

The Framework Convention for the Protection of National Minorities A Guide for Non-Governmental Organizations

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1. Introduction

On 1 February 1998, the Council of Europe's Framework Convention for the Protection of National Minorities entered into force. This was an important milestone because the Convention is the first legally binding multilateral instrument devoted to the protection of minorities in general. Its effectiveness, however, is likely to depend on whether it is taken seriously by governments and the strength of the Council of Europe's monitoring mechanism to oversee its implementation. The active involvement of non-governmental organizations (NGOs) is crucial for both of these factors. NGOs can both encourage governments to make the necessary legislative and policy changes to realize the principles enshrined in the Convention and – by providing information and analysis – help to monitor governmental compliance. This publication is intended to support this process by raising awareness about the Convention and explaining how NGOs and minority organizations¹ can use it to protect and promote minority rights. It is stated in Article 22 of this Convention that it complements existing human rights and fundamental freedoms.

The Convention is the outcome of a decision taken at the 1993 Vienna Summit of Heads of States and Governments. It draws on the texts of both the Concluding Document of the Copenhagen Human Dimension Meeting of 1990 of the Conference for Security and Cooperation in Europe (CSCE)² and the 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. The Framework Convention can serve as a model and legal benchmark for the legislation and practice of Member States of the Council of Europe and of states willing to become members with regard to their treatment of minorities.

The Convention may be regarded as the most recent and comprehensive of international standards on national minorities and its adoption is becoming obligatory for applicants to become Member States of the Council of Europe. The Convention has a moral and political authority even though it may not have been legally ratified by some countries.

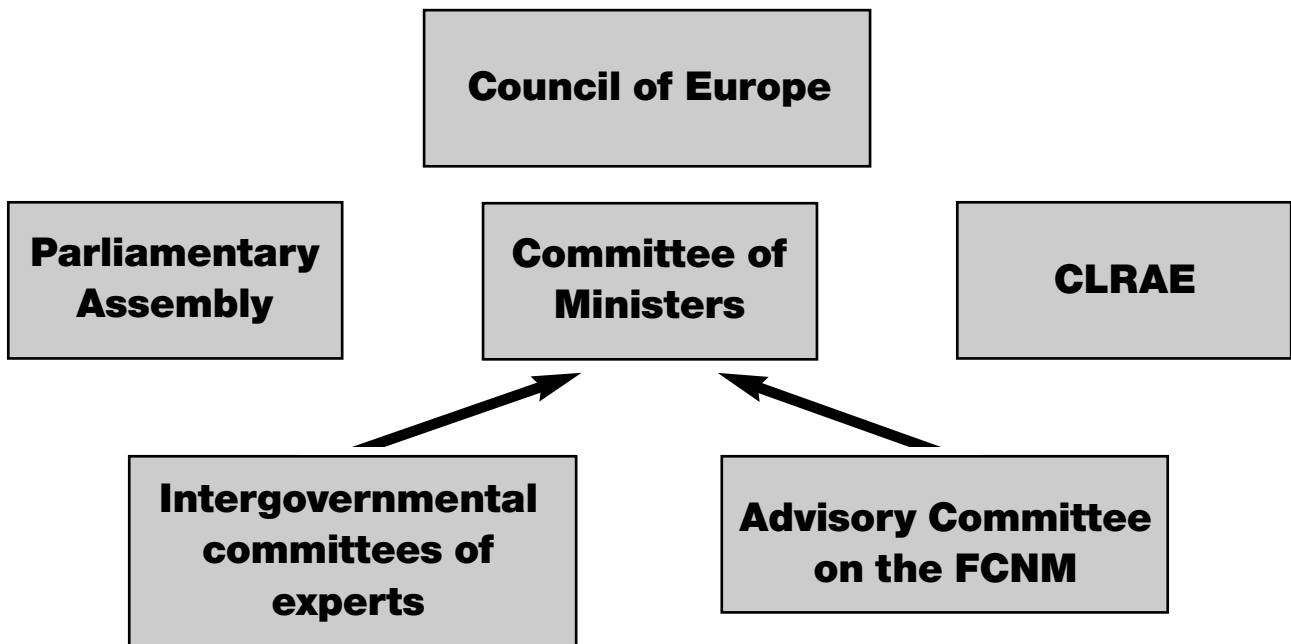
Why minority rights?

The greatest attention in international human rights law has been given to the rights of individuals. Often individuals belonging to a minority are not able to enjoy fully their human rights and freedoms because they are discriminated against on the basis of their ethnic, religious or linguistic identity. However, non-discrimination provisions are not enough to ensure that minorities can enjoy full and effective equality. Prohibition of discrimination results in equality under the law, but does not ensure equality in fact. In addition, special rights and measures for the protection of minorities are needed to overcome patterns of discrimination and to realize equality in practice.

Minority rights are human rights. Minority rights are not privileges; they are available so that minorities can preserve and develop their identity, characteristics and traditions. Only then can full and effective equality be enjoyed. Thus measures should be established in the field of education, culture, religion, but also in political, social and economic affairs, to bring minorities into effective equality with the rest of the population. Measures to promote full and effective equality are not considered to be an act of discrimination.

What is the Council of Europe?

The Council of Europe, with its headquarters in Strasbourg, France, was founded in 1949 as an organization for cooperation between the governments and parliaments of Europe.³ Its aim is to achieve greater unity between its Member States in order to facilitate their economic and social progress and to safeguard the principles of pluralist democracy, respect for human rights and the rule of law. The Member States must embrace these principles and ensure that all people under their jurisdiction are able to enjoy human rights and fundamental freedoms.



The structure of the Council of Europe

The Council of Europe is an organization of states. It has both political and judicial or quasi-judicial mechanisms to oversee its work. The chief political organs are:

- The *Committee of Ministers*, which takes the major executive decisions and guides the action of the organization. It is composed of the Ministers of Foreign Affairs from each Member State. This meets twice a year. However there are weekly meetings of their deputies (the permanent representatives of Member States in Strasbourg).
- The *Parliamentary Assembly*, which is the deliberative forum for the work of the Council. It is made up of national parliamentarians representing different political groups. It has powers of recommendation, is involved in decisions on the membership of the Council of Europe and elects the Secretary General.
- The *Congress of Local and Regional Authorities*, a semi-parliamentary body composed of local and regional elected representatives from Member States.
- The *Intergovernmental Committees of Experts*, which is like the Steering Committee on Human

Rights (CDDH) with a Sub-Committee on minority issues (DH-MIN). These are formed to follow up activities assigned to them by the Committee of Ministers, such as drafting recommendations, resolutions, conventions and other legal and non-legal documents.

- The *Advisory Committee on the FCNM* which is an independent body of experts selected by the Committee of Ministers from candidates proposed by State Parties. Its role is to examine reports from Member States and prepare opinions on the measures they have taken to implement the Convention.

The Council of Europe has legal mechanisms which monitor the compliance by states to their commitments under the Conventions of the Council of Europe. The most well known is the *European Court of Human Rights*, which monitors the European Convention on Human Rights (ECHR) by deciding on cases brought to it by individuals or states.⁴ The monitoring mechanism for the Framework Convention will be described in more detail below.

The whole structure of the Council is serviced by its *Secretariat* in Strasbourg, which is organized into 15 directorates. One of these is the *Directorate of Human Rights*, which includes the *Minorities Unit*.

There are various opportunities for NGOs to participate in the workings of the Council. NGOs operating internationally can gain consultative status that allows the organs and bodies of the Council of Europe to consult them on matters of mutual interest. National and local NGOs can at least gain indirect access through their affiliation with international NGOs with consultative status. In addition to the consultation process through formal status, there are many other ways in which NGOs can get involved with the Council's work in the field of human rights. For example, many committees maintain links with NGOs with specific expertise, whose representatives are invited to meetings and contribute actively to the preparation of reports. Also, NGOs can submit written information to the various monitoring mechanisms operating at the Council.

Human rights instruments of the Council of Europe

A significant contribution of the Council of Europe is its range of instruments to protect and promote human rights in its Member States. These include:

- the European Convention on Human Rights;
- the Framework Convention for the Protection of National Minorities;
- the European Social Charter;
- the European Convention for the Prevention of Torture;

as well as instruments dealing with related matters:

- the European Convention on Nationality;
- the European Charter for Regional or Minority Languages;
- the European Charter of Local Self-Government.

Each of these instruments covers a special sphere of protection, as is implied by their name. Yet there are specific articles in each of them that are relevant to the concerns of minorities, such as articles concerning 'non-discrimination' and 'equality'. Minority rights activists who want to work within the Council of Europe system should become familiar with the range of instruments and the monitoring mechanisms available in order to make an informed decision about which instruments and mechanisms to use.

The *European Commission against Racism and Intolerance* (ECRI) was also established after the 1993 Vienna Summit. It does not monitor a specific Convention, but assesses the effectiveness of the range of measures –

legal, policy, etc. – taken by Member States to combat racism, xenophobia, anti-Semitism and intolerance. ECRI prepares country reports with recommendations to the governments concerned. NGOs can submit information to ECRI. Its members – one member and one deputy from each of the Member States – are nominated by the government on the basis of their expertise in the subject.

For more information see 'NGOs and the Human Rights Work of the Council of Europe: Opportunities for Cooperation', which has been published by the Human Rights Awareness Unit in the Directorate of Human Rights of the Council of Europe.⁵

2. Content of the Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities is the first multilateral instrument developed to address the situation of minorities in general that is legally binding.

The use of the term ‘framework’ refers to the fact that the Convention contains ‘programme-type’ provisions. In view of the different situations and problems in the Member States the drafters of the Convention did not consider it feasible to include provisions with detailed or specified rights for minorities. The Convention therefore sets out general objectives and principles concerning issues such as cross-border contacts, education, full and effective equality, identity, association, religion, language, media and participation. It should be noted that a number of provisions go beyond the mere stating of principles so that the Framework Convention is sometimes called a hybrid convention. The Preamble of the Convention says that the State Parties are obliged to implement the objectives and principles through national legislation and policies. The Explanatory Report of the Convention explains in paragraph 11 that the provisions leave the states concerned a measure of discretion in the implementation of the objectives and principles in order to enable them to take particular circumstances into account.

The Convention creates legal obligations for the Parties. It obliges State Parties to realize the principles of the Convention by taking special measures, refraining from certain practices and guaranteeing specific rights. However, its provisions are worded as state obligations and are not couched in terms of specific rights for individuals belonging to minorities as in the ECHR. If individuals believe that their rights under the ECHR have been violated, they can in most Council of Europe Member States, invoke the EHCR as a legal basis for their claims before a domestic court. If not satisfied with the outcome of the domestic remedies, they can appeal to the European Court for Human Rights. This is not the case for the Framework Convention. Thus, although some articles of the Convention make explicit references to rights of persons belonging to national minorities, it depends on the domestic legislation of the State Parties whether these rights are judicable at the domestic level or not. It is

important to remember that various provisions of the Convention overlap with those of the ECHR, for example the right to freedom of expression. The main reason for this is that some Parties to the Framework Convention may not be Member States of the Council of Europe and thus may not be party to the EHCR. Minorities can also make good use of the ECHR to further their cause.

It should also be noted that the Explanatory Report states that collective rights of national minorities are not envisaged. Instead, it argues that the protection of a national minority can be achieved through the protection of the rights of individuals who are members of a minority. Nonetheless the Framework Convention does not oppose the introduction of collective rights either. Rather, this is considered to be a matter of technical choice.

The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others. Nevertheless there is a collective dimension with references in Articles 10, 11 and 14 to language rights in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers.

Articles

NGOs who want to use the convention in their work, should refer to the actual text of the Convention. It gives details of the specific obligations and its text is legally binding on the states that have ratified it. Nevertheless, the following overview should provide a general sense of what is covered by the Convention.

The Preamble is the section that provides the reason for developing the Framework Convention and provides important insight into the ‘spirit’ of the agreement. As explained above, the principles in the text are worded in general terms. The statements in the preamble should be seen as a guide for interpreting the Convention. It recognizes 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.

It stresses, among other things, 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’. State Parties are thus required to take action. It also declares 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’. A précis of the Convention follows with our emphasis given:

Section I, Articles 1–3, sets out several general principles:

- **Article 1** states that the protection of national minorities is part of the international system for human rights protection.
- **Article 2** declares that the Convention needs to be implemented in good faith and through cooperation between states.
- **Article 3** says that every person belonging to a national minority is free to choose – without the risk of disadvantage – whether or not to be treated as a minority, and that the rights which flow from the principles of the Framework Convention can be exercised individually or in community with others.

Section II, Articles 4–19, is the main operative part of the text and contains the ‘programme-type’ provisions. They set out the objectives and principles protected by the Framework Convention. The State Parties should implement the provisions through legislation and appropriate policies at home and, where appropriate, through bilateral and multilateral agreements.

- **Article 4** specifies the obligation of State Parties to guarantee the ‘right of equality before law and equal protection of the law’. It also **obliges** states to take ‘adequate measures’ to **promote ‘full and effective equality’** in all areas of life and determines that these measures shall not be considered acts of discrimination.
- **Article 5** obliges State Parties to ‘promote the conditions necessary’ for minorities to **maintain and develop their culture**, and to **preserve their identity**. It also specifies that states should ensure that minorities are not assimilated ‘against their will’.

- **Article 6** asks State Parties to **encourage mutual respect, tolerance**, intercultural dialogue and cooperation among all persons in their country. It further obliges State Parties to protect persons from ‘discrimination, hostility, or violence’ targeted at them because of their minority identity.
- **Article 7** concerns the right to **freedom of peaceful assembly**, association, expression, thought, conscience and religion.
- **Article 8** deals with the right to **manifest ‘religion or belief** and to establish religious institutions, organizations, and associations’.
- **Article 9** specifies that the right to **freedom of expression** includes the freedom to receive and impart information in the minority language. It also protects against discrimination in access to the media and promotes the possibility for minorities to create their own media.
- **Article 10** covers **linguistic freedoms**, including the use of the minority language in private and in public, and before administrative and judicial authorities.
- **Article 11** continues with the **use of minority names**, and the display of information and topographical indications in the minority language.
- **Article 12** addresses **intercultural education** such that State Parties are obligated to foster knowledge of the ‘culture, history, language, and religion’ of minorities and of the majority. They must also ‘promote equal opportunities for access to education at all levels’.
- **Article 13** protects the right for minorities to create and manage ‘their own private **educational and training establishments**’, without entailing any financial obligation for the government.
- **Article 14** protects the right to learn a **minority language**. Furthermore, it deals with the possibility for minorities to be taught the minority language or to receive instruction in it, without prejudice to learning or being taught in the official language.
- **Article 15** obliges State Parties to enable minorities to **participate effectively in cultural, social and economic life, and in public affairs**.

- **Article 16** declares that State Parties are not allowed to ‘**alter the proportion of the population**’ in areas with concentrations of minorities when these measures are aimed at restricting the rights covered by the Convention.
- **Article 17** protects the right to ‘**maintain free and peaceful contacts across frontiers**’. It also protects the right to participate in NGO activities, both at the domestic and international levels.
- **Article 18** covers cooperation between states by **encouraging bi- and multilateral agreements** between each other to protect minorities.
- **Article 19** declares that the only ‘**limitations, restrictions or derogations**’ that State Parties can make to the Convention’s principles are those **permitted in other international legal instruments**.

Section III, Articles 20–3, concentrates on issues regarding the interpretation of the principles in Section II.

- **Article 20** requires persons belonging to national minorities to respect domestic legislation.
- **Article 21** protects the territorial integrity and political independence of states.
- **Article 22** defines that the Convention may not be used to limit higher standards of protection provided either in other international instruments or under domestic legislation.
- **Article 23** concerns the interpretation of the rights which are subject to provisions in both the Convention and the ECHR.

Section IV, Articles 24–6, and Section V, Articles 25–32, set out the principles for the monitoring and entering into force of the Convention. These are described in more detail below.

Interpreting the Framework Convention

As described earlier, the Framework Convention for the Protection of National Minorities uses ‘programme-type provisions’. States are given ‘a measure of discretion’ in deciding how to implement the Convention’s objectives at home based on the specific

circumstances in their countries. The provisions are worded in general terms and contain qualifications such as ‘substantial numbers’ (Articles 10.2, 11.3 and 14.2), ‘sufficient demand’ (Articles 11.3 and 14.2), ‘a real need’ (Article 10.2), ‘where necessary’ (Articles 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).

Although it is true that the situation of minorities differs from country to country and consequently requires different approaches, the danger is that the generally worded objectives and principles will be interpreted restrictively by some of the Parties. This flexibility to translate the principles into domestic national legislation and policies which best suit their specific situation may possibly be used by some State Parties to avoid their obligations. In this context, serious doubts have already been expressed regarding the impact of the Convention.

On the other hand, one could also argue that the general wording of the Convention’s provisions is not necessarily to the disadvantage of minorities. The states are obliged to interpret the provisions in the spirit of the Convention. Particularly important in this relation are the clear statements in the Preamble. NGOs can use the entry into force of the Convention as an opportunity to start a dialogue with the authorities on its interpretation and come forward with ideas for its implementation.

In addition, Article 22 links the Convention to other international instruments and prohibits states from using the Convention to lower existing standards. The Convention should be ‘read with’ other international instruments to ensure that the maximum standard of protection offered by international law is upheld. Article 22 also prohibits states from using the Convention to reduce existing minority protection under domestic legislation. In this respect attention should also be paid to those international instruments, which become binding instruments through bilateral treaties.

The term ‘national minority’

One of the major issues concerning the interpretation of the Convention will be the term ‘national minority’. The Convention does not give a definition of a ‘national minority’. This means that there is no clear agreement about the types of groups covered by the Convention. The Explanatory Report says in paragraph 12 that the drafters decided to take this ‘pragmatic approach’, because they did not consider it possible to formulate a

definition that would receive support from all of the Council of Europe's Member States. This pragmatic approach has also been adopted by the OSCE High Commissioner on National Minorities. It is important to note that in other international organizations there is no consensus on a definition of 'national minority' or 'minority'. The standard practice is to regard the categorization of minorities as a question of fact rather than a question of law. A number of attempts have been made by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to agree a definition. However, no consensus has yet been reached.

Yet the implication for the Convention is that a number of states⁶ might issue declarations when they ratified or signed the Convention that contain a definition and/or identify the groups covered in their country or declare that there are no national minorities under their jurisdiction. The majority of states have not made such declarations, but it remains to be seen to which groups the Convention will be applied. Analysis of the declarations which have been made so far indicates that there are two main categories of groups that some states believe should be excluded: groups of non-citizens⁷ and migrants.⁸ It should be noted that the Convention itself does not expressly require that persons belonging to national minorities be citizens in order to fall within its protective remit, and only a few articles refer to areas traditionally inhabited by persons belonging to minorities.

Conversely a number of states are stipulating that all ethnic, religious or linguistic communities will enjoy the rights of this Convention. The advantage of no definition in the Convention, however, is that no groups are excluded in advance. As long as there is no definition there is also space for dialogue. In the end it is not for states alone to decide which groups are and which are not minorities.⁹ As mentioned above, NGOs can point out to states their obligation to interpret the provisions in the spirit of the Convention, i.e. they should act with true commitment to the protection of minorities. In addition, it should be noted that, according to international law, reservations and declarations may not be contrary to the object and purpose of the treaty, and that the principle of non-discrimination prohibits unjustified distinctions between groups when states qualify groups as 'national minorities' or not.

3. Implementing the Convention: The Monitoring Mechanism

In addition to a constructive and cooperative approach of the State Parties, the success of the Convention will to a large extent depend on the monitoring of the implementation of the Convention. A well-functioning monitoring mechanism can substantially contribute to overcoming the danger of different and restrictive interpretations.

Section IV of the Convention, Articles 24–6, covers the monitoring mechanism. It provides that the Committee of Ministers of the Council of Europe will monitor the implementation of the Convention on the basis of reports submitted by states and that an Advisory Committee will assist the Committee of Ministers with this task. In September 1997 the Committee of Ministers adopted Resolution 97(10) that provides further guidance on the composition, election and appointment of the Advisory Committee, and the procedures to be followed in performing the monitoring functions. The Resolution specifies that the Advisory Committee is composed of ‘independent experts’. This is of major importance. The Committee of Ministers (deputies) is a political body in which all Council of Europe member states are represented. Consequently the involvement of an impartial body in the assessment of the State Reports reduces the level of politicization.

The State Parties need to describe in their reports how the Convention is implemented in their countries. The Advisory Committee will consider these reports first, and, in so doing, can also take account of evidence submitted by other sources, including minorities and NGOs. It then formulates its opinions on the realization of the Convention’s principles. The Committee of Ministers (deputies) will then review (both the State Report and) the opinions of the Advisory Committee to form conclusions and, as appropriate, recommendations to the state about the effectiveness of its implementation.

The monitoring mechanism is thus not an individual complaints procedure as is the case with the European Court of Human Rights. Yet NGOs can play an important role by providing information and analysis that will be used when State Reports are assessed.

The State Reports

The states which have ratified the Convention are obliged to submit their initial reports within 12 months of the Convention having entered into force in the state concerned.¹⁰ Thereafter each State Party needs to submit a report every five years. In addition, the Committee of Ministers can request ad hoc reports in order to address circumstances which may arise between two periodic reports of a Party concerned. The State Reports will be made public once the Council of Europe receives them. States have the option of making their own reports public at an earlier stage. Some may do so, following the example of those states which make the preparation of the report a public process.

The reports should contain ‘full information on the legislative and other measures taken in order to give effect to the principles set out in the Convention’. There are detailed guidelines that specify the information to be included in the first State Reports.¹¹ These have been drawn up by the Advisory Committee and are available from the Council of Europe.

Part I should include an introduction about how the state has tried to implement the Convention. It should also contain basic information about the country and its policy concerning the protection of minorities. States must also indicate how they have promoted awareness of the Convention among both the public and the relevant governmental authorities.

In Part II, states must document the measures taken to implement the Convention by presenting information article by article. In this way, states will have to demonstrate how they are meeting the objectives of each of the Convention’s programmatic principles.

The guidelines indicate five categories of information and specify for each article the category of information required. The categories are:

- **narrative information** describing the state’s activity to fulfil the objective;

- **legal texts** and any available remedies relevant to the principle;
- **state infrastructure** of authorities with competence and/or responsibilities in the field concerned;
- **policies**, measures, programmes, statements and documents from government agencies, and public expenditure or budgets; and
- **factual information**, including statistics and other data, to enable an evaluation of how effective the state's actions (as detailed in the other information categories) have been in practice at fulfilling the principles.

Role of the Advisory Committee and the Committee of Ministers

The duty of the Advisory Committee is to examine the State Reports and to prepare opinions on the measures that states have taken to implement the Convention. The Advisory Committee is an independent body of experts.¹² The Committee of Ministers selects them from candidates proposed by the State Parties. Each member serves in his or her individual capacity and therefore is not a representative of the government. They must have 'recognized expertise' in the field of minority protection, and be independent and impartial. Their term of office is four years and they can be re-appointed only once. Although each member is nominated by a state, this state cannot withdraw their candidate after the person has become a member of the Committee. Advisory Committee members are not allowed to vote on the opinions regarding the State Reports of the country that nominated them.

The maximum number of 'ordinary members' on the Advisory Committee is 18. It is thus inevitable that there will not be a member appointed in respect of each of the State Parties. The Committee of Ministers maintains a list of approved candidates from each State Party. It will fill vacant seats by appointing people from this list, giving priority to people nominated by those states that have not previously had a nominee in the Advisory Committee. This creates a rotation system so that the geographic composition changes over time. Meanwhile, the experts on the list serve as 'additional members' and sit on the Committee in a non-voting capacity at the time when it is reviewing the State Report from their country. Equally, as mentioned above, ordinary members do not have a vote with regard to the opinions on the State Reports

from the countries that nominated them.

When it is assessing a State Report, the Advisory Committee can make use of additional information to get a full picture of the implementation of the Framework Convention. It can, for example, request additional information from the state. It can also invite other sources, such as NGOs, to submit information, although it has to notify the Committee of Ministers that it intends to do so. In May 1999 the Committee of Ministers (deputies) took note of the intention of the Advisory Committee 'to invite, during the initial reporting cycle, where appropriate, information from international organizations, ombudsmen and national institutions for the promotion and protection of human rights as well as representatives from civil society and NGOs'. Other sources, including NGOs, may also submit information on their own initiative.

The Advisory Committee can request a closed meeting with the relevant government and must have one if the government requests it. It may also hold meetings with others, if it first gets a mandate from the Committee of Ministers. Already one state, Finland, has invited the Advisory Committee to visit Finland to enter into dialogue. During the visit the Advisory Committee met with both government representatives and NGOs. It may share information with other monitoring mechanisms of the Council of Europe,¹³ as well as with organs and bodies of other intergovernmental organizations. To increase its efficiency, the Advisory Committee has formed small working groups to assess each State Report and draft opinions on the reports. Their findings are presented to the Advisory Committee as a whole and the final opinion will be made by majority-vote of the ordinary members. Their opinions on the measures taken by the state are then submitted to the Committee of Ministers.¹⁴ The Advisory Committee can also suggest to the Committee of Ministers to adopt certain country-specific recommendations.

The Committee of Ministers considers both the State Report and the Advisory Committee's opinions. It forms conclusions about the adequacy of the measures taken by the state in implementing the Convention. It may also make recommendations to the state and set a time limit for the state to provide information on how they are following up these recommendations. All conclusions and recommendations are made public. The Advisory Committee's opinion is also made public at the same time, unless the Committee of Ministers decides in a specific case to keep it confidential.

The conclusions and recommendations of the Committee of Ministers are not legally binding and there is no sanctioning system. Nevertheless, it is anticipated that the dialogue between the State Parties and the Committees will be constructive, and may often result in substantive changes in the country concerned. One of the significant forces will be the political pressure that arises in an atmosphere where the state is under scrutiny.

4. NGO Action

The Framework Convention on National Minorities should be helpful in attaining the wider goal of promoting minority rights and cooperation between communities, and serve as a valuable tool for NGOs addressing minority rights problems in their countries. NGOs can use the political space that has been created by the development of the Convention to stimulate discussion on minority issues. Structuring such discussion around the moral and legal authority of instruments like the Convention is a good way to start. Beyond questions of their legal significance, the conclusions and recommendations of the Committee of Ministers and the opinions of the Advisory Committee will have a significant publicity value and moral force. NGOs can use these findings to advocate minority rights in their country.

NGOs in countries which have not yet ratified the Convention can pressure their governments to do so. Of the States Parties, 27 have ratified and at least a further 6 are expected to ratify by the end of 2000. In countries where the Convention has entered into force, the primary sphere for advocacy will be in influencing domestic processes to change legislation, policy and practices to fulfil the Convention's programmatic objectives. The international monitoring mechanism, i.e. the Advisory Committee and the Committee of Ministers, is a secondary level of advocacy, where NGOs can raise their concerns if their governments are not responsive. NGOs with sufficient resources may want to use a longer-term, complementary strategy utilizing the many leverage points available. The following sections sketch out some of the possibilities.

Implementation on a domestic level

The Convention presents a number of opportunities which NGOs can use to contribute to the protection and promotion of minority rights in their countries. Several types of activity can be undertaken.

Increasing public awareness

Learning about the content of the principles enshrined in the Convention and in other legal instruments can be

empowering. It can create an environment in which minorities (and the civil society in general) expect the government to act to fulfil their obligations. NGOs can work to increase public awareness of the country's obligations under the Convention, for example through the translation and dissemination of documents and other information pertaining to the Convention. NGOs may want to network with other NGOs and minority group representatives in their country to ensure that everyone is aware of the existence of the Convention. It might be helpful to organize a training and/or strategic planning workshop to develop activities to promote the Convention.

Public education campaigns, involving the media and other communication outlets, can also be undertaken to increase general awareness of the Convention and related instruments. All of these efforts can be geared to create the groundwork for advocacy with the government to enact legal or policy changes to implement the Convention. Other opportunities to publicize the Convention and the government's record of compliance will occur when the opinions, conclusions and recommendations on the State Reports are made public. Comparisons with models of good practice elsewhere can also be made.

Changing domestic legislation and practice

The Convention presents an opportunity for significant changes to be made in the legislation and practice of governments, to ensure that minority rights are protected and promoted. In practice, however, these changes are more likely to occur if NGOs get involved in the process and work towards these changes. Implementation of the Convention's principles will certainly to a large extent depend on the commitment and imagination of NGOs. They can come forward with ideas on how the Convention's articles should be interpreted and initiate dialogue with decision-makers over the range of measures that can be taken to implement the Convention in their country.

NGOs can use the government's international obligations under the Convention as a justification for their demands for reforming existing policies or practices and

introducing new legislation. As with most initiatives of this kind, coalition-based campaigns that demonstrate significant public support are likely to be the most effective. Therefore, the public education efforts could be seen as a preliminary stage in a longer-term advocacy campaign.

The campaign might develop in several ways. One might be the establishment of new structures for dialogue, a second might be to promote new mechanisms to oversee the implementation within states of the Convention.

Monitoring implementation

NGOs also have an important role to play in monitoring the implementation of the Convention. The initial State Reports and the opinions, conclusions and recommendations about them will set the baseline for the states' future work around the Convention. It is important that the range of minorities' concerns are addressed during the assessment of the initial reports. Information and analysis from NGOs is therefore important to ensure that the Advisory Committee and the Committee of Ministers have a more complete understanding of the situation in a country that is being assessed.

There may be opportunities for NGOs to be directly involved in preparation of the State Report for their country. This participation could be an opportunity for NGOs to set the agenda for implementation in their country. NGOs will need to assess the degree to which they want to cooperate with their government on the official report and the possibilities of preparing 'alternative reports' to submit to the Advisory Committee. These different options are not mutually exclusive. It is possible for NGOs to adopt a flexible approach, participating in the government's State Report preparations and issuing their own statements or alternative reports. There are, however, strategic and resource considerations. The following guidelines may assist in thinking through some of these issues.

Cooperation with official State Report process

It is essential to learn some basic information about which governmental body is responsible for the preparation of the State Report on the implementation of the Convention. In most countries, it will be the ministries of the interior, justice or foreign affairs. If it is not possible to identify the appropriate body through contacts in the

capital, this information can also be obtained from the government's permanent representative to the Council of Europe in Strasbourg.

The appropriate office should be asked about the process they have adopted for implementing the Convention, the procedures for state reporting and how NGOs can become involved. For example, governments may want to receive information from NGOs to include in their report, or they may set up a consultation process in which NGOs are asked to comment on the draft report. NGOs could also take part in the preparation of the report itself. If the government is open to NGO involvement in the preparation of State Reports, there are a number of issues that need consideration.

There are a number of potential positive benefits that can emerge from participation. One is supporting the general principle of government transparency through the participation of civil society in human rights reporting. Participation can also provide opportunities to contribute to the interpretation of the 'programme-type' provisions in the context of the country concerned. In addition, NGOs will be in a better position to know their government's position on these issues and then take steps to address them. In general, the dialogue and negotiation that can occur during the preparation process may help to create an environment that results in increased minority rights.

There are also potential negative consequences that could come from participation. In some cases, NGOs might worry that governments will use NGO participation as propaganda to demonstrate that there are no significant problems in their country or to legitimize the State Report without necessarily reporting on all the concerns raised by NGOs. In these cases, NGOs should be very clear about the terms of their participation and specify what will happen if the State Report does not represent their view. NGOs may want to ensure that they can participate in the entire process of preparation, including the drafting of the State Report. Alternatively, they might arrange to attach separate NGO opinions to the report. Another consideration is that NGOs could find their resources drained by providing information and commenting on drafts. In these cases, NGOs might offer to submit a list of questions or problematic issues to the responsible government agency so that they include and address these concerns in the report.

It is the State's responsibility, as the contracting party, to submit a State Report (see Article 25). The state may choose to include or not to include evidence or comments of NGOs. However, NGOs themselves have their

own separate channels of communication with the Council of Europe and may contact the Council of Europe Secretariat directly and, through them, contact the Advisory Committee and the Committee of Ministers, even if they were consulted by the state.

Submission of information and preparation of alternative reports

For a sound assessment of the State Reports it is essential that the Advisory Committee receive information on the situation of minorities from independent sources. NGOs can at all times send information to the secretariat of the Advisory Committee at the Council of Europe in Strasbourg. Ideally, NGOs submit alternative reports at the time of the submission of the State Reports which address all the issues discussed in the State Reports. If resources do not allow for the preparation of complete alternative reports, information relating to specific implementation issues can of course also be submitted.

NGOs should study the State Reports, which will be made public at the latest once received by the Council of Europe, in order to define what information needs to be challenged or supplemented. In this way NGOs can focus on submitting data which is lacking from the State Report or which will provide alternative/corrective information. It is important to find out from the secretariat the date by which information must be received, so that the members of the Advisory Committee can study it while they are reviewing the State Report of the country concerned. Usually this should be soon after the submission of the State Report and certainly within three months of the submission. Preferably such information must be submitted in English or French, the two working languages of the Council of Europe. The use of other languages may for practical reasons limit the use that can be made of the information.

Broadening the base

NGOs may want to consider forming a coalition to prepare an alternative report about the implementation of the Convention. While coalition efforts can be complex and time-consuming, they offer numerous benefits. First, they potentially have considerable legitimacy, as they can be seen as more representative than something prepared by one group. This legitimacy can translate into moral and political 'weight' as both the government, the monitoring body, the media and the wider public are all more likely to take seriously a report that represents the

views of a significant sector of society. If a coalition is not feasible, it still is very worthwhile to at least liaise and coordinate with other NGOs in order to prevent conflicting information being submitted to the Advisory Committee.

Second, the people researching the report will be able to draw upon a wider body of expertise contributed by the different participating NGOs. This can save considerable time and resources by preventing the duplication of effort.

Third, the coalition process for preparing an alternative report can develop into wider coalition efforts to advocate for legislative and policy changes in the country. It may be particularly important for different minority groups to work together in preparing a report, as this will help to develop a unified strategy for protecting and promoting minority rights. NGOs operating at a domestic level may also want to consider cooperating with international NGOs that have experience in preparing alternative reports and developing advocacy strategies to use them effectively.

Professionalism

NGOs should be aware of the problems in establishing their credibility – which can be difficult to develop and easy to destroy. Presenting incorrect information can impact negatively on the NGO in question and generally impair the perceived reliability of others as well. NGOs must always be able to substantiate their submissions.

Information and analysis must be factual and detailed, providing appropriate references to the sources of information. It is important not to assume prior knowledge, but to be as complete as possible. Demographic and statistical information, including gender disaggregated data, is very valuable.

NGOs should try to prepare their information or reports as though they were preparing a court case. References should be made to the articles of the Convention, where possible structured in the same way as State Reports, and their texts quoted in order to demonstrate precisely why the government is violating or failing to implement the Convention.

Background information

Basic materials for the preparation of submissions of information or alternative reports are:

- text of the Framework Convention and the Explanatory Report;
- outline for State Reports (see further information section, Council of Europe Documents);
- Resolution 97(10) on the monitoring mechanism (see further information section, Council of Europe Documents);
- The Rules of Procedure of the Advisory Committee (see further information section, Council of Europe Documents);
- State Report (and, if available, previous State Reports plus the opinions, conclusions and recommendations adopted).

Possible sources of data are:

- reports from other national or international NGOs; governmental bodies (administrative, judicial, etc.); research institutes and universities;
- intergovernmental organizations – particularly their documents, statements, reports, surveys and statistical data from the monitoring mechanisms;
- other bodies of the Council of Europe, such as the Monitoring Committee of the Parliamentary Assembly, the Committee of Experts of the European Charter for Regional or Minority Languages and ECRI;
- UN Treaty bodies including CERD, the Human Rights Committee and the Committee on the Rights of the Child. Much of this data is now on the website of the UN High Commissioner on Human Rights (<http://www.unhcr.ch>).

Over time, documentation about the Framework Convention will develop. The text of the opinions, conclusions and recommendations issued for other State Reports will help to provide a sense of how the principles in the Convention are interpreted in practice. It may also be useful to learn about the positions taken on other countries to gather ideas about practices that are normative elsewhere.

General suggestions

When preparing information or alternative reports, it is advisable to:

- Provide information about the NGO(s), including the mission statement and some description of the general activities. This information can help to demonstrate the NGO's competence and expertise.
- Prepare an executive summary and conclusion with lists of points or questions to the Advisory Committee for when they are reviewing the official State Report.
- Follow the order of the articles of the Convention in the main body of the text. NGOs can refer to the Council of Europe's reporting guidelines and try to prepare information similar to that requested from states. This task will be made easier once the State Report has been studied. NGOs will then know what information needs to be challenged and can provide the alternative data.
- Provide recommendations for actions that the government should take to address problems.
- Pay attention to the presentation of the information or report, i.e. use formatting such as a contents page, headings, summaries, etc. to make the contents clear and accessible. Arguments can be supported by putting in additional information and including annexes, such as NGO reports, newspaper articles and findings from other intergovernmental reports.
- Monitor the timing of the actual submission of information or report. Find out when State Reports are due. There will be some period of time after this deadline when NGOs can submit their own reports or information. As a general rule, however, the earlier information is submitted the more likely it is that the Advisory Committee will be able to work with it. For further information, contact the Secretariat of the Advisory Committee at the Directorate of Human Rights.

Using the report

NGOs can submit their information or report directly to the Advisory Committee via its secretariat.

The information or reports can at the same time be used as the basis for a number of other advocacy activities. NGOs can also seek to discuss their materials with Council of Europe decision-makers, including the members of the Committee of Ministers and the Parliamentary Assembly. At home, government officials and parliamentarians can also be approached for their support. The release of information or an alternative report may provide a good opportunity for a media launch, which could help to bring attention to the Convention and the situation of minorities.

NGOs can press their government to invite the Advisory Committee to pay a visit and keep the Advisory Committee informed of their proposal.

Follow-up

Once the Advisory Committee and the Council of Ministers (deputies) have taken a view on the State reports, NGOs can undertake the following follow-up activities:

- Study the opinions of the Advisory Committee and the conclusions and recommendations of the Committee of Ministers. It will be interesting to see whether or not the Committee of Ministers follows the Advisory Committee, and, if it does not, how that will be argued.
- Monitor the government's response to the opinions, conclusions and recommendations. This is in particular needed in case the Committee of Ministers has requested information or follow-up to their recommendations. In general the opinions and conclusions should be used to put pressure on governments to increase their efforts to comply with their international obligations.
- These documents can be made public at home through translation and dissemination, including drawing media attention. They offer an opportunity to start a discussion at the level of civil society on the situation of minorities.

In general, the Convention offers a number of opportunities to promote and protect minority rights. While gov-

ernments are ultimately responsible for implementing the Convention, NGOs can use their expertise, dedication and creativity to make effective use of these opportunities to achieve change.

5. For Further Information

Addresses

Organization for Security and Cooperation in Europe
High Commissioner on National Minorities
P.O. Box 20062
2500 EB The Hague
The Netherlands
Tel. +31.70.312 5500
Fax +31.70.363 5910

Council of Europe
F-67075 Strasbourg Cedex
France
Tel: + 33 (0)3 88 41 20 00
Internet: <http://www.coe.int>

Human Rights Information Service
Council of Europe
Tel: + 33 (0)3 88 41 20 24
Fax: + 33 (0)3 88 41 27 04
E-mail: hricdoc@coe.fr
Internet: <http://www.dhdirhr.coe.int>
Internet (publications): <http://book.coe.fr>

Secretariat of the Advisory Committee on the Framework Convention for the Protection of National Minorities
Directorate of Human Rights – Minorities Unit
Council of Europe
Tel: + 33 (0)3 88 41 2963
Fax: + 33 (0)3 88 41 2793

Organisation for Security and Cooperation in Europe,
High Commissioner
Secretariat Office
Rytířská 31
110 11, Prague 1
Czech Republic
Tel: +420-2 216 10 217
Fax: +420-2 216 10 227
Internet: <http://www.osceprag.cz>

Council of Europe Documents

Framework Convention for the Protection of National Minorities – Collected Texts
ISBN 92-871-3907-5 (includes the texts below)
Framework Convention for the Protection of National Minorities and Explanatory Report, Strasbourg, February 1995, H (95) 10.

Outline for the Reports to be submitted pursuant to Article 25 Paragraph 1 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers on 30 September 1998 at the 642nd meeting of the Ministers' Deputies, ACFC/INF(98)1.

Resolution (97)10: Rules adopted by the Committee of Ministers on the Monitoring Arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers on 17 September 1997 at the 601st meeting of the Ministers' Deputies.

Rules of Procedure of the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC/INF (98)2)

Other useful reading

Alfredsson, Gudmundur and Melander, Göran, *A Compilation of Minority Rights Standards: A Selection of Texts from International and Regional Human Rights Instruments and other Documents*, Raoul Wallenberg Institute of Human Rights and Humanitarian Law Report No. 24, Lund, Sweden, 1997.

Minority Rights Group, *The Council of Europe's Framework Convention for the Protection of National Minorities: Analysis and Observations on the Monitoring Mechanism*, MRG International, London, March 1998.

United Nations, *Manual on Human Rights Reporting*, UN Document HR/PUB/91/1, 1991.

European Centre for Minority Issues website:
<http://www.ecmi.de>

6. Glossary

Convention – term used in the Council of Europe for multilateral treaties that have been agreed there.

Contracting Party – term used in the Framework Convention to refer to a state that has agreed to be bound by it.

Instrument – a term that covers all documents that embody both legally binding and non-legally binding texts (human rights).

Member State – a European country that has successfully applied for membership of the Council of Europe and agrees to uphold its statutory principles.

Ratification – the process whereby a state finally confirms that it intends to be bound by a treaty which it has previously signed, consent not being effective until such ratification.

Signature – the first step by which a state endorses a treaty but is not yet fully legally bound by it.

Standard – generally indicates an accepted model of practice and, in international human rights law, refers to the norms or principles considered as legitimate and which states agree to uphold.

Party – see definition for Contracting Party.

Treaty – a legal instrument which, when endorsed by ratification, binds a state to uphold the provisions it has agreed to.

7. Notes

- 1 For convenience, the term ‘NGO’ will be used throughout to include the range of organizations in civil society that might be interested in working on the Convention – including all forms of minority-based organizations.
- 2 Since 1995 called the Organization for Security and Cooperation in Europe (OSCE).
- 3 As of 1998, it has 41 Member States: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, (the former Yugoslav Republic of) Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. Six other states have applied to join: Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, and the Federal Republic of Yugoslavia. See also Annex.
- 4 As of November 1998, there is a single European Court of Human Rights in Strasbourg. The new Court replaces the old monitoring institutions, i.e. the European Commission of Human Rights and the European Court of Human Rights.
- 5 H (98) 12. This document can be ordered from the Human Rights Information Service. Please see contact details at p. 17.
- 6 Austria, Bulgaria, Denmark, Estonia, Germany, Liechtenstein, Luxembourg, Malta, Slovenia, Switzerland and (the former Yugoslav Republic of) Macedonia.
- 7 Reference may also be made to the General Comment 23 (50) of the UN Human Rights Committee on Article 27 of the International Covenant on Civil and Political Rights (ICCPR). This Comment states that individuals do not have to be citizens in order to receive protection as a person belonging to a minority.
- 8 Specific references to ‘areas traditionally inhabited by’ minorities are made only in Articles 10.2, 11.3 and 14.2.
- 9 Article 1 declares that the protection of national minorities forms an ‘integral part of the international protection of human rights’. Therefore minority rights are a matter of legitimate international concern. A state’s decision about the recognition of a group as a ‘national minority’ should therefore not be conclusive for determining if the group falls within the scope of the Convention. Also, General Comment 23 (50) of the UN Human Rights Committee on Article 27 of the ICCPR states that the existence of a minority does not depend upon a decision by the state, but requires it to be established by objective criteria.
- 10 As of 16 June 1999 the following members have ratified the Convention: Armenia, Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, (the former Yugoslav Republic of) Macedonia, Germany, Hungary, Ireland, Italy, Liechtenstein, Malta, Moldova, Norway, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom. See also Annex concerning the dates of the entry into force of the Convention in these states.
- 11 *Outline for the Reports to be submitted pursuant to Article 25 Paragraph 1 of the Framework Convention for the Protection of National Minorities*, adopted by the Committee of Ministers on 30 September 1998 (ACFC/INF(98)1).
- 12 The list of members of the Advisory Committee can be found on the Council of Europe’s website or obtained from the secretariat of the Advisory Committee. (See Further information, p.17.)
- 13 Such as the Monitoring Committee of the Parliamentary Assembly, the Committee of Experts of the European Charter for Regional or Minority Languages and ECRI.
- 14 See *Rules of Procedure of the Advisory Committee on the Framework Convention for the Protection of National Minorities* (ACFC/INF(98)2).

8. Annex

Member States of the Council of Europe, Signatures and Ratifications of the Framework Convention at 24/06/99*

MEMBER STATES	Date of Signature	Date of Ratification or Accession	Date of entry into force	R: Reservations D: Declarations T: Territorial Decl. E/F: English/Français
ALBANIA / ALBANIE	29/06/95			
ANDORRA / ANDORRE				
AUSTRIA / AUTRICHE	01/02/95	31/03/98	01/07/98	D: E / F
BELGIUM / BELGIQUE				
BULGARIA / BULGARIE	09/10/97	07/05/99	01/09/99	D: E / F
CROATIA / CROATIE	06/11/96	11/10/97	01/02/98	
CYPRUS / CHYPRE	01/02/95	04/06/96	01/02/98	
CZECH REP. / REP. TCHEQUE	28/04/95	18/12/97	01/04/98	
DENMARK / DANEMARK	01/02/95	22/09/97	01/02/98	D: E / F
ESTONIA / ESTONIE	02/02/95	06/01/97	01/02/98	D: E / F
FINLAND / FINLANDE	01/02/95	03/10/97	01/02/98	
FRANCE				
GEORGIA / GEORGIE				
GERMANY / ALLEMAGNE	11/05/95	10/09/97	01/02/98	D: E / F
GREECE / GRECE	22/09/97			
HUNGARY / HONGRIE	01/02/95	25/09/95	01/02/98	
ICELAND / ISLANDE	01/02/95			
IRELAND / IRLANDE	01/02/95	07/05/99	01/09/99	
ITALY / ITALIE	01/02/95	03/11/97	01/03/98	
LATVIA / LETTONIE	11/05/95			
LIECHTENSTEIN	01/02/95	18/11/97	01/03/98	D: E / F
LITHUANIA / LITUANIE	01/02/95			
LUXEMBOURG	20/07/95			D: E / F
MALTA / MALTE	11/05/95	10/02/98	01/06/98	R/D: E / F
MOLDOVA	13/07/95	20/11/96	01/02/98	
NETHERLANDS / PAYS-BAS	01/02/95			
NORWAY / NORVEGE	01/02/95	17/03/99	01/07/99	
POLAND / POLOGNE	01/02/95			
PORTUGAL	01/02/95			
ROMANIA / ROUMANIE	01/02/95	11/05/95	01/02/98	
RUSSIA / RUSSIE	28/02/96	21/08/98	01/12/98	D: E / F
SAN MARINO / SAINT-MARIN	11/05/95	05/12/96	01/02/98	
SLOVAKIA / SLOVAQUIE	01/02/95	14/09/95	01/02/98	
SLOVENIA / SLOVENIE	01/02/95	25/03/98	01/07/98	D: E / F
SPAIN / ESPAGNE	01/02/95	01/09/95	01/02/98	
SWEDEN / SUEDE	01/02/95			
SWITZERLAND / SUISSE	01/02/95	21/10/98	01/02/99	D: E / F
“the former Yugoslav Republic of Macedonia” / “l'ex-République yougoslave de Macédoine”	25/07/96	10/04/97	01/02/98	D: E / F

**Member States of the Council of Europe,
Signatures and Ratifications of the Framework Convention at 24/06/99* cont.**

MEMBER STATES	Date of Signature	Date of Ratification or Accession	Date of entry into force	R: Reservations D: Declarations T: Territorial Decl. E/F: English/Français
TURKEY / TURQUIE	15/09/95	26/01/98	01/05/98	
UKRAINE				
UNITED KINGDOM / ROYAUME-UNI	01/02/95	15/01/98	01/05/98	

**Non-Member States of the Council of Europe,
Signatures and Ratifications of the Framework Convention at 24/06/99***

MEMBER STATES	Date of Signature	Date of Ratification or Accession	Date of entry into force	R: Reservations D: Declarations T: Territorial Decl. E/F: English/Français
ARMENIA / ARMENIE	25/07/97	20/07/98	01/11/98	

* Treaty open for signature by the member States and up until the date of entry into force by any other State so invited by the Committee of Ministers

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