

**Frameworks for diversity and equality in our contemporary world:
Experiences with minority protection in Europe and at the United Nations.**

**Keynote speech by Asbjørn Eide in Strasbourg
on the occasion of the 15th anniversary of the entry into force of the Framework
Convention on the Rights of National Minorities.**

Thanks for being invited- it is great to be here, meeting so many friends and former colleagues, and also so many new members of the Advisory Committee. Thanks also to the many representatives of States parties to the convention and to those representing other organizations concerned with minorities at the Council of Europe and the United Nations.

Thanks to you all for being present here to discuss a subject important to us all.

In focus for our discussions here are the achievements made within minority protection in these 15 years, and the contemporary challenges and opportunities.

Personally, I have a twofold background on minority issues; in the United Nations and in the Council of Europe. In 1995 the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities established its working group on the rights of persons belonging to minorities, where I was elected as chairman and I remained its chair for 10 years. From 2003 I became also member of the ACFC, serving also as its President for a couple of years.

The United Nations was established on the ruins of the worst catastrophe in human history, World War II. Its horrors and brutality led the nations of the world in 1945 to initiate a new world order under the Charter of the United Nations, and to proclaim universal human rights for all without discrimination on any ground. But the drafters did not include any minority right in the UDHR. As the UN could not remain indifferent to the fate of minorities, however, the UN GA referred in 1948 the matter to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

I became a member of that Sub-Commission in 1981 and learned quickly that while the Sub-Commission had done wonderful work on prevention of discrimination, it had done very little for the protection of minorities.

But from 1989 there was a new urgency both in the UN and the Council of Europe. The Cold War had ended with the fall of the Berlin wall. Europe was no longer divided. But in the process of transition, serious ethnic and nationalist conflicts erupted and others threatened to become violent. I was requested by the UN to make a study on peaceful and constructive approaches to situations involving minorities (1990-1993), carried out at a time when violence was erupting in many places, particularly in the Balkans and in some parts of the former Soviet Union.

The widespread sense of urgency regarding the minority issues resulted in the CSCE Copenhagen meeting in 1990 adopting principles on minority protection; in 1992 the CSCE (later named OSCE) established the office of the High Commissioner on National Minorities, who was given an important role in conflict prevention. Also in 1992, the United Nations adopted its Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, and in 1994 the Council of Europe adopted its Framework Convention on the Protection of National Minorities, which entered into force in 1998 and the Advisory Committee on the Framework Convention (ACFC) set up.

The purposes of minority protection and the underlying considerations..

In the preamble of the framework convention, we find the justifications for it in the following words and I quote:

“Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent”

They were right, minority issues had often been mismanaged and had been part of the causes of the upheavals including in the start of two world wars. These upheavals had themselves created new or aggravated minority situations.

Let us therefore also keep in mind the second part of the sentence: That the protection of national minorities is essential to stability, democratic security and peace in this continent. It is this point that we need to focus on. **Where is Europe today**, in that respect?

Europe had during the 20th century, been the slaughter field for two devastating world wars and since 1945 for more than forty years been divided between East and West by the Cold War. There was peace, but it was a frozen peace. When that frost came to an end with Glasnost and Perestroika and the dismantling of the Berlin wall, parts of Central and Eastern Europe were suddenly torn apart in violent conflicts.

Today, in these first decades of the 21 century, Europe is – at least on the surface - a rather peaceful region of the world. One of the factors behind this European peace and stability is that we have learned to protect minorities and to promote equality for all, which is essential for social cohesion. Let us hope we can keep it that way. There are many challenges and unless they are properly handled they can still escalate into massive violence.

As stated in the preamble of the Framework convention, a pluralist and genuinely democratic society should not only **respect** the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate **conditions enabling** them to express, preserve and **develop** this identity. But, as also stated in the preamble, this needs deliberate efforts to nurture a climate of **tolerance and dialogue** so that **cultural diversity** can be enabled to be a source and a factor, not of division, but of **enrichment** for each society.

So these were the purposes, expectations and requirements. What has been achieved?

I will address three issues of importance: The relationship between integration and protection of the separate identity of minorities; second, the achievements and failures in the European efforts to end discrimination and to integrate the traditionally most marginalized minorities on this continent, particularly the Roma and travelers; thirdly, the particular issues surrounding new minorities including religious minorities and the efforts to promote a reasonable accommodation in our pluralist societies. On that basis I shall draw some conclusions on the achievements made but also underline some contemporary challenges.

2. Integration and separate identity

Minorities and persons belonging to them generally have two concerns. One is to be treated as equals to other members of society, being freed from discrimination and marginalization. The other is to have the necessary conditions for their maintenance of their collective identity.

Not all minorities have the same priorities. For some minorities, the main priority is integration and equality. For others, the quest for a protected space for collective identity is the dominant concern. The priorities may also change over time. In addition, the minorities are not homogenous groups: Some members of the group are mostly interested in equal treatment without focussing much on their separate identity, for others it is opposite. Controversies may arise between factions among minorities; state authorities should seek to find flexible solutions that can accommodate both (or all). It is therefore essential to have available standards and procedures that makes it possible to find suitable and reasonable arrangements for accommodation. The solutions found should also be sufficiently flexible to make it possible to have them renegotiated when times and conditions have changed.

The system of universal human rights is based on the premise, as expressed in Article 1 of the Universal Declaration of Human Rights, that everyone is born free and equal in dignity and rights. The purpose of the adoption in the 1990s of minority rights was not to challenge the fundamental right of every individual to equality and non-discrimination, but to supplement it with a set of special rights by which minorities could maintain and develop the separate identity. The Framework Convention Article 5.1 requires State Parties to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”. This is further elaborated in several subsequent articles of the FCNM.

Article 4 of the FCNM, however, requires that states adopt adequate measures in order to promote, in all areas of economic, social, political and cultural life, **full and effective equality** between persons belonging to a national minority and those belonging to the majority. This requires by necessity a degree of integration between the majority and the minority. How can integration be advanced without engaging in assimilation? This has been central both to the ACFC and the High Commissioner of the OSCE.

In November 2012, OSCE adopted the Ljubljana Guidelines on Integration of Diverse Societies, which contain very useful recommendations that can be helpful also for the work of the ACFC. Those guidelines remind us that protection of human rights, including minority rights, is inextricably linked with the preservation of peace and stability within and between states, a consideration that is reflected both in the UN declaration on minorities and in the preamble of the FCNM. They also point out that states have a practical interest in ensuring equal opportunities: low participation by excluded or marginalized groups tends to bring direct and indirect costs to society as a result of reduced contributions to the common good and the increased costs associated with putting policies in place to address the numerous consequences of exclusion. Under the FCNM Article 15 and under human rights in general, States parties are obliged to guarantee equal opportunities for everyone, regardless of whether they belong to majorities or minorities, to participate in the economic, social, cultural and political life of society.

Article 5.2, however, makes it clear that measures of integration and the promotion of equality must not lead to assimilation. We must therefore clearly distinguish between assimilation of persons belonging to minorities (which is prohibited), and measures taken in favour of integration, which is not only permitted but indeed necessary. The balance that has to be drawn between prohibited assimilation and the necessity of integration is reflected in much of the content of the three thematic commentaries adopted by the Advisory Committee – on education, on effective participation by minorities, and on language rights.

While assimilation of persons belonging to minorities is a one-sided affair – it is only the minority that is forced to give up its characteristics, while the majority remains as before – integration is a two-sided affair; the majority also changes by becoming more pluralistic and open to diversity, even to appreciate the diversity. But we cannot be unrealistic about it. On both sides there may have to be some features that have to be given up, and that may cause some resentment. It is better, however, than the alternative of two or more ethnic groups that are completely separate from the others and/ or from the majority.

3. Marginalized and discriminated minorities: Failed or weak integration.

In the United Nations human rights work, prevention and elimination of all forms of discrimination has been at the core from the beginning. In 1965, the Convention on the Elimination of All Forms of Racial Discrimination was adopted, where «racial discrimination" includes also discrimination on grounds of ethnicity or national origin. Great efforts have been made in the UN, the Council of Europe and the European Union for the elimination of discrimination against traditionally marginalized groups, whether the discrimination has been based on race, ethnicity, descent or other factors.

The greatest victory of the UN in the struggle against discrimination was the elimination of Apartheid , but many problems remain both outside Europe -in particular the extensive caste discrimination in South Asia- and discrimination of the Roma and Travellers in Europe. We can therefore not be complacent.

Let me focus today on the Roma, which can be found in almost all European states. Some of them prefer a travelling lifestyle while most of them have sought to settle down, but are prevented from finding a satisfactory livelihood due to extensive discrimination.

In 2012, the outgoing Commissioner on Human Rights of the Council of Europe, Thomas Hammarberg, collected and presented a devastating report on the neglect or violations of human rights of Roma and Travellers in Europe. He described the widespread attitudes of anti-Gypsyism, which has led to racially motivated violence against Roma and Travellers. He documented extensive and harmful treatment of Roma and Travellers by law enforcement people, including police violence and racial profiling as well as arbitrary seizure or destruction of property, frequent arbitrary detention, and biases within the judicial authorities. He described cases of lack of respect for their private and family life, including forced sterilization and removal of Roma children from their parents. Their economic and social rights are often neglected or mismanaged. Their access to quality education is dismal. Some Roma children are effectively excluded from formal schooling and measures to combat school abandonment and segregation of Roma children are often ineffective. Access to school by Roma girls is particularly weak. The rights of the Roma to adequate housing has been extensively violated or neglected, including by segregation and substandard housing condition. They face serious difficulties in access to

employment, and barriers in their access to health services and to social security. Many have also been denied citizenship, particularly in the context of state succession. Their freedom of movement within the EU and the European Economic Area has often been sought to be blocked or hindered by several European states.

Many of the State Parties' reports submitted under the Framework convention have recognized that the Roma face more significant difficulties than others in employment, education and training, in housing, health care and social protection. The ACFC has often and strongly pointed out that these situations are not compatible with Article 4, Article 6 paragraph 2 or Article 15 of the Framework Convention.

A serious problem and a contributory factor in this regard is the irresponsible media reporting on the Roma. Although the Roma are no more inclined to criminal behaviour than anybody else, media insistence on mentioning ethnicity in news reports gives credence to the myth that Roma are by nature criminals. This is not only false, but also dangerous as it risks heightening the already tense relations between the Roma and the majority population all over Europe.

To find solutions to the problems face by the Roma is not easy. It requires not only strong political commitment by states individually and jointly in Europe, but it requires also cooperation from the side of the Roma. The difficulties they have faced in the various sectors of life as a result of stigmatization, exclusion and exploitation

have been interconnected and mutually reinforcing. This has led them into a spiral of exclusion from socio-economic participation. Such exclusion leads them to a degree of withdrawal due to resignation, low levels of self-esteem and lack of expectations in areas of education and training. They are often caught in a particular kind of poverty culture. It would take much patience, resources and commitment to help them break out of that culture.

The standard of living of many Roma in several countries is often unacceptable, lacking running water, electricity and sanitary facilities. Evictions are frequent, and the resettlement of the Roma in places lacking the necessary standards both as regard housing itself, and regarding transportation facilities, access to schools, health centers and employment opportunities are issues of particular concern.

Having a low quality primary education, their prospects in secondary education are weak. The majority drop out before having completed secondary education. Very few make it to the university-level education. Among those few who manage to complete secondary and tertiary education, some seek to hide their origins in order to avoid discrimination in the majority society, and can therefore not be role models for others of Romani origin

I am aware that the ACFC has been instrumental in raising awareness about problems faced by the Roma throughout Europe, and so has the European Commissioner on Human Rights, the European Union and the Organization of Security and Cooperation in Europe (OSCE). The World Bank and the UNDP has also become involved. There appears to be a broad coalition of agencies that seek to promote measures to improve the situation of the Roma, but so far the resources have been too limited and they have rarely reached the intended beneficiaries.

More is clearly required. Let me therefore propose, in light of the seriousness of this issue, that the Advisory Committee prepares a thematic commentary on this subject. In doing so, it should engage in a comprehensive discourse with governments, non-governmental organizations and agencies and bodies of the Council of Europe as well as with the organizations of the Roma themselves, in order to develop a comprehensive approach to the implementation of Article 4 and 15 of the FCNM in regard to the Roma, Travellers and comparable groups

4. New minorities and religious minorities – diversity under stress

Neither the United Nations Declaration on Minorities or the Council of Europe's Framework Convention on the Protection of Minorities contain any definition of the term "minorities". Some have argued that this term includes only persons that are citizens of the state. That is definitely wrong at least with regard to the UN Minority declaration. The Human Rights Committee has made it clear that persons who are not, or not yet, citizens of the country in which they reside can have minority rights under Article 27 of the Covenant on Civil and Political Rights. While citizenship as such should not be a distinguishing criterion that excludes some persons or groups from enjoying minority rights under UN law, other factors can be relevant in distinguishing between the rights that can be demanded by different minorities. Those who live

compactly together in a part of the State territory may be entitled to rights regarding the use of language, and street and place names which are different from those who are dispersed, and may in some circumstances be entitled to some kind of autonomy. Those who have been established for a long time on the territory may have stronger rights than those who have recently arrived.

The situation is less clear under the Council of Europe's Framework convention. Many States parties apply the term "national minority" to groups that are citizens of the country and who have existed there for a considerable length of time. The Advisory Committee has recognized that while Parties have a margin of appreciation in order to take the specific circumstances prevailing in their country into account, this margin must be exercised in accordance with general principles of international law, in particular the principle of non-discrimination and of the principles set out in Article 3. The implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions in the treatment of persons. Furthermore, some provisions of the FCNM, in particular Article 6, have a wider scope of application than "national minorities". The ACFC has therefore in regard to some states recommended the inclusion also of other minorities, but this has rarely been accepted by governments.

On religious minorities, religious pluralism and secularism,

Questions regarding which minorities to be covered by the convention is particularly important in regard to new religious minorities, but this is where tolerance of diversity is under particular stress in our time. It is not new, but it is changing in nature.

In centuries back there were in Europe severe conflicts between different Christian groups, leading to massive violence. There has also been massive persecutions of Jews, in centuries back often on the grounds of their religion, but in recent times of racist theories, culminating with the Holocaust.

Most of us have now learned to accept that religion is a private affair and that the state should be more neutral in that regard. The time has long passed, particularly in Europe, where people adhered to only one religion. Not only have European states accepted religious pluralism but humanist secularism has also become widespread.

We do no longer refer to “freedom of religion” but to “freedom of religion or belief”. Secularism is gaining ground. In principle we now agree that everyone had the right to manifest their own religion and belief, as set out in Article 8 of the FCNM. **But** anti-Semitism seems again to be in the rise in some European countries. Even more worrying is the growth of Islamophobia, caused by the relatively recent arrival in West European countries of significant Muslim minorities.

This has been aggravated by the emergence in Europe of extremist right-wing movements devoted to hate speech and xenophobia, some of whom have now become part of the political parties and parliaments in some European countries.

If we look beyond Europe, we are aware of many of the most severe conflicts are those where different religious groups are pitted against each other and/or against secularists. We see conflicts between different Muslim groups, in particular between Sunni and Shia (particularly in Syria and Iraq) and between devout Muslims and “modernizing” secularists (in Egypt and in Turkey).

Under Article 6 of the FCNM, State parties have undertaken to encourage tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory – irrespective of those persons’ ethnic, cultural, linguistic or **religious** identity. Such measures should be taken particularly in the fields of education, culture and the media. The Parties shall also to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence, among others on grounds of their religious identity.

These questions have become increasingly more important in recent years, including the terrifying events that took place in my own country, Norway, on July 22, 2011, when a brutal Islamphobist mass murderer killed scores of young people. The particularly ominous aspect of that case was that the target of the mass murderer, those completely defenseless people that he brutally killed, were young people who were engaged in bridge building, understanding and promotion of tolerance between the new minorities and the traditional society. This is a phenomenon that I have also observed in other settings: That the targets by the violent extremists are mostly those that seek to promote understanding and tolerance.

Against this background, it is my proposal here that the issue of the implementation of Article 6 should receive greater attention in state reports and in the ACFC, possibly moving towards the drafting of a thematic commentary on this subject.

5. The relations between the Advisory Committee and the minority organizations.

Of great significance for the success of minority protection is the extensive contacts that the ACFC has had, not only with the relevant authorities of the state parties, but also with the minority organizations, both in terms of their supplementary information to the state reports, the extensive contacts with the minorities made possible during the visits prior to the preparation of the opinions, and in particular the follow-up seminars within the state parties, which many state parties have facilitated and encouraged.

This should be greatly applauded, and governments should be praised for their support for this activity. This openness and flexibility is quite different from what I experienced during my UN practice as chairman of the United Nations Working Group on Minorities. I will make two recommendations in that regard

a. Make sure that the Roma and traveler minorities are fully involved in these encounters and particularly in the follow-up seminars. This may help making the other minorities better aware of the problems faced by the Roma.

b. Ensure that these contacts and these seminars extend also to religious minorities and focus on the balancing between dominant versus minority religious groups and the scope and limits of secularism (state neutrality and the limitation of religion-based duties and restrictions in national legislation).

The Parliamentary Assembly of the Council of Europe has underlined that one of Europe's shared values, transcending national differences, is the separation between church/religion and state. It will always be a degree of uncertainty what that separation implies, and how it affects the relationship towards the dominant and the minority religions within each country.

6. Conclusions: Achievements made and pending challenges

If we look beyond Europe, violence involving minorities is still widespread and many conflicts remain unresolved. Within Europe, however, the focus on and management of situations involving minorities has led to considerable improvement in social stability and international peace..

We now live in a much more peaceful Europe than in the previous century. One reason is that we have managed to deal better with situations involving minorities, we have found ways to promote reasonable accommodation between different doctrines and beliefs, and we have developed mechanisms and procedures to respect and promote their rights. The minorities have obtained respect for their identity and the benefits of cultural diversity has generally been recognized and protected. All of this has been made possible because Europe has now a greater understanding of the benefits of institutionalized cooperation.

But serious problems remain, and I have in this speech pointed to three issues:

One is to improve the process towards social integration while protecting diversity and therefore avoiding assimilation.

The second is to improve the inclusion and equal treatment of persons belonging to marginalized minorities, in particular the Roma and the Travellers.

The third is to develop a much better capability of states to enhance within their respective national societies tolerance and understanding between different religious groups, in particular tolerance between the religious minorities whether old or new, and between the religious groups and secularists.

This is urgent indeed. Extremist right-wing movements devoted to hate speech and xenophobia are on the rise. In an appeal some weeks ago by the new Commissioner for Human Rights of the Council of Europe, Nils Muiznieks, he expressed deep concern that Europe has seen a worrying intensification of activities of racist extremist organizations, including their infiltration of political parties. The upsurge has even reached the point of “an early form of far right terror”. In his opinion the European community and national political leaders appear not to be fully aware of the serious threat that these organizations pose to the rule of law and human rights. The philosophy of racist extremist organizations is centered on denying the entitlements and human rights of “others” – mainly migrants and members of national, ethnic and religious minorities. They invent “enemies” whom they fight and try to eliminate.

The phenomenon is all the more serious, he said, because it is paired with an increased influence of racist extremist political parties in national parliaments and governments, and endeavours by these parties to strengthen their position at European level through alliances. There is little awareness of this among politicians and those in law enforcement. He therefore pointed to a range of measures that should be taken, including stronger criminalization of hate speech and racist organizations.

He also reminded us that racist and religious violence, as opposed to other forms of violence, has a broader destructive impact on human dignity and social cohesion and should be treated more seriously than other forms of violence and extremism. Individuals and organizations involved in such acts are a threat to the pillars of democracy and to the very purposes of the Framework Convention.

I fully endorse this appeal by the Commissioner for Human Rights of the Council of Europe. Let me conclude by encouraging all those assembled here, whether they represent State parties, are members of the ACFC, represent minorities or are university scholars, to take these concerns fully into account in your work in the coming years.

Thank you for your attention and good luck for minority protection in coming years.