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

(CAHMIN)

**Draft explanatory report
on the framework Convention
on the protection of national minorities**

Document prepared by
the Directorate of Human Rights

NOTE:

The draft explanatory report CAHMIN (94) 21 has been revised by the Secretariat to take into account the results of the 6th meeting (12-16 September). All additions which were proposed by one or more experts have been included and are reproduced in *italic*, with a reference to the corresponding paragraph in the 6th meeting report CAHMIN (94) 28.

The results of the meetings of the Rapporteur Group of the Ministers Deputies' (28,29 September and 3 October 1994) and of the Ministers Deputies' (7 October 1994) will be included in an addendum to the present document.

BACKGROUND

1. The Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than forty years. Already in its very first year of existence (1949), the Parliamentary Assembly recognised, in a report of its Committee on Legal and Administrative Questions, the importance of "the problem of wider protection of the rights of national minorities". In 1961, the Assembly recommended the inclusion of an article in a second additional protocol to guarantee to national minorities certain rights not covered by the European Convention on Human Rights (ECHR). The latter simply refers to "association with a national minority" in the non-discrimination clause provided for in Article 14. Recommendation 285 (1961) proposed the following wording for the draft article on the protection of national minorities:

"Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion."

2. The Committee of Experts which had been instructed to consider whether it was possible and advisable to draw up such a protocol adjourned its activities until a final decision had been reached on the Belgian linguistics cases concerning the language used in education (Eur. Court H.R. Judgment of 27 July 1968, Series A No 6). In 1973, it concluded that, from a legal point of view, there was no special need to make the rights of minorities the subject of a further protocol to the ECHR. However, the experts considered that there was no major legal obstacle to the adoption of such a protocol if it were considered advisable for other reasons.

3. More recently, the Parliamentary Assembly recommended a number of political and legal measures to the Committee of Ministers, in particular the drawing up of a protocol or a convention on the rights of national minorities. Recommendation 1134 (1990) contains a list of principles which the Assembly considered necessary for the protection of national minorities. In October 1991, the Steering Committee for Human Rights (CDDH) was given the task of considering, from both a legal and a political point of view, the conditions in which the Council of Europe could undertake an activity for the protection of national minorities, taking into account the work done by the Conference on Security and Co-operation in Europe (CSCE) and the United Nations, and the reflections within the Council of Europe.

4. In May 1992, the Committee of Ministers instructed the Steering Committee on Human Rights to examine the possibility of formulating specific legal standards relating to the protection of national minorities. To this end, the CDDH established a committee of experts (DH-MIN) which, under new terms of reference issued in March 1993, was required to propose specific legal standards in this area. The CDDH and the DH-MIN took various texts into account, in particular the proposal for a European Convention for the Protection of National Minorities drawn up by the European Commission for Democracy through Law (the so-called Venice Commission), the Austrian proposal for an additional protocol to the ECHR, the draft additional protocol to the ECHR included in Assembly Recommendation 1201 (1993) and other proposed legal measures. This examination culminated in a report of the CDDH to the Committee of Ministers in September 1993, which set out various legal standards which might be adopted in this

area and the legal instruments in which they could be laid down.

5. The decisive step was taken when the Heads of State and Government of the Council of Europe's member States met at the Vienna Summit on 8 and 9 October 1993. There, it was agreed that the national minorities established by the upheavals of European history had to be protected and respected as a contribution to peace and stability. In particular, the Heads of State and Government decided to enter into political and legal commitments regarding the protection of national minorities. Appendix II of the Vienna Declaration instructed the Committee of Ministers:

- to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities. This instrument would also be open for signature by non-member States;
- to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.

6. On 4 November 1993, the Committee of Ministers established an ad hoc Committee for the Protection of National Minorities (CAHMIN). Its terms of reference reflected the decisions taken in Vienna. The Committee, made up of experts from the Council of Europe's 32 members, started work in late January 1994, with the active participation of representatives of the CDDH, the Council for Cultural Co-operation (CDCC), the Steering Committee on the Mass Media (CDMM) and the Commission for Democracy through Law. The High Commissioner on National Minorities on the CSCE and the Commission of the European Communities also took part, as observers.

7. On 15 April 1994, CAHMIN submitted an interim report to the Committee of Ministers, which was then communicated to the Parliamentary Assembly (Doc. 7109). At its 94th session in May 1994, the Committee of Ministers expressed satisfaction with the progress achieved on the drawing up of legal instruments concerning national minorities, in accordance with the Vienna Declaration.

8. At its meeting from [...] to [...] 1994, CAHMIN decided to submit the draft framework Convention to the Committee of Ministers, which adopted the text at the [...] meeting of the Ministers' Deputies held on [...] 1994. The framework Convention was opened for signature by the Council of Europe's member States on [...] 1994.

GENERAL CONSIDERATIONS

Objectives of the framework Convention

9. The framework Convention is the first legally binding multilateral instrument concerned with the protection of national minorities. Its aim is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities. The Council of Europe has thereby given effect to the Vienna Declaration's call (Appendix II) for the political commitments adopted by the Conference on Security and Co-operation in Europe (CSCE) to be transformed, to the greatest possible extent, into legal obligations.

Approaches and fundamental concepts

10. In view of the range of different situations and problems to be resolved, a choice was made for a framework Convention which concentrates on programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions - which will not, in principle, be self-executing - leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take the particular circumstances into account.

11. It should also be pointed out that the framework Convention contains no definition of the concept of a "national minority". The Council of Europe has decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering universal support. In its final activity report of 8 September 1993, the CDDH noted that for some, the term "national minority" was confined to minorities with a long history. For others, it covered only historically multinational minorities or regional minorities. For yet others, "new" minorities, e.g. migrant workers and refugees, should also be included in the concept and citizenship should not be a criterion for determining whether a person belongs to a national minority.

12. Such conceptual problems become less significant once the emphasis is placed on the protection of persons belonging to national minorities rather than the granting of collective rights to minorities as such. Following the example of documents adopted by other international organisations, the framework Convention aims to provide better protection to persons belonging to national minorities. This will not affect these persons' ability, both individually and jointly with other members of their group, to exercise the rights and freedoms flowing from the principles set out in the framework Convention (see Article 3, para 2).

Structure of the framework Convention

13. Apart from its preamble, the framework Convention contains an operative part which is divided into five sections.

14. *Section I* contains provisions which, in a general fashion, stipulate certain fundamental principles which may serve to elucidate the other substantive provisions of the framework Convention.

15. *Section II* contains a catalogue of specific substantive provisions.

16. *Section III* [to be completed].

17. *Section IV* contains various provisions concerning the interpretation and application of the framework Convention.

18. *Section V* contains some final clauses which are based on the model final clauses for conventions and agreements concluded within the Council of Europe.

COMMENTARY ON THE PROVISIONS OF THE FRAMEWORK CONVENTION

PREAMBLE

19. The preamble sets out the reasons for drawing up this framework Convention and explains certain basic concerns of its drafters. The opening words already indicate that this instrument may be signed by States not members of the Council of Europe (see Article E).

20. The preamble refers to the statutory aim of the Council of Europe and to one of the methods by which this aim is to be pursued: the maintenance and further realisation of human rights and fundamental freedoms.

21. Reference is also made to the Vienna Declaration of Heads of State and Government of the member States of the Council of Europe, a document which laid the foundation for the present framework Convention (see also paragraph 5 above). In fact, the text of the preamble is largely inspired by that Declaration, in particular its Appendix II. The same is true of the choice of undertakings included in Chapters I and II of the framework Convention.

22. The preamble mentions, in a non-exhaustive way, three further sources of inspiration for the content of the framework Convention: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and United Nations and CSCE instruments which contain commitments regarding the protection of national minorities.

0.0. The resolve to protect national minorities on the territory of the Parties was included in the Preamble to reflect the abhorrence at events taking place in former Yugoslavia at the time of drafting of the framework Convention. (CAHMIN (94) 28 para.6).

23. Given that the framework Convention is open to States which are not members of the Council of Europe, it was not considered superfluous to include certain undertakings which already appear, in similar or different terms, in the ECHR or in the protocols thereto (see also connection to this, Article D of the framework Convention).

24. The reference to the relevant CSCE commitments reflects the desire expressed in Appendix II of the Vienna Declaration that the Council of Europe should apply itself to transforming, to the greatest possible extent, these political commitments into legal obligations. The Copenhagen Document in particular provided guidance for drafting the framework Convention.

25. Finally, the reference to United Nations Conventions and declarations recalls the standard-setting work done at the universal level, for example in the Covenant on Civil and Political Rights (Article 27) and in the Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities (Resolution 47/135 adopted by the General Assembly in December 1992). *However this reference does not extend to any definition of a national minority which may be contained in these texts. (CAHMIN (94) 28 para. 31).*

26. The last paragraph in the preamble sets out the direct aim of the framework Convention: to ensure the effective protection of national minorities and of the rights of

persons belonging to those minorities. It also indicates that the protection offered by the framework Convention respects the principles of the rule of law, the territorial integrity and the national sovereignty of states.

SECTION I

Article 1

27. The main purpose of Article 1 is to specify that the protection of national minorities, like the protection of human rights, does not fall within the reserved domain of states. The statement that this protection "forms an integral part of the international protection of human rights" does not entail any competence of the organs established by the ECHR to interpret the present framework Convention.

28. The article refers to the protection of national minorities as such and of the rights *and freedoms* of persons belonging to such minorities. This distinction and the difference in wording make it clear that no collective rights of national minorities are envisaged (see also the commentary to Article 3). They do however recognise that protection of a national minority can be achieved through protection of the rights of individuals belonging to such a minority.

Article 2

29. This article provides a set of principles governing the application of the framework Convention. It is inspired by the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)). The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the framework Convention.

Article 3

30. This article contains two distinct but not unrelated principles laid down in two different paragraphs.

Paragraph 1

31. Paragraph 1 firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such. This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection of the framework Convention or under national rules applicable to persons belonging to national minorities.

32. This paragraph does not guarantee a general freedom to choose to belong to a national minority or not. Objective elements determine the exercise of the right guaranteed in this paragraph, since an individual has to "belong" to a national minority in order to be able to claim it.

33. Paragraph 1 further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice. This

part of the provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly.

Paragraph 2

34. Paragraph 2 provides that the rights and freedoms flowing from the principles of the framework Convention may be exercised individually or in community with others. It thus recognises the possibility of joint exercise of those rights and freedoms, without placing any obligation on the Parties to recognise collective rights. The term "others" shall be understood in the widest possible sense and shall certainly include persons belonging to the same national minority, to another national minority, or to the majority.

SECTION II

Article 4

35. The purpose of this article is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities. *The provisions of this Article are to be understood in the context of this framework Convention. (CAHMIN (94) 28 para. 34).*

Paragraphs 1 and 2

36. Paragraph 1 takes the classic approach to these principles, whereas the obligation laid down in paragraph 2 reflects awareness that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the parties to adopt special measures that take into account the specific conditions of the persons concerned. Such measures need to be "adequate", i.e. in conformity with the proportionality principle, in order to avoid discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality.

37. No separate provision dealing specifically with the principle of equal opportunities has been included in the framework Convention. Such an inclusion was considered unnecessary as the principle is already implied in paragraph 2 of this article.

Paragraph 3

38. The purpose of paragraph 3 is to make clear that the measures referred to in paragraph 2 are not to be regarded as contravening the principles of equality and non-discrimination. Such measures should not be contrary to the wishes of the national minorities concerned.

Article 5

39. This Article essentially aims at ensuring that persons belonging to national minorities can maintain and develop their culture and preserve their identity.

Paragraph 1

40. Paragraph 1 contains an obligation to promote the necessary conditions in this respect. It lists four elements that may be essential to the identity of a national minority. This provision does not imply that all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities (see in this regard the report of the CSCE meeting of experts, held in Geneva in 1991, section II paragraph 4).

41. The reference to "traditions" is not an endorsement or acceptance of practices which are contrary to national law and international standards. Traditional practices remain subject to legitimate limitations arising from the requirements of public order.

Paragraph 2

42. The purpose of paragraph 2 is to protect persons belonging to national minorities from assimilation against their will. It does not prohibit voluntary assimilation (see also the freedom of choice guaranteed under Article 3, paragraph 1).

43. Paragraph 2 does not preclude the Parties from taking measures in pursuance of their general integration policy. It thus acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society.

Article 6

44. This article is an expression of the concerns stated in Appendix III to the Vienna Declaration (Declaration and Plan of Action on combating racism, xenophobia, antisemitism and intolerance).

Paragraph 1

45. Paragraph 1 stresses a spirit of tolerance and *the intercultural dialogue* and points out the importance of the Parties' promoting mutual respect, understanding and co-operation among all who live on their territory. The fields of education, culture and the media are specifically mentioned because they are considered particularly relevant to the achievement of these aims.

46. One way to promote tolerance and *the intercultural dialogue* is to eliminate barriers between ethnic groups by encouraging, without discrimination, organisations and movements which seek to integrate them into society.

Paragraph 2

47. This provision is inspired by paragraph 40.2 of the Copenhagen Document of the CSCE. This obligation aims at the protection of all persons who may be subject to threats or acts of discrimination, hostility or violence, irrespective of the source of such threats or acts.

Article 7

48. The purpose of this article is to guarantee the respect of every person belonging

to a national minority to the fundamental freedoms mentioned therein. These freedoms are of course of a universal nature, i.e. they apply to all persons, whether belonging to a national minority or not (see, for instance, the corresponding provisions in Articles 9,10 and 11 of the ECHR), but they are particularly important for the protection of national minorities. For the reasons stated above in the commentary on the preamble, it was not considered superfluous to include certain undertakings which already appear in the ECHR.¹

49. The wording of this provision indicates that it may give rise to certain positive obligations of the Parties to protect the freedoms mentioned against violations by non-State entities. Under the ECHR, the possibility of such positive obligations has been recognised in the caselaw of the European Court of Human Rights (see, for instance, the judgment of 21 June 1988 in the Plattform "Ärzte für das Leben" case, Series A No. 139, p. 12, para. 32). See also in this connection, Article 9, paragraph 3 (second sentence) and paragraph 4.

50. Some of the freedoms laid down in Article 7 are elaborated upon in Articles 8 and 9.

Article 8

51. This article lays down more detailed rules for the protection of freedom of religion than Article 7. It combines several elements from paragraphs 32.2, 32.3 and 32.6 of the CSCE Copenhagen Document into a single provision. This freedom of course applies to all persons and persons belonging to a national minority should, in accordance with Article 4, enjoy it as well. Given the importance of this freedom in the present context, it was felt particularly appropriate to give it special attention.

Article 9

52. This article contains more detailed rules for the protection of the freedom of expression than Article 7.

Paragraph 1

53. The first sentence of this paragraph is modelled on the second sentence of Article 10, paragraph 1, ECHR. In addition to this the declaration of the Committee of Ministers of 29 April 1982 on the freedom of expression and information was borne in mind. Although the sentence refers specifically to the freedom to receive and impart information and ideas in the minority language, it obviously also implies the freedom to receive and impart information and ideas in the majority or in other languages.

54. The second sentence of this paragraph contains an undertaking to ensure that there is no discrimination in access to the media. The words "in the framework of their legal systems" were inserted in order to respect constitutional provisions which may limit the extent to which a Party can regulate access to the media.

Paragraph 2

55. This paragraph is modelled on the third sentence of Article 10, paragraph 1, ECHR.

56. The licensing of sound radio and television broadcasting, and of cinema enterprises should be non-discriminatory and be based on objective criteria. The inclusion of these requirements, which are not expressly mentioned in the third sentence of Article 10, paragraph 1, ECHR, was considered important for an instrument designed to protect persons belonging to a national minority.

57. The words "sound radio", which also appear in paragraph 3 of this Article, do not appear in the corresponding sentence in Article 10 ECHR. They are used in order to reflect modern terminology and no material difference in meaning from Article 10 ECHR is intended.

Paragraph 3

58. The first sentence of this paragraph, dealing with the creation and use of printed media, contains an essentially negative undertaking whereas the more flexibly worded second sentence emphasises a positive obligation in the field of sound radio and television broadcasting (e.g. the allocation of frequencies). This distinction reflects the relative scarcity of available frequencies and the need for regulation in the latter field. No express reference has been made to the right of persons belonging to a national minority to seek funds for the establishment of media, as this right was considered self-evident.

Paragraph 4

59. This paragraph emphasises the need for special measures with the dual aim of facilitating access to the media for persons belonging to national minorities and promoting tolerance and cultural pluralism. The expression "adequate measures" was used for the reasons given above in the commentary on Article 4, paragraph 2, which uses the same words. The paragraph complements the undertaking laid down in the last sentence of Article 9, paragraph 1. The measures envisaged by this paragraph could, for example, consist of funding for minority broadcasting or for programme productions dealing with minority issues and/or offering a dialogue between groups, or of encouraging, subject to editorial independence, editors and broadcasters to allow national minorities access to their media.

Article 10

Paragraph 1

60. The recognition of the right of every person belonging to a national minority to use his or her minority language freely and without interference is particularly important. The use of the minority language represents one of the principal means by which such persons can assert and preserve their identity. It also enables them to exercise their freedom of expression. "In public" means in a public place, outside, or in the presence of other persons but is not concerned in any circumstances with relations with public authorities, the subject of paragraph 2 of this article.

Paragraph 2

61. This provision does not cover all the relations between individuals belonging to national minorities and public authorities. It only extends to administrative authorities. Nevertheless, the latter must be broadly interpreted to include, for example, ombudsmen.

In recognition of the possible financial, administrative and technical difficulties associated with the use of minority languages in relations between persons belonging to national minorities and the administrative authorities, this provision has been worded very flexibly, leaving Parties a wide measure of discretion.

62. Once the following two conditions are met, the use of a minority language in relations with the administrative authorities must as far as possible be ensured: the persons belonging to the national minority must request its use and the request must correspond to a real need on the part of the population concerned. *The existence of such a real need is to be assessed by the State on the basis of objective criteria. (CAHMIN (94) 28 para. 37).* Although contracting States must make every effort to apply this principle, the wording "as far as possible" indicates that various factors, in particular the financial resources of the Party concerned, may be taken into consideration.

63. The Parties' obligations regarding the use of minority languages do not in any way affect the status of the official language or languages of the country concerned. Moreover, the framework Convention deliberately refrains from defining "areas inhabited by persons belonging to national minorities traditionally or in substantial numbers". It was considered preferable to adopt a flexible form of wording which will allow each Party's particular circumstances to be taken into account.

Paragraph 3

64. This paragraph is based on certain provisions contained in articles 5 and 6 of the European Convention on Human Rights. It does not go beyond the safeguards contained in those articles.

Article 11

Paragraph 1

65. In view of the practical implications of this obligation, the provision is worded in such a way as to enable Parties to apply it in the light of their own particular circumstances. For example, Parties may use the alphabet of their official language to write the surname of a person belonging to a national minority in its phonetic form. Persons who have been forced to give up their original name should be entitled to revert to it, subject of course to exceptions in the case of abuse of rights and changes of name for fraudulent purposes.

Paragraph 2

66. The obligation in this paragraph concerns an individual's right to display "in his or her minority language signs, inscriptions and other information of a private nature visible to the public". This does not, of course, exclude persons belonging to national minorities from being required to use, in addition, the majority language and/or other minority languages. Articles 20 and B of the framework Convention, particularly the reservation concerning the protection of public order, may restrict the scope of this provision. *The expression "of a private nature" refers to all that is not official. (CAHMIN (94) 28, para. 42).*

Paragraph 3: to be completed

0.0. This article aims to promote the possibility of having local names, street names and other topographical indications intended for the public also in the minority language. In implementing this provision the States are entitled to take due account of the specific circumstances and the framework of their legal systems. This provision does not imply any official recognition of local names. The term "traditionally inhabited" does not refer to historical minorities, but only to those still living on the same territory. (CAHMIN (94) 28, para. 10 and 11).

Article 12

67. This article seeks to promote knowledge of the culture, history, language and religion of both *national minorities* and the *majority population* in a multicultural perspective. The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework Convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive *whilst the words "access to textbooks" are understood as including the publication of textbooks (CAHMIN (94) 28, para. 43)*. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.

Article 13

Paragraph 1

68. The Parties' obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.

Paragraph 2

69. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.

Article 14

Paragraph 1

70. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this.

Paragraph 2

71. This provision concerns instruction both of and in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The obligation to ensure instruction of and in minority languages is subject to several conditions; in particular, there must be "sufficient demand" from persons belonging to the relevant national minorities. The wording "as far as possible" indicates in particular that such instruction is dependent on the available financial resources of the Party concerned.

72. The text deliberately refrains from defining "areas inhabited by persons belonging to national minorities traditionally or in substantial numbers", a flexible form of wording which allows Parties to take account of their countries' own particular circumstances. Parties have a choice of means and arrangements in ensuring such instruction, taking their particular educational system into account.

73. The alternatives referred to in this paragraph - "... opportunities for instruction of or in their minority language" - are not mutually exclusive. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation in this paragraph could be extended to pre-school education. The principles contained therein apply, mutatis mutandis, to geographically dispersed minorities.

Article 15

74. This article requires Parties to 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. It aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. In order to create the necessary conditions for such participation by persons belonging to national minorities, Parties could promote inter alia the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities.

Article 16

75. This article is based on parts of Article 2, paragraphs 1 and 2 and Article 3, paragraph 2 of Protocol No. 4 to the ECHR, *and does not aim to set a higher standard of protection than that instrument. (CAHMIN (94) 28 para. 45)*. Liberty of movement and freedom to choose one's residence are of course guaranteed under existing human rights instruments, but it was felt that a provision on this subject could usefully be included as these freedoms might be of special relevance to persons belonging to national minorities.

76. The second sentence of this Article does not prevent the Parties from applying, in a non-discriminatory manner, general criteria for entry to and departure from their territory.

Article 17

77. The purpose of this article is to protect against measures which change the proportion of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms which flow from the present framework Convention. Examples of such measures are expropriation, eviction or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms ("gerrymandering").

78. The article prohibits only measures which are aimed at restricting the rights and freedoms flowing from the framework Convention. It was considered impossible to extend the prohibition to measures having the effect of restricting such rights and freedoms, since such measures may sometimes be entirely justified and legitimate. One example might be resettlement of inhabitants of a village in order to build a dam.

Article 18

79. This article contains two undertakings important to the maintenance and development of the culture of persons belonging to a national minority and to the preservation of their identity (see also Article 5, paragraph 1). The first paragraph deals with the right to establish and maintain free and peaceful contacts across frontiers, whereas the second paragraph protects the right to participate in the activities of non-governmental organisation. See also in this connection, the provisions on freedom of assembly and of association in Article 7.

80. The provisions of this article are largely based on paragraphs 32.4 and 32.6 of the Copenhagen Document of the CSCE. It was considered unnecessary to include an explicit provision on the right to establish and maintain contacts within the territory of a State, since this was felt to be adequately covered by other provisions of the framework Convention, notably Article 7 as regards freedom of assembly and of association.

Article 19

81. This article encourages the Parties to conclude bilateral and multilateral agreements for the protection of national minorities, and to stimulate, where necessary, transfrontier co-operation. As is emphasised in the Vienna Declaration and its Appendix II, such agreements and co-operation are important for the promotion of tolerance, prosperity, stability and peace.

Paragraph 1

82. Bilateral and multilateral agreements as envisaged by this paragraph might, for instance, be concluded in the fields of culture, education and information (see also Article 14 (a) of the European Charter for Regional or Minority Languages). In particular, transfrontier co-operation has the advantage that it allows for arrangements specifically tailored to the wishes and needs of the population living on the two sides of the frontier.

Paragraph 2

83. This paragraph points out the importance of transfrontier co-operation. Exchange of information and experience between States is an important tool for the promotion of mutual understanding and confidence.

Article 20

84. This article provides, in a general way, for the possibility of limitations, restrictions or derogations to the extent allowed by other international legal instruments, in particular the ECHR. A more detailed provision, for instance along the lines of the restriction clauses in some of the articles of the ECHR, was not considered appropriate for a framework Convention.

[*SECTION III*: to follow]

SECTION IV

Article A

85. Persons belonging to national minorities are required to respect national legislation. However, this reference to national legislation clearly does not entitle Parties to ignore the provisions of the framework Convention. Persons belonging to national minorities must also respect the rights of others. In this regard, reference may be made to situations where persons belonging to national minorities are in a minority nationally but form a majority within one area of the State.

Article B

86. This provision stresses the importance of the fundamental principles of international law and specifies that the protection of persons belonging to national minorities must be in accordance with these principles.

Article C

87. This provision, which is based on Article 60 of the ECHR, sets out a well-known principle. The aim is to ensure that persons belonging to national minorities benefit from whichever of the relevant national or international human rights legislation is most favourable to them.

Article D

88. This provision deals with the relationship between the framework Convention and the European Convention on Human Rights, reference to which is included in the preamble. Under no circumstances can the framework Convention modify the rights and freedoms safeguarded in the European Convention on Human Rights. On the contrary, rights and freedoms enshrined in the framework Convention which are the subject of a corresponding provision in the European Convention on Human Rights must be interpreted in accordance with the latter.

SECTION V

89. The final provisions contained in articles E to K are based on the model final clauses for conventions and agreements concluded within the Council of Europe. *No article on the admissibility of reservations was included, with the aim to allow reservations in as far as they are permitted by international law.* The majority of the articles in this section require no particular comment. However, the following articles call for some explanation.

Articles E and G

90. The framework Convention is open for signature by the Council of Europe's member States and, at the invitation of the Committee of Ministers, by other States. These provisions take account of the Vienna Declaration, according to which the framework Convention should be open to signature by non-member States (see Appendix II to the Vienna Declaration of the Council of Europe Summit). The right to sign or accede following a Committee of Ministers' invitation is not confined to European States.

Article H

91. It has been decided not to permit States to exclude part of their territory from the scope of the framework Convention.