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## **Committee on Legal Affairs and Human Rights**

### **For a greater commitment of member states concerning the efficiency and implementation of the Council of Europe Treaty Law**

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#### **The specificity and added value of the *acquis* of the Council of Europe treaty law**

Working document  
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#### **Summary**

*This report is concerned with the extent to which the Council of Europe's treaty law can be regarded as having both specificity and added value. It defines the considerations relevant to establishing such characteristics and examines the content and implementation of treaties that have been adopted in the six principal groupings of them that have been identified. The report finds that at the time of adoption the provisions in the treaties were entirely relevant and to a very large extent adequate for the issues being addressed. Furthermore the more recently adopted treaties are tackling pressing issues and providing leadership in the approach needed. Nonetheless there are areas where the contribution seems weak. At their best, the implementation techniques in the treaties exceed by far what is found in treaties adopted elsewhere. However, these implementation techniques are far from universal in the treaty law of the Council of Europe. Overall much of what can be seen in the treaty law of the Council of Europe has clear specificity and added value. However, there is still a good deal which only really affects half or less of the membership. Thus the existence of a genuine European *acquis* with specificity and added value remains very much work in progress and an extensive level of non-participation in the treaties for a lengthy period is likely to compromise the possibility of such a goal being attained. The challenge for the Council of Europe in truly attaining a significant *acquis* with specificity and added value is to ensure not only that its treaties remain relevant and adequate but also that they attract the full engagement of all its member states, both formally and with respect to their effective implementation.*

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## Introduction

1. This report is concerned with the characteristics of the treaty law that has been developed by the Council of Europe - part of its "common legal space"<sup>2</sup> - since that organisation came into being on 5 May 1949. In particular it examines the extent to which this treaty law can be regarded as having both a specificity and an added value when viewed in the light of other regional and international treaty-making and standard-setting, as well as of measures adopted at the national level.

2. The preparation of the report was undertaken at the request of the Parliamentary Assembly of the Council of Europe. It deals with developments concerning Council of Europe treaties up until 24 July 2009.

3. The report begins by considering the context in which the treaty-making with which it is concerned occurs. Then it seeks to define the basis in principle for determining whether a body of treaty law can be regarded as having specificity and added value. This is followed by a review of the development of treaty-making within the Council of Europe, the range of subjects that are addressed by its treaties and their connection to the mandate of the Council of Europe. In addition this section examines the extent of acceptance of obligations under Council of Europe treaties, both by its member states and others, and the relationship between the treaty-making of the Council of Europe and other instruments and techniques which it uses to set standards and to facilitate the implementation of particular objectives. In the course of this review the specificity and added value of the Council of Europe's treaties is considered in general terms by reference to the criteria previously identified.

4. Thereafter, using the same criteria, the report turns to assess the specificity and added value of the Council of Europe's treaties through a focus on each of the principal fields in which these treaties have been adopted. The report concludes by giving an overall assessment of the extent to which treaties adopted within the Council of Europe can be regarded as having both specificity and added value.

## Context

5. A treaty has come to be regarded as international agreement between international persons - primarily states but also international organisations - that is in written form and is governed by international law<sup>3</sup>.

6. While most treaty-making is bilateral in nature, the conclusion of treaties involving many parties - usually described as "multilateral" but also as "law-making" because of the attempt in many of them to lay down rules of general application<sup>4</sup> - has been a phenomenon of international relations for more than four centuries<sup>5</sup>. However, although such treaties began to become significant in the course of the nineteenth century, their adoption only really became extensive with the establishment of international organisations promoting them in pursuit of their respective mandates

7. Although some multilateral treaties continue to be adopted outside of the framework of various international organisations<sup>6</sup>, it is primarily within the latter framework that they are now produced. This occurs both at the global level - notably through the United Nations and its specialised agencies - and under the auspices of a number of regional organisations, the most significant of which in this regard are the African Union, the Organization of American States and the Council of Europe.

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<sup>2</sup> See 'The Common Legal Space of the Council of Europe', speech by Maud de Boer-Buquicchio, Deputy Secretary General, Sevilla, 7 May 2009.

<sup>3</sup> Article 2 of the Vienna Convention on the Law of the Treaties, 1969, Article 2 of the Vienna Convention on Succession of States in respect of Treaties, and Article 2 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Unwritten agreements can still be legally binding and not all written agreements between international persons are governed by international law or even legally binding.

<sup>4</sup> They are, however, also the means for establishing international organisations such as the United Nations and the Council of Europe.

<sup>5</sup> See Christian L. Wiktor, *Multilateral Treaty Calendar 1648-1995*, (1998), p xiii.

<sup>6</sup> The diplomatic conferences leading to the Geneva Conventions of 12 August 1949 and the subsequent Protocols I and II of 8 June 1977 and Protocol III of 8 December 2005 and the conventions adopted under the auspices of the Hague Conference on Private International Law are notable examples.

8. Treaty-making at the international level can overlap with that undertaken by regional organisations and will, therefore, be relevant to any assessment of the specificity and added value of the Council of Europe's treaties. Moreover, while at the regional level in Europe there is no competitor treaty-making body to the Council of Europe, in the present context the extensive law-making of the European Union<sup>7</sup> is undoubtedly relevant to such an assessment, as is to a considerably lesser extent the standard-setting undertaken by the Organization for Security and Cooperation in Europe ("OSCE").

### Definition

9. Treaty-making might be regarded as having specificity where its particular characteristics are such as to render it unique in one or more ways. It can be viewed as having added-value where what that treaty-making does achieves something that has not proved possible either by states acting alone or through other regional and international mechanisms.

10. The particular features of a treaty that will be significant for the purpose of assessing its specificity and added value will relate either to its subject-matter or to the circumstances of its adoption and implementation.

11. As regards the former the considerations of importance for any assessment will not only be the extent to which a treaty is innovative, relevant and adequate at the time of its adoption but also the question of whether or not it has since been overtaken by other developments, whether as a consequence of changing circumstances rendering the treaty no longer relevant and/or sufficient or of the adoption of other instruments in other fora that are much more appropriate in the evolving situation. However, the mere fact that instruments in other fora have been adopted would not necessarily render those of the Council of Europe redundant; the key issue will be whether or not there is a complementarity between them so that both sets of instruments have a useful role to play in tackling the issues concerned.

12. When it comes to implementation there are a number of considerations that will be important when evaluating a treaty. The first will be the extent to which the particular treaty has advanced from merely being an adopted text to one that has actually entered into force. A second one will be the extent to which the provisions of the treaty concerned are operative; a matter not only of the number of ratifications<sup>8</sup> achieved but also of the impact on these both of reservations and denunciations. The third consideration of importance concerns the extent to which the treaty has been successfully implemented; a matter of the availability of tools to promote and secure this objective, the efficacy of those tools and the extent to which national law and practice has been transformed following the acceptance of a given treaty, with or without the assistance of the foregoing tools.

13. Although implementation in some instances will be an ongoing process - notably in the case of those concerned with human rights since the reach and meaning of them continues to evolve - and can only be assessed through constant and detailed monitoring of national measures, there will also be treaties where the simple act of transforming the European standard into national law will be sufficient to fulfil the treaty's objective. The achievement of this transformation in the case of the latter instruments may be enough to secure their added value and this should not be lost sight of it when comparing the lack of activity relating to them with the continuous effort required to secure the implementation of many other treaties. In this report only the tools made available to secure that implementation is considered as it is impracticable within its scope to assess the adequacy of steps taken at the national level in respect of all of the Council of Europe's treaties<sup>9</sup>.

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<sup>7</sup> This does, however, occasionally use the treaty vehicle for its standard-setting; see, e.g., n 202.

<sup>8</sup> The expression of definitive consent to be bound. Ratification is technically a term reserved for such an act - done through an instrument of ratification or of acceptance or approval - by those international persons who took part in the negotiations for the treaty or signed, whereas the term "accession" is used for those consent at a later point in time. However, for the purpose of this report, "ratifications" shall be taken also to include any accessions.

<sup>9</sup> However, see further J. Polakiewicz, *Treaty-making in the Council of Europe* (1999), ch 9.

14. What gives a treaty specificity can be as much about its adoption and implementation as its subject-matter, since it may be the former that transforms an already accepted standard into reality. Conversely added value can be achieved solely through the content of a treaty as it may lead to a significant change in the way in which an issue is perceived, even if implementation lags a considerable way behind.

15. While the considerations that lead to a treaty having specificity can often result in it also having some added-value, this cannot be assumed. A treaty that is innovative whether as regards subject-matter or implementation machinery will be of little consequence if it is either not accepted or the standards or machinery prove unworkable in practice. The uniqueness of a particular instrument is certainly not a guarantor of value being added through its adoption and it may take some time before it is possible to discern whether or not any such value has been added.

### The Council of Europe's Treaties

16. This section looks first at the volume of treaty-making under the auspices of the Council of Europe and the various subjects which this addresses. It then seeks to establish the essential character of the treaties adopted, distinguishing those concerned with democracy and human rights from those directed at harmonisation and co-operation. The level of participation by member states in the treaties adopted and the extent of the commitment actually made is then considered. Thereafter issues of territorial application, participation by non-member states and a possible problem of European Union exceptionalism are examined. Finally the section consider the treaties in the light of other instruments adopted by or within the Council of Europe.

#### *Volume*

17. The Council of Europe Treaty Series ("CETS")<sup>10</sup> comprises 213 treaties<sup>11</sup>. Of these treaties some 31 are not yet in force<sup>12</sup>, 11 have ceased to be operative, whether because they have been deleted from the CETS<sup>13</sup>, have been repealed<sup>14</sup>, lost their purpose<sup>15</sup> or are no longer open for signature<sup>16</sup>. 16 treaties have become integral to the treaties which they amend<sup>17</sup> and there are 5 treaties which are revised versions of treaties that had already been adopted and entered into force<sup>18</sup>.

18. The scale of the treaty-making effort within the Council of Europe has remained at a fairly constant level over the course of the organisation's life<sup>19</sup>. Thus 5 were concluded in its first nineteen months<sup>20</sup> and the rate of production in the succeeding decades has generally been much the same, namely 28 for 1951-1960, 41 for 1961-1970, 37 for 1971-1980, 34 for 1981-1990, 36 for 1991-2000 and 28 since the beginning of 2001. This level of activity exceeds that of other comparable regional organisations<sup>21</sup> but it is still more limited than the 517 major multilateral instruments deposited with the

<sup>10</sup> Technically this series only begins with number 194 as treaties adopted before that were published in the European Treaty Series ("ETS") but in practice the two series are treated as one and the more current one is used to embrace all the treaties of the Council of Europe. "CETS" will thus be used when referring to treaties in the earlier series.

<sup>11</sup> Although the last treaty number in the Council of Europe Treaty Series is 205, numbers 3,4, 6-8 and 11 have no entry, 8 numbers are supplemented by lettered entries (12A, 13A, 14A, 48A, 61A, 61B, 74A and 78A). See the Appendix for the full list.

<sup>12</sup> CETS Nos 56, 57, 60, 61, 61A, 61B, 71, 75, 79, 91, 119, 129, 131,136, 139, 145, 146, 150, 153, 154, 172, 175, 180, 184, 190, 194, 199, 201, 202, 203 and 205.

<sup>13</sup> CETS Nos 3, 4, 6, 7, 8 and 11.

<sup>14</sup> CETS No 140 Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms was repealed following the entry into force of Protocol 11 (CETS No 155).

<sup>15</sup> CETS No 146 (Protocol No 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms) lost its purpose following the entry into force of Protocol 11 (CETS No 155).

<sup>16</sup> CETS Nos 22, 36 and 137, the Second, Fourth and Fifth Protocols to the General Agreement on Privileges and Immunities of the Council of Europe ceased to be open for signature following the entry into force of Protocol 11 (CETS No 155).

<sup>17</sup> CETS Nos 44, 45, 55, 81, 103, 109, 110, 111, 113, 118, 134, 151, 152,155, 170 and 171.

<sup>18</sup> These are with the earlier versions in brackets: CETS Nos 139 (78), 143 (66), 163 (35), 193 (65) and 202 (58). CETS Nos 139 and 202 are not yet in force and the parties to CETS Nos 139, 143 and 163 do not so far include all the parties to the treaties which are being revised.

<sup>19</sup> See further J. Polakiewicz, *Treaty-making in the Council of Europe* (1999).

<sup>20</sup> May 1949-December 1950.

<sup>21</sup> The website of the Organization of American States

([http://www.oas.org/DIL/treaties\\_signatories\\_ratifications\\_year.htm](http://www.oas.org/DIL/treaties_signatories_ratifications_year.htm) consulted on 15 July 2009) shows 67 treaties concluded up to 2003 and the website for the African Union shows 39 treaties (including those concluded under

Secretary-General of the United Nations as of 1 January 2006, which comprise mainly but not exclusively the multilateral treaties concluded under the auspices of the United Nations and its specialized agencies<sup>22</sup>.

### *Subject areas*

19. The web site of the Council of Europe's Treaty Office<sup>23</sup> groups the treaties into 49 fields<sup>24</sup>, although some of them are listed under more than one field because in order to take account of the mixed character of their subject-matter. However, a clearer view of the focus of the treaties - and one which is more manageable for the purpose of the analysis in this report - might be gained by treating them as falling into the following six broad categories, namely, one concerned with the operation of the Council of Europe itself ("institutional"<sup>25</sup>) and five addressed to the member states and any other parties to them, i.e., culture and sport<sup>26</sup>, democracy and human rights<sup>27</sup>, environmental and social issues<sup>28</sup>, legal process and co-operation<sup>29</sup> and private law<sup>30</sup>. It is acknowledged that the use of the "human rights" designation for some treaties is not necessarily what those adopting them had in mind or indeed reflected in the division of work between the Council's Directorate-Generals<sup>31</sup> but in substantive terms this is a fair portrayal of their contribution to European standards.

20. There can be no doubt that the five categories just identified all fall firmly within the aim set for the Council of Europe in its Statute, namely, "to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress" which is to be pursued through "agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms"<sup>32</sup>.

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its predecessor, the Organisation of African Union (<http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>, consulted on 15 July 2009).

<sup>22</sup> <http://untreaty.un.org/English/overview.asp>, consulted on 15 July 2009.

<sup>23</sup> <http://conventions.coe.int/>

<sup>24</sup> Arbitration; Au pair work; Audiovisual Law; Biomedicine; Cinema; Civil Law; Civil liability; Commercial Law; Corruption; Court procedure; Culture; Cybercrime; Data protection; Enforcement of sanctions; Environment; European social charter; Extradition; Family Law - Rights of Children; Financial Law; General international law; Higher education; Human Rights; Human Rights (Convention and Protocols only); Intellectual Property; Legal co-operation in administrative and fiscal matters; Legal co-operation in civil matters; Legal co-operation in criminal matters; Legal status of the Council of Europe; Local and Regional Authorities; Migrant workers; Minorities; Movement of persons; Mutual assistance in criminal matters; Nationality; Other legal co-operation; Prevention of torture; Protection of Animals; Protection of victims; Public health; Radio and Television; Refugees; Social and medical assistance; Social Law; Social protection of farmers; Social security; Sport; Terrorism; Testaments; and Transfer of proceedings.

<sup>25</sup> Comprising treaties in the field Legal status of the Council of Europe.

<sup>26</sup> Comprising treaties in these fields: Audiovisual Law; Cinema; Culture; Radio and Television; and Sport.

<sup>27</sup> Comprising all or some of the treaties in these fields: Biomedicine; Data protection; European social charter; Family Law - Rights of Children; General International Law; Human Rights; Human Rights (Convention and Protocols only); Local and Regional Authorities; Migrant workers; Minorities; Movement of persons; Mutual assistance in criminal matters; Nationality; Prevention of torture; Refugees; and Social Law.

<sup>28</sup> Comprising all or some of the treaties in these fields: Au pair work; Environment; Higher education; Legal co-operation in criminal matters; Migrant workers; Movement of persons; Protection of Animals; Public health; Social and medical assistance; Social Law; Social protection of farmers; and Social security.

<sup>29</sup> Comprising all or some of the treaties in these fields: Arbitration; Corruption; Court procedure; Cybercrime; Enforcement of sanctions; Extradition; Family Law - Rights of Children; General international law; Legal co-operation in administrative and fiscal matters; Legal co-operation in civil matters; Legal co-operation in criminal matters; Local and Regional Authorities; Mutual assistance in criminal matters; Other legal co-operation; Protection of victims; Radio and Television; Terrorism; Testaments; and Transfer of proceedings.

<sup>30</sup> Comprising all or some of the treaties in these fields: Civil Law; Civil liability; Commercial Law; Family Law - Rights of Children; Financial Law; Intellectual Property; and Radio and Television.

<sup>31</sup> E.g., the Framework Convention for the Protection of National Minorities is within the responsibility of the Directorate General of Human Rights and Legal Affairs but the European Charter for Regional or Minority Languages is a matter for the Directorate General of Education, Culture and Heritage, Youth and Sport

<sup>32</sup> Article 1(a) and (b).

### Character

21. The essential character of the treaties grouped into the five categories for which member states and other parties are the addressees have previously been described as being either ones that "seek to achieve harmonisation of national legislation" ("harmonisation treaties") or ones which "aim at facilitating and improving international cooperation between national law enforcement agencies"<sup>33</sup> ("cooperation treaties"). In making this distinction between them, it was suggested that harmonisation treaties were essentially concerned with aspects of private law and cooperation treaties applied mainly to cooperation in the administrative and penal fields.

22. Furthermore it has been suggested that this distinction affected the implementation techniques that were adopted. Thus the focus in harmonisation treaties is only on preventive measures to forestall divergent practices, namely, the preparation of explanatory reports and the promotion of official translations that correspond with the original text in English and French. On the other hand the cooperation treaties have tended to employ corrective measures of varying intensity in order to ensure their implementation, on the basis that difficulties in applying their provisions could not be anticipated beforehand - and thus addressed in an explanatory report - since they were only likely to arise when steps were actually taken to apply them.

23. These corrective measures range from adjudicatory mechanisms (of which the European Court of Human Rights is the most significant), through non-judicial settlement procedures, the use of monitoring bodies that either examine reports submitted by the parties or evaluate actual law and practice and the making of proposals on application by an expert body, to the mere submission of information on domestic measures (whether generally or on a specific issue)<sup>34</sup>. As such they reflect the approach to implementation seen in treaties concluded at the international level. However, it is more usual for the mechanisms in the Council of Europe treaties to be obligatory than is the case with those in international treaties.

24. While the various forms of implementation mechanisms just outlined continue to be used (albeit with some enhancements) and the treaties concerned with harmonisation remain firmly in the sphere of private law, the use of "cooperation" to designate a significant element of the treaty-making undertaken within the Council of Europe - even if at one point it was generally but not entirely accurate - does not really do justice to either the objectives or achievements of many of them.

25. "Cooperation" is a term used to describe treaties that "do not seek to reform domestic substantive law but relate to the procedural aspects of national legislation, and to internationally oriented procedures at that"<sup>35</sup>.

26. As such this is far from apt to describe many of the treaties in the democracy and human rights field. The latter are not directed at harmonisation in the sense of seeking identical rules on given matters in the legal systems of member states and other parties - the discrete grouping already noted - but they are both (a) establishing certain minimum standards to be respected by national law and practice and (b) (generally) creating mechanisms to ensure that this actually occurs. Indeed the implementation mechanism in at least some of them is a primary rationale for their adoption and in one of them it is the sole rationale<sup>36</sup>. These treaties are sometimes just viewed negatively as a constraint on the freedom of action of states but a more positive view of them is that they are not only an articulation of shared values but also an important means of assisting in their realisation. This is, therefore, clearly much more than cooperation and it might be better to regard the democracy and

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<sup>33</sup> H-J Bartsch, 'The Implementation of Treaties Concluded within the Council of Europe', in F G Jacobs and S Roberts (eds), *The Effect of Treaties in Domestic Law* (1987), 197, 200.

<sup>34</sup> The techniques of implementation will be considered further in the "Substantive focus" section below. See also J Polakiewicz, *Treaty-making in the Council of Europe* (1999), ch 8. On the discrete role of the Parliamentary Assembly in supervising the implementation of treaty obligations, see F Benoît-Rohmer, 'Mécanismes de supervision des engagements des états membres et autorité du Conseil de l'Europe', in B Haller, H C Kruger and H Petzold, *Law in Greater Europe*, (2000), 80.

<sup>35</sup> H-J Bartsch, 'The Implementation of Treaties Concluded within the Council of Europe', in F G Jacobs and S Roberts (eds), *The Effect of Treaties in Domestic Law* (1987), 197, 205.

<sup>36</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CETS No: 126.

human rights treaties as forming a discrete grouping of treaties from those that are designated as ones concerned with either harmonisation or cooperation<sup>37</sup>.

27. The significance of the democracy and human rights treaties is further underlined by the fact that many of the ones in this grouping - although not all of them<sup>38</sup> - must be ratified as a condition of becoming a member of the Council of Europe<sup>39</sup>. However, they are not unique in this regard since in addition to them and the institutional treaties<sup>40</sup>, this fundamental status has also been accorded to an increasing number of treaties that fall into the cooperation grouping<sup>41</sup>. The actual list of which treaties must be ratified has grown with the enlargement of the membership<sup>42</sup>, undoubtedly reflecting not only the development in the body of the Council of Europe's treaty law but also the growing recognition of the significance of these treaties and thus undoubtedly their specificity and added value. However, it is noteworthy that the majority of the treaties for which ratification has been imposed as a condition have not yet been accepted by all the existing member states<sup>43</sup>.

<sup>37</sup> See further G de Vel and T Markert, 'Importance and weaknesses of the Council of Europe Conventions and of the Recommendations addressed by the Committee of Ministers to member states' in B Haller, H C Kruger and H Petzold, *Law in Greater Europe*, (2000), 345.

<sup>38</sup> Namely, the European Convention on Human Rights and Protocols Nos 1, 4, 6, 7, 12, 13 and 14 (CETS Nos 5, 9, 46, 114, 117, 118, 187 and 194), the European Charter of Local Self-Government (CETS No 122), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CETS No 126), as amended by its protocols, the European Charter for Regional or Minority Languages (CETS No 148), the European Convention on the Exercise of Children's Rights (CETS No 160), the European Social Charter (revised) (CETS No 163), the European Convention on Nationality (CETS No 166), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (CETS No 200).

<sup>39</sup> Prescribed in the invitation extended by the Committee of Ministers under Article 4 of the Statute of the Council of Europe.

<sup>40</sup> I.e., the Statute of the Council of Europe and the General Agreement on Privileges and Immunities of the Council of Europe (CETS No. 2) and its Protocols Nos 1 and 6 (CETS Nos 10 and 162).

<sup>41</sup> Namely, the European Convention on Extradition (ETS No 24), the European Convention on Mutual Assistance in Criminal Matters (CETS No 30), the European Convention on the International Validity of Criminal Judgments (CETS No 70), the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No 82), the European Convention on the Suppression of Terrorism (CETS No 90) and its Protocol (CETS No 190), the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (CETS No 106) and the protocols thereto, the Convention on the Transfer of Sentenced Persons (CETS No 112) and its Additional Protocol (CETS No 167), the Convention on the Compensation of Victims of Violent Crimes (CETS No 116), the Criminal Law Convention on Corruption (CETS No 173) and its Protocol (CETS No 191), the Civil Law Convention on Corruption (CETS No 174), the Convention on Cybercrime (CETS No 185) and its Additional Protocol (CETS No 189), the Council of Europe Convention on the Prevention of Terrorism (CETS No 196) and the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (CETS No 198).

<sup>42</sup> Those in referred to in nn 38, 40 and 41 are the requirements imposed on the most recent state to become a member of the Council of Europe, Montenegro, taking into account those that it would have been expected to ratify but for the fact that it had already done so. See *Accession of the Republic of Montenegro to the Council of Europe*, Opinion No. 261 (2007) of the Parliamentary Assembly of the Council of Europe, 17 April 2007 and *Letter from the Chairman of the Committee of Ministers to the authorities of Montenegro*, 3 May 2007 ([CM/Del/Dec\(2007\)994/2.1a/appendix3E / 04 May 20](#)).

<sup>43</sup> Namely, Protocols Nos 1, 4, 6, 7, 12, 13 and 14 to the European Convention on Human Rights, the European Convention on the International Validity of Criminal Judgments, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, the European Convention on the Suppression of Terrorism and its Protocol, the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities and its Protocols, the Convention on the Transfer of Sentenced Persons and its Additional Protocol, the Convention on the Compensation of Victims of Violent Crimes, the European Charter of Local Self-Government, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the European Convention on the Exercise of Children's Rights, Protocol No 6 to the General Agreement on Privileges and Immunities of the Council of Europe, the European Social Charter (revised), the European Convention on Nationality, the Criminal Law Convention on Corruption and its Protocol, the Civil Law Convention on Corruption, the Council of Europe Convention on Action against Trafficking in Human Beings, the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. See further B Haller, 'L'Assemblée Parlementaire et les conditions d'adhésion au Conseil de l'Europe', in B Haller, H C Kruger and H Petzold, *Law in Greater Europe*, (2000), 27

28. Whatever the field, there is a noticeable trend for the focus of more recent treaties to go beyond the prescription of norms that must be observed and seek to tackle underlying societal problems, for which a long-term engagement by the Council of Europe, member states and others will be required in order for them to be satisfactorily addressed. This is particularly evident in treaties dealing with the conservation of wildlife<sup>44</sup>, corruption<sup>45</sup>, cybercrime<sup>46</sup>, money-laundering<sup>47</sup>, the prevention of torture<sup>48</sup>, the protection of archaeological, architectural audiovisual and cultural heritage and the landscape<sup>49</sup>, sexual exploitation of children<sup>50</sup>, spectator violence<sup>51</sup>, terrorism<sup>52</sup> and trafficking in human beings<sup>53</sup>. Such treaties also require the involvement of specialists other than legal and law enforcement professionals for their effective implementation. Their adoption is an indication of the continuing relevance of the treaty-making process of the Council of Europe.

#### *Participation of member states*

29. Generally a low ratification threshold has been set for the entry into force of Council of Europe treaties. Thus the overwhelming majority of treaties specify between just 2 and 6 ratifications before they can enter into force (primarily 3)<sup>54</sup>, with only 21 treaties requiring between 7 and 14 ratifications<sup>55</sup>. In addition there are 28 treaties which amend existing treaties and require all the parties to ratify them before they can enter into force. A requirement of 2 ratifications now tends to be used just for Protocols to existing treaties and the larger thresholds are employed primarily in institutional treaties and ones concerned with human rights<sup>56</sup>.

30. However, there does not seem to have been any general raising of the ratification threshold for a treaty to enter into force in the light of the considerable enlargement of the Council of Europe. Nevertheless the size of the threshold does not in practice seem particularly material to the ability to attract ratifications for a treaty, with the larger thresholds not appearing more difficult in practice to attain the lower ones. Furthermore the requirement that a protocol that amends a treaty must be ratified by all the parties to the latter before the former can enter into force has not normally been an obstacle to this occurring, the notable exception being Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention<sup>57</sup>.

31. Nevertheless the extent to which a treaty does attract ratification is an indicator of its impact and low thresholds could encourage the view that the treaty is optional rather than an important part of the standards and procedures being developed within the Council of Europe.

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<sup>44</sup> CETS No 104.

<sup>45</sup> CETS Nos 173, 174 and 191.

<sup>46</sup> CETS Nos 185 and 189

<sup>47</sup> CETS Nos 141 and 198.

<sup>48</sup> CETS No 126

<sup>49</sup> CETS Nos 121, 143, 176, 183 and 199.

<sup>50</sup> CETS No 201.

<sup>51</sup> CETS No 120.

<sup>52</sup> CETS Nos 90, 190, 196 and 198.

<sup>53</sup> CETS No 197.

<sup>54</sup> Thus 20 treaties require 2 ratifications, 835 require 3, 16 require 4, 37 require 5 and 2 require 6.

<sup>55</sup> Thus 5 treaties require 7 ratifications, 2 require 8, 9 require 10, 1 requires 12 and 2 require 14.

<sup>56</sup> But also treaties concerned with patents (CETS No 47), Pharmacopoeia (CETS No 50) (both 8), corruption (CETS Nos 17 and, 174, both 14), landscape (CETS No 176) and cultural heritage (CETS No 199) (both 10).

<sup>57</sup> As a consequence of Russia's failure to ratify this instrument, Protocol No 14 bis (CETS No 204) has been adopted, allowing those parties who wish to do so to accept some amendments to the mechanism in the European Convention on Human Rights (CETS No 5).

32. Whatever the explanation, there are in fact only 16 Council of Europe treaties that have been ratified by all of its member states<sup>58</sup>. Moreover there is quite a variable level of participation by member states in the treaties of the Council of Europe. Thus there are 10 treaties that have attracted no ratifications, 8 which have only 1 ratification, 17 with 2-5 ratifications, 28 with 6-10 ratifications, 22 with 11-15 ratifications, 28 with 16-20 ratifications, 31 with 21-25 ratifications, 9 with 26-30 ratifications, 9 with 31-35 ratifications, 14 with 36-40 ratifications and 15 with 41-46 ratifications. It is important to note that all these figures include the treaties that are no longer operative or have become an integral part of other treaties<sup>59</sup>.

33. Although some of the treaties with no or few ratifications are obviously ones that have only recently been adopted and domestic action to permit ratification can take some time, there are 49 treaties adopted 10 or more years ago that have yet to attract even 10 ratifications and a further 45 treaties of the same vintage that have not attracted more than 20 ratifications. In respect of the latter it may, of course, be that some matters of significance for "older" Council of Europe member states are less important for the "newer" ones but it may also be that the issues addressed in them have been overtaken by events.

34. Overall only 77 of the treaties have been ratified by 24 or more member states, i.e., only just over a third of the total treaties adopted within the Council of Europe have been ratified by at least half of its member states<sup>60</sup>.

35. This undoubtedly means that the actual impact of many of the treaties is significantly diluted. Furthermore this lack of support must undermine the extent to which the treaties concerned can properly be regarded as forming part of an *acquis* established within the framework of the Council of Europe or indeed ever expected to become a part of it.

#### *Level of commitment*

36. The impact of the treaties in this regard is also to some extent affected by the fact that with respect to many of them states may qualify the extent to which they accept particular provisions through making reservations<sup>61</sup> and declarations which determine either (a) the provisions accepted pursuant to a scheme of opting-in or opting-out specifically authorised by the treaties themselves<sup>62</sup> or (b) whether any of the provisions will apply to non-metropolitan territories<sup>63</sup>.

37. The making of reservations initially tended to be only allowed in Council of Europe treaties in respect of matters where there was a conflict between provisions in them and ones in the law of the ratifying state. However, the practice regarding reservations has since evolved so that several possibilities now exist: (a) the treaty says nothing about reservations; (b) reservations are expressly prohibited; (c) reservations are permitted without qualification<sup>64</sup>; (d) specified reservations and/or ones restricted to certain provisions are permitted; and (e) reservations negotiated by a particular state or organisation are permitted<sup>65</sup>. Of these, the first and fourth possibilities remain the most common ones<sup>66</sup>. This means there is considerable scope for making reservations since the effect of the former

<sup>58</sup> The main institutional treaties, the European Convention on Human Rights but not its substantive Protocols, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols, the European Cultural Convention, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

<sup>59</sup> See para 17.

<sup>60</sup> These figures include ratifications for treaties that are no longer operative.

<sup>61</sup> Sometimes these are expressed as "declarations" but they are in substance reservations because they can only be understood as limiting the legal effect of one or more provisions in the treaty concerned with respect to the state or organisation ratifying it.

<sup>62</sup> The former require acceptance of a minimum number of provisions (e.g., CETS Nos 35 and 163). See CETS No 127 for an instance of the latter.

<sup>63</sup> E.g., Article 56 in CETS No 5. There is also sometimes scope for a party to choose how it will define a key concept; see CETS Nos 52 and 71.

<sup>64</sup> Although this must be subject to the general requirement of international law that reservations must be compatible with a treaty's object and purpose.

<sup>65</sup> See further S S Åkermark, 'Reservation Clauses in Treaties concluded within the Council of Europe', (1999) 49 *ICLQ* 479 and N Levrat, 'De quelques particularités du mode d'élaboration des normes conventionnelles, et de leur influence sur la nature des traités conclus au sein du Conseil de l'Europe', (2002-2) 22 *Rev Dr ULB* 19

<sup>66</sup> The analysis by Åkermark shows the former possibility occurring in 43% of treaties adopted between CETS Nos 38 and 170, with the latter in 35% of treaties, while reservations were only prohibited in 14% of treaties. For the 35 treaties subsequently adopted there seems to be some trend towards prohibiting reservations as possibility

is generally to authorise reservations, notwithstanding the treaty's silence on the issue, either because the treaty is a protocol and action in this regard is governed by a reservation clause in the main treaty or because the making of a reservation that is compatible with the treaty's object and purpose is permitted under general international law<sup>67</sup>.

38. Although possibilities (a) and (d) - as well as the much more infrequent use of opt-ins<sup>68</sup> and opt-outs - are envisaged by the treaties themselves, it is impossible not to regard their existence as weakening the extent to which the treaties can be regarded as embodying, in principle, in their entirety a generally applicable set of standards. Moreover this has been borne out in practice as certainly some advantage has been taken of the various possibilities of qualifying the level of acceptance by those who become parties to the treaties<sup>69</sup>. As a consequence not only is the body of treaty law not binding on all member states of the Council of Europe but those who are parties to the treaties are not fully bound by all of their provisions. The existence of a possibility of making reservations and declarations is undoubtedly essential to securing the participation of some member states but achieving breadth in the extent of commitment at the expense of its depth can make it harder to establish what are the core values shared by member states. This becomes increasingly problematic with the considerable expansion in membership that has occurred over the last two decades.

39. This situation can be regarded as being exacerbated by the fact that there is no generally available means of determining authoritatively the admissibility of the reservations and declarations that have actually been made with respect to the Council of Europe's treaties. This is a consequence of the weak implementation arrangements normally adopted; it is only in respect of the European Convention on Human Rights and its Protocols that it is in practice possible for a reservation or declaration to be ruled inadmissible, with the result that a party must fulfil the requirements of the provision concerned without the qualification it had advanced<sup>70</sup>.

40. Some safeguard against the integrity of a commitment being improperly compromised does exist in the capacity of the Secretary General as depositary to draw problematic reservations or declarations to the attention of other parties, who could then object to it. However, this can only really be helpful where a problem is evident from the text of a reservation or declaration rather than its purported application in a specific situation. Moreover the other parties may not be prepared to pursue an objection for reasons unconnected with the issue of whether or not a reservation or declaration is inadmissible<sup>71</sup>. It remains to be seen whether the introduction of a provision for review of reservations in the Protocol amending the European Convention on the Suppression of Terrorism<sup>72</sup> will overcome such reluctance to object.

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(b) is found in 10 (28%) of them. Nonetheless categories (a) and (d) remain in the majority, with 11 (31%) and 14 (40%) treaties respectively.

<sup>67</sup> Vienna Convention on the Law of Treaties, Article

<sup>68</sup> Which might be subject to reciprocity; see N Levrat, 'De quelques particularités du mode d'élaboration des normes conventionnelles, et de leur influence sur lanature des traités conclus au sein du Conseil de l'Europe', (2002-2) 22 *Rev Dr ULB*.19, 40-45.

<sup>69</sup> An analysis of the detailed character of the various reservations, opt-ins and opt-ins by states is not within the scope of this report.

<sup>70</sup> See *Belilos v Switzerland*, no 10328/23, 29 April 1988 and *Loizidou v Turkey (Preliminary Objections)* [GC], no 15318/89, 23 March 1995.

<sup>71</sup> On the rarity of objections being made, see J Polakiewicz, *Treaty-making in the Council of Europe* (1999), 99-101.

<sup>72</sup> CETS No 190, introducing a new Article 17.

41. The trend, already noted<sup>73</sup>, for more recent treaties to prohibit the making of reservations entirely must be welcome insofar as an enhancement of the essential nature of the obligations being undertaken by those becoming parties, thereby strengthening the values expressed in the treaties concerned, ought to be regarded as a desirable development. Similarly welcome is the practice sometimes seen of setting time-limits on the life of any reservation made<sup>74</sup>; even if there is still scope for renewing their operation, such an approach necessitates a reconsideration of the appropriateness of maintaining a reservation<sup>75</sup>.

#### *Territorial application*

42. The failure to make a declaration extending the application of a party's obligations under a treaty to non-metropolitan territories<sup>76</sup> is probably not critical insofar as the concern is the extent to which a *European acquis* of some significance is being established by the Council of Europe's treaties. Nonetheless such application, although it still does not occur with respect to all of those treaties, can underline the fundamental character of the provisions in them and add to the value of what they are achieving.

43. However, the issue of territorial application of the treaties is not just about non-metropolitan territories as some member states have sought to exclude any obligation in respect of parts of their territory where they do not exercise control and others have been challenged to observe treaty provisions in places that do not form part of the territory of any member state. So far this only seems to be an issue with respect to the European Convention on Human Rights<sup>77</sup> and some conclusions have been reached by the European Court of Human Rights. Thus lack of control by a party over its own territory does not mean an end to all of its obligations under this instrument in respect of events there<sup>78</sup>. In addition control over territory - at least of another member state - can result in responsibility under it for events occurring there<sup>79</sup>.

44. There has, however, been some reluctance to hold a party responsible for actions in the territory of a non-member state but even then such responsibility is not excluded in all instances<sup>80</sup> and the case law is still evolving. Developments so far emphasise the specificity of what is seen by the Court as "a constitutional instrument of *European* public order for the protection of individual human beings"<sup>81</sup> but the evolving extraterritorial application also demonstrates that the protection being afforded by this treaty extends beyond Europe and the value added by it is thereby considerably enhanced.

#### *Participation by non-member states*

45. There are only 41 treaties for which ratification is restricted to Council of Europe member states<sup>82</sup>, while 166 are open to other European states<sup>83</sup>, 152 are open to non-European non-member states<sup>84</sup> and 48 are open to the European Community<sup>85</sup>. Ratification of Council of Europe treaties by

<sup>73</sup> See para 37.

<sup>74</sup> See, e.g. CETS Nos 190 and 196.

<sup>75</sup> Particularly when coupled with the review provision discussed in the preceding paragraph.

<sup>76</sup> Certainly not all member states with non-metropolitan territories have extended all the treaties that they have ratified to them and where there has been an extension this has not always been to all of the territories concerned.

<sup>77</sup> Although occupation or control of another state's territory could perhaps also raise issues with respect to the fulfilment of obligations relating to social rights and protection of various heritage interests.

<sup>78</sup> *Ilaşcu and Others v Moldova and Russia* [GC], No 48787/99, 8 July 2004.

<sup>79</sup> *Cyprus v Turkey* [GC], No 25781/94, 10 May 2001.

<sup>80</sup> *Banković, Stojanović, Stoimenovski, Joksimović and Suković v Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom* (dec.) [GC], no 52207/99, 12 December 2001.

<sup>81</sup> *Ibid*, para 80 (emphasis added).

<sup>82</sup> Primarily ones that are institutional ones or concerned with democracy and human rights and those dealing with terrorism, with just a few from the fields relating to culture and sport, environmental and social issues and private law.

<sup>83</sup> Covering all fields apart from the institutional one. However, as most European states are now member states, this is currently only of significance for Belarus and the Holy See.

<sup>84</sup> Covering treaties in all the fields apart from the institutional ones.

<sup>85</sup> Mainly ones concerned with culture and sport, environmental and social issues, legal process and cooperation and private law, but also some relating to democracy and human rights. The entry into force of Protocol No 14 to the European Convention on Human Rights would enable the European Union to accede to the Convention and its other Protocols.

non-member states and the European Community could be an indication of the wider significance of the treaties concerned and thus potentially their added value. However, such ratification would not necessarily point to their specificity since the same standards in them might exist in other fora and the attraction of securing the ratification of the Council of Europe treaty would just be to ensure their widest possible applicability.

46. In fact the level of participation in Council of Europe treaties by non-member states is very low. Thus the European Community has ratified only 11 of the 48 treaties open to it and no European non-member state has ratified more than 7 of the 166 treaties open to them<sup>86</sup>. Moreover only one non-European state has ratified 10 treaties, while one has ratified 5, one has ratified 4, two have ratified 3, another two have ratified 2 and the majority have just ratified 1 treaty<sup>87</sup>. Although the extension to non-member states of the possibility of ratification of Council of Europe treaties clearly seems desirable in principle - not least because such ratifications could secure the wider applicability of its standards and facilitate cooperation - current practice does not suggest that the opportunity is being taken up by them to any significant extent and as a consequence this is not something that has actually enhanced the impact of the treaties.

#### *EU exceptionalism*

47. In a number of treaties<sup>88</sup> there are clauses providing that those parties which are members of the European Union shall, in their mutual relations, apply any applicable Community and European Union rules governing the matter in question. Such a "disconnection clause" is supposed to reflect the fact that implementation of the treaties concerned may involve the competence both of the members of the European Union and of the European Community and thus require the enactment of Community law which would supersede any treaty provision<sup>89</sup>. The clause does not seek to affect the application of the treaty concerned in relations between the parties who are members of the European Union and those who are not<sup>90</sup>.

48. It does not, of course, really matter whether the source of the implementing measure is a national or Community one as long as it is effective but the concern raised about such clauses is the potential for different rules to be applied between European Union member states to those applied between them and the other parties to the treaty concerned. This is potentially possible as a treaty obligation is no defence to the requirement to fulfil the requirements of European Union measures<sup>91</sup> and a broad construction of the clause could be seen as authorising this. Indeed, viewed in this way, such a clause would appear effectively to authorise a diminution of obligations as and when the European Union sees fit. This would be incompatible with the specificity generally required for reservations to Council of Europe treaties.

49. There is a need for the actual scope of such disconnection clauses to be clarified and, if they do go beyond simply establishing the source of the implementing measure and allow for different but lower standards to operate between European Union member states, it would be more appropriate for what is in reality an opt-out or reservation to be specified in the same way as applies to other parties to Council of Europe treaties<sup>92</sup>.

<sup>86</sup> Belarus has ratified 7 and the Holy See has ratified 6.

<sup>87</sup> The detailed figures are as follows: Australia (5); the Bahamas (1); Bolivia (1); Burkina Faso (1); Canada (2); Chile (1); Costa Rica (2); Ecuador (1); Honduras (1); Israel (10); Japan (1); Kazakhstan (1); Korea (1); the Kyrgyz Republic (1); Mauritius (1); Mexico (3); Morocco (1); New Zealand (3); Panama (1); Senegal (1); South Africa (4); Tonga (1); Trinidad and Tobago (1); Tunisia (4); the United States (3); and Venezuela (1). Invitations to ratify some Council of Europe treaties have also been extended to: Colombia; the Dominican Republic; El Salvador; the Philippines; and Tajikistan. Most ratifications by non-European states have concerned treaties in the legal process and cooperation field.

<sup>88</sup> E.g., CETS Nos 132, 133 and 197.

<sup>89</sup> Although the competence is supposed to be shared, none of the treaties to which the European Community is actually a party (CETS Nos 26, 33, 39, 50, 84, 87, 104, 123, 134, 170 and 180) has such a clause.

<sup>90</sup> See further J Polakiewicz, 'The European Union and the Council of Europe - Competition or Coherence in Fundamental Rights Protection in Europe?', paper presented at the Jean Monnet Conference, 27-28 May 2008, 8-9.

<sup>91</sup> Case C-222/94, *Commission v United Kingdom* [1996] ECR I-4025.

<sup>92</sup> It is questionable whether the use of such a clause could be effective in respect of human rights provisions as their *erga omnes* character would preclude different standards applying to any group of parties to the treaty concerned.

### *Other instruments*

50. The significance of the treaty-making of the Council of Europe needs to be viewed also in the light of a wide range of other standard-setting and monitoring mechanisms that it has established in the course of its existence without recourse to the adoption of a legally binding instrument<sup>93</sup>.

51. Thus standard-setting can be seen in the many Resolutions and Recommendations adopted of the Committee of Ministers<sup>94</sup>, Resolutions and Recommendations of the Parliamentary Assembly (as well as its various decisions, action plans and guidelines)<sup>95</sup>, the normative statements elaborated by monitoring bodies established by treaty or otherwise<sup>96</sup> and the case law of the European Court of Human Rights<sup>97</sup>. Equally implementation mechanisms have been established by (non-legally binding) partial and enlarged agreements (i.e., not treaties)<sup>98</sup> and by Resolution of the Committee of Ministers<sup>99</sup>. In one instance a mechanism established by the latter technique now also serves as the mechanism dealing with implementation of certain treaty obligations<sup>100</sup>.

52. The attraction of standard-setting outside of a treaty framework (often termed "soft law"<sup>101</sup>) can be its looser normative formulation and the fact that it may be easier to find agreement on something that is not legally binding where the analysis of problems and their possible solutions may not yet be clear cut. Moreover, despite their informal status, such standards can nonetheless be highly influential within and beyond the membership of the Council of Europe<sup>102</sup>. This is equally the case with some of the Council of Europe's monitoring mechanisms that do not have a treaty basis for their activities, both as regards member states directly and through the use of their work by bodies that do have a treaty basis<sup>103</sup>.

<sup>93</sup> Standard-setting adopted on this basis is the only option open to the OSCE.

<sup>94</sup> E.g., Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (Adopted on 11 January 2006 at the 951st meeting of the Ministers' Deputies) and Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism (Adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies).

<sup>95</sup> E.g., The urgent need to combat so-called "honour crimes", Resolution 1681(2009), adopted by the Assembly on 26 June 2009 (26<sup>th</sup> Sitting) and Human rights of irregular migrants, Resolution 1509 (2006), adopted by the Assembly on 27 June 2006 (18th Sitting).

<sup>96</sup> E.g., *The CPT Standards "Substantive" sections of the CPT's General Reports* (CPT/Inf/E (2002) 1 - Rev. 2006) and the General Policy Recommendations of the European Commission against Racism and Intolerance.

<sup>97</sup> On all of these forms of standard-setting, see further J Polakiewicz, 'Alternatives to Treaty-Making and Law-Making by Treaty and Expert Bodies in the Council of Europe', in R Wolfrum and V Röben, *Developments of International Law in Treaty-Making* (2005), 245-290.

<sup>98</sup> E.g., the Co-operation Group for the Prevention of, Protection Against, and Organisation of Relief in Major Natural and Technological Disasters (EUR-OPA) established by Resolution 87(2) (adopted by the Committee of Ministers on 20 March 1987 at the 405th meeting of the Ministers' Deputies) and the European Commission for Democracy through Law (Venice Commission) given a revised Statute by Resolution (2002)3 (adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies). Non-member states and the European Community can be members or associate members or otherwise involved (as observers or participants) in enlarged partial agreements and enlarged agreements.

<sup>99</sup> E.g., Resolution (99)50 on the Council of Europe Commissioner for Human Rights (Adopted by the Committee of Ministers on 7 May 1999 at its 104th Session) and Resolution Res(2002)8 on the statute of the European Commission against Racism and Intolerance Adopted by the Committee of Ministers on 13 June 2002 at the 799th meeting of the Ministers' Deputies).

<sup>100</sup> I.e., the Group of States against Corruption (GRECO) established by Resolution (98) 7 (adopted by the Committee of Ministers on 5 May 1998 at its 102nd session). GRECO was subsequently given the role of monitoring the implementation of the Criminal Law Convention on Corruption (CETS No 173), the Civil Law Convention on Corruption (CETS No 174) and the Additional Protocol to Criminal Law Convention on Corruption (CETS No 191) by those treaties.

<sup>101</sup> See D Shelton, *Commitment and Compliance: The role of Non-Binding Norms in the International Legal System*, (2000).

<sup>102</sup> The OSCE has, e.g., made considerable use of the Fundamental Principles on the Legal Status of Non-governmental Organisations, even though they were only taken note of by the Committee of Ministers at its 861st meeting on 19 November 2003. They have since been developed into Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies).

<sup>103</sup> Notably the use that the European Court of Human Rights makes of reports on individual countries by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") when dealing with cases about conditions of detention.

53. However, non-legally binding standards and mechanisms are not free-standing and can really only exercise their influence because they come into existence against a background of extensive treaty law. This is not just true of the case law of the European Court of Human Rights, which is formally binding only on the respondent state(s)<sup>104</sup> but which in many ways clarifies or crystallises the obligations of all parties to the European Convention on Human Rights. It is also the case with all other standards which codify and concretise a whole range of treaty obligations, even if they go beyond those norms as well<sup>105</sup>. Furthermore, treaty provisions, unlike those in soft law instruments, can be applied by national courts in those cases where they are self-executing and adopted treaties form part of national law.

54. Similarly the monitoring mechanisms that are not established by a treaty invariably rely at least to some extent on standards that are treaty-based, whether very specific instruments such as the European Convention on Human Rights or the more general commitment in Article 3 of the Statute of the Council by its member states to "accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council".

55. The significance of non-legally binding standards and mechanisms established by the Council of Europe cannot be doubted. However, this significance should be understood as deriving from, reflecting and enhancing what has been achieved through the adoption of treaties, as well as sometimes being a useful staging post on the way towards the adoption of further treaties, particularly where the nature of a problem is not yet fully appreciated. Such non-legally binding standards and mechanisms are, therefore, to be seen as a confirmation of, and complement to, the value that treaties can achieve and not as an alternative to them<sup>106</sup>.

### *Conclusion*

56. It is evident that there has been a considerable volume of treaty-making in the course of the Council of Europe's existence directed to the fulfilment of its mandate and of particular significance for the lives of nationals and residents of its member states. Although a good number of the treaties clearly reflect values espoused by all of the member states, this has not always been matched by their willingness to make a formal commitment to them and, even where that is given, that commitment may be watered down by reservations and similar actions. There is in particular a disconnection between the terms on which membership has been offered and the practice of some of those offering it.

57. There do appear to be some problems in maintaining the relevance of particular standards but generally there is a considerable effort to ensure that they are kept up to date.

58. The participation of non-member states in many of the treaties of the Council of Europe seems entirely appropriate but, as the opportunity to do so is not that often seized, the reasons for their reluctance to ratify ought to be clarified so that the effort in reaching out to them is not wasted. In this respect the involvement of the European Union is of particular importance, especially as its justice and home affairs activities brings it even more within the scope of the Council of Europe's treaties. However, it is important that this does not lead to a weakening of the standards applicable within a very significant proportion of the member states.

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<sup>104</sup> Article 46 of the European Convention on Human Right.

<sup>105</sup> Such as the instruments referred to in nn 94 and 96.

<sup>106</sup> See further G de Vel and T Markert, 'Importance and weaknesses of the Council of Europe Conventions and of the Recommendations addressed by the Committee of Ministers to member states' in B Haller, H C Kruger and H Petzold, *Law in Greater Europe*, (2000), 345

59. Instruments other than treaties that have been adopted within the Council of Europe cannot be an alternative to the latter but they play an important role that is both complementary to and pioneering for them. It is important, therefore, that there continues to a clear linkage between the two forms of instrument and that they maintain an overall coherence.

### **Substantive focus**

60. This section focuses in more detail on the six groupings of treaties that have been identified. It reviews their content and methods of implementation so as to get a better sense of the extent to which they can be regarded as having specificity and added value. It starts with the institutional treaties and thereafter looks at those dealing with culture and sport, democracy and human rights, environmental and social issues, legal process and co-operation and private law.

#### *Institutional treaties*

61. There are 8 treaties of an institutional character, namely, the Statute of the Council of Europe<sup>107</sup>, the General Agreement on Privileges and Immunities of the Council of Europe<sup>108</sup> and 6 Protocols to the General Agreement<sup>109</sup>. The first two treaties are in force and have been ratified by all the member states, as has the first of the Protocols. The Second, Fourth and Fifth Protocols ceased to be operative with the entry into force of Protocol No 11 to the European Convention on Human Rights, with the latter two being replaced by the Sixth Protocol which deals with the position of judges of the European Court of Human Rights and has so far been ratified by 44 member states<sup>110</sup>. However, only 26 member states have ratified the Third Protocol, which concerns the Council of Europe Development Bank<sup>111</sup> and to which 40 of the member states belong.

62. It is evident that, given their role in establishing the Council of Europe and protecting those who work in various ways for it, all these treaties have an unquestionable specificity. The extent to which they have any added value is dependent upon the effect of the various activities of the Council of Europe and this can at least be partially established from the analysis that follows of what has been achieved through the other five groupings of treaties adopted under its auspices.

63. It should, however, be noted that the Statute of the Council of Europe has a general power which could be used where there are problems in implementing treaty obligations of member states. This is power in Article 8 to bring a state's membership to an end where that state has "seriously violated" its obligation to "accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council". This power has never been used<sup>112</sup>. However, although its very existence ought in many instances to prompt compliance with those treaty commitments seen as fundamental to membership<sup>113</sup>, the possibility of making use of this power should perhaps be more often considered<sup>114</sup>.

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<sup>107</sup> CETS No 1.

<sup>108</sup> CETS No 2.

<sup>109</sup> CETS Nos 10, 22, 28, 36, 137 and 162.

<sup>110</sup> Azerbaijan, Portugal and San Marino have still to ratify the Sixth Protocol.

<sup>111</sup> This was established by a partial agreement.

<sup>112</sup> Although Greece withdrew in 1970 when such action was being contemplated

<sup>113</sup> See para 27.

<sup>114</sup> The consistent failure to remedy systemic problems leading to undue length of proceedings - the largest single source of cases before the European Court of Human Rights and its resulting backlog - might, for example, be justifiably viewed as approaching - if not constituting - a serious violation of the commitment to the rule of law.

*Culture and sport*

64. There are 22 treaties in this grouping<sup>115</sup> and they deal with issues relating to audiovisual law, the cinema, culture, radio and television and sport. In particular they are concerned with the adoption of anti-doping measures, cinematographic co-production, offences relating to cultural property, programme exchanges, the protection of archaeological, audiovisual and cultural heritage, the protection of services based on conditional access (i.e., encrypted broadcasts) and television broadcasts more generally, the restriction on broadcasts from outside the national territory, spectator violence and misbehaviour at sports events and transfrontier television<sup>116</sup>.

65. Technological developments make it hard to keep up to date in dealing with some of these issues. Thus 3 of the 5 protocols adopted to amend the broadcasting treaties have never even entered into force<sup>117</sup> and the two others have only each attracted 10 ratifications<sup>118</sup>. Moreover both the principal treaty for the latter two<sup>119</sup> and another treaty to protect television broadcasts<sup>120</sup> have failed to attract many ratifications<sup>121</sup>. Only one treaty - on transfrontier television - has attracted the support of well over half the member states<sup>122</sup>. This general lack of support may well reflect the uncertainties created by technological change and competition from standard-setting by the European Union, UNESCO and the World Intellectual Property Organization. It certainly points to the absence of a significant current impact of the Council of Europe's treaties in the broadcasting field.

66. There is, however, a considerable variation in the general level of participation in this grouping of treaties, with some garnering insufficient interest to enter into force but others attracting ratifications from all or most of the member states. Thus 5 of the 22 treaties have yet to enter into force<sup>123</sup>, 5 have entered into force but have only secured 10 or fewer ratifications<sup>124</sup>, there are three with less than 20 ratifications<sup>125</sup> and 2 with 25 or fewer ratifications<sup>126</sup> but 4 that have been ratified by between 32 and 39 member states<sup>127</sup>, one that has the support of 41 of them<sup>128</sup>, another with 46 ratifications<sup>129</sup> and a third that has been ratified by all of them<sup>130</sup>.

67. The most popular treaties concern (in descending order) culture, anti-doping measures, spectator violence, cinematographic co-production, architectural heritage<sup>131</sup> and transfrontier television. These are all areas in which the Council of Europe's treaties have made and continue to have a significant influence. Many of them remain pioneering instruments and in the case of the remainder, where other international organisations are also working, the effort has been more collaborative and complementary than competitive and thus they remain useful.

<sup>115</sup> CETS Nos. 18, 27, 34, 53, 54, 66, 81, 113, 119, 120, 121, 131, 132, 135, 143, 147, 171, 178, 183, 184, 188 and 199.

<sup>116</sup> There is also a treaty on information society services (CETS No 180) considered under 'Legal process and cooperation' and another on copyright (CETS No 153) considered under 'Private law'.

<sup>117</sup> CETS Nos 131, 171 and 184.

<sup>118</sup> CETS Nos 81 and 113.

<sup>119</sup> CETS No 34.

<sup>120</sup> CETS No 178.

<sup>121</sup> 11 and 8 respectively.

<sup>122</sup> There have been 32 ratifications to CETS No 132.

<sup>123</sup> CETS Nos 119, 113, 171, 184 and 199 with 0, 7, 25, 5 and 7 ratifications. CETS No 171 needs to be ratified by all 32 parties to CETS No 132 in order to enter into force.

<sup>124</sup> CETS Nos 54 (10 but there have been 4 denunciations), 81 (10), 113 (10), 178 (8), and 183 (5).

<sup>125</sup> CETS Nos 27 (14), 34 (11 but there have been 4 denunciations) and 53 (19).

<sup>126</sup> CETS Nos 66 (23) and 188 (25); see also n 131.

<sup>127</sup> CETS Nos 121 (39), 132 (32), 143 (36) and 147 (39).

<sup>128</sup> CETS No 120.

<sup>129</sup> CETS No 135.

<sup>130</sup> CETS No 47.

<sup>131</sup> The 36 ratifications of the revised convention being considerably more popular than the original version (CETS No 66), which has 23 ratifications (15 have been denounced).

68. There is provision for implementation in respect of 14 of the 22 treaties. This provision ranges from notification of the Secretary General by parties of the measures that they have taken<sup>132</sup>, through periodic multilateral consultations on the application of the convention<sup>133</sup>, proposals for application by an expert body and reporting back by parties<sup>134</sup>, monitoring of application by an expert committee with power to propose activities and reform<sup>135</sup>, submission by parties of information on measures taken and monitoring by a standing committee of application with power to make recommendations for measures to be taken and proposals for reform<sup>136</sup>, an expert committee with power to follow the application of the convention and to facilitate a friendly settlement of any difficulty arising out of its execution<sup>137</sup>, a standing committee with power to make recommendations on application and examine (on request) issues of interpretation<sup>138</sup>, a standing committee with the power to do the previous two things but also to endeavour to secure a friendly settlement in the event of difficulties between the parties<sup>139</sup> and monitoring by a group comprised of delegates from the parties with power to approve the list of prohibited agents and methods, to recommend measures to be taken and to propose reforms to the treaty<sup>140</sup>, to a monitoring mechanism (whether an existing or new committee) to maintain an overview of the means by which commitments are met, to give (on request) an advisory opinion on interpretation, evaluate (at the initiative of one or more parties) any aspect of implementation and foster trans-sectoral application<sup>141</sup>.

69. Apart from the last two mechanisms mentioned (which concern antidoping measures and cultural heritage), the arrangements for implementation of the treaties in this grouping are all relatively weak. The cultural heritage treaty has yet to enter into force but the monitoring group on anti-doping measures has been active in producing reports on the implementation of the treaties and organises consultative and evaluation visits. It also collaborates with the World Anti-Doping Agency.

70. Overall there are a significant number of treaties for which specificity can properly be ascertained. Although some of the treaties have been overtaken by technological developments and other treaties, there is still considerable added value as regards the content of many of them. However, the position with respect to their actual implementation would seem to be uneven.

#### *Democracy and human rights*

71. In this grouping there are 51 treaties<sup>142</sup>. Apart from two treaties concerned with a broad range of rights (one on civil and political and the other on economic and social rights), they deal with more specific issues, namely, access to information, biomedicine, children's rights, data protection, local self-government, migrant workers, minorities, nationality, the participation of foreigners in public life, the prevention of torture, refugees and trafficking in human beings<sup>143</sup>.

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<sup>132</sup> CETS No 66.

<sup>133</sup> CETS No 178.

<sup>134</sup> CETS No 18.

<sup>135</sup> CETS Nos 121 and 143

<sup>136</sup> CETS No 120.

<sup>137</sup> CETS No 119.

<sup>138</sup> CETS Nos 183 and 184.

<sup>139</sup> CETS Nos 132 and 171.

<sup>140</sup> CETS Nos 135 and 188.

<sup>141</sup> CETS No 199.

<sup>142</sup> CETS Nos 5, 9, 31, 35, 43, 44, 45, 46, 55, 67, 93, 95, 96, 107, 108, 114, 117, 118, 122, 124, 126, 128, 140, 142, 144, 146, 148, 149, 151, 152, 155, 157, 158, 160, 161, 163, 164, 166, 168, 177, 181, 186, 187, 194, 195, 197, 200, 201, 203, 204 and 205.

<sup>143</sup> There are also 5 treaties relevant to the movement of persons (CETS Nos 19, 25, 37, 57 and 175) and 4 social security treaties of relevance to refugees (CETS Nos 12, 12A, 13 and 13A) considered under 'Environmental and social issues', as well as one treaty concerned with consular functions regarding the protection of refugees (CETS Nos 61A) and another concerned with cybercrime and in particular criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No 189) considered under 'Legal process and cooperation'. In addition there is one institutional treaty (CETS No 162) which was considered above (see para 61).

72. At the time of their adoption the treaties were almost all innovative and those that were not were a potentially important complement to existing international instruments<sup>144</sup>. In the case of those that were innovative, this characterisation was applicable not simply to the substantive commitment which parties to them made but also to the arrangements made for implementation, notably as regards adjudication of complaints, evaluation of law and practice and on-site investigation. Provisions in some of the treaties have since been replicated by international and regional instruments<sup>145</sup> - notably those in the two protecting a range of rights and dealing with migrant workers and the prevention of torture - but it remains the case that the Council of Europe's treaties remain at the forefront of standard-setting and implementation and have not been displaced or rendered irrelevant or dated by the international instruments.

73. The reason for the continuing significance of many of the treaties in this grouping is threefold. Firstly the treaties protecting a range of rights and those on biomedicine, data protection, nationality and the prevention of torture have been modified substantively and/or procedurally by a significant number of protocols and one revised version since their initial adoption<sup>146</sup> and have thus responded to the changing situation. Secondly the implementation mechanisms in the treaties that have them have rarely been matched and certainly never surpassed in their effectiveness. Thirdly, and linked to the nature of the implementation mechanisms, extensive guidance has been provided on the meaning and concrete application of provisions through an examination of the way in which they are applied in specific situations and this guidance has been informed by a willingness continually to reappraise the requirements of those provisions in the light of changing circumstances.

74. Nonetheless there are instances where other institutions, including the European Union, have addressed a particular issue before the Council of Europe - such as with respect to trafficking in children - and action by the latter will clearly only be valuable if it builds upon rather than duplicates the work of the former, notwithstanding that the states involved are not identical. This was achieved in the trafficking case<sup>147</sup> and the experience gained from work on that will need to be drawn upon in future standard-setting<sup>148</sup>.

75. Only three of the treaties have yet to enter into force but these were only adopted within the past year<sup>149</sup>. There are 5 treaties that have between 3 and 5 ratifications<sup>150</sup>, 3 that have 8 ratifications<sup>151</sup>, 7 that have between 11 and 13 ratifications<sup>152</sup>, 3 that have between 17 and 19 ratifications<sup>153</sup> and another 3 that have 22 or 23 ratifications<sup>154</sup>, 8 treaties have between 24 and 27 ratifications<sup>155</sup>, 2 that have 35 or 39 ratification<sup>156</sup>, 6 that have between 41 and 45 ratifications<sup>157</sup>, 2 which 46 member states have ratified<sup>158</sup> and 9 which all 47 of them have done so<sup>159</sup>.

<sup>144</sup> I.e., those concerned with children's rights (CETS Nos 160 and 201), refugees (CETS Nos 12, 12A, 13, 13A, 31, 61A and 107) and trafficking in human beings (CETS No 197).

<sup>145</sup> Notably the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the EU Charter of Fundamental Rights. The interpretation of the last must be consistent with that of the European Convention on Human Rights but this does not apply with respect to rights secured by other Council of Europe treaties. Only when it enters into force will it be possible to assess whether it significantly exceeds Council of Europe standards.

<sup>146</sup> Thus CETS No 5 has been amended by CETS Nos 9, 44, 45, 46, 55, 114, 117, 118, 140, 146, 155, 177, 187, 194 and 204, CETS No 35 has been amended by CETS Nos 128, 142 and 158, as well as being adopted in a revised version (CETS No 163), CETS No 43 has been amended by CETS Nos 95, 96 and 149, CETS No 108 has been amended by CETS No 181, CETS No 126 has been amended by CETS Nos 151 and 152 and CETS No 164 has been amended by CETS Nos 168, 186, 195 and 203.

<sup>147</sup> CETS No 197.

<sup>148</sup> See further J Polakiewicz, 'The European Union and the Council of Europe - Competition or Coherence in Fundamental Rights Protection in Europe?', paper presented at the Jean Monnet Conference, 27-28 May 2008, 6-7 and 18-19.

<sup>149</sup> CETS Nos 201, 203 and 205. The first has two ratifications and the other two have none.

<sup>150</sup> CETS Nos 96 (4), 149 (3 but 1 denunciation), 195 (5), 200 (3) and 204 (4).

<sup>151</sup> CETS Nos 95, 144 and 186.

<sup>152</sup> CETS Nos 43 (13, denounced but re-ratified by Germany), 93 (11), 107 (13), 124 (11), 128 (13), 158 (12) and 160 (13).

<sup>153</sup> CETS Nos 166 (19), 168 (17) and 177 (17).

<sup>154</sup> CETS Nos 31 and 164 have 22 and CETS No 142 has 23.

<sup>155</sup> CETS Nos 35 (27), 67 (26, no longer operative), 140 (24), 146 (25 but has lost its purpose), 148 (24), 163 (27), 181 (24) and 197 (25).

<sup>156</sup> CETS No 161 has 35 and CETS No 157 has 39.

<sup>157</sup> CETS Nos 9 (45), 46 (42), 108 (41), 117 (41) 122 (44) and 187 (41).

<sup>158</sup> CETS Nos 114 and 194.

<sup>159</sup> CETS Nos 5, 44, 45, 55, 118, 126, 151, 152 and 157.

76. It is not surprising that the latter two sets of figures concern the European Convention on Human Rights and its Protocols and the Convention on the Prevention on Torture and Inhuman or Degrading Treatment or Punishment, the requirement to ratify which figures prominently in the conditions imposed on those aspiring to become members of the Council of Europe<sup>160</sup>. Moreover they may give a slightly misleading impression as to the extent of the commitment in that 5 of the treaties with 47 ratifications concern amendments to the implementation of the European Convention on Human Rights and thus they really only concern one substantive set of obligations. At the same time these ratifications are an indication of a general willingness to ensure that this treaty remains relevant and effective. Also potentially misleading, in a different sense, is the extent of support for the European Social Charter. The ratifications for neither the original nor the revised versions exceed 30<sup>161</sup> but taken together its provisions have been accepted by 40 member states<sup>162</sup>.

77. The level of participation in this grouping seems reasonably good. Thus the treaties with less than 20 ratifications are either very recently adopted ones<sup>163</sup> or generally they are ones in respect of which ratification by all member states might not be expected because the consensus is perhaps still developing<sup>164</sup>, the provisions in them have been overtaken by another treaty<sup>165</sup> or they involve a further strengthening of the implementation arrangements which seem too demanding for some states<sup>166</sup>. However, it is perhaps surprising that there is such a reluctance on the part of some member states to accept treaties dealing with non-discrimination<sup>167</sup> and the exercise of children's rights<sup>168</sup>, matters that have already been accepted by them at the international level<sup>169</sup>.

78. There are 9 treaties in this grouping which make no provision for implementation<sup>170</sup>. They concern issues relating to nationality, NGOs and refugees that might be seen as having a harmonisation character. All the other treaties have some form of implementation mechanism. Some of them are not particularly exacting such as the the provision of information<sup>171</sup> and the creation of a consultative committee than can either express a general opinion on the application of the treaty and publish information about relevant national law<sup>172</sup> or that can express an opinion on the application of the treaty at the request of a party and make proposals to improve the treaty's application<sup>173</sup>. Others are more demanding, allowing for the examination of periodic reports by a committee of experts whose recommendations may be adopted by the Committee of Ministers<sup>174</sup>, the evaluation of implementation by a group of experts and the possibility of recommendations by a committee of the parties<sup>175</sup> the expression of an opinion on the application of the treaty by a committee of the parties<sup>176</sup> and the reporting by a group of specialists on the adequacy of implementation measures, as well as the expression by it of an opinion on any issue of application<sup>177</sup>.

<sup>160</sup> See para 27.

<sup>161</sup> CETS Nos 35 (27) and 163 (27).

<sup>162</sup> Liechtenstein, Monaco, Montenegro, Russia, San Marino, Serbia and Switzerland have still to ratify either.

<sup>163</sup> CETS Nos 186, 195, 200 and 204.

<sup>164</sup> Cloning (CETS No 168), migrant workers (CETS No 93), nationality (CETS Nos 95, 96, 149 and 166), NGOs (CETS No 124), the participation of foreigners in public life (CETS No 144) and refugees (CETS No 107).

<sup>165</sup> The provisions in CETS No 128 are to be found in CETS No 163 (the European Social Charter (revised)).

<sup>166</sup> The introduction by CETS No 158 of a collective complaints mechanism to the European Social Charter (CETS No 35).

<sup>167</sup> CETS No 177.

<sup>168</sup> CETS No 160.

<sup>169</sup> In the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

<sup>170</sup> CETS Nos 31, 43, 95, 96, 107, 124, 149, 166 and 200.

<sup>171</sup> CETS No 122.

<sup>172</sup> CETS No 93.

<sup>173</sup> CETS Nos 108 and 181.

<sup>174</sup> CETS Nos 35 and 128 (as modified by CETS No 142) and CETS Nos 148 and 157 (the committee for the latter is formally designated as an advisory one).

<sup>175</sup> CETS No 197.

<sup>176</sup> CETS No 201.

<sup>177</sup> CETS No 205

79. However, the most significant means of implementation entail the examination of collective complaints in respect of social rights by a committee of independent experts, whose views are subject to adoption by the Committee of Ministers<sup>178</sup>, the production and publication of reports on conditions of detention based on visits which parties are bound to allow<sup>179</sup> and the adjudication by the European Court of Human Rights of complaints from individuals and member states about violations of civil and political rights followed by supervision of the execution of its judgments by the Committee of Ministers<sup>180</sup>. Although problems may exist with respect to these implementation mechanisms - notably as a result of the volume of cases before the Court which reflects deficiencies in national legal systems and the potential for a contradictory (rather than expansive) approach to interpretation of rights and freedoms secured by Council of Europe treaties on the part of the European Court of Justice<sup>181</sup> - there is no doubt that these remain the most demanding forms of implementation yet achieved at either the regional or international level and they have done much to make a reality of the standards that they were designed to protect.

80. Viewed as a whole and taken individually there can be no doubt as to the specificity and added value of the treaties in this grouping. However, there is no room for complacency as the participation level for a good number could still be improved and the initiatives of other organisations need to be taken into account. Moreover as the work of the various supervisory mechanisms reveal, there is still a considerable amount to be done in achieving effective domestic implementation of all the treaties.

#### *Environmental and social issues*

81. This grouping of 57 treaties<sup>182</sup> covers a wide range of issues, most of which would seem to be of crucial importance for the conditions of modern life, namely, animal protection in the context of farming, scientific experimentation, slaughter, transport and the keeping of them as pets, au pair placement, environmental protection, equivalence in qualifications for university entrance and on graduation, exchange of therapeutic substances of human origin and various reagents, importation of medical, surgical and laboratory equipment, landscape protection and management, medical training, medical care during temporary residence, movement of persons, mutual medical assistance, social and medical assistance, social protection of farmers social security, the elaboration of a European Pharmacopoeia, the exchange of war cripples for treatment, the transfer of corpses, the use of detergents, vouchers for the repair of prosthetic and orthopaedic appliances and wildlife conservation<sup>183</sup>.

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<sup>178</sup> CETS No 158.

<sup>179</sup> CETS Nos 126, 151 and 152. The publication, although formally a sanction, is generally authorised by member states.

<sup>180</sup> CETS Nos 5, 9, 46, 114, 117, 177 and 187 (with amendments to the procedure by CETS Nos 55, 67, 118, 146, 140, 155, 161, 194 and 204). There is also provision for advisory opinions on matters that cannot be the subject of a complaint, introduced by CETS No 44 but now integrated into the primary treaty by CETS No 155.

<sup>181</sup> Both when applying the European Convention on Human Rights at present and the Charter of Fundamental Rights when that enters into force. Accession of the European Union to the European Convention could preclude the risk of conflict between the European Court of Justice and the European Court of Human Rights, but the effective protection of human rights within the European Union really requires its acceptance of all the human rights treaties elaborated by the Council of Europe.

<sup>182</sup> CETS Nos 12, 12A, 13, 13A, 14, 14A, 15, 19, 20, 21, 25, 26, 32, 33, 37, 38, 39, 40, 48, 48A, 49, 50, 57, 59, 64, 65, 68, 69, 78, 78A, 80, 83, 84, 87, 89, 102, 103, 104, 109, 110, 111, 115, 123, 124, 125, 129, 134, 138, 139, 144, 145, 150, 154, 165, 170, 172, 175, 176 and 193.

<sup>183</sup> There is also a treaty on the legal status of migrant workers (CETS No 93) considered under 'Democracy and human rights'.

82. There can be little doubt that all the matters addressed by this grouping were innovative at both the international and regional level when they were adopted. Only one of them - that concerning the exchange of war cripples might seem to be restricted to circumstances following the Second World War, although more recent conflicts might make it relevant again. However, others concern matters in which the European Union is increasingly active, notably as regards educational equivalence, environmental protection, movement of persons and social security. Furthermore all these areas are also ones being addressed by conventions promoted by the United Nations or its specialised agencies.

83. Nonetheless the subject-matter of many of the Council of Europe's treaties in this grouping concerns matters which no one else is addressing, particularly those dealing with health and medical issues. Moreover, even where others are also working in the field, there is a high level of complementarity between the work of the Council of Europe and that of the European Community and the International Labour Organisation. Indeed this grouping is one which has attracted the overwhelming majority of ratifications by the European Community. Furthermore, although the European Union's influence regarding educational equivalence undoubtedly extends beyond its borders and may become more pervasive, the most recent Council of Europe treaty on this topic is the second most ratified treaty in this grouping<sup>184</sup>. Also the fact that the European Union's work in the field of social security to some extent overlaps that in the Council of Europe's treaties ought not to deprive the latter of value since they could still be helpful in dealing with this issue both outside the European Union and within it where nationals of Council of Europe member states not in the European Union are involved. Only the treaty dealing with au pair placement seems a little out of date. Moreover it should be noted that several of the Council of Europe's treaties have been updated or revised by protocols or new treaties to ensure that they remain current<sup>185</sup>, showing clear account being taken of developments in scientific knowledge.

84. However, only 11 of the 57 treaties in the grouping have been adopted from 1990 onwards<sup>186</sup>. More importantly the level of participation in these treaties by Council of Europe member states is relatively poor. Only 22 of the treaties have 21 or more ratifications<sup>187</sup> and just 6 have 31 or more ratifications<sup>188</sup>. 7 of the treaties which have not yet entered into force<sup>189</sup> and 28 treaties have between 5 and 20 ratifications<sup>190</sup>. Thus, despite the potentially useful standards in these treaties, it would not seem that the majority have yet come to be accepted as embodying essential requirements for life in Europe. This applies as much to treaties adopted in the more recent period of treaty-making as those concluded prior to 1990.

85. There is provision for implementation in respect of only 26 of the 57 treaties. This ranges from a commission charged with the elaboration of standards<sup>191</sup>, through provision for a duty to submit information on domestic measures at the outset and on later request by the Secretary General<sup>192</sup>, multilateral consultations on implementation<sup>193</sup>, the creation of a network of information centres<sup>194</sup>, a standing or other committee that can make recommendations on implementation<sup>195</sup> (sometimes with a role in facilitating friendly settlements of disputes between the parties<sup>196</sup>), a committee charged with

<sup>184</sup> CETS No 165 has attracted 42 ratifications. This was adopted in collaboration with UNESCO.

<sup>185</sup> See CETS No 89 in respect of CETS No 84, CETS Nos 103 and 193 in respect of CETS No 65, CETS No 109 in respect of CETS No 26, CETS No 110 in respect of CETS No 33, CETS No 111 in respect of CETS No 39, CETS No 115 in respect of CETS No 64, CETS No 134 in respect of CETS No 50, CETS No 139 in respect of CETS No 78, CETS No 145 in respect of CETS No 87 and CETS No 170 in respect of CETS No 123.

<sup>186</sup> CETS Nos 138, 139, 145, 150, 154, 165, 170, 172, 175, 176 and 193.

<sup>187</sup> There are 12 treaties with 21-25 ratifications (CETS Nos 12, 12A, 13, 13A, 26, 33, 39, 65, 102, 103 (but this has had one denunciation), 109 and 111), 5 with 25-30 (CETS Nos 21, 32, 49, and 176), 2 with 31-35 (CETS Nos 15 and 87), 2 with 36-40 (CETS Nos 50 and 134), 2 with 41-46 (CETS Nos 104 and 165) and none that have been ratified by all 47 member states.

<sup>188</sup> CETS Nos 15, 50, 87, 104, 134 and 165.

<sup>189</sup> CETS Nos 57 (with 1 ratification), 129, 139, 150 (all with 0 ratifications), 154, 172 and 175 (each with 1 ratification).

<sup>190</sup> There is 1 treaty with 5 ratifications (CETS No 115), 8 with 6-10 ratifications (CETS Nos 38, 40, 48A, 10, 68, 78, 78A, 83 and 193), 2 with 11-15 ratifications (CETS Nos 19 and 59) and 16 with 16-20 ratifications (CETS Nos 14, 17, 20, 25, 37, 48, 69, 80, 84, 89, 110, 123, 125, 138, 145, 170).

<sup>191</sup> CETS Nos 50 and 134 (for the European Pharmacopoeia).

<sup>192</sup> CETS Nos 32, 48 and 48A.

<sup>193</sup> CETS Nos 125 and 175.

<sup>194</sup> CETS No 165.

<sup>195</sup> CETS Nos 19, 57, 87, 104, 150 and 165.

<sup>196</sup> CETS Nos 19, 57, 87 and 104.

monitoring implementation based on reports submitted by states<sup>197</sup> and a commitment to dispute settlement or any other peaceful means chosen by the parties concerned<sup>198</sup> to a commitment to arbitration in the event of disputes between member states<sup>199</sup>. These are not, of course, particularly exacting forms of implementation and it is thus far from clear how successful the treaties concerned have been in practice, particularly in the light of the low level of participation.

86. Overall the content of these treaties is marked by a high degree of specificity but the low level of participation and the limited nature of the implementation mechanisms casts doubt on the extent to which any added value that they have so far conferred can be regarded as substantial.

#### *Legal process and co-operation*

87. There are 52 treaties in this grouping<sup>200</sup>, which covers issues as diverse as arbitration, corruption, court procedure, cybercrime, enforcement of sanctions, extradition, general international law, legal co-operation in administrative, civil, criminal, fiscal and other matters, local and regional authorities, mutual assistance in criminal matters, the protection of victims, terrorisms, testaments and transfer of proceedings<sup>201</sup>.

88. On many of the issues addressed - notably as regards corruption, cybercrime, money laundering and the financing of terrorism, the prevention and suppression of terrorism and the transfer of sentenced prisoners - the treaties were particularly innovative at the time of their adoption and they remain pioneering instruments. Others concern matters of considerable practical importance because of the increasing manner in which the lives of nationals and residents of the Council of Europe's member states transcend national boundaries. This is especially so with regard to extradition, the international validity of criminal judgments, the transmission of legal aid requests and various forms of co-operation and assistance in legal matters. In some instances the treaties have been a means of extending standards already applicable within the European Union to the membership of the Council of Europe as a whole<sup>202</sup>.

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<sup>197</sup> CETS Nos 68, 139 and 176. The committee is provided for in the treaty except in CETS No 176, which relies upon the provision in Article 17 of the Statute for designating a committee of experts.

<sup>198</sup> CETS No 172.

<sup>199</sup> CETS Nos 12, 12A, 13, 13A, 14, 14A, 78, 87 (as amended by 103) and 193.

<sup>200</sup> CETS Nos 23, 24, 30, 42, 51, 52, 56, 61, 61A, 61B, 62, 63, 70, 71, 73, 74, 74A, 76, 77, 82, 86, 88, 90, 92, 94, 97, 98, 99, 100, 101, 105, 106, 112, 116, 127, 141, 156, 159, 167, 169, 173, 174, 179, 180, 182, 185, 189, 190, 191, 192, 196 and 198.

<sup>201</sup> There is also a treaty establishing a charter of local self-government (CETS No 122), another on the participation of foreigners in public life (CETS No 144), a third on the protection of children against sexual exploitation (CETS No 201), a fourth on recognition of international NGOs' legal personality (CETS No 124) and a fifth on trafficking in human beings (CETS No 197) which are considered under 'Democracy and human rights', as well as one treaty on offences relating to cultural property (CETS No 119) considered under 'Culture and sport', one treaty on the protection of the environment through criminal law (CETS No 172) considered under 'Environmental and social issues', and two treaties on insider trading (CETS Nos 130 and 133) which are considered under 'Private law'.

<sup>202</sup> E.g., CETS No 180 which extends the application of Directive 98/48/EC and CETS No 182 which follows many of the provisions in the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the member states of the European Union.

89. Only 6 out of the 52 treaties are not in force and all but one of these were adopted during or prior to 1970 and have attracted no ratifications after 1995<sup>203</sup>. Of the treaties in force there are 3 with 5 or fewer ratifications<sup>204</sup>, 6 with 8 or fewer ratifications<sup>205</sup>, 9 with between 11 and 15 ratifications<sup>206</sup>, 7 with between 18 and 20 ratifications<sup>207</sup>, 4 with 24 or 25 ratifications<sup>208</sup>, 1 with 29 ratifications<sup>209</sup>, 5 with between 31 and 36 ratifications<sup>210</sup>, 6 with between 37 and 40 ratifications<sup>211</sup>, 2 with 46 ratifications<sup>212</sup> and 3 which have been ratified by all 47 member states<sup>213</sup>. As a result just 21 of the 52 treaties have been ratified by at least half of the Council of Europe's member states.

90. There has been a consistent effort to amend many of the treaties through protocols so that they can effectively address significant new developments<sup>214</sup>, although some amending protocols were adopted at or soon after the main treaty and tend only to cover matters that not all could agree to include in that treaty<sup>215</sup>.

91. Undoubtedly some of the less successful treaties have suffered from competition by developments elsewhere, particularly in the European Union, the Hague Conference on Private International Law and UNCITRAL as regards arbitration and the repatriation of minors. In one instance attempts to go beyond the standards of an international treaty - the Vienna Convention on Consular Relations - have failed to attract sufficient ratifications to enter into force and this now looks improbable. Whatever the intrinsic merits of the treaties concerned<sup>216</sup>, it is evident that they did not address an issue seen as particularly critical to member states.

92. However, leaving aside the instances of competition and insufficient relevance, the lack of support for many treaties that seem to be genuinely useful and to serve the common interest of member states is surprising. Also puzzling in respect of members of an organisation committed to the rule of law is the lack of support for the European Convention for the Peaceful Settlement of Disputes<sup>217</sup>. Although the commitment to have resort to the International Court of Justice could be off-putting for some, it is remarkable that more member states have made a declaration accepting that Court's jurisdiction than have ratified the Convention<sup>218</sup>.

93. The majority of the treaties do not have any special arrangements for implementation, reflecting the essential harmonisation character of many of them in this grouping. There are, however, 21 treaties that have some form of implementation provision. Apart from the judicial settlement, conciliation and arbitration arrangements provided in the European Convention for the Peaceful Settlement of Disputes and discussed above, this provision ranges from a mere commitment to provide information<sup>219</sup>, through meetings of designated national authorities convened by the Secretary General<sup>220</sup>, a monitoring committee of experts to review the working of the treaty<sup>221</sup>, monitoring by the

<sup>203</sup> CETS Nos 56, 61, 61A, 61B and 71. The exception is CETS No 180 which was adopted in 2001 and has 2 ratifications.

<sup>204</sup> CETS Nos 52 (5), 76 (4) and 82 (5).

<sup>205</sup> CETS Nos 42 (8), 74 (8), 74A (6), 94 (8), 100 (6) and 192 (6).

<sup>206</sup> CETS Nos 23 (14), 77(11), 88 (12), 101 (15), 127 (13), 156 (13), 179 (13), 189 (15) and 198 (15).

<sup>207</sup> CETS Nos 51 (19), 63 (20), 70 (20), 159 (20), 169 (19), 182 (18) and 196 (20).

<sup>208</sup> CETS Nos 73 (25), 116 (24), 185 (25) and 191 (24).

<sup>209</sup> CETS No 190.

<sup>210</sup> CETS Nos 92 (31), 105 (36), 106 (36), 167 (35) and 174 (32).

<sup>211</sup> CETS Nos 86 (37), 62 (40), 97 (37), 98 (40), 99 (40) and 173 (40).

<sup>212</sup> CETS Nos 90 and 112.

<sup>213</sup> CETS Nos 24, 30 and 141.

<sup>214</sup> CETS Nos 86 and 98 for 24, 97 for 62, 99 and 182 for 30, 167 for 112, 179 for 92, 189 for 185, 190 for 90 and 191 for 173.

<sup>215</sup> CETS Nos 61A and B for 61, 74A for 74 and 133 for 130.

<sup>216</sup> CETS Nos 61, 61A and 61B.

<sup>217</sup> CETS No 23.

<sup>218</sup> Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland and the United Kingdom. Of these Austria, Belgium, Denmark, Germany, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Sweden, Switzerland and the United Kingdom (as well as Italy and Slovenia) have ratified the Convention.

<sup>219</sup> CETS Nos 92, 97, 101, 106 and 116.

<sup>220</sup> CETS No 105.

<sup>221</sup> CETS No 156.

Group of States against Corruption (GRECO) through evaluation of reports and country visits<sup>222</sup>, a conference of states parties to ensure the effective use and operation of the treaty (including the identification of problems)<sup>223</sup> a role for the Council of Europe or the European Committee on Crime Problems to facilitate friendly settlements of difficulties in execution<sup>224</sup>, the same role supplemented by provision for arbitration where a friendly settlement is not reached<sup>225</sup> and (for the parties to an amending protocol) a power, at a party's request, to express an opinion on any question concerning the treaty's application<sup>226</sup> and a conference of the parties to monitor the treaty's proper implementation with the power, at a party's request, to express an opinion on any question concerning its interpretation and application and a duty to seek a peaceful settlement where this is disputed<sup>227</sup>, to the creation of a European Tribunal to deal with state immunity disputes<sup>228</sup>.

94. The system of mutual evaluation and peer pressure employed by GRECO, together with the possibility of public statements, has proved to be as exacting for member states as that developed under Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and on which it is modelled. Of the other implementation mechanisms, some of them - particularly the provision for adjudication, arbitration and other forms of peaceful settlement - have the potential to be quite demanding as far as member states are concerned and their simple existence could be enough to encourage effective implementation of the treaties concerned. However, only two of them has been ratified by over half of the member states<sup>229</sup> and the others have only attracted between 6 and 20 ratifications<sup>230</sup>. As such these implementation mechanisms remain more in the realm of potential than actual achievement. Nonetheless the strengthening of mechanisms in more recent treaties does augur well for them having a real impact in practice

95. Notwithstanding the value of many of the standards being set, there is still some way to go before all the treaties in this grouping can all be regarded as ones to which the entire membership of the Council of Europe is committed. Moreover, although certainly one vigorous implementation mechanism has been established, the absence of something comparable for many other treaties means that their impact is likely to be more limited and thus be a constraint on the added value that can actually be achieved by them.

#### *Private law*

96. This grouping of 18 treaties<sup>231</sup> ranges over issues of civil law and liability, commercial law, financial law and intellectual property. In particular it addresses questions of adoption, compulsory motor insurance and liability for damage caused by motor vehicles, copyright law in the framework of transfrontier broadcasting, family law, foreign money liabilities, insider trading, international aspects of bankruptcy, the legal status of children born out of wedlock, the liability of hotel-keepers, patent applications, classification and unification, place of payment of money liabilities, products liability and stops on bearer securities<sup>232</sup>.

<sup>222</sup> CETS Nos 173, 174 and 191. GRECO also has been given responsibility for monitoring the soft law standards set out in Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption (adopted by the Committee of Ministers on 6 November 1997 at the 101<sup>st</sup> session of the Committee of Ministers).

<sup>223</sup> CETS No 90 as amended by CETS No 190.

<sup>224</sup> CETS Nos 71, 73, 86, 112, 182.

<sup>225</sup> CETS No 90, 185 and 196.

<sup>226</sup> CETS No 90 as amended by CETS No 190.

<sup>227</sup> CETS No 198.

<sup>228</sup> CETS No 74, created by CETS No 74A. The Tribunal consists of members of the European Court of Human Rights and members designated by those non-member states who are parties to CETS Nos 74 and 74A.

<sup>229</sup> CETS No 90 as amended by CETS No 190 (29) and CETS 185(25).

<sup>230</sup> CETS Nos 74A (6), 196 (20) and 198 (15).

<sup>231</sup> CETS Nos 16, 17, 29, 41, 47, 58, 60, 72, 75, 79, 85, 91, 130, 133, 136, 153, 192 and 202.

<sup>232</sup> In addition there is a treaty on the exercise of children's rights (CETS No 160) considered under 'Democracy and human rights', there is a treaty on liability for activities dangerous to the environment (CETS No 150) and the landscape (CETS No 176) considered under 'Environmental and social issues' and there are two treaties on arbitration (CETS Nos 42 and 56) and one each on contact concerning children (CETS No 192), corruption (CETS No 174) cybercrime (CETS No 185), recognition and enforcement of decisions (CETS No 105), registration of wills (CETS No 77), time limits (CETS No 76) considered under legal process and cooperation.

97. Harmonisation of national law in respect of many of the issues addressed in this grouping is, in principle, clearly desirable but it is all the more pressing as the nationals of Council of Europe member states increasingly live their lives beyond the confines of one national boundary.

98. The level of participation by member states in this grouping of treaties is rather poor. Thus 7 of the 18 treaties are not yet in force<sup>233</sup> and of these 6 were adopted prior to 1995 with no prospect of them suddenly becoming attractive. Furthermore two others have been denounced by all of the parties to them<sup>234</sup>. Moreover another treaty has been denounced by 16 of its 19 parties<sup>235</sup>, 4 others have attracted no more than 8 ratifications<sup>236</sup> and 1 has attracted 17 ratifications<sup>237</sup>. There is one that has been ratified by 18 member states (although 2 of these have since denounced it)<sup>238</sup> and just one has obtained 22 ratifications<sup>239</sup>. As a result the most successful treaties in this grouping concern the legal status of children born out of wedlock<sup>240</sup> and the liability of hotel-keepers<sup>241</sup>.

99. Only one of the treaties has been revised, with the original one not being particularly successful<sup>242</sup>, and only one has had an amending protocol, which was adopted in the same year as the principal treaty<sup>243</sup>. The lack of real success for these treaties would seem to be suffering from competition from the standards promoted by the European Patent Organisation, the European Union and the World Intellectual Patent Organization. It may also be that the case law of the European Court of Human Rights finding violations of the European Convention on Human Rights in instances of discrimination against children born out of wedlock<sup>244</sup> might make some states consider it unnecessary to ratify the European Convention on the Legal Status of Children born out of Wedlock<sup>245</sup>.

100. Given that the character of these treaties is essentially one of harmonisation, it is unsurprising to find no special implementation measures except in one of them which provides only for the holding of multilateral consultations on implementation<sup>246</sup>.

101. There is definitely some specificity in the content of these treaties but the low level of participation casts doubt on the continuing relevance of some of them, as well as the likelihood of them having resulted in much added value.

<sup>233</sup> CETS Nos 70, 75, 79, 91, 136, 153 and 202.

<sup>234</sup> CETS Nos 17 and 72.

<sup>235</sup> CETS No 16.

<sup>236</sup> CETS Nos 29 (7 ratifications), 130 (8 ratifications), 133 (7 ratifications) and 192 (6 ratifications).

<sup>237</sup> CETS No 41.

<sup>238</sup> CETS No 58.

<sup>239</sup> CETS No 85.

<sup>240</sup> CETS No 41.

<sup>241</sup> CETS No 85.

<sup>242</sup> CETS No 202 in respect of No 58 (18 ratifications but 2 denunciations).

<sup>243</sup> CETS No 133 in respect of No 130.

<sup>244</sup> See, e.g., *Marckx v Belgium*, no 6833/74, 13 June 1979 and *Inze v Austria*, no 8695/79, 28 October 1987.

<sup>245</sup> CETS No 85, which has 22 ratifications. However, some newer member states have ratified it, the most recent being Ukraine in June 2009.

<sup>246</sup> CETS No 153.

## Conclusion

102. There is no question that at the time the treaties were adopted the provisions in them were entirely relevant and to a very large extent they were adequate for the issues being addressed, at least when viewed from the level of appreciation then as to what was needed. Some of the treaties have since been overtaken by events and treaties adopted by other organisations. However, updating and responding to new situations has not generally been neglected and many of the treaties still have much to offer in more modern circumstances. Furthermore the more recently adopted treaties are tackling pressing issues and often they are providing leadership in the approach needed, not just in the region but more generally. Nonetheless there are areas where the contribution seems weak and that is especially so with regard to private law. This does not mean that there is not a contribution to be made. Indeed on some issues in this field it is definitely occurring but this seems to be only true in the case of a few of the treaties concerned.

103. It is also the case that a good number of the treaties have been marked by significant innovations as regards implementation techniques. This is true not only of the time when the treaties were adopted but also of adaptations subsequently made to them in response either to difficulties or shortcomings that subsequently emerged or to a positive wish to take on board more exacting requirements. At their best, the implementation techniques in the Council of Europe's treaties still exceed by far what is found in treaties adopted at the international level or in other regions. However, these implementation techniques are far from universal in the treaty law of the Council of Europe. Of course, the more exacting techniques may not be needed for treaties that are merely harmonisation ones - although the assumption that this is the case is questionable given the problems seen in giving effect to provisions of European Union law that are supposed to be directly applicable in member states - but the ambitious problem-solving treaties adopted in more recent years certainly do not all have sufficiently vigorous means of securing their implementation.

104. Although member states often make a particular point of asserting that many, if not all, of the Council of Europe's treaties embody values shared by all Europeans, there has been a remarkable failure to translate that into formal commitments through ratifying all of the treaties concerned. This is not just true of certain treaties dealing with human rights since it also applies to those directed to solving common problems in a wide range of fields. It is, of course, the case that the lack of commitment to certain treaties reflects the fact that its provisions have ceased to be relevant. However, this seems to be only so with regard to a minority of treaties. Moreover many of the treaties that are faced with a low participation level are ones adopted in the last couple of decades and thus ones in which all or the overwhelming majority of states have had a full opportunity to contribute to the process of elaborating them. Without a greater commitment to a significant number of treaties the real *acquis* of the Council of Europe is much more modest than the lengthy list of treaties to be found on the Treaty Office's website.

105. The failure to attract extensive participation by non-member states in the treaties adopted within the Council of Europe, despite the possibility of their ratifying the majority of them does not negate the establishment of a European *acquis*. However, the impact of such an *acquis* would be much more substantial if the apparent interest of many non-member states could be translated into effective participation in many more of the Council of Europe's treaties. At the same time the growing and justifiable interest in securing the participation of the European Union in these treaties should not lead to the member states who belong to it being able unilaterally to apply different and lower standards amongst themselves as this would inevitably inhibit the further development of standards common to all Europeans. This has not so far occurred but it is a risk that needs to be addressed to secure what has already been achieved.

106. Overall a good deal of what can be seen in the treaty law of the Council of Europe has clear specificity and added value. Some of this is shared by all or almost all of the member states. However, much of it only really affects half or less of the membership. In such circumstances the existence of a genuine European *acquis* with specificity and added value remains very much work in progress. An extensive level of non-participation in the treaties for a lengthy period by the member states is likely to compromise the possibility of such a goal being attained.

107. The challenge for the Council of Europe in truly attaining a significant *acquis* with specificity and added value is thus to ensure not only that its treaties remain relevant and adequate but also that they attract the full engagement of all its member states, both formally and with respect to their effective implementation.

## APPENDIX: COUNCIL OF EUROPE TREATIES

A chronological list of the Council of Europe's treaties is set out below, broken into the time bands used for the analysis in the report. The name of each treaty is followed (firstly if applicable) in the first set of square brackets by an indication whether ratification is possible by non-member states ("non-MS") and the European Community ("EC") and/or whether ratification is limited to parties to an existing treaty and then in the second set of square brackets the number of ratifications required for it to enter into force.

### 1949-1950

- CETS No 1 Statute of the Council of Europe [7]  
 CETS No 2 General Agreement on Privileges and Immunities of the Council of Europe [7]  
 3 -  
 4 -  
 CETS No 5 Convention for the Protection of Human Rights and Fundamental Freedoms [10]

### 1951-1960

- 6 -  
 7 -  
 8 -  
 CETS No 9 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms [signatories to CETS No 5] [10]  
 CETS No 10 Protocol to the General Agreement on Privileges and Immunities of the Council of Europe [member States signatories to CETS No 2 and for accession by the States having acceded to treaty CETS No 2] [Ratification by all parties to CETS No 2]  
 11 -  
 CETS No 12 European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors [non-MS] [2]  
 CETS No 12A Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors [member States signatories to CETS No 12 and for accession by the non-member States which have acceded to CETS No 12] [2]  
 CETS No 13 European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors [non-MS][2]  
 CETS No 13A Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors [member States signatories to CETS No 13 and for accession by the non-member States which have acceded to CETS No 13] [2]  
 CETS No 14 European Convention on Social and Medical Assistance [non-MS][2]  
 CETS No 14A Protocol to the European Convention on Social and Medical Assistance [member States signatories to CETS No 14 and for accession by the non-member States which have acceded to CETS No 14] [2]  
 CETS No 15 European Convention on the Equivalence of Diplomas leading to Admission to Universities [non-MS] [3]  
 CETS No 16 European Convention relating to the Formalities required for Patent Applications [non-MS and members of the International Union for the Protection of Industrial Property] [4]  
 CETS No 17 European Convention on the International Classification of Patents for Inventions [non-MS and members of the International Union for the Protection of Industrial Property] [4]  
 CETS No 18 European Cultural Convention [non-MS] [3]  
 CETS No 19 European Convention on Establishment [5]  
 CETS No 20 Agreement on the Exchange of War Cripples between Member Countries of the Council of Europe with a view to Medical Treatment [non-MS] [3]  
 CETS No 21 European Convention on the Equivalence of Periods of University Study [non-MS] [3]  
 CETS No 22 Second Protocol to the General Agreement on Privileges and Immunities of the Council of Europe [no longer open for signature or ratification since the entry into force of CETS No 155] [3]  
 CETS No 23 European Convention for the Peaceful Settlement of Disputes [non-MS] [2]  
 CETS No 24 European Convention on Extradition [non-MS] [3]  
 CETS No 25 European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe [non-MS] [3]  
 CETS No 26 European Agreement on the Exchange of Therapeutic Substances of Human Origin [non-MS and EC] [3]

- CETS No 27 European Agreement concerning Programme Exchanges by means of Television Films [non-MS] [3]
- CETS No 28 Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe [member States of the Development Bank and for accession by the new members of the Bank] [three signatories representing at least one-third of the Fund's holdings have deposited their instruments of ratification]
- CETS No 29 European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles [non-MS] [4]
- CETS No 30 European Convention on Mutual Assistance in Criminal Matters [non-MS] [3]
- CETS No 31 European Agreement on the Abolition of Visas for Refugees [member States and for accession by non-member States party either to the Convention relating to the Status of Refugees of 28/7/1951 or to the Agreement of 15/10/1946] [3]
- CETS No 32 European Convention on the Academic Recognition of University Qualifications [non-MS] [3]
- CETS No 33 Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for use on free loan in Hospitals and other Medical Institutions for purposes of Diagnosis or Treatment [non-MS and EC] [3]
- CETS No 34 European Agreement on the Protection of Television Broadcasts [a member of the Council of Europe or any non-European government having political ties with a member of the Council of Europe may accede to it, subject to the prior approval of the Committee of Ministers] [3]

### 1961-1970

- CETS No 35 European Social Charter [5]
- CETS No 36 Fourth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe [no longer open for signature or ratification since the entry into force of CETS No 155] [3]
- CETS No 37 European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe [non-MS] [3]
- CETS No 38 European Agreement on Mutual Assistance in the matter of Special Medical Treatments and Climatic Facilities [non-MS] [3]
- CETS No 39 European Agreement on the Exchanges of Blood-Grouping Reagents [non-MS and EC] [3]
- CETS No 40 Agreement between the Member States of the Council of Europe on the issue to Military and Civilian War-Disabled of an International Book of Vouchers for the repair of Prosthetic and Orthopaedic Appliances [non-MS] [3]
- CETS No 41 Convention on the Liability of Hotel-keepers concerning the Property of their Guests [non-MS] [3]
- CETS No 42 Agreement relating to Application of the European Convention on International Commercial Arbitration [non-MS and EC] [2]
- CETS No 43 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality [non-MS] [2]
- CETS No 44 Protocol No 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions [integral part of CETS No 5] [parties to CETS No 5]
- CETS No 45 Protocol No 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention [integral part of CETS No 5] [parties to CETS No 5]
- CETS No 46 Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto [signatories to CETS No 5] [5]
- CETS No 47 Convention on the Unification of Certain Points of Substantive Law on Patents for Invention [non-MS and members of the International Union for the Protection of Industrial Property] [8]
- CETS No 48 European Code of Social Security [non-MS] [3]
- CETS No 48A Protocol to the European Code of Social Security [parties to CETS No 48 and non-MS parties to CETS No 48] [3]
- CETS No 49 Protocol to the European Convention on the Equivalence of Diplomas leading to Admission to Universities [parties to CETS No 15 and non-MS parties to CETS No 15] [2]
- CETS No 50 Convention on the Elaboration of a European Pharmacopoeia [member States which take part in the activities in the field of public health referred to in Resolution (59)23 and for accession by other member States and by non-member states] [8]

- CETS No 51 European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders [non-MS] [3]
- CETS No 52 European Convention on the Punishment of Road Traffic Offences 52 [non-MS] [3]
- CETS No 53 European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories [member States and for accession by non-member States, members or associate members of the International Telecommunication Union] [3]
- CETS No 54 Protocol to the European Agreement on the Protection of Television Broadcasts [integral part of CETS No 43] [parties to CETS No 34]
- CETS No 55 Protocol No 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention [integral part of CETS No 5] [parties to CETS No 5]
- CETS No 56 European Convention providing a Uniform Law on Arbitration [non-MS] [3]
- CETS No 57 European Convention on Establishment of Companies [5]
- CETS No 58 European Convention on the Adoption of Children [non-MS] [3]
- CETS No 59 European Agreement on the Instruction and Education of Nurses [non-MS] [3]
- CETS No 60 European Convention on Foreign Money Liabilities [non-MS] [3]
- CETS No 61 European Convention on Consular Functions [non-MS] [5]
- CETS No 61A Protocol to the European Convention on Consular Functions concerning the Protection of Refugees [parties to CETS No 61 and non-MS parties to CETS No 61] [5]
- CETS No 61B Protocol to the European Convention on Consular Functions relating to Consular Functions in respect of Civil Aircraft [parties to CETS No 61 and non-MS parties to CETS No 61] [5]
- CETS No 62 European Convention on Information on Foreign Law [non-MS] [3]
- CETS No 63 European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers [non-MS] [3]
- CETS No 64 European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products [member States of the Council of Europe which take part in the activities in the field of public health referred to in Resolution (59) 23] [3]
- CETS No 65 European Convention for the Protection of Animals during International Transport [non-MS] [4]
- CETS No 66 European Convention on the Protection of the Archaeological Heritage [non-MS] [3]
- CETS No 67 European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights [5]
- CETS No 68 European Agreement on Au Pair Placement [non-MS] [3]
- CETS No 69 European Agreement on continued Payment of Scholarships to students studying abroad [non-MS] [5]
- CETS No 70 European Convention on the International Validity of Criminal Judgments [non-MS] [3]
- CETS No 71 European Convention on the Repatriation of Minors [non-MS] [3]
- CETS No 72 Convention relating to Stops on Bearer Securities in International Circulation [non-MS] [4]

### 1971-1980

- CETS No 73 European Convention on the Transfer of Proceedings in Criminal Matters [non-MS] [3]
- CETS No 74 European Convention on State Immunity [non-MS] [3]
- CETS No 74A Additional Protocol to the European Convention on State Immunity [parties to CETS No 74 and non-MS parties to CETS No 74] [5]
- CETS No 75 European Convention on the Place of Payment of Money Liabilities [non-MS] [5]
- CETS No 76 European Convention on the Calculation of Time-Limits [non-MS] [3]
- CETS No 77 Convention on the Establishment of a Scheme of Registration of Wills [non-MS] [3]
- CETS No 78 European Convention on Social Security [non-MS] [3]
- CETS No 78A Supplementary Agreement for the Application of the European Convention on Social Security [parties to CETS No 78 and non-MS parties to CETS No 78] [3]
- CETS No 79 European Convention on Civil Liability for Damage caused by Motor Vehicles [non-MS] [3]
- CETS No 80 Agreement on the Transfer of Corpses [non-MS] [3]
- CETS No 81 Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts [parties to CETS No 34 and non-MS parties to CETS No 34] [integral part of CETS No 34] [parties to CETS No 34]
- CETS No 82 European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes [non-MS] [3]
- CETS No 83 European Convention on the Social Protection of Farmers CETS No 83 [non-MS] [3]
- CETS No 84 European Agreement on the Exchange of Tissue-Typing Reagents [non-MS & EC] [3]

- CETS No 85 European Convention on the Legal Status of Children born out of Wedlock [non-MS] [3]
- CETS No 86 Additional Protocol to the European Convention on Extradition
- CETS No 87 European Convention for the Protection of Animals kept for Farming Purposes [non-MS] [4]
- CETS No 88 European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle [non-MS] [3]
- CETS No 89 Additional Protocol to the European Agreement on the Exchange of Tissue-Typing Reagents [member States signatories to CETS No 84] [integral part of CETS No 84] [allows EEC to become party to CETS No 84]
- CETS No 90 European Convention on the Suppression of Terrorism [3]
- CETS No 91 European Convention on Products Liability in regard to Personal Injury and Death [non-MS] [3]
- CETS No 92 European Agreement on the Transmission of Applications for Legal Aid [non-MS] [2]
- CETS No 93 European Convention on the Legal Status of Migrant Workers [5]
- CETS No 94 European Convention on the Service Abroad of Documents relating to Administrative Matters [non-MS] [3]
- CETS No 95 Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality [parties to CETS No 43 and non-MS parties to CETS No 43] [2]
- CETS No 96 Additional Protocol to the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality [Parties to the Convention and which, if they are Parties to the Protocol amending the Convention, have accepted the provisions of Chapter I of the Convention. any State which acceded to the Convention may accede to this Protocol provided that such State, when acceding to the Protocol amending the Convention, accepts the provisions of Chapter I of the Convention includes non-MS - invitation assumed] [2]
- CETS No 97 Additional Protocol to the European Convention on Information on Foreign Law [parties to CETS No 62 and non-MS parties to CETS No 62] [3]
- CETS No 98 Second Additional Protocol to the European Convention on Extradition [parties to CETS No 24 and non-MS parties to CETS No 24] [3]
- CETS No 99 Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [parties to CETS No 30 and non-MS parties to CETS No 30] [3]
- CETS No 100 European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters [non-MS] [3]
- CETS No 101 European Convention on the Control of the Acquisition and Possession of Firearms by Individuals [non-MS] [3]
- CETS No 102 European Convention for the Protection of Animals for Slaughter CETS No 102 [non-MS & EC] [4]
- CETS No 103 Additional Protocol to the European Convention for the Protection of Animals during International Transport [integral part of CETS No 65] [parties to CETS No 65]
- CETS No 104 Convention on the Conservation of European Wildlife and Natural Habitats [non-MS and EC] [5]
- CETS No 105 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children [non-MS] [3]
- CETS No 106 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities [non-MS] [4]
- CETS No 107 European Agreement on Transfer of Responsibility for Refugees [member states and for accession by non-member States party either to the Convention relating to the Status of Refugees of 28/7/1951 or to the Protocol on the Statute of Refugees of 31/1/1967] [2]
- 1981-1990**
- CETS No 108 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [non-MS] [5]
- CETS No 109 Additional Protocol to the European Agreement on the Exchange of Therapeutic Substances of Human Origin [integral part of ETS 26] [tacit acceptance by parties to ETS 26]
- CETS No 110 Additional Protocol to the Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for Use on free loan in Hospitals and other Medical Institutions for Purposes of Diagnosis or Treatment [integral part of CETS No 33] [tacit acceptance by parties to CETS No 33]

- CETS No 111 Additional Protocol to the European Agreement on the Exchanges of Blood-Grouping Reagents [integral part of CETS No 39] [tacit acceptance by parties to CETS No 39]
- CETS No 112 Convention on the Transfer of Sentenced Persons [non-MS] [3]
- CETS No 113 Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts [integral part of CETS No 34] [parties to CETS No 34]
- CETS No 114 Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty [signatories to CETS 5] [5]
- CETS No 115 Protocol amending the European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products [parties to CETS No 64] [3]
- CETS No 116 European Convention on the Compensation of Victims of Violent Crimes [non-MS] [3]
- CETS No 117 Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms [signatories to CETS 5] [7]
- CETS No 118 Protocol No 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms [integral part of CETS 5] [parties to CETS No 5]
- CETS No 119 European Convention on Offences relating to Cultural Property [non-MS] [3]
- CETS No 120 European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches [member States and the other States Parties to the European Cultural Convention and for accession by the other non-member States] [3]
- CETS No 121 Convention for the Protection of the Architectural Heritage of Europe [non-MS & EC] [3]
- CETS No 122 European Charter of Local Self-Government [4]
- CETS No 123 European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes [non-MS] [4]
- CETS No 124 European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations [non-MS] [3]
- CETS No 125 European Convention for the Protection of Pet Animals [non-MS] [4]
- CETS No 126 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [non-MS] [7]
- CETS No 127 Convention on Mutual Administrative Assistance in Tax Matters [member states of the Council of Europe and the Member countries of OECD] [5]
- CETS No 128 Additional Protocol to the European Social Charter [member states signatories to CETS No 35] [3]
- CETS No 129 Arrangement for the Application of the European Agreement of 17 October 1980 concerning the Provision of Medical Care to Persons during Temporary Residence [member states parties to the European Agreement of 17 October 1980 and for accession by non-member States Parties to the said Agreement] [2]
- CETS No 130 Convention on Insider Trading [non-MS] [3]
- CETS No 131 Third Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts [parties to CETS No 34 and non-MS parties to CETS No 34] [parties to CETS No 34]
- CETS No 132 European Convention on Transfrontier Television [member States and by the other states parties to the European Cultural Convention and by the European Community] [7 Ratifications including 5 member states]
- CETS No 133 Protocol to the Convention on Insider Trading [Integral part of CETS No 130] [parties to CETS No 130]
- CETS No 134 Protocol to the Convention on the Elaboration of a European Pharmacopoeia [Integral part of CETS No 50] [parties to CETS No 50]
- CETS No 135 Anti-Doping Convention [member states, the other states parties to the European Cultural Convention, the non-member States which have participated in its elaboration and for accession by the other non-member States] [5 Ratifications including 4 member states]
- CETS No 136 European Convention on Certain International Aspects of Bankruptcy [non-MS] [3]
- CETS No 137 Fifth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe [no longer open because of ECHR Protocol No 11 CETS No 155] [3]
- CETS No 138 European Convention on the General Equivalence of Periods of University Study [member States and the other States Parties to the European Cultural Convention and for accession by the other non-member States and by the EC] [2]
- CETS No 139 European Code of Social Security (Revised) [non-MS & EC] [2]
- CETS No 140 Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms [repealed because of ECHR Protocol No 11 CETS No 155] [10]
- CETS No 141 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [non-MS] [3]

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- CETS No 142 Protocol amending the European Social Charter [member states signatories to CETS No 35] [parties to CETS No 35]
- CETS No 143 European Convention on the Protection of the Archaeological Heritage (Revised) [non-MS & EC] [4]
- CETS No 144 Convention on the Participation of Foreigners in Public Life at Local Level [non-MS] [4]
- CETS No 145 Protocol of Amendment to the European Convention for the Protection of Animals kept for Farming Purposes [non-MS if party to CETS No 87 and EC] [parties to CETS No 87]
- CETS No 146 Protocol No 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms [lost purpose because of ECHR Protocol No 11 CETS No 155] [parties to CETS No 5]
- CETS No 147 European Convention on Cinematographic Co-Production [non-MS & EC] [5 Ratifications including 4 member states]
- CETS No 148 European Charter for Regional or Minority Languages [non-MS] [5]
- CETS No 149 Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality [parties to CETS No 43 and non-MS parties to CETS No 43] [2]
- CETS No 150 Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment [non-MS & EC] [3]
- CETS No 151 Protocol No 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [integral part of CETS No 126] [parties to CETS No 126]
- CETS No 152 Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [integral part of CETS No 126] [parties to CETS No 126]
- CETS No 153 European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite [non-MS & EC] [7 ratifications including 5 member states]
- CETS No 154 Protocol to the European Convention on Social Security [parties to CETS No 78 and non-MS parties to CETS No 78] [2]
- CETS No 155 Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby [integral part of CETS No 5] [parties to CETS No 5]
- CETS No 156 Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances [member states which have already expressed their consent to be bound by the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988] [3]
- CETS No 157 Framework Convention for the Protection of National Minorities [open for signature by the member states and up until the date of entry into force by any other state so invited by the Committee of Ministers] [12]
- CETS No 158 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints [parties to CETS No 35] [5]
- CETS No 159 Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities [open for signature by the states signatory to the Outline-Convention] [4]
- CETS No 160 European Convention on the Exercise of Children's Rights [non-MS & EC] [3 Ratifications including 2 member states]
- CETS No 161 European Agreement relating to persons participating in proceedings of the European Court of Human Rights [10 Ratifications or on the date of entry into force of CETS No 155, whichever is the later]
- CETS No 162 Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe [Treaty open for signature by the member States of the Council of Europe signatories to CETS No 2] [Ratification by 3 parties to CETS No 2 or on the date of entry into force of CETS No 155, whichever is the later.]
- CETS No 163 European Social Charter (revised) [3]
- CETS No 164 Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine [non-MS & EC] [5 Ratifications including 4 member states]
- CETS No 165 Convention on the Recognition of Qualifications concerning Higher Education in the European Region [This Convention shall be open for signature by: the member states of the Council of Europe; the member states of the Unesco Europe Region; any other

- signatory, contracting state or party to the European Cultural Convention of the Council of Europe and/or to the Unesco Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region, which have been invited to the diplomatic conference entrusted with the adoption of this Convention. These states and the Holy See] [5 Ratifications including 3 member states of the Council of Europe and/or the UNESCO Europe Region]
- CETS No 166 European Convention on Nationality [non-MS] [3]
- CETS No 167 Additional Protocol to the Convention on the Transfer of Sentenced Persons [parties to CETS No 112 and non-MS parties to CETS No 112] [3]
- CETS No 168 Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings [signatories to CETS No 164] [5 Ratifications including 4 member states]
- CETS No 169 Protocol No 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation [states signatory to the Outline-Convention] [4]
- CETS No 170 Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes [integral part of CETS No 123] [parties to CETS No 123]
- CETS No 171 Protocol amending the European Convention on Transfrontier Television [integral part of CETS 132] [parties to CETS No 132]
- CETS No 172 Convention on the Protection of Environment through Criminal Law [non-MS] [3]
- CETS No 173 Criminal Law Convention on Corruption [non-MS & EC] [14]
- CETS No 174 Civil Law Convention on Corruption [non-MS & EC] [14]
- CETS No 175 European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People [parties to the European Cultural Convention and other non-MS] [5 Ratifications including 4 member states]
- CETS No 176 European Landscape Convention [non-MS & EC] [10]
- CETS No 177 Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms [parties to CETS No 5] [10]
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- CETS No 178 European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access [non-MS & EC] [3]
- CETS No 179 Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid [parties to CETS No 92] [2]
- CETS No 180 Convention on Information and Legal Co-operation concerning "Information Society Services" [member States, the non-member States which have participated in its elaboration and by the European Community, and for accession by other non-member states] [Ratification by five signatories, of which at least one is not a member state of the European Economic Area]
- CETS No 181 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows [Signatories of the treaty CETS No 108 and by the European Communities, and for accession by the states having acceded to CETS No 108] [5]
- CETS No 182 Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [parties to CETS No 30 and non-MS parties to CETS No 30] [3]
- CETS No 183 European Convention for the protection of the Audiovisual Heritage [member states and by the other states parties to the European Cultural Convention, and by the European Community, and for accession by the other non-member states] [5 Ratifications including 4 member states]
- CETS No 184 Protocol to the European Convention for the protection of the Audiovisual Heritage, on the protection of Television Productions [signatories of CETS No 183 and for accession by the states having acceded to CETS No 183] [5 Ratifications including 4 member states]
- CETS No 185 Convention on Cybercrime [non-MS] [5 Ratifications including at least 3 member states]
- CETS No 186 Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin [signatories to CETS No 164] [5 Ratifications including at least 4 member states]

- CETS No 187 Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances [parties to CETS No 5] [10]
- CETS No 188 Additional Protocol to the Anti-Doping Convention [member states and the other states signatories or parties to the Convention] [Ratification by 5 states parties to the Convention]
- CETS No 189 Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems [states which have signed CETS No 185] [5]
- CETS No 190 Protocol amending the European Convention on the Suppression of Terrorism [member states signatories to CETS No 90] [parties to CETS No 90]
- CETS No 191 Additional Protocol to the Criminal Law Convention on Corruption [states signatories to CETS No 173] [5]
- CETS No 192 Convention on Contact concerning Children [non-MS & EC] [3 Ratifications including 2 member states]
- CETS No 193 European Convention for the Protection of Animals during international Transport (Revised) [non-MS & EC] [4]
- CETS No 194 Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention [signatories to CETS No 5] [parties to CETS No 5]
- CETS No 195 Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research [signatories to CETS No 164] [5 Ratifications including 4 member states]
- CETS No 196 Council of Europe Convention on the Prevention of Terrorism [non-MS & EC] [6 Ratifications including 4 member states]
- CETS No 197 Council of Europe Convention on Action against Trafficking in Human Beings [non-MS & EC] [10 Ratifications including 8 member states]
- CETS No 198 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [non-MS & EC] [6 Ratifications including 4 member states]
- CETS No 199 Council of Europe Framework Convention on the Value of Cultural Heritage for Society [non-MS & EC] [10]
- CETS No 200 Council of Europe Convention on the avoidance of statelessness in relation to State succession [non-MS] [3 member states]
- CETS No 201 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse [non-MS & EC] [5 Ratifications including at least 3 member states]
- CETS No 202 European Convention on the Adoption of Children (Revised) [non-MS] [3]
- CETS No 203 Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes [signatories to CETS No 164] [5 Ratifications including 4 member states]
- CETS No 204 Protocol No 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms [signatories to CETS No 5] [3]
- CETS No 205 Council of Europe Convention on Access to Official Documents [non MS and IOs on invitation] [10]