A Soft Law Reality Check: Reflections on the Role and Influence of Council of Europe Expert bodies on Standard-Setting in European Human Rights Law with Special Reference to Normative Impacts on the Czech Republic

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1. Introduction[1]

This article examines the influence of expert bodies within the Council of Europe (CoE) on standard-setting in human rights law. Standard-setting in the context of this article shall mean all activities aiding, leading to or being part of the process of definition and concretion of human rights.[2] Ever since its creation in 1949 the CoE has played an important role in the promotion and protection of human rights law and the monitoring of its observance in the member states. Among the legal milestones set are the Council's human rights texts such as, *inter alia*, the European Convention on Human Rights (ECHR), the European Social Charter (ESC), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) and the Framework Convention for the Protection of National Minorities (FCNM). The manifold nature of the CoE human rights instruments notwithstanding, this article will focus on only four of its key aspects: on the visiting practice of the European Committee on the Prevention of Torture (CPT), the monitoring function of the European Committee on Social Rights (ECSR), the role of the Advisory Committee under the FCNM and on the approaches taken by the European Commission against Racism and Intolerance (ECRI).

The question this article aims to address is whether in an era of international law, when states prove hesitant to stand up to high human rights standards, CoE expert bodies are factually and/or legally able and willing to set standards in human rights law. The main question that will have to be answered in this context is whether the views (recommendations, conclusions, opinions, comments) expressed by the expert bodies are considered non-binding, ethically binding or even legally binding by the state to which they were addressed. Can they be considered as soft law – or even as law?

Mention will be made of the difference between a *de facto* and a *de jure* influence of expert bodies' views on states and the way this difference is illustrated by the states' reactions (implementing, neglecting, contesting) to the expert bodies' views. After a short introduction and a brief overview over the legal basis and mandate of the four CoE expert bodies (2.) the research undertaken will be put in a practical context when analyzing selected CoE expert bodies' recommendations, conclusions, opinions and comments in relation to the Czech Republic (3.). The Czech Republic was chosen as it has joined the CoE only on 6 November 1996 and was therefore immediately confronted with a

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[1] This article is based on research carried out in the context of a course given by Ass.-Prof. Dr. Renate Kicker (University of Graz, Austria) in 2004.

[2] Cf. Oberleitner, Gerd, *Menschenrechtsschutz durch Staatenberichte* (Peter Lang Verlag, Frankfurt, 1998), p. 24.

comprehensive set of points of critique vis-à-vis its legal and factual situation. Selected aspects of this criticism, and the reaction to it, will be examined. After an analysis of the standard-setting function of the expert bodies (4.), the author will offer a conclusion (5.).

2. The Council of Europe expert bodies and their role in the European human rights architecture

2.1. The visiting practice of the European Committee on the Prevention of Torture (CPT)

The establishment and mandate of the CPT are based on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[3] (ECPT), which was formulated in order to provide for more effective international measures to "strengthen the protection of persons deprived of their liberty"[4]. The ECPT was opened for signature by the member states of the CoE on 26 November 1987 and entered into force on 1 February 1989.[5] Amendments to the Convention have been provided for in Protocol No. 1[6] and No. 2[7], which entered into force on 1 March 2002. Protocol No. 1 envisages an "open" ECPT by providing that the Committee of Ministers may invite non-member states of the CoE to accede to it. Protocol No. 2 foresees technical amendments to the ECPT.[8]

Pursuant to Article 1 ECPT the CPT shall examine the treatment of persons deprived of their liberty by a public authority in order to insure the protection of said persons from torture and from inhuman or degrading treatment or punishment by visiting places where such persons are held.[9] In accordance with Article 4 (1) ECPT the CPT is composed of a number of members equal to that of the Parties. These members – highly qualified experts of "high moral character", who are independent and impartial (Article 4 (1) and (2) ECPT) – are elected for a period of four years by the CoE's Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly (Article 5 (1) and (2) ECPT); for the purpose of compiling the list of names national delegations provide the Bureau with three candidates.

The legal mechanism of the CPT's visits rests on two pillars: "co-operation between the Committee and the States Parties and confidentiality."[10] The CPT is a "proactive non-judicial mechanism" of "preventive character"[11] which has been established alongside the "reactive judicial mechanism"[12] of the ECHR. Whereas under Article 7 (1) ECPT the CPT

[3] ETS No. 126; more specifically, Article 1 ECPT.
[4] Explanatory Report to the ECPT, http://conventions.coe.int/Treaty/en/Reports/Html/126.htm, 12, accessed: 21 October 2005.
[5] The Czech Republic signed the ECPT on 23 December 1992 and ratified it on 7 September 1995, whereupon it entered into force on 1 January 1996. The Czech Republic also signed and ratified Protocol No. 1 to the ECPT on 28 April 1995 and 7 September 1995, respectively; Protocol No. 2 to the ECPT was signed on 28 April 1995 and ratified on 7 September 1995. Both Protocols came into force on 1 March 2002.
[6] ETS No. 151.
[7] ETS No. 152.
[8] Protocol No. 2 provides for, *inter alia*, the continuity of membership in the CPT by laying down that one half of the CPT's membership is renewed every two years and that members of the CPT may be re-elected twice.
[9] In prisons, police stations, military barracks, mental hospitals, etc.
[10] Drzemczewski, Andrew, *The Prevention of Human Rights Violations: Monitoring Mechanisms of the CoE*, http://www.gddc.pt/actividade-editorial/pdfs-publicacoes/8182AndrewDRZ.pdf, 71, accessed: 20 October 2005.
[11] The CPT standards, http://www.cpt.coe.int/en/documents/eng-standards.doc (accessed: October 15, 2005), at 4.
[12] Drzemczewski, *Prevention*, p. 71.

shall every five years organise periodic visits to places where persons are deprived of their liberty by a public authority, the CPT may also organise ad hoc visits, when they appear required. After each visit the CPT shall draw up a report on the facts found during the visit (Article 10 (1) ECPT) and set forth any recommendations it considers necessary. By virtue of Article 8 (5) ECPT the CPT may also make immediate observations. The CPT's confidential report is transmitted to the State with the request for a written response. Even though the reports are confidential, , most states later agree to publish the report and their response (Article 11 (1) and (2) ECPT). Furthermore the CPT submits a yearly general report to the Committee of Ministers under Article 12 ECPT. "Substantive sections" contained in these reports have been compiled to form the "CPT standards".[13]

2.2. The monitoring function of the European Committee on Social Rights (ECSR)[14]

The establishment and mandate of the ECSR[15] are based on the European Social Charter[16], which opened for signature by the members of the CoE on 18 October 1961 and entered into force on 26 February 1965.[17] The Charter guarantees 19 fundamental social and economic rights. A 1988 Additional Protocol to the European Social Charter[18] entered into force on 4 September 1992. Systems of control were established by the ESC and further developed by the Protocol of 1991[19] and by the Additional Protocol to the European Social Charter providing for a System of Collective Complaints[20] that entered into force on 1 July 1998.

A Revised European Social Charter (RevESC)[21] was adopted on 3 May 1996 and entered into force on 1 July 1999.[22] The RevESC takes account of the "evolution"[23] occurred since

[13] As of October 2004 CPT standards exist on police custody, imprisonment, training of law enforcement personnel, health care services in prisons, foreign nationals detained under alien legislation, involuntary placement in psychiatric establishments and juveniles and women deprived of their liberty.

[14] The ESC was signed by the Czech Republic on 27 May 1992 and ratified on 3 November 1999. The ESC entered into force on 3 December 1999. In conformity with the 'à la carte'-approach of the ESC the Czech Republic has accepted the hard core provisions (Articles 1, 5, 6, 12, 13, 16, 19), with the exception of Article 1 para 4 and Article 19, of which it has accepted para 9 only (see Conclusion XVII-2, 3). Of the non hard core provisions (Articles 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 17, 18 ESC) the Czech Republic has not accepted Articles 4 para 1, 9, 10, 15 para 1, 18 para 1, 18 para 2, and 18 para 3. After signing the Additional Protocols of 1988 and 1991 on 27 May 1992 and their ratification on 17 November 1999, both Protocols entered into force on 17 December 1999. The Czech Republic signed the revised version of the ESC on 4 November 2000, but has as of 30 November 2005 not ratified the revision. A parallel situation exists with regard to the Collective Complaints Protocol, which was signed by the Czech Republic on 26 February 2002, but is awaiting ratification.

[15] On the ESCR, generally, see Akandji-Kombe, Jean-François/Leclerc, Stéphane (eds.), *La Charte Sociale Européenne. Actes des Premières Rencontres Européennes de Caen organisées à Caen, le 17 mars 2000* (Bruylant, Brussels, 2001) and Darcy, John/Harris, David, *The European Social Charter* (Transnational Publishers, Ardsley, NY, 2nd edition 2001).

[16] ETS No. 35.

[17] Article 20 §1 b ESC (and Article A §1 b RevESC) provide for an 'à la carte'-approach, enabling states to choose certain provisions to be applicable to them. A state wishing to become Party must be bound by at least 10 Articles (out of 19) or 45 numbered paragraphs of Part II of the Charter. Of the seven particularly significant 'core' Articles 1, 5, 6, 12, 13, 16 and 19, each Party must accept at least five. Cf. also http://conventions.coe.int/Treaty/en/Summaries/Html/ 035.htm, accessed: 10 November 2004.

[18] ETS No. 128.

[19] ETS No. 142.

[20] ETS No. 158.

[21] ETS No. 163.

[22] The high number of states not having ratified the revision notwithstanding, the RevESC will replace the ESC and the Additional Protocols.

the adoption of the ESC and embodies new rights such as the protection against poverty and social exclusion, the right to protection against sexual harassment in the workplace and the rights of workers with family responsibilities to equal opportunities and equal treatment.

The work of the ECSR relies on a reporting procedure and a system of collective complaints. In pursuance of Rule 2 of the Rules of Procedure[24] of the ECSR the Committee's defining task is to make legal assessments of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the RevESC; in so doing the ECSR evaluates the reports of states as to their implementation of the ESC/RevESC in law and in practice and analyzes the compliance of national law and practice with the provisions set forth in the ESC/RevESC. After completing a cycle of analysis, the ECSR adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure. Under Rule 1 the Committee is composed of independent, impartial 15 members[25] (Rules 1, 3), who are elected by the Committee of Ministers for a period of six years (Rule 7), renewable once. [26]

Under Article 21 ESC states are required to submit annual reports[27] of the accepted provisions of the ESC/RevESC indicating how they implement the ESC/RevESC in law and practice.[28] The reporting task is facilitated by questions provided by the ECSR which support the states in delivering the relevant information. Pursuant to Article 22 states may also have to report on unaccepted provisions. The ESCR then examines the reports and decides whether the states have honoured their undertakings, may address requests for information and clarification and, finally, publishes conclusions.[29] Conclusions of non-compliance are then considered by a Governmental Committee, which is comprised of states representatives and representatives of European social partners.[30]

If the Governmental Committee considers that a state does not envisage remedying a situation of non-compliance, it may propose that the Committee of Ministers address a recommendation to the State in question.[31] The Governmental Committee may select, on the basis of social, economic and other policy considerations, the situations of non-compliance whereto it proposes a recommendation. It cannot, however, alter the conclusions and/or add considerations to the conclusions of the ECSR. The Governmental Committee may also refrain from proposing a resolution and issue a warning. This serves

[23] http://conventions.coe.int/Treaty/en/Summaries/Html/136.htm**,** accessed: 5 November 2005.

[24] Rules of Procedure of the European Committee for Social and Economic Rights, adopted on 29 March 2004.

[25] The latter is in conformity with the decision of the Minister's Deputies applying Article 25 paragraph 1 of the European Social Charter as amended by the Protocol of Turin, taken during the 751st meeting of the Ministers Deputies (2-7 May 2001).

[26] Council of Europe, 'Council of Europe Monitoring Procedures: An Overview', Monitor/Inf (2004) 2, http://dsp.coe.int/monitoring/docs/Monitor-inf(2004)2_E.pdf, accessed: October 15, 2005, at 59.

[27] For a complete overview see Council of Europe, *European Social Charter-Collected texts* (4th edition) (Council of Europe Publications, Strasbourg, 2003).

[28] Biennial reports have to be made only on the seven 'core' ESC articles 1, 5, 6, 12, 13, 16 and 19. The other articles can be reported on every four years. Cf. Harris, David, 'Lessons from the Reporting System of the European Social Charter', in: Alston, Philipp/Crawford, James, *The Future of Human Rights Treaty Monitoring* (Cambridge University Press, Cambridge, 1998), p. 349.

[29] Council of Europe, 'Monitoring Procedures', at 58 et seq.

[30] Council of Europe, 'Monitoring Procedures', at 62. The social partners which are members in the Governmental Committee are European employers' organisations and trade unions (ETUC, UNICE, IOE).

[31] T-SG (2002) 19, at 15. This document and all others cited in this article can be found at the website of the expert body that has published them. The websites are accessible via the Council of Europe's main page: http://www.coe.int.

as an indication to the state in question that unless measures are taken to comply with the ESC a recommendation will be proposed in the next report.[32] Conversely, if a state does not react to a recommendation, the Governmental Committee may propose to the Committee of Ministers to "renew" it.[33]
The Additional Protocol of 1995 provides for a system of collective complaints that can be submitted by European organisations of employers and trade unions participating in the work of the Governmental Committee and certain other non-governmental organisations. States may also authorize national non-governmental organisations (NGOs) to lodge complaints in relation to the authorizing state.[34] The complaints are then examined by the Governmental Committee, which may hold hearings and finally takes a decision on the merits of the complaint.

2.3. The role of the Advisory Committee under the Framework Convention for the Protection of National Minorities (FCNM)[35]

The Framework Convention for the Protection of National Minorities (FCNM)[36] was opened for signature by the CoE member states on 1 February 1995.[37] It entered into force on 1 February 1998.[38] Pursuant to Article 24 (1) and 26 (1) FCNM, the Committee of Ministers shall monitor the implementation of the Convention, assisted by an "advisory committee".
Article 26 (1) FCNM provides for an Advisory Committee to "assist" the Committee of Ministers in evaluating the measures taken by states to give effect to the principles set out in the FCNM. Being the first legally binding multilateral instrument providing for the protection of national minorities, the FCNM seeks to "protect the existence of national minorities within the respective territories of the Parties", to ensure their "full and effective equality" and to "[enable] them to preserve and develop their culture and to retain their identity."[39] As instructed by Article 26 (2) FCNM, the Committee of Ministers has elaborated Rules of Procedure of the Advisory Committee.[40] The Advisory Committee is composed of 18 ordinary members appointed by the Committee of Ministers after being nominated by states. In order to qualify for membership the nominees have to be recognised experts in the field of protection of national minorities (Article 26 (1)) and be independent, impartial, and able to serve the committee effectively.
Within one year of the entry into force of the FCNM the states are obliged, under Article 25 (1) FCNM, to submit a report to the CoE containing "full information on the legislative and other measures taken to give effect to the principles set out in the [FCNM]". Further reports are to be transmitted every five years and whenever the Committee of Ministers so requests

[32] T-SG (2001) 21, at 83.
[33] Cf. a recommendation concerning Ireland: T-SG (2001) 21, at 16.
[34] Council of Europe, 'Monitoring Procedures', at 62.
[35] The Framework Convention for the Protection of National Minorities was signed by the Czech Republic on 28 April 1995, ratified on 18 December 1997 and entered into force on 1 April 1998.
[36] ETS No. 157.
[37] The FCNM was drafted by an ad hoc Committee for the Protection of National Minorities (CAHMIN), that was provided for by the Vienna summit of the Heads of State and Government of the Council of Europe in 1993.
[38] http://conventions.coe.int/Treaty/en/Summaries/Html/157.htm, accessed: 30 November 2005.
[39] http://conventions.coe.int/Treaty/en/Summaries/Html/157.htm, accessed: 30 November 2005.
[40] Rules on the monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities, Resolution (97) 10, adopted on 17 September 1997.

(Article 25 (2) FCNM). The Advisory Committee may ask for additional information from a State Party, may receive information from NGOs and individuals and may hold meetings with governments and has to do so if the government concerned so requests.
On the basis of the report the Advisory Committee evaluates the adequacy of the implementation, prepares an opinion on the measures taken by the reporting state and forwards it to the Committee of Ministers. The Committee of Ministers may then come to certain conclusions as to the adequacy of the measures taken by the state. If appropriate, the Committee of Ministers may adopt recommendations in respect of the State Party concerned, which are then made public when adapted. Very often the Advisory Committee is also involved in the follow-up monitoring to the conclusions and recommendations. The Committee organises follow-up Seminars which have "proved to be an excellent means to promote the implementation of the [FCNM]"[41] and are a "useful example of a linkage between the monitoring activities and co-operation programmes of the Council of Europe."[42]

2.4. Approaches taken by the European Commission against Racism and Intolerance (ECRI)[43]

ECRI was established in the context of the Vienna Declaration on 9 October 1993, where CoE member states undertook to "combat as energetically as possible racism, xenophobia, anti-Semitism and intolerance."[44] It is a political body, not a convention-based body; thus states did not have to ratify a convention acceding to a founding treaty. After the October 2000 European Conference against Racism in Strasbourg had called for the strengthening of ECRI's action, the Committee of Ministers adopted a new Statute[45] for ECRI on 13 June 2002.
Pursuant to Article 1 of its Statute, ECRI is a body of the CoE entrusted with the task of combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the ECHR. Its mandate includes, *inter alia*, reviewing member states' legislation to combat aforementioned phenomena and to formulate general policy recommendations to member states. By virtue of Article 2 (1) one member of ECRI is appointed for each member state by its respective government. Members have to be persons of "high moral authority and recognised expertise" (Article 2 (3)) in dealing with the above mentioned phenomena.
ECRI focuses on three main approaches to combat racism and intolerance: a country-by-country approach, work on general themes and relations with civil society (cf Article 10 (1)). In the framework of its country-by-country approach, ECRI examines the situation in CoE member states.[46] Before the preparation of a new report a contact visit is organised for the ECRI Rapporteurs. Then ECRI draws up a draft report containing recommendations in relation to the problems identified during the visit. The draft text is then transmitted to the country visited via the Committee of Ministers in order to initiate a confidential dialogue with the national authorities. After a final version has been adopted, the report is then made

[41] ACFC/INF(2002) 001, at38.
[42] ACFC/INF(2002) 001, at 39.
[43] Since its accession to the CoE the Czech Republic has taken part in the activities of ECRI.
[44] Council of Europe, 'Monitoring Procedures', at 82.
[45] Appendix to the Committee of Ministers Res. 2002 (8).
[46] Council of Europe, 'Monitoring Procedures', at 82.

public, unless the government opposes it. The reports are organised in four/five-year cycles, covering ten/twelve countries per year.[47]
The first round's reports were completed by 1998, those of the second round by 2002. Work on the third round reports has stared in January 2003 and will be completed by 2007. Third round reports will focus on whether states have implemented ECRI's recommendations from previous reports.[48] In addition to its reports, ECRI has formulated general policy recommendations which can be seen as general guidelines in relation to certain aspects of its mandate and published examples of good practice in member states.

3. Implementing, neglecting, contesting: selected aspects of the co-operation between Council of Europe expert bodies and the Czech Republic

3.1. Recommendations of the CPT

Five main categories of reactions to recommendations of the CPT can be established: *First*, the argument that recommendations made by the CPT are already part of the legal framework or factual situation of detention facilities is often employed. Difficulties raised by this line of reasoning are, *inter alia*, the lack of possibility for the CPT to prove this statement, especially in the light of CPT members having observed a situation where the detention reality had differed from the State's assertion. While the CPT recommended that "[p]ersons detained by the police should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day"[49] the Czech government responded that "[a] hot meal is delivered for all detainees within six hours of the time their freedom is restricted. The next day, detainees regularly receive breakfast, lunch, and an evening meal, which is hot. No cases have been discovered in police cells where detainees have not received a hot meal.**"**[50]
Second, a state may assert that they would directly implement a recommendation. In reaction to a CPT recommendation that "steps be taken to improve the ventilation in cells at Ostrava Municipal Police Station …"[51] Czech authorities answered that "new fans were installed in police cells; these fans currently comply in full with standards in force and ensure that there is proper ventilation and an exchange of air in the police cells.**"**[52] After receiving such comments CPT's main task then is to make certain by means of requests of information that the implementation phase has successfully been completed. On ensuing visits the standards implemented have to be controlled.
Third, a state may assure that an implementation is envisaged in the near future, as a direct implementation is impossible for financial or legal reasons. Reacting to the CPT's recommendation that when "it is necessary to place a [foreign] detainee under special conditions of detention, the reasons for such placement should be communicated in writing to the person concerned, who should have a right of appeal against that measure,"[53] the

[47] Council of Europe, 'Monitoring Procedures', at 89.
[48] Council of Europe, 'Monitoring Procedures', at 89.
[49] CPT/Inf (2004) 4, at 17.
[50] CPT/Inf (2004) 5, at A.2.
[51] CPT/Inf (2004) 4, at 15.
[52] CPT/Inf (2004) 5, at A.2.
[53] CPT/Inf (2004) 4, at 36.

Czech authorities answered that "[t]he planned amendment to the Foreigners Act stipulates that … the verdict on placement in a strict regime should be part of a written decision on detention, including justification for this measure. … [F]oreigners will be entitled to submit an application for a judicial review of the decision."[54] The CPT's task is to assure the arguments used are valid and to press towards and monitor the eventual implementation.

Fourth, a recommendation made during a prior visit has not been implemented at all or not correctly, and the state is still neglecting its implementation. In its first report the CPT recommended the design of a strategy "to bring about a permanent end to overcrowding to be developed and implemented."[55] This recommendation was reiterated in the following report: "The CPT invites the Czech authorities to continue to pursue their efforts to bring about a permanent end to overcrowding of prisons"[56] The Czech authorities did not contest the recommendation, but answered that they would "continue to strive to end the overcrowding of prisons."[57]

Fifth, a recommendation might be contested by a state. This might happen because it is considered unwise by the state or is supposedly based on incorrect observations or for the reason that the recommendation's implementation is deemed impossible or injudicious or because factual and legal differentiations considered necessary have not been taken into account when formulating the recommendations. Reacting to a CPT recommendation calling upon Czech authorities "to take steps to ensure that in all police establishments … persons obliged to stay overnight in custody are provided with a clean mattress and clean blankets"[58] the government answered that "[g]iven their nature and purpose, rooms for persons brought to a police station cannot be fitted with beds, and therefore they cannot be equipped with mattresses or blankets either."[59]

3.2. Conclusions of the ECSR

Since the volume of the documents produced in the ESC reporting procedure makes it impracticable to analyze all reports, conclusions, recommendations in relation to all articles, this article will focus on the reporting cycle XVI-1 and the right to strike (Article 6 (4) ESC), arguably one of its most important provisions, as it is the "first international convention that explicitly recognizes this right."[60] This provision will be analyzed in the light of the ESC reporting mechanism and the digest of ECSR case law. A critical comparison between the relevant sections of the Czech Republic's First report[61], the conclusions[62] of the ECSR, the proposals for recommendation[63] of the Governmental Committee and the ECSR case law illustrates the reasons why the law and state practice were found to be not in conformity with Article 6 (4) ESC. A comparative look at the

[54] CPT/Inf (2004) 5, at B.2.
[55] CPT/Inf (99) 7, at 48.
[56] CPT/Inf (2004) 4, at 60.
[57] CPT/Inf (2004) 5, at C.1.
[58] CPT/Inf (2004) 4, at 15.
[59] CPT/Inf (2004) 5, at A.2.
[60] Kicker, Renate, 'Prevention of Human Rights Violations: Standard-Setting through Monitoring. A European Approach', *Favorita Paper – Transatlantic Legal Issues: European Views*, 2005, in print, at IV.b.2.
[61] RAP/Cha/CZ/I (2001), Article 6 (4).
[62] Conclusion XVI-I, Article 6 (4).
[63] T-SG (2002) 19, 16th Report (I).

Czech Republic's Third Report[64] and the ECSR's Conclusion XVII-1 will show the impact that Governmental Committee comments during the reporting cycle XVI have had on the Czech Republic's law and practice, even if the Committee of Ministers has not yet formulated a recommendation referring thereto.

In its first report the Czech government stated that "the only form of the strike regulated by law in detail up to this day is the strike because of the dispute to conclude a collective agreement."[65] The ECSR concluded that "[t]he right to strike is not adequately protected outside of the context of collective bargaining."[66] In the Governmental Committee report the Czech delegate noted that "[t]he decisions of the court … reflect that even where there is an absence of an express legal provision it does not mean that the right does not exist and a strike outside of collective bargaining may therefore under the circumstances also be protected." [67] In its case law the ECSR does not regulate this question; it writes that "Article 6 §4 guarantees the right to strike whether in law or case-law."[68] The legal situation in the Czech Republic would therefore be in conformity with the ESC.

A different point of concern mentioned in Conclusions XVI-1 was the number of workers who would have to agree to strike for a strike to be legal. "More than half of the workers concerned (i.e. the workers covered by the collective agreement) must vote in favour of … strikes …". The Committee considers that this quota constitutes a substantial impairment of the right to take collective action."[69] In the report of the Governmental Committee the Czech delegate consented to the criticism and stated that "the trade unions agreed with the criticism and the Government intended to change the rule."[70] This is in conformity with ECSR case law that allows "subordinating the exercise of the right to strike to prior approval by a certain percentage of workers … as long as the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited."[71]

Conclusions XVI-1 refer to the point of strikes as being unlawful before mediation has been tried. The ECSR considered that this obligation, "which is considerably more onerous than a cooling off period, constitutes a restriction of the right to take collective action that is not in conformity with the Charter."[72] The Czech delegate of the Governmental Committee disagreed. The Report quotes him saying that "the Government did not understand ECSR's conclusion. Under previous case law such an obligation had always been found compatible with Article 6.4." [73] By virtue of its case law, however, any requirement to exhaust conciliation or mediation procedures before calling a strike is only in conformity with Article 6 (4) "as long as such machinery is not so slow that the deterrent effect of a strike is affected."[74]

The conformity of the Czech regulation notwithstanding, the delegate's objection is *per se* remarkable because it demonstrates the importance of the ECSR case law. Obviously, the

[64] RAP/Cha/CZ/II (2003), Article 6 (4).
[65] RAP/Cha/CZ/I (2001), Article 6 (4).
[66] Conclusion XVI-I, Article 6 (4).
[67] T-SG (2002) 19, 16th Report (I), 243.
[68] Digest of the case law of the ECSR, June 2004, at 32.
[69] Conclusion XVI-I, Article 6 (4).
[70] T-SG (2002) 19, 16th Report (I), at 243.
[71] Digest of the case law of the ECSR, June 2004, at 32.
[72] Conclusion XVI-I, Article 6 (4).
[73] T-SG (2002) 19, 16th Report (I), at 243.
[74] Digest of the case law of the ECSR, June 2004, at 32.

Czech government had indeed looked into the case law and judged their law and practice to be compatible with it. Unfortunately, as the Dutch delegate noted, there had "apparently … been a change in the case-law of the ECSR".[75] The delegates from Germany and the United Kingdom agreed and pointed out "that the ECSR had always accepted cooling-off periods and they saw no problem."[76] The comment by Germany and the United Kingdom raises an interesting issue insofar as it implies that the two delegates are of the opinion that the ECSR is bound by its own case law and cannot, at a later point, change it – in other words: *stare decisis*, one of the key decision-taking maxims of *courts* of the common law tradition.

In its following report[77] on the ESC core provisions the Czech Republic took note of the four reasons why the ECSR delivered a decision of non-conformity. According to the report the right to strike is adequately protected even outside of the context of collective bargaining because it has been the practice of the courts[78] that organizing a strike out of the context of collective bargaining is possible "should this be an action to protect economic and social interests and the exercise of this right is not restricted by anything which restricts the right to strike within the dispute concerning the conclusion of a collective agreement." This formulation is admittedly inelegant and unclear. The Czech reaction to the question of quotas is a good example of contesting a conclusion. The Czech Republic, considering a strike "an extreme form of bargaining ... the last resort of defence", believes the quota to be "democratic and … adequate."[79]

The mediation requirement that was seen as a restriction of the right to strike by the ESCR is also defended by the Czech Republic and the conclusion has not been implemented. The Czech Republic reports that by having the mediation requirement "the right to strike is by no means prejudiced and more restrictive than the cooling-off period that is in compliance with the Charter as construed by the Committee for Social Rights."[80] The ECSR again disagreed strongly and again found the law and state practice of the Czech Republic to be in non-conformity with Article 6 (4).[81]

3.3. Opinions of the Advisory Committee under the Framework Convention for the Protection of National Minorities

When analyzing the effects of Advisory Committee opinions it should be noted that their effect is primarily an indirect one, by way of Committee of Ministers resolutions.[82] These resolutions (containing recommendations and conclusions) are, however, "very largely in line with that of the corresponding Opinion of the Advisory Committee and their concluding remarks."[83] Additionally, the Committee of Ministers usually recommends that states take into account the Advisory Committee's opinions when reacting to the

[75] T-SG (2002) 19, 16th Report (I), at 245.
[76] T-SG (2002) 19, 16th Report (I), at 245.
[77] RAP/Cha/CZ/II (2003), Article 6 (4).
[78] The reports cites the "Czech Supreme Court's decision from 14 November 2002 under reference number 21 Cdo 2104/2001".
[79] RAP/Cha/CZ/II (2003), Article 6 (4).
[80] RAP/Cha/CZ/II (2003), Article 6 (4).
[81] Conclusion XVII-1, Article 6 (4).
[82] ACFC/INF (2002) 001, at 26.
[83] ACFC/INF (2002) 001, at 26.

Committee of Ministers' conclusions.[84] In the past the Committee of Ministers has decided to formulate conclusions more generally and shorter than had been suggested by the Advisory Committee, which proposed to adopt "detailed conclusions."[85] This is evidenced by a comparison of the opinion[86] of the Advisory Committee on the Czech Republic and the conclusion by the Committee of Ministers. Part V of the opinion, which deals with the proposed conclusions and recommendations by the Committee of Ministers, provides recommendations in relation to specific articles and is, with approximately 1600 words, very detailed. The resolution,[87] however, is much shorter (approximately 300 words) and does not refer to individual articles.

In its first opinion the Advisory Committee was particularly concerned about the "widespread discrimination in the Czech Republic, notably against Roma"[88] and took note of their "considerable socio-economic difficulties in comparison to both the majority and other minorities"[89] and the "widespread … attitudes of intolerance and hostility"[90]. These concerns were shared by the Czech authorities, who described in the comments on the first opinion that "[t]o secure the complete and actual equality of Romanies with the majority population or other minorities" a "Concept for Romany Integration" had been approved by the government. The Concept's objective was to integrate "the Roma, as a national minority, into Czech society."[91] The Committee of Ministers took notice of the determination to improve the situation of the Roma minority, but expressed its conviction that due to ethnically motivated threats, violence and hostility "real problems remain"[92] in relation to the Roma.

The first and second parts of the Czech Republic's second report sum up the "arrangements made at national level for following up the results of the first monitoring cycle".[93] It was pointed out that "comprehensive anti-discrimination tools"[94] had been introduced. Legislative measures taken include, *inter alia*, the adoption of the Minorities Act, which was lauded as "commendable efforts"[95] by the Advisory Committee. Said Act specifies the rules for the exercise of national minority rights.[96] National implementation is monitored by the Minorities Council, the "Czech Government's permanent advisory body."[97] As to Roma education the Czech Republic expressed its willingness to "radically change the present situation"[98] by affirmative action. The effect of the Advisory Committee's work on the situation – or at least their role in Czech minority policy – can be judged by the number of appearances the word "Roma" makes in the relevant documents. In the Czech Republic's

[84] ACFC/INF (2002) 001, 26. Cf. ResCMN (2002) 2, where the Committee of Ministers "[r]ecommends that the Czech Republic take appropriate account of the conclusions set out in section 1 …, *together* with the *various comments* in the Advisory Committee's opinion." (emphasis added)
[85] ACFC/INF (2002) 001, at 26.
[86] ACFC/INF/OP/I (2002) 002.
[87] Resolution ResCMN (2002) 2.
[88] ACFC/INF/OP/I (2002) 002, at 25.
[89] ACFC/INF/OP/I (2002) 002, at 29.
[90] ACFC/INF/OP/I (2002) 002, at 38.
[91] GVT/COM/INF/OP/I (2002) 002, at 10.
[92] ResCMN (2002) 2.
[93] ACFC/SR/II (2004) 007, at 1 et seq.
[94] ACFC/SR/II (2004) 007, at 16.
[95] ACFC/INF/OP/I (2002) 002, Executive Summary, at 2.
[96] ACFC/SR/II (2004) 007, at 39 et seq.
[97] ACFC/SR/II (2004) 007, at 1.
[98] ACFC/SR/II (2004) 007, at 5.

first report the word "Roma" can be found 12 times in 43 pages. In the Advisory Committee's opinion "Roma" appears 56 times, in the Czech Republic's comments 20 times and in the second report, which has approximately 13 pages more than the first one, an astonishing 199 times. The situation of the Roma is not only an issue of concern in the Czech Republic, but was also raised by the Advisory Committee in a number of recommendations concerning states so different as Albania and Norway.[99] Among the most problematic aspects of Roma life in the light of the FCNM were their "socioeconomic situation, discriminatory behaviour of the majority population, access to media, education, and participation in the decision-making-processes."[100]

3.4. Comments by ECRI

Unlike other international bodies monitoring racism and intolerance[101] ECRI draws up its own reports and does not rely on the states monitored to do so. While this, on the one hand, insures that reports are drawn up regularly and objectively, the reaction of states to recommendations made by ECRI can only be seen, on the other hand, by a comparative reading of ECRI's own reports.

In its first report ECRI did not give recommendations at all and only mentioned key areas that would deserve attention, which included racist groups, racist attacks, particularly targeting Roma/Gypsies and a public hostility towards them.[102] ECRI's second report summed up the reactions of the Czech government to the finding in the first report, welcoming in particular the "positive steps" that had been taken: racially-motivated violence was being "tackled through … legislative and policy measures" and "a growing acknowledgement of the problems of racism and discrimination in the Czech Republic" could be ascertained. However, "severe problems" persisted, especially concerning "racist violence … directed towards members of the Roma/Gypsy population."[103] ECRI recommended that the judicial process should be streamlined so as to enable the effective implementation of the comprehensive body of anti-discrimination legislation. It also stressed the need to combat discrimination and racism against the Roma/Gypsy community and to raise the awareness of the public in relation to all aspects concerning racism and intolerance.

During its third round reports ECRI focused on the question of whether the recommendations from previous reports had been implemented by states. The progress made by adopting a Concept on Roma Integration notwithstanding, ECRI found that a number of recommendations of the second report had not been followed: Only "few detectable improvements" were found by ECRI as to the situation of Roma, who continue to be subjected to "marginalisation", "ghettoisation", "[r]acially motivated violence and ill-treatment."[104] The socio-economic and cultural discrimination of Roma included children as well, who "continue to be sent to special schools for the mentally disabled" and who are,

[99] Pekari, Catrin, 'Review of the Monitoring Process of the Council of Europe Framework Convention for the Protection of National Minorities', *European Yearbook of Minority Issues* 2003/4,, Vol. 3, p. 361.
[100] Pekari, 'Review', p. 361.
[101] Martín Estébanez, María Amor/ Thornberry, Patrick, *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe* (Strassbourg: Council of Europe Publishing, 2004), p. 575.
[102] CRI (97) 50, at 6.
[103] CRI (2000) 4, at 4.
[104] CRI (2004) 22, at 6.

at a disproportionately high rate, "removed from their families and placed in state institutions or foster care."[105] ECRI recommended "urgent measures" to reintegrate Roma communities and to "swift[ly]" adopt the draft anti-discrimination law.[106] Furthermore, ECRI "urge[d] the authorities to take firm action to counter the problem of police ill-treatment". As the third report was the first one to use direct and strong language in formulating the recommendations, the fourth report – recording the reactions of the Czech government – will be of particular interest.

4. Law or less? The standard-setting function of Council of Europe expert bodies

This article has focused on the question of whether the expert bodies within the CoE's framework for the protection of Human Rights have an impact on standard-setting in Human Rights Law with special reference to four expert bodies and one State Party to the CoE (Czech Republic). Before analyzing the standard-setting function of the four expert bodies, it should be stressed that standards set by them do not have legal authority on their own. Standards should not be misconstrued to be understood as 'norms' of (regional) international law, whose creation, under international law, is a prerogative of states and international organizations insofar as they are empowered to create them by the states that have founded them or acceded to them; this is of course without prejudice to the process of creation of customary international law. In this context an interesting provision is Article 31 (3) (a) and (b) VCLT that provides for the possibility of consensual substantial additions to existing treaties between states.[107] If standards set by expert bodies are widely agreed upon, the member states of the relevant treaty, under said Article, may thereby amend it. In the past guidelines and standards developed by the ECSR in its case law also had an impact when shaping the RevESC.[108] Mention should also be made of ECRI's "major contribution"[109] to the development of Protocol No. 21 of the ECHR. Standards developed by expert bodies have been taken up by international courts such as the ECHR. The Austrian CPT member Renate Kicker writes that "CPT reports have been quoted by the European Court on Human Rights and standards developed by the CPT have been adopted in its judgments."[110] Furthermore, standards developed by expert bodies can be reflected in new conventions and charters set forth by the CoE[111].

4.1. CPT: The CPT Standards

By virtue of Article 12 ECPT, the CPT submits a yearly general report to the Committee of Ministers. "Substantive sections" contained in these reports have been compiled to form the

[105] CRI (2004) 22, at 6.
[106] CRI (2004) 22, at 6.
[107] Cf. Polakiewicz, Jörg, 'Alternatives to Treaty-Making and Law-Making by Treaty and Expert bodies in the Council of Europe', in Wolfrum, Rüdiger (ed.), *Developments of International Law in Treaty Making* (Springer, New York, 2005), p. 257.
[108] Kicker, *Prevention*, at IV.b.2.
[109] Martín Estébanez/Thornberry, *Minority rights*, p. 588.
[110] Kicker, *Prevention*, at IV.a.2.
[111] Kicker, *Prevention*, at IV.a.2, in the example of the draft recommendation for a European Penitentiary Charter, makes mention of the possibility that solitary confinement may constitute inhuman and degrading treatment.

"CPT standards"[112], whose role, according to the CPT[113], has to been seen both in the light of "advance indication" to national authorities on the subject of how persons deprived of their liberty ought to be treated and to generally "stimulate discussion" on the rights of aforementioned persons. Despite the descriptive nature of the CPT's statements, the consistent approach by the CPT and its formulation of certain standards, of a "jurisprudence"[114], shows that standard-setting is undoubtedly within its scope and goals. Despite the Explanatory Report to the ECPT[115], that lays down that "it's not for the committee to perform any judicial functions; it is not its task to adjudge that violations of the relevant international instruments have been committed," the CPT might consider increasing the accessibility of the standards' contents and the 'normativity' of their appearance. This goal can be approached by setting different measures: First, the CPT should continue its efforts to encode the Standards to form a system of Rules with the same consistency as the European Prison Rules. Before an agreement on the CPT Standards by the states can be considered, a codification is essential.[116] A compilation of standards would then enable the CPT to, second, regularly refer to a coherent, consistent and holistic codification[117] in their reports. In doing so, CPT delegations can increase the Committee's Standard-setting function on a *de facto* basis. Third, with the goal of rendering the codification acceptable to the states, the focus of the CPT should slowly shift from establishing new standards to re-formulating existing ones, provided – of course – that the areas of concern relevant to the CPT's mandate have been 'standardised'. Generally speaking, a shorter and more stringent (normative) formulation might engender higher levels of comprehension, acceptance and implementation.

4.2. ESCR: The power of case law

The ECSR has already established a well founded compilation of maxims of interpretation of Charter articles: the ECSR "consistent case law"[118] to which it regularly refers. The case law relating to each Article of the ESC is collected in a digest. Under each Article of the ESC the ECSR has added its explanations and interpretations, thereby aiding states to better adapt to the standards required by the ECSR. As mentioned above, the standards set out in the case law have had an effect on the RevESC. Their influence aside, the term 'case law' is misleading. 'Law' indicates a binding, normative obligation, which the ECSR comments, under the Charter, *de jure*, do not have. This "will change fundamentally"[119] with the entry into force of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (CCP), under which the ECSR will now have the possibility to

[112] http://www.cpt.coe.int/en/docsstandards.htm, accessed: 21 October 2005.
[113] The CPT standards, CPT/Inf/E (2002) 1 - Rev. 2004, http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf, 3, accessed: 21 October 2005.
[114] Kicker, Renate, 'The European Committee on the Prevention of Torture (CPT) – Developing European Human Rights Law?' in Benedek/Isak/Kicker (eds), *Development and Developing International and European Law*, pp. 595-610.
[115] Explanatory Report to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, http://conventions.coe.int/Treaty/en/Reports/Html/126.htm, accessed: 21 October 2005.
[116] However, any tendency towards the smallest common denominator in relation to the Standards has to be strongly discouraged. Compilation and codification of the Standards with a view of increasing their normative influence should not result in their weakening.
[117] The term 'codification' does not presuppose a legally binding content.
[118] Conclusion XVI-I, Article 6 (4).
[119] Cf. Oberleitner, *Developing Social Rights*, p. 647.

"elaborate concrete case-law and thus assume judicial competences".[120] The term 'judicial competences' might be too far-reaching, especially considering that the Committee a) does not take binding decisions and b) does not even take 'decisions' at all but rather, pursuant to Article 8 CCP, after having decided on the admissibility of a complaint and having held hearings, forwards a report with its conclusions to the Committee of Ministers. The Committee of Ministers may not alter the conclusions, but rather make them the basis for a resolution. *Oberleitner*'s concerns that this connection might turn the legal question into a political one[121] should be shared.

4.3. The Advisory Committee under the FCNM: a catalyst, not a court

The Committee of Ministers, being independent from the Advisory Committee's opinion in decision making, does not necessarily have to come to the same conclusion as the Advisory Committee.[122] This is different from the legal situation with the ESCR's conclusions, whereto the Governmental Committee cannot add considerations or alterations. However, the Committee of Ministers has indicated that states should take into account the Advisory Committee's opinions as well. In its Third Activity Report the Advisory Committee stressed that it "does not attempt to be a court but rather a catalyst for the improved implementation of the Convention."[123] The aim of the Advisory Committee is therefore not to set standards as to a certain means of 'interpretation' of the FCNM, but rather to "ensure [the] Opinions … constitute a good basis on which the Committee of Ministers can build its respective conclusions and recommendations."[124] Moreover, the Advisory Committee states that Opinions are drafted in a manner that "reflects the fact that the Framework Convention is a flexible instrument that nevertheless sets legal standards for the protection of national minorities."[125] The term 'framework' already indicates that the FCNM was not endowed with self-executing character but is rather a set of legal standards that is not directly applicable.[126] However, from a *de facto* position it can be seen that states have indeed "welcomed the Opinions of the Advisory Committee", have "provided constructive comments on them", have indicated that "increased action to address specific shortcomings in the implementation of the Framework Convention" has taken place and that "fresh rounds of interdepartmental discussions within governments" have been stimulated by opinions. In some cases "an immediate dialogue with national minorities on the issues raised" has been prompted.[127] As only a small number of countries have already entered into the second opinion cycle, it might be considered premature to judge on the substantiation of new standards by the Advisory Committee. However, an analysis of the language of its opinions clearly points towards a standard-setting function.

[120] Cf. Oberleitner, *Developing Social Rights*, p. 647.
[121] Cf. Oberleitner, *Developing Social Rights*, p. 648.
[122] Kicker, *Prevention*, at IV.c.1.
[123] ACFC/INF(2002) 001, at 22.
[124] ACFC/INF(2002) 001, at 22.
[125] ACFC/INF(2002) 001, at 22.
[126] http://conventions.coe.int/Treaty/en/Summaries/Html/157.htm, accessed: 30 November 2005.
[127] ACFC/INF(2002) 001, at 23.

4.4. ECRI: Standard-setting through general policy recommendations

In the course of its work ECRI has formulated nine general policy recommendations[128], which are addressed to governments of all member states. They deal with the most important aspects of racism and intolerance and provide "guidelines for the development of comprehensive national policies."[129] ECRI continuously refers to its general policy recommendations in its state reports and thereby sets standards for government approaches to problems of racism and intolerance. In its third report on the Czech Republic, which focused on the implementation of previous recommendations, mention is made numerous times of general policy recommendations throughout the report. ECRI "welcomes the fact that a number of provisions … *reflect* those recommended in ECRI's General Policy Recommendation No. 7."[130] It "believes … that the Act could be further enhanced by *taking into account* further suggestions made in its General Policy Recommendation No 7."[131] ECRI "*draws attention* to its General Policy Recommendation No. 7"[132] and "urges the Czech authorities to *draw inspiration from* its General Policy Recommendations No 2 and No 7."[133] Under the keyword "Good Practices" ECRI has also put together three collections[134] of positive examples of combating racism and intolerance from member states. Even though they neither "amount to ECRI recommendations"[135] nor are accompanied by "value judgements"[136], they can be seen as important steps towards a set of accepted standards.

5. Conclusion

This article has argued that expert bodies indeed set standards which in turn are increasingly accepted by the respective conventions' and charters' signatory states as additional aspects of the European Human Rights Order. The expert bodies' standards are by their very nature not legally binding but, indeed, what is commonly referred to as 'soft law'; they are, however, not without significance. An ontological view illustrates that they have a growing effect insofar as states who do not reach up to the standards – on the whole

[128] CRI (96) 43 rev: ECRI general policy recommendation N°1: Combating racism, xenophobia, antisemitism and intolerance; CRI (97) 36: ECRI general policy recommendation N°2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level; CRI (98) 29 rev: ECRI general policy recommendation N°3: Combating racism and intolerance against Roma/Gypsies; CRI (98) 30: ECRI general policy recommendation N°4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims; CRI (2000) 21: General policy recommendation N°5: Combating intolerance and discrimination against Muslims; CRI (2001) 1: General policy recommendation N°6: Combating the dissemination of racist, xenophobic and antisemitic materiel via the internet; CRI (2003) 8: ECRI general policy recommendation N°7 on national legislation to combat racism and racial discrimination; CRI (2004) 26: ECRI General Policy Recommendation N°8 on combating racism while fighting terrorism; CRI (2004) 37: ECRI general policy recommendation N°9 on the fight against anti-Semitism.
[129] Martín Estébanez/Thornberry, *Minority rights*, p. 582.
[130] CRI (2004) 22, at 26, emphasis added.
[131] CRI (2004) 22, at 27, emphasis added.
[132] CRI (2004) 22, at 31, emphasis added.
[133] CRI (2004) 22, at 38, emphasis added.
[134] CRI (2004) 6: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level; CRI (2000) 19: Examples of "good practices" to fight against racism and intolerance in the European media; CRI (2001) 28: Practical examples in combating racism and intolerance against Roma/Gypsies.
[135] Martín Estébanez/Thornberry, *Minority rights*, p. 587.
[136] Martín Estébanez/Thornberry, *Minority rights*, p. 587.

– strive to do so and feel obliged to explain their position. Only very few examples of 'persistent objectors' to standards set by CoE expert bodies can be ascertained. The role of expert bodies in the development of new Human Rights standards is likely to rise in importance, especially in a time of geo-political turbulences, in which individual states prioritize the promotion of security[137] and the 'global war on terror' over the promotion and protection of Human Rights and the prevention of Human Rights violations. To rely solely on states as innovators in the development of Human Rights law in Europe, would probably bring an end to a future oriented set of Human Rights: a vision that finds its expression in a Human Rights approach that is coherent and consistent, effective and innovative. In the context of a broad variety of legal and para-legal instruments to secure Human Rights, with institutions and organizations having been established under different regional and thematic perspectives, standards set by the CoE's Expert bodies might just be one of the legal techniques of the future.

[137] Unfortunately not in the sense of Human Security, a new approach to security has been embraced by a number of international institutions. For the impact of the concept of Human Security on international security, see, among others, Benedek, Wolfgang, 'Der Beitrag des Konzeptes der menschlichen Sicherheit zur Friedenssicherung' in Dicke, Klaus/ Hobe, Stephan/Meyn, Karl-Ulrich/Peters, Anne/Riedel, Eibe/Schütz, Hans-Joachim/Tietje, Christian (eds.), *Weltinnenrecht. Liber Amicorum Jost Delbrück* (Duncker & Humblot, Berlin, 2005), pp. 25-36, and, for a brief introduction to the concept in general, Kettemann, Matthias C., 'The Conceptual Debate on Human Security and its Relevance for the Development of International Law', *Human Security Perspectives*, Vol. 2 (2005) Issue 1, in print.