'The Pan-European Dimension: Ensuring the Use of the Council of Europe's Wider European Membership'

Advisory Report by the Second Think-Tank Task Force

(Strasbourg, May 2014)

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Table of Contents

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[*] All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Executive Summary

Is the Council of Europe's big membership of 47 states today an asset or a liability? Is the pan-European idea, forming the basis of the Organisation's speedy enlargement in the 1990s and early 2000s, an outdated concept or does it still hold a promise for the future of the European project? The CoE includes different categories and regional groups of member states with seemingly diverging foreign policy interests, but also democracy and human rights policies. How should the Council approach its Wider European members? Can Turkey and Russia be accommodated despite their own ambitions to become attractive poles of integration? Can the relationship with the EU be taken to a higher level, and how can EU states be motivated to invest more in the Organisation? What about a neighbourhood policy for the Council? And finally, is there a certain *raison d'être* the CoE can find in its membership? The following key recommendations could form the basis of a new approach:

A) The Council of Europe is the Continent's only real pan-European organisation in the political field. Although pan-Europeanism seems to be under increasing pressure these days - that does not mean that it holds no potential. The Organisation should use its encompassing membership to progressively address the strategic challenges of the European project, to be part of a new quest for East-West rapprochement and a solution for the "neighbourhood problem" and use the institutional link it provides to Moscow, Ankara and Kyiv for a new European division of labour with the EU. The CoE is well placed to bring about a conceptualisation of a wider Europe without dividing lines.

B) With democracy and human rights records challenged nearly everywhere in a post-crisis Europe and a "new authoritarianism" gaining ground in Eastern Europe, a new "value divide" seems to be emerging between Europe's East and West, but it is also running through each of its societies. The Council of Europe is a crucial organisation to prevent this from happening. It should devise strategies for countries and societies that want to become real democracies, position itself as a forum for dialogue between parts of Europe which are on different paths in their democratic development, and it should institutionalise the communication of the EU with Wider European countries such as Russia and Turkey. The Organisation as such should define itself more clearly as an authority on the state of democracy and human rights others can refer to and represent a vision of Europe larger than the EU.

C) Wider Europe is the Organisation's main challenge and place in which to invest. The CoE, considering the EU's enlargement fatigue, is the only institutional instrument in a position to bring about a sustained rapprochement between Europe's different regions. First, the big players Turkey and Russia, notwithstanding the important differences between them, should be engaged by efficient legal-technical co-operation, a strong commitment to basic values including necessary critique, and a multi-level dialogue with civil society. Second, the Council should offer its support for an overhaul of the EU's neighbourhood policy and convince Brussels to develop human rights acquis in the neighbourhood through its mechanisms: an emphasis on local governance and empowerment of local communities, a bolder role in protecting media freedom

and freedom of expression (via development of an own instrument) and with a proper debate on public budgets.

D) In order to devise a strategy for the Council's work with its encompassing membership and immediate neighbourhood, it makes sense to think of the latter in four categories or circles. Next to the EU countries, there are the countries which are willing to join the EU (Georgia, Moldova and Ukraine) and with whom a dialogue based on strict monitoring and conditionality should be furthered. With the countries for which full EU accession is off the table and democracy under pressure (Russia and Azerbaijan), a kind of conditionality-light approach should be applied based on monitoring instruments and self-assessment. Finally, for the neighbourhood (Maghreb), the focus should be on awareness-raising concerning standards and best practices of governance. Although it makes sense to think in different categories of the membership, a self-induced disintegration of the membership circle should also be avoided. The support and inclusion of sub-regional organisations, connecting different regional groups of the CoE's membership, could be a structural solution here.

E) An effective co-operation between the Council of Europe and the European Union will be one of the key's to European stability. The forthcoming accession of the EU to the ECHR is a first step in the right direction, but should be accompanied by others. The CoE should encourage the EU to see it as the main point of reference for "deep democracy" and "good governance" in Europe and to integrate its expertise. An own EU role in standard-setting in the realm of values should be avoided by the Council developing timely and effective new standards and by an improvement of the implementation of existing ones. EU member states should be encouraged to be more active in the CoE, e.g. by an improved agenda-setting, regional priorities and more vision. Finally, the Council could play a very useful role for the EU in post-accession monitoring and as a gatekeeper for EU accession candidates ("Copenhagen Certificate").

F) Last but not least, the Council of Europe should be very careful in developing its own neighbourhood policy. It just does not have its own foreign policy capacities and should concentrate on its already challenging core business. Rather, it should focus on countries which are really aspiring to become democracies and aim there at a transgression of European values. An extension of the new "partner for democracy" status with the Assembly and a new status at the Council as such could be envisaged, and the Schools of Political Studies and the INGO Conference should be opened to the neighbours. For the sole European non-member Belarus, a strategy based on conditionality, a clear red line (no membership for the Lukashenko regime) and civil society co-operation should be adopted. Kosovo* should be encouraged to finally apply for membership (road map) and engagement of the NRE's could be extended.

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1. Introduction

This report addresses the following key concepts and questions:

Pan-Europeanism: The Council of Europe is the Continent's only pan-European organisation in the political field. Having been hostage to the East-West divide of the Cold War until the early 1990s, it was one of the few international organisations which upheld the promise of a "Common European Home" and integrated in its ranks most Central, Southeast and Eastern European countries until the early 2000s. Eventually, with the notable exception of the people of the sole non-member state, Belarus, and possibly such new aspirants like Kosovo*, the overall majority of European citizens today is able to defend their basic human rights at the Strasbourg European Court for Human Rights and enjoys the protection of the most important Council of Europe conventions. Yet, considering the multipolar challenge of the new Europe and the various processes of disintegration and differentiation on the Continent, does pan-Europeanism still makes sense as a concept for the European project and the CoE?

A Community of Values: Since 1949, the Council of Europe has, with its conventions and agreements covering a wide spectrum of basic human, social or minority rights, developed into the most important standard-setting organisation in Europe. With its monitoring mechanisms and first of all through the European Court of Human Rights, it is working to protect and promote European values on a pan-European level. At the same time, it seems that there is less and less agreement between different states, most obviously between the EU and Russia, on what those core values should be, how they should be interpreted, how a political system should look like or what balance between individual and group rights should be sought. Is this divergence a temporal, politically motivated phenomenon or does it reflect a deeper rift in the values of European societies? This growing divide poses the question: what are the exact non-negotiable acquis that the Council of Europe wants to defend, how and through which instruments and formats should it address the existing differences between states and ensure a dialogue?

Wider Europe: From a geostrategic perspective, the Organisation's Wider European membership should be seen as one of its unique features (Europe is more than the EU!) and therefore also as a comparative advantage to the Organisation. The fact that Russia, Turkey, Ukraine, the Balkan and the South Caucasian states are members should give the Council a quite natural prominent place in the Continent's current most topical debates such as the remodeling of EU-Russian relations, the integration of Turkey into the European project or the peaceful transformation of still young and troubled states into a functioning democratic order. On the other hand, the Council's Wider membership is also a challenge to an Organisation concentrating on the protection and support of human rights and democracy as many of the respective states are not yet fully-fledged democracies or are even challenging the CoE's core standards. Is the Council of Europe's Wider membership an asset or a liability to the Organisation? What are its strategic benefits and how can it be reconciled with the mandate of the CoE?

The CoE and the EU: The EU and its member states are the most influential group inside the Council of Europe (28 out of 47 member states). Taken as a bloc the EU can enjoy the absolute majority in the Committee of Ministers, and with the addition of candidate countries and like-minded states it could technically quite easily manage the necessary bar of the qualified majority needed on practically all decisions of substance. In addition, the EU has its own mechanisms and instruments for human rights protection. This is giving the EU a lot of influence inside the CoE. Brussels' pending accession to the European Convention on Human Rights is an important step, but also a challenge. The prevailing view is that the EU acting as a bloc inside the CoE would be fatal for the Council of Europe. But the EU is the only realistic source of political leadership in preparing the CoE's decisions. A lack of any co-ordination within the EU debilitates the decision-making capacity of the CoE leading to a situation where the lowest common denominator becomes the only option for CM decisions. This low common denominator sometimes becomes the rationale for the EU to develop its own policies and standards. Thus the double-membership of the EU states sometimes tends to undermine the Council's influence there. Which strategic role then has the Council still to play in states and regions that are already part of the EU? How should the EU position itself inside the CoE? How can the relationship with the EU be improved and how should Strasbourg handle the challenge of Brussels's own human rights policies?

Neighbourhood: For decades the Council has been a source of attraction for European countries that wanted to join the EC or later the EU. Strasbourg has for a long time acted as a kind of "waiting" and "preparation room" for European integration, supporting EU accession candidates' efforts to fulfill the Copenhagen Criteria. Today, the Council has also become a source of attraction and reference for states outside Europe aiming to build a democratic future. Recent developments in Northern Africa and even Central Asia are posing the question of whether the Council should develop a more ambitious Neighbourhood Policy or in some way even give aspiring democracies a certain status in the Organisation. Yet, is such an ambitious project feasible or does an own Neighbourhood Policy overstretch the Council's resources? The canonical philosophy of the CoE attitude to the non-member states has been based on a "demand-driven approach". Whilst the approach sounds generous and technical it poses a risk of transforming itself into a deliberate abdication of any political strategy towards partners. Some of them cynically seek one-sided gains from the co-operation (political, in terms of good image, or even material, in terms of access to legal means to pursue their own agenda). Can the CoE have any clear strategy on co-operation with non-members? What could it look like? Finally, a few special questions exist, especially now when the Council is serious about creating a pan-European legal space without "black holes": Therefore, how should it approach the only non-member state Belarus, the not yet universally recognised Kosovo* and non-recognised or breakaway entities such as Transnistria?

2. The Ups and Downs of Pan-Europeanism and the CoE

Pan-Europeanism, the idea to create a democratic political community including all states geographically located in Europe, once at least intellectually vibrant has faded from the radars of European politicians over the last two decades. It gravitated in part towards the EU. In its true sense it found at least indirect

institutional incarnation in the Helsinki Process and the Final Act of 1975, when 35 countries decided to follow a functional approach towards a reduced East-West divide, covering the areas of security, trade and contact between people. It persevered until the fall of the Berlin Wall and the Conference on Security and Co-operation in Europe (CSCE) "Charter of Paris for a New Europe" of November 1990. Even at that time though, shortly before the collapse of the Soviet Union, the envisioned format, famously termed by the Americans "Europe – whole and free", was a Western one, concentrating on democracy, the rule of law and economic liberalism far from propagating some kind of third way whatever it might mean.

After an initial romantic period in European East-West relations political realities again turned Pan-Europeanism into the somewhat utopian political concept it had been for decades. The CSCE, the only real pan-European international organisation at the time, failed to develop into the key organisation of Post-Cold War Europe, whereas NATO and the EU soon abandoned the idea of alternative solutions to enlargement and quickly became the major poles of attraction for most countries in the Central East European (CEE) Region. Today's OSCE format is based on a transatlantic and Eurasian understanding of Pan-Europeanism. Its latest conceptual embodiment has been the idea of a security community promoted by the OSCE. But the divisions make this concept quite elusive. For many, Pan-Europeanism became not more than just a mere illusion. Many feared that it could be used as a tool to prevent them from seeking membership in the Western structures (NATO or the EU) or even as a disguise to push Americans out of Europe. Pan-Europeanism became politically suspicious as a term.

All factors thus played into the logic of strengthening and expanding the existing Western organisations and not towards the strengthening of a single organisation that had been created to promote the idea of an "undivided Europe". The post-Soviet countries were the main 'losers' of these processes: for different reasons they could not find anchorage in the newly emerging political map of Europe.

The Council of Europe has been the only organisation which opted to enlarge its membership beyond Central and Eastern Europe and to take in former Soviet and Yugoslav countries during the 1990s and the early 2000s even at the price of lowering the performance expectations. This could be considered as a true impact of the pan-European philosophy. Yet, everyone even back then understood that the EC or later the EU was the key political organisation in Europe, while for the CEE countries CoE membership was seen merely as a demonstration that they now belonged to the club of liberal democracies. The Post-Soviet countries, which did not have an EU membership perspective or did not aspire to have one, also perceived Council of Europe membership as a source of democratic and international legitimacy, while their representation in Strasbourg provided them with at least an institutional link-up to the European project.

Two decades later, the picture of European international politics has significantly changed again. Whilst the EU, which was almost solely embodying the idea of Europe in the Post-Cold War era, has reached a certain enlargement deadlock, Russia and Turkey have become much more powerful actors with Russia pursuing over the years its own integration projects for its neighbourhood now more and more seen as the alternative to the EU. "Wider Europe", the space between the three dominant European actors – the EU, Russia and to some extent Turkey, is more and more troubled and reminiscent of a geopolitical

greyzone, torn between domestic transformation and fragility on one side and a lack of strategic offers and orientation on the other. At the same time, this unsettled geostrategic context is contributing to a renewed East-West divide, exemplified by growing disagreements on basic concepts such as democracy or human rights and a simultaneous lack of structures and policies eventually enabling all actors to find a common ground again. Consequently, there seems to be sufficient demand at least on the intellectual plane for organisations like the EU or the CoE to develop strategic alternatives.

Do those challenges imply that Pan-Europeanism is again on the table? If so, what should be the Council of Europe's role, especially since its membership does already reflect a Wider European approach? Currently, the mid-term perspective of a pan-European revival looks rather grim. Whereas, for example, the Russians have most probably never been really sincere about their proposals of a pan-European security treaty in 2008 and a pan-European free trade area in 2010, the EU and the CoE have not even begun to consider the implications of the new strategic challenges for their vague vision of the European architecture. However, there seems to be no political momentum for a new pan-European umbrella organisation or other arrangements. For many nations it became clear that the political priority is simply to get anchored as soon as possible in the Western institutions. Furthermore, for the CoE, 'consolidation' seems to turn into a catchword for the next decade as incumbent members, especially in its Wider European neighbourhood, show major democratic deficits and could backslide into defective democracies.

Yet, this does not mean that the Council is unable to address the strategic challenges of the European project. The Organisation should be part of a quest for a new East-West rapprochement and a solution for the "neighbourhood problem". The CoE, with the institutional link it provides to Moscow, Ankara or Kyiv, can have a clear guidance on how to find its place in a division of labour between different international actors in the European project due to its encompassing membership. That is because in recent decades, the term 'Europe' is increasingly associated with the European Union, consequently, the EU dominates both the definitions of and the debate about what constitutes Europe and where its borders lie. This has serious repercussions on delineating what Europe is along very narrowly perceived lines, whereas the Council of Europe, just by the very nature of its pan-European character, is sidelined in the European identity debate. Yet, precisely because of its more encompassing character, the Council of Europe is a better candidate to bring about a conceptualisation of a wider Europe. The main driver in this endeavour should be the European Union. It should demonstrate that it does not want to take on its shoulders the whole burden of managing the Wider European space while competing sometimes in this area with actors like Russia. For Russia or even the EU it may sometimes be tempting to turn this management into a bilateral exercise or a system of bilateral political or economic exercises (EU-Russia, EU-Turkey, EU-Ukraine, Russia-Ukraine, Russia-Georgia, etc.). But the EU in particular would be better off if its leadership role is more focused on a level-playing field as offered by the CoE. The EU should put this concept into policy relevant discourse. It should recognise that the CoE has more than just a technical, think-tank utility for the European Union.

Geostrategically, the Council of Europe could also try to identify regional groups of members with distinct political features such as the EU group, the Wider European and even an own neighbourhood group. Thereby, and for example by linking up with regional initiatives such as the Black Sea Co-

operation or the Baltic Sea Co-operation, the Council might have a stronger impact on the necessary strategic realignment of the European project than by using the ailing concept of pan-Europeanism as a vantage point.

3.   The Necessity of a Continental Dialogue on Values

The CoE Value Acquis and the Challenges to Democracy

The Council of Europe is an organisation firmly underpinned by a value-based mandate, calling upon it to protect and support democracy, human rights and the rule of law.

In 2014, 65 years after the foundation of the Organisation, the value acquis of the Organisation have grown considerably beyond the European Convention on Human Rights, guaranteeing the right to life, liberty, security, a fair trial, family life and freedom of thought, conscience, religion and expression. The 212 conventions, treaties and partial agreements, cover currently in particular social values (European Social Charter – safeguarding rights regarding employment, social and legal protection, housing, health and education), national minorities (Framework Convention for the Protection of National Minorities), culture (European Cultural Convention), but also human trafficking, terrorism, cybercrime, local self-government and many others. The Council is but also aware of significant gaps in its legal framework, such as freedom of expression, and tries to establish instruments in those fields.

These values are European values, they reflect the Continent's history and long struggle against war, totalitarianism and even genocide. In the 1990s and early 2000s, when many Central East and East European countries joined the Organisation, observers thought that this would mean that the Cold War "is over again" and that we would finally see a merging of what democracy and human rights mean to people in Eastern and Western Europe.

Yet, Francis Fukuyama's prominent 1992s thesis of the "End of History" and a worldwide victory of democracy have not materialised to date. Rather, what we have observed on a worldwide and regional level during the last two decades are new challenges for democracy and human rights arising from a number of factors such as the insecurity of a new multipolar world order, the continuous pressure of globalisation, new technical opportunities of the digital age and even migration and demographics. Contrary to Fukuyama's thesis, "new authoritarianisms" have developed and the progress of democracy has slowed down, with China as the most prominent example. These, sometimes quite hybrid, regimes are obviously able to combine one party-rule with capitalism and economic success. For developing or emerging countries this has created a template, allegedly releasing them from the tough task of democratising their polities before enjoying growth and welfare. In some Latin American or Eastern European countries, which were supposedly on a transformative track towards democracy for years, we even witness a systematic return to dictatorial and repressive methods of governance. Democracy has but also come under pressure in traditional, old democracies in Northern America and Europe. Here, economic crises, the pressure of migration and the erosion of social contracts are providing fertile ground for populists and have resulted in a growing distrust in democratic parties and institutions.

Addressing the Emerging Value Divide

The Council of Europe itself has experienced that a wide variety of different types of political regimes, from those of liberal democracies in Western and Central Europe to hybrid regimes such as Ukraine or Armenia and as far as those of clearly authoritarian state structures such as that in Azerbaijan, must be accommodated under the same institutional "roof" without abandoning the concept of democratic values as a criterion for membership. Core human rights issues such as those of political prisoners, the treatment of NGO's or LGBT rights are heavily contested in different parts of the Continent and a new value divide seems to be emerging between the East and the West of the Continent. Elites in some countries are openly contesting what they themselves call "European values" (in particular, tolerance and non-discrimination of sexual minorities). As of recently, pro-democratic events in Ukraine, Georgia and Moldova have however shown that such a divide has not yet petrified itself. But the danger, in particular when following the media in Russia, is real. Finally, it must be emphasised that problems in regard to democracy and human rights are not exclusive to the countries of the Wider Europe area, they also exist in EU states. The value divide runs through every society.

Regime types are developing very dynamically and so does Europe's normative order. This calls upon European organisations to devise strategies supporting those countries and populations that want to become real democracies and to anchor themselves in the European project. The Council should take on this role in a much more assertive way and position itself as a *forum for dialogue* between different parts of Europe, which might be at different stages of democratic development, but whose societies nevertheless share core European values. One of the most important tasks here is for the Council to ensure the institutionalisation of communication between representatives of the EU on one side and Wider European countries such as Russia, Turkey, Ukraine or the Caucasian states on the other. In the absence of deepened, not to mention institutionalised bi-lateral frameworks between those actors, multilateralism becomes even more important. The Council should be seen as an agent for upholding the concept of Europe without dividing value lines, of a diversified and heterogeneous Europe constructed on the common value basis.

Second, the Council, with its in-house and field office expertise on the different countries, should define itself as an *authority on the state of democracy and human rights* that others can refer too. In the current environment it seems that not much is known about the existing standards and many stereotypes exist in EU states for example on the state of political systems, the judiciary or civil society in Russia or Turkey. Here, a fundamental explanation is necessary in order to avoid misunderstandings and counterbalance effective propaganda, which will only increase the prospect of a genuine value divide. Another question is that the importance of values on the political agendas of many European countries has diminished. The golden years of human rights as a policy issue were in the 1970s. After the fall of communism in the 1990s the value factor again played an important role, this time in assessing the aspirant countries' readiness to join the Western structures. Now it seems its importance is waning. The numerous arrests of political opponents on the eve of the Azerbaijan chairmanship of the CoE Committee of Ministers did not manage to find a reference in CoE member countries speeches in Strasbourg. Finally, the Council should invest more in projects that create lasting co-operation and

communication between experts, activists and students from both sides to provide a political and social place for an eventual rapprochement of the diverging sides.

Third, the Council should more openly address the issue of diversity of regime types and ways to approach democracy and human rights policies among its membership. The heterogeneity of concepts, practice and quality of democratic government, constitutionalism and rule enforcement should be better known. It seems that the "gold standard" of democracy, human rights and the rule of law is something all members are having to struggle towards individually and they do so with different methods and levels of success in the field of corruption, fragile institutions, media control, etc. To be aware of these differences one could establish best practices and a basis for the transfer of knowledge.

Europe Is More Than the EU

One of the principal problems with European values and their promotion is the fact that many people today see the EU as the main embodiment of those values. The current definitions of and the debate about what constitutes Europe and where its borders lie are dominated by Brussels. This domination in turn leads to the domination of a very limited Christian-cultural Western perspective and the consequential exclusion of, for example, Turkey or even Orthodox dominated societies from the mainstream of the European project. In contrast, the Council of Europe, with its pan-European membership and its emphasis on democratic principles constituting Europeanness, could stand for another, much more legitimate, non-ethnic and open idea of Europe. Therefore, the Organisation should be much more courageous and portray itself as a potential model of what Europe could be actually seen as. In other words, the Council has the capacity to represent a wider Europe and its core values, much more legitimately than the EU. Yet, to achieve that is not an easy task.

In order to be able to do so, the Council of Europe should take on two major tasks. The first task is a more straightforward definition of what European values are. Here, the Secretary General should invest more energy in trying to elaborate the meaning of values and to formulate the definitions connected with those values. For example, the Council should hold debates and initiate campaigns on how our values such as personal dignity and or the freedom of expression can be reconciled with the most challenging political developments of our time such as immigration, demographics or economic inequality. A second task could be to facilitate a regular dialogue on values between different regional groupings of its membership. It is of utmost importance, especially in a time of perceived divergence, that an honest dialogue on values is upheld and that differences such as those in the sphere of LGBT-rights are clearly expounded. The Council could make its position visible only through the method of long-term persuasion, hopefully leading the way to a more democratic Europe at large.

If these two tasks are successfully completed, the danger that the EU will go on with its own process of defining its values and human right standards – thus falling victim the diktat of the lowest common denominator of the Council of Europe (determined in fact by "outliers" and "spoilers") – can be avoided.

The Method of Value Promotion

Values are a sphere which is intrinsically bound to the historical and cultural heritage of people. Convictions in this field therefore seldom change overnight. An Organisation such as the Council of Europe, with its focus on technical co-operation, the consent of the state concerned and an approach emphasising persuasion rather than enforcement is already well placed for the task of value promotion. In order to be more successful, the Council should learn to nurture a certain "smart power" approach and emphasise its original institutional methods such as learning, peer pressure and dialogue. At the same time, it should be more creative in finding methods enabling it to demonstrate the long-term influence of its work. In today's very fast and digitalised world, people tend to forget about the fact that some political processes need more than a governmental policy in order to materialise. This in turn increases the chances of democratic backslide. An open and visible CoE support to democratic consolidation and its long term commitment would be needed to prevent such backslides. It should be made clear to the public and other political actors that the CoE's precise and unique task is the ability to engage in a long-term nurturing of democracy and human rights, which can be processed with delayed results and even setbacks along the way.

4.   The Council's Wider European Membership

Why Wider Europe is the Council's Major Challenge

Next to its unique convention system, the Council of Europe is the only significant international organisation on the Continent that includes countries of the former Soviet Union, Western Balkans and Turkey. The scope of its membership is the Organisation's unique selling point, which should see its strategic value in working towards a sustained rapprochement between Europe's different regions. Especially the major powers among the CoE's Wider European members, Russia and Turkey, are underrepresented in the European project. On paper, Council membership provides them with one of the few institutional links to Europe. Yet their performance deficiencies with regard to human rights, the rule of law and democracy, provide little incentive to invest more into making the CoE stronger. Quite naturally then their policy strategy towards the CoE looks like a defensive one. However, a differentiation between Russia and Turkey should be highlighted in this context. Turkey has been included in the European institutions; from 1949 in the CoE and from 1952 in NATO, and is a candidate since 1999 for the EU and negotiating for accession with it since 2005. For Turkey, therefore, the CoE is not the only institutional link to the European project, whereas it is clearly the case for Russia. Seen from the Organisation's point of view, although the leverage of Strasbourg over Moscow or Ankara seems limited, their presence in the Organisation provides an opportunity for long-term dialogue and change. In a more than ever multipolar Europe, the Council should be the one organisation delivering the necessary mechanisms and creative formats that facilitate East-West and North-South co-operation on the Continent. It is also possible to observe that the size of a member country and its relative power position in the larger global setting shapes the ability of the CoE to foster political change in those countries. Thus a question that remains to be answered is whether the CoE could have a more

substantial impact in the relatively smaller countries in Europe, those which need the CoE to anchor and validate their status as part of the European project.

For the smaller countries of "Wider Europe" the Council is first of all an extension of the European project beyond the EU and a source of international and democratic legitimacy. The heterogeneity of this group is rather big. We also find states aspiring to EU membership such as Moldova or Serbia, states with domestic instability and fluctuating foreign orientation such as Ukraine and countries which do not seek to be anchored in Western institutions such as Azerbaijan. Here, the Council can at best serve as a kind of gate towards later EU membership or act, in a minimal scenario, as a last resort protector of European values and human rights for people living under authoritarian regimes. In any case, the Council should be aware of the fact that "Wider Europe", especially with the EU experiencing a serious enlargement-fatigue, is still its main challenge and place where it ought to invest – especially if we take a less governmental and more societal perspective. The wider Europe area seems to be highly varied within itself, both with regards to the size of the countries included in this perspective and with regards to their different levels of integration and commitment to the European project. However, it is highly likely that the EU membership might no longer be an option for most of those states in the Wider European belt. In the absence of an EU incentive and anchor, the CoE might remain the only viable option for these countries, rendering the CoE the only European institution with multiple patterns of integration.

While it is true that "Pan-Europeanism" has somewhat also lost force among the societies of "Wider Europe", this is largely the result of a misunderstanding. It is first of all the EU's European Neighbourhood Policy (ENP), with its emphasis on complex harmonisation, a myriad of regulations and above all a lack of vision, which has triggered disappointment and a certain Euro-fatigue among its partners. On the other hand, for those countries on the EU accession track such as Turkey and the Western Balkans, EU accession seems at times elusive and subject to the fulfilment of much tougher EU criteria. Yet, the broader and more abstract notion for which the "European model" stood remains as appealing as ever for the peoples of non-EU states: a good, effective and decent system of governance. It suffices to look at the latest events in Moldova and Ukraine, but also at the growing dissatisfaction with corruption levels in, for example Russia, to understand that good governance and a functioning and independent judiciary is something to which the peoples in Wider Europe countries aspire. This occasions a big opportunity for the Council of Europe, which could be the main reference and the bearer of a pan-European "gold standard" as regards democracy and human rights.

There are also several small states in the CoE family for whom the Organisation is one of the few real platforms to manifest their distinct political identity. The recent chairmanship in the Committee of Ministers of such countries as Andorra or previously San Marino proves that these countries value very highly this opportunity.

The Role of Key Non-EU Members

Russia (member since 1996) and Turkey (member since 1949) are two of the Council of Europe's biggest member states and their presence in Strasbourg does make the Council a genuine pan-European organisation. Through its offices in Ankara and Moscow, through their permanent representations in Strasbourg and through their delegations sent regularly to both PACE and Congress, the Council functions as one of the few institutionalised links between the European project and those major European powers. Not least, both Turkish and Russian citizens have access to the ECHR mechanism and therefore to the protection of the convention system. Yet, one needs to differentiate between Turkey and Russia as Turkey both has a longer period of membership in the institution, but more importantly it is closely linked to the EU. Turkey is an associate member of the EU since 1963, is a candidate since 1999, and began accession negotiations with the EU in 2005, whereas Russia does not have such institutional links with the EU. The EU's role in monitoring Turkey's democracy is significant, including through its Progress Reports and the continuous evaluation of its democratic transition by the European Parliament. In any case, the CoE and the EU have a mutual interest in promoting democratic consolidation and their joint efforts increase their leverage on Turkey. Russia is further away from the European project compared to Turkey in that aspect.

Yet, the often challenging relationship between the Organisation and Moscow or Ankara is also easily revealed by the number of cases brought against them to the Court (together they account for more than 30% of all cases). In the recent past, Russia has diverted from the initial phase of transformation supposedly "converting" it into a democracy, and is today more or less representing a case of a stable new authoritarian order with strong personal leadership, coupled with a certain impressive economic success, but also a decreasing respect for democracy and human rights. The case of Turkey is different in many respects but the recent developments in that country are sometimes diagnosed by experts as having to do with the worsening of the quality of democracy and the rule of law. Inside the Council of Europe the problem of the role of both countries is exacerbated by the considerable power both countries can exert in the different bodies, where they often form alliances against certain policies or simply try to water down the standards of the Organisation. How can perspectives of a leading Russian and Turkish role in the Council be reconciled with the recent developments?

In the current context, any visionary schemes for the Council of Europe based in particular on the membership of Russia are seen by many experts as wishful thinking. Russia's leadership is strengthening authoritarian tendencies and has just clearly broken international law with its annexation of Crimea. For its part, Turkey has been witnessing some turbulence and some experts believe that it all leads towards more anti-democratic policies. However, what would be won, for example, by the exclusion of Russia from the Organisation? Whilst the Council would regain some credibility and might have an easier time enforcing its standards elsewhere, it would lose the opportunity to assess developments in Russia with its monitoring mechanisms, it would mean the exclusion of Russian people from accession to the ECHR mechanism, and it would lead to the abandonment of one of the last institutional links and forums of dialogue with the country. Therefore, another strategy must be found. Three pillars are necessary for that: functioning legal-technical co-operation, a strong commitment to basic values on behalf of CoE

authorities, and the initiation of a multi-level dialogue with authorities eventually contributing to enhanced formats of co-operation.

Yet again, one needs to bear in mind that these two countries cannot be considered as two similar cases. Just the opposite, because the CoE has a much stronger leverage on Turkey compared to Russia, precisely because of Turkish integration in all the other main European institutions and largely because of its ongoing accession process to the EU. With Russia, the CoE is the only institutional link for Russian inclusion into the European project, for Turkey it is among the many institutional links, but the only one with clear political priorities and objectives.

Legal-Technical Co-operation: Membership in the CoE has helped to advance the 'European legal culture' in Russia and the ECHR's judgments are referred to in Russian courts. This slow and uneven progress is in the long run better than nothing as this may help Russia in its drive for modernisation and the gradual rooting of the rule of law and legal certainty in the country. In that respect, the CoE provides a strong institutional framework of learning and democratic norm transfer across Europe. The best way forward for the Council of Europe is thus a legal-technical approach to Russia and Turkey, offering help in building strong institutions and engaging in area-specific co-operation where European support and expertise are requested (mostly in the realm of the rule of law). Thereby, the EU method of functionalism – where co-operation on more and more fields follows simple functional projects – could be a reasonable approach.

Strong Commitment to Basic Values: However, critics of this functional approach will argue that stability will not materialise in the long run without some political change. Therefore, critique and shaming should not be avoided deliberately for the sake of internal peace or personal interests. On the contrary, it is obligatory for the political bodies of the Council to insist on the fundamental values of the Organisation and to criticise Russian or Turkish authorities openly in case they clearly break their commitments. Sensitive monitoring reports such as the PACE Magnitsky Report should therefore be properly debated on all levels and lead to political decisions. However, instead of threatening the Russians with sanctions which would only lead to their self-exit, the Council should use all its resources to make shortcomings public and address human rights abuses in its different fora. Last but not least, the monitoring reports the Council provides are a valuable source for other actors such as the EU to more effectively criticise Russian behaviour. Since the EU is already evaluating the Turkish political situation in line with the EU's political criteria, a similar mechanism could be possible for Russia as well. The EU anchor for Turkey is critical so that the CoE's position is taken seriously in Ankara in this respect.

A multi-level dialogue and vision: In order to be credible and have a bigger impact inside both countries, the Council should enlarge its network of personal contacts beyond the PACE delegations and reach out to the level below the realm of high politics. For example, the Turkish accession process to the EU already incorporates a civil society pillar based on increased dialogue between civil society stakeholders – a similar mechanism could be developed within the CoE framework. There simply might be more people who have the freedom and the willingness to work with the Council. This approach should also extend to civil society representatives or even business people who are interested in joint projects. In

that way, the Council could provide a missing institutional link between the European project and Moscow or Ankara, which might also contribute to the development of new formats and mechanisms of co-operation between the EU, its member states and Russia or Turkey. It also needs to be noted that Russia is a critical interlocker for the ENP countries, whereas Turkey's role for the CoE might be increasingly important for links with the Middle East and the Arab Spring countries. Thus, the CoE's ability to anchor Russia and Turkey firmly into the European project carries repercussions for the institution's ability to deal with the newly arising challenges in Europe's surrounding regions.

There are also other key non-EU countries for which the Council of Europe has a political value in itself. States like Norway or Switzerland are leaders in human rights performance, are wealthy and carry a respectable political weight. Their serious investment in the Council of Europe is visible. What they could further do is to show increased interest in deep and high-level political dialogue in the Organisation, in particular in the Committee of Ministers. After all, unlike the EU countries and countries like Russia or Turkey, they have fewer opportunities to engage in multilateral dialogue on such matters like developments in Ukraine, Russia or the Western Balkans.

Sometimes the interest of non-EU countries in political dialogue in the CoE looks doubtful. The three biggest non-EU countries (Russia, Turkey and Ukraine) were not represented at a political level at the 2013 Committee of Ministers session (neither were the three biggest EU states – France, Germany and UK). But fortunately their ministers were already present at the 2014 Vienna Ministerial.

The CoE and the European Neighbourhood Policy

Today, the area between the EU and Russia is the most important geostrategic region on the Continent. As recent events in Ukraine and the Crimea-conflict have shown, domestic instability there is very high and can create international security implications far beyond the region. A major reason for that is the unfinished domestic transformation of the respective countries and, interconnected, the open question of their international orientation. This, connected with a certain enlargement fatigue, has so far prevented the EU from proposing more ambitious designs for Moldova, Ukraine and Georgia, which are the most pro-European countries in the region. In fact, after the tumultuous experience of negotiating and signing the Association Agreement with Ukraine, the EU faces the necessity of a complete overhaul of its neighbourhood policy. Yet, regardless of the eventual outcome, the EU will not be able to give a credible membership perspective to these states, and it will have to invest much more resources in the development of "good governance" and the anchoring of "deep democracy" – which are not classical EU issues. The lack of European credibility in engaging these countries in the European debate has led to an increased Russian presence there as well.

Therefore, the Council of Europe could play a much more enhanced role in this region. In general, the CoE serves, through its wider membership, as an implicit agent for the extension of EU values. Specifically, the CoE has advantages (in contrast to the EU) when it comes to its expertise and its inter-governmental method, which could serve as a basis for the development of a pan-European "gold standard" in regards to democracy, human rights and the rule of law. Yet, the CoE lacks, unlike the EU,

the material instruments to stimulate political change. It remains to be seen, therefore, what the political impact of the CoE can be without the tangible material benefits that organisations such as the EU carry. In addition to its expertise, method and the fact that the Council is not seen as an outsider to the states concerned, the Council's biggest advantage is its exclusive focus on values, an area that Brussels has to constantly calibrate with other, mostly economic and geopolitical priorities. The Council should thus be much bolder in convincing the EU to develop human rights acquis in the neighbourhood via the Council of Europe and to use it as a neutral forum for dialogue on value questions with non-EU countries. The CoE itself, on the other hand, should concentrate on its historic role as a standard setter and value promoter and thereby create a culture of offering aid towards the neighbourhood accompanied by a strong demand from the respective states.

How to Prevent a New Value Divide – The Instrumental Level

In order to be operational, the concept of good governance must be developed and concretised in a few areas of action with monitoring tools and action plans being appropriately devised.

There is a number of areas in which the CoE has both a clear mandate and better expertise than the EU. The most obvious is <u>local governance</u>: the Council is well placed to help with the right framework for dialogue between central and local authorities in its member countries in order to promote decentralisation, which is indirectly a tool to advance democracy in general. Even in semi-authoritarian systems with controlled politics, empowering local communities represents a step forward towards nascent pluralism. In other countries, with pluralist but disorganised politics, locally elected institutions can function, in the right framework, as counter-weights to the patronage system directed from the centre. Most countries of relevance for our deliberations (Western Balkans, post-Soviet space and Turkey) are signatories of the <u>European Charter of Local Self-Government</u>, and in the past they have been keen to stay engaged and, when not using directly the technical assistance provided (for example, by the screening of new legislation), at least they benefit from the prestige associated with the stamp of approval from the Council that their system of local governance meets the minimal standards of the Charter.

Since the EU has no instrument in this area, and there has been no dedicated chapter of negotiation on local democracy with candidate countries, the CoE should agree with the EU on playing an enhanced and more formal role on monitoring (a) prospective candidate countries and; (b) other countries with which the Union intends to develop partnerships. The monitoring should take place on something similar to the Copenhagen Criteria applied to candidate countries: minimal requirements on administrative reform (de-politicisation of civil service; functional decentralisation) and independence of judiciary. And since, as noted, joining the Union is not an immediate prospect for most of the countries discussed, the evaluation on criteria can take the form of exercises repeated periodically (every two years), either by experts or by using peer review missions, on behalf of the EU Commission. The model for such co-operation can be the SIGMA program, jointly operated by the EU and OECD, but with an emphasis on evaluation rather than direct technical assistance, as it was the case with SIGMA.

The Congress of Local and Regional Authorities, with the support of the Centre of Expertise on Local Government Reform, could function as a platform for such an effort at the CoE. In the same way, the Venice Commission can be a coordinating platform for similar activities in the area of judiciary reform, with the final aim of encouraging partner states to live up to minimal standards of judiciary independence and human rights protection. A good model would be the Co-operation and Verification Mechanism (CVM) set up by the EU Commission for Romania and Bulgaria in order to press reforms in this non-acquis domain. The benchmarks and style of monitoring should be naturally adapted to the local conditions and the degree of leverage Europe has in the respective state. However, it is essential to have such instruments that rely on true achievements – assessing outputs from the system – not only on institutional changes which are easily circumvented in practice afterwards. In other words, not only the adoption of legislation but its implementation and enforcement need to be checked and monitored by the CoE.

Coming back to the issue of local governance, the Centre of Expertise on Local Government Reform has launched, for example, the ELOGE initiative, a method of ranking with multiple criteria, based on self-assessment of the quality of local governance in a certain country. Such initiatives should be promoted more aggressively, and the EU should invest more resources in support in all the partner countries concerned. Adaptable to local conditions and 100% administered nationally, ELOGE does not trample on political sensitivities. At the same time, even if self-assessments may be to some extent manipulated (which is unavoidable in such environments), they still indirectly increase awareness and create a positive demonstration effect by allowing a large number of stakeholders from municipalities to at least find out about the European standards of good governance and have them as a mental reference.

In the way it is build, ELOGE also touches marginally on the issue of fair treatment towards minorities. It remains to be discussed whether it makes sense to develop a similar, but dedicated instrument of self-assessment in this respect. This too is an area in which the EU as such has no clear mandate: treatment of the vulnerable groups (minorities, but not only). Unlike the reports currently submitted by CoE members, which are written by the governments, or the monitoring missions by members of PACE or the Office of the Commissioner for Human Rights, such instruments would also have a valuable "pedagogical" dimension by forcing the societies under scrutiny to internalise some standards, even if for the moment they do not live up to them.

It definitely makes sense to be bolder in protecting the freedom of the <u>media / freedom of expression</u>, which is a crucial dimension of a liberal state and a building block of good governance. The current change of paradigm in the mass media, triggered by the advance of the internet, a shift of the public to social networks and free online content leading, as a result, to the erosion of traditional business models, comes on top of the difficulties created by the economic crisis to all commercial sectors, even in those countries with a diversity of media outlets. Quality news and investigative reporting, which are at the core of the media's public function and had never been well developed in these parts even before the crisis, are particularly threatened in the whole Wider Europe space these days: not only because of political pressures, but mainly because they are difficult and expensive to produce, so are the first under the axe when commercial budgets are cut. With poorly paid journalists and pliant media owners chasing

contracts with public institutions – when these owners are not themselves politicians controlling public institutions – there is little public space left where the basic facts of domestic politics and policy can be debated free of manipulation and no-go areas. This is, of course, a European-wide problem not necessarily specific to the struggling democracies in the wider European space. However, the magnitude of the problem in these countries is alarming, specifically with regards to basic rights of expression.

It is imperative to develop monitoring tools and, where conditions permit, support programs for the truly independent media – either traditional operations or new forms, such as freelancing co-operatives of investigative journalists publishing online. It is also important not to fall for easy relativism and compare the situation of the press in the Balkans or Wider Europe zone with that in old member states, where bias and a certain ideological leaning do exist. Tradition, the size of the domestic markets and the business model – in which media channels are just annexes of parties or business groups used as tools for extracting favours in those sectors – makes the situation radically different. The latest round of CVM reports on Romania, for example, highlighted the threat posed by a clientelistic press to the independent judiciary, through campaigns to slander and apply pressure on individual magistrates. Indicators to measure could be: (a) bias and politicisation in the media reporting on various issues; (b) ownership concentration of the main media operations and; (c) direct political connections of the main media groups, are not difficult to build and they can be used in independent reporting. However, we question why the Council of Europe has so far not invested any political capital in the development of a respective instrument – that should be done as soon as possible.

Good governance also means more transparent and socially negotiated resource allocations, which all comes down to a <u>proper debate on the public budgets</u>. At the limit, such things can be considered as part of the matrix of fundamental rights in a modern democracy. There is a lot to be said about the failure, even within the European Union, to live up to such standards, as we have seen during the recent crisis. There is no doubt that among non-member states in the Wider Europe zone the need is even bigger to tackle the problem, but so are the difficulties and sensitivities. More than one year ago, the EU Commission set up a technical committee of experts to develop an evaluation framework for "good governance" (read, corruption), based on "objective criteria" measuring the reality "out there" – e.g., not on opinion polls (such as the TI index) or on government's policy responses to corruption (such as those used by GRECO). This is a challenging intellectual exercise, even before embarking on the task of measuring the indicators in practice. But progress has been made and the final intention is to deploy a set of instruments within a common assessment framework in all EU member states. Operational dimensions on which indicators to estimate clientelism could be built may be the politicisation of the civil service and state-owned enterprises; siphoning off public resources through SOEs; territorial financial allocations to local communities, especially for investment purposes; or the whole process of public procurement (for instance, cost benchmarks). It is the obvious comparative advantage of the CoE that it could adapt this list to other non-EU regions and encourage its members to sign up for an assessment exercise. The Council of Europe must speed up the change of paradigm in combatting corruption. This is no longer an aspect of criminal law but a real threat to democracy and good governance.

Towards A Political Strategy

When a set of instruments such as the ones suggested above is prepared, even in pilot form, the Council of Europe can use them in its dialogue with the EU non-member countries, in line with the Memorandum of Understanding between the two bodies. In the same manner in which the IMF is working together with the EU Commission in tackling macro imbalances in various states, the Council of Europe could perform the same kind of broader technical monitoring / advice in areas where the Union has no direct mandate, and build the results into the EU non-member state dialogue, sometimes even in the form of conditionality. The nature, scope and strength of this co-operation will vary depending on the types of countries concerned. There will be at least three categories:

- In countries that are willing to join the EU, which do not contemplate an alternative geo-political model and for which the EU perspective is distant, but not completely unrealistic (Moldova, Georgia, or in some ways Kosovo*), the dialogue based on strict monitoring and conditionality carries considerable strength, no matter how remote the prospect. The experience of the new member states shows that substantial progress can be made on the relevant dimensions by using such tools – and in particular before accession.
- In countries where the EU engagement and interests are strong but, for various reasons, full accession is not on the table (Azerbaijan, Belarus and Russia) the monitoring instruments should be adapted (conditionality-light?) and the exercise should rely more on self-assessment. The key incentive for co-operation is that these societies share many structural socio-economic challenges with the EU member states, more or less, but without having the right set of institutions to address them in the long run, or the resources necessary: geopolitical fears, demographic risks, loss of economic competitiveness, crisis in their social sectors (education, health care). The free travel of their citizens is also something these regimes truly care about.
- In countries with weaker ties with the EU, or where European interests are less multi-dimensional (Maghreb), increasing the awareness within those societies, at sub-national level, about standards and best practices of governance in key areas, as they are applied in Europe, should be regarded as the main benefit.

The grand vision behind such efforts is that, regardless of the current level of enthusiasm in the EU for further enlargement, or the objective difficulties presupposed by the inter-governmental method of the CoE, a common European space of values, based on the notion of good governance, is a goal still worth pursuing, because it is grounded in peoples' genuine aspirations. In this sense, Europe is a menu of (rather liberal) solutions to public matters, which can be adapted locally (but not endlessly), similar to Wittgenstein's idea of family resemblances: particular elements can be dropped or added at the margins, so that there is no thread shared by all family members, but still the whole is recognised as a family by outsiders. Good governance may be regarded as such a "family resemblance" when it comes to being captured and evaluated with indicators. Second, even if monitoring on the proposed benchmarks will be imperfect and self-assessments biased in some countries where such an exercise is a

novelty, it is still important to engage stakeholders and local governments, above the head of the central governments, in a process of social learning about good governance standards.

Sub-Regional Organisations: A Helpful Tool?

Finally, the CoE should – next to the above outlined country-group approach – think about co-operation forms between countries of different categories or types. This would first of all take into account the growing complexity of European structures, forums and areas of co-operation and at the same time help to avoid a self-induced disintegration of the CoE's membership circle.

We currently observe contradictory trends across Europe, e.g. of integration, disintegration, regionalisation and trans-nationalisation. At the same time, we have entered a post-enlargement era and a period of flexible integration in Europe, when even EU members are participating in elements of integration to different degrees. For the Council of Europe, which is, next to the OSCE, the only real pan-European structure in this framework, it seems of utmost importance to link up not only to the larger integration processes and formats such as the EU (see next chapter) but also to lower-level processes, which might help to foster the homogeneity of its big membership, bridge the dividing lines between different types of members (e.g. EU states and Wider European or even Neighbourhood states) and finally even to ensure a better compliance with its standards. An especially valuable partner here could be sub-regional organisations.

Sub-regional organisations, such as the Council of the Baltic Sea States (CBSS), the Visegrad Group, the Black Sea Economic Co-operation (BSEC) or the Barcelona Process are sometimes called the "Cinderellas of European Co-operation" due to their underused potential. For the CoE, those sub-regional forums imply several promises: first of all they could be tools to bridge the divide between its EU and Wider European members on a sub-regional level. This would be of high importance for example in the Balkans, where increased co-operation in the Regional Co-operation Council (RCC) could ease the cleavages now arising from some states entering the EU (Croatia) and some being very far from it (Bosnia and Herzegovina and Kosovo*). Secondly, a strengthened co-operation with sub-regional forums would also allow to keep co-operation and communication with the Russians alive below the politicised forums, including the CoE. For example, the CBSS and the BSEC can contribute to drawing Russia into co-operative frameworks on a more technical and regionally focused level. Finally, due to the better local knowledge and expertise concentrated in sub-regional forums, the latter could also function as valuable proxies for the CoE's objects of promoting democracy, human rights and the rule of law. Practically, this would mean that the CoE, in the case of a problematic country, could first of all rely on neighbouring countries, which share the same historical experiences and are more knowledgeable in approaching the government, addressing and maybe even already solving the problem at a lower level.

Such a strategy, which could at some point develop into an "EU-CoE-Sub-regional trilateral framework for democracy and human rights protection", would but also suppose that the CoE supports the strengthening of already existing sub-regional frameworks and encourages their foundation in other regions (e.g. the Southern Caucasus). The CoE which once had ambitious plans concerning sub-regional

organisations (The Vilnius Declaration) seems to have abandoned this dimension almost totally. It could be revived within the proposed trilateral format.

5. The Council, its EU Members and EU Accession Candidates

The EU and the CoE in a Functioning Partnership

The relationship with the EU and its member states is of utmost importance for the CoE both in political and material terms. Politically, the Council depends on an active role of the EU and its member states, which are still forming the core of the organisation and its "best pupils", and on the willingness of Brussels to accept the Council as a standard-setting organisation for its membership. Materially the Council already for quite some time depends on the contributions coming from the EU via so called Joint Programmes (81.9 million Euros alone in 2013) and other common activities. Although the current Secretary General has invested a lot of effort in an improved, practical relationship with the EU, and there exist a solid basis with the 2007 Memorandum of Understanding between both organisations and the EU's bi-annual Priorities for Co-operation with the Council of Europe, the atmosphere between Brussels and Strasbourg is still suffering from the EU's continued pursuit of its own human rights policy.

On the other hand, the pending accession of the European Union to the European Convention on Human Rights bears a lot of potential for further improvement of the relationship and will have the effect of strengthening the Convention as the main benchmark for human rights policies on the Continent. The Council should use this moment and develop the relationship further in a direction allowing it to be the main point of reference for issues such as "deep democracy" and "good governance" in Europe. The EU should be encouraged to integrate the CoE's expertise very practically and visibly in its assessments on the state of democracy and human rights in the member states. Thus, the main challenge to the Council of Europe is not the EU's building of institutions in the human rights field (which can, as the Fundamental Rights Agency or the EU's Special Representative for Human Rights show, strengthen compliance with the Council's standards), but a possible future role of Brussels as a self-sufficient standard setter in the human rights field. This can be avoided only if the Council improves its standards and effectively develops new ones for upcoming policy fields such as the digital space.

Politically, it is often heard that the EU acting as a bloc inside the CoE's major organs would lead to a paralysation of the Organisation due to its numeric majority. However, the past has shown that such a scenario is unlikely. On the contrary, history shows that the Council has often been used by EU states to continue their open disputes over European issues and that rather more unity than less would be necessary. Therefore, it will not be difficult to avoid the EU acting as a political bloc inside the CoE, but it should be encouraged to do so at least in urgent cases such as in the current Ukraine crisis. The EU should find a careful balance on when to use its might as a bloc. For the future, the Council of Europe and the EU should even think about a possible full membership of the Union in the Organisation as suggested in the Juncker Report. Membership of the EU would first of all give a signal that Brussels

appreciates the CoE and its independent contribution to European politics and that it is willing to accept Strasbourg's superiority when it comes to values in Europe. Moreover, the CoE would gain the political support of an entity representing 28 states and more than 360 mln people, which would in turn also be a significant driver for a necessary re-mobilisation of the EU states inside the CoE.

Facilitating a Renaissance of the Founding Member States

One of the most problematic aspects about the Council of Europe's membership is the growing disinterest and in some cases even hostility that many West European democracies, among them a lot of the founding member states of the Organisation, are displaying towards the CoE. How can this be explained? First of all, among the governments of these states, a high standard in regard to human rights and democracy is taken for granted and other political issues are dominating the agenda. Furthermore, they concentrate their multilateral efforts on the EU, which also has developed its own human rights acquis at least for its own members. Last but not least, many of the more progressive countries, due to the strong influence of states with problematic records of compliance such as Russia or Azerbaijan have on the CoE's decision-making, do not see the Organisation as an effective tool for improving democracy and human rights records in the Wider European area. Yet, without a decisive impact of the big EU member states such as France or Germany, the Council will hardly be able to form the strong political alliances necessary for protecting the conventions and for pressuring non-compliant members.

In order to overcome the fatigue of the bigger EU states and to facilitate a renaissance of the founding member states, the Council could do the following: first of all, attractiveness depends on the agenda. The Council is mainly underused by the EU states because its agenda is too broad, not very specific and even less visionary. Only if the Council, mainly with the help of its Secretary General, manages to define the right priorities for the next 10-15 years, will it get back on the radars of the EU heads of states and governments. The Secretary General should thus, for example, clearly announce his or her regional priorities, such as Ukraine, Georgia, Moldova and the West Balkan states, his or her political priorities, such as the aim to build an independent judiciary in the ENP countries or the objective of introducing elements of devolution and local/regional politics in Eastern Europe's over-centralised states, and a visionary outlook, for example by announcing a willingness to invest in new instruments in the sphere of media freedom and the protection of civil society actors.

Next to its agenda, the Secretary General should also be more aware of the necessity for strong political leadership. It should be the utmost priority for the head of the Organisation to constantly work on the formation of political alliances for the CoE's major priorities. Thus, for example in the case of Ukraine and the Council's now to be expected enhanced role there, the Secretary General should try to speak and gather the strategically most interested and thus most important states such as Germany, Poland, Sweden and the Baltic countries. Why should the Council of Europe not be the one place where the strategic answers on such a political crisis are discussed with the representatives of the states concerned and with the representatives of the Council who have the expertise on how ideas can be implemented on the ground? This does not mean that the heads of states or governments should attend, but

Strasbourg could be the place where a higher ministerial level from the member states is discussing and coordinating the international response on major developments in the Wider European region.

Finally, the Organisation will not be taken more seriously by the EU states that really want to use it for a norm and value transfer to Eastern Europe if it is as underrepresented in the respective countries as it is right now. It is simply not serious to state that the CoE is *the* institution aiming at a pan-European legal space, while having offices with sometimes only a handful of people in Kyiv, Chisinau, Tbilisi or Sarajevo. Thus, the Council needs to invest in its local offices and develop a stronger field image. Only if the technical-legal co-operation the CoE praises itself for is backed up by considerable on-site presence can it be taken seriously and attract more contributions from EU states.

Monitoring Post-EU-Accession: The Council and the New EU Members

Even among the Council's EU members there are different categories, especially if one takes into account increasingly heterogeneous democracy and human rights records across the Union. It is evident here that some of the younger EU member states, who joined the EU in 2004 and 2007, are still far from being consolidated democracies, whereas a couple of them have even taken a worrying political course characterised by populist, nationalist and authoritarian tendencies. Whilst, for example, Hungarian Prime Minister Viktor Orban has used his absolute majority in parliament to change the constitution in his favour and sometimes resorts to strong nationalist rhetoric to please his electoral base, Bulgaria is plagued by a constant crisis resulting from high corruption levels and an ineffective judiciary, with Romania also experiencing similar political tensions.

The integration of these countries into the EU might have made the Council of Europe (and Brussels itself) turn its attention away from the respective countries. Above all, the current negative trends show that a formal fulfilment of the Copenhagen Criteria is no guarantee for sustained high levels of democracy and human rights. Rather, compliance with norms must be ensured on a continuous basis. For that, however, the Union is not very well equipped. Although it has some instruments at its disposal to sanction non-compliant members, the multiplicity of political and economic agendas it has with its member states does make a necessary focus on values and the commitment to them rather unlikely.

Here, the Council, with its sole focus on value protection, is much better positioned and could thus co-operate with the Union more effectively. For example, the EU and the CoE, already coming closer to each other with Brussels' accession to the ECHR, could agree on a partnership for the common defense of their (already very similar) human rights acquis. Thereby, the EU would outsource the post-accession monitoring of new member states to Strasbourg. The effect would be a much more efficient disclosure of the shortcomings in the newer EU states, whereas the Commission would be less prone to critique from the non-compliers and would therefore not so much run the risk of getting drowned in conflictive political priorities.

If we talk about the necessity of post-accession monitoring, it becomes clear that an even bigger field for EU-Council of Europe co-operation exists in the area of pre-accession, meaning the preparation of EU integration candidates along the Copenhagen Criteria. This task would not be entirely new to the CoE: a majority of the countries that joined the Council of Europe over the past two decades are today members of the EU, or at least (potential) candidates. In this regard, membership of the CoE has helped to pave the way to EU membership. In fact, the EU now insists that all countries applying for membership should first be exemplary members of the CoE and adhere to the principles of human rights and democracy as set out in its conventions, whose provisions must be incorporated into their domestic legislation. The CoE is participating in the accession dialogue concerning relevant chapters. However, until now the link between CoE and EU accession has not been systematically addressed by Strasbourg, whilst its own impact on new members, considering the rather hasty accessions of many new members to the CoE in the 1990s, has been limited.

For a number of reasons, the Council is but rather well placed for helping the EU with new member preparation. Accession and observance of the CoE acquis, especially where no such EU acquis exist (cf. Chapters 23 and 24 of the EU's accession negotiation framework), is essential in the EU assessment on whether an aspirant country meets its membership criteria. Particularly, the link in various EU agreements and initiatives between access to EU funds and compliance with CoE norms enhances the 'persuasiveness' of the normative pressure exercised by the CoE. Governments of candidate countries wish to avoid the material disadvantages that are indirectly implied by CoE criticism. This link with the EU enables the Council to use social influence to promote democratic behaviour. The Organisation is armed with a significant institutional mechanism for the 'shaming' of states that do not conform with its standards. Also, the CoE offers advice in designing democratic institutions and seeks to make them work (e.g. via the Venice Commission). Perhaps its biggest contribution to the development of democracy lies in its role as a third party enforcer. Because it is not part of the European Union's institutionalised interaction, it is able to offer reforms that reflect an awareness of competing power relationships from a neutral position.

In practical terms, the European Union and the Council of Europe could agree on a kind of joint accession management. For example, this would entail that the EU encourages the Council of Europe to issue a "Copenhagen Certificate" on its behalf to the CoE countries whose democracy, human rights and rule of law records are already in line with the EU's demands. For the EU, this would have the advantage that a big part of its work during the integration process could be outsourced to another organisation, whereas the Union could instead place more focus on the fulfilment of economic and other criteria. Furthermore, in the case where the division of work is being taken seriously by both organisations and should the CoE develop the necessary procedure, the EU could be somewhat relieved of the political pressure which is usually connected with the integration process. The Council of Europe's profit from the co-operation arrangemement would mainly consist of the fact that Strasbourg could apply some conditionality to the members who would like to join the EU. In that way, the Organisation would be much better able to convince members to comply with the standards of the Organisation. Finally, the

overall strategic value of a common accession policy could be a more homogenous approach to European integration, which would ensure that the non-EU members of the Council are already much better connected to the EU even before accession and that the prospect of a new value divide is therefore reduced.

6.   The Council and its Neighbours

How Much Engagement?

The question of how far to engage with the different neighbourhoods of the Council of Europe has gained significantly more weight due to the "Arab Spring". Obviously, if states at Europe's borders wish to develop into real democracies, be it in the Maghreb or Central Asia, European democracies are the model they want to follow and learn from. In which way can and should the Council of Europe help those states and societies and is a neighbourhood policy feasible for an Organisation such as the Council? First of all, it must be said that the CoE can and should not ignore developments in its direct neighbourhood, as instability or authoritarianism there might easily affect the human rights situation in the member states. Many of the most urgent challenges for the Organisation, such as the consequences of immigration, are also connected to what is happening beyond the borders of the membership. Yet, the Council is already a rather big international organisation struggling to make its impact felt in 47 member states with an annual budget of a middle-sized West European municipality. This could be seen as a clear expectations and capabilities gap, where the Council is expected to do a great many deeds with very meagre means.

Therefore, we are rather sceptical about whether the Council should really adopt a systemic neighbourhood policy comparable to Brussels' European Neighbourhood Policy. Two reasons for that are paramount: the Council has no real foreign policy capacities and there would be the possibility of an administrative overstretch and even of fraying out. Thus, the CoE should rather concentrate its resources on its core business, e.g. its current membership, which includes the Wider European space and already poses a multitude of critical challenges. Any 'neighbourhood strategy' of the CoE should therefore be limited. Yet, there is also a fine line the Council could walk between integration and ignorance in regard to neighbouring states interested in co-operation without having to invest many additional resources.

A Neighbourhood Strategy

First of all, the Council should have a clear vision of how to approach the neighbourhood. The EU's ENP, for example, still suffers from its limited strategic choice of simply creating a stable and democratic ring of states around it. From the very outset, the CoE should opt for a concept of an envisaged transgression of European values towards its neighbourhood, where no "*cordon sanitaire*", but rather a progressive policy of Europeanisation of now hybrid regimes is projected.

The following points should form the basis of any engagement of the Council of Europe with the neighbourhood: the Organisation should in general try to support any neighbourhood country which wants to become a democracy with its already existing instruments; the Council should not develop a comprehensive neighbourhood policy (which would raise unjustified expectations) but work with countries that want to restructure their polities along the lines of a European model of governance (but it makes no strategic sense to apply a demand-driven approach, where the CoE invests its expertise without having any say in the strategy of the countries); all support needs to be financed from extra-budgetary resources while costs for the necessary additional staff should be included. Finally, due to the recent history of and the current dynamic political processes in the MENA region and in Central Asia, the Secretary General and all other major political bodies of the Council should avoid using the same terminology and objectives as for membership, but take a more long-term approach emphasising the importance of core human values and be rather prepared for democratic setbacks.

The following more detailed recommendations could be envisaged for the co-operation with neighbouring countries: The national parliaments of all southern Mediterranean and Middle Eastern countries participating in the Union for the Mediterranean-Barcelona Process (including the Palestinian Legislative Council), and of Central Asian countries participating in the OSCE (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan), should be in theory eligible to request the new "partner for democracy" status with the Assembly. However, requests from parliaments of other states may also be considered if the Bureau of the Assembly so decides. The aim of this new status is to create a framework for institutional relations and co-operation with Parliaments of neighbouring countries on the basis of clearly expressed commitments towards democracy, respect for human rights and the rule of law. Unlike observer status, designed for accomplished democracies, the new status is tailored for countries which have made a choice for democracy and that wish to use the Council of Europe's experience of, and expertise in, democratic transition. Therefore, unlike Observer status, it foresees country-specific commitments defined on a case-by-case basis with the country concerned, with a follow-up mechanism. So far, the Assembly has granted the status to the Parliament of Morocco, the Palestinian National Council and the Parliament of Kyrgyzstan. The same could be done also with the Congress of Local and Regional Authorities. Consequently, a new status should be invented at the Council of Europe for neighbourhood countries (and not only parliaments) which have made their choice for democracy clear. But this new status should offer a qualitatively new level of rights and commitments and not simply a new label for co-operation.

Especially interesting for the neighbouring countries are also those Council of Europe activities, which are especially designed to support democratic transformation. Thus, the Schools of Political Studies, where young multiplicators and future leaders come together for national and regional seminars on the Council' major topics, should be extended to the neighbourhood. Thereby, the CoE can provide a new generation of democratically minded elites with the much need capacities and expertise (teachers) in order to become more autonomous from the old authoritarian minded generation. The Council should furthermore try to extend its work with civil society and the INGO Conference to the neighbouring countries. Seminars open to an interested public with a possible engagement with interested opinion

leaders in these countries could be a potential strategy to elicit interest both in the Council and in the process of democratisation itself. Additionally, the Council should make more <u>use of existing formats</u> to co-operate with neighbouring countries. For example, the Venice Commission is open for requests from non-members, who can also participate in around 150 open Council of Europe treaties such as the European Convention for the Prevention of Torture. Furthermore, the Committee of Ministers and the Assembly are open to non-members as observers. It is, therefore, possible to extend the Council's leverage and impact into the European periphery without a full-fledged neighbourhood policy by increasing political engagement in these countries and by drawing these countries closer to the Council's orbit.

Special Cases: Belarus, Kosovo* and the Non-Recognised Entities (NRE's)

Among the non-members of the Council there are also three special cases, which do belong to Europe territorially but do not, for different reasons, qualify yet for accession. Belarus is the only European state still outside the Council of Europe, because it continues to exercise the death penalty and as a result of its bad human rights and democracy records and the general repressive nature of the regime. Yet, the absence of Belarus also creates problems for the CoE: while the Belarusian people have no access to the Court mechanism, the Organisation as such is deprived of the necessary instruments to have an impact on the human rights situation in the country. Kosovo* is in a comparable situation, although its outsider status has nothing to do with its human rights or democracy records. Rather, the Council has until now – despite a majority of member states recognising Kosovo's* independence – avoided an open debate about membership. While the so called Non-Recognised Entities such as Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh not only pro-forma belong to another category (their non-membership stemming from the fact that they lack international recognition), the consequences are the same: the existence of "black" spots in Europe, where the Council cannot protect citizens from human rights violations and anti-democratic rule. In these breakaway regions the CoE monitoring activities practically do not take place. The CoE should do its best to extend the scope of its instruments to all these territories.

The difficult political and legal circumstances of all these cases do not mean that co-operation is impossible. For Belarus, for example, the CoE should develop a more strategic approach in order to be efficient and to avoid unpleasant surprises (what would the Organisation do if Belarus unexpectedly abolishes the death penalty? Grant membership?). The following strategic suggestions could be considered:

<u>Getting Straight About the Situation and Major Objectives</u>: It is the CoE's mission to try to protect individuals and societies and though Belarus is not a member state, a complete renunciation of any co-operation would reduce its influence on a possible change of the country to a minimum. For now, the CoE does not really exert any influence on the regime or protect the Belarusian people, it is, notwithstanding the above-mentioned projects, practically absent from the country. What the Organisation would thus need is a clear objective-setting and a vision on how it sees the country's mid-term future: the Committee of Ministers should thus aim at a sustained improvement of the democracy-

and human rights record in the country, a guarantee of modest political freedoms and a certain protected niche (institutional guarantees) for opposition and civil society actors.

Apply Strategic Conditionality: Clear conditionality would mean that bigger co-operation activities with clear benefits for the Belarusian state (e.g. in fighting corruption) should be directly connected to appropriate measures of the regime regarding the release of political prisoners, a decreased practice of the death penalty or the freedom of press sphere. A clear list of incentives and concessions on one side, and respective expectations and conditions on the other side should be developed by the Committee of Ministers as a basis of the CoE's Belarus policy.

Make the Red Line Clear and Avoid Single Issue Traps: Progress on the issue of the death penalty (non-implementation or possible moratorium) and the release of political prisoners are seen by the PACE as the very first steps to take by the Belarusian side in order to make a real rapprochement possible. However, in a long-term strategy on Belarus, the PACE and the Committee of Ministers are well advised to avoid being held hostage by single issue traps, since symbolic movement on the above issues does not entail big costs for the regime and will not change its nature. Rather, it must be clear from the outset that co-operation with the Lukashenko regime can never lead to membership in the CoE, which should be made conditional on regime change and a significant democratisation of the political system.

Intensify Co-operation With Civil Society: In the case of a dictatorial regime such as in Belarus it is in no way acceptable for the Council to work exclusively or even mainly with the authorities. On the contrary, the Secretary General should make our long-term vision of a democratic Belarus clear by pushing the Secretariat to lay a special emphasis on co-operation with civil society actors. This is however easier said than done. Although Belarusian civil society is, according to experts, the most developed and active in the countries of the Eastern Neighbourhood, there is a lack of will for fundamental political change and a tendency towards opportunistic strategies. On the other hand, the regime will not allow the Council to work with civil society organisations inside the country without its blessing. In such a situation, all entities of the Council should insist on the integration of domestic civil society actors into any project conducted with the authorities, support also organisations working in exile, and exert pressure on the authorities for and respectively lend its expertise to the establishment of an independent human rights institution.

In Kosovo*, whose independence is already recognised by a majority of CoE member states and where a legal basis for CoE co-operation exists (UN Resolution 1412), the Council already has an office and conducts various projects with the authorities, such as in the field of minority protection. However, Kosovo* membership until now has not really been an issue due to the expected resistance of Serbia, Russia and a few EU states – most of them wary of setting a precedent. This should but not deter the Council's major political bodies to encourage the Kosovar authorities to officially apply for membership and to act on an application. The sooner Kosovo* enters the Organisation, the sooner its people are protected by the Conventions, which is essential due to the still difficult relationship existing between different ethnic communities (Kosovars, Serbs and Roma). In order to circumvent the difficult question

of immediate membership, the Council could at least work on a road map and invent different intermediate steps and statuses until complete accession is also politically feasible.

As for the Non-Recognised Entities it must be emphasised that, although the consequences of their isolation for the CoE are similar, they all represent very different cases. Common to all is but the complete lack of any legal basis for the Council enabling co-operation with the authorities. However, here the Council has a few advantages in comparison to other international organisations: it is less political than the EU, concentrates on values rather than security, economics or even legal status, and it mostly includes all the countries concerned such as Azerbaijan and Armenia in the case of Nagorno-Karabakh. Moreover, due to its concentration on observation and monitoring the Council could be far more engaged in NREs and fill an obvious gap there by offering monitoring reports and even CBMs. In order to avoid pitfalls, such as the tough balancing between more engagement and member states' interests (politicisation risk) or the likelihood of ending up with the EU's negative image in NREs, there could be an inclusive and Caucasus-wide engagement strategy by the CoE, the use of local NGOs and INGOs as indirect entry points, and the creation of a kind of "mixed project bag" for target groups such as students and journalists. Above all, any engagement strategy for the NRE's presupposes the political will of the Secretary General, who should make those "black holes" in the envisaged pan-European legal space a priority for the future.

7.   The Strategic Value of the Wider Membership

The Council of Europe's membership circle is both a serious challenge and an asset for the Organisation. The CoE is no longer seen as an exclusive club as was the case before the end of the Cold War, neither is it an easily accessible organisation (like the OSCE). After a period of fast enlargement during the 1990s and the early 2000s a certain overstretch of the CoE could not be denied, especially after it became clear that many of the new members still had a long way to go in order to comply with the Council's values and its convention system. Today, with such a large membership of 47 states, any international organisation which mostly work on a consensual basis, would also confront a serious challenge to its effectiveness – the Council's problems with the implementation of Court judgments or its current inability to drive progressive agendas is a proof of that. On the other hand, this report shows that the Council's multifaceted membership also creates certain opportunities and good prospects for the Organisation's future.

First of all, the Council of Europe is the Continent's only real pan-European organisation, which, considering the emerging value divide between Europe's East and West, could make it a political player of prime importance for European international relations. With the membership of problematic states such as Russia and Azerbaijan and with its focus on human rights and democracy, the Organisation is well positioned in order to provide a necessary forum for a structured pan-European value dialogue and an eventual reduction of tensions and rapprochement between EU members and Wider European states. If the Council manages to take on this role and at the same time to develop into a more creative

actor envisaging new concepts and arenas for East-West co-operation, it could significantly enhance its value for European politics.

The Council has a special role to fulfil in the countries between the EU and Russia, which are part of Brussels's Eastern Partnership framework. This current "greyzone" of European politics will be a major task for international actors in the years to come, and a successful transformation of Ukraine, Moldova and Georgia into functioning states and democratic polities will be key to a stabilisation of the whole region. In fact, the EU and the CoE should join their efforts here for a European stability policy aimed at firmly anchoring the respective countries in a future European order, thereby preventing them from becoming objects of an anachronistic "spheres of influence"-policy again. The CoE, especially in the light of the EU's sustained enlargement fatigue, should use all its instruments and the membership of the respective countries for a large, field-oriented initiative aimed at capacity building, education and civil society engagement in order to make "deep democracy" possible.

The EU member states have not played a big role for the Council of Europe in recent years, as the focus of the Organisation had turned mainly Eastwards. However, the Council needs both a revitalisation of its relationship with its founding member states and a strategy for a less and less homogeneous EU space in terms of democracy and human rights. Both aspects are interrelated – if the Organisation manages to make a serious offer to Brussels and the bigger member states to take over a post- and pre-accession monitoring role, it might get more attention in the big Western European capitals too.

Finally, what vision can we extrapolate from the Council's pan-European membership? The French historian and slavicist Georges Nivat has just argued that the Maidan revolution in Ukraine might open an opportunity for yet another advance of the European project following 1945 and 1989. Such a "third Europe" would, after the Central European countries joined the European project after 1989, welcome the future democracies of the post-Soviet area. Here, Nivat not only speaks about Ukraine or Moldova, but eventually also about Russia and even Belarus. As ambitious as it might sound, the Council of Europe, already including the states concerned and with its values reflecting the domestic vision of this "third Europe", should try to think as big and make more use of its comparative assets.

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