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Uniting Europe: The Council of Europe's Unfinished Mission

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The Council of Europe (CoE) is an essential building block of the European integration process. However, the organisation is confronted with fundamental challenges relating to the erosion of its core principles, the overload of the ECHR system and the expansion of the European Union. These developments put the CoE's future in jeopardy. Yet, there are three reasons why the organisation should have a future: the CoE has the potential to become the key forum for dialogue between Europe and Russia, it could make further contributions to a European stability policy, and it could continue to build a pan-European legal space.

Introduction

When the conflict between Georgia and Russia erupted in early August 2008, the European Union (EU) assumed responsibility for bringing the conflict among two non-member states in its neighbourhood to a halt. The most important and also most visible figure was French President Nicolas Sarkozy, whose country held the EU's rotating presidency in the second half of 2008. Sarkozy brokered a peace plan in mid-August and an agreement on the implementation of the plan in early September. The EU also appointed a 'Special Representative for the crisis in Georgia' and deployed a civilian observer mission with 200 monitors on the ground that started work in October.

What is interesting here is that there is another European organisation of which both Russia and Georgia are members and whose very purpose it is to protect the observation of human rights, democracy, and the rule of law in its member states – all of which is hardly the case during armed conflicts. This organisation is the Council of Europe (CoE). This is not to imply that the CoE was an idle bystander during the conflict between Russia and Georgia. Indeed, the organisation was actively engaged. To give but a few examples: the Swedish Foreign Minister, Carl Bildt, acting as Chairman of the CoE's Committee of Ministers, and the organisation's Secretary General, Terry Davis, travelled to Georgia only a couple of days after the conflict had commenced and held talks, among others, with the Georgian President, Mikheil Saakashvili.[1] The CoE's Parliamentary

Assembly sent one of its *rapporteurs* to monitor the obligations and commitments that Russia had accepted through accession into the organisation to Moscow to gather information.[2] During its plenary session in late September, the Assembly held a debate under urgent procedure on 'the consequences of the war between Georgia and Russia'. The Human Rights Commissioner of the CoE, Thomas Hammarberg, also travelled to Russia and Georgia in late August. Among other things, he proposed six principles for the protection of the victims of the conflict.[3]

However, despite those and other activities intended to solve the Georgian–Russian conflict, the CoE nonetheless remained virtually invisible. Rather, it was the EU's involvement with two member states of the CoE that had a decisive impact. The CoE's performance becomes all the more striking as there is a general trend discernable that shows the EU slowly but steadily intruding into areas that used to be handled exclusively by the CoE. Geographically, the latest EU enlargement rounds in 2004 and 2007 saw its membership increase from 15 to 27 countries. With four official candidate countries (Croatia, Iceland, the Former Yugoslav Republic of Macedonia, and Turkey) as well as additional aspirants in the Balkans and the Caucasus already on the doorstep, the number is set to grow further. As all potential future EU states already belong to the CoE – as did the 12 countries that acceded in recent years – membership of the two organisations will continue to converge. Simultaneously, the EU has expanded its reach policywise. As a result, also the issue areas covered by the two organisations increasingly overlap. Most significantly, the EU has started to deal with the protection of human rights,[4] which represents one of the core principles of the CoE. From the CoE's perspective, the situation is further aggravated by the fact that its political clout and financial power pales when compared with the EU's.

Against this background, the question that almost inevitably arises is whether the CoE has a future. This article argues that the CoE still has significant contributions to make for preserving and deepening human rights, democracy and the rule of law in Europe and beyond. However, in its present condition, the organisation is not in a position to deliver. Rather, building on, as well as having to react to, the downsides of its past achievements, institutional reforms as well as conceptual innovations are required to equip the CoE for the future.

This article proceeds as follows. The first section highlights the major achievements of the CoE, particularly since the end of the Cold War. At the same time, it reveals the downsides that have come along with the organisation's successes. The next section discusses three aspects that demonstrate the continued potential inherent to the CoE, along with obstacles that could, and in parts already do, prevent the exploitation of this potential. The paper closes with suggestions on how the member states could raise the public and political profile of the organisation, thereby enabling the CoE to continue its mission toward pan-European unity.

Achievements and Challenges

Pan-Europeanisation and the Erosion of the Organisation's Core Principles

With the signing of the 'London Treaty' in May 1949, the CoE started as a Western European organisation. Its ten founding members were Belgium, Denmark, France,

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Ireland, Italy, Luxemburg, the Netherlands, Norway, Sweden and the United Kingdom. Nonetheless, ever since its creation, the CoE has had a pan-European vision since it wanted to bring together all European countries.[5] However, as a prerequisite for membership, states were supposed to live up to the organisation's core principles, namely the preservation and promotion of democracy, human rights and the rule of law.

Hence, at least in theory, the CoE has been open for accession to all European states ever since its creation. In practice, though, this openness was primarily symbolic in nature. Countries from Central and Eastern Europe and the Balkans did not formally qualify for membership, since they did not meet the requirements concerning the implementation of the organisation's core principles. What is more, the East–West antagonism rendered membership of those countries impossible anyway. As a result, the CoE remained a primarily Western European organisation throughout the Cold War, with its membership growing to 23 countries in 1989. The only 'geographical exceptions' were Greece, Turkey, Cyprus and Malta.

The end of the Cold War ushered in a new era in the organisation's policy towards countries from Central and Eastern Europe. Today, the CoE is a truly pan-European organisation. Indeed, the first half of the 1990s saw an actual 'enlargement boost'. Between November 1990 and November 1996, 17 countries acceded. Since then, seven more countries have become members of the CoE, lifting its total number of member states to 47. Only the absence of Belarus and Kosovo prevents the completion of the organisation's pan-Europeanisation. However, as long as Belarus continues to exhibit severe shortcomings concerning the CoE's core principles,[6] and as long as the member states of the organisation are split with respect to the recognition of Kosovo's statehood, the completion of the 'Europe of 49' is postponed.

In short, then, the CoE has all but fulfilled its objective of becoming a, or rather *the*, pan-European organisation. However, this success came with a price. True, the 'old members', that is, the countries that belonged to the CoE before 1989, are far from perfect concerning the upholding of the organisation's standards with respect to democracy, human rights and the rule of law. However, it is equally true that those states that acceded after 1989 were, and in parts still are, plagued by considerably more severe deficiencies than the old members.[7]

Thus, by granting membership to countries with, in parts, considerable shortcomings concerning the respect of the organisation's core principles, the erosion of its normative core represents the downside of the CoE's pan-Europeanisation. Of course, this challenge was self-inflicted. Until 1989, states willing to accede to the CoE had to live up to the organisation's standards before receiving the invitation for membership. Conversely, the idea that guided the enlargement process in the last two decades was 'better to include than exclude.'[8] The rationale was that the organisation would be better suited to assist countries by including them into its institutional structure than by merely supporting them from the outside. The domestic political conditions in the individual states were secondary to the unification idea that aimed at overcoming Europe's decades-long division.

In sum, the enlargement process has not changed the priorities of the CoE. To the contrary, the organisation's opportunities to spread and consolidate its principles throughout the continent have considerably increased. However, several of the new member states are still far

from living up to the obligations and commitments that they had agreed to through accession to the CoE. Therefore, to remain credible in its role as guardian of democracy, human rights and the rule of law in Europe, the CoE has no choice but to succeed in spreading and consolidating its principles across Europe rather quickly.

The Establishment of the Most Advanced International Human Rights Protection System for Individuals and the System's Overload

The second major achievement of the CoE has been the establishment of the world's most elaborate international human rights protection system for individuals. At the core lies the 'Convention for the Protection of Human Rights and Fundamental Freedoms' (ECHR) of 1950.[9] The document lays down key civil and political rights and freedoms, such as the right to life, the right to liberty and security or the freedom of thought, conscience, and religion. Among the landmark developments that followed the entering into force of the Convention in 1953 were the acceptance of individual applications by the contracting parties in 1955 and the setting-up of the European Court on Human Rights (ECoHR) in 1959. Together with the 'European Commission of Human Rights' (set up in 1954) and the CoE's Committee of Minister, the ECoHR represented an integral part of the enforcement mechanism of the Convention. This three-pronged system was replaced in 1998 through the entering into force of Protocol No. 11 to the Convention.[10] Among other things, the protocol led to the dissolution of the Commission, stripped the Committee of Ministers from its adjudicative role, and replaced the part-time ECoHR with a single, full-time court. As a result, the convention process was made fully judicial, with the Committee of Minister's remaining task being to monitor the implementation of the Court's judgements.[11]

Taking together those substantial and institutional innovations, the convention system has established a unique mechanism for the protection of rights and freedoms of individuals beyond the European nation-states. In recent years, however, the system has come under mounting pressure. The number of individual applications has skyrocketed since the early 1990s. Between 1955 and 1998, and thus until the dissolution of the European Commission of Human Rights, a total of 45,000 individual applications were allocated to a judicial formation. In contrast, just in 2010 there were more than 61,000 applications.[12] This huge increase can be attributed to a large extent to the enlargement of the CoE since the early 1990s. To illustrate this point: in 2010, among all the individual applications allocated to a judicial formation, almost 70% came from new member states. Russia topped the list with more than 14,300 applications, followed by Romania (more than 5900), the 'old-member state' Turkey (5800), Poland (5700) and the Ukraine (3900).[13]

On the one hand, those numbers demonstrate that the convention system is strongly accepted by the people of the CoE's member states. This seems particularly true for those countries where the national mechanism for the protection of individual human rights and fundamental freedoms still leaves room for improvement. On the other hand, the popularity of the system carries the seeds of its own destruction. With the almost exponential increase in individual applications over the last two decades, the system is no

longer able to cope with the workload. At the end of June 2010, almost 140,000 cases were pending before the ECoHR. Again, the vast majority comes from new member states, above all some 28% from Russia.[14]

Hence, it is urgent that the system be reformed. The major reasons for the court's overload are patently obvious. They relate to inadmissible cases and repetitive cases respectively. Some 90% of the cases brought before the ECoHR are declared inadmissible, and repetitive cases account for 60% of the court's judgments.[17] Thus, the key rests on devising a viable mechanism for the filtering of clearly inadmissible cases before they reach the court as well as streamlining the procedure for dealing with repetitive cases. This points to the delicate balance that reforms of the control system of the ECHR must strike. On the one hand, the system needs to be kept open for complaints. On the other hand, the system must be relieved from the overwhelming caseload.

Although there has been no lack of efforts to reform the system, the attempts have not yielded the desired results yet, including Protocol No. 11 to the ECHR mentioned above. The same will hold true for the Protocol No. 14, which was entered into force in June 2010. The protocol was opened for signature already in May 2004. However, it did not enter into force until June 2010. The delay was caused primarily by Russia. All member states except Russia had ratified the protocol by October 2006 at the latest. Russia, however, did not follow suit until February 2010. As an interim measure, Protocol No. 14b is that put into effect two of the procedural elements of Protocol No. 14 was opened for signature in May 2009 and entered into force in October 2009. It ceased to be in force with the entry of Protocol No. 14. Most importantly, the new protocol amends the control system by reinforcing the court's filtering mechanism as well as introducing a new admissibility criterion and measures for dealing with repetitive cases. However, those changes are not expected to remedy either the system's shortcomings or overload.[15] Expectations are that the reforms will increase the efficiency of the ECoHR by some 20%.[16] Against this background, even an official document of the CoE acknowledges that '[f]urther reform of the Convention systems is necessary.'[17]

It is of little surprise, then, that discussions continue about yet another reform of the control system. Most recently, the 'Interlaken Declaration' was adopted in February 2010 at a Ministerial Conference on the future of the ECoHR in Interlaken/Switzerland.[18] The overall aim of the conference was to secure the long-term effectiveness of the ECHR control system. Representatives of the CoE's 47 member states agreed that a balance must be reached between the ECoHR's judgments and decisions on the one hand and the number of incoming applications on the other. There was also consensus that the court must be put in a position to reduce the backlog of pending cases within a reasonable period of time and that the full and rapid execution of the court's judgments must be ensured. To achieve those objectives, a 'roadmap' was agreed that set forth an action plan as well as an agenda for its implementation. The action plan lists a number of short-term and medium-term measures that address, among other things, the right of individual petition, the court's handling of repetitive applications, the supervision of the execution of the court's judgments by the CoE's Committee of Ministers and the implementation of the ECHR at the level of the member states.

Preparing Former Communist Countries for EU Membership and the EU's Challenge

The internal challenges that came along with the enlargement of the organisation and the creation of a human rights protection system have been aggravated by an external challenge. This comes in the form of an expanding EU. The CoE was the first address for roughly two dozens former communist countries on their way back to Europe, and for several of them further on into the EU. Most importantly, and representing its third major achievement, the CoE assisted those countries in reforming their political and judicial systems and improving their human rights protection mechanisms. In so doing, the CoE supported countries in their preparations for becoming EU members. However, as outlined in the introduction of this article, the EU's thematic and geographic expansion poses a fundamental challenge to the CoE.

Recent controversies highlight that the CoE and the EU have 'remained a shaky team.'[19] When the EU decided in 2003 to set-up a human rights agency – what was to become the 'European Union Agency for Fundamental Rights' (FRA) in 2007 – representatives of the CoE viewed this move with great scepticism. For instance, the then Secretary General of the CoE, Terry Davis, remarked: '[W]ith all the best will in the world, I can't understand what it [the agency] is going to do.'[20] The issue was settled when the mandate of the FRA took into account several of the CoE's concerns. Among other things, the FRA does not establish a general monitoring mechanism on human rights for the EU member states but solely examines the implementation of Community law by the EU's member states and institutions. The other example that highlights the imperfect interaction between the CoE and the EU is the investigation of CIA activities in Europe, including rendition flights and secret prisons. Until December 2006, the CoE's Parliamentary Assembly, the organisation's 'Venice Commission', and its Secretary General had looked into the allegations. Nevertheless, in December 2006 the EU's European Parliament (EP) decided to set-up a temporary committee whose purpose was to examine the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, too. In the end, the EP's resolution on the subject explicitly stressed the convergence between its findings and those of the Parliamentary Assembly, which points to the lack of new insights that had been generated.[21]

These two examples demonstrate that the interaction between the CoE and the EU leaves considerable room for improvement. Both organisations would benefit from a viable inter-institutional co-operation that avoids duplications and fosters synergies. The CoE's leverage would be significantly enhanced by placing its activities into a wider policy context that is supported by the EU. By deliberately leaving certain tasks to the CoE, in turn, the EU would get some urgently needed breathing room necessary for its internal consolidation. Indeed, there are ongoing efforts to enhance co-operation. In May 2007, the two organisations signed a 'Memorandum of Understanding' whose purpose is to further consolidate the inter-institutional cooperation.[22] The same intention motivated the CoE's Parliamentary Assembly and the EP, which signed a co-operation agreement in December 2007.[23] The problem with those agreements is that they are primarily declaratory in nature. Hence, it remains to be seen how successful efforts to fill the documents with life will be.[24]

Prospects

The Council of Europe's achievements concerning European integration in general and the protection of human rights in Europe in particular are considerable. At the same time, the organisation is under stress due to the internal (erosion of core principles; overload of the ECHR control system) and external (expansion of the EU) challenges outlined above. Under those circumstances, the Council of Europe's future is in question. However, there are three reasons why the organisation should have a future. The CoE has the potential to provide the key forum for dialogue between Europe and Russia, it could make further contributions to a European stability policy alongside the EU, and it could continue to build a pan-European legal space. Yet the following discussion shows that the realisation of the CoE's potential is far from being certain.

Providing a Forum for Dialogue with Russia

The Council of Europe has the potential to provide the key forum for dialogue between European states and Russia. Contested issues between European states and Russia are as numerous as they are thematically diverse. They include security questions, such as missile defence, energy security, or Russia's conduct in its 'near abroad'. They also include normative questions, for instance the treatment of Russian citizens in the Baltic states or the status of human rights, the rule of law, and democracy in Russia.

In short, the necessity to talk is obvious. Yet what is lacking is an adequate forum in which European states and Russia can talk on equal footing and without predetermined group constellations. At summit meetings between the EU and Russia or NATO and Russia, the groupings are clear from the outset. Two parties, that is, the EU and NATO members respectively on the one hand and Russia on the other, gather in order to exchange and ideally harmonise their positions. True, the NATO–Russia high-level exchanges have seen a certain evolution over the last decade. Starting with a 'NATO+1' format in 1997, it has evolved into an 'all participants are equal' set-up since 2002. Still, this change is primarily symbolic as Russia is still the outsider among the participating states.

Organisations where the constellation among the states is less clear-cut and therefore also less conflict-laden seem more promising for fostering a genuine dialogue. One option would be the Organisation for Security and Cooperation in Europe (OSCE). However, the OSCE is currently ill-positioned to present a forum for dialogue between Europe and Russia. Russia is blaming the OSCE for its alleged partisanship as well as for its intrusion into Russia's internal affairs. The organisation's transatlantic dimension, which results from the membership of both the United States of America and Canada, is another reason for tensions that have plagued, and at times almost paralysed, the organisation for several years now. To give but one example: In November 2007, the OSCE's 'Office for Democratic Institutions and Human Rights' (ODIHR) decided to refrain from monitoring Russia's parliamentary elections that were scheduled for December 2007. ODIHR's justification was that the Russian authorities had limited its room for manoeuvre, for instance by delaying the issuing of visas for its election monitors. In response, Russia's then president Vladimir Putin blamed the United States of America

for ODIHR's decision.[25] A similar pattern of accusations emerged a couple of months later when ODIHR decided not to monitor Russia's presidential elections as well.

The CoE presents yet another option for a European–Russian forum for dialogue. It brings together not only all EU members but also 20 non-EU states. With its membership far exceeding the one of the EU or NATO, the CoE can provide meetings that are considerably less predetermined by fixed group constellations than the EU–Russia or the NATO–Russia meetings. Moreover, in contrast to the OSCE, the CoE does not exhibit a significant transatlantic dimension. The United States of America and Canada have solely observer status with the Committee of Ministers (and Canada also with the Parliamentary Assembly), which means, among other things, that they are not entitled to vote on decisions. Two additional aspects speak in favour of the CoE. Following the organisation's traditional intergovernmental set-up, all member states are equal. Crucial questions are decided unanimously. Each state has the power to veto. The other aspect is the organisation's thematic diversity. According to the CoE's Statute, all issues except those related to defence might be discussed. Admittedly, defence questions are among the contested issues between Europe and Russia. And yet, if exchanges, confidence-building measures and joint actions inside the CoE with respect to non-defence issues of mutual interest are successful, this could only have positive effects on co-operation in the defence realm that takes place in other organisations, above all in NATO.

Having said that, a genuine European–Russian dialogue inside the CoE is far from inevitable. Russia must be willing to use the organisation for this end. Whether this is the case must be called into question. For instance, the country's recent ideas on a pan-European security pact place virtually no emphasis on the CoE.[26] What is more, European states are confronted with the question as to what degree they are willing to accept the violation of the organisation's principles by Russia. Already Russia's accession to the CoE in the mid-1990s was heavily contested due to the first war in Chechnya.[27] In the course of the second war, tensions between the CoE and Russia resurfaced.[28] For instance, Russia's delegation to the Parliamentary Assembly was suspended for a nine-month interval in 2000/2001.

As also illustrated in the introduction, the conflict between Russia and Georgia in August 2008 put Russia in the spotlight once again. Representatives of the CoE commented on Russia's action vis-à-vis Georgia very critically, including comments about Russia's decision to recognise the independence of South Ossetia and Abkhazia. For instance, the Chairman of the Committee of Ministers, Swedish Foreign Minster Carl Bildt, condemned this decision since it 'blatantly contradicts the fundamental principles of the Council of Europe, commitments taken by the Russian Federation towards the Council of Europe, as well as the repeated assurances given by the Russian authorities in favour of the full respect of the territorial integrity and sovereignty of Georgia.'[29] The CoE's then Secretary General, Terry Davis, accused Russia as wanting to 'have it both ways'[30] given the country's previous support for the principle of territorial integrity.

Finally, based on a motion that was signed by 24 parliamentarians, the Parliamentary Assembly discussed whether the credentials of the Russian delegation should be reconsidered. On the one hand, the parliamentarians considered the 'war' between Georgia and Russia as a 'serious violation' of the CoE's Statute as well as the two

countries' obligations and commitments as member states of the organisation. On the other hand, they wanted to continue the dialogue with the Russian side.[31] Therefore, in contrast to its decision of 2000, the Assembly decided to confirm the credentials of Russia's delegation. In October 2009, history all but repeated itself. This time, 72 parliamentarians had signed a motion in which they requested the consideration of the Russian delegation's credentials. They claimed that Russia had not only failed to comply with the Assembly's demands but also taken steps that made their implementation even less likely.[32] Once again, the motion did not find the support of the majority. The Assembly concluded that Russia had not implemented most of its key demands, for instance with respect to allowing international and humanitarian organisations access to Abkhazia and South Ossetia or the restrictions that were still being placed on the local population in the two regions.[33] However, the parliamentarians also pointed out that 'its demands were directed at the Russian authorities whose policies are not in the hands of the members of the Russian delegation to our Assembly.'[34] Thus, despite Russia's lack of compliance, the credentials of its delegation to the Assembly were confirmed.

In short, no sanctions have been imposed on Russia, or on Georgia for that matter, in the aftermath of the 2008 war. The CoE's equivocal stance and actions vis-à-vis Russia point to a general deficit. The organisation lacks adequate tools to sanction a country that is in violation of its principles. There are only a few instruments that would allow the sanctioning of a country below the level of its suspension and ultimately expulsion from the organisation. They include the lodging of an inter-state complaint before the ECoHR by one or several member states or the suspension of a country's delegation to the Parliamentary Assembly (which leaves the country's membership to the organisation untouched). If those measures do not yield the envisaged results, the Committee of Ministers could draw on Article 8 of the CoE's Statute, according to which a country that has seriously violated the organisation's principles may be suspended and ultimately expelled. In short, the sanctions arsenal of the CoE is rather narrow and does not include, for instance, the imposition of fines. What is more, states are clearly unwilling to confront their peers, particularly powerful ones such as Russia.[35] Of course, confronting a state that seriously and persistently violates the organisation's principles would not only demonstrate the organisation's resolve but at the same time impede its influence on the country in question.

Contributing to an Inter-institutional European Stability Policy

There can be no doubt that the EU is the predominant actor in the European integration process. This does not mean, however, that there is no place left for the CoE within the post-Cold War European institutional architecture. In order to make the most out of the CoE's potential to contribute to stability and peace in Europe in collaboration with the EU, the two organisations must reach an understanding concerning a division of labour. As outlined above, efforts in this direction, such as the 'Memorandum of Understanding' between the CoE and the EU of 2007, are still inconclusive. The overarching aim should be to devise an inter-institutional European stability policy. This policy would have an internal and an external dimension. The internal dimension would relate to those countries that are already members of the CoE but not of the EU and the external dimension to the neighbouring countries of the CoE.

Regarding the internal dimension, the CoE's focus should rest on 'involuntary EU outsiders', that is, countries particularly in the Balkans and the Caucasus that want to accede to the EU but will not be able to fulfil the accession criteria for the foreseeable future, if ever. Regarding content, the CoE would concentrate on assisting these countries in improving their performance concerning democracy, the rule of law and human rights – and hence in issue areas where the organisation has outstanding expertise, also compared to the EU. Of course, such a focus on certain states would be a balancing act, albeit one that could be managed. Allegations of lopsidedness could be countered by pointing out two things: first, placing a focus on certain states does not mean that the other states are relieved from fulfilling their obligations and commitments vis-à-vis the CoE. Second, the CoE has various monitoring institutions at its disposal that scrutinise all members at regular intervals. The Committee on the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance (ECRI) are but two examples. This leaves the question as to how certain states may be persuaded to become 'focus states'. Here, support from the EU is key. The EU could back up the CoE's efforts in the fields of democracy, human rights and the rule of law with economic and financial incentives and ultimately with the prospect of EU membership. It goes without saying that such support for the CoE's activities does not preclude further actions by the EU in other issue areas, for instance energy security or security and defence policy.

The external dimension of the stability policy would call on the CoE to establish a neighbourhood policy for the countries along its borders. The question is whether the organisation could once again play a pioneering role similar to the one it had with respect to the integration of former communist countries into the European integration process after the end of the Cold War. Of course, there would be one major difference from the outset. In the 1990s, the CoE's strategy vis-à-vis its then neighbouring states was enlargement. Given the organisation's internal problems, this is clearly not an option with respect to today's neighbours. Yet ignoring those countries is not an option, either. Indeed, developments in Central Asia and the Southern and Eastern Mediterranean affect the CoE states (and hence the EU states), whether they like it or not.

Between accession and disregard lies the creation of stronger ties between the CoE and the countries in question. Several instruments are already in place to achieve this end and are waiting to be further exploited. For instance, more than 150 of the CoE treaties are open to 'non-European non-members states'.[36] In addition, the organisation's two main institutions, that is, the Committee of Ministers and the Parliamentary Assembly, have non-European states as observers. In order to receive observer status, countries must fully comply with the CoE's principles.[37] This is hardly the case in today's neighbouring countries. Therefore, the Parliamentary Assembly recommended that the Committee of Ministers create a new status for those countries that want to co-operate with the CoE but do not fulfil the requirements necessary for obtaining an observer status.[38] However, the Committee of Ministers rejected this idea. It argued that the organisation's focus should rest on its member states.[39]

The Parliamentary Assembly then decided to act unilaterally. In June 2009, a 'partner for democracy' status was established with the Assembly.[40] This status is open for parliaments from neighbouring regions of the CoE. More precisely, national parliaments

from Southern Mediterranean and Middle Eastern countries that participate in the EU-led Union of the Mediterranean or from Central Asia that participate in the OSCE are eligible for the new status. The aim is to support and assist parliaments in those countries in democracy building and foster political debate on common challenges. It is important to note that there are certain strings attached to the status. Parliaments that want to obtain the status must, among other things, commit themselves to the CoE's values, act toward the abolition of the death penalty in their country and encourage a balanced participation of men and women in public and political life. Thus far, the parliament of Morocco as well as the Palestinian National Council has applied for the status.

Overall, a 'CoE neighbourhood policy' would offer numerous opportunities for co-operation with the EU, not least as the latter covers several of the states in question within its neighbourhood policy.[41] Similar to the internal dimension, the CoE would be the primary organisation to promote democracy, human rights and the rule of law. The EU, in turn, would assist the CoE in doing so and also complement the latter's activities with additional actions in other policy areas.

Deepening the Pan-European Legal Space

The CoE remains crucial for the further deepening of the European legal space. The organisation's main tools in this respect are its treaties.[42] To date, 211 conventions and agreements have been developed under the auspices of the CoE.[43] Most of the treaties deal with rather 'traditional' issues, such as the protection of human rights (ECHR, opened for signature in 1950) and social rights (European Social Charter, 1961), the prevention of torture (Anti-torture Convention, 1987) and the protection of national minorities (Framework Convention on the Protection of National Minorities, 1995). However, in recent years, a trend has become discernable towards addressing 'future topics', that is, topics that may be less obvious, or prominent, than the ones just described but that are nonetheless important for the future development of Europe's societies. Treaties were adopted, for instance, on human rights and biomedicine (1997), cybercrime (2001), the trafficking in human beings (2005), the protection of children against sexual exploitation and sexual abuse (2007) or the access to official documents (2009).

The CoE's treaties are essential building blocks for a pan-European legal space that covers 800 million people. Yet member states are reluctant to accede to them. Out of more than 200 treaties, only a dozen have been ratified by all 47 member states. The ratification numbers of the five major contributors to the CoE's budget are telling: France has signed and ratified 128 treaties, Italy 120, Germany 117, the United Kingdom 115 and Russia a mere 56.[44] Some 30 treaties have not even entered into force yet, as the conditions for their ratification have not been met. This fact is all the more surprising as it usually takes only the ratification by a fraction of the CoE's member states to bring a treaty into force. In most cases, less than ten ratifications are required.

The obvious lack of 'ratification discipline' on part of the member states is particularly troubling, since it concerns even the centrepiece of the treaty system, the ECHR. Although the ECHR as such is not affected, as every member of the organisation is obliged to ratify it, its protocols are. For instance, Protocol No. 13 of 2002 concerning

the abolition of the death penalty in all circumstances has been ratified by 42 states, and Protocol No. 12 of 2000 concerning the general prohibition of discrimination by only 18 states. The reluctance of member states to ratify treaties also holds true for conventions and agreements on 'future issues'. For instance, 30 states have ratified the convention on cybercrime, 26 the convention on human rights and biomedicine and five the convention on the protection of children against sexual exploitation and sexual abuse.

There are several reasons for the member states' reluctance to ratify CoE treaties. Above all, no state can be forced to accede to a treaty. Hence, if for instance a topic is not perceived as important, or if political resistance on the domestic level is to be expected (e.g. in federal states with respect to the distribution of competencies), member states are free to opt out. As a result, the pan-European legal space currently looks patchy instead of homogeneous. Of course, this imperfect situation does not diminish the CoE's potential concerning the construction of a pan-European legal space. What is more, the organisation's institutions have means to actively promote the ratification of the treaties. The members of the Parliamentary Assembly seem particularly well-positioned in this regard, as they are also, and primarily, members of a national parliament. Hence, they can advocate for the ratification of treaties on two levels, namely the European and the national level. In addition, member states that have ratified a treaty could and indeed should exert peer pressure on other states, since their ratification remains rather pointless if the vast majority of other states do not follow suit.

Giving the Council of Europe 'Faces'

In conclusion, there can be no doubt that the CoE has made significant contributions to the uniting of Europe. Indeed, with its 47 member states, the organisation is an essential building block of Europe's post-Cold War security architecture. Equally undisputed, however, is the fact that the CoE is confronted with fundamental challenges. Those challenges call for far-reaching reforms along the lines outlined above, targeting both the organisation's institutions and policies. Those reforms must be complemented by two further aspects: better communication of the CoE's activities and achievements that, in turn, is intimately connected with an increased participation of leading politicians in the organisation. The remainder of this article addresses those two subjects.

Despite its achievements, the CoE receives scant public or media attention. This has implications for the resonance of the organisation on the political level, which is limited in many, if not most, member states, particularly in the 'old' ones. In this sense, a former member of the Parliamentary Assembly commented that the CoE 'is an organisation incommensurably little known to public opinion.' He further argued that this situation 'does not raise the consciousness of European societies, which is necessary for more support from European parliaments and governments for the needs of the Council of Europe.'[45] Indeed, a key element of enabling the CoE to fulfil its tasks in the future is to make its activities (and in many cases probably its very existence) known to a wider public.

To achieve this end, the CoE needs a 'face', or rather several 'faces'. There are two starting points for increasing the profile of the organisation. One relates to high-profile

positions within the organisation, above all its Secretary General. The Secretary General is the major representative of the organisation to the outside world. In contrast to the chairmanship of the Committee of Ministers, which rotates among member states every six months, the Secretary General 'embodies' the CoE. In fact, member states were aware of the necessity to put a nameable and prestigious person in this spot. In May 2007, the Committee of Ministers decided to win over a leading political figure, such as a former president or prime minister, for the post 'in order to enhance the visibility of the work conducted by the Council of Europe.'[46] When it came to electing a new Secretary General in 2009, member states did follow up their words with deeds in letter but not really in spirit. Choosing from two candidates who had been nominated by the Committee of Ministers, the Parliamentary Assembly elected Thorbjørn Jagland, a former prime minister of Norway, to the post. Jagland won the election against Włodzimierz Cimoszewicz from Poland. With this choice, the Council of Europe has still not managed after more than two decades to put a citizen of a new member state in one of the organisation's top positions (Secretary General, Deputy Secretary General, President of the Parliamentary Assembly). In addition, despite the new Secretary General's political credentials, it is questionable whether he can actually become the 'face' of the CoE who can convince the European people of the future of the organisation. Of course, the underlying problem of the election was that none of Europe's leading politicians was in the race for the post in the first place.

The other starting point for raising the CoE's profile concerns the member states' participation in the two main institutions of the organisation, that is, the Committee of Ministers and the Parliamentary Assembly. The organisation would gain leverage if the member states are represented by senior figures in both institutions. Thus far, this has hardly been the case. Concerning the Committee of Ministers, in 2004 the number of its annual meetings was reduced from two to one. This decision was supposed to increase participation of the member states' foreign ministers. However, the majority of national delegations continues to be headed by deputy ministers, state secretaries or permanent representatives of member states to the CoE (on ambassadorial level). In particular, the foreign ministers of the major states, such as Germany, France, Russia, and the United Kingdom, are hardly ever present at the meetings. However, it is particularly the presence of the foreign ministers of those countries that would send a strong signal to other states as well as the public concerning the continued relevance of the CoE.

A similar picture emerges regarding the member states' national delegations to the Parliamentary Assembly. The delegations are composed of members of the respective national parliaments. Leading parliamentarians, such as the chairpersons of committees or parliamentary groups, are largely absent. Again, this holds particularly true for major member states. However, the participation of leading parliamentarians in the Assembly would not only strengthen the institution as such but also enhance the resonance of the Assembly's activities in the domestic political arena.

Admittedly, convincing foreign ministers and senior parliamentarians to participate in the CoE on a regular basis seems quite a challenge. Their agendas are filled to capacity. Moreover, a minister's or parliamentarian's engagement in and for the CoE is unlikely to yield noteworthy returns in the next election. And yet, those practical and political constraints stand and fall with the actors' will and strategic foresight concerning the

effective use of the CoE's potential. That the organisation has unexploited potential with respect to the uniting of Europe is the gist of this article.

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