

**Swiss Chairmanship of the Committee of Ministers CoE.**

**From Minority Protection to Managing Diversity**  
**Zurich 28-29 April 2010.**

**Presentation by Alan Phillips, President of the Advisory Committee**

**1. Introduction to the invitation.**

**Mr. Chairman,**

It is a delight to be in Switzerland once again. I know personally how seriously you take minority issues and how supportive the Swiss government has been on the Framework Convention and in promoting minority rights not only in Switzerland but throughout Europe. I was impressed by the way in which the Foreign Minister was transforming the problem emerging from the referendum on the minarets into an opportunity for reforms.

The Swiss Ambassador to the Council of Europe, Ambassador Widmer, convened a meeting of Presidents of Monitoring Bodies in Strasbourg on 19 March 2010. It was a valuable meeting ensuring that the Presidents were well informed of the new direction that the Council of Europe is taking under its new Secretary General. The Ambassador's opening remarks were particularly welcome as he stated that, in the Council of Europe, the Monitoring Bodies gave the greatest added value. It is not for me to disagree with this assessment.

Ambassador Widmer's emphasised the need for us to consider the relevance and impact of our work. Our work is not an academic exercise, we work at the cutting edge of human rights in Europe, although we benefit from academics on our Advisory Committee alongside practitioners and past policy makers. Consequently I shall focus on the relevance of minority protection and diversity and the impact on our work, noting that much more work needs to be done here.

**2. Critique of the title.**

The title that you have given for this conference is an interesting one, possibly a too interesting one as we can explore this agenda from many directions.

We could devote the whole conference to focusing on what we mean by minorities, therefore I will take a pragmatic approach and concentrate on those protected by the Framework Convention in practice.

The “Protection of National minorities” is at the heart of the Framework Convention. Even this legally binding instrument, that many regard as weak, goes much further than this ; it is designed to “create appropriate conditions to enable national minorities to express, preserve **and develop** their identity”. The Framework Convention is also designed to promote other aspects of minority rights to which I will return to later.

The word “ **From**” implies that there is a need to move on and that minority protection has already been achieved. I will contest this strongly later drawing on the work of the Advisory Committee.

Similarly the word “**To**” Implies that this is an alternative, a new place to be. This is the direction of travel as if managing diversity is “the promised land flowing with milk and honey!”

You will know that **Diversity** has a diversity of meanings, overt and covert that I will touch upon, while **Managing** can imply a top down, controlling authority that is result driven, where process is perceived as a “challenge”.

Furthermore the title does not have a question mark, consequently it could be inferred that a decision has been taken to go along this route.

You may have gathered by now that I am a little sceptical about the title of this conference. However if we apply a margin of appreciation and a flexible, inclusive approach, which members of the Advisory Committee know well, I will make a presentation on **Minority Rights and Participatory Diversity**, focusing on the work of the Advisory Committee of the Framework Convention for the Protection of national minorities.

The relevance and impact of our work is achieved in a diversity of ways. It responds to the different circumstance in States that are as far apart geographically as Portugal and Russia or Norway and Cyprus, recognising that States can be equally far apart in the way they implement human rights and promote genuine democratic participation. Let me invite you to read our Opinions, for example look at those on Austria and Azerbaijan.

The detail of our work can be seen in a succession of State Reports, Advisory Committee Opinions, the State Comments on the Opinions and the Resolutions of the Committee of Ministers. Soon we will be publishing, Article by Article case law, and dossiers of information around each article, which should be a rich and easily accessible source of information. Already the Advisory Committee has Commentaries on Education and Effective Participation, while our new Commentary on Language rights is already progressing well.

The processes of monitoring the implementation of the FCNM, with the visits to countries that have become custom and practice, are crucial. We consult governments on our visits, we often visit places where

official rarely go in the periphery of a country or into impoverished Roma Settlements. Officials sometimes ask if they can join us to learn about the situation of minorities, but since these are not training visits for officials we refuse, but subsequently we do have a dialogue with government officials on what we saw and heard.

Sometimes, more disturbingly, we are followed during monitoring visits and attempts are made to tightly control whom we see. On some occasions secret messages are passed to us and our contacts are victimised. In one state that is close to EU membership, a member of parliament warned off Roma NGOs from speaking to us, while officials criticised UNHCR for allegedly introducing the Advisory Committee to groups of unregistered Roma. In another State, not Austria, an academic was convicted of terrorism and given a 10 year prison sentence – primarily for assisting the Council of Europe promote the Framework Convention.

### **3. Preamble to the FCNM and the Explanatory Report.**

The Framework Convention has sixteen articles under section 2 the main The Preamble sets out the reasons for drawing up this framework Convention and explains certain basic concerns of its drafters.

The penultimate paragraph in the Preamble sets out the main aim of the framework Convention: to ensure the effective protection of national minorities and of the rights of persons belonging to those minorities.

My contention is that, although the FCNM was drawn up speedily in 1994 and most States ratified the Convention over a decade ago, the need to protect national minorities and their rights remains highly relevant today. The realisation of minority rights is a highly complex process involving their economic, social and cultural rights as well as civil and political rights of individuals alongside their enjoyment in community with others. These are require complex, long term processes that even the most supportive states cannot readily achieve.

### **4. Minorities:**

It is not appropriate here for me to develop a long conversation on who or what is a minority that require protection. The Council of Europe decided to adopt a pragmatic approach, based on the recognition that it was impossible to arrive at a definition capable of mustering general support of all its member States.

There is a wide diversity of approaches from the UK position that accepts that the Framework Convention covers all those protected under its race relations act, to Denmark that has declared that “the Framework Convention shall apply to the German minority in South Jutland”. Interestingly although the majority of States recognise Roma and Travellers as national minorities, a number of States, including Portugal and the Netherlands, do not.

A number of states include the so called “new minorities”. This appellation is problematic; it includes those whose families may have been living in a country for two or three generations as well as those living in a country for two or three years. Some differentiation is needed here on rights.

### **5. Protection also implies promotion:**

The protection of national minorities , under the legally binding Framework Convention, includes legislation and policies to Promote:

The individual right to self-identification; ( article 3)

The Development of culture; ( article 5)

Non Discrimination, ( article 4) and positive measures

Full and effective equality; (article 4)

Tolerance and inter-cultural dialogue; (article 6)

Freedom of association; (article 7)

Right to religious belief and practice; (article 8 )

Access to the media; ( article 9 )

Use of minority languages; ( article 10 )

Use of minority names; ( article 11 )

Inter-cultural education; ( article 12 )

Minority education establishments; ( article 13 )

Learning of and in minority languages; ( article 14 )

Effective participation in economic, social and cultural life;  
( article 15 )

Effective participation in public affairs; ( article 15 )

Prohibition against altering proportions of population;(article 16)

Cross-frontier contacts; ( article 17 )

Bilateral treaties.

The Advisory Committee in its 76 Opinions in both the first and second cycle of monitoring have shown that members of many national minorities need protection. I invite you to read any of the second cycle Opinions that

demonstrate that even longstanding democracies in the heart of Europe, including Switzerland and all its neighbours, have some outstanding issues. I challenge anyone to cite a State in which all minorities are effectively protected and their rights are promoted.

It is crucial for us to ensure that we are not complacent. Most of Europe has not been free of frontier changes in the last century, unlike the United Kingdom or Switzerland. One of my Committee spoke of his elderly mother that had lived her life in the same city, but had also lived her life in 6 different countries.

We are less than two decades away from the wars that took place in the Southern Caucasus and Yugoslavia, while there have been recent violent conflicts in Kosovo, Macedonia, Georgia and even Moldova. It can take generations for the bitterness of inter-ethnic conflicts to dissipate. Less dramatically but poignantly, many States hold strong views about their kin community, often in neighbouring states (e.g. Hungary or Russia). It is no coincidence that at the Committee of Ministers, when States respond to my introduction of Advisory Committee Opinions, many States are deeply concerned about the direct criticisms they will face from other states with "kin communities" in their states.

In 2008, at the 10<sup>th</sup> Anniversary Conference on the Impact of the FCNM I spoke about some of the challenges and where we needed to make an impact. I cited:

- The humiliation of elderly minorities, seen as aliens in their homeland.
- Communities denied their culture, their language and their dignity.
- Children born without citizenship and denied basic human rights.
- Institutional discrimination in education and in employment.
- The victims of wars and conflicts in all communities.

I added to this the situation of Roma in Central and Southern Europe, a community that is always addressed in our Opinions.

The Commissioner for Human Rights has spoken out sharply on the rise of race hatred and killings of Roma in several countries, including Hungary and Italy. The European Court of Human Rights and its Grand Chamber, as well as the Advisory Committee, addressed issues of geographic separation of communities and segregation in schooling for Roma children in a range of states including the Czech Republic, Slovakia and Croatia. Even more concerning is the deep Poverty and illiteracy among some Roma, especially among Roma women, which may require many decades of remedial action.

There is much work that remains to be done to protect minorities.

## **6. Diversity:**

Issues of diversity, as well as minority rights are always considered carefully by the Advisory Committee.

Article 5 of the Framework Convention contains an obligation to promote the necessary conditions for the maintenance and development of cultures of national minorities. It lists four essential elements of the identity of a national minority; their religion, language, traditions and cultural heritage. It

also protects persons belonging to national minorities from assimilation against their will.

A delicate balance has to be drawn as State Parties may take measures to pursue their general integration policy, recognising the importance of social cohesion. Nevertheless the Preamble of the Framework Convention is explicit here stating that cultural diversity should be a source and a factor, not of division, but of enrichment to each society.

The same philosophy continues in Article 6 whose aim is to strengthen social cohesion and to promote tolerance and intercultural dialogue. It is explicit that barriers should be eliminated between persons belonging to ethnic, cultural, linguistic and religious groups. There should be the encouragement of intercultural organisations and movements which seek to promote mutual respect and understanding and to integrate these persons into society whilst preserving their identity.

I recall being at a conference in Carinthia in the 1990s where one academic spoke of the need to create areas of linguistic and cultural purity. This is not what the Framework Convention supports, nor does it permit the building of walls around Roma Ghettos, nor does it support the de facto housing separation in Northern Ireland, or the separation of mono linguist communities by language that is all too apparent in parts of the former "Soviet Union", where the State language used to communicate with minorities in Russian. Today many members of minority communities still do not communicate effectively in the main state language. This ranges from Moldova to Latvia, from Georgia to Estonia. In some places, like Macedonia or Kosovo, there is no attempt by the majority to speak the substantial minority language or to enjoy and celebrate its culture.

## **7. Effective Participation:**

Certainly these issues of mono-lingualism and mono-culturalism need to be addressed. However the suggestion of "managing diversity" may imply a top down approach, of control with the hidden agenda of assimilation, sometimes taking advantage of the current economic crisis to reduce disproportionately the funding of the cultural organisations of minorities. This has been reinforced by the confidence in some states given by their new European Union membership. There is an absence of any external incentive to ensure that effective institutions, legislation and policies were in place to protect national minorities as demanded by the Copenhagen Accession criteria and the Framework Convention.

The conversation needs to be on celebrating diversity and the realisation of rights rather than managing diversity; managing diversity may become a bureaucratic control mechanism that is self-defeating.

Article 15 is a central provision of the Framework Convention. The degree of participation of national minorities in all spheres of life can be considered as one of the indicators of the level of pluralism and democracy of a society. Creating the conditions for the effective participation of national minorities should, therefore, be considered by the State Parties as forming an integral

part of the implementation of the principles of good governance in a pluralistic society.

The effective participation of national minorities is also crucial for enhancing social cohesion, as keeping national minorities on the periphery of society can lead to social exclusion and tensions among groups. Furthermore marginalising persons belonging to national minorities in socio-economic life also has implications for the country as a whole, risking the loss of their contribution to wider society.

Additionally it is clear that when designing and implementing cultural policies that affect national minorities, it is essential that the authorities adequately consult those national minorities and engage them in the decision-making process to meet their needs effectively. This applies equally in the allocation of public support for minority cultures.

## **8. Conclusions:**

In the spirit of the Preamble of the FCNM, Protection needs to be considered alongside promoting rights, celebrating diversity and enjoying common cause on many issues.

The psychology of minorities needs to be understood, the resentment of being marginalised and excluded removed, and encouragement given to becoming full, equal citizens. The discourse should focus on minority rights and all its reciprocal implications for minorities respecting the rights of others and celebrating their cultures.

The conversation needs to concentrate on effective processes, not efficient management ensuring that members of minorities effectively participate in decision making and can feel an ownership of their community but also of the wider community. In this way the human rights of minorities can be protected through integration policies that do not separate or assimilate communities. It should be in the spirit of promoting Minority Rights, Cooperation between Communities, and participatory diversity.

Thank you