

# Filling the Frame

5th anniversary of the entry into force of the  
Framework Convention for the Protection of National Minorities

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## **Concluding plenary**

## **Conclusions of the Conference by the General Rapporteur**

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I start with a remark that we live in interesting times, considering the changes that are around us. The continuing construction of Europe and processes that have accelerated political change present challenges to the whole range of international institutions, and place stresses and strains on the political and normative fabric of States. Globalisation adds its own dimensions, impinging on cultures, prompting the flow of migrants, causing us to ask fresh questions about national and regional identities, about personal identity, forcing a sense of oneness in this world, an outward looking cosmopolitanism on the positive side, offering threats to diversity and human security on the negative side. These positives and negatives of globalisation, its 'Janus faces' (the god who looks both ways), are of course not confined to Europe, but impact on Europe also.

For the changes we are enmeshed in, we aspire to situate them in a human rights framework. Unlike earlier periods of rapid change, we are mandated to attend to the human dimensions of change, its implications in terms of human rights. It is in this context that we examine the potential of the Framework Convention for the Protection of National Minorities, to, in the words of the Secretary General in his intervention at this Conference, "develop or orchestrate change". It is, however, also true that change has its own momentum, and that the Framework Convention, like all human rights instruments, may in turn be buffeted by the winds of change. Professor Hofmann used the phrase "catalyst for discussion" as a summary of what the Framework Convention can do, which is a modest but important and achievable objective.

The Framework Convention is a young instrument. We are talking about birthdays, but certainly in terms of international human rights instruments, it is very much a newcomer. Professor Hofmann described the faculties of the toddler to us yesterday. A number have noted that when the Framework Convention was born it may not have been loved by its parents, but was looked upon by many as a rather ugly infant. It was regarded as a big disappointment for various reasons, including its lack of real collective rights and no autonomy rights, because of a relentless individualisation of its rights provisions, because it did not provide a definition of minorities, nor definitions or elaborations of key terms, and because of its highly qualified language in key areas such as education and language rights. Commentators and institutions could hardly conceal their disappointment when the Framework Convention emerged into the light. To change the metaphor a little we have focused at this Conference on 'filling the frame', but some, at least initially, found the frame to be very incomplete. The frame is a little fuller now, the infant is better loved, and perhaps we should adopt instead an attitude of grudging admiration, or maybe just admiration. So we are here to reflect on how and to what extent the frame has been filled out.

Minority rights in Europe have a very chequered history. We are aware that historically the concern for minorities moved from the case of religious minorities towards national minorities, and we are still using the latter terminology. Minority rights were the other side of the coin from nation state ideology. Minority rights, when they were recognised, were regarded as exceptions to the principle that States could treat their peoples as they wished. John Packer spoke yesterday on the need to move definitively out of this mindset, away from the ideology that States are homogeneous and that minority rights

would be a kind of concession. I think the integration of minority and human rights makes this more possible. Minority rights are not states of exception, but a recognition within a human rights framework, that definition of one's own identity, one's own authenticity, is a value to be safeguarded. Oppression of that right diminishes human security, provokes conflict and reduces our 'gene bank' of cultural diversity. The identity of Europe is implicated in the notion of diversity. In view of our history, it could hardly be otherwise, but what has been lacking in this kaleidoscope of identities is reflection on the Other's identity. This respect for the Other's identity is what minority rights ultimately endeavours to teach us.

Just to take the historical aspect further and bring it up to date, there were some points made yesterday on the inadequacies of earlier regimes of minority rights, with reference to the League of Nations.

Of course, on the negative side, one lesson that it taught us was to be careful about double standards, about applying norms to one group of States, while ignoring those same norms for another group of States. I think, as far as Europe is concerned on the minority rights issue, there can be no dividing lines. On the other hand, we are not asking for uniform treatment of all States, because States are different, but equal treatment of States, as with individuals, with full regard for their circumstances in the true meaning of equality.

On the positive side, we may recall from the League of Nations, the maxim which has been repeated through the current human rights framework, that the existence of minorities is a question of fact, it is not a question of law. This rather peculiar statement does little justice to the complexity of facts, but what it does suggest is that the notion of 'minority' in international law is capable of having an autonomous meaning, which may not be the same as the meaning attributed to it within the domestic law of any particular country, and ultimately, that the existence of minorities is driven by notions of self-definition, interfaced with elements of the interests of the State and society in how to give expression to that self-definition, with full respect for the rights of all. But if I may say, in taking the definition issue up in the context of the Framework Convention and by the Advisory Committee, do not expect the Convention bodies to resolve the question of definition in the short term. Human groups resist easy categorisations, and we have been without a consensus account of the concept of minorities after nearly a century of minority rights instruments and half a century of human rights instruments. The other point I wanted to make on the definitional question of a 'minority', as again has been made by Professor Hofmann and others, is that it is not necessary for a group to call itself a minority, or a national minority, to avail itself of the protection of the Framework Convention. This is particularly clear in the case of groups self-describing as indigenous peoples, who may also claim that protection.

A number of papers and interventions recalled the entire human rights framework when reading the Framework Convention and it is entirely appropriate to read the Convention in that way, as it is part of the company of human rights. No human rights text is hermetically sealed off from this company. There is a family likeness, a family

resemblance, to adopt Wittgenstein's term. Interpretations begin with the text, but the boundaries between that and the wider world are fluid - Duncan Wilson made this point very forcefully in discussing the education provisions of the Framework Convention. Of course the text itself suggests that it is to be interpreted as adding to the richness of human rights, not subtracting from human rights.

A point should be made here about the principle of non-discrimination. A number of issues have been raised concerning special measures. The principle of non-discrimination is changing, it is opening out, so that the lines between that and minority rights are to a certain extent becoming blurred, since under the right circumstances, taking a purely non-discrimination principle, special measures can in fact be compulsory under international human rights law, and not a concession. The other point is that there is nothing in the principle of non-discrimination to forbid special concern for minorities. On the contrary, the principle of non-discrimination does not forbid all differences, but only those differences which cannot be defended, differences which are arbitrary. Clearly the promotion of minority identities and the safeguarding securities of communities is a valid objective, so I see no inconsistency between those desiderata and non-discrimination. On the contrary, the principle of non-discrimination is an essential building block for the development of minority rights.

Those are some initial observations on the approach to interpreting the Framework Convention, and to its relation to other principles. There are a number of weaknesses in the text of the Framework Convention itself, especially the hesitant and qualified language of some articles. John Packer made points on this yesterday, trying to show us a way of reading these qualifying terms, particularly in the key Articles of 10, 11 and 14, in a rather positive way. All we can say beyond that is that the qualifying language is there, but that there are real rights in the Articles 10, 11 and 14. These rights should not be suffocated, and they have not been I think in practice, certainly not in the practice of the Advisory Committee. It is important to pay very close attention to the language of some of the qualifiers, they are not all equal and some may be less restrictive than others.

One can see other areas in which particular normative developments or thematic or general recommendations could be made by the Advisory Committee. We had interesting discussions yesterday on the notion of demand: what is a demand, is it a purely passive issue, something the State must wait for, or is it something to be actively stimulated? If we ask the right questions, will there be a demand for minority education, whereas if we ask other questions, 'demand' will not be as evident? Access was another point, as in connection with media with the distinction the Rapporteur made between passive access and active access. Adequate representation would be another issue. I think this suggests perhaps in all that the article-by-article approach may have worked to some extent, but the text needs to be read as a whole in the light of other norms, and in the light of the aims and objectives of the enterprise that is the Framework Convention.

If I may make a general point, it is very important that as many terms as possible within the Framework Convention be given an active meaning. Inaction by State authorities is

not an adequate response to minority rights in general, nor indeed is passivity on the part of minority groups.

Interpretative complexities suggest strongly that one idea that has come up repeatedly, with all due caution, would be the thematic approach towards perhaps a general comment or general recommendation on specific aspects of the Framework Convention as they trouble those who interpret it, and those who have to respond to the calls of the Advisory Committee, and other bodies, to submit their reports and explain their legislation. I noted Professor Hofmann's caution yesterday, but also his broad endorsement of the idea of the thematic approach, and as the Framework Convention moves to a new cycle of implementation, a solidification of some issues which come up repeatedly in the dialogues would be appropriate. Apart from any clarifying function of general comments, the guidance function is highly relevant, and the summarising function, to get a clear sense of what the Advisory Committee looks for. At present, there is an increasing amount of documentation, a growing accumulation of reports, which could be subsumed on particular points into concise comments, which would help the Advisory Committee, Governments, NGOs and members of communities as well as buttress the position of the Advisory Committee and the Convention as a key point of reference.

Those points are essentially on discourse, and I would like to briefly comment on the mechanism. Many NGOs and other interlocutors express satisfaction with country visits, and indeed they are a very characteristic and enviable part of the methodology of the Advisory Committee, particularly when the visits reach outside capital cities and go into the areas where there are minority communities, an extremely laudable procedure. One is positively impressed by the follow-up seminars; this is something that United Nations bodies have been wrestling with at various levels with varying degrees of success. One would hope that more States would take advantage of the possibility of follow-up seminars. The engagement with NGOs is another very positive aspect, particularly again in association with country visits but also in relation to alternative reports. For someone working in a different system, namely the UN system, the relationship between the Advisory Committee and the Committee of Ministers appears potentially a very delicate one. I am not in a position to comprehend fully what this relationship implies, but sense that it can work if both bodies engage in dialogue and enjoy mutual respect, with the balance, if I may say so, to be tilted in favour of the human rights dimension as it is a human rights instrument, rather than political control. As far as we can judge, the relationship appears to work, and for that we must be grateful.

Mechanisms can always be improved, with increased exchange of experiences and increased dialogue being obvious desiderata. We also heard a great deal about complementarity, integration, cooperation, synergy with other bodies and instruments. These are positives and they ought to be encouraged. Responsibility towards one's own instrument or text need not exclude recourse to others and neither should responsibilities to one's own institutions. As there are many related norms in the field of human rights, there are also related institutions and mechanisms. Co-operation within the Council of Europe is clearly valid, particularly with the institutions of the Language Charter and the ECRI, as indeed if it can be achieved, cooperation with institutions outside the Council of

Europe, notably the OSCE and other organisations. Other actors in the field of minority rights include the Central European Initiative and, of course, the United Nations. Cooperation is easier to idealise than to find real working modalities of cooperation. Similarly to those working on the UN Committees, which are constantly being encouraged to cooperate with others, it is indeed a matter of finding ways and means to actually do this. But it is important to produce consistency of implementation and consistencies of discourse.

I have not too much time to comment on the workshop areas, which I enjoyed greatly, except to note the flagging up of the issue of economic exclusion in the participation workshop. Also to note in the case of media that freedom of expression is a human right, but it is not unlimited, and one has to be extremely careful in assessing its limitations and possibilities in the field of racial and ethnic relations. Education, as always, is caught delicately between integration and assimilation, and we should not forget that education has been a great engine of assimilation.

Two issues seem to come to the surface a great deal, throughout the workshops- the Roma and economic exclusion generally. We have a similar experience on the United Nations Committee on Racial Discrimination, where we have found that lack of full enjoyment of economic and social rights, health, education, housing, and problems of ghettoisation and poor life expectancy, hit minorities hard and this is particularly true of some vulnerable groups, such as the Roma. It may be that in the life of a treaty or a declaration, a particularly pressing issue emerges which may not be adequately covered by general norms, and may suggest the emergence of a specific instrument. I make no proposal on that, but a similar process may occur within the life of the Framework Convention.

Issues that were not covered in depth include the important matter of religious minorities which we briefly touched on this morning. Language as an issue was not as such one of the focal points. Also, we might have said more on the area of non-discrimination.

To wind up with a couple of remarks, we have seen great movement in key areas of work, so we need not be too pessimistic, although there is much to be done. Specifically, there are still States that have not signed, nor ratified, the Framework Convention, which is a situation that needs attention. The instrument seems to be, as many of you have stated, under-resourced and, especially in view of the many functions suggested for it, it really needs appropriate, solid and consistent funding. The other point that has arisen is that no body, including a government, can do its job properly without appropriate disaggregated data, whatever the difficulties in obtaining such data. This is something that may require a seminar in itself, in view of arguments about issues as privacy. It should be noted that there are indirect ways of collecting data, if the ethnic question is not regarded as an appropriate question to put directly to populations.

It should be said that, although the Framework Convention is focused on minority rights, it should not be exclusive and inward-looking. We need to be aware of the sensitivities of majority populations, that they too may feel threatened and vulnerable. Minority rights

are not a recipe for exclusiveness but ideally for a sharing of concerns based on a shared humanity and the vulnerability of all.

I wish to end with a brief note on law and patience. We are urged to change the world, and we need to keep a sense of indignation when we see injustice and unfairness. But rooting these sentiments, or rooting this culture of human rights, may take a long time. We should not, I think we cannot, superimpose standards on unwilling populations, on uninformed populations, and expect instant excellent results, as if we were pouring water on instant coffee. What is needed is a growth from below, civil society in dialogue with international bodies and national bodies, so that human rights and minority rights are in the ownership of the people, of all the people. There are no instant solutions, but we can be patient, professional and relentless, and address problems as they arise and before they arise, before the genie escapes from the bottle. The Framework Convention, as it says, provides a frame. Its success is not just the responsibility of governments, the Advisory Committee, the Committee of Ministers or the NGOs, but of all of us.

Reference was made this morning to the Universal Declaration of Human Rights. In its drafting process, the name was changed from International Declaration to Universal Declaration, so that we shifted the attention from the authors of the instrument to the readers of the instrument, towards, if you like, a culture of human rights. We may aspire, I think, to a similar shift in relation to the Framework Convention. While this instrument is in its early days, it can provide us with a common lexicon of rights, the property of all peoples in Europe, and act as an inspiration for all those outside.