



Strasbourg, 18 August 1994
[K:\6MEET\ECMIN.25R]



COE056924

Restricted
CAHMIN (94) 25

**AD HOC COMMITTEE FOR THE PROTECTION OF
NATIONAL MINORITIES**

(CAHMIN)

**SUMMARY OF THE MAIN POINTS RAISED BY THE
OPINION OF THE DIRECTORATE OF LEGAL AFFAIRS
ON THE DRAFT FRAMEWORK CONVENTION**

prepared by the Directorate of Human Rights

Ce document n'est disponible qu'en version anglaise.
La version française sera disponible au début
de la 6ème réunion du CAHMIN (12 septembre 1994)

1. At the request of the Directorate of Human Rights, the Directorate of Legal Affairs prepared an opinion on the draft framework Convention. The main points addressed by the opinion are summarised in this document.

2. The observations concentrate on the Final Provisions (Chapter V) of the framework Convention, comments on the other chapters (I-IV) are limited to cases where the actual wording of the provisions appears to be unclear or contradictory or where it may cause problems for the application of the treaty.

3. Regarding the **PREAMBLE** the following is suggested:

a. to substitute, in the first recital,

"States, signatory hereto" by "States, signatories to the present framework Convention".

This change will ensure the accordance between the English and French versions;

b. to replace, in the last recital, "assure" by "ensure";

c. to delete, in the last recital "European" and "of the Council of Europe".

4. Regarding **CHAPTER II: Obligations**, the following is suggested:

a. in Article 6 paragraph 2 to delete "proportionate". The provision is not concerned with restricting individual rights and need not therefore provide against excessive measures;

b. in Article 10 paragraph 2 and variant (i) of Article 11 paragraph 3 the words "real need" are not defined in the text. It is suggested that at least the Explanatory Report should specify by whom and according to what criteria the "real need" will be established;

c. in Article 16 the first "their" in the English text is incorrect. To remedy this and to avoid misunderstanding over the reference in the second "their" the following text is proposed:

"The Parties shall ensure that every person belonging to a national minority has the right to liberty of movement and freedom to choose a residence within the national territory";

d. in Article 18 paragraph 1, French version, to introduce "commun" following "patrimoine culturel";

e. in Article 19, English version to replace "assure" by "ensure";

- f. in Article 20, the "limitations", "restrictions" and "derogation" regard "the principles enshrined in the present framework Convention". However, due to their general character, principles are not subject to "limitation", "restrictions" and "derogations". In international instruments and the European Convention on Human Rights, referred to in the draft text of Article 20 in a general way, these terms usually have bearing on rights and freedoms. Although "principles" could be replaced by "rights and freedoms flowing from the principles", the exact scope would remain unclear. The obligations contained in Chapter II already allow Parties a rather wide margin of appreciation making the necessity of yet another escape clause doubtful. For these reasons it is suggested to delete this provision.
5. Regarding **CHAPTER IV, Miscellaneous provisions**, the following is suggested:
- a. in article D the words "in accordance with the European Convention on Human Rights or the protocols thereto", may be replaced by "so as to conform to the latter provisions".
6. Regarding **CHAPTER V, Final provisions**, the following is suggested:
- a. in article G, it should be considered whether it is not advisable to take decisions on the invitation of non-member States only after consulting the Contracting States which are not represented in the Committee of Ministers. Although this is not provided for in the Model Final Clauses, the consultation of Contracting States prior to any decision on the invitation to accede constitutes the usual practice of the Committee of Ministers. It has even decided to proceed to such a consultation in the case of conventions which do not contain any provision to this effect. To avoid all ambiguity, it is therefore suggested to complete Article G by introducing the words "after consulting the Contracting States" (cf. Article 30, paragraph 1, of the European Convention on Transfrontier Television);
 - b. of article H, paragraph 1, it is suggested that it may be put more clearly as follows:

"Parties may not exclude any parts of their national territory from the application of this Convention".
 - c. On the question of reservations in respect of the framework Convention it is noted that a specific provision is clearly preferable. Particularly in the case of multilateral treaties of a normative character, a mere reference in the explanatory memorandum to the general rules contained in the Vienna Convention on the Law of Treaties is not sufficient to solve all the problems raised by the formulation of reservations. Attention is drawn to the fact that both the Parliamentary Assembly and the Committee of Ministers have expressed the view that it is advisable to include in each convention a clause specifying whether reservations are admitted and, if this is the case, the conditions under which States may make them (cf. Recommendation 1223

[1993] and Reply by the Committee of Ministers thereto, adopted on 17 February 1994). In conclusion it is put that, given the legal nature of a framework Convention, there should be no necessity for the formulation of reservations with regard to the principles contained therein. Therefore the formulation contained in draft Article I is favoured.

*

*

*

Finally as a general point it is suggested that it is not always necessary to use terms as "this framework Convention", or "the present framework Convention" or "the framework Convention". These may be replaced by "this Convention" to make the text more readable.