



**CONFERENCE:
ENHANCING THE IMPACT OF
THE FRAMEWORK CONVENTION**

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**The use of the Framework Convention for the Protection
of National Minorities by the Organization for Security and
Co-operation in Europe and the United Nations**
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The views expressed are those of the author only

I. INTRODUCTION

Article 1 of the Framework Convention for the Protection of National Minorities (FCNM) acknowledges that “[t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation”. These fundamental principles embodied within the first Article of the Convention provide elementary points of departure for implementation of the protection of national minorities within the context of international law. They confirm that the interference into a sovereign state’s internal affairs is possible when the government is committing human rights violations against its population, including violations of the rights of persons belonging to national minorities. Importantly, it formally recognizes and affirms that minority protection is within a scope of *international co-operation* thus providing a clear mandate for a co-operative approach in protecting ethnic minorities, including through bilateral and multilateral mechanisms and political action dedicated to implementation of minority rights.

This Report explores how this international co-operation advanced in the context of the adoption and application of a specific legally binding treaty on protection of national minorities, *the Framework Convention for the Protection of National Minorities*. More specifically, it focuses on how minority rights safeguards within the FCNM and the work of the FCNM’s monitoring bodies influenced activities of other international organizations and institutions active in the field. The report further examines procedural aspects of the co-operation in advancing the application of the FCNM between the relevant actors, inter alia the United Nations (UN) and the Organization for Security and Co-operation in Europe (OSCE) and looks into mutual impact of thematic work of the ACFC and the UN and the OSCE bodies and mechanisms.

Given that the report has been prepared as a background document for the FCNM Impact-assessment conference specific points for discussion, highlighting possibilities for future co-operation in promoting application of the FCNM, including strategies enhancing the impact of the FCNM, are included in the report.

II. STANDARD-SETTING AND COMPLEMENTARITY OF MANDATES

1. The FCNM and mutual influence in development of minority rights instruments

The FCNM was the first comprehensive legally binding multilateral treaty addressing protection of national minorities. As stated in Article 1, the protection embodied within the Framework Convention is to be considered an integral part of the international protection of human rights and a subject to international co-operation. From this perspective the FCNM is an important part of the international body of human rights treaties with all relevant consequences, such as being a key source of law in the field of the minority rights protection and conversely other international human rights standards impacting interpretation of the FCNM.

The evidence of substantive and historical connectedness of the FCNM with other international minority rights standards can be glimpsed from the drafting process of the Convention. The Ad Hoc Committee for Protection of National Minorities (CAHMIN) during the drafting closely considered and has build upon the newly adopted minority rights documents in Europe, in particular the minority rights standards of the OSCE. In this respect, the standard-setting of the FCNM shall be seen as a part of a revival of the international efforts to guarantee minority rights protection. The UN Commission on Human Rights significantly stepped up its work in developing a global standard of treating minorities and submitted to *the UN General Assembly the Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities* (the Declaration on the Rights of Minorities) for adoption by the Assembly in 1992¹. With the changes in 1989 and 1990, the situation of ethnic minorities in Eastern Europe and the former Soviet Union became the major focus of European international relations and resulted in progressive standard-setting undertaken by the Organization for Security and Cooperation in Europe. The OSCE as a mean of curtailing the national minority conflicts formulated political commitments codifying the conduct of participating states towards their national minorities. *The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (Copenhagen Document)² was the first far-reaching standard-setting text, with ten paragraphs among the other human rights commitments dedicated specifically to protection and promotion of the rights of persons belonging to national minorities; later followed by other OSCE documents such as the 1990 Charter of Paris for a New Europe, the 1991 Geneva Report on National Minorities, the 1991 Moscow Document, 1992 Helsinki Document and 1994 Budapest Document that formed basis of the OSCE activities dedicated to protection of national minorities.

The emergence of the FCNM is directly linked to a recognition by states, expressed through the OSCE political undertakings, that protection of and respect for national minorities contributes to stability and peace within Europe. The Vienna Summit of Heads of States and Governments of the Council of Europe in 1993 decided to transform, to the greatest possible extent, these political commitments of the OSCE into legal obligations. In this connection CAHMIN was established in 1993 with a mandate to draft a convention on the protection of national minorities. The commitments of the Copenhagen Document especially, as well as commitments concerning the protection of minorities in United Nations conventions provided guidance for drafting the FCNM provisions. This has been reflected in the Preamble³ and the Explanatory Report to the Framework Convention which directly links its articles to particular paragraphs of the Copenhagen Document.⁴ By incorporating the normative content of legal and political commitments adopted within the UN and OSCE systems, the Framework Convention

¹ UN Commission on Human Rights, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Final Report of the Commission's Working Group, UNGA Res. 47/135(1992), UN Doc. E/CN.4/1992/48.

² Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, adopted in Copenhagen on 29 June 1990.

³ The FCNM Preamble states: "Having regard to the Commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document.", para. 11.

⁴ See FCNM, Explanatory Report, paras. 26, 27, 32, 50, 54, 84.

strengthens their international implementation, as well as enhances its invocation of its obligations by the UN and OSCE.

2. Complementarity of mandates of the FCNM monitoring bodies and the relevant international actors

a. United Nations

The legroom for implementation and application of the FCNM by relevant international bodies and institutions, as well as the character of their cooperation, is largely subject to competencies entrusted by states to these bodies, as well as the ways these actors realize objectives of their mandates. Another aspect playing a key role concerning proximity of co-operation is a territorial scope of activities of the relevant international actors. Understandably, more intensive and close co-operation has been developed between the European regional players in comparison with co-operation on a global plane. Additional aspect affecting mutual cooperation is the complex and multifaceted system of activities addressing protection of persons belonging to minorities within the UN system. Minority issues are monitored under the majority of the UN treaty bodies. Most important in this respect is the Human Rights Committee (CCPR) tasked with monitoring of Article 27 on protection of minorities of the International Covenant on Civil and Political Rights (ICCPR). However, the protection of minorities is considered also within the monitoring process of the [Committee on Economic, Social and Cultural Rights \(CESCR\)](#), [Committee on the Elimination of Racial Discrimination \(CERD\)](#), [Committee on the Elimination of Discrimination Against Women \(CEDAW\)](#), [Committee on the Rights of the Child \(CRC\)](#). As the FCNM obligations often complement implementation of the commitments under the specific treaties, the treaty bodies during the monitoring process increasingly encourage states to ratify the FCNM or fulfill its obligations. In addition, the issues concerning protection of minorities are also addressed through the UN thematic special procedures, inter alia work of the Special Rapporteur on the right to [education](#), the Special Rapporteur on [freedom of religion or belief](#) and the Special Rapporteur on contemporary forms of [racism](#), racial discrimination, xenophobia and related intolerance.

However, the mandate exclusively dedicated to the protection of national minorities was represented by the UN Working Group on Minorities (WG). The WG had been set up as a subsidiary organ of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to promote the implementation of the Declaration on the Rights of Minorities and acted mainly as a forum for dialogue and exchange of ideas and information on constructive group accommodation.⁵ Relevant to implementation and application of the FCNM was the Working Group's effort in raising greater awareness on differing perspective on minority issues and on constructive solutions to problems involving minorities, including establishing effective domestic framework of the protection and accommodation of national minorities. In this respect, the UN issued the Guide for Minorities, a series of informational pamphlets used

⁵ The Working Group on Minorities was established in 1995 pursuant to Economic and Social Council Res. 1995/31 of 25 July 1995; its work was discontinued in 2006 with the a view of the Human Rights Council taking decision on the future mechanism on minority issues. The new mandate of UN Forum on Minority Issues has been set up by resolution 6/15 of 28 September 2007. See also the final report of the Working Group on Minorities A/HCR/Sub.1/58/19 of 24 August 2006.

also in its training fellowship programmes, with a specific pamphlet dedicated to the FCNM. In comparison with the regular monitoring activities of the ACFC and the CoE Committee of Ministers (CM) based on the structured reporting procedures reviewing implementation of the legally binding treaty obligations, the system of implementation of the Declaration was in essence based on self-monitoring of its realization by the States and initiatives of non-governmental organizations contributing to the Working Group's discussions on promoting the implementation.

The reform of the United Nations bodies and establishment of new mandates addressing the situation of minorities brought a new dynamic to interaction and co-operation with the monitoring bodies of the FCNM. In particular the establishment of a special procedures mandate of the UN Independent Expert on minority issues (IE) under the UN Commission on Human Rights in 2005⁶ impacted their mutual relations. The mandate of the IE is relatively broad, with focus on the protection activities, promotion of the implementation of the Declaration and technical cooperation through country visits and consultations with Governments as preventive measures addressing causes of grievances concerning minorities. Significantly, the Independent Expert's task is to promote the implementation of the Declaration on the Rights of Minorities also through consultations with the Governments, taking into account existing international standards and national legislation concerning minorities.⁷ Although, there is no formal procedure comparable to the monitoring of implementation of the FCNM, the competencies delegated to the IE break a new ground with respect to proactive approach in monitoring of the application of the Declaration on the Rights Minorities by states. Notably with her work concerning the country focus. In this respect, the IE could communicate upon her initiative with states, where appropriate, enter into further consultations and visit a country upon an invitation of a Government and issue a report with recommendations to the UN Human Rights Council. Importantly from the perspective of application of the FCNM and complementarity of the mandates, in reviewing the situation of national minorities and implementation of the safeguards expressed in the UN Declaration on the Rights of Minorities the IE takes into consideration existing international standards, including observance of the fulfillment of obligations ensuing from the FCNM where relevant. In this respect, the IE is expressly mandated to cooperate closely, while avoiding duplication, with existing relevant United Nations bodies, mandates, mechanisms as well as regional organizations. In comparison with the role and function played by the FCNM the mandate of the IE delegates more specific competence in the area of conflict prevention, allowing the Independent Expert to enter upon her initiative into consultations with a particular state in addressing specific grievances and upon an invitation conduct a country visit. With respect to monitoring of implementation of minority rights there exists a comparative advantage related to the mandate of the IE which lies in the nature of the UN Declaration on the Rights of Minorities. It represents a universal standard adopted by the General Assembly that the member states have voluntarily agreed to uphold and implement. In this respect, the treaty monitoring system under the FCNM is restrained by non-ratification of the FCNM by states. This fact has played an important role in strengthening complementarity of the mandates of the IE and the monitoring mechanism under FCNM. As will be shown later, in selecting specific countries to monitor the realization of the UN Declaration on the Rights of Minorities and in

⁶ See the UN Commission on Human Rights Res. 205/79.

⁷ See the UN Human Rights Council Res. A/HRC/RES/7/6 of 27 March 2008.

entering into dialogue with the particular Governments the IE focused mainly on the European countries that have not ratified the FCNM.

A new opportunity for co-operation in the monitoring activities concerning protection of minorities represents the newly established UN mechanism of the Universal Periodic Review (UPR).⁸ The Human Rights Council undertakes a universal periodic review of the fulfillment by each State of its human rights obligations and commitments. The review shall be based on universal coverage and equal treatment with respect to all states and shall be conducted in co-operation and dialogue with a concerned country. One of the sources of the information for the review mechanism is the summary prepared by the OHCHR based on the information given by the relevant stakeholders, including regional organizations. It will be important with respect to modalities of the review to encourage that a proper attention is given to situation of minorities within a particular country and include the relevant information based on the ACFC monitoring process.

From the perspective of complementarity of thematic work, the new mandate of UN Forum on Minority Issues replacing the WG on Minorities by the Human Rights Council resolution 6/15 of 28 September 2007 should be noted. The Forum is an expert mechanism open to participation of member states, UN bodies, institutions and mechanisms, intergovernmental and non-governmental organizations and various experts acting as a platform for dialogue and cooperation on thematic issues pertaining to national or ethnic, religious and linguistic minorities. In particular, its objective is to bring thematic expertise to the mandate of the Independent Expert who will guide the work of the Forum. Similarly to the thematic commentaries of the ACFC, the Forum shall provide thematic observations and recommendations on a chosen thematic issue to the UN Independent Expert who will then present a report addressing the specific thematic field to the Human Rights Council.

b. Organization for Security and Cooperation in Europe

With respect to complementarity of work in the field of minority protection, the territorial scope of activities gives more prominent role to regional actors addressing minority situations in Europe, in particular the institutions and mechanisms developed within the OSCE context. The approach to minority issues by both organizations, the OSCE and the CoE, is founded in the common belief rooted in the historical experience of member states that political and social stability of states is directly linked to promotion and protection of the rights of national minorities. In this respect, both organizations have been actively engaged in an attempt to stabilize majority and minority situations. While the OSCE aimed at preventing such developments by means of diplomacy and political pressure, represented by activities of the OSCE High Commissioner on National Minorities (HCNM), the CoE given its long standing tradition of initiating negotiations and drafting legally binding instruments with a judicial enforcement mechanism has chosen a different approach and adopted a comprehensive legally binding instrument on protection of national minorities with a specific monitoring mechanism. Although the OSCE has its own monitoring activities concerning promotion and protection of the rights of persons belonging to national minorities, in particular through the annual implementation review meetings wherein participating states collectively examine how the

⁸ See the UN General Assembly Res. 60/251 of 15 March 2006 and the UN Human Rights Council Res. A/HRC/RES/5/1 of 18 June 2007.

political commitments of the OSCE human dimension, including those on national minorities, were being implemented, its key instrument dealing with minority situations in the OSCE region, the High Commissioner on National Minorities, is a mechanism belonging to the security dimension of the Organization. HCNM's mandate has been established to provide an early warning and early action with regard to tensions involving national minority issues that had the potential to develop into conflict situations.⁹

In comparison with the CoE instrument dedicated to the development of the comprehensive domestic system of the protection of national minorities through implementation of the international treaty with its soft enforcement mechanism through reporting and monitoring procedures, the HCNM's goal is to provide primarily by political engagement advice and external mediation to help to prevent and resolve national minority/majority conflicts at the earliest possible stage before they began to present any threat to international security. From the perspective of an impact and application of the FCNM, it is important to appreciate the approach adopted by the HCNM in carrying out and implementing objectives of its mandate. In involving himself in a specific country situation, political negotiations or in providing advice and recommendations to the Governments to fulfill his early action mandate, the HCNM grounded himself in international standards, often arguing that these standards have been voluntarily accepted by the parties. This approach has been very pragmatic. It ensured that he can not be accused of arbitrariness in assessing and dealing with diverse situations when asking states to adhere to a minimum standard of behavior and at the same time the specific provisions governing the protection of national minorities provided an inspiration for possible solutions to specific tensions and grievances.

The HCNM in his work greatly used existing international norms, including the CoE FCNM and the European Charter for Regional or Minority Languages. However, the HCNM has not been formed by the OSCE as an enforcement mechanism for implementation of minority rights but in carrying out his conflict prevention mandate he often assisted states in fully appreciating and understanding the extent of their commitments contained in these norms. He often played complementary role to many treaty body or monitoring mechanisms in this function of a normative intermediary.¹⁰ This particular role proved a significant contribution to application of the FCNM, in particular with respect to interpretation of the Framework Convention's obligations by the states, as well as their incorporation into domestic context of the state parties. In general in his dialogue with the governments and in issuing his recommendations the HCNM used the international standards in number of ways: 1) The HCNM invoked and interpreted the international standards especially when the parties tried to misinterpret the norms or ignore their commitments. In this respect, he has often offered solutions in which the parties acknowledged duties to follow conduct encouraged by the international norms or conversely discouraged behavior inconsistent with the FCNM. In this respect, the HCNM assumed a monitoring and enforcement function with regard to fulfillment of the FCNM obligations; 2) Understanding the importance of effective protection of minority rights to political stability of states, the HCNM has encouraged governments to adopt a comprehensive

⁹ For the mandate of the HCNM see the CSCE Helsinki Document "The Challenges of Change", 3rd CSCE Summit of Heads of State or Government, Helsinki, 1992.

¹⁰ See Steve Ratner, 'Does International Law Matter in Preventing Ethnic Conflict?', New York University Journal of International Law and Politics, Vol.32, No. 3, Spring 2000, p. 668.

system of protection of minority rights through acceptance of the international system of protection of minorities, inter alia, through ratification of the FCNM; 3) Given the particular character of the international minority rights standards and the FCNM, the HCNM often provided expertise to states, assisting them to substantiate the content of their undertakings within their domestic context. Frequently, the HCNM provided states with technical co-operation in drafting domestic legislation concerning protection of persons belonging to national minorities or other relevant laws. In this respect, in comparison with the ACFC the HCNM was in a unique position and used his mandate in a complementary way to benefit the implementation of the FCNM. It would have been difficult for the FCNM bodies to provide such advice and assistance, given that their principal task is reviewing fulfillment of the FCNM undertakings by domestic measures, in particular legal and institutional arrangements. However, it should be noted that the HCNM has not acted in a vacuum and in carrying out these activities closely co-operated with the CoE bodies and mechanisms, in particular the FCNM's Secretariat. The nature as well as the details of this co-operation are discussed in Part 3 of this Report.

Although the HCNM has played an instrumental role concerning realization of minority rights within the OSCE, the primary mandate in implementing the OSCE political commitments regarding protection of national minorities falls to the human dimension mechanisms. In particular, the OSCE Human Dimension Implementation Meetings held annually to review the implementation of the human dimension commitments by participating states play a key role in monitoring activities of the OSCE. During those meetings organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) the Governments through self-monitoring activities examine fulfillment of the minority rights standards set in the OSCE documents. Implementation of the FCNM legal obligations is regularly raised by states and participating non-governmental actors, including calls to ratify the FCNM by those OSCE states that have signed but have not ratified the Convention. From the point of view of complementarity of monitoring activities, it should be noted that the implementation meetings are an important forum for reviewing a situation concerning protection of minorities within the European region, in particular in states that have not ratified the FCNM but accepted the political commitments of the OSCE. Another important mechanism placed within the ODIHR is the Contact Point for Roma and Sinti Issues (CPRSI), a mechanism established to promote specifically the protection of Roma communities which is also used for gathering information and monitoring the situation of these communities within the OSCE region.

Importantly from the perspective of the implementation of the FCNM undertakings in state parties, a valuable role played the OSCE field operations, in particular the OSCE long term missions through their assistance to states in promoting democratization, rule of law and human rights. In comparison with the CoE relatively limited field operations, the OSCE long term field presence represents a comparative advantage in treating minority issues within domestic context of the European countries and regarding a level of engagement in addressing specific minority issues. A large part of the OSCE field activities is dedicated to re-instating democratic institutions, monitoring human rights and addressing grievances of national minorities. Many OSCE field missions have engaged in close and regular assistance to country authorities in capacity-building and in establishing effective arrangements for the protection of minority communities living within the OSCE states.

III. INTERNATIONAL CO-OPERATION

The co-operation concerning the use of the FCNM by international actors could be seen from two perspectives: a) procedural aspects of interaction between international actors and; b) substantive aspects of such co-operation.

The content of the mutual interaction could be summed up into the three main areas:

- promoting international minority rights standards, inter alia through broad application of the FCNM;
- addressing protection of minorities through international monitoring and implementation of domestic measures for protection of national minorities;
- standard-setting and interpretation of norms through thematic work concerning protection of national minorities.

a. Procedural aspects of co-operation

i. Ad hoc meetings and informal contacts and consultations

The UN and the CoE co-operation with respect to application and implementation of the FCNM is essentially limited to regular contacts and exchange of information with the office of the UN Independent Expert on minority issues, in particular before country visits of the IE or the ACFC. The State Reports and the ACFC Opinions, as well as informal consultations with the Secretariat of the FCNM, proved an important source of information for preparation of the first European country visit of the UN Independent Expert Ms. Gay McDougall to Hungary in June 2006. By the same token, the FCNM Secretariat has established a close regular co-operation with the Office of the High Commissioner for Human Rights (OHCHR) and United Nations High Commissioner for Refugees (UNHCR), in particular with their field offices in states under the ACFC consideration. The ACFC during its country visits usually meets with their staff using their field knowledge as a source of information, as well as sharing their own observations concerning the situation of minorities on the ground. These meetings have proven to be extremely useful in terms of information gathering for the ACFC Opinions, as well as assisting the members of the ACFC missions to understand the political and social environment of the visited countries. Important role has been played by the Independent Expert in the effort to promote implementation of the FCNM. In 2007 the Independent Expert conducted a country visit to France and in 2008 she went to Greece. Significantly, she has focused on these two countries partly because they are not parties to the FCNM and she saw this as a good opportunity to complement the work of the CoE and their limited opportunities for monitoring under the FCNM. In both cases in her reports, as well as during her discussions she encouraged the Governments to ratify and/or sign the FCNM. Also the OHCHR has been promoting broad application of the Framework Convention through its training fellowship programmes. Moreover, regular participation has been established with respect to meetings and specific seminars organized by both organizations where the CoE or the UN officials participated as resource persons, in particular in the meetings of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

From the beginning of the FCNM standard-setting through establishment of the FCNM's monitoring mechanism and the subsequent implementation there existed a close informal co-operation of the CoE bodies with the OSCE mechanisms and institutions dealing with the protection of minorities. The experience of the first HCNM regarding his engagement in country situations, his methods of conducting country visits and consultations have been a great inspiration for developing the mandates and working methods of the FCNM monitoring bodies. The HCNM office provided a substantial input into drafting process of the ACFC mandate, trying to secure the utmost effectiveness of the application of the new legal instrument on protection of national minorities and to ensure that the developing system of monitoring will be efficient in enforcement of the undertakings, in particular through on-site visits.

A close interaction has been developed between the HCNM and the minority section of the Directorate of Human Rights (later on transformed into the Secretariat of the FCNM). In his discussions with the various involved parties and in trying to offer solutions to particular issues concerning language, education policy or citizenship inter alia in Baltics and in Central European countries, the HCNM has frequently invoked the FCNM. Even before the FCNM entered into force, the HCNM invoked the FCNM in countries who have signed the Convention, stressing that they expressed their voluntary will to be bound by the undertakings contained in this treaty and as a minimum can not act against the spirit and the purpose of the Convention. In this respect, the HCNM acted as an important standard-bearer regarding implementation of the obligations under the FCNM. From the perspective of enforcement of the FCNM undertakings, acting as the first European institution with rapidly developing expertise in the field and detailed country knowledge, the HCNM acted as "a gate-keeper" regarding the entry criteria of the East and Central European states to the European Union and NATO. His assessment on the compliance with and fulfillment of the international obligations on the protection of minorities, including those obligations under the FCNM, has been often a key in deciding whether a country fulfilled the entry criteria. In this respect, a joint strategy and initial informal tripartite consultations and meetings with regard to particular country situations had taken place between the HCNM staff, Minorities Section of the Directorate of Human Rights and various offices of the European Commission. For instance, this informal co-operation has resulted in re-drafting of the Slovak State Language Law, ensuring that the domestic legislation adheres to the minimum international minority rights standards. It should be noted that this informal consultations and co-operation between the CoE and the OSCE in addressing various minority issues and situations in European countries have been pursued on two levels: 1) the high political engagement, in particular consultations between the HCNM and the CoE Commissioner for Human Rights on issuing recommendations and statements assessing the compliance with the international standards concerning the protection of country's minorities; and 2) the working level, where consultations have taken place between the staff of the relevant CoE offices and the HCNM staff, in particular the HCNM's legal advisers. Their co-operation focused on developing common positions on the interpretation and application of particular international standards and compliance of domestic legislation and practice with these standards. With increasing activities of the HCNM and beginning of the first FCNM monitoring cycle, the number of issues of joint interest have risen and the frequent informal contacts have been replaced by regular meetings with a comprehensive agenda reviewing the joint interests and focusing on developing positions or strategy in approaching

specific country situation or in interpreting minority rights standard or policy. Moreover, the staff of both organizations acting as resource persons has been often invited to the meetings of the CoE bodies or reciprocally to the HCNM's or ODIHR's consultations and meetings focused on developing thematic recommendations concerning interpretation and application of the minority rights standards or domestic legislation under review.

With respect to promotion and application of the FCNM, the HCNM has been acutely aware of the importance of implementation of legal and institutional measures rooted in the comprehensive framework of protection contained in the FCNM to internal stability of countries. In this respect, the HCNM encouraged States who have signed the FCNM to proceed with its ratification. In particular in 2003 the HCNM upon invitation of the Latvian Government seeking advice regarding ratification of the Convention entered into consultations on the possible ways of incorporating the FCNM standards within the context of a particular situation of their country seeking to reverse the poor linguistic situation of the majority and at the same time to ensure protection of its large Russian minority. Similar role has been now played by the HCNM with respect to ratification of the Convention by Georgia.¹¹ Significantly, the HCNM played an extensive role in assisting states in their effort to incorporate the FCNM obligations in their domestic context and provided them with support and advice in developing their national legal framework for the protection of national minorities, inter alia providing legal advice in drafting the constitutional guarantees and laws on the rights of national minorities across the Balkan region. In all his activities the HCNM held close exchanges with the members of the ACFC and the Secretariat to the ACFC, as well as other engaged CoE bodies such as the European Commission for Democracy through Law (the Venice Commission). The ACFC with respect to its monitoring activities also consults and exchanges information on the situation of minorities with the OSCE field missions, in particular in preparing for the country visits. In addition, the OSCE Mission to Kosovo facilitated the visit of the ACFC in October 2005, which has resulted in the adoption of the Opinion of the Advisory Committee in October 2006.¹²

ii. Formal inter-agency co-operation

Since 2004 principal progress has been made in creating the formal channels of co-operation between the CoE and the OSCE initiated within the Programme “*Enhanced Cooperation OSCE – Council of Europe*”. As a result the CoE/OSCE Co-ordination Group was set up in December 2004 to reinforce their cooperation in four priority areas, including the one related to the protection of national minorities.¹³ The Co-ordination Group meets on six-month basis and regular joint reports on the OSCE/CoE co-operation are produced in relation to the meetings. In 2007 focal points from both organizations were appointed to coordinate the work of this group dedicated to the area of minority protection. On behalf of the OSCE the HCNM was

¹¹ Joint Report on co-operation in the field of the protection of the rights of persons belonging to national minorities, 6th Meeting of Co-ordination Group between the Council of Europe and the OSCE (Vienna, 6 March 2006), GR-EXT (2006)4revised, 24 February 2006, para.6.

¹² Joint Report on co-operation in the field of the protection of the rights of persons belonging to national minorities, 6th Meeting of Co-ordination Group between the Council of Europe and the OSCE (Vienna, 6 March 2006), GR-EXT (2006)4revised, 24 February 2006, para. 4.

¹³ See *the Declaration on Cooperation between the Council of Europe and the Organization for Security and Cooperation in Europe*, GR-OSCE (2005)4 addendum 21 March 2005, PC.DEC/670, 28 April 2005.

appointed as the focal point and on the side of the CoE the Chairperson of the Group of Rapporteurs on Human Rights of the Committee of Ministers (GR-H) assumed this role. As a result of creating the formal mechanism for a close inter-agency co-operation, the mutual interaction between two organizations has been gradually enhanced. The co-ordination group provides a forum for a regular review of the activities in the respective areas of common interest. Importantly, however, more advanced co-operation has been developed with respect to joint projects. Relevant to the FCNM is a joint initiative to promote the international minority rights standards through publication of the reference book to the CoE and OSCE legal standards and political commitments '*National Minority Standards. A Compilation of OSCE and Council of Europe Texts*'.¹⁴ In November 2005, the HCNM began regular consultations through participation in the plenary session of the ACFC discussing the ways of the future co-operation and country-specific issues.¹⁵ With regard to specific country-situations, besides the regular exchanges between the ACFC and the HCNM on specific minority issues, both the CoE and the HCNM participated as observers in the monitoring missions organized with the framework the Treaty of Co-operation and Good Neighbourliness between Romania and Ukraine. Nevertheless, one of the main ways of interaction and mutual exchanges between the HCNM and the CoE remain the regular consultations on country-specific issues, in particular within the context of the monitoring activities of the ACFC¹⁶ and mutual participation in development of the thematic commentaries and recommendations. Moreover, the President of the Advisory Committee also participated in the Supplementary Human Dimension Meeting on Sustainable Policies for Roma and Sinti Integration organized by OSCE/ODIHR sharing experience of the ACFC on the participation of persons belonging to the Roma and Sinti communities in social and economic life and in education.

b. Co-operation on ACFC's Commentaries and thematic work

i. Education

The ACFC from the beginning of its monitoring work intended to set up analytical research of the state practice and its Opinions along thematic issues. After the 5th Anniversary Conference of the Entry into Force of the Framework Convention in October 2003, the ACFC decided to produce analytical overview of its findings in three specific fields: participation, education and media.¹⁷ Its first thematic analysis of their experience has focused on education. In this process, it should be said that co-operation between the OSCE and the CoE in developing the first thematic commentary provided a platform for joint reflection on minority standards.¹⁸ In March 2006 at its 25th session the ACFC adopted *the Commentary on Education under the*

¹⁴ *National Minority Standards. A Compilation of OSCE and Council of Europe Texts*, Strasbourg, 2007.

¹⁵ Joint Report on co-operation in the field of the protection of the rights of persons belonging to national minorities, 6th Meeting of Co-ordination Group between the Council of Europe and the OSCE (Vienna, 6 March 2006), GR-EXT (2006)4 revised, 24 February 2006, para. 5.

¹⁶ Recent example includes the participation of the HCNM representative in an Information Meeting on the Implementation of the Framework Convention for the Protection of National Minorities organized by the Secretariat of the ACFC (Montenegro, Podgorica, 20 March 2007).

¹⁷ ACFC Meeting Report, ACFC/MR/INF(2004)001, Item 10, paras. 23-24.

¹⁸ The High Commissioner on National Minorities took part with his advisers in the Council of Europe Seminar on 18 October 2006 in Strasbourg, which was focused on the 'International Legal Guarantees for the Protection of National Minorities and Problems in their Implementation, with a Special Focus on Minority Education'.

Framework Convention for the Protection of National Minorities. The Commentary represents up-to-date one of the most comprehensive summary of the state practice and interpretation of the international standards, with the main focus on the FCNM.¹⁹ The FCNM with its Articles 12-14 which are directly dedicated to the subject and other provisions such as Article 4 guaranteeing equal access to education and Article 6 highlighting the role of education in promoting a spirit of tolerance and intercultural dialogue embodies the most detailed and systematic international standard of education rights of national minorities. As such the provisions of the FCNM served as one of the primary sources of law for development of *the OSCE Hague Recommendations Regarding the Education Rights of National Minorities*. The OSCE High Commissioner on National Minorities in addressing the substance of tensions frequently encountered issues related to education, in particular minority language education. This has resulted in the effort of the HCNM to clarify the content of minority education rights and long before the FCNM entered into force the above mentioned provisions had been used as normative source for producing recommendations in a specific area of minority language education.

At the time the Hague Recommendations represented the first detailed attempt to provide guidance to states to address the complex issue of minority language education through different stages of education. The recommendations were based on international standards and educational research by international experts trying to balance on one hand, the maintenance and development of culture and linguistic identity of persons belonging to national minorities and, on the other hand, ensure their integration and participation in the society. They advocate attainment of the multilingualism as the most efficient way of achieving the above mentioned aims. The approach is to strengthen the weaker minority mother tongue by using it as the medium for teaching in early years of education with gradual increase of teaching of and in the official language or languages through the schooling system. In contrast the Commentary does not advocate specific approaches to linguistic education for minorities, it simply provides systematic summary of the state practice based on the State Reports and the observations and experience of the ACFC in the monitoring process. In this respect, the ACFC's Commentary serve as an important source of state practice, offerings states a broad spectrum of solutions in addressing education for national minorities. Its asset is in highlighting the challenges which arise in the field of minority and intercultural education and in showing the state parties choices that they need to consider in developing educational policy and programs for minorities as well as the majority.

The education plays a key role in preservation and transfer of unique culture and identity of national minorities and as such has been at the centre of thematic focus of the UN mechanisms dealing with minority issues. Access to education and minorities has been chosen as a thematic focus of the inaugural session of the newly established UN Forum on Minority Issues to be held in December 2008. The Forum plans to produce a set of thematic action-oriented

¹⁹ The Commentary does not provide only interpretation of the specific provisions guaranteeing rights in education for minorities within the system of the Convention but draws on much larger body of international law sources, such as the universal and regional human rights standards related to right to education and work done by various international actors such as the treaty monitoring bodies of the United Nations, the UN Special Rapporteur on the Right to Education and the OSCE High Commissioner on National Minorities. See ACFC Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, pp. 6-7.

recommendations, which will be presented by the Independent Expert on Minority Issues to the Human Rights Council. In this respect, the ACFC assessment of the state practice summarized in the Commentary, as well as experience of the ACFC in drafting the Commentary, is an important source for the global forum informing the discussion about the challenges, good practices and solutions used in Europe in relation to access to education for minorities.

ii. Participation

Full and effective participation of persons belonging to national minorities represents a core provision of the FCNM. It provides the essential link to integration of minorities within a state, creating mutual loyalty between the majority and minority communities and granting minorities an input in decision-making processes of a state. While there is a clear agreement that full and effective participation of minorities is central to maintenance of their distinct identities, to their feeling being a part of the wider society and to protecting their needs and interests, Article 15 of the FCNM, as well as other international standards do not specify how this participation should be facilitated. This has led to elaboration of thematic recommendations and commentaries on the subject by the Council of Europe and other international organizations. Initially, the ACFC in assessing Article 15 of the FCNM in the State Reports widely used in their monitoring practice *the Lund Recommendations on Effective Participation of National Minorities in Public Life* generated by the HCNM in 1999. They address the participation of minorities in two conceptual fields: participation in decision-making and self-governance. The Lund Recommendations are used by the HCNM “to encourage and facilitate adoption by States of specific measures to alleviate tensions related to national minorities and to serve the ultimate conflict prevention goal of the HCNM”.²⁰ Importantly though, the influence between the OSCE and the ACFC concerning the development and application of the Recommendations has been mutual. Not only that the ACFC in assessing the State Reports used the Recommendations as a menu that systematizes a range of forms of political participation but the Lund Recommendations made an attempt to interpret the scope and content of the international standards in the light of available state practice. The Lund Recommendations attempted to elaborate on the substance of the existing standards on minority participation. In this respect, Article 15 of the FCNM, as well as other relevant Articles of the Convention underlying minority participation, served as an international law source for elaboration of the Recommendations. The Explanatory Note, an integral part of the Lund Recommendations, provides a detailed explanation of each recommendation and gives a reference to the relevant international standards. Article 15 of the FCNM is one of the foundational standards mentioned in the Explanatory Note accompanying the General Principles of the Lund Recommendations, confirming that effective participation of national minorities in public life is an essential component of genuine integration and good governance of the State.²¹ In this context, it should be also noted that the interpretation of the normative content of the effective public participation of minorities has been also addressed in *the Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, which

²⁰ The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Report, OSCE HCNM, September 1999, p. 6.

²¹ The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Report, OSCE HCNM, September 1999, para. 1, p. 7; p. 16.

has also drawn on the Lund Recommendations but addressed briefly other areas, such as participation in social and economic life.²²

Although the Lund Recommendations were one of the first and most successful attempts to elaborate the principle of effective participation of minorities, their main focus is on the participation in public affairs, more specifically on political representation and self-governance. Article 15 of the FCNM defines the scope of participation in more comprehensive way. It calls 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”.²³ The Lund Recommendations pay less attention to participation of persons belonging to national minorities in social and economic life and deal with participation in cultural life in a limited way by references to cultural autonomy.²⁴ In this respect, the second ACFC thematic comment, *the Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs* adopted by the ACFC in February 2008 provides more complete analysis and interpretation of the participation of minorities in various spheres of life as foreseen in Article 15. Most importantly, it pays specific attention to the areas of economic and social participation of minorities. The main contribution of the Commentary is not only the interpretation of obligations of States regarding Article 15 for the purposes of monitoring but an attempt to provide states with key findings concerning effective options for minority participation in all areas of public life. In this respect it is an important guidance for the State Parties to the FCNM but also to other international actors in advancing their minority policies in carrying out their own minority protection related mandates. In this context there was a close co-operation between the HCNM and the ACFC in developing the Commentary²⁵ with the HCNM participating in the drafting sessions and providing the ACFC with comprehensive observations on the Commentary.²⁶

iii. Inter-State Relations

In relation to thematic commentaries and recommendations the recent co-operation of the ACFC on the OSCE thematic issues should be also mentioned. In particular, the ACFC has taken a strong interest in development of the OSCE *Recommendations on National Minorities in Inter-State Relations* adopted in 2008. The Advisory Committee provided substantial comments on the Recommendations and also participated in the consultation meeting held in May 2008 in the Hague. The Recommendations provide guidance on relations between States

²² See UN Doc.E/CN.4/AC.5/2001/2.

²³ Article 15 of the FCNM.

²⁴ The narrow focus of the Lund Recommendations, however, must be seen in the context of other thematic recommendations generated by the OSCE HCNM, which deal with linguistic rights, access to media and education and include suggestions and good practices of minority participation and representation in these areas. See: Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note, OSCE HCNM, February 1998; Guidelines on the use of Minority Languages in the Broadcast Media, OSCE HCNM, October 2003; The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note, OSCE HCNM, October 1996.

²⁵ See the ACFC Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, para. 4 and para. 7.

²⁶ The HCNM provided the ACFC with comprehensive written comments on the Commentary and participated in the consultation meeting on the draft commentary held in Bolzano in October 2007.

concerning national minorities outside their sovereign jurisdiction (the 'kin-State issue'). They also discuss the particular role of States on establishing and maintaining links with minorities abroad, including the question of provision of citizenship and other benefits to such minorities. The above mentioned regular mutual exchanges and participation in the development of thematic work set a very good precedent for co-operation between the ACFC and international actors active in the field.

IV. CONCLUSION

In exploring how the FCNM has been used by international actors one can use two perspectives:

- 1) The application of the FCNM in implementing their own mandates dealing with protection of minorities and addressing situations involving national minorities; and
- 2) The contribution of the international actors, the OSCE and the UN, to promotion of the FCNM as an important international standard and an effective mechanism of treating national minorities.

1. Prior to establishment of the CoE/OSCE Co-ordination Group, there has been little reflection on the structured approach to co-operation in advancing the application of the FCNM. The entire process can be regarded as pragmatic and responsive to the evolving situations concerning either specific countries under focus of the particular international actors or the new developments of specific minority protection mandates, specifically within the UN. The interaction in application and implementation of the FCNM has been initially triggered by the need to develop common positions and policies concerning the minimum standards of treatment of minorities within the process of the EU and NATO enlargement, as well as the need for co-operation in responding to minority/majority conflicts within the European region. Further, the increase in co-operation has been impacted by establishment of the new minority protection related mandates within the UN, in particular the IE, and by development of thematic work of the relevant international institutions and the ACFC.

Evaluating the impact of the FCNM as an integral part of the international protection of human rights, it could be asserted that the Convention has been often used by other international organizations as a normative source for development of their own standards regarding state's conduct towards minorities. In this respect, being the most recent standard on minority rights the FCNM had not played a significant role in norm-setting of the OSCE and the UN. Both organizations developed their own basic texts on minority rights before adoption of the FCNM. However, as the most comprehensive legally binding standard, the FCNM has been a key source for these organizations in interpreting the minimum standard of behaviour when addressing situation of minorities in various countries, as well as in interpreting their own norms related to minority protection. This has been reflected in various thematic and country recommendations and opinions of the OSCE and the UN in the field of minority rights. The use of the FCNM as a regional standard has been also strengthened by its inter-connectedness to the OSCE political commitments, which have served as the initial source of minority rights safeguards for this legally binding treaty.

To sum up, the role of the FCNM within the work of the OSCE and the UN bodies and mechanisms, has been two-fold:

- *In addressing specific country situations, the FCNM provisions have been invoked by these mechanisms and bodies as the minimum standard of behaviour of states towards their minorities.* Most frequently by the OSCE HCNM, who has either persuaded particular states to develop policies and legal arrangements fulfilling the commitments under the FCNM or discouraged them to pursue conduct not consistent with the FCNM obligations. In this respect, the monitoring process of the FCNM, including state reports and the ACFC country opinions served as an important source for interpreting the states' obligations in their particular national context and have been used by the OSCE, inter alia by the HCNM and the ODIHR, as well as the UN treaty monitoring bodies and the UN IE in addressing the conduct of states towards their national minorities.

- *The FCNM comprehensive safeguards and obligations assisted other international actors in substantiating content of minority rights standards and in defining the desired conduct of behaviour in developing their own minority rights related policies.* In particular, the HCNM and the ODIHR developed thematic recommendations and guidelines in various fields of minority protection, such as the education, language, participation and electoral rights of minorities, access to media, multi-ethnic policing and kin-state relations. On the part of the UN, the thematic work of the former WG, in particular the report on participation of minorities and the guidelines on multi-ethnic policing, should be mentioned. In both instances, the FCNM provisions, the state practice under the FCNM and the ACFC opinions, have been used in developing the above mentioned recommendations and guidelines.

2. The second perspective in evaluating the use of the FCNM is represented by the contribution of international actors to promotion of the FCNM as an effective instrument of protection of minorities and to development of efficient functioning of its monitoring mechanism. In this context the international actors have engaged in three main areas of activity:

a) promoting the application and ratification of the FCNM as an effective mechanism in treating national minorities by states;

b) contributing to the ACFC's and the CM's monitoring process regarding fulfillment of the FCNM's obligations by individual states;

c) interpreting FCNM's standards through their contributions to thematic work of the ACFC and other relevant CoE bodies.

Fully understanding the importance of building an effective system of protection of minorities within national states secured by international monitoring system, the HCNM, as well as the UN treaty monitoring bodies and the IE encouraged wide ratification of the FCNM by states. Furthermore, the HCNM pursued discussion on elimination of possible reservations to the FCNM system and acted in number of country situations discouraging state's conduct going against the purpose and spirit of the FCNM.

With respect to monitoring process of the FCNM, regular consultations between the HCNM and the ACFC on country situations have been established. Similar practice has gradually evolved with respect the OSCE field missions and the UN IE. Furthermore, the HCNM participated in internal CoE processes directed at creating effective procedures regarding the monitoring process of the FCNM.

Lastly, international actors have been closely engaged in development of the thematic work of the FCNM and encouraged the CoE to address some important thematic issues concerning implementation of the FCNM. In particular the HCNM has played a very active role in encouraging and supporting the discussion on specific thematic issues concerning procedural, as well as substantive aspects of application of the FCNM. Besides his close co-operation on the ACFC thematic commentaries, the HCNM encouraged the relevant CoE bodies such as the Committee of Experts on Issues relating to the Protection of the National Minorities (DH-MIN), the Sub-Committee on Rights of Minorities of the Parliamentary Assembly of the CoE (PACE) and the Venice Commission to address particular thematic questions such as the personal scope of the application of the FCNM, including the question of citizenship and application of minority rights, electoral rights of minorities, access of minorities to media, national consultative bodies, kin-state relations and integration of new minority communities.

Points for discussion:

- With respect to the UN, the avenues of institutionalizing and enhancing co-operation between the CoE and the UN shall be examined, looking into a possibility of establishing regular exchanges between the ACFC and the FCNM Secretariat with the UN treaty bodies, the Human Rights Council, the IE and the Forum on Minority Issues. The discussion should focus on establishing channels of mutual interaction and on strategies and effective methods for promotion and application of the FCNM by these instruments and mechanisms in the spheres mentioned below.

- The new Programme of Enhanced Cooperation between the OSCE and the Council of Europe and establishment of the CoE/OSCE Co-ordination Group and focal points represent a new stage in developing formal channels of co-operation and provide a new platform for more structured and directed effort in promoting the application of the FCNM. In this respect, the meeting could focus on creating structured discussion regarding interaction between the OSCE bodies, the HCNM, the ODIHR and the OSCE field missions in the following areas:

a) promotion of ratification and broad application of the FCNM by states

- Establishing priorities in encouraging the application and ratification of the FCNM regarding specific country focus; possibilities for encouraging elimination of reservations to the application of the FCNM; identifying relevant forums, effective strategies and methods which could be used within the scope of specific mandates of the UN and the OSCE institutions and mechanisms in pursuing promotion of ratification of the FCNM by states;

establishing efficient distribution of information concerning the ratification and specific issues connected with the application of the FCNM to the OSCE and UN actors.

b) enhancing monitoring process of implementation of the FCNM by individual states;

- The discussion could focus on modalities of the practice of regular exchanges and participation of the above mentioned actors in the meetings of the ACFC and the CM dealing with the country reports; in preparing and writing the ACFC's opinions; in the ACFC field missions; in the follow-up country activities of the ACFC.

- The discussion could focus on enhancing effectiveness of the monitoring process by encouraging use of the substantive sources of interpretation of minority rights standards and guidelines for implementation of minority policies developed by the UN and the OSCE. The good practice has been set up by the PACE Recommendations 1773 (2006) on the 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance cooperation and synergy with the OSCE suggesting that the Guidelines developed by the OSCE HCNM should be taken into account in the framework of the monitoring of the FCNM. The discussion could focus on identification of other recommendations and the OSCE and the UN guidelines that can be formally included in the monitoring work of the ACFC.

- The discussion should explore ways of continuing and enhancing consultations and mutual co-operation between the UN and the OSCE actors, inter alia the HCNM, and the ACFC Secretariat and other relevant CoE bodies with regard to technical assistance provided to states in developing their legal and institutional frameworks for protection of national minorities.

c) interpreting FCNM's standards through thematic work of the ACFC and other relevant CoE bodies.

- The discussion could focus on identifying the UN, the OSCE and the CoE activities concerning their thematic focus and establishing joint activities in areas of mutual interest with the aim of complementing the work pursued by various bodies and mechanisms and preventing duplication of activities or initiatives.

- The Workshop could examine procedural ways of effective co-operation in preparing and drafting of thematic recommendations, guidelines or commentaries by various international actors.

- The discussion can further focus on exploring the ways of promoting the ACFC Commentaries within the activities of the HCNM, other OSCE institutions and the UN treaty monitoring bodies, as well as the special procedures and mechanisms addressing minority policies.