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Protection of Religious Minorities in Europe: The Council of Europe's Successes and Failures.

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COMMENT

PROTECTION OF RELIGIOUS MINORITIES IN EUROPE: THE COUNCIL OF EUROPE'S SUCSESSES AND FAILURES

LAUREN C. BAILLIE*

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INTRODUCTION

With the European Union (“EU”) expanding, secular Europe finds itself faced with an increasingly religious populace. Recent debates over headscarves and legislation on religion illustrate Europe’s discomfort in making room for its religious minorities.¹ Relieving this discomfort, however, may not be as difficult as the EU anticipates, largely because the framework to do so is already in place.

As the first multi-national European organization formed at the end of the Second World War, the Council of Europe (the “Council”) has already taken the first steps towards Winston Churchill’s vision of a “United States of Europe.”² Through a series of conventions, monitoring bodies, and an influential and well-respected court, the Council of Europe has developed the strongest human rights enforcement mechanism in the world today.³ As Europe grows ever

1. See, e.g., *Trials of Tolerance*, TIMES (London), Feb. 11, 2004, at 19 (discussing France’s controversial policy of banning the Muslim headscarf in public schools); see also *Sorry Tales of the Cross and the Veil: We Should Assert Universal Values, Not Spread Moral Panic*, FIN. TIMES, Dec. 23, 2006, at 8 (describing the varied and misguided strategies addressing immigrant integration that have contributed to growing tensions in Europe).

2. See Heinrich Klebes, *Membership in International Organizations and National Constitutional Law: A Case Study of the Law and Practice of the Council of Europe*, 99 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 69, 71 (1999) (crediting the eventual development of a community of values based on democracy, rule of law, and human rights to Churchill’s efforts).

3. See Jonathan L. Black-Branch, *Observing and Enforcing Human Rights Under the Council of Europe: The Creation of a Permanent European Court of Human Rights*, 3 BUFF. J. INT’L L. 1, 7 (1996) (acknowledging that scholars and lawyers have widely recognized the Council of Europe’s Convention on Human Rights as the “world’s most successful system of international protection of human rights and one of the most advanced forms of international legal process” (quoting MARK W. JANIS & RICHARD S. KAY, *EUROPEAN HUMAN RIGHTS LAW* 23 (1990))).

more diverse, the Council of Europe stands to play an increasingly important role in protecting the rights of Europe's population.⁴

The European Convention on Human Rights and Fundamental Freedoms ("Human Rights Convention")⁵ emerged shortly after the Council's inception.⁶ It laid out the fundamental rights of individuals, including the right to religion, and established the European Court of Human Rights ("ECHR" or the "Court").⁷ Despite the Human Rights Convention's great advances in human rights protections, it has been less successful in protecting the rights of religious minorities.⁸ To compensate for this weakness and to handle issues arising from Europe's burgeoning minority population, the Council of Europe drafted the Framework Convention for the Protection of National Minorities ("FCPNM" or "Framework Convention").⁹ The Framework Convention outlines in detail the rights of national minorities, including religious minorities, and the duties of States to

4. See Gráinne de Búrca, *On Enlargement of the European Union: Beyond the Charter: How Enlargement Has Enlarged the Human Rights Policy of the European Union*, 27 *FORDHAM INT'L L.J.* 679, 684-86 (2004) (finding that while the European Communities focused primarily on economic integration, the Council of Europe assumed the bulk of the responsibility for EU human rights policy); see also Elizabeth Shaver Duquette, *Human Rights in the European Union: Internal Versus External Objectives*, 34 *CORNELL INT'L L.J.* 363, 372 (2001) (asserting that notwithstanding the European Community's ("EC") inability to accede to the European Convention on Human Rights and Fundamental Freedoms, the EC should "vigorously protect and promote human rights and democracy throughout its territory").

5. Convention on Human Rights and Fundamental Freedoms, Sept. 3, 1953, Europ. T.S. No. 5, 213 U.N.T.S. 222 [hereinafter European Convention on Human Rights].

6. See Christin J. Albertie, *The Act on Hungarians Living Abroad: A Misguided Approach to Minority Protection*, 24 *MICH. J. INT'L L.* 961, 972-73 (2003).

7. See Black-Branch, *supra* note 3, at 8 (recognizing the Human Rights Convention's influence in developing other regional human rights bodies, including the Inter-American Convention on Human Rights). See generally Dinah Shelton, *The Boundaries of Human Rights Jurisdiction in Europe*, 13 *DUKE J. COMP. & INT'L L.* 95, 98-99 (2003) (tracing the history of the establishment of mechanisms designed to ensure the protection of human rights laid out in the Human Rights Convention).

8. See Albertie, *supra* note 6, at 973-74 (correlating the ECHR's inadequate protection of minority rights to its narrow view of protection as solely in reference to discrimination).

9. Framework Convention for the Protection of National Minorities, Feb. 1995, Europ. T.S. No. 157 [hereinafter FCPNM].

uphold these rights.¹⁰ The FCPNM's impact, however, is greatly diminished by a weak enforcement mechanism comprised of state-authored compliance reports and non-binding recommendations from the FCPNM's monitoring body, the Advisory Committee, and the Committee of Ministers.¹¹

This Comment argues that although the Human Rights Convention and the FCPNM currently provide inadequate protection to religious minorities,¹² with changes to the FCPNM's enforcement mechanism and expansion of the European Court of Human Rights' case law on the free practice of religion, the Council of Europe may more efficiently address the problems faced by religious minorities in Europe. Part I discusses Europe's minority issues, the protections afforded by both conventions, and the ways in which issues are addressed under each. Part II analyzes the effectiveness of the conventions' protection of rights of religious minorities and explores the ways in which the conventions complement and undermine one another. Part III recommends ways to improve the current system of minority protection by strengthening the integration of the two instruments to enhance the protections afforded to religious minorities. This Comment concludes that improvements to the FCPNM's monitoring mechanisms and additions to ECHR's

10. See Christopher J. Miner, *Losing My Religion: Austria's New Religion Law in Light of International and European Standards of Religious Freedom*, 1998 BYU L. REV. 607, 633 (1998) (advancing that the FCPNM's link between national minorities and religious rights underscores the reality that national minorities are often religious minorities too); see also Zdenka Machnyikova, *Article 7*, in THE RIGHTS OF MINORITIES IN EUROPE 218 (Marc Weller ed., 2005) (acknowledging the role that religion and religious beliefs play in enabling national minorities to maintain and develop their identities).

11. But see Christopher Ward, Book Note, *Majoring in Minorities: Minority Rights in Europe*, 24 MELB. U. L. REV. 530, 533 (2000) (conceding that the FCPNM's reporting mechanism may function as a means of encouraging modification of state behavior, even though the mechanism is arguably weak as compared to a quasi-judicial system); Albertie, *supra* note 6, at 984 (noting that the FCPNM has, in fact, influenced the composition of bilateral treaties on the treatment of national minorities).

12. See Maxine Sleeper, *Anti-Discrimination Laws in Eastern Europe: Toward Effective Implementation*, 40 COLUM. J. TRANSNAT'L L. 177, 178 (2001) (acknowledging that the challenge faced by Europe's governing bodies in protecting the rights of religious minorities requires Member States to undertake legislative reform).

jurisprudence are necessary to accommodate Europe's religious minority populations.¹³

I. BACKGROUND

The Council of Europe was established with the goal of codifying Europe's shared values of democracy and human rights.¹⁴ The Council embraced the responsibility of ensuring that basic legal standards were in place to enforce those shared values, thereby developing its human rights jurisprudence through a series of conventions adopted to address inadequacies in domestic legal systems.¹⁵ Although other international agreements have taken precedence over many of the Council's instruments, the Council remains a driving force in human rights protection.¹⁶

A. EUROPE'S RELIGIOUS MINORITY ISSUES

Over the past twenty-five years Europe has experienced a surge of immigration, and, with it, a wave of discrimination based on language, religion and ethnicity.¹⁷ Discrimination has occurred in particular against Muslims immigrating to states committed to secularism, but has by no means been confined to Islam.¹⁸ Many

13. See David Wippman, *Human Rights on the Eve of the Next Century: Aspects of Human Rights Implementation: The Evolution and Implementation of Minority Rights*, 66 FORDHAM L. REV. 597, 611-12 (1997) (arguing that, as it currently stands, the FCPNM's use of imprecise and vague language results in the creation of obligations for Contracting States instead of the delineation of enforceable individual rights).

14. See Peter Leuprecht, *Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Reinforcement?*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 313, 313-14 (1998).

15. See Klebes, *supra* note 2, at 71-72 (providing that the democratic and constitutional norms of the Council of Europe have served as a yardstick by which potential new Member States are measured).

16. See, e.g., Duquette, *supra* note 4, at 381 (contending that the EU has built upon the work of the Council of Europe, incorporating respect for human rights into its legal system through the Model Human Rights Clause).

17. See *Trials of Tolerance*, *supra* note 1, at 19 (recognizing that an estimated five million Muslims have immigrated into France alone).

18. See Ira Rifkin, *Europe Targets Minority Religious Groups*, THE TIMES UNION, June 19, 1999, at E1 (noting that discrimination has occurred against religious minorities including the Amish, Jehovah's Witnesses, Wiccans, Hare

European states have classified smaller religious groups as sects or cults that endanger society, despite the questionable existence of any threat.¹⁹

Outward expression of religious beliefs, particularly through dress, has come to the forefront of public debate in Europe. While the majority of Western European countries have addressed religious attire in public schools,²⁰ the debate has been most prominent in France, where secularism is viewed as integral to the state structure. Wearing headscarves in French public schools has been the subject of heated discourse, prompting the adoption of legislation prohibiting students from wearing religious attire in primary and secondary schools.²¹

B. THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND THE PROTECTION OF RELIGIOUS MINORITIES

The Human Rights Convention, which came into force on September 3, 1953, was drafted with the intention of creating a legally binding convention with corollary institutions to protect human rights.²² The Human Rights Convention reaffirmed Europe's commitment to the Universal Declaration of Human Rights and further elaborated Europe's commitment to human rights

Krishnas, Seventh-day Adventists, Scientologists, Hindus, Buddhists, Satmar Hasidic Jews, Baha'is, and Mormons).

19. See James T. Richardson & Massimo Introvigne, "Brainwashing" Theories in European Parliamentary and Administrative Reports on "Cults" and "Sects", 40 J. SCI. STUDY OF RELIGION 143, 144 (2001) (referencing French and Belgian parliamentary reports listing groups such as Mormons, Quakers, and Baha'is as cults or sects that posed a threat to society).

20. See *Sahin v. Turkey*, (2005) 41 Eur. H.R. Rep. 8, ¶¶ 55-65 (noting that following varying degrees of public and legal debate, Belgium, Austria, Germany, the Netherlands, Spain, Sweden, Switzerland, and the United Kingdom permit Islamic headscarves to be worn in classrooms).

21. Law No. 2004-228 of Mar. 15, 2004, J.O. 65, Mar. 17, 2004, p. 5190.

22. See Mikael Rask Madsen, *From Cold War Instrument to Supreme European Court: The European Court of Human Rights at the Crossroads of International and National Law and Politics*, 32 LAW & SOC. INQUIRY 137, 140-41 (2007) (observing that the legally binding nature of the Human Rights Convention was largely a reaction to the soft legal institutions supporting the Universal Declaration of Human Rights).

protection.²³ Under Article 9 of the Human Rights Convention, the right to religious freedom includes the freedom to change religion²⁴ and the freedom from discrimination based on religious beliefs.²⁵ The freedom to “manifest religious beliefs” in Article 9 is subject to limitations only as prescribed by law or necessary to allow the government to maintain order.²⁶ The rights guaranteed in the Human Rights Convention are individual—rather than group—rights.²⁷

C. THE EUROPEAN COURT OF HUMAN RIGHTS

The Human Rights Convention established the ECHR as a supplement to domestic legal remedies.²⁸ The Court ensures that Member States observe their responsibilities under the Human Rights Convention, and its jurisdiction is limited to matters foreseen by the

23. See Black-Branch, *supra* note 3, at 7 (recognizing that the intention of the Human Rights Convention was to provide the infrastructure to protect the rights outlined in the Universal Declaration of Human Rights).

24. See European Convention on Human Rights, *supra* note 5, art. 9 (protecting the worship of, teaching of, practice of, observance of, and the freedom to change religions as manifestations of religious beliefs).

25. See *id.* art. 14.

26. See *id.* art. 9(2) (designating the permissible reasons for limiting religious rights as those necessary for the maintenance of public safety, public order, health or morals, or protection of others' rights and freedoms); see also *Kokkinakis v. Greece*, 260-A Eur. Ct. H.R. (ser. A) ¶ 33 (1993) (interpreting the article's limitations as allowing democratic societies the discretion to place restrictions upon the freedom to manifest religion or belief when it is necessary to reconcile various groups' interests and to ensure that everyone's beliefs are respected).

27. See Charles F. Furtado, Jr., *Guess Who's Coming to Dinner? Protection for National Minorities in Eastern and Central Europe under the Council of Europe*, 34 COLUM. HUM. RTS. L. REV. 333, 338 (2003) (acknowledging that minority groups must articulate their claims as violations of individual rights to have standing under the Human Rights Convention).

28. See European Convention on Human Rights, *supra* note 5, art. 38; see also Leuprecht, *supra* note 14, at 316 (explaining that the Convention of Human Rights and its mechanisms, namely the disbanded European Commission of Human Rights and remaining ECHR, provide a subsidiary international guarantee which any person can invoke in appealing national decisions); J.A. Andrews, *The European Jurisprudence of Human Rights*, 43 MD. L. REV. 463, 468 (1984) (lauding the Human Rights Convention as the first international legal instrument to both guarantee individual rights and provide a means to enforce them, originally through individual petitions to the now defunct European Commission of Human Rights and now, directly, through the European Court of Human Rights).

Convention.²⁹ Although the Court primarily decides issues of civil and political rights, the Court has addressed issues of economic, social, and cultural rights³⁰ and may issue advisory opinions on the interpretation of the Human Rights Convention and its protocols.³¹

Signing and ratifying the Human Rights Convention has become a *de facto* requirement for joining the Council of Europe.³² Prospective Member States must reform their laws to conform to the values set forth by the Human Rights Convention and submit to the jurisdiction of the ECHR.³³ States have incorporated the Human Rights Convention into their legal systems to varying degrees, but most States party to the Human Rights Convention have modified their legal systems as a result of acceding to the Human Rights Convention.³⁴ Moreover, the ECHR has enjoyed a high rate of Member State compliance with its decisions.³⁵

29. See Klebes, *supra* note 2, at 77 (distinguishing the broad scope of the European Court of Justice and the more narrow scope of the ECHR whose decisions are bound by the framework of the Human Rights Convention).

30. See Leuprecht, *supra* note 14, at 315.

31. See Protocol No. 11 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 1, 1998, Europ. T.S. No. 155, art. 47 [hereinafter Protocol No. 11] (mandating that advisory opinions may not address questions relating to the content or scope of the rights or freedoms defined in Section 1 of the Human Rights Convention or with any other question which might be considered in the course of any proceeding instituted in accordance with the Convention).

32. See Shelton, *supra* note 7, at 97 (explaining that the Statute of the Council of Europe mandates that each Member State accept the principles of human rights and fundamental freedoms in its jurisdiction).

33. See Klebes, *supra* note 2, at 76 (emphasizing that candidate states have a limited time period to ratify the Human Rights Convention and adapt domestic legislation after acceding to the Council).

34. See Andrews, *supra* note 28, at 479-80 (attesting that while some states have incorporated the Human Rights Convention into domestic law or given the Human Rights Convention the weight of constitutional law, others have not adopted the Human Rights Convention into their domestic law in any manner).

35. See Klebes, *supra* note 2, at 78-79 (noting that the European Court of Human Rights has handed down roughly 800 judgments and ensured a high level of compliance by adapting its interpretation of the Human Rights Convention to changing societal needs).

D. THE RIGHT TO RELIGION IN THE EUROPEAN COURT OF HUMAN RIGHTS' JURISPRUDENCE

The ECHR's jurisprudence has expanded along with Europe's population,³⁶ and the Court has taken a more active role in protecting the rights outlined in the Human Rights Convention.³⁷ The degree of the Court's success in protecting the rights of religious minorities, however, is questionable, as illustrated by the following two examples.

1. Religious Attire

The issue of headscarves in educational institutions came before the ECHR in *Leyla Sahin v. Turkey*.³⁸ Sahin was suspended from Istanbul University for failing to abide by regulations prohibiting students from wearing clothing "that symbolise[s] or manifest[s] any religion, faith, race, or political or ideological persuasion in any institution or department of the University"³⁹ Sahin claimed that the school's prohibition interfered with her right to manifest religious beliefs under Article 9 of the Human Rights Convention.⁴⁰ Despite acknowledging that the ban interfered with Sahin's right to practice her religion,⁴¹ the Court found that the interference was justified by a legitimate legislative interest in secularism⁴² and proportional to reaching this legislative interest.⁴³

36. See CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 15-16 (2001) (tallying that the Court received only 2,088 applications from 1955 to 1964, yet received nearly quadruple the number, 8,396, in 1999 alone).

37. See *id.* at 16 (underscoring the importance of the development of clear admissibility standards by the Court in light of the expanding caseload and time pressures and constraints).

38. *Sahin v. Turkey*, (2005) 41 Eur. H.R. Rep. 8.

39. *Id.* ¶ 45.

40. *Id.* ¶ 14.

41. *Id.* ¶ 71 (proceeding on the assumption that the University's restrictions on the applicant's right to wear the Islamic headscarf amounted to an interference with her right to manifest her religion).

42. See *id.* ¶¶ 104-106 (asserting that the principles of secularism and equality not only complement each other, but are consistent with the Human Rights Convention's permissible limitations).

43. See *id.* ¶¶ 110-111 (observing that the measures treated all forms of religious dress equally in banning them from campus).

2. Greek National Day Cases

The Court has decided two cases concerning the forced participation of Greek Jehovah's Witnesses in elementary school National Day parades.⁴⁴ The facts of the cases are substantially similar: school children were forced, against their pacifist religious beliefs, to participate in parades commemorating the war between Greece and fascist Italy.⁴⁵ Both children protested participating and filed suit after being forced to participate, alleging violations of Article 9.⁴⁶ In *Valsamis v. Greece*, the ECHR held that the parade could not be viewed as an attempt to indoctrinate the child with views or beliefs contrary to those of her parents, and that therefore the forced participation was not an interference with her right to religion under Article 9.⁴⁷ In *Efstratiou v. Greece*, the Court held that because the purpose of the parade was to celebrate freedom and democracy and not to glorify war, the forced participation of the child did not amount to an interference with the child's freedom of religion.⁴⁸

E. THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES AND THE RIGHT TO RELIGION

Drafted in response to the collapse of the communist regimes in Central and Eastern Europe, the FCPNM entered into force in 1998.⁴⁹

44. See *Valsamis v. Greece*, App. No. 21787/93, 24 Eur. H.R. Rep. 294 (1996); *Efstratiou v. Greece*, App. No. 24095/94, 24 Eur. H.R. Rep. 294 (1996) (judgments delivered on the same day).

45. See *Valsamis*, 24 Eur. H.R. Rep. 294 (1996), ¶¶ 8-10; *Efstratiou*, 24 Eur. H.R. Rep. 294 (1996), ¶¶ 9-11.

46. See *Valsamis*, 24 Eur. H.R. Rep. 294 (1996), ¶¶ 18, 42-44 (advancing the argument that Article 9 of the Human Rights Convention guarantees a right to a negative freedom not to manifest convictions or opinions contrary to one's own religious beliefs); *Efstratiou*, 24 Eur. H.R. Rep. 294 (1996), ¶ 18.

47. See *Valsamis*, 24 Eur. H.R. Rep. 294 (1996), ¶¶ 50-51 (holding that religious convictions cannot be used as a basis to ignore a rule that is applied to everyone in the same manner).

48. See *Efstratiou*, 24 Eur. H.R. Rep. 294 (1996), ¶¶ 38-39 (intimating that if the purpose of the holiday was to express bellicose feelings or glorify military conflict, forced participation would offend the child's pacifist beliefs).

49. See Leuprecht, *supra* note 14, at 323 (observing that the FCPNM is the first legally binding multilateral instrument to outline protections for national minorities); see also John R. Valentine, *Toward a Definition of National Minority*, 32 DENV. J. INT'L L. & POL'Y 445, 461 (2004) (recognizing the emerging and

Prospective Member States must ratify and implement the FCPNM, and non-member States must participate in the implementation mechanism prior to joining the Council of Europe.⁵⁰ Currently, four Member States have not yet ratified the FCPNM; three have yet to sign the FCPNM.⁵¹ The FCPNM further elaborates the rights of national minorities and expands the duties of the Member States to uphold them.⁵² The FCPNM requires that States encourage the development of an environment in which religious minorities may develop and flourish⁵³ by refraining from instituting assimilationist policies;⁵⁴ encouraging intercultural dialogue;⁵⁵ protecting minorities from violence, threats of violence, and acts of discrimination;⁵⁶ and making no policies hindering communication among religious minorities.⁵⁷ The rights protected under the FCPNM are individual

profound issues of the largely ignored minority groups of the communist countries of Eastern Europe).

50. See FCPNM, *supra* note 9, art. 24.

51. See Council of Europe, Chart of Signatures and Ratifications, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=&DF=&CL=ENG> (last visited Mar. 17, 2008) (Belgium, Greece, Iceland, and Luxembourg have signed the FCPNM but have not ratified it while Turkey, France, and Monaco have neither signed nor ratified the FCPNM).

52. See Furtado, *supra* note 27, at 361-62 (stating that the FCPNM challenges Member States to promote full and effective equality between minority and majority populations by promoting conditions necessary to preserve minority cultural identity).

53. See FCPNM, *supra* note 9, pmb. (espousing that a genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of national minorities, but also create conditions enabling them to express, preserve and develop this identity); *id.* art. 5 (demanding the preservation of essential elements of national minorities such as language, traditions and cultural heritage).

54. See *id.* art. 5.2; see also Wippman, *supra* note 13, at 606 (discussing banning policies or practices aimed at involuntary assimilation).

55. See FCPNM, *supra* note 9, art. 6 ("The Parties shall . . . take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, . . . in particular in the fields of education, culture, and the media.").

56. See *id.* art. 6.

57. See *id.* art. 9 (asserting the right to access media, to receive and impart information and ideas in the minority language, and to use print and broadcast media).

rights which could potentially be adjudicated in the ECHR, although the Court's mandate does not extend to such rights.⁵⁸

F. THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES' ENFORCEMENT MECHANISM

The Council of Europe relies on State legislative action and an informal reporting system to implement and enforce the FCPNM.⁵⁹ Upon ratifying the FCPNM, States must undertake legislative review and reform to implement the terms of the FCPNM.⁶⁰ States must submit regular reports regarding all measures, legislative or otherwise, undertaken to achieve the principles of the FCPNM to the Secretary General of the Council of Europe,⁶¹ who in turn forwards the reports to an Advisory Committee.⁶² Using both the information submitted in the State's report and information gathered from news reports, non-governmental organizations ("NGOs"), and interested parties, the Advisory Committee authors an opinion and makes recommendations to the Committee of Ministers on the adequacy of the report.⁶³ The Committee of Ministers then issues recommendations to the State.⁶⁴ Yet, the Committee of Ministers' power to enforce its recommendations is unclear. Moreover, the

58. See Elena A. Baylis, *Minority Rights, Minority Wrongs*, 10 UCLA J. INT'L L. & FOREIGN AFF. 66, 84 (2005) (emphasizing that designing protections to accrue to the individual, rather than to the minority group, limits the scope and character of communal protections available).

59. See Furtado, *supra* note 27, at 364 (conceding that despite the extensive rights outlined by the FCPNM, the FCPNM's language rarely obligates Member States to take the prescribed measures).

60. See Sleeper, *supra* note 12, at 184 (stressing that rather than setting out specific means of performance or enforcement, the FCPNM relies mainly on a reporting mechanism as the primary means of enforcement).

61. See FCPNM, *supra* note 9, art. 25.

62. See *id.* art. 26 (mandating that the Advisory Committee be composed of individuals with recognized expertise in the field of the protection of national minorities chosen by the Committee of Ministers).

63. See Gerd Oberleitner, *Monitoring Minority Rights Under the Council of Europe's Framework Convention*, in MINORITY RIGHTS IN THE "NEW" EUROPE 82 (Peter Cumper & Steven Wheatley eds., 1999) (arguing that NGOs and international organizations may be used to encourage submission of State reports by allowing the Advisory Committee to gather information on its own).

64. See de Bürca, *supra* note 4, at 711 (indicating that the purpose of the Advisory Committee is to facilitate and participate in an ongoing, consultative dialogue with Member States).

FCPNM provides no right of petition for individuals, minority groups, or other States seeking to bring complaints against a State party under the FCPNM.⁶⁵

G. THE RIGHT TO RELIGION IN ADVISORY COMMITTEE REPORTS

Given that the FCPNM's Advisory Committee issues opinions in response to State-authored reports rather than contested issues, the opinions of the Advisory Committee tend to be general and broadly worded.⁶⁶ The opinions essentially review the State's report for credibility of the assertions made⁶⁷ and assess the State's efforts in implementing the FCPNM.⁶⁸ If the opinion notes a weakness in the State's protections, it also makes general recommendations as to how the State may correct them.⁶⁹ When given, the recommendations are typically general, suggesting that the State increase its vigilance,⁷⁰ work towards practical solutions,⁷¹ and ensure that procedures aimed

65. See Sleeper, *supra* note 12, at 184.

66. See Furtado, *supra* note 27, at 368-69 (characterizing the language of the Advisory Opinions as little more than "diplomatic niceties" with little direct criticism); see, e.g., Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Azerbaijan* ¶ 116 (Jan. 26, 2004) (suggesting general reforms of the education system); Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the United Kingdom* ¶ 106 (Nov. 30, 2001) (recommending that the United Kingdom "consider the inclusion" of minorities).

67. See *Opinion on Azerbaijan*, *supra* note 66, ¶ 25 (noting that Azerbaijan's statement that no known instances of intolerance had occurred in Azerbaijan's history was contradicted by a number of credible reports of such instances).

68. See, e.g., Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Switzerland* ¶ 31 (Feb. 20, 2003) (finding the State's efforts to protect linguistic and religious minorities satisfactory); Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Ireland* ¶ 27 (May 22, 2003) (approving of the two Acts implemented to (1) eradicate employment discrimination based on, among other things, religion or race; and (2) ensure equal status among all people).

69. See generally *Opinion on the United Kingdom*, *supra* note 66, ¶ 61 (recommending that the State examine additional measures aimed at reducing discrimination).

70. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Ukraine* ¶ 38 (Mar. 1, 2002) (urging continuous vigilance over the interconfessional tension in Crimea).

71. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Sweden* ¶ 80 (Aug. 25, 2002) (recommending a

at protecting religious minorities are functioning properly.⁷² Even in instances in which protections for religious minorities are lacking or worsening, the language of the Advisory Committee rarely increases in strength or specificity.⁷³ The vague wording of these reports jeopardizes the effectiveness of the FCPNM and illustrates a crucial weakness inherent in the Framework: the Advisory Committee's lack of authority to compel states to respond or comply with its recommendations.⁷⁴

Despite the vague wording of its opinions, the Advisory Committee has become more thorough and pointed in its analysis in its second round of opinions. For example, in its initial opinion on Moldova, the Advisory Committee noted problems with discrimination against religious minorities in the media, yet concluded that the media could adequately police itself through existing watchdog groups.⁷⁵ In its second opinion on Moldova, the Advisory Committee acknowledged problems with Moldova's laws

search for pragmatic solutions in the implementation of legislation concerning the circumcision of boys in an effort to balance legitimate governmental aims and freedom of Jewish minorities to practice their religion).

72. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Spain* ¶ 55 (Aug. 25, 2002) (urging authorities to take all necessary steps to counter instances of religious intolerance escalating in violence against minorities by the local population).

73. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the Russian Federation* ¶ 64 (Sept. 13, 2002) (recognizing the occurrence of vandalism to cemeteries and minority religious sites and expressing the "wish" that the government pay more attention to prevention and investigation of such incidents); Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Romania* ¶¶ 35, 38, 42 (Apr. 6, 2001) (finding that the government failed to protect persons from discrimination and hostility under the FCPNM, yet concluding only that it "should" support media programming dealing with minority groups accurately and fairly).

74. See Sleeper, *supra* note 12, at 184 (contending that the State reporting system limits the effectiveness of the FCPNM in enforcing the rights of national minorities because it allows for neither an interstate complaint procedure nor a right of petition for individuals or minority groups); see also Peter G. Danchin, *U.S. Unilateralism and the International Protection of Religious Freedom: the Multilateral Approach*, 41 COLUM. J. TRANSNAT'L L. 33, 99-100 (arguing that although the Human Rights Convention protects freedom of religion more effectively than other international instruments, it does not expressly protect religious minorities).

75. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Moldova* ¶¶ 47, 50 (Mar. 1, 2002).

on registration of religious groups and recognized that Moldovan law enforcement officers were restricting free practice of religion.⁷⁶ It seems unlikely that the latter problems arose only after the publication of the first report, suggesting that in its second opinion the Advisory Committee is asserting more authority.

II. ANALYSIS

Despite its success in enforcing individual human rights, the Human Rights Convention has been less successful at enforcing the rights of religious minorities.⁷⁷ The FCPNM more successfully elaborates the rights of religious minorities and the duties of Member States to protect them, but falls short in enforcing these rights.⁷⁸ Both instruments, however, stand to play an increased and longer-term role in working with Member States toward effective protection of religious minorities.⁷⁹

A. THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES ADDRESSES THE DEFICIENCIES IN THE HUMAN RIGHTS CONVENTION'S PROTECTIONS OF RELIGIOUS MINORITIES

By expanding the rights outlined in the Human Rights Convention, the FCPNM underscores its deficiencies.⁸⁰ For example, the provisions of the Human Rights Convention are too general to

76. Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on Moldova* ¶¶ 78-79 (May 24, 2005).

77. See EVANS, *supra* note 36, at 78 (observing that a State must act very repressively before the ECHR will intervene in issues where the relationship to the practice of religion is subtle).

78. See Wippman, *supra* note 13, at 611 (noting that "the more generally applicable and strongly worded a minority rights instrument is . . . the less it is likely to contain specifically enforceable obligations").

79. See Baylis, *supra* note 58, at 137-38 (positing that regional systems and structures are well-suited to address minority rights).

80. See Furtado, *supra* note 27, at 361-62 (finding that the FCPNM addresses two of the major drawbacks of the Human Rights Convention: (1) the absence of explicit recognition and protection for minority rights; and (2) the insufficiently broad interpretation of rights); see also *id.* at 358 (declaring that the FCPNM's comprehensive protections and the specificity of its signatories' obligations are a milestone for the Council of Europe).

adequately address the realities of protecting religious minorities.⁸¹ The FCPNM fills the gaps left by the Human Rights Convention by recognizing that protection of religious minorities requires not only expanded protections, but also affirmative duties of Member States to ensure unimpeded religious practice.⁸²

The general protections afforded by the Human Rights Convention to religious minorities are lacking in several important respects.⁸³ The right protected by the Convention is the right not to be discriminated against for practicing or changing one's religion.⁸⁴ However, simply barring direct interference or outright discrimination against religious minorities does not provide complete protection of the freedom of religion. As illustrated by *Sahin* and the Greek National Day cases, States may act in ways that infringe upon freedom of religion without direct interference, outright discrimination, or the intent to discriminate.⁸⁵ In focusing on the legislative intent of the policies and events in question, the Court failed to address an issue central to each case: the right to unimpeded manifestation of religious belief. *Sahin* illustrates the deference the Court gives to State discretion in limiting religion, and the Greek National Day cases suggest that the Human Rights Convention does not recognize freedom of religion beyond

81. See EVANS, *supra* note 36, at 2 (contending that the bodies responsible for protecting freedom of religion and belief under the Human Rights Convention have done so in an incoherent and inconsistent manner, developing principles more favorable to States and giving little consideration to the importance of religious freedom and belief).

82. See Baylis, *supra* note 58, at 73 (suggesting that without "measures specifically designed to address minority groups, ordinary state institutions and processes may not offer effective avenues for minority groups to raise their concerns").

83. See Andrews, *supra* note 28, at 474-75 (intimating that compromises among the Human Rights Convention drafters resulted in a hierarchy of rights, laying out broadly-stated non-derogable rights followed by specifically worded qualified rights).

84. See Black-Branch, *supra* note 3, at 9 (characterizing the right to religious freedom as a protective right, meant to protect the individual against wrongs perpetrated by the Member State).

85. See Furtado, *supra* note 27, at 361 (noting that the Human Rights Convention's lack of explicit recognition and protection for minority rights weakens security for national minorities by allowing States discretion in implementing protections).

protection from direct interference or outright discrimination based on religious beliefs.⁸⁶

Finally, the Human Rights Convention does not suggest how rights should be protected.⁸⁷ Consequently, the Human Rights Convention's allowance of certain limitations on the rights of religious minorities in order to maintain public order jeopardizes the protections afforded by the Human Rights Convention, as States retain the sole discretion to determine what is necessary to maintain public order.⁸⁸ Despite requiring that all limitations be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society,⁸⁹ States retain significant discretion in limiting the practice of minority religions.

By placing affirmative duties on the State, the FCPNM addresses the deficiencies of the Human Rights Convention in protecting religious minorities.⁹⁰ The FCPNM extends the duties of states beyond simply prohibiting discrimination by requiring states to foster a climate in which religious minorities may flourish.⁹¹ While some commentators have criticized the FCPNM's failure to vest states

86. See EVANS, *supra* note 36, at 69 (advancing the argument that the Human Rights Convention primarily obliges States to refrain from interfering with the free practice of religion, rather than to create conditions for religious practice to flourish).

87. But see European Convention on Human Rights, *supra* note 5, art. 9(2) (declaring only that a State may limit freedom of religion when doing so is necessary to protect society as a whole).

88. See Miner, *supra* note 10, at 634 (explaining that ECHR case law makes clear that States may interfere with the right of religious freedom provided their aim in doing so is both legitimate and reasonably proportional to the necessity of the situation).

89. See Thomas Giegerich, *Freedom of Religion as a Source of Claims to Equality and Problems for Equality*, 34 ISR. L. REV. 211, 222-23 (2000) (implying that the ECHR grants States party to the Human Rights Convention broad discretion in scrutinizing whether limitations imposed on the freedom of expression are necessary for the protection of freedom of religion).

90. See Miner, *supra* note 10, at 633 (noting that the FCPNM goes beyond merely protecting religious minorities' rights by affirmatively requiring countries to ensure national minorities' freedom of religion and freedom of religious manifestation).

91. See FCPNM, *supra* note 9, arts. 5-6, 9 (requiring protection from threats or acts of discrimination, hostility, or violence based on national minority status; prohibiting assimilationist policies; and ensuring unimpeded communication between national minorities).

with the means to limit the rights of religious minorities in the name of public order,⁹² others have praised its significant advances in protecting religious minorities.⁹³

B. BOTH THE HUMAN RIGHTS CONVENTION AND THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES
FAIL TO ADEQUATELY ENFORCE THE RIGHTS OF RELIGIOUS
MINORITIES

While the FCPNM takes bold steps towards improving the protection of religious minorities, its enforcement mechanism falls far short of permitting any meaningful oversight of the implementation process.⁹⁴ The political nature of the monitoring bodies, the state-driven compliance system, and the inability of other States, individuals, and groups to invoke the protection of the FCPNM greatly handicap its efforts to provide better protection of religious minorities.⁹⁵ Supported by the ECHR and a history of influential human rights decisions, the Human Rights Convention overshadows the FCPNM in definitively deciding issues and in achieving compliance on the part of the Member States.⁹⁶ However, the Human Rights Convention's limited definition of "freedom of religion" as well as the broad discretion it gives the States to limit the

92. See EVANS, *supra* note 36, at 208 (claiming that "[n]o judicial model of religious freedom should ever give absolute primacy to the right to have and to practise a religious belief").

93. See Boriss Cilevi s, *The Framework Convention Within the Context of the Council of Europe*, in FILLING THE FRAME: FIVE YEARS OF MONITORING THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES 28, 37 (2004) (contending that, for the first time in history, respect for religious minorities has been evaluated through FCPNM's impartial legal analysis).

94. See Alberty, *supra* note 6, at 975-76 (surmising that because the FCPNM's provisions are not directly applicable to domestic legal systems it gives States wide discretion in implementing the FCPNM's objectives).

95. See Furtado, *supra* note 27, at 369 (concluding that even if it reached its fullest potential, the FCPNM's reporting system lacks the ability to enforce its recommendations).

96. See Kevin Boyle, Book Review, 89 AM. J. INT'L L. 241, 242 (1995) (reviewing THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS (1993)) (arguing that, despite the Council of Europe's advances in developing the FCPNM, the Human Rights Convention remains the centerpiece of human rights protection).

same curbs the Court's ability to enforce the right to religious freedom to its fullest extent.⁹⁷

The implementation and monitoring mechanism established by the FCPNM is loosely constructed and carries with it no defined penalties for noncompliance.⁹⁸ Because Member States largely drive the process, the Advisory Committee is unlikely to get an unbiased picture of the situation of religious minorities in the State and may need to look to other sources for accurate information.⁹⁹ The state-centric nature of the reporting process also disenfranchises individuals and groups seeking relief for a violation of the FCPNM.¹⁰⁰ Moreover, prior to publication, the reports must be approved by the Committee of Ministers—a political body. The Committee of Ministers makes a final determination and recommendation based on the advice of the Advisory Committee.¹⁰¹ Given that the Committee of Ministers may be affected by political concerns, the Advisory Committee's findings and recommendations may not be neutral or impartial.¹⁰² Additionally, given that the Committee's recommendations are non-binding, the FCPNM is left

97. See Nathan A. Adams, IV, *Human Rights Imperative: Extending Religious Liberty Beyond the Border*, 33 CORNELL INT'L L.J. 1, 52-53 (2000) (finding that the discretion afforded to States in determining what is necessary to maintain public order renders the protection afforded religious minorities against discrimination ineffective).

98. See de Búrca, *supra* note 4, at 711-12 (recognizing that the FCPNM lacks systematic or structured monitoring mechanisms).

99. See Sleeper, *supra* note 12, at 194-96 (providing the example of Romania, which, despite being the first State to sign and ratify the FCPNM, failed to report on any successful legislative action taken to comply with the FCPNM).

100. See Wippman, *supra* note 13, at 613 (recognizing that the FCPNM protections occur through national legislation and policies rather than through an interstate complaint procedure or an individual or minority group right of petition).

101. See Alyssa Haun, *The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and Right to Choose a Residence*, 33 GEO. WASH. INT'L L. REV. 155, 189 (2000) (hypothesizing that the Committee of Ministers may limit the FCPNM's efficacy by taking into account diplomatic, economic, and strategic concerns when issuing recommendations).

102. See Furtado, *supra* note 27, at 368 (finding that despite pointing out State shortcomings in implementing the FCPNM, the opinions' conclusions and recommendations are rarely critical).

with no effective enforcement mechanism in cases of noncompliance.¹⁰³

The Advisory Committee's opinions illustrate the ineffectiveness of the FCPNM's enforcement mechanism. Advisory Committee opinions note intolerance and discrimination against religious minorities within states and reiterate that the behavior is contrary to the values of the FCPNM, yet outline only vague corrective recommendations.¹⁰⁴ These recommendations not only fail to address State compliance effectively, they are of questionable value in enforcing the principles of the FCPNM.¹⁰⁵ Even in the Advisory Committee's second opinion on the Russian Federation, which took an unusually strong step in condemning the State's actions, there is little noticeable or significant strengthening of the Advisory Committee's recommendations to remedy the violations.¹⁰⁶ Under the jurisprudence of the ECHR, however, these issues of noncompliance can be handled with more authority and, potentially, with more effective enforcement.¹⁰⁷

103. See *id.* at 364-65 (noting that while the FCPNM uses "shall" in laying out Member State obligations, it nonetheless allows States great flexibility in implementing the FCPNM according to the limitations of their domestic law).

104. See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the Czech Republic* ¶ 48 (Apr. 6, 2001) (suggesting simply "that the Czech authorities should take all necessary measures to prevent" pervasive intolerance against religious minorities without any reference to the types of measures to be undertaken); Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on the Russian Federation* ¶ 138 (May 2, 2007) (recommending increased zeal in the investigation and prosecution of religiously motivated crimes and punishment of prosecutorial and police inaction).

105. Cf. Mary Ellen Tsekos, *Minority Rights: The Failure of International Law to Protect the Roma*, 9 HUM. RTS. BR. 26, 28 (2002) (noting that if the reporting State has refused to acknowledge that the discrimination exists, the Advisory Committee may not make recommendations to resolve the discrimination).

106. See *Second Opinion on the Russian Federation*, *supra* note 104, ¶ 314 (stating that the authorities of the Russian Federation are "invited" to adopt the recommendations of the advisory committee).

107. Compare *Opinion on Romania*, *supra* note 73, ¶ 19 (suggesting that the Government of Romania "consider" further measures to improve relations between minorities and the police), with *Valsamis v. Greece*, App. No. 21787/93, 24 Eur. H.R. Rep 294, ¶ 37 (1996) (declaring that because the parade did not offend the religious beliefs of the child, the parade did not amount to an interference with the child's freedom of religion).

Unlike the FCPNM, the Human Rights Convention's enforcement mechanism has been highly successful at protecting individual rights and encouraging State compliance with its decisions.¹⁰⁸ The ECHR's ability to decide both fact-specific, contentious cases and issue advisory opinions allows the Court to produce consistent, authoritative rulings. These rulings and opinions have become the basis for an extensive jurisprudence that guides the behavior of Member States. Yet as noted by scholars, the ECHR's success has increased the volume of cases, making maintaining this consistency more difficult.¹⁰⁹

The ECHR's success may also be credited to the Court's judges. The Human Rights Convention includes language designed to ensure a high degree of impartiality as well as reduce any conflict of interest or adverse political influence.¹¹⁰ All judicial candidates must possess substantive legal knowledge and experience, and no Member State is allowed to have more than one judge on the Court.¹¹¹ Furthermore, unlike the FCPNM, the ECHR permits individual recourse outside domestic legal systems, lessening the ability of Member States to influence the outcome of internal discrimination against religious minorities.¹¹²

In deciding cases and issues, however, the ECHR retains no power to ensure that the state follows through on the decision or to ensure that the State reforms its laws to prevent future violations.¹¹³ The Court's approach leaves the resolution of the issue to the State and does not provide a guarantee to the individual that the Court will follow through without further resort to court proceedings.

108. See Klebes, *supra* note 2, at 78 (crediting the ECHR's success to its ability to adapt the Human Rights Convention to reflect changing societal needs).

109. Shelton, *supra* note 7, at 148-49.

110. See Protocol No. 11, *supra* note 31, art. 21.

111. See Andrews, *supra* note 28, at 472.

112. See *id.* at 468 (noting the striking willingness of Council of Europe Member States to permit ECHR jurisdiction over individuals' claims against the Member State).

113. Protocol No. 11, *supra* note 31, arts. 46, 54 (transferring to the Committee of Ministers the supervisory role).

C. DESPITE ITS FAILINGS IN ENFORCING THE RIGHTS OF RELIGIOUS MINORITIES, THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES STANDS IN A UNIQUE POSITION TO FURTHER THE RIGHTS OF RELIGIOUS MINORITIES

Although the formal mechanisms of the FCPNM fail to provide an effective mechanism for immediate protection of the rights of religious minorities, the FCPNM's informal mechanism of enforcement may actually further the FCPNM's goals in ways the ECHR can not. As it stands, publication of judgments is the extent of the ECHR's involvement in the issues it decides. Once the Court adjudicates the matter, the State bears the responsibility of implementing the decision.

The FCPNM's enforcement mechanism establishes a system by which the prescribed reforms may be monitored. This system includes cyclical reporting requirements for States. Each State must keep the Secretary General and, by extension, the Committee of Ministers abreast of its progress in addressing and remedying its deficiencies under the FCPNM.¹¹⁴ Given the nature of the enforcement mechanism, the State is under no obligation to comply with the Advisory Committee's recommendations, but the prospect of future criticism for failing to do so may prompt State action to correct deficiencies. Further, as the Advisory Committee recognizes State progress in providing protections for religious minorities in its reports, the State may wish to have its accomplishments highlighted in an official, public document.

D. THE RELUCTANCE OF MEMBER STATES TO VEST THE COUNCIL OF EUROPE WITH MORE POWER OVER DOMESTIC AFFAIRS HINDERS ANY MOVE BY THE COUNCIL TO MODIFY THE JURISDICTION OF THE EUROPEAN COURT OF HUMAN RIGHTS

The effectiveness and authority with which the ECHR adjudicates issues make changing the scope of its jurisprudence highly contentious. Allowing the Court to enforce a more detailed set of rights would allow the Court greater influence in domestic politics.¹¹⁵

114. FCPNM, *supra* note 9, art. 25.

115. See Klebes, *supra* note 2, at 76 (arguing that the Convention on Human Rights trumps national law to the extent that it conflicts with obligations under that

The FCPNM's status as a framework convention rather than a full-fledged convention illustrates the concern of Member States in extending the rights protected by the ECHR.¹¹⁶ Further, the ECHR bears a heavy caseload¹¹⁷ and may itself oppose any changes to its current jurisprudence. As a result, integrating the FCPNM into the Human Rights Convention would be a challenge for the Council of Europe.¹¹⁸

III. RECOMMENDATIONS

Ideally, the Council of Europe should work toward creating a system that incorporates the FCPNM into the jurisprudence of the ECHR while balancing the interests of the Member States in retaining control of their domestic affairs.¹¹⁹ Given that such a prospect would likely face opposition from Member States and the Court alike, such a solution may be a long-term goal unlikely to happen soon.¹²⁰ As a result, interim steps are necessary to ensure that Member States and the Court are prepared for any such change to the Court's jurisdiction.¹²¹

law); Wippman, *supra* note 13, at 613 (emphasizing that the FCPNM's "provisions are not directly applicable in state parties' national law"); *see also* Valentine, *supra* note 49, at 445 (linking an absence of a definition for national minorities in the FCPNM to the Council of Europe's lack of consensus on a definition); Wippman, *supra* note 13, at 614-15 (noting that the FCPNM is not the only European treaty faced with such drafting problems; the European Charter for Regional and Minority Languages experienced similar difficulties).

116. *But see* Wippman, *supra* note 13, at 613 (contending that unlike other conventions, the FCPNM intentionally gives States broad discretion in determining the means pursued to meet their obligations).

117. *See* EVANS, *supra* note 36, at 15-16 (noting that the Court's caseload has increased significantly since the Court was established).

118. *See* Furtado, *supra* note 27, at 365-66 (acknowledging that the FCPNM developed as a framework convention due to the reluctance of Member States to conclude legally binding agreements on minority protection).

119. *See id.* at 369 (proffering that the convergence of the two treaties is the natural evolution in protecting the rights of national minorities); Geoff Gilbert, *Autonomy and Minority Groups: A Right in International Law?*, 35 CORNELL INT'L L.J. 307, 317 (2002) (suggesting that all minorities treaties should seek to guarantee equality and preservation of the minority groups' characteristics and traditions).

120. *See* Cilevi s, *supra* note 93, at 33.

121. *See id.* at 33 (considering that it is unrealistic that minority rights will soon become justiciable).

A. REQUIRE ALL MEMBER STATES TO RATIFY THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Despite the increasing importance of the FCPNM and the requirement that all prospective Member States of the Council of Europe ratify it, not all current Member States have.¹²² Permitting established Council Members such as France and Turkey to refrain from ratifying the FCPNM contributes to the perception that it is an optional instrument, impeding the Council's efforts to increase or enforce compliance.¹²³ The failure of current Member States to ratify the FCPNM also jeopardizes the Council's credibility.¹²⁴ The Council's role in integrating prospective Member States is critical in light of the eastward expansion of the EU.¹²⁵ Accordingly, established Member States must commit to the FCPNM as they have to the Council of Europe if they hope to maintain credibility and authority.

B. INCREASE THE ADVISORY COMMITTEE'S INDEPENDENCE FROM
THE COUNCIL OF MINISTERS AND AUTHORITY TO ISSUE OPINIONS

The Advisory Committee is currently subordinate to the Committee of Ministers, a political body, which reviews all Advisory Committee opinions before they are published.¹²⁶ Submitting these opinions to a political body lessens the independence and credibility

122. See Vessela V. Stoyanova, Comment, *The Council of Europe's Monitoring Mechanisms and their Relation to Eastern European Member States' Noncompliance*, 45 SANTA CLARA L. REV. 730, 767-68 (2005) (illustrating the adverse impact on the integrity of the FCPNM due to this failure).

123. See Christophe Hillion, *On Enlargement of the European Union: The Discrepancy Between Membership Obligations and Accession Conditions as Regards the Protection of Minorities*, 27 FORDHAM INT'L L.J. 715, 719 (2004) (noting general European discomfort with the concept of minority rights); Stoyanova, *supra* note 122, at 767 (recognizing that though France has one of the largest population of national minorities it has nonetheless failed to ratify the FCPNM).

124. See Stoyanova, *supra* note 122, at 767-68 (emphasizing the while the Council closely securitizes the compliance of Eastern European countries, it fails to do the same with the Western European countries leading to accusations of hypocrisy).

125. See Shelton, *supra* note 7, at 95-96 (suggesting that increasingly complex questions will arise as regional efforts to address human rights concerns expand into Eastern European countries).

126. FCPNM, *supra* note 9, arts. 25-26.

of the report by increasing the probability that political concerns affect the final product.¹²⁷ Separating the Advisory Committee from the Committee of Ministers will increase the effectiveness of the Committee's opinions and ensure that the principles of the FCPNM eclipse political concerns.

The Advisory Committee should also be given greater power beyond simply monitoring compliance with the FCPNM.¹²⁸ Constraining the Advisory Committee to publishing opinions solely in response to State reports hinders the Advisory Committee's ability to produce reports or opinions on common problems throughout the Council of Europe.

C. THE ADVISORY COMMITTEE SHOULD TAKE A MORE ACTIVE
ROLE IN THE DECISION-MAKING PROCESS TO ENSURE THAT THEIR
OPINIONS ARE BASED ON ACCURATE INFORMATION

By turning to outside sources to verify State reports, the Advisory Committee has been able to effectively assess problems even if they have not been reported by the State.¹²⁹ The Advisory Committee should extend its efforts to validate the information given to it by a State. In particular, the Advisory Committee should collaborate with other international organizations promoting the rights of national minorities in Europe. For example, the Committee on Security and Cooperation in Europe ("CSCE"), the independent U.S. agency charged with monitoring Member State compliance with the principles of the Organization for Security and Cooperation in Europe ("OSCE"), introduced a High Commissioner for National Minorities in 1992 to ferret out problems related to the presence of

127. See Haun, *supra* note 101, at 189 (postulating that the Committee of Ministers might "soften its criticism of a State Party in order to avoid the same degree of scrutiny being directed at their own country's policies").

128. See John Packer, *Situating the Framework Convention in a Wider Context: Achievements and Challenges*, in FILLING THE FRAME 48-49 (2004) (advocating for a more proactive role for the Advisory Committee which includes providing States with technical assistance, developing thematic reports and advisory opinions, and drafting suggested policies and legislative options).

129. See *Opinion on Azerbaijan*, *supra* note 66, ¶ 25 (noting that the Advisory Committee was able to counter Azerbaijan's assertions with credible information from other sources).

national minorities and to effectively resolve them.¹³⁰ Collaborating with the CSCE, OSCE and other similar organizations may help the Advisory Committee effectively compile its opinions on the situation of religious minorities in Member States and prospective Member States.

D. PERMIT INDIVIDUALS, GROUPS, AND OTHER STATES TO INVOKE
THE PROTECTIONS OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES

The FCPNM should be amended to allow individuals and groups to: (1) report violations of the FCPNM; (2) make timely reports to the Council of Europe of potential noncompliance; and (3) allow minority groups to protect their rights under the FCPNM more effectively.¹³¹ Allowing groups and individuals to report violations of the FCPNM will improve the FCPNM's effectiveness and ability to address a full range of concerns on the part of religious minority groups.¹³²

E. BRING CASES AND REQUEST ADVISORY OPINIONS FROM THE
EUROPEAN COURT OF HUMAN RIGHTS ON PROTECTIONS FOR
RELIGIOUS MINORITIES AFFECTED BY NEUTRAL OR GENERAL
LAWS

To expand the Court's jurisprudence on religious minority issues, the Committee of Ministers should request advisory opinions on the interpretation of Article 9 of the Human Rights Convention and general or neutral laws.¹³³ Consideration of these laws will help the

130. See COMMITTEE ON SECURITY AND COOPERATION IN EUROPE, *Helsinki Summit Declaration*, in THE HELSINKI DOCUMENT: THE CHALLENGES OF CHANGE ¶¶ 18-20 (1992).

131. See Valentine, *supra* note 49, at 446-48 (championing increased and timely protection through inclusion of an individual and group right to petition the government for redress).

132. See *id.* (arguing that providing a right of petition on a group basis guarantees minorities equal representation in different national sectors, just as, for example, affirmative action did in the United States).

133. *Contra* European Convention for Human Rights, *supra* note 5, Protocol II, art. 1 (mandating that advisory opinions may not deal with any question relating to the content or scope of the rights or freedoms defined in Section 1 of the Human Rights Convention or with any other question which the Court or the Committee of

Court expand its jurisprudence to encompass more than mere non-discrimination and may further the protection of religious minorities.

IV. CONCLUSION

Given the impact of the Council of Europe in modifying and unifying legal systems throughout Europe, the Council of Europe stands to play an important role in the protection of religious minorities as Europe grows increasingly diverse.¹³⁴ With increasing immigration into the EU,¹³⁵ Europe's religious landscape is diversifying, and the increasing diversity has presented challenges for governments throughout Europe.¹³⁶ Implementing more stringent policies and guidelines for State actors aimed at preserving the right of religion will facilitate integration of religious minorities into the European community.¹³⁷ This will be particularly important in countries such as the successor states to the former Yugoslavia, where religion divided the states to the point of civil war and genocide.¹³⁸ Only by adapting the Convention on Human Rights and the Framework Convention to allow the Council of Europe to both

Ministers might consider in consequence of any proceeding instituted in accordance with the Convention).

134. See Romano Prodi, President, European Comm'n, Speech at the New York University Law School: Cultural Diversity and Shared Values (Nov. 4, 2003) (noting that the EU is becoming increasingly diverse as immigrants from a myriad of countries and ethnicities flock to it); see also Adams, *supra* note 97, at 64 (recognizing the critical nature of religious liberty to counter secessionist movements organized on the basis of religious differences).

135. See Danchin, *supra* note 74, at 100 (correlating changes in the political landscape of Eastern and Central Europe and increased mobility with the increase in immigration).

136. See Adams, *supra* note 97, at 52-53 (noting that in recent years, Europe has witnessed increasing animus toward religious minorities similar to the "political hysteria surrounding McCarthyism in the United States"); see also Marina Hadjioannou, *The International Human Right to Culture: Reclamation of the Cultural Identities of Indigenous Peoples Under International Law*, 8 CHAP. L. REV. 201, 202 (2005) (noting the increasing importance of cultural durability and integrity in providing human rights protections).

137. See Adams, *supra* note 97, at 53 (contending that the ECHR has failed to protect religious minorities from increased scrutiny by Council of Europe States); see also *supra* Part III (concluding that stricter reporting mechanisms and increased authority and autonomy for the Advisory Committee are necessary to strengthen the FCPNM).

138. See Ward, *supra* note 11, at 531.

regulate and protect religious minorities can true positive change occur.¹³⁹

139. See Sleeper, *supra* note 12, at 204-05 (proffering that states must begin to implement legal reforms that incorporate international norms and satisfy the requirements of international treaties, including enforcement mechanisms that will strengthen social reform and civil society).