Legitimation, rights and the Council of Europe: a question of ‘borrowed’ legitimacy?

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Introduction

The paucity of literature on the political authority and indeed legitimacy of the Council of Europe (hereinafter, "the CE") obfuscates its significance, not only as a regional organisation, but most importantly, as the rights arbiter for Europe. From its inception in 1949, literature on the CE offers an account of an organisation on a quest for political legitimacy. The following reasons have been advanced in an attempt to explain this quest: shortcomings in its institutional design; its 'low-impact' policy output; its wide-ranging but undefined tasks; external competition from the European Union (hereinafter, "the EU"), thus contributing to a growing sense of a loss of purpose; and, a general failure in its desire to become an integrative force in Europe.

The foregoing assertion presupposes the presence of a legitimacy deficit for which alternate legitimations are to be explored. The legitimacy deficit exposed by the insufficiency of indirect authorisation as the organisation's exclusive legitimation necessitates this investigation into the CE's potential self-legitimations. To this end, how does regional human rights protection contribute to the CE's self legitimation as the rights arbiter for Europe?

At present, academic literature on the CE is restricted to the following periods: 1949-1960, early 1970's, and from 1994 to 2007. Within these periods, very little attempt is made to provide substantial analytical and theoretical frameworks of the organisation, its legitimacy and modes of legitimation. The initial tentative links made between the CE's mandate and the underlying assumptions regarding its political authority are descriptive and temporally restricted to the period between its inception in 1949 and the early 1970's. As such, they cannot account for the organisation's evolution and the resurgence of its political authority following the end of the Cold War.

The intended purpose of this paper is thus summarised: an original contribution to knowledge, establishing and demonstrating the importance of the CE's human rights outputs to its wider structural legitimacy as the regional rights arbiter for Europe. In its attempts to offer new insight into, and broaden existing knowledge on the CE, this paper examines the CE's human rights policy.

This paper begins with an outline of the concept of legitimacy, and a brief discussion on legitimacy and international organisations. In turn, with reference to the CE's wider role within the European integration process, it examines the organisation's origins and functions. Its authority is considered, emphasising its standard-setting role through deliberation and the harmonisation of its member states' legal principles (Benoît-Rohmer and Klebes, 2005).

The third section then discusses the CE's human rights mandate within the wider context of its Statute's Article 3 and liberal democratic membership. It outlines the statutory and non-statutory human rights mandates incumbent upon the organisation's institutions, notably the Committee of Ministers' (hereinafter, "the CoM") role in supervising the European Court of Human Rights' (hereinafter, "the ECtHR") rulings.

However, notwithstanding the linkage between rights protection and the CE's legitimacy, its status as the rights arbiter for Europe is that of a deliberative organisation. Accordingly, and with reference to its most widely recognised human rights output – the European Convention on Human Rights and Fundamental Freedoms (hereinafter, "the ECHR") – section three examines the manner in which the regional organisation's human rights pillar contributes to both the sectorialisation

and institutionalisation of human rights policy within the CE.[1]

The concluding section then further develops the contribution of the ECHR to the organisation's 'legitimation-by-rights'. To this end, Article 2 of the ECHR and its Protocols will be used as a case study, focusing on the annulment of the death penalty as a legally enshrined exception to the right to life. Thus, with reference to the pan-European norm on the abolition of the death penalty, this paper seeks to investigate and demonstrate the contribution of the CE's sectorialised human rights policy to the organisation's self-identity and self-legitimacy.

Legitimacy and international organisations

Defining legitimacy

The concept of legitimacy can be concisely defined as "an entitlement to issue authoritative commands that require compliance from those subject to them" (Reus-Smit, 2007: 158). In this sense, legitimacy as subjective belief denotes the capacity to issue authoritative commands to and elicit compliance from the relevant subjects who consider such an authority as having been socially sanctioned, and thus, hierarchically superior. As such, the 'subjective' internalisation of the 'intersubjective', operationalises such rules, rendering them authoritative over each individual subject.

However, it is from this Weberian notion of "legitimacy-in-context" that the moral vacuity of the 'received' notion of legitimacy emerges, reducing legitimacy to the authority's capacity to engender its own legitimacy (Beetham, 1991: 14; Buchanan, 2002). A similar critique is posited by Simmons (2001), for whom the subjective perception of the 'rightfulness' of authority disregards the underlying justifications of the rights possessed and the scope of its political authority. Additionally, attempts to synonymise subjective belief in legitimacy with the conferral of authoritative rights emergent from the power relation is considered objectionable. 'Legitimacy-in-situ' is thus tantamount to the (informational) efficiency with which a regime demonstrates the 'rightfulness' of its own authority - auto-legitimation - the means of which are not necessarily subject to the evaluative scrutiny of external validating criteria (Beetham, 1991; Simmons, 2001).

Notwithstanding the importance of legitimacy as the subjective interpretation of the 'rightfulness' of authority, this brief analysis of legitimacy and substantive rules supplements the underlying causal relationship between subjective belief and the validity of a political order. Thus, for Sutchman (1995: 574), "legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions". In this marked departure from the Weberian perspective in which legitimacy arising from subjective belief is merely discernible through empirical analysis of compliant behaviour, Sutchman introduces an additional component to the concept of legitimacy: social norms.

Thus, it is the presence of an underlying moral code that distinguishes the 'cognitive' validation of legitimacy claims from its 'evaluative' equivalent. The act of conferring legitimacy upon a rule or institution becomes an evaluative process in which the

[1] Opened for signature on 04-Nov-1950, entered into force on 03-Sep-1953.

rightfulness of authority is ascertained in relation to the external validating criteria. That is, the validating normative standard upon which claims to legitimacy are based highlights the underlying societal beliefs regarding the rightful source, the means and ends of a given legitimate authority. It is from the foregoing assertion that the concept of legitimacy as normative justifiability begins to populate the concept of legitimacy as legal validity. That is, the normative validity of the legal rules by which an authority is instituted, as well as the legal and conventional rules that govern the exercise of its powers (Beetham and Lord, 1998).

While the 'belief' in the legitimacy of an authority remains an important factor in substantive accounts of legitimacy, the presence of terms such as "generalised perception" and "some socially constructed norms, values […]" (Sutchman, 1995: 574) demonstrates the broadening concept of the subject. Thus, no longer narrowly associated with individual beliefs, perceptions or assumptions, the 'subjective' becomes the 'intersubjective' social community. It is within this context that legitimacy is constructed and contested, from which its dual purpose arises, and through which it is to be asserted. That is, legitimacy is defined and constrained by societal processes and norms. It is within this context that the legitimate authority's realm of political action is delineated either geographically or sectorially.

Conversely, its purposive nature accordingly defines, empowers and constrains societal development and norms of the members of the given 'social constituency'. To this end, the notion of legitimacy as a 'process' makes reference to the concept of legitimation. *Legitimation* denotes the ascription of the quality of legitimacy, a process validating the authority's claim to legitimacy. In turn, legitimacy claims make reference to the justifications as to why a belief in an authoritative identity is sought. These claims can only be validated when the authority is considered rightful within the given 'social constituency' (Reus-Smit, 2007). In considering the CE an international organisation with a regional mandate, the following section will offer a brief evaluation of the legitimacy of international organisations.

Legitimacy and international organisations

How therefore is the legitimacy of international organisations to be understood? The foregoing legitimacy triad – normative justifiability, legal validity and consent – remains the most appropriate heuristic device in evaluating the legitimacy of international organisations.

With state volition as the basis of international action, 'legitimacy as legality' is thus synonymous with state consent. The legitimacy of international law is thus assumed – a debate that surpasses the objectives of the present paper -, denoting the hierarchical superiority of international law over municipal law. To this end, the presumption of legitimacy assumes the creation of international organisations in accordance with of international law, of which they are subject (Buchanan and Keohane, 2006).

Before evaluating the normative justifiability of international organisations, the following question merits attention: to what extent can one argue for the presence of an international community? As previously highlighted, the ascription of the quality of legitimacy is concomitant with the presence of a constituency. It is within this constituency that the validation or disqualification of justificatory reasons as to the rightfulness of authority is to take place. Additionally, considering the preponderant

number of states compliant with un-coerced or un-coercible international rules, the presence of an international community governed by legitimate legal rules can thus be deduced (Franck, 1988; Hurd, 1999; Clark, 2005). In sum, the hierarchical superiority of international law attests to the presence of an international community, within which legitimacy is instituted and of which it is constitutive.

What therefore, are the underlying normative justifications governing the source, conduct and ends of international organisations? The emergence of collaborative instruments at the international level or regional integrative mechanisms requires that states voluntarily relinquish aspects of their national sovereignty in pursuit of common international or internationalised objectives. That is, it is the inability of individual states in performing certain functions within the confines of their own territorial boundaries that necessitates the pooling of resources at the international level for the resolution of common problems. To this end, international and regional regulatory organisations arise from "the outgrowth of government policies" (Mansfield and Milner, 1997: 3), and their jurisdictions delimited either geographically or sectorially. As such, the fulfilment of their given performance criteria not only demonstrates their ability to increase the constituent units' aggregate welfare, but most importantly, that they are the "right organisation for the right job" (Sutchman, 1995: 581). It is this output legitimacy that serves to reinforce their normatively weak justifications of international authority (Beetham and Lord, 1998; Clark, 2005).

Concisely put, the belief in the rightfulness of the authority, as well as its entitlement to rule and solicit compliance from those who fall within its jurisdiction, is reinforced not only by its claims to expertise, but most importantly, by its capacity to fulfil the set criteria as to the 'ends' of its ascribed political authority (Beetham and Lord, 1998; Buchanan, 2002; Zaum, 2006). Additionally, it is from the foregoing that the question of consent begins to (re)emerge. The expression of consent to authority – and the ensuing moral duty of obedience -, is imbued within the process of authorisation. It is the ascription of the quality of legitimacy by the legitimate members of the international community – intergovernmental legitimation - that equally serves to demonstrate consent to authority and confirmation of the given authoritative status. In view of the Council of Europe's regional rights mandate, how is its legitimacy to be perceived?

The CE: organisational shortcomings and the legitimacy deficit

Political authority and the institutional design

Created in the aftermath of the Hague Congress (1948) as Europe's first regional multipurpose organisation, the CE was to provide the necessary political core to the European integration process, and contributing to the safeguard of Western democratic states against the threat of Soviet communism and potential German militarism (see Table 1 for the CE's membership). Its standing as an "association of democratic states" (Smithers, 1970) was intended to reinforce the underlying pledge binding liberal democracies to the rule of law and, the protection of human rights and fundamental freedoms. As Trommer and Chari (2006: 677) highlight, the CE's aims are rooted in "pacifism, transnationalism and human rights".

The CE has two main statutory institutions: the Parliamentary Assembly (hereinafter, "the Assembly") and the CoM. Both institutions are served by the organisation's Secretariat (CE Statute, Article 10). As the "oldest international pluralist parliamentary assembly established on the basis of an intergovernmental treaty" (Adviesraad Internationale Vraagstukken, 2005: 19), the Assembly is composed of indirectly elected parliamentarians from its forty-seven member states. Demonstrative of the importance attributed to democratic rule and the European public opinion, representatives to the Assembly possess a dual mandate: as members of parliament representing their own constituencies; and, as national parliamentary representatives to the CE, acting in an individual capacity (Haller, 2006). As the more 'European-minded' institutional drive behind the European integration process (Haller, 2006), the Assembly's use of its 'right of initiative' has allowed for its development into "an innovator and agitator, pushing for programmes that at any given time may be in advance of what governments are willing to do" (Mower, 1964: 293). The Assembly's role is, however, undermined by the restriction of its powers to its deliberative promotion of the organisation's underlying principles.

In opposition to the Assembly's prolific use of its right of initiative, the CoM approach to European integration remains staunchly intergovernmental.[2] The CoM is composed of the forty-seven member states' Foreign Ministers and their nominated Permanent Representatives. As the regional organisation's executive institution, the CoM has, however, "limited legislative and executive influence" (Trommer and Chari, 2006: 668). As the sole institution mandated to act on the organisation's behalf, the CoM's powers over the CE's member states are, however, restricted to the proposal of non-binding recommendations (de Vel, 1995, van Dijk et al., 2006, Smithers, 1970).

Although this paper attributes greater emphasis to the workings of the Assembly and the CoM, the contribution of other statutory and non-statutory institutions to the CE's mandate will be discussed in relation to the organisation's policy on the abolition of the death penalty. In the interim, suffice to mention the importance of the Congress on Local and Regional Authorities, which succeeded the consultative Conference of Local Authorities in 1994, and ensures for the promotion of democracy at both local and regional level.[3] With the addition of the NGO Liaison Committee in 1976, Trommer and Chari (2006) propose the term "quadrilogue" to describe the interaction among the four institutionalised lobbying channels of the CE. That is, the CoM, the Assembly, the Congress and the NGO Liaison Committee.

Federalist-functionalist dilemma: the origins of the CE's legitimacy deficit

Dismissed as a "debating society for European parliamentarians, with an intergovernmental organisation incongruously attached to it" (Political and Economic Planning, 1959: 131), this citation best summarises the prevailing attitude towards the

[2] Originally named the 'Consultative Assembly' and notwithstanding member state resistance, the Parliamentary Assembly began using its current appellation in 1974. Despite official recognition by the Committee of Ministers in February 1994, this has however, not been formally amended in the Council of Europe's Statute.

[3] Statutory Resolution (2000)1 of 15-Mar-2000 (Ministers Deputies, 702nd meeting) creating the Congress of Local and Regional Authorities of Europe. Note that this replaces Statutory Resolution (94)3 on the Congress' creation, which was adopted by the CoM on 14-Jan-1994, at the 506th meeting of the Ministers' Deputies

CE in the years following its creation. Mired in its attempts to become a centripetal force within Europe, and among the emergent European organisations, the insufficiency of the CE's intergovernmental legitimation to the effective acquittal of its mandate is indicative of the underlying federalist-functionalist dilemma. Its impact on the organisation's authority will be discussed with reference to its mandate, institutions, and member state perceptions.

Initial opposition to the CE was demonstrated by the member states' hostility towards the Assembly. Notwithstanding its intended role in representing the European public opinion, the following external perceptions served to limit the Assembly's, and the wider organisation's political authority: the fear within member states of the potential effect on governments of a concerted European public opinion, of which the Assembly was to be the mouthpiece (Political and Economic Planning, 1959: 143). Although Kover (1954) and Smithers (1999) argue that the insufficient media coverage of the organisation's activities contributed to its failure in galvanising the European public opinion, the following citation of an address at the Royal Institute of International Affairs in 1956 aptly demonstrates national governments' fears of the electorate's response to the Assembly, and the CE's role in the European integration process:

> "[…] we must reconcile ourselves to the fact that not only the British Foreign Office but even, in some degree the Quay d'Orsay, and all the rest, are naturally hostile to this alien organisation which has sprung up at Strasbourg and has started talking about things that pertain to them, and are better not discussed in public anyway – that matter too much to the people's of the world to be discussed in front of the people's of the world" (Boothby, 1956: 333).

Accordingly, in serving as an 'incongruously attached intergovernmental organisation', the CoM becomes the necessary anti-federalist check to the otherwise integrationist Assembly (Political and Economic Planning, 1959). This served to limit the CE's decision-making powers to that which the member states had initially intended: an organisation for "democratic consolidation" and not "democratic control" (Boothby, 1952: 331). Thus, restricting the Assembly's role to promoting the organisation's underlying values through deliberative means, dispels the need for its evolution into an elected 'European Parliament', equipped with the same legislative powers as those incumbent upon national parliaments. Notwithstanding its importance as a deliberative organisation, providing fora for the discussion and conclusion of treaties, the futile attempts between 1949 and 1955 at establishing the CE as an organisation with limited functions but real powers reinforced its authority as being that of a mere 'talking shop' on European integration (Political and Economic Planning, 1959; Smithers, 1970; Bitsch, 1996; Haller, 2006). With this in mind, the CE remained a European political authority with wide-ranging functions but limited powers.

A general framework for Europe?

Despite the importance of its intended role in forming and representing the emergent European public opinion, and in concluding international treaties, this alone did not justify the CE's existence (Smithers, 1970). Consequently, in an attempt to establish itself as a *political authority with limited functions but real powers*, the CE sought to become *the general framework for European policy*. To this end, its Programme of Work (1954) outlines the important functions the organisation was to assume: an

umbrella organisation, providing a forum for discussion between its members – Grand Europe -, and those of the European Communities – Little Europe. Analogous to the role of the UN and its specialised agencies, the Assembly's pivotal "right to review" was intended to provide an element of parliamentary supervision to the work of other regional organisations: the European Coal and Steel Community; the European Defence Community; and, the European Political Community (Smithers, 1965). In facilitating the necessary parliamentary review and joint policy coordination, the organisation's envisaged pre-eminence would allow it to coordinate its member states' foreign policy matters (Political and Economic Planning, 1959; Smithers, 1965). However, as is well noted, matters relating to national defence are excluded from the CE's deliberative remit (CE Statute, Article 1(d)).

Nonetheless, as with the federalist-functionalist dilemma with regards to its authority over its member states, the CE failed to secure a pre-eminent role over the activities of other regional organisations. This failure to become a centripetal force in the years following its creation is well documented in the post-Cold war writings and research on the CE's political authority. As Russell (1999) aptly demonstrates, the creation the ECSC forced the CE to streamline its activities, with a particular focus on regional democratic consolidation and human rights protection. This is exemplified by the creation of the consultative Conference of Local Authorities in 1957.

In the decades that follow, the increased academic interest in the EU democratic legitimacy and legitimation further contributed to the CE's growing sense of a loss of purpose (Milligan, 1999). More evidently, following the Maastricht Treaty's entry into force (1993), the EU's increased interest in the 'softer subjects of European integration' is most notably exemplified by the creation of the European Union Agency for Fundamental Rights (2007), providing its twenty-seven member states with the necessary support on Community law and rights protection. With its growing sense of a loss of purpose, Croft *et al* (1999: 157) argue for an "institutional reorientation of sorts", reasserting the CE's political authority on the basis of its original aims: pan-European democratic conduct and rights protection.

Dilution of core aims: a survey of recent delegitimation

Notwithstanding the CE's importance as an inclusive framework, membership of which is synonymous with that of the European regional community, post-Cold War enlargement has, however, led to criticism concerning the 'dilution' of the organisation's underlying principles: pluralist democracy; the rule of law; and, rights protection. While acknowledging the new democracies accession to the CE as based on their commitments to meet the set membership criteria, Tarschys (1996), Croft *et al* (1999) and Jackson (2004) question the new member states' successful 'socialisation' into the CE normative framework. For the authors, the failure to fulfil the requisite pre-accession membership criteria diminishes the probability of state compliance, once membership has been granted. This 'dilution' of the CE's principles is exemplified by Russia's "managed democracy" (Jackson, 2004: 29), characterised by the Russian state control of the media, restrictions imposed on NGO activities, and the Duma's opposition to the abolition of the death penalty.

With reference to the preceding argument on the federalist-functionalist dilemma, for Jackson (2004) the example of Russia's "managed democracy" further demonstrates the internal power struggle between the Assembly and the CoM. In this regard, the

CoM's refusal to petition the ECtHR for human rights abuses perpetrated during second Chechen invasion (Aug-1999), and to initiate expulsion proceedings following the Assembly's suspension of Russian voting rights, demonstrates the organisation's underlying structural shortcomings (Jackson, 2004). Nonetheless, the duality of the CE's double standard from which the preceding critique arises, is noteworthy: the strict monitoring of established member states; and, the incoherent application of the membership criteria among the new accessionist states. These will be examined accordingly.

The expulsion threats, the 1967 Greek withdrawal following the installation of a military dictatorship (1967-1974) and the ensuing inter-state 'Greek case' of 1969 before the European Court of Human Rights (hereinafter, "the ECtHR"), demonstrate the strict application of the membership criteria among the CE's more established member states (Robertson, 1973; Haller, 2006).[4] Additionally, while falling short of the complete Greek withdrawal, the 1981-1984 Turkish suspension sought to preserve the CE's, and in particular, the Assembly's continued democratic influence. However, in view of the CE's inaction when faced with the democratic failings in Armenia, Azerbaijan and Georgia, Croft *et al* (1999) highlight the continued spectre of *realpolitik* in the organisation's post-Cold War enlargement. As in all other areas of international relations, geopolitical and economic factors[5] continue to exert their influence. Schimmelfennig (2007) further develops this argument, highlighting that while CE membership has served to inter communism in Europe, the organisation's presence is instrumental in compensating countries that are unable to join NATO or the EU.

This 'leniency' towards post-Communist states reveals the second double standard. That is, the incoherent and inconsistent application of the CE's *acquis* within the Central and Eastern European countries. As Flauss (2004) argues, the CE's leniency towards Russia and the Caucus region is in stark contrast the 1991 Yugoslav withdrawal and the Ukraine's threat of suspension following its conduct during the 2004 political unrest, thus demonstrating the regional organisation's inconsistent conduct.

A further critique demonstrating the weakened CE principles relates to the extension of its core aims. With the intended renewal of its traditional membership criteria, recommendations from the CE's Vienna Declaration (1993) sought to broaden the CE's core aims in view of successful enlargement (Pinto, 1996). As outlined in the Vienna Declaration, the new post-Cold War membership criteria would include: ECHR ratification; the ECtHR's compulsory jurisdiction; protection of minority rights; promotion of local democracy. However, the inclusion of social cohesion, health, the environment, regional planning, education and culture into the CE's remit has been criticised by the Dutch Foreign Ministry's Advisory Council on International Relations (2005). In its reports to the Dutch delegation to the CE, it calls for increased efficacy, arising only from the organisation streamlining its tasks, thus focusing on its core aims: democracy; rule of law; rights protection; and, promoting cultural diversity. From an internal dimension, this, it argues, reinforces the CE's existing

[4] This first interstate case: *Greece v. Denmark, the Netherlands, Norway and Sweden*, of 05-May-1969

[5] Resolution (2007)26, adopted by the Committee of Ministers on 27 November 2007 at the 1012th meeting of the Ministers' Deputies, sets Russia's contribution to the Council of Europe's Ordinary budget at 12%.

normative framework, and reduces the proliferation of norms. Externally, it strengthens the organisation's monitoring role, and allows for reflection on the compatibility of its conventions and agreements with its underlying principles and its core tasks (Advisory Council on International Relations, 2005; Tarschys, 1996).

Legitimation and regional rights protection

The CE's human rights mandate

As outlined in its introductory paragraphs, this paper considers the contribution of the CE's human rights policy to the organisation's legitimation as the regional rights arbiter for Europe. In considering regional human rights protection a pillar for post-war recovery, it is within this context that the organisation's role as the regional rights arbiter for Europe is to be considered. In this regard, it provides the necessary regional fora for the development and convergence of nationally and internationally defined human rights norms, facilitating what may be defined a *regional human rights standard*.

However, before considering the CE's wider role in norm development and norm convergence, and with illustrations from the CE's institutions, this section will outline the organisation's human rights mandate: that is, both statutory and non-statutory. As highlighted in the preceding discussion, Article 3 of the CE's Statute provides the legal basis for the political actualisation of the underlying principles upon which the organisation was founded, limiting its membership to liberal democratic states. Within the context of this exclusivist membership criterion of liberal democracies, the organisation's 'preferences and identity' begin to emerge: regional democratic consolidation; and, human rights protection (Trommer and Chari, 2006, Haller, 2006, Schimmelfennig *et al*., 2006). Additionally, notwithstanding its limited powers, the CE's importance resides in its role as a deliberative organisation, providing fora for the discussion and adoption of conventions and agreements among its member states. It is therefore, within this dual context – deliberation and treaty elaboration – that its role as the regional rights arbiter is to be understood.

As the CE's executive body, the CoM's role as a 'human rights institution' is thus: its main human rights remit, from which its human rights powers emerge, is to supervise the execution of the ECtHR's final rulings. By virtue of Article 46 of the ECHR, the CoM is the regional supervisory body for the ECtHR's judgments. In this capacity, and at its quarterly human rights meetings, it is mandated to ensure member states' compliance with the Court's judgments. The conclusion of each case is highlighted by the adoption of a final and public resolution. In instances where further action is required to ensure the adoption of measures to facilitate the cessation of the human rights violations, an interim resolution is adopted. In keeping with its role as the CE's executive body, the CoM's role as the organisation's human rights institution is equally exemplified by its appointment of the following: Commissioners to the now former European Commission for Human Rights (hereinafter, "the EComHR"); committee members to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and, the European Social Charter Committee. It equally serves as the monitoring body for the Framework Convention for the Protection of National Minorities.

Considered the CE's "guardian of democracy and human rights" (Haller, 2006: 150), the organisation's Assembly's human rights mandate is carried out by its Committee on Legal Affairs and Human Rights. Considered the Assembly's *de facto* legal advisor (Council of Europe, www.coe.int), the Committee on Legal Affairs and Human Rights is composed of eighty-four parliamentarians and their respective substitutes. Through its system of rapporteurs, fact-finding missions and reports, the Committee and its four sub-committees are responsible for the realisation of the Assembly's core remit on the rule of law and human rights protection. Each sub-committee is responsible for a particular segment of the Committee's mandate: human rights; crime related problems and terrorism; minority rights; and, the election of judges to the ECtHR. The Committee's policy outputs are then presented as the Assembly proceedings – resolutions and recommendations – to other institutions, notably the CoM, or the CE's member states.

However, in the interest of a more holistic approach to the CE's role as the regional human rights arbiter, the contribution of its non-statutory institutions to the organisation's mandate and human rights policy will now be discussed. The first institution is that of the Office of the Commissioner for Human Rights (hereinafter, "the Office of the Commissioner").[6] As the ECHR's non-judicial institution, the Office of the Commissioner encourages the observance of human rights protection through informational and educational awareness, and promotes the development national human rights institutions (Resolution (99)50, Article 3). However, while the Office of the Commissioner is an independent institution within the CE, the ECtHR and the former EComHR are not. Despite their importance to the CE's mandate, they are institutions of the ECHR, complemented by the Office of the Commissioner's diplomatic functions.

Complementary to its statutory human rights functions, is the role of the Secretariat's Directorate General for Human Rights and Legal Affairs (hereinafter, "the DGHL"). With its wide-ranging remit aimed at ensuring the realisation of the CE's mandate, its work is performed by the following Directorates: Cooperation; Monitoring; and, Standard-setting. Together, these are responsible for coordinating the organisation's human rights outputs, both internally and externally. Internally, this involves providing expert advice to the CoM, Assembly and Secretariat on matters relating to human rights protection and the rule of law. For example, preparing conventions and agreements for adoption by the CoM in consultation with the Assembly. It additionally, ensures for cooperation between the CE's statutory institutions and the ECtHR. Externally, and in conjunction with the Directorate for External Relations, it facilitates cooperation with the human rights institutions of other international organisations, notably the EU, the Organisation for Security and Cooperation in Europe and the United Nations.

The Commission for Democracy through Law's – more commonly known as the Venice Law Commission (hereinafter, "the VCL") – remit further complements the DGHL's work on the legal aspects relating to the organisation's mandate.[7] Created in 1990 as a Partial Agreement in response to the CE's post-Cold War enlargement, the

[6] Resolution (99)50: On the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 07-May-1999 at its 104th Session

[7] Resolution (90)6 on the Partial Agreement Establishing the European Commission for Democracy through Law, adopted by the Committee of Ministers on 10-May-1990 at its 86th Session

VCL is an independent consultative institution specialising in constitutional law (Resolution (90)6, Article 1(1)).[8] Initially intended to align the constitutions of the emergent Central and Eastern European democracies with the CE's underlying aims – pluralist democracy, rights protection and the rule of law -, the VCL is now an Enlarged Partial Agreement, extending its membership to non-CE member states. Its membership is currently composed of fifty-six states.[9]

Institutional human rights sectorialism and depth of policy integration
Having demonstrated that the protection of human rights within the CE is restricted to deliberation and treaty elaboration, the concept of *institutional human rights sectorialism* will now be offered as the necessary heuristic device with which to understand the contribution of the ECHR and its institutions to the CE's human rights policy and wider structural legitimation as the regional rights arbiter for Europe. To this end, this discussion will examine the following characteristics of institutional human rights sectorialism. First under consideration is the depth of regional human rights policy integration. That is, in seeking to distinguish between the 'scope' and 'level' of human rights policy integration, this paper will examine the autonomy of European human rights protection within the context of a regional multipurpose organisation. In turn, this discussion will investigate the conditions, which facilitate the emergence and evolution of institution human rights sectorialism: the conditions which facilitate the delegation of authority on human rights matters from the CE's member states to the regional multipurpose organisation, and in turn, to the independent regional human rights institutions of the ECHR.

This attempted distinction between 'scope' and 'level' of human rights policy integration examines the autonomy of European human rights protection within the context of a regional multipurpose organisation. The *scope of integration* is understood to be the breadth of policy integration within the regional organisation. That is, the number of issue areas, which states agree upon for multilateral cooperation. Within a multipurpose organisation such as the CE, coordinated issue areas not only include human rights protection but also cover a wider spectrum of issues, intended to facilitate economic and social progress (CE Statute, Article 1(a)). As illustrated by the diverse range of treaties recently concluded under the auspices of the CE, its remit is so broad as to include promoting education, environmental protection, anti-corruption measures, and outlawing the financing of terrorist activities.

Conversely, the *level of integration* highlights the depth and importance of regional integration on a given issue area. That is, the ECHR's entry into force in 1953 has allowed for the institutionalisation and sectorialisation of European human rights protection. Within this notion of institutional human rights sectorialism, the concept 'sectorialism' has been developed with reference to that offered by Taylor (1993). For Taylor, 'sectorial' denotes the presence of isolable issues areas, which while

[8] A brief summary of the types of agreements that the CE can conclude.

1. *Partial agreements:* limited membership allowing for joint action, without the participation of all CE Member states; gradual membership of the partial agreement by all member states;
2. *Enlarged partial agreements:* limited CE membership, but open to non-CE member states;
3. *Enlarged agreements:* membership of all CE states as well as other non-member states.

[9] Resolution(2002)3, Revised Statute of the European Commission for Democracy through Law, adopted by the Committee of Ministers on 21-Feb-2002 at the 784th meeting of the Ministers' Deputies

recognised as part of the whole, can be solved on their own terms. Granted that within the CE context, regional human rights protection was intended as one of the main pillars for post-war recovery, facilitating closer unity among member states through regional democratic consolidation. However, multilateral human rights protection within the context of a regional multipurpose organisation is mired by the prevailing attachment to national sovereignty. In this regard, it is deficient of that required for the continued existence of a democratic and rights-based region.

In order to fully comprehend the paramount importance of 'sectorialising' human rights protection within the CE, this thesis will now discuss the effectiveness and efficacy of human rights protection within the context of a regional multipurpose organisation. Drawing on the work of Keohane (1986), Caporaso (1992) and Kiss (2006), the main feature under consideration is the principle of reciprocity within the regional organisation. In his discussion of the principle of reciprocity, Keohane (1986: 4) outlines the distinction between diffuse and specific reciprocity, in which the latter is defined as "specified partners exchange items of equivalent value in a strictly delimited sequence. If obligations exist, they are clearly specified in terms of rights and duties of particular actors". In turn, with diffuse reciprocity, no assumptions are made of the equivalent value of exchangeable goods or actions. The obligations outlined are attributed to actors who are considered to be part of a group, and not on an individual basis. In this regard, "diffuse reciprocity involves conforming to generally accepted standards of behaviour" (Keohane, 1986: 4).

The above aptly encapsulates Caporaso's discussion of the principle of reciprocity within a context such as that of the CE as a regional multipurpose organisation. For Caporaso (1992) such institutionalised multilateral settings are characterised by the following key features. *First*, the indivisible nature of the scope of practices upon which multilateral treaties and institutions are based. That is, the actions of one member state will impact on the actions of other member states. *Second*, the presence of generalised principles and norms of behaviour, promulgated and applied within the organisation. *Lastly*, diffuse reciprocity, in which group members reap the mutual benefits of cooperation on a long, rather than on a short-term basis. However, diffuse reciprocity, as with specific reciprocity highlights conditional action: "actions that are contingent upon rewarding reactions from others and that cease when these expected reactions are not forthcoming" (Keohane, 1986: 6).

In view of reciprocal action being "contingent on rewarding reactions from others", the principle of reciprocity – both diffuse and specific – is thus, incompatible with the normative integrity of human rights law. In this regard, Kiss (2006) aptly demonstrates that with regards to international human rights law, the principle of reciprocity has thus been superseded by unilateral obligations to both, or either of the following two beneficiaries: the international community; or, nationals of signatory states. It is this non-reciprocal nature of human rights treaties that allows for their classification as *"traités lois"*: 'law-making' or 'normative' treaties (Kiss, 2006). That is, an international treaty that is not of benefit to the signatory states, but its obligations being of benefit to the international community. By way of example, reservations to human rights treaties made by one party are not applicable to other parties *inter se*. This normativity distinguishes *"traités lois"* from *"traités contrats"*,

as general multilateral treaties based on the principle of reciprocity.[10] Thus, while unlike the unconditional cooperation necessary for diffuse reciprocity (Capraso, 1992), the normative status of human rights norms, and their third party beneficiaries, renders this principle inapplicable to international human rights law. Human rights norms, such as those enshrined under the ECHR, constitute an international – or, in this case, regional – common good, instituting a "common international regulation on the basis of shared values" (Kiss, 2006: 24).

Having discussed the importance of 'sectorialising' human rights protection within the CE as a regional multipurpose organisation, this paper will now continue in its distinction between the 'scope' and 'level' of human rights policy integration. Given the aforementioned absence of independent human rights mechanisms within the CE's organisational structure and the inapplicability of the principle of reciprocity to human rights law, this discussion will now focus on the second aspect of institutional human rights sectorialism: the 'institutionalisation' of European human rights protection.

With the ECHR's entry into force in 1953, the institutionalisation of European human rights protection is to be understood in the following manner: it denotes the creation of regional human rights institutions, which are distinctly separate from, and independent of the wider organisational setting. The recognition of this autonomy does not, however, negate the legal link between the CE and the ECHR's institutions, notably, the CoM being the supervisory body for the ECtHR's rulings, and the latter's officials being CE functionaries. By making reference to the Convention, the institutional aspects of institutional human rights sectorialism place greater emphasis on the workings of the ECtHR, the former EComHR and the Office of the Commissioner.[11] The 'separate' institutionalisation of European human rights protection, as the outcome of the sectorialised human rights policy within the CE – as previously demonstrated by the importance of the DGHL to the CE's human rights policy -, therefore highlights the level of integration and independence required for effective regional human rights protection. From the foregoing, this paper's working definition of institutional human rights sectorialism is thus: *the detachment and delegation of regional human rights protection from the context of a multipurpose, multiple-issue agenda to a specific single-issue area, for which greater policy integration and institutional independence is required.* In this regard, institutional

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[10] With reference to the following ECtHR Grand Chamber ruling, the Court highlights the normative integrity of the ECHR with reference to its 'constitutional' character: *Bankovic and Others v. Belgium* Grand Chamber inadmissibility decision of 12-12-2001, para. 80:

"The Court's obligation, in this respect, is to have regard to the special character of the Convention as a constitutional instrument of the European public order for the protection of individual human beings and its role, as set out in Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties."

[11] Resolution (99) 50 on the Office of the European Commissioner for Human Rights (adopted by the Committee of Ministers on 7 May 1999 at its 104th Session)

1. *Article 1(1):* "The Commissioner shall be a non-judicial institution to promote education in, awareness of and respect for human rights, as embodied in the human rights instruments of the Council of Europe".
2. *Article 1(2):* "The Commissioner shall respect the competence of, and perform functions other than those fulfilled by, the supervisory bodies set up under the European Convention of Human Rights or under other human rights instruments of the Council of Europe. The Commissioner shall not take up individual complaints".

human rights sectorialism is therefore, the necessary complement to the deliberative role incumbent upon the CE, and most importantly, its Assembly.

Conditions for institutional human rights sectorialism

The preceding discussion on human rights protection within the context of a regional multipurpose organisation posited the concept of institutional human rights sectorialism as the necessary heuristic device with which to understand the contribution of the ECHR and its institutions to the CE's legitimation-by-rights. Policy sectorialisation was understood to mean the presence of isolable issue areas, which while part of the whole, can be solved on their own terms. In turn, institutionalisation within this context denotes the creation of regional human rights institutions, which are distinctly separate from, and independent of the wider organisational setting.

This section will now consider the conditions, which facilitate the emergence and evolution of institutional human rights sectorialism. The *first* condition facilitating the emergence of institutional human rights sectorialism is to be found in the original aims leading to the creation of the CE. As previously highlighted, the CE was created in the aftermath of the Hague Congress of 8 to 10-May-1948, which sought to explore the possibilities of long-term joint policy-making and cooperation within the context of a European Assembly. With regards to post-WWII human rights protection in Europe, pledge two of its 'Message to the Europeans' highlighted the principles upon which the envisaged pan-regional cooperation was to be based: *"*We desire a Charter of Human Rights guaranteeing liberty of thought, assembly and expression as well as the right to form a political opposition". In turn, the pledge three outlined: "We desire a Court of Justice with adequate sanction for the implementation of this Charter". Additionally, in order realise the intended Charter, the Congress recommended that "[…] in the interest of human values and human liberty, the [envisaged] Assembly should make proposals for the establishment of a Court of Justice with adequate sanctions for the implementation of this Charter, and to this end any citizen of the associated countries shall have redress before the Court, at any time and with the least possible delay, of any violation of his rights as formulated in the Charter" (Cf. Shelton, 2006).

Accordingly, intended as the political core to the European integration process, the CE's stringent membership criteria as defined under Article 3 of its Statute outlines the organisation's preferences and identity. In limiting its membership to liberal democracies, the regional democratic community would be founded on the following underlying principles: pluralist democracy; the rule of law; and, the protection of human rights and fundamental freedoms. How this protection was to take place remained a question to be answered by the drafting of what became the ECHR, presided over by the Assembly's Rapporteur Pierre-Henri Teitgen. The immediacy of the Assembly's 38th recommendation of September 1949 to the CoM urging the latter to "[…] cause a draft Convention to be drawn up as early as possible, providing a collective guarantee […]", in relation to the date on which the CE was created – 05-May-1949 -, highlights the importance of the rights charter to the organisation's self-identity. Paragraph three of the ECHR's Preamble reiterates the CE's commitment to regional rights protection, and the 'outsourcing' of its normative claims to legitimacy: "considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which this aim is to be pursued

is the maintenance and further realisation of human rights and fundamental freedoms". As Haller (2006: 68) reiterates, the ECHR "[embodies] the Council of Europe's identity and aims in the human rights field".

Thus, although the CE's Statute does not explicitly outline the organisation's day-to-day role with regards to human rights protection, as the preceding discussion on the multipurpose organisation highlighted, this remit falls within its wider integrationist mandate. Thus, with the CoM having facilitated the intergovernmental adoption of the ECHR in 1951, and its ensuing entry into force in 1953, this paper will now discuss the *second* condition for the emergence and evolution of institutional human rights sectorialism.

With reference to the preceding discussion regarding the insufficiency of the CE's deliberative role in providing the requisite levels of human rights protection within the democratic region, the second condition pertains to the relation between the CE's founding Statute and the Convention instituting the ECtHR. As Drzemczewski (1990), de Vel (1995) and Benoît-Rohmer and Kleber (2005) demonstrate, although the CE's conventions and agreements are constitutive of its *acquis*, unlike EU law, the former is not a full-scale legal system.[12] In this regard, the institutionalised regional human rights system was founded on a separate international treaty – the ECHR -, and not the founding Statute of the CE as a regional multipurpose organisation.

Thus, considering the urgency of such a Convention and its institutions in post-war Europe, and its legal foundation being separate from that of the CE, it may be surmised that the ECHR would be equipped with the necessary mechanisms for its own autonomous evolution. In view of the Convention and the ECtHR's importance to the CE's self-identity and self-legitimacy/legitimation, it may then be hypothesised that this autonomous evolution ***within*** sectorialised human rights policy in the CE, and its institutionalised equivalent within the ECHR would be met with little resistance by the member states. This underlying premise presupposes the potential for endogenous self-legitimation, and a measure of 'borrowed legitimacy' by the CE of its human rights policy. Accordingly, this evolution and potential for self-legitimation will now be examined with reference to Article 2 of the ECHR.

[12] The Council of Europe's *acquis* is to be defined as the underlying abstract body of knowledge, which establishes and is to be realised through the workings of the regional organisation: "principles and knowledge that are conventionally agreed upon, around which a consensus has emerged and on which all major disagreements have been settled" (Pratchett and Lowndes, 2004: 11) The sources of the Council of Europe's *acquis* are as follows:

1. *Treaties:* conventions, protocols and charters; these provide the minimum standard for accession and wider membership thereof, allows for greater authoritativeness and significance.
2. *Proceedings:* formal understandings of the organisation's abstract *acquis*, arrived at through deliberation and interpretation by the three aforementioned institutions;
3. *Non-authoritative texts (reports and general publications):* non-formal texts with relatively little formal influence on the development of the Council of Europe's *acquis*.

Legitimation by rights: a case study of the abolition of the death penalty[13]

Europe: a de facto death penalty free zone

With the illustration of the ECHR's Article 2 on the 'right to life', and the relevant additional Protocols to the Convention – Protocols No. 6 and 13 –, this paper will now continue with its investigation into the importance of the CE's human rights policy to the organisation's legitimation. To this end, it considers the gradual annulment of the use of the death penalty as a legally enshrined exception to the right to life. The legal provision allowing for the use of such a penalty is thus outlined: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally *save in the execution of a sentence of a court of law following his conviction for a crime for which this penalty is provided by law"* (Article 2(1), emphasis added).

To facilitate this analysis, this investigation will make reference to the previously discussed concept of institution human rights sectorialism. With reference to the principle of reciprocity, a generalist approach to human rights policy-making within the context of a regional multipurpose organisation was discounted in favour of a more sectorial approach. The institutionalised approach to rights protection, as offered by the ECHR and its institutions, was considered complementary to the deliberative role incumbent upon the Assembly, and the CE more generally. With this sectorial approach to human rights policy-making in mind, the abolition of the death penalty in Europe is to be considered within the wider context of the internal conditions, which facilitate the sectorialisation of the CE's human rights policy on the abolition of the death penalty.

With reference to this sectorialised approach to human rights policy-making, consider first, the Assembly's pivotal role in facilitating the emergence of a pan-European norm on the abolition of the death penalty. Notwithstanding the Assembly's importance in the CE's human rights policy-making, its initial reticence to the motion for a resolution on abolition tabled by Astrid Bergegren in 1973 (Resolution 3297(1973)) was demonstrated by its own Legal Affairs Committee's refusal to submit a report on the subject in 1975. With the resignation of Rapporteur Henrik Lidgard in January 1976, it was struck off the Assembly's agenda in May 1976. Coinciding with the accession to the CE of three abolitionist states – Liechtenstein (23-Nov-1978), Portugal (22-Sep-1976) and Spain (24-Nov-1977) -, Rapporteur Carl Lidbom's report of 18-Mar-1980 on the death penalty in Europe (PACE Document 4509(1980)) initiated the Assembly's Resolution and Recommendation on the CoM on the amendment of Article 2(1), and the adoption of a formal agreement abolishing the use of the death penalty in peacetime: Protocol 6.

While setting a positive trend towards abolition, the report and the ensuing Protocol, were reflective of the regional mood being ripe for abolition (Wohlwend, 2004). In a resolution of a similar tone, the CE's European Ministers for Justice reiterated the Assembly's Recommendation 891(1980) to the CoM requesting an additional Protocol to the ECHR abolishing the use of the death penalty in peacetime. At their 12th Conference in May 1980, the European Ministers for Justice emphasised that "Article 2 of the European Convention on Human Rights does not adequately reflect the situation actually attained in regard to the death penalty in Europe". It reiterated

[13] Work in progress

this pledge in September 1981, expressing "a great interest in every national legislative action aimed at abolishing capital punishment and in the efforts undertaken in the same sense at the international level, notably within the Council of Europe".

However, while the Assembly is often credited with the emergence of the pan-European norm on the abolition of the death penalty, its initial catalyst was in fact, the European Committee on Crime Problems. A steering committee within the DGHL's Directorate for Standard-Setting, its concern regarding the use of the death penalty in Europe was considered important enough for it to be included within its First Work Programme of 1957. In turn, the Committee's report of 1962 prepared by Marc Ancel provided the necessary documentation as to the use of the death penalty in post-war Europe. To this end, while the Assembly's reticence on the issue led to it being struck off the agenda in May 1976, the 11th Conference of the European Ministers for Justice in 1978 recommended that the CoM "refer questions concerning the death penalty to the appropriate Council of Europe bodies for study as part of the Council of Europe's work programme".

With the ratification of Protocol 6 underway in the CE's more established member states, the organisation's gradualist approach to abolition was, however, not extended to the new post-Cold War accessionist states. Immediate accession to the ECHR, as amended by its relevant Protocols, was a requirement as of 1989. This condition was then clearly outlined in the Assembly's Opinion No. 182(1994) concerning the Principality of Andorra's membership, and the following criteria were then applied to all accessionist states: immediate signature of the ECHR upon being granted membership; and, obligatory ratification within twelve months[14]. For non-abolitionist members, the introduction of moratoria on executions was mandatory upon accession (Wohlwend, 2004).

With the compulsory accession to the ECHR and the declaration of moratoria on executions coinciding with Rapporteur Hans Göran Frank's 1994 inventory on the use of the death penalty in Europe, the Assembly adopted Resolution 1044(1994) and Recommendation 1246(1994). Intended to mirror the 'fully abolitionist' trend among member states (Wohlwend, 2004), the Recommendation urged the adoption by the CoM, of supplementary legislation outlawing the use of the death penalty at all times: Protocol 13. With its entry into force on 01-Jul-2003, Europe has now become a *de facto* death penalty free zone (see Tables 1 to 3). Although the fully abolitionist Armenia, Azerbaijan, Poland and Spain have not ratified Protocol 13[15], the emergence of Europe as a *de jure* death penalty free zone awaits the Latvian abolition of the death penalty during wartime, and Russia's full abolition.

Rights, abolition, organisational self-identity and self-legitimation

The preceding discussion sought to outline the CE's role in the emergence of a pan-European norm on the abolition of the death penalty. In order to understand the importance of this CE's human rights policy to the organisation's standing as the regional rights arbiter for Europe, this discussion will now examine some of the reasons advanced by the organisation as to the importance of abolition. In so doing, it

[14] Assembly's Opinion No. 182(1994) concerning the Principality of Andorra's membership application; Cf. Benoît-Rohmer and Kleber (2005)

[15] Armenia, Poland and Spain have signed but not ratified the Protocol. Azerbaijan has not acceded to Protocol 13.

similarly considers the importance of abolition to the organisation's self-identity and self-legitimation.

Consider *first*, the importance of interpreting the Convention in light to the evolving political landscape in Europe. As one of the general principles of interpretation employed by the ECtHR, this principle of evolutive interpretation makes reference to the Convention as a 'living instrument', adaptable "to new realities and attitudes rather than providing static standard" (Dembour, 2006: 21). In *Tyrer v. United Kingdom*, in which the Court made its first reference to the Convention as a 'living instrument', it stated that:

> "The Court must also recall that the Convention is a living instrument which, the Commissioned rightly stressed, must be interpreted in light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of member states of the Council of Europe in this field".[16]

With reference to the present case study on the abolition of the death penalty in Europe, the case of *Öcalan v. Turkey* aptly demonstrates the linkage between the evolution of the CE's human rights policy and the underlying democratic-rights standard it seeks to uphold:

> "The Court reiterates that the Convention is a living instrument which must be interpreted in light of the present-day conditions and that the increasingly high standard required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing the breaches of the fundamental values of democratic societies".[17]

In order to fully assess the importance of this principle in relation to abolition, this discussion will now examine the *second* reason for abolition, and the CE's legitimation in relation to the underlying normative standard, as enshrined under Article 3 of its Statute: democracy; the rule of law; and, the protection of human rights and fundamental freedoms.

With the use of the death penalty being described as an "extreme physical and mental assault on a person already rendered helpless by government authorities" (Prokosch, 1999: 18), the first reason for abolition is based on the analogous relation between the use of the death penalty and the use of torture. With reference to the Convention, the legality of executions as punishment is often questioned. Article 3 of the ECHR prohibits the use of torture or degrading treatment: "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". A separate treaty further provides for this prohibition: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (26-Nov-1987). As exemplified in the ECtHR's case law, notably *G.B. v. Bulgaria* and *Iorgov v. Bulgaria* the Court found the imposition of the death penalty to be a violation of the Convention's Article 3 prohibiting the use of torture and degrading treatment.[18] In this regard, arguments as

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[16] Tyrer v. United Kingdom (Application no. 5856/72), Judgment of 25-Apr-1978, 2 E.H.R.R. 1 9, paragraph 70

[17] Öcalan v. Turkey (Application no. 46221/99), Judgment of 12-Mar-2003, (2003) 37 E.H.R.R. 238, paragraph 193

[18] G.B v. Bulgaria (Application no. 42346/98), Judgment of 11-Mar-2004, (2005) 40 E.H.R.R. 7;

to the ‘torturous’ nature of an impending execution cite the mental, material and physical effects suffered by those condemned to death. In the case of *G.B v. Bulgaria*, the case made reference to Article 3, highlighting the severity of the “stringent custodial regime to which the applicant was subjected for more than eight years”.[19] The preoccupation with the material and physical conditions under which the prisoners are detained at the pre-trial prison in Kharkiv was equally highlighted in the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter, “the CPT”), following its visits to the Ukraine in 1998, 1999 and 2000.[20] The summative conclusions from its first visit, to which the Court made reference in the case of *Poltoratskiy v. Ukraine*, stated that:

> “In short, prisoners sentenced to death were locked up for 24 hours a day in cells which offered only a very restricted amount of living space and had no access to natural light and sometimes meagre artificial lighting, with virtually no activities to occupy their time and very little opportunity for human contact. Most of them had been kept in such deleterious conditions for considerable periods of time (ranging from 10 months to over two years). Such a situation may be fully consistent with the legal provisions in force in Ukraine concerning the treatment of prisoners sentenced to death. However, this does not alter the fact that, in the CPT’s opinion, it amounts to inhuman and degrading treatment”.[21]

In this continued analogy between the death penalty and the use of torture, the mental impact of detention is assessed, often citing the “death row phenomenon”, in which consideration is given to the time-lag between detention and execution. The torturous nature of contemplating one’s death while on death row, as not only highlighted by the CPT reports on the conditions of detention in the Ukraine. In the case of *Soering v. United Kingdom*, the threat of the “death row phenomenon” was pivotal in the Court’s refusal to extradite the defendant to the United States:[22]

> “[…] in the Court’s view, having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant’s extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3”.

In keeping with the preceding legality of the use of the death penalty in relation to the Convention, the *third* argument for abolition relates to issues of equitable justice and the right to a fair trial: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”

Iorgov v. Bulgaria (Application no. 40653/98), Judgment of 11-Mar-2004, (2005) 40 E.H.R.R. 7

[19] *Op cit.* final judgment, paragraph 87

[20] CPT reports to the Ukrainian Government following the Committee’s visits

1. 8 to 24-Feb-1998 [CPT/Inf (2002) 19]
2. 15 to 23-Jul-1999 [CPT/Inf (2002) 22.] Only available in French
3. 10 to 26-Sep-2000 [CPT/Inf (2002) 23]

[21] *Poltoratskiy v. Ukraine* (Application no. 38812/97), Judgment of 29-Apr-2003, (2004) 39 E.H.R.R. 43

[22] Soering v. United Kingdom (Application no. 14038/88), Judgment of 07-Jul-1989, (1989) 11 E.H.R.R. 439, paragraph 111

(Article 6(1)). In his discussion on the link between other human rights and the death penalty, Prokosch (1999) highlights strong public reactions towards serious crimes as adding pressure on public authorities to use “effective justice techniques”, thus potentially leading to the loss of innocent lives. While the case of *Hulki Gunes v. Turkey* reiterated the issue of a fair trial with regards to the sufficiency of the evidence and legal representation, it partially reiterated the central argument in the infamous case of *Öcalan v. Turkey*, in which the applicant had sufficiently demonstrated the absence of a fair trial in an independent and impartial tribunal, and the absence of sufficient legal representation. Before referring the case to the Grand Chamber, the First Section judgment stated that:

> “In the Court’s view, to impose a death penalty on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed. The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there exists a real possibility that the sentence will be enforced, must give rise to a significant degree of human anguish. Such anguish cannot be disassociated from the unfairness of the proceedings underlying the sentence which, given that human life is at stake, becomes unlawful under the Convention. Having regard to the rejection by the Contracting Parties of capital punishment, which is no longer seen as having any legitimate place in a democratic society, the imposition of a capital sentence in such circumstances is considered, in itself, to amount to a form of inhuman treatment”.[23]

Having sought to examine the reasons advanced for abolition, these will now be considered with reference to the preceding discussion on legitimacy and the legitimacy of the CE. That is, the mutually reinforcing nature of organisation and norm (Clark, 2005; Hurd, 2007; Reus-Smit, 2007). On the one hand, the legitimation and legitimacy of the pan-regional human rights standard provides an ‘added-value’ to the CE’s attempts at endogenous legitimation. On the other hand, the legitimation and legitimacy of the organisation as the rights arbiter for Europe serves to entrench and legitimate its abolitionist human rights output. Thus, in considering the legitimation of the CE as dependent upon its human rights policy, it being “the right organisation for the right job” (Sutchman, 1995: 581) is dependent upon the efficacy and efficiency with which it acquits its task as the regional rights arbiter for Europe.

Conclusion

The purpose of this paper was three-fold. In the first instance, it sought to offer a general analysis of the concept of legitimacy, as well as how this is to be understood within the context of international organisations. In its introduction to the CE, it then discussed the organisation’s mandate, with an emphasis on the member states’ perceptions of the organisation’s functions and political authority. The CE’s human rights mandate was then outlined, with an emphasis on its most important human rights output: the ECHR. The concept of institutional human rights sectorialism was offered as a heuristic device with which to understand the contribution of the ECHR and its institutions to the CE’s human rights policy-making. In considering the importance of an evolutive approach to the regional human rights protection, the

[23] Hulki Güneş v. Turkey (Application no. 28490/95), Judgment of 19-Sep-2003, (2006) 43 E.H.R.R. 15 10; Öcalan v. Turkey *supra* at. 17, paragraph 207

concluding section then discussed the importance of the CE's human rights outputs to its legitimation. The case study of Article 2 of the ECHR assessed the organisation's role in the emergence of a pan-European norm on the abolition of the death penalty. With Europe now a *de facto* death penalty free zone, the concluding remarks highlight the mutually reinforcing legitimacies of both norm and organisation.

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Table 1: CE member states, international human rights law and the abolition of capital punishment

	Signature dates for relevant European Conventions						Signature dates for International Conventions	
Country	**Signature of /Accession to CE Statute**	**ECHR (04-Nov-1950)**	**Protocol No. 6 (28-Apr-1983)**	**Protocol No. 13 (03-May-2002)**	**European Convention on Extradition[24] (18-Apr-1960)**	**European Convention on the Prevention of Terrorism[25] Ratification dates (01-May-2005)**	**ICCPR (16-Dec-1966)**	**ICCPR Protocol No. 2 (15-Dec-1989)**
Albania	13-Jul-1995	13-Jul-1995	04-Apr-2000	26-May-2003	17-Aug-1998	01-Jun-2007	04-Jan-1992	17-Oct-2007
Andorra	10-Nov-1994	10-Nov-1994	22-Jan-1996	03-May-2002	11-Jan-2001	01-Sep-2008	05-Aug-2002	22-Sep-2006
Armenia	25-Jan-2001	25-Jan-2001	25-Jan-2001	19-May-2006[26]	25-Apr-2002	Not ratified	23-Sep-1993	Non-signatory
Austria	16-Apr-1956	13-Dec-1957	28-Apr-1983	03-May-2002	19-Aug-1969	Not ratified	10-Dec-1978	02-Jun-1993
Azerbaijan	25-Jan-2001	25-Jan-2001	25-Jan-2001	Non-signatory	26-Sep-2002	Not ratified	13-Nov-1992	22-Apr-1999
Belgium	05-May-1949	04-Nov-1950	28-Apr-1983	03-May-2002	27-Nov-1997	Not ratified	21-Jul-1983	08-Mar-1999
Bosnia - Herzegovina	24-Apr-2002	24-Apr-2002	24-Apr-2002	03-May-2002	24-Jul-2005	01-May-2008	06-Mar-1992	16-Jun-2001
Bulgaria	07-May-1992	07-May-1992	07-May-1999	21-Nov-2002	15-Sep-1994	01-Jun-2007	23-Mar-1976	10-Nov-1999

[24] **European Convention on Extradition, Article 11** – Capital punishment: If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out.

[25] **European Convention on the Prevention of Terrorism, Article 21** – Discrimination clause: (3) Nothing in this Convention shall be interpreted either as imposing an obligation to extradite if the person who is the subject of the extradition request risks being exposed to the death penalty or, where the law of the requested Party does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested Party is under the obligation to extradite if the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole.

[26] Not ratified

Croatia	06-Nov-1996	06-Nov-1996	06-Nov-1996	03-Jul-2002	25-Apr-1995	01-May-2008	08-Oct-1991	12-Jan-1996
Cyprus	24-May-1961	16-Dec-1961	07-May-1999	03-May-2002	22-Apr-1971	01-May-2009	23-Mar-1976	10-Sep-1999
Czech Republic	30-Jun-1993	21-Feb-1991	21-Feb-1991	03-May-2002	01-Jan-1993	Non signatory	01-Jan-1993	15-Sep-2004
Denmark	05-May-1949	04-Nov-1950	28-Apr-1983	03-May-2002	12-Dec-1962	01-Aug-2007	23-Mar-1976	24-May-1994
Estonia	14-May-1993	14-May-1993	14-May-1993	03-May-2002	27-Jul-1997	01-May-2008	21-Jan-1992	30-Apr-2004
Finland	05-May-1989	05-May-1989	05-May-1989	03-May-2002	10-Aug-1971	01-May-2008	23-Mar-1976	11-Jul-1991
France	05-May-1949	04-Nov-1950	28-Apr-1983	03-May-2002	11-May-1986	Not ratified	04-Feb-1981	02-Oct-2007
Georgia	27-Apr-1999	27-Apr-1999	17-Jun-1999	03-May-2002	13-Sep-2001	Not ratified	03-Aug-1994	22-Jun-1999
Germany	13-Jul-1950	04-Nov-1950	28-Apr-1983	03-May-2002	01-Jan-1977	Not ratified	23-Mar-1976	18-Nov-1992
Greece	09-Aug-1949	28-Nov-1950	02-May-1983	03-May-2002	27-Aug-1961	Not ratified	05-Aug-1997	05-Aug-1997
Hungary	06-Nov-1990	06-Nov-1990	06-Nov-1990	03-May-2002	11-Oct-1993	Not ratified	23-Mar-1976	24-May-1994
Iceland	07-Mar-1950	04-Nov-1950	24-Apr-1985	03-May-2002	18-Sep-1984	Not ratified	22-Nov-1979	11-Jul-1991
Ireland	05-May-1949	04-Nov-1950	24-Jun-1994	03-May-2002	31-Jul-1966	Not ratified	08-Mar-1990	18-Sep-1993
Italy	05-May-1949	04-Nov-1950	21-Oct-1983	03-May-2002	04-Nov-1963	Not ratified	15-Dec-1978	14-May-1995
Latvia	10-Feb-1995	10-Feb-1995	26-Jun-1998	03-May-2002	31-Jul-1997	01-Jun-2009	14-Jul-1992	Non-signatory
Liechtenstein	23-Nov-1978	23-Nov-1978	15-Nov-1990	03-May-2002	26-Jul-1970	Non signatory	10-Mar-1999	10-Mar-1999
Lithuania	14-May-1993	14-May-1993	18-Jan-1999	03-May-2002	18-Sep-1995	Not ratified	20-Feb-1992	27-Jun-2002
Luxembourg	05-May-1949	04-Nov-1950	28-Apr-1983	03-May-2002	16-Feb-1977	Not ratified	18-Nov-1983	12-May-1992

Malta	29-Apr-1965	12-Dec-1966	26-Mar-1991	03-May-2002	17-Jun-1996	Not ratified	13-Dec-1990	29-Mar-1995
Moldova	13-Jul-1995	13-Jul-1995	02-May-1996	03-May-2002	31-Dec-1997	01-Sep-2008	26-Apr-1993	20-Sep-2006
Monaco	05-Oct-2004	05-Oct-2004	05-Oct-2004	05-Oct-2004	30-Jan-2009	Non-signatory	28-Nov-1997	28-Jun-2000
Montenegro	11-May-2007	03-Apr-2003	03-Apr-2003	03-Apr-2003	30-Sep-2002	01-Jan-2009	23-Oct-2006	23-Oct-2006
Netherlands	05-May-1949	04-Nov-1950	28-Apr-1983	03-May-2002	15-May-1969	Not ratified	11-Mar-1979	11-Jul-1991
Norway	05-May-1949	04-Nov-1950	28-Apr-1983	03-May-2002	18-Apr-1960	Not ratified	23-Mar-1976	05-Dec-1991
Poland	26-Nov-1991	26-Nov-1991	18-Nov-1999	03-May-2002	13-Sep-1993	01-Aug-2008	18-Jun-1977	Not ratified
Portugal	22-Sep-1976	22-Sep-1976	28-Apr-1983	03-May-2002	25-Apr-1990	Not ratified	15-Sep-1978	11-Jul-1991
Romania	07-Oct-1993	07-Oct-1993	15-Dec-1993	03-May-2002	09-Dec-1997	01-Jun-2007	23-Mar-1976	11-Jul-1991
Russian Federation	28-Feb-1996	28-Feb-1996	16-Apr-1997	Non-signatory	09-Mar-2000	01-Jun-2007	23-Mar-1976	Non-signatory
San Marino	16-Nov-1988	16-Nov-1988	01-Mar-1989	03-May-2002	18-Mar-2009	Not ratified	18-Jan-1986	17-Nov-2004
Serbia	03-Apr-2003	03-Apr-2003	03-Apr-2003	03-Apr-2003	29-Dec-2002	Not ratified	27-Apr-1992	03-Sep-2001
Slovakia[27]	30-Jul-1993	21-Feb-1991	21-Feb-1991	24-Jul-2002	01-Jan-1993	01-Jun-2007	01-Jan-1993	22-Sep-1999
Slovenia	14-May-993	14-May-993	14-May-1993	03-May-2002	17-May-1995	Not ratified	25-Jun-1991	10-Jun-1994
Spain	24-Nov-1977	24-Nov-1977	28-Apr-1983	03-May-2002	05-Aug-1982	01-Jun-2009	27-Jul-1977	11-Jul-1991
Sweden	05-May-1949	28-Nov-1950	28-Apr-1983	03-May-2002	18-Apr-1960	Not ratified	23-Mar-1976	11-Jul-1991
		21-Dec-1972	28-Apr-1983	03-May-2002	20-Mar-1967	Non-signatory	18-Sep-1992	16-Sep-1994

[27] Accession to the CE as Czechoslovakia and subsequently as Slovakia (30-Jun-1993)

Switzerland	06-May-1963							
FYR Macedonia	09-Nov-1995	09-Nov-1995	14-Jun-1996	03-May-2002	26-Oct-1999	Not ratified	17-Sep-1991	26-Apr-1995
Turkey	13-Apr-1950	04-Nov-1950	15-Jan-2003	09-Jan-2004	18-Apr-1960	Not ratified	23-Dec-2003	02-Jun-2006
Ukraine	09-Nov-1995	09-Nov-1995	05-May-1997	03-May-2002	09-Jun-1998	01-Jun-2007	23-Mar-1976	25-Jul-2007
United Kingdom	05-May-1949	04-Nov-1950	27-Jan-1999	03-May-2002	04-May-1991	Not ratified	20-Aug-1976	10-Mar-2000

Table 2: CE member states and ratification of European legislation on the abolition of capital punishment

		CE member states and ratification of European legislation on the abolition of capital punishment						
Country	**Signature of /Accession to CE Statute**	**ECHR (04-Nov-1950)**	**Protocol No. 6 (28-Apr-1983) Signature**	**Protocol No. 6 Ratification**	**Protocol No. 6 Entry into force**	**Protocol No. 13 (03-May-2002) Signature**	**Protocol No. 13 Ratification**	**Protocol No. 13 Entry into force**
Albania	13-Jul-1995	13-Jul-1995	04-Apr-2000	21-Sep-2000	01-Oct-2000	26-May-2003	06-Feb-2007	01-Jun-2007
Andorra	10-Nov-1994	10-Nov-1994	22-Jan-1996	22-Jan-1996	01-Feb-1996	03-May-2002	26-Mar-2003	01-Jul-2003
Armenia	25-Jan-2001	25-Jan-2001	25-Jan-2001	29-Sep-2003	01-Oct-2003	19-May-2006	Not Ratified	N/A
Austria	16-Apr-1956	13-Dec-1957	28-Apr-1983	05-Jan-1984	01-Mar-1985	03-May-2002	12-Jan-2004	01-May-2004
Azerbaijan	25-Jan-2001	25-Jan-2001	25-Jan-2001	15-Apr-2002	01-May-2002	Non-signatory	N/A	N/A
Belgium	05-May-1949	04-Nov-1950	28-Apr-1983	10-Dec-1998	01-Jan-1999	03-May-2002	23-Mar-2003	01-Oct-2003
Bosnia - Herzegovina	24-Apr-2002	24-Apr-2002	24-Apr-2002	12-Jul-2002	01-Aug-2002	03-May-2002	29-Jul-2003	01-Nov-2003
Bulgaria	07-May-1992	07-May-1992	07-May-1999	29-Sep-1999	01-Oct-1999	21-Nov-2002	13-Feb-2003	01-Jul-2003
Croatia	06-Nov-1996	06-Nov-1996	06-Nov-1996	05-Nov-1997	01-Dec-1997	03-Jul-2002	03-Feb-2003	01-Jul-2003
Cyprus	24-May-1961	16-Dec-1961	07-May-1999	19-Jan-2000	01-Feb-2000	03-May-2002	12-Mar-2003	01-Jul-2003
Czech Republic	30-Jun-1993	21-Feb-1991[28]	21-Feb-1991	18-Mar-1992	01-Jan-1993	03-May-2002	02-Jul-2004	01-Nov-2004
Denmark	05-May-1949	04-Nov-1950	28-Apr-1983	01-Dec-1983	01-Mar-1985	03-May-2002	28-Nov-2002	01-Jul-2003

[28] Accession to the CE as Czechoslovakia and subsequently as the Czech Republic (30-Jun-1993)

Estonia	14-May-1993	14-May-1993	14-May-1993	17-Apr-1998	01-May-1998	03-May-2002	25-Feb-2004	01-Jun-2004
Finland	05-May-1989	05-May-1989	05-May-1989	10-May-1990	01-Jun-1990	03-May-2002	29-Nov-2004	01-Mar-2005
France	05-May-1949	04-Nov-1950	28-Apr-1983	17-Feb-1986	01-Mar-1986	03-May-2002	10-Oct-2007	01-Feb-2008
Georgia	27-Apr-1999	27-Apr-1999	17-Jun-1999	13-Apr-2000	01-May-2000	03-May-2002	22-May-2003	01-Sep-2003
Germany	13-Jul-1950	04-Nov-1950	28-Apr-1983	05-Jul-1989	01-Aug-1989	03-May-2002	11-Oct-2004	01-Feb-2005
Greece	09-Aug-1949	28-Nov-1950	02-May-1983	08-Sep-1998	01-Oct-1998	03-May-2002	01-Feb-2005	01-Jun-2005
Hungary	06-Nov-1990	06-Nov-1990	06-Nov-1990	05-Nov-1992	01-Dec-1992	03-May-2002	16-Jul-2003	01-Nov-2003
Iceland	07-Mar-1950	04-Nov-1950	24-Apr-1985	22-May-1987	01-Jun-1987	03-May-2002	10-Nov-2004	01-Mar-2005
Ireland	05-May-1949	04-Nov-1950	24-Jun-1994	24-Jun-1994	01-Jul-1994	03-May-2002	03-May-2002	01-Jul-2003
Italy	05-May-1949	04-Nov-1950	21-Oct-1983	29-Dec-1988	01-Jan-1989	03-May-2002	03-Mar-2009	01-Jul-2009
Latvia	10-Feb-1995	10-Feb-1995	26-Jun-1998	07-May-1999	01-Jun-1999	03-May-2002	Not Ratified	N/A
Liechtenstein	23-Nov-1978	23-Nov-1978	15-Nov-1990	15-Nov-1990	01-Dec-1990	03-May-2002	05-Dec-2002	01-Jul-2003
Lithuania	14-May-1993	14-May-1993	18-Jan-1999	08-Jul-1999	01-Aug-1999	03-May-2002	29-Jan-2004	01-May-2004
Luxembourg	05-May-1949	04-Nov-1950	28-Apr-1983	19-Feb-1985	01-Mar-1985	03-May-2002	21-Mar-2006	01-Jul-2006
Malta	29-Apr-1965	12-Dec-1966	26-Mar-1991	26-Mar-1991	01-Apr-1991	03-May-2002	03-May-2002	01-Jul-2003
Moldova	13-Jul-1995	13-Jul-1995	02-May-1996	12-Sep-1997	01-Oct-1997	03-May-2002	18-Oct-2006	01-Feb-2007
Monaco	05-Oct-2004	05-Oct-2004	05-Oct-2004	30-Nov-2005	01-Dec-2005	05-Oct-2004	30-Nov-2005	01-Mar-2006
Montenegro	11-May-2007	03-Apr-2003	03-Apr-2003	03-Mar-2004	06-Jun-2006	03-Apr-2003	03-Mar-2004	06-Jun-2006

Netherlands	05-May-1949	04-Nov-1950	28-Apr-1983	25-Apr-1986	01-May-1986	03-May-2002	10-Feb-2006	01-Jun-2006
Norway	05-May-1949	04-Nov-1950	28-Apr-1983	25-Oct-1988	01-Nov-1988	03-May-2002	16-Aug-2005	01-Dec-2005
Poland	26-Nov-1991	26-Nov-1991	18-Nov-1999	30-Oct-2000	01-Nov-2000	03-May-2002	Not Ratified	N/A
Portugal	22-Sep-1976	22-Sep-1976	28-Apr-1983	02-Oct-1986	01-Nov-1986	03-May-2002	03-Oct-2003	01-Feb-2004
Romania	07-Oct-1993	07-Oct-1993	15-Dec-1993	20-Jun-1994	01-Jul-1994	03-May-2002	07-Apr-2003	01-Aug-2003
Russian Federation	28-Feb-1996	28-Feb-1996	16-Apr-1997	Not ratified	N/A	Non-signatory	Non-signatory	N/A
San Marino	16-Nov-1988	16-Nov-1988	01-Mar-1989	22-Mar-1989	01-Apr-1989	03-May-2002	25-Apr-2003	25-Apr-2003
Serbia	03-Apr-2003	03-Apr-2003	03-Apr-2003	03-Mar-2004	01-Apr-2004	03-Apr-2003	03-Mar-2004	01-Jul-2004
Slovakia[29]	30-Jul-1993	21-Feb-1991	21-Feb-1991	18-Mar-1992	01-Jan-1993	24-Jul-2002	18-Aug-2005	01-Dec-2005
Slovenia	14-May-993	14-May-993	14-May-1993	28-Jun-1994	01-Jul-1994	03-May-2002	04-Dec-2003	01-Apr-2004
Spain	24-Nov-1977	24-Nov-1977	28-Apr-1983	14-Jan-1985	01-Mar-1985	03-May-2002	Not Ratified	N/A
Sweden	05-May-1949	28-Nov-1950	28-Apr-1983	09-Feb-1984	01-Mar-1985	03-May-2002	22-Apr-2003	01-Aug-2003
Switzerland	06-May-1963	21-Dec-1972	28-Apr-1983	13-Oct-1987	01-Nov-1987	03-May-2002	03-May-2002	01-Jul-2003
FYR Macedonia	09-Nov-1995	09-Nov-1995	14-Jun-1996	10-Apr-1997	01-May-1997	03-May-2002	13-Jul-2004	01-Nov-2004
Turkey	13-Apr-1950	04-Nov-1950	15-Jan-2003	12-Nov-2003	01-Dec-2003	09-Jan-2004	20-Feb-2006	01-Jun-2006
Ukraine	09-Nov-1995	09-Nov-1995	05-May-1997	04-Apr-2000	01-May-2000	03-May-2002	11-Mar-2003	01-Jul-2003
United Kingdom	05-May-1949	04-Nov-1950	27-Jan-1999	20-May-1999	01-Jun-1999	03-May-2002	10-Oct-2003	10-Feb-2004

[29] Accession to the CE as Czechoslovakia and subsequently as Slovakia (30-Jun-1993)

Table 3: CE member states and abolition

Table 3(a): Pre-Protocol 6 Abolitionists (12)

Country	CE Accession	Abolition date	Last known execution
Austria	16-Apr-1956	1920	1967
Denmark	05-May-1949	(1930) 1978	(1892) 1950
Finland	05-May-1989	(1949) 1972	1944
France	05-May-1949	1981	1977
Iceland	07-Mar-1950	1944	1830
Luxembourg	05-May-1949	1979	1949
Monaco	05-Oct-2004	1962	1847
Netherlands	05-May-1949	1982	1952
Norway	05-May-1949	1979	1948
Portugal	22-Sep-1976	1976	1849
San Marino	16-Nov-1988	1865	1468
Sweden	05-May-1949	1975	1910

Table 3(b): Pre-Protocol 13 Abolitionists (28)

Country	CE Accession	Abolition date	Last known execution		Country	CE Accession	Abolition date	Last known execution
Andorra	10-Nov-1994	1990	1943		Italy	05-May-1949	1994	1947
Azerbaijan	25-Jan-2001	1998	1993		Latvia	10-Feb-1995	**1999 (Partial)**	1996
Belgium	05-May-1949	1996	1950		Liechtenstein	23-Nov-1978	1987	1785
Bosnia & Herzegovina	24-Apr-2002	2001			Lithuania	14-May-1993	1998	1995
Bulgaria	07-May-1992	1998	1989		Malta	29-Apr-1965	2000	1943
Croatia	06-Nov-1996	1990	1973		Moldova	13-Jul-1995	1995	1990
Cyprus	24-May-1961	2000	1962		Poland	26-Nov-1991	1997	1988
Czech Republic	30-Jun-1993	1990	1988		Romania	07-Oct-1993	1997	1989
Estonia	14-May-1993	1998	1991		Slovakia	30-Jun-1993	1990	1988
FYR of Macedonia	09-Nov-1995	1991			Slovenia	14-May-1993	1989	1957
Georgia	27-Apr-1999	1997	1995		Spain	24-Nov-1977	1995	1975
Germany	13-Jul-1950	(FRG: 1949) 1987	(1949) 1981		Switzerland	06-May-1963	1992	1944
Hungary	06-Nov-1990	1990	1989		Ukraine	09-Nov-1995	1999	1997
Ireland	05-May-1949	1990	1954		United Kingdom	05-May-1949	1998	1965

Table 3(c): Post-Protocol 13 Abolitionists (5)

Country	CE Accession	Abolition date	Last execution
Albania	13-Jul-1995	2007	1995
Armenia	25-Jan-2001	2003	1991
Greece	09-Aug-1949	2004	1972
Montenegro	11-May-2007	2002	
Serbia	03-Apr-2003	2002	1992
Turkey	13-Apr-1950	2004	1984

Table 3(d): Non Abolitionist moratorium (1)

Country	CE Accession	Moratorium date	Last execution
Russian Federation	28-Feb-1996	1996	1996