from the Convention.⁸ Nevertheless, this initially proved problematic in the debates with one or two specific States. For example, the AC issued an Opinion on Denmark, which had declared that the Convention only applied to the German minority in Southern Jutland. This Danish Declaration had excluded all other groups, including the Roma and Greenlanders in the mainland of Denmark. The AC's subtle approach may remain a problem when groups claim to be a national minority, and claim protection under the

FCNM, and constructive dialogue with States on an Article by Article basis does not take place. Civil society will need to be vigilant in opposing such Declarations, thereby ensuring that the Convention is not undermined by this approach from a small number of States. The AC and CoM will also need to be more forthright, if their subtle approach fails.

2.3 Ratifications of FCNM

The CoE, with its high reputation for human rights Conventions, has achieved a considerable success with the FCNM. In less than five years, 34 of its 44 Member States, as well as the Federal Republic of Yugoslavia, have ratified the Convention.⁹ All the CoE applicant States were obliged to ratify the FCNM¹⁰, while the EU considers States' implementation of the FCNM as an important factor in its accession criteria on minority rights (1993 Copenhagen criteria).¹¹ Nevertheless, some States have ratified the Convention but have failed to make this widely known domestically.

However, Belgium, France, Greece, Luxembourg and the Netherlands have not ratified this Convention, while Germany and particularly Denmark have done so, while entering Declarations attempting to limit the potential beneficiaries of the Convention. The prospect of the FCNM being accepted as part of EU law, or *acquis communautaire* is far away.

These double standards have been justified by a narrow interpretation of the purposes of the Convention; they emerge from a failure of some EU States to use the FCNM to celebrate pluralism and to promote the culture of those communities that have lived in these particular States' territory for several decades. With good will in all States, it would be possible to implement key elements of the Convention *de facto* before legislative changes take place, as the protection offered is largely through policies and programmes.

2.4 The Advisory Committee's role and composition

Over the last four years, the AC has become the key body in the FCNM's implementation. Its work has developed well beyond the implied modest role of Article 26 – which states that the Committee of Ministers shall be assisted by an Advisory Committee, the members of which shall have recognized expertise in the field of protecting minorities. Today, the AC undertakes the monitoring, with the CoM receiving Opinions, State Comments on the Opinions and adopting Resolutions based largely on the AC's Concluding Remarks. Recently the scope of the AC's work has been extended: in section 3 of the Resolutions adopted on a State Report, the State is invited,

'in accordance with Resolution (97) 10

a) to continue the dialogue in progress with the Advisory Committee;

b) to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in sections 1 and 2 above'.¹²

It is therefore essential that the AC has the competence and capacity to fulfil this role. Resources are crucial (see section 4.1.3 below) and so is the AC's and its Secretariat's membership, experience and competence. The members of the AC are unpaid, with expenses covered by the CoE. Consequently, this can limit the availability of candidates.

Individual nominations to the AC have in general been carefully identified by States and then scrutinized by the CoE before their election by the CoM. There is a temptation for many States to choose the most suitable scholar of international law. Such members of the AC are essential, however, there remains a need for a balanced Committee, particularly as the FCNM depends on programme-type provisions. Consequently, it is important to ensure that there are members with practical programming experience in different areas. States nominating new candidates for the AC should also ensure they have a sound knowledge and experience of human and minority rights. They should be known for their independence, and come from a wide variety of backgrounds. The AC should include members of minorities and civil society, and have a gender balance. The CoM should insist that the nomination procedure for new members¹³ should be transparent and consultative before nominations are presented and voted upon.

The FCNM Secretariat has been particularly commended in the AC's three activity reports,¹⁴ although the CoE has been consistently asked to provide more staffing to meet the growing demands. This remains a critical issue.

2.5 Committee of Ministers

At the outset, considerable concern was expressed over the CoM's role in the implementation of the FCNM; as the CoM is a political body composed of Foreign Ministers (normally represented by Ambassadors as their Deputies) from each of the Member States, often taking instructions from capitals. The CoM has the power under the Convention to control and politicize the monitoring process and restrict the independent role of the AC.

In general a constructive, trusting relationship has developed between the AC and CoM. This can be seen by the way the CoM has endorsed without amendment the AC's proposals on:

- Rules of Procedure of the AC;
- outline for State Reports;
- information from sources other than the State concerned;
- mandate for the Advisory Committee to hold meetings;
- role of additional members; and
- non referral of issues to the European Court of Human Rights.

The CoM initiated its own Resolutions on:

- Written Comments by States on AC Opinions;
- early publication of Opinions;
- involving the AC in the follow-up to Opinions;
- invitations to the AC to observe meetings of the CoM and the Rapporteur Group on Human Rights (GR-H), when FCNM Opinions, Comments and Resolutions are discussed.

These followed consultation with the AC and its Secretariat and have met with satisfaction in the AC's Bureau (composed of the President and two Vice-Presidents). This success story has been achieved by good coordination within the FCNM Secretariat and by the AC's Bureau cultivating good relationships with Ambassadors at the CoM and with the chair of GR-H. Confidence has been built on both sides, this has enabled the system to cope

with individual States that objected to the Opinions. Additionally, some States, particularly Finland, have set good precedents on inviting the AC to visit, and publishing Opinions early; this has encouraged other States to adopt similar approaches that are becoming custom and practice. It will be important that this good practice continues.

3. Monitoring procedures and practices

The monitoring procedures that govern the FCNM are specified in Articles 24–26. Before the AC was established, more detailed rules were adopted by the CoM.¹⁵ Neither minority communities nor civil society generally was consulted by the CoM on these procedures or rules,¹⁶ although they cover many aspects of the monitoring process – including aspects of the way the monitoring should be conducted, the relationship between the AC and CoM and detailed rules for the AC.

3.1 State Reports

The Convention is monitored primarily on the basis of State Reports, which are to be submitted one year after entry into force, and every five years thereafter.

In the course of its first two meetings the AC produced an outline for these Reports. This was adopted by the CoM on 30 September 1998¹⁷ and became part of the procedures for implementing the Convention. The Report should be in two parts: the first should contain an introduction on the way the State has sought to implement the Convention and the second should provide details on an Article by Article basis, following the order of the provisions of the Convention with 'full information on the measures they have adopted to ensure its implementation'. This information may be presented in five categories: narrative, legal, State infrastructure, policy and factual. A seminar was held between relevant government officials and the AC to explain the thinking behind the proposed outline and to help build confidence.

The Reports did largely follow the proposed structure but they were very mixed in their breadth and depth.¹⁸ Most concentrated on the first two categories – narrative and legal – with some limited reflections on State infrastructure and policy, but there was usually insufficient evidence of the factual situation. Where data was provided it was rarely disaggregated by age, gender or location; economic data on employment or access to land was weak, both at the macro and micro level, while there were few qualitative assessments of the data that was provided. This was notable in the area of unemployment, where some minorities described high levels of unemployment and the need for the government to address this issue. This indicates that a new approach will be needed to data collection, analysis and policy implications in the next round of monitoring.

States were invited to highlight measures, practices and policies, which they considered to have worked particularly well, but such value judgements were rare. Similarly, States were invited 'to indicate issues on which they would particularly welcome the support and the advice of the Advisory Committee'. In most cases this did not happen, however, the Czech Republic's Report was a commendable exception.

More positively, many States did indicate the measures they had taken to promote awareness among the public and the relevant authorities about the Convention. Although the procedures do not specify this, most States consulted a range of minority groups before submitting their Report, and this was encouraged informally as a model of good practice. Nevertheless, some minorities are unaware of the FCNM. The Slovak Government suggested that its Report was also the work of civil society organizations, but the AC rejected this suggestion. In Romania, the Constitutional Court made a judgement, being unaware that Romania had ratified the FCNM, and denied its applicability, while other Ministries including their Office of National Minorities had not been consulted in the drawing up of the Report. A significant number of governments have convened conferences to discuss the Convention and to engage minorities in the preparation of the State Report, and have reflected the views expressed by minorities. It is important that this becomes custom and practice in the next round of reporting, and that there is the involvement of minorities throughout the State.

3.2 'Additional Sources' of information

The rules of procedure on monitoring¹⁹ stipulate that the AC may request additional information from the State Party whose report is under consideration, and that the AC may receive information from additional sources. However, the AC could only invite information from other sources after notifying the CoM of its intention to do so. There was much criticism of these rules as being restrictive and potentially a form of censorship.²⁰

In 1998, the AC requested the CoM to allow it to seek information from a wide variety of reliable sources.²¹ Subsequently, a comprehensive dossier was put together by the Secretariat on each country for the AC and this often included over 100 different documents, with frequently more than 1,000 pages of evidence. The data was targeted and came from many reliable sources including inter-governmental organizations, Treaty monitoring bodies, Ombudspople, international NGOs, national research institutes, and local NGOs – including minority organizations.

The AC did not analyse petitions on individual cases or seek to act as a court judging cases. However, the outcomes of court cases did indicate where there might be inadequacies in the law or in the judicial system (in Croatia, for example, reports were received of court judgements being delayed for over 12 years), while several States provided evidence on large numbers of Roma being held in prison.

International NGOs, in particular MRG and International Helsinki Federation, and some local NGOs, publicize the Convention, provide training on the FCNM for participants from minority organizations and encourage the submission of alternative reports to the AC, to enable minorities to give their own perspective. Many such alternative reports have been received and are crucial to the AC's work,²² and there have been many valuable presentations on specific Articles and issues covered by the Convention. The FCNM Secretariat has also played a highly constructive role sponsoring and supporting NGO information and training initiatives, both within States and in Strasbourg. These have been evaluated positively and should be developed.

3.3 Advisory Committee Opinions

The AC decided early on that it needed to learn from the experience of other similar bodies and establish a method of working. It decided to set up working groups, usually of four members, to look at each State Report. The Independent Experts were not members of their country working group but had a role in the content of the Opinion on their country at a later stage. The composition of each country working group varied to ensure a sharing of experience, encouraging consistency and developing a rapport between all members. The working groups would meet and review a substantial dossier, then join a week-long visit to States. The Secretariat would play a discrete but significant role in preparing the first draft Opinion for the working group based on the views of the working group, however, one of the dilemmas was that the monitoring procedures, including staffing, were and are under resourced to cover, in a timely manner, such a complex and important issue for democracy and stability in Europe.

The Independent Experts are consulted on the draft Opinion on the State from which they were nominated and are engaged in the debate, once the first draft of the Opinion has been circulated to the whole of the AC. It has become custom and practice for the Independent Expert for the State concerned to have a constructive involvement adding to the understanding of complex issues, but not to attempt to represent the State or to challenge the Opinion politically. Most Experts make only a few comments, while others engage themselves more actively, however none has sought to undermine the principle of independence.²³ The AC has generally operated as a team in plenary, seeking a consistent approach. It will be important for this approach to continue.

The Opinions are about 25 pages long and have a section entitled Concluding Remarks, which draw together the key issues. There may be other issues in the text that are important, however the essential issues are in the Concluding Remarks and Executive Summary. This paper does not seek to make a judgement on those Opinions, although initial surveys indicate that all the key issues raised by NGOs have been examined and referred to in the Opinions. The AC has been careful to adopt the same standards of scrutiny in all countries, although its Opinions will naturally vary, reflecting different situations across States. In the future it will be important to look at thematic issues and develop a commentary on them to help guide States and minorities on good practice. This could take a similar course to the approach adopted in the General Recommendations of the UN Committee on the Elimination of Racial Discrimination and could be assisted by scholarly papers.²⁴

3.4 Visits to States

The custom and practice has gradually developed of States Parties inviting the AC to visit. Although this was not referred to in CoM Resolution 97(10), via the AC's openness to invitations alongside lobbying by NGOs, every State to date has invited the AC when a visit has been thought to be valuable. These visits have become central in monitoring the FCNM and have transformed the methodology into a

process of engagement of government and civil society, including national minorities.²⁵ During the visits a range of meetings are held with many actors, particularly governments and minority organizations. This methodology has been warmly welcomed by all parties and has played a significant part in confidence building.

At its meeting in February 2002 the AC considered an evaluation paper²⁶ and concluded that country visits had become one of the most valuable parts of monitoring the implementation of the FCNM. Visits have helped to ensure that the Convention and its implementation could become a process that is used and owned locally. The visits – including visits to minority areas – have not only opened up many new sources of information and understanding, but have led to a much deeper appreciation of the situation of national minorities and provided a framework for dialogue on contentious issues. No other human rights Treaty monitoring body has enjoyed such discussions and meetings with governments and civil society.

3.5 State Comments on Opinions

States are invited to comment on the AC's Opinions within four months of the Opinion being distributed to the CoM. Almost all States have provided such 'Comments', and their substance and tone have varied considerably. Most address the key issues but other interesting aspects have emerged. The Comments on some occasions have emphasized new measures adopted since the AC made its findings, these have included new legislation and new strategies (e.g. Croatia and Hungary). A few pointed to areas where it was suggested that the Opinion was, in part, inaccurate (e.g. Slovakia), and some have sought to rebut criticism by implying that other sources had accepted their behaviour (e.g. Estonia). Most have been complimentary about the AC's work (e.g. Italy), although the Danish Government reacted negatively to the Opinion. The Finnish and the Hungarian Comments, two of the first States to provide a Comment, were significantly more helpful in promoting the FCNM and minority protection than those from Denmark and Slovakia. The constructive approach of Finland, which also published its Opinion and Comments early, has set the scene for the future.

States' Comments have gradually become more constructive and accepting of the Opinions, and many States have agreed to publish Opinions and Comments early. In the next set of Opinions on Croatia, Cyprus, Czech Republic and Romania some serious outstanding issues were identified and the response of the States has been constructive. Civil society has an important role to play in following the outcome of the monitoring, and continuing the dialogue and debate domestically and internationally.

Many States agree to the publication of Opinions, once they have submitted the State Comments on the Opinions. This has been a valuable innovation, avoiding the delay before the adoption of a Resolution by the CoM. All States should be pressed to follow this good practice and should consider going one step further by agreeing to the publication of the Opinion once it is received by the CoM, its 44 Ambassadors and the observers to the CoM. This could ensure that Opinions were available some seven months earlier than at present.

3.6 Committee of Ministers' Resolutions

The CoM is formally charged with monitoring the FCNM and could if it so chose ignore the AC's findings. Over the last four years the AC has been careful to develop its work gradually, to consult the CoM and to remain within the mandate it has inherited or that has been developed. Liaison has taken place with Ambassadors to help identify the best approaches and to consider the experience of other bodies, such as the European Commission against Racism and Intolerance (ECRI). Consequently, the CoM had confidence in the AC, which proved important in view of the debate that arose around the first set of Opinions.

The CoM had not anticipated what it had to do and it took almost six months to decide that States should be given a further four months to provide their Comments on Opinions. It then took several more months to reach the conclusion that it was important for the CoM to rely heavily on the AC's Opinions.

While the first four Opinions were being considered, the CoM recognized how complex and controversial it would be to reopen substantial debate on the monitoring. Consequently, it delegated discussion to the GR-H that invited the AC's Bureau to introduce Opinions, and States to comment. Both the AC and CoM appear happy with this mechanism.²⁷ Nevertheless, this mechanism is open to criticism by civil society as it lacks transparency.

3.7 Differences in interpretation

When the rules of procedure were adopted by the CoM, there was considerable concern that the AC and the CoM would take fundamentally different approaches. Some five years after these debates, it is interesting to examine if this is the case, and compare the operative paragraphs in the CoM's Resolutions with the AC's Concluding Remarks. The style of language and the format of the two differ, the Resolutions drawing on the substance of the Opinions but expressed in modified language. Consequently, a direct comparison is made more difficult and a close examination is needed to see if issues are obscured or excluded. Many of the Resolutions faithfully reflect the key issues included in the Concluding Remarks of the Opinions – notably for Cyprus, Denmark, Finland, Liechtenstein, Malta and San Marino. However, the Resolutions on Croatia, Czech Republic, Hungary and Slovakia have one and sometimes two notable omissions from the Concluding Remarks in the Opinions. These came about through a desire to accommodate representations from the State and a desire to reach a consensus.

These changes do not alter the main sentiment of the Concluding Remarks, but represent a small yet disturbing trend. This is mitigated by the CoM Resolution making a specific reference to the AC's Opinion (see section 2.4 above). Consequently, the fact that the whole Opinion is published and a constructive reference is made to it in the CoM's Resolution is most important. Nevertheless, a close watch is needed by civil society to ensure that States do not delay Resolutions and do not seek to dilute criticisms. This dilution is easy to identify by examining the timing and content of Opinions and Resolutions. Should such a dilu-

tion happen, it will be important for civil society to publicize this, and lobby domestically and internationally on the excluded issues. Pressure should be put on the CoM to be more transparent, and to allow representatives of relevant Parliamentary Assembly Committees (PACE) and accredited NGO observers to listen to the debate at GR-H on the AC's Opinions and make written interventions.

3.8 Analysis to action

All States that have ratified the FCNM commit themselves to applying the provisions of the Convention in good faith and in a spirit of understanding and tolerance. Once Opinions, Comments and Resolutions have been agreed it is the responsibility of a State to use these to strengthen the implementation of the Convention.

In all Resolutions adopted by the CoM it is recommended that the States take appropriate account of their own Conclusions, together with the various Comments in the AC's Opinion. The government is also invited to continue the dialogue with the AC and to keep the AC regularly informed of measures it has taken in response to the Conclusions and Recommendations. By mid-summer 2002, Croatia, Finland, Hungary and Romania have taken this seriously and are convening local conferences with the CoE to discuss the Opinion, Comment and Resolution with relevant government ministries and civil society.²⁸ This presents a unique opportunity for continuing dialogue and for each ministry to begin an action plan to find ways of strengthening the implementation of the Convention.

This continuing dialogue between States and the AC has many advantages. It promotes the engagement of minority organizations with the government and the CoE in tackling essential, critical issues identified in the Opinions. Furthermore, this should simplify the next round of reporting, as some of the problematic issues will have been dealt with. This innovative procedure may also be of value to other Treaty monitoring bodies.

It is important to move from analysis to action. Legislation, policies and prioritized programmes are needed to implement the FCNM, using the evidence, analysis and interest stimulated during the monitoring process. Within each State, many actors from all communities, centrally and locally, must be involved. People from different disciplines and professions must be encouraged to tackle the social, economic, cultural and political issues affecting minorities and intercommunity relations. There are rarely easy answers, hence the full and effective participation of all in helping to find constructive ways forward is essential. Opinions, Comments and Resolutions must be translated into key languages and widely disseminated.

Governments should set up a task force, in which minorities should participate, to look at how the CoM's Resolution is implemented, and to establish a continuous rapport with the AC, sharing experiences of problems and good practice.

Governments across the CoE area, as well as the EU and donors, should give serious consideration to using the Opinions and Resolutions to guide the funding of programmes, which will help lay the foundations for a stable Europe, full participation and the inclusion of all.

4. The process of monitoring and implementing the Convention

4.1 Ownership of the Convention

If international law is to be effectively implemented, like domestic law, it needs both political and moral support for its values and it needs knowledge of its substance. Mechanisms of monitoring are important but they need to be supported by a genuine commitment to make them work. Much international human rights law fails as it is treated as something that States wish to be seen to support in international fora, but domestically may be treated as a State secret, an external imposition and unnecessary to implement effectively. Monitoring can be seen as a nuisance or even a threat to both politicians and officials, as they see their actions criticized.

Work has been done by NGOs to address this approach and to encourage a constructive and inclusive ownership of the Convention but more initiatives are needed.

4.1.1 Governments

Since the Convention has been recently adopted and States are fully aware of the major social and violent conflicts that have developed around certain inter-ethnic tensions, the importance of the issue is well understood. Although some States would prefer to put aside national minority issues, it is clear that the proper protection of national minorities is crucial. Given the 1993 Copenhagen criteria for EU accession, there is a political and economic incentive in some States to ensure that they are seen to be implementing the FCNM. This has been reinforced by States that strongly support the FCNM and consequently there is a strong motivation to take the monitoring seriously, and to be seen to be helping the AC in its work. All 34 States (there are 44 members of the CoE) that have ratified the FCNM did so voluntarily, and for some it was a condition of membership of the CoE. Sadly, among EU members, Belgium, France, Greece, Luxembourg and the Netherlands had failed to ratify the FCNM by July 2002.

Most States have been diligent and have provided their Reports within three months of the due date, and only a small number have allowed more than a year to lapse. Most Reports are serious attempts to comply with what was requested. Some States have actively involved minorities in the reporting and most States have been helpful in answering the questionnaire for further information in a reasonable time.

When the AC believed that a visit was needed, it discussed this visit with the relevant State and, to date, all States have invited the AC to visit. Visits have now become custom and practice. States have organized high-level meetings and facilitate the visits in a constructive way. Furthermore, an important trend has been to invite the AC to hold a local meeting to present its Opinion to government officials and national minorities, once the CoM's Resolution has been adopted. These meetings provide a new opportunity for promoting a continuous dialogue and for continuing action,²⁹ and should be encouraged and supported by civil society.

4.1.2 Civil society

One of the most important aspects of this Convention has been the way that civil society organizations have used the FCNM. International NGOs, working with local partners, have played a major role in publicizing and promoting the Convention internationally. A number of local NGOs have used the FCNM to promote minority rights in their countries.

This has included:

- lobbying for the FCNM's ratification;
- local and Europe-wide training workshops on the Convention;
- translating the Convention;
- publication of a training manual in many languages;³⁰
- organization of local workshops and conferences to publicize the Convention;
- supporting projects locally to submit alternative reports to the AC;
- encouraging specialist NGOs to present evidence on topics to the AC;
- meeting the AC and helping set the agenda during visits;
- providing extra data identified as important by the AC;
- lobbying governments to publish Opinions and Comments early;
- attending follow-up meetings to help implement the findings; and
- organizing working groups to promote the findings of Opinions locally.

There have been both individual initiatives and collective approaches by a consortia of NGOs in many countries of Europe. However, funding is essential for this independent, participative work to continue. The EU, the CoE and some other donors have been supportive, yet much more work is needed to transform the analysis into action. Continuing resources are needed for local and international NGOs, with an emphasis on the effective participation of minorities in such programmes.

Academics have played their part in offering reviews and criticisms of the Convention and can continue to help by reviewing the Opinions for consistency, and for the way they have taken forward international law and its application.

4.1.3 The Council of Europe

The CoE has had a mixed response to supporting the AC. Some parts have been highly supportive while others have been less diligent. Institutionally it has not anticipated the resources required to do a good, timely job, and this failure has led to Opinions, Comments and Resolutions taking 31 months to be published.

The staff in the AC's Secretariat are capable and dedicated, but the structure depends on having the resources and seniority of a body like the Convention for the Prevention of Torture (CPT), if the issue of minority protection is to be given an equivalent status. The FCNM Secretariat has been placed two levels of management lower than the CPT Secretariat in the organizational hierarchy. Furthermore, there could have been a synergy between ECRI, the Language Charter and the FCNM Secretariat in planning reviews and visits, if they had been grouped together managerially.

No additional resources have been added, save for a very

modest addition two years ago after a major growth in the number of ratifications. No new funds have been provided for visits, and two meetings a year have been cancelled to pay for these crucial visits. This crisis has been highlighted in each of the AC's three activity reports. Furthermore, no funds have been provided for the AC to follow up activities after an Opinion is formed, perhaps a key area where the CoE could make a difference. Some thoughtful work by the FCNM Secretariat, creating some synergy with work on the Stability Pact in South-East Europe, has enabled there to be in-country activities. However, this is limited to South-East Europe and it would be valuable to expand the activities across the CoE region and throughout the CoE's sphere of influence.

The budget of the whole of the CoE has been frozen with zero staffing growth, this began several years ago, when the FCNM work had just got underway and since then no high-level management decision has been taken to reallocate resources within the CoE. Indeed the FCNM budget was cut by 4 per cent to cover other priorities. It is good to note that the European Court of Human Rights last year received additional funds for over 110 new staff with specific funding from the major donors. Substantial funds have been reallocated to expensive high profile activities regarding the conflict in Chechnya, for example, but the FCNM does not attract media attention in donor countries and it has not been prioritized. It is ironic that the most important Convention for protecting minority rights, preventing conflicts and promoting good democratic participation, has been very well supported by States, by national minorities and by the CoM in its Resolutions, but not by adequate funding.

4.2 The monitoring cycle crisis

Opinions, Comments and Resolutions have on average taken 31 months to produce. The AC itself takes on average 20 months to formulate its Opinion.³¹ In a survey of minority-based and other human rights NGOs attending a practical training course on the Convention (sponsored by MRG and the CoE), over 75 per cent of the participants stated that an Opinion should be published within a year of the State Report being submitted. Similarly, the meeting of Government Offices for National Minorities called for speedier responses to their Reports.³² The efficiency and effectiveness of the Convention – encouraging processes of dialogue and ensuring that data is up to date – makes the suggested 12 months a good target.

A set of measures are needed and in the next round of reporting some obvious improvements can be made, without additional resources. It may be anticipated that the CoM may reduce the time it takes to receive a Comment and decide upon its Resolution to seven months, but the process would still take double the acceptable time. In addition, if the AC sends out its questionnaires on new Reports quickly, or obviates this in the second round, and if visits follow quickly and Opinions are dealt with at the first AC meeting after a visit, this target of 12 months can be met. It will, however, demand rigorous target-setting and close management by the AC. It would also demand a new approach, whereby all Opinions were published, as soon as they are circulated to the 44 Member States, to avoid the delay within the CoM referred to above. The major problem remains how to cope in 2004, as 17 States are due to report in that year.

Some States may be late in reporting, however, more funding will be essential for more staff, for at least four plenary meetings a year for the AC and for working group meetings between AC meetings. Unless this happens it is most unlikely that the 12-month cycle proposed will be reached, and the value of the FCNM and its processes will be diminished.

4.3 Developing the process

Many challenges lie ahead, a serious one is the danger of States' complacency after an Opinion is published, and as the newness of the Convention wears off. The reinforcement of local involvement will be more important than ever in ensuring that appropriate measures are taken to strengthen the FCNM's implementation and to maintain a dialogue between governments and minorities, and the AC and CoM.

Similarly, it will be essential to ensure that the CoE, the Organization for Security and Cooperation in Europe (OSCE) and the EU maintain a determination to focus on the FCNM, to encourage a practical manifestation of the stability and participative democracy that is crucial for peace and prosperity in Europe.

A careful review is needed of what aspects of the FCNM's implementation have worked well or not so well in practice, when, where and why. No two situations are the same but lessons of principle can be learnt and shared. It must be based on the clear evidence that exists today, after almost five years of work on the Convention. On the basis of this, strategies need to be adapted or re-defined, and joint action promoted at local, sub-regional or regional levels as part of a rights-based approach to the full and effective participation of minorities.

The CoE should publish information on its range of work on minorities and establish a strategy for its work with minorities, drawing together the competences of all parts of the organization to help reduce discrimination and to advance the implementation of minority rights and the FCNM.

5. Conclusions

The FCNM should not be judged by an academic analysis alone. It does not meet all minority rights aspirations; it is a practical Convention for practical circumstances. The FCNM should be judged on how far it has promoted the protection of national minorities through the principles set out in its Preamble. Consequently, a key question is how far the application of the FCNM has increased stability, democratic security and peace in Europe. Another question is whether the FCNM has promoted the needs of a pluralist and genuinely democratic society, and the realization of a tolerant and prosperous Europe. All those who are practitioners in the field of human rights know that such broad, long-term outcomes are immensely difficult to monitor and measure, even in one State. Judgements may be made by looking at the outputs that this paper has, in part, measured; and experience can be drawn on to make future predictions. It is anything but a precise science.

The first round of monitoring has been largely successful. The reporting by States has been taken seriously, while

NGOs have contributed significant additional information that has given a vitality to the process of dialogue. All States have of their own volition encouraged visits, placed no obstacles whatsoever in the way of meetings with NGOs, and often encouraged visits outside the capital. The AC has acted coherently and in unison to adopt substantial and constructive Opinions that do not fail to criticize where necessary, while listening carefully to governments and minorities. The CoM has not been the *bête noire* painted by some early critics, rather it has developed confidence and trust in the AC, has worked in concert to strengthen the FCNM's mechanisms, and has largely worked as a team to achieve the Convention's objectives. Some of the perceived weakness of the Convention has often been its strength, over three-quarters of the CoE's Member States have ratified the FCNM, while the flexibility of its language has allowed for practical interpretations by the AC, and an opportunity to persuade States to continually improve.

Major difficulties remain, however, as the CoE has allocated inadequate resources for the development of the AC's work, while there are unacceptable delays in the monitoring cycle that both the CoM and AC could address by streamlining procedures.

On the substantial issue of the application of the Convention in States, it is too early to judge what changes it has brought about. There have been many cases where the protection of minorities has improved but there are many factors in play, and to isolate the FCNM as the primary cause would be premature. Some substantial research is needed on this. Nevertheless, in MRG's dialogue with representatives of minorities, a good number have stated that the FCNM has contributed to significant gains, and that many want to continue to work with the FCNM as an important tool for furthering minority protection.

One key element in intercommunity relations is the prevailing atmosphere, which includes how far different communities and sectors of society (government/civil society) are in substantial dialogue on difficult issues, and how far there are serious attempts to seek common ground. It is clear that the process of alternative reports, consultations by governments, meetings during visits, State Comments and follow-up meetings have all helped in this regard. Here, process is an essential prerequisite for product, and the development of action plans to implement the findings of the AC. The UK Government has agreed that the integration of the FCNM's standards and Resolutions into human rights strategies is useful, and that the application of the FCNM will be raised in discussions with other governments.³³ Civil society can encourage other governments to do this as well.

Unless governments, officials and minorities are motivated to work together practically to protect minorities, the FCNM is not worth the paper it is written on. When that motivation exists, and the FCNM can provide an important vehicle for encouraging this, real material gains will be made over time. The issues are often complex and controversial, even in a stable environment. However, where there has been deep distrust or violence, the foundations that are being laid now may materialize into a new construct for intercommunity relations for the coming decades.

6. Recommendations

1. All States should ratify the FCNM and, pending the removal of legal constraints, should seek to implement the principles of the FCNM in practice. States should continue to develop the FCNM's scope of application, seeking to protect all established minorities with the Convention.
2. State Reports and monitoring require some changes, with a greater focus on the implementation of programmes. The provision of good quality, up-to-date data on social and economic issues, that is disaggregated by age and gender, and reflects geographical differences, is essential.
3. All States should be pressed to report on time and the AC's Opinions should be published within 12 months of the submission of State Reports.
4. States should involve minorities more actively in the reporting and implementation of the FCNM. Joint task groups should be set up around problem areas to encourage minority participation and agreed responses.
5. States should ensure that through consultative and transparent nomination procedures, the AC is made up of independent experts with a minority/majority and gender balance.
6. States should initiate a programme to raise awareness of minority rights and the FCNM. This should include the translation into key languages of the text and Explanatory Report of the FCNM, Opinions, Comments and Resolutions, and these should be widely disseminated.
7. The CoM should take great care to follow the AC's Conclusions in its own Resolutions, and strongly resist pressure from governments to weaken any criticism. It should be more transparent in its work on the FCNM.
8. Each year the CoM should review the situation in States where non-compliance with the FCNM has been identified. On key issues States should present progress reports to the AC and the CoM.
9. As a priority, the CoM should provide more resources for the AC, for speedy and dynamic monitoring, and to promote effective implementation of the CoM's Resolutions. This would include follow-up visits and advice, and dialogue with States and civil society on problematic issues between reporting cycles.
10. The CoE should establish an institution-wide strategy to link all of its work on minorities to create synergies and encouragement for the whole of the CoE to assist in implementing the CoM's Resolutions. The CoE, EU, OSCE and UN should work together in a coordinated

Notes

- 1 MRG played an active role both in the CSCE Copenhagen Human Dimension Meeting in 1990 and in the drafting of the United Nations (UN) Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). See MRG *Annual Reports*, London, 1990, 1991, 1992.
- 2 MRG, *FCNM: Analysis and Observations on the Monitoring Mechanism*, London, March 1998.
- 3 See the recommended reading list.
- 4 See the FCNM Explanatory Report.
- 5 Many reviews, including MRG *FCNM: Analysis and Observations on the Monitoring Mechanism*, *op. cit.*
- 6 Although States initially identify the FCNM's scope of application, within the context of an international Treaty it is not for States alone to determine whether a national minority exists.
- 7 A specific session of the AC was dedicated to this, authorities were commissioned to prepare a paper and attend, and the Vienna Convention on the Law of Treaties was carefully considered.
- 8 The Opinions of the AC consistently refer to this issue.
- 9 For full details visit the CoE's FCNM website.
- 10 An exception was made for Georgia due to the on-going conflicts in that country.
- 11 Final statement at the EU Council meeting Copenhagen, 1993.
- 12 See recommended reading.
- 13 The UK adopted a public system of advertising and seeking candidates. Forty-eight candidates were considered and eight interviewed by officials and an independent member, before ratification by a minister. In contrast one State nominated a former Foreign Minister and current ambassador who was rejected by the CoE as unable to be classified as independent! This contrasts with the Committee on the Elimination of Racial Discrimination and the UN Sub-Commission on Human Rights which have a number of Ambassadors as 'independent experts'.
- 14 All three reports are published on the AC website (see recommended reading).
- 15 See Resolution (97) 10 adopted by the CoE 17 September 1997.
- 16 The CoE Parliamentary Assembly was consulted, see Recommendations 1255, 1285, and 1300, although in many areas their Recommendations were not accepted.
- 17 See 642 meeting of the CoM Deputies 30 September 1998.
- 18 See CoE website for all Reports by States www.coe.int/
- 19 *Ibid.*
- 20 See MRG *FCNM: Analysis and Observations on the Monitoring Mechanism*, *op. cit.*
- 21 Decision of the CoM 20–21 May 1999.
- 22 See Greek Helsinki Monitor's valuable website <http://www.greekhelsinki.gr/>
- 23 The AC has reinforced its independence in various ways, including when the first Independent Experts nominated by Malta and Spain respectively resigned from the AC when they were appointed to diplomatic positions.
- 24 For a substantial review of how CERD developed its work see Banton, M., *International Action Against Racial Discrimination*, Clarendon Press, Oxford, 1996.
- 25 The prospect of the AC paying visits to States to see how the FCNM was being implemented was proposed by the author at the second meeting but at that stage there was considerable concern by some that it was outside the rules of procedure agreed by the CoM and that the CoM would not approve any changes.
- 26 Paper prepared by the author on evaluating the work of the AC.
- 27 The AC's activity report should be read to give further insights.
- 28 The presentation by the CoE in Zagreb has been published on the Croatian Government website.
- 29 The precedent was set once again by Finland with Croatia following, others are joining this procedure although Slovakia has, for the time being, declined to offer an invitation.
- 30 Barnes, C., and Olsthoorn, M., *The Framework Convention for the Protection of National Minorities: A Guide for Non-Governmental Organizations*, London, MRG, 1999. For details of translations contact MRG.
- 31 The author prepared and presented a paper to the AC at its 13th meeting on 'An analysis of the timetable of monitoring the implementation of the FCNM'. The paper is based on data in the public domain and is available from the author.
- 32 Ninth CoE Meeting of Offices of National Minorities, Lithuania, April 2002.
- 33 Letter of 8 July 2002 by the Rt Hon. Peter Hain, Minister for Europe, to the author.

Recommended reading

1. *Framework Convention for the Protection of National Minorities – Collected texts*, Council of Europe Publishing (2nd edition), August 2001.
2. The third *Activity Report* of the Advisory Committee covering the period November 2000 until May 2002. www.humanrights.coe.int/minorities/eng/sitemap.htm
3. Hofmann, R., 'Protecting the rights of national minorities in Europe. First experiences of the Council of Europe FCNM', *German Year Book of International Law*, vol. 44, 2001, pp. 237 et seq.
4. *FCNM: From Analysis to Action*, MRG Briefing, September 2002.
5. *The Council of Europe FCNM Revisited*, European Centre for Minority Issues (ECMI) Issue Paper, December 1998.
6. Council of Europe Minorities home page for State Reports, Advisory Committee Opinions, State Comments and Resolutions on monitoring by the Committee of Ministers. www.humanrights.coe.int/minorities/eng/sitemap.htm
7. Greek Helsinki Monitor website for comprehensive information on the FCNM, including alternative State Reports written by civil society organizations. www.greekhelsinki.gr/english/reports/CEDIME-FCNM.htm Additionally, Minelres provides a valuable resource on minority issues and may be found on www.riva.lv/minelres
8. Thornberry, P., 'The FCNM : a provisional appraisal and memory of the Baltic States', *The Baltic Year Book of International Law*, 2002.
9. Alfredsson, G., 'A frame with an incomplete painting. Comparison of FCNM with international standards and monitoring procedures', *International Journal on Minority and Group Rights*, vol.7, issue 4, 2000.
10. Steketee, F., 'The Framework Convention: a piece of art or a tool for action?', *International Journal on Minority and Group Rights*, vol.8, issue 1, 2001.

Framework Convention for the Protection of National Minorities

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedom

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that 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;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

- 1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
- 2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

- 1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
- 2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
- 3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

- 1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
- 2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

- 1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
- 2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

- 1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority 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. The Parties

shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

- 2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
- 3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
- 4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

- 1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
- 2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
- 3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

- 1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.
- 2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
- 3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

- 1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
- 2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
- 3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

- 1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

- 2 The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

- 1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
- 2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
- 3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

- 1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
- 2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

- 1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
- 2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV

Article 24

- 1 The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
- 2 The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

- 1 Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
- 2 Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
- 3 The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

- 1 In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
- 2 The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V

Article 27

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

- 1 This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.
- 2 In respect of any member State which subsequently expresses its

consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

- 1 After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.
- 2 In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

- 1 Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;
- d any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

working to secure the rights of minorities and indigenous peoples

minority
rights
group
international

The Framework Convention for the Protection of National Minorities: A Policy Analysis © Minority Rights Group International 2002. All rights reserved. Published September 2002.

The Author: Alan Phillips is an independent expert and writer on minority rights issues. He was the UK Independent Expert and the Vice-President of the CoE FCNM Advisory Committee June 1998– May 2002.

Acknowledgements: MRG gratefully acknowledges the support of all organizations and individuals who gave financial and other assistance for this paper, in particular the expert readers. This document has been produced with the financial assistance of the European Community. The views expressed here can in no way be taken to reflect the official opinion of the European Community. MRG project coordinators: Chris Chapman and Magdalena Syposz; MRG editor: Katrina Payne. Typeset by Kavita Graphics.

Material from this publication may be reproduced for teaching or for other non-commercial purposes. No part of it may be reproduced in any form for commercial purposes without the prior express permission of the copyright holders. For further information please contact MRG. This paper is published by MRG as a contribution to public understanding of the issue which forms its subject. The text and views of the author do not necessarily represent in every detail and in all its aspects, the collective view of MRG.

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations which represent minority and indigenous peoples.

MRG works with over 130 organizations in nearly 60 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG had consultative status with the United Nations Economic and Social Council (ECOSOC), and is registered as a charity and a company limited by guarantee under English law. Registered charity no. 282305, limited company no. 1544957.

Minority Rights Group International 379 Brixton Road, London SW9 7DE, UK
Tel +44 (0)20 7978 9498 **Fax** +44 (0)20 7738 6265
E-mail minority.rights@mrgmail.org **Website** www.minorityrights.org