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A Contextual Analysis of the Council of Europe’s Convention on Preventing and Combating Violence against Women.

Dr. Ronagh McQuigg.*

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Abstract.

This article examines the Council of Europe’s recent Convention on Preventing and Combating Violence against Women. The focus of this paper is on the specific issue of domestic violence. The article seeks to place the Convention in the context of other developments as regards the analysis of domestic violence as a human rights issue.

Key Words.

Domestic Violence; Council of Europe; Convention on Preventing and Combating Violence against Women.

The Council of Europe’s new Convention on Preventing and Combating Violence against Women and Domestic Violence was adopted by the Committee of Ministers of the Council of Europe on 7 April 2011. This Convention is certainly a very important development, as it will set new legally binding standards in the area of gender based violence in the European context. However, it is not the first regional Convention on the subject of violence against women. Almost 17 years prior to the Council of Europe’s adoption of this Convention, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (also known as the ‘Convention of Belem Do Para’) was adopted by the General Assembly of the Organization of American States (OAS). This article will analyse the approach taken by the Council of Europe Convention to the specific issue of domestic violence. In order to place the Convention in context, reference will also be made to other developments as regards the analysis of domestic violence as a human rights issue.

* Lecturer, School of Law, Queen’s University Belfast, 28 University Square, Belfast BT7 1NN. Email: r.mcquigg@qub.ac.uk
Context.

The origins of the new Council of Europe Convention are found in a campaign implemented by the Council of Europe between 2006 and 2008, which was aimed at combating violence against women. As part of this campaign, a task force carried out an assessment of measures which had been adopted by states in this area. It was concluded that there was a need to ensure that levels of support and protection were standardised across Europe, and the task force therefore recommended that a Convention to combat violence against women be developed. In December 2008 the Committee of Ministers of the Council of Europe established an Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence with the mandate of preparing a legally binding instrument. The finalised Convention was subsequently adopted by the Committee of Ministers on 7 April 2011.

However, it should be noted that this Convention is not the first instrument of its kind. Almost 17 years previously, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women was adopted by the General Assembly of the Organization of American States. The adoption of the Inter-American Convention on violence against women on 9 June 1994 was a somewhat innovative development within the OAS system. This is particularly apparent given the timing of developments in this area at the United Nations level. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)1 had been adopted in 1979 however, somewhat surprisingly, this treaty makes no mention of the issue of domestic violence, or indeed gender-based violence more generally. It was not until 1992 that the Convention’s monitoring body, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), issued its General Recommendation 19 which officially interpreted CEDAW as prohibiting violence against women in both the public and private contexts.2 This development was followed in 1993 by the adoption by the UN General Assembly of its Declaration on the Elimination of Violence against Women.3 The Inter-American Convention on violence against women was adopted only one year later. It can be seen therefore that, although the adoption by the Council of Europe of a Convention on violence against women is certainly a very significant step, this development cannot be seen in isolation, but instead must be viewed as part of the growing recognition of violence against women as a human rights issue.

1 1465 UNTS 85.
Defining Domestic Violence.

The definitional approach adopted by the new Council of Europe Convention to the issue of domestic violence is striking. In the terminology used in the Convention, domestic violence is repeatedly separated out from violence against women more generally. Examples of this can be seen in both the title of the instrument - the Convention on Preventing and Combating Violence against Women and Domestic Violence - and in the purposes as elaborated in article 1. These include ‘to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence’;\(^4\) ‘to design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence’;\(^5\) and ‘to provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.’\(^6\)

This approach to defining domestic violence is very different to that adopted in previous instruments. For example, the actual term ‘domestic violence’ is not to be found in the Inter-American Convention on violence against women. Instead, violence against women taking place in the home is approached as an integral facet of violence against women more generally. Article 1 of the Inter-American Convention states that,

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2 expands on this definition, stating that ‘violence against women’ should be understood:

to include physical, sexual and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse.\(^7\)

Likewise, article 3 emphasises that, ‘Every woman has the right to be free from violence in both the public and private spheres.’

A very similar approach is adopted by the UN Declaration on the Elimination of Violence against Women.\(^8\) Article 1 of this document states that:

\(^{4}\) Article 1(a).
\(^{5}\) Article 1(c).
\(^{6}\) Article 1(e).
\(^{7}\) Article 2(a).
\(^{8}\) Supra note 3.
the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 2(a) of the Declaration asserts that, ‘Violence against women shall be understood to encompass…physical, sexual and psychological violence occurring in the family.’ Again, the term ‘domestic violence’ is not used, and violence against women in the home is simply encompassed within the general concept of violence against women.

It is debatable whether the separating out of domestic violence from violence against women more generally, as found in the Council of Europe Convention, was the correct approach to adopt. It could be argued that by so doing the Convention risks implying that domestic violence is unrelated to the structural issues of violence against women. Nevertheless, such an approach does possess certain advantages. For example, it emphasises the importance which the Convention accords to combating the specific problem of domestic violence, an aim which is certainly to be applauded. In addition, distinguishing violence against women from domestic violence appears to suggest a recognition that men may also be the victims of domestic violence. In article 3(b), ‘domestic violence’ is defined as meaning:

all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

This definition is not gender-specific, therefore the Convention appears to recognise that in some instances domestic violence will simply not be encompassed by the term ‘violence against women.’ Nevertheless, although article 2(2) states that, ‘Parties are encouraged to apply this Convention to all victims of domestic violence’, it also proceeds to stress that, ‘Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.’ In addition, it is emphasised in article 2(1) that, ‘This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.’ Essentially, the language of the Convention is that states are ‘encouraged’ to apply the Convention to male victims of domestic violence, however the language of the Convention on this issue is non-mandatory in approach.

It could thus be argued that the Council of Europe’s Convention takes a more sophisticated approach to the issue of domestic violence than do previous instruments such as the Inter-American Convention on violence against women. Since the adoption of the latter, understanding of the phenomenon of domestic violence has increased substantially and there is now a much greater awareness of the prevalence of domestic
violence taking place against men. The approach adopted by the Inter-American Convention, by which domestic violence is simply viewed as one facet of violence against women, leaves no scope for a recognition of men as victims of violence in the home. However, it seems that the inclusion of this recognition within the Council of Europe’s Convention is certainly to be welcomed.

As in the Inter-American Convention, the Council of Europe’s Convention encompasses not only physical and sexual violence, but also psychological abuse. However, interestingly the definition of domestic violence used in the Council of Europe’s Convention additionally encompasses ‘economic violence’. Although this term is not specifically defined in the Convention, it is certainly true that abuse occurring within the home can have an economic or material aspect. As Mullender and Morley comment, ‘Although we normally think of domestic violence as physical, commonly the physical is but one aspect of a pattern of abuse which also includes sexual, emotional, and material abuses.’ Again, the inclusion of this form of abuse within the Council of Europe’s Convention is evidence of the increases in understanding of the phenomenon of domestic violence which have taken place in recent years.

**The Concept of Due Diligence.**

Article 5(1) of the Council of Europe Convention states that, ‘Parties shall refrain from engaging in any act of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state act in conformity with this obligation.’ Article 5(2) places a duty on state parties to ‘take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-state actors.’ The Convention therefore places substantial importance on the principle of state responsibility as regards the issue of violence against women.

Interestingly, almost identical wording is found in article 7(a) of the Inter-American Convention on violence against women, which places an obligation on state parties to ‘refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation’. Likewise, under article 7(b) states must ‘apply due diligence to prevent, investigate and impose penalties for violence against women’.

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The fact that reference is made in both of these instruments to the concept of ‘due
diligence’, explicit mention of which is rare among treaties, is very significant. The
principles of state responsibility and positive obligations\textsuperscript{10} have played an invaluable role
in the recognition of domestic violence as being a human rights issue, and the concept of
due diligence has increasingly influenced case law in relation to domestic violence and
violence against women. The judicial branches of both the Inter-American and Council
of Europe systems have been extremely instrumental in this process. The Inter-American
Court on Human Rights is credited with one of the earliest formulations of the principle
of state responsibility in the case of Velasquez Rodriguez v Honduras.\textsuperscript{11} As regards
domestic violence, the seminal petition on this issue which was lodged with the Inter-
American Commission using the Inter-American Convention on violence against women
is that of Maria da Penha Maia Fernandes v Brazil.\textsuperscript{12} This petition alleged that the state
had condoned domestic violence perpetrated against Mrs Fernandes by her husband,
which had culminated in her attempted murder. In finding breaches of the American
Convention on Human Rights and of the Inter-American Convention on violence against
women, the Commission stated that the failure to prosecute and convict the perpetrator
was an indication that the state condoned the violence suffered by Mrs Fernandes. The
Commission proceeded to comment that, ‘The condoning of this situation by the entire
system only serves to perpetuate the psychological, social, and historical roots and factors
that sustain and encourage violence against women.’\textsuperscript{13} It concluded that, ‘in this case,
which represents the tip of the iceberg, ineffective judicial action, impunity, and the
inability of victims to obtain compensation provide an example of the lack of
commitment to take appropriate action to address domestic violence.’\textsuperscript{14}

In its decision, the Commission made a wide range of recommendations to the state.
These included completing, rapidly and effectively, criminal proceedings against the
perpetrator; conducting an exhaustive investigation to determine responsibility for the
irregularities that prevented effective prosecution of the perpetrator; and adopting the
measures necessary for the state to grant compensation to Mrs Fernandes. At a broader
level, the Commission recommended \textit{inter alia} that the state adopt measures to simplify
criminal judicial proceedings so that the time taken for proceedings could be reduced.
The state should also increase the number of special police stations to address the rights
of women and ensure the provision of sufficient resources to process and investigate
effectively all complaints relating to domestic violence.\textsuperscript{15}

\textsuperscript{10} For a discussion of the positive obligation of states to take measures as regards violations committed by
\textsuperscript{12} Case 12.051, Report No. 54/01 (2001).
\textsuperscript{13} At para. 55.
\textsuperscript{14} At para. 57.
\textsuperscript{15} At para. 61.
A more recent decision of the Inter-American Commission relating to the issue of domestic violence is that of *Jessica Lenahan (Gonzales) v United States*.\(^\text{16}\) This case arose from a petition presented to the Commission against the United States of America by representatives of the American Civil Liberties Union. The petition was presented on behalf of Jessica Lenahan, formerly Jessica Gonzales, and her three deceased daughters. The United States is not a party to either the Inter-American Convention on violence against women or the American Convention on Human Rights. However, the claimants argued that the United States had violated a number of provisions of the American Declaration of the Rights and Duties of Man, due to a failure to exercise due diligence in protecting Jessica Lenahan and her daughters from acts of domestic violence on the part of Ms Lenahan’s former husband (Simon Gonzales). It was claimed that the police had failed to respond in an adequate manner to Ms Lenahan’s repeated telephone calls reporting that her husband had taken their three daughters, who were aged seven, eight and ten, in violation of a domestic violence restraining order. Simon Gonzales had eventually arrived at the police station and opened fire at police. The police returned fire, resulting in his death. The three children were later found shot to death in the back of their father’s truck. The petitioners claimed that the state had never duly investigated the circumstances of the deaths of the children, and had not provided Ms Lenahan with a sufficient remedy for the failures of the police. The Commission held that the United States had failed to act with due diligence to protect Ms Lenahan and her daughters from domestic violence, and that this constituted a violation of a number of provisions of the American Declaration of the Rights and Duties of Man, namely Article I (the right to life), Article II (the right to equality), Article VII (relating to the special protection of children), and Article XVIII (the right to judicial protection). A wide range of recommendations were made to the state, both as regards Ms Lenahan’s position specifically and also at a more general level.

The decision of the Inter-American Commission in *Lenahan* is certainly of a dynamic nature. The Commission is to be congratulated for its willingness to use the provisions of the American Declaration of the Rights and Duties of Man and the concept of due diligence to place obligations on the state in relation to the issue of domestic violence, even in the absence of state ratification of either the Inter-American Convention on violence against women or the American Convention on Human Rights.

Likewise, the European Court of Human Rights has developed a very substantial body of jurisprudence on the concept of positive obligations, which it has used to great effect in its case law on the issue of domestic violence. This case law is of much more recent origins than that of the Inter-American system, as the issue of domestic violence was not

considered substantively by the European Court until 2007. However the Court has now directly addressed this subject in a series of recent cases. The first of these cases was Kontrova v Slovakia in which the applicant had been subjected to domestic violence by her husband. He had threatened to kill himself and their two children and he had in fact carried out this threat. In holding that the police had failed to take appropriate action to protect the right to life of the children under article 2 of the European Convention on Human Rights, the Court stated that article 2:

enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction...It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.18

In Bevacqua and S v Bulgaria the applicants were a victim of domestic violence and her young son. It was argued that the authorities had failed to protect the first applicant against the violent behaviour of her former husband and had failed to take the necessary measures to secure respect for the family life of both applicants. In holding that there had been a violation of article 8, the Court stated that:

the authorities’ failure to impose sanctions or otherwise enforce (the applicant’s former husband’s) obligation to refrain from unlawful acts was critical in the circumstances of this case, as it amounted to a refusal to provide the immediate assistance the applicants needed. The authorities’ view that no such assistance was due as the dispute concerned a ‘private matter’ was incompatible with their positive obligations to secure the enjoyment of the applicants’ Article 8 rights.20

In Opuz v Turkey the applicant alleged that the authorities had failed to protect herself and her mother from domestic violence, which had resulted in the death of her mother and her own ill-treatment. In addition to finding a breach of article 2, the Court also found that there had been a violation of article 3, the right to be free from torture and inhuman or degrading treatment, ‘as a result of the State authorities’ failure to take protective measures in the form of effective deterrence against serious breaches of the applicant’s personal integrity by her husband.’22 In addition, it was held that there had been a breach of article 14, the equality provision. The Court stated that:

Bearing in mind...that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence

18 At para. 49.
19 Application No. 71127/01, September 12, 2008.
20 At para. 83.
21 Application No. 33401/02, September 9, 2009.
22 At para. 176.
suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women.\textsuperscript{23}

Violations of the European Convention on Human Rights were also found in other cases involving domestic violence such as \textit{Branko Tomasic and Others v Croatia};\textsuperscript{24} \textit{E.S. and Others v Slovakia};\textsuperscript{25} \textit{A v Croatia};\textsuperscript{26} and \textit{Hajduova v Slovakia}.\textsuperscript{27} It is certainly likely that this case law exerted a substantial influence on the drafting process of the new Council of Europe Convention on violence against women.

\textbf{Provisions on Domestic Violence.}

The Council of Europe Convention on violence against women contains a very detailed set of measures which should be adopted by state parties upon ratification. For example, articles 12-17 focus on awareness raising and on changing societal attitudes. Article 12 states that measures must be adopted to promote changes in social and cultural behaviour patterns with a view to eradicating prejudices and practices based on the idea of inferiority of women. Similarly, article 13 places a duty on state parties to promote and conduct awareness-raising campaigns to increase understanding among the general public of the need to prevent violence against women. Under article 15, state parties should provide training for professionals dealing with victims or perpetrators of violence against women on issues such as the detection of such violence. The Convention also addresses in detail the support services which should be made available to victims. For example, article 20(1) states that:

\begin{quote}
Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counseling, financial assistance, housing, education, training and assistance in finding employment.
\end{quote}

As regards civil law measures, article 53 emphasises the need to ensure that restraining or protection orders are available to victims. The Convention also contains detailed consideration of how the criminal justice systems of state parties should respond to the issue of violence against women.\textsuperscript{28} Article 49(1) states that:

\begin{quote}
It should be noted that there are variations in the approaches taken by domestic jurisdictions to the criminalisation of domestic violence. For example, in the United Kingdom, there is no specific offence of ‘domestic violence’. Instead, domestic violence must be dealt with under the more general criminal law statutes, such as the Offences Against the Person Act 1861. A discussion of police, prosecutorial and
\end{quote}

\textsuperscript{23} At para. 200.  
\textsuperscript{24} Application No. 46598/06, January 15, 2009.  
\textsuperscript{25} Application No. 8227/04, December 15, 2009.  
\textsuperscript{26} Application No. 55164/08, October 14, 2010.  
\textsuperscript{27} Application No. 2660/03, 30 November, 2010.  
\textsuperscript{28} It should be noted that there are variations in the approaches taken by domestic jurisdictions to the criminalisation of domestic violence. For example, in the United Kingdom, there is no specific offence of ‘domestic violence’. Instead, domestic violence must be dealt with under the more general criminal law statutes, such as the Offences Against the Person Act 1861. A discussion of police, prosecutorial and
Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

Under article 50, state parties must ensure that law enforcement agencies respond appropriately to instances of violence against women by offering adequate and immediate protection to victims.

These provisions are certainly much more detailed than those contained in the Inter-American Convention on violence against women, a fact which may be explained by recent developments in the understanding of domestic violence and of the measures necessary to address this issue. Indeed, the provisions of the Inter-American Convention which relate to domestic violence are subsumed in the more general provisions on violence against women, due to the integrated approach adopted by this instrument. Under article 7, state parties must include in their domestic legislation provisions to prevent, punish and eradicate violence against women;²⁹ adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman;³⁰ and take all appropriate measures to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain violence against women.³¹ State parties must also establish fair and effective legal procedures for women who have been subjected to violence;³² establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to just and effective remedies;³³ and adopt such legislative or other measures as may be necessary to give effect to the Convention.³⁴

Article 8 of the Inter-American Convention contains further measures which state parties should adopt. However, very importantly, the wording of article 8 is that state parties agree to undertake these measures ‘progressively’. This approach is similar to that found in the International Covenant on Economic, Social and Cultural Rights,³⁵ article 2 of which places an obligation on the state ‘to take steps…to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant’. The principle of progressive realisation of judicial responses to domestic violence can be found in R. McQuigg, International Human Rights Law and Domestic Violence (2011) at 19-30.

²⁹ Article 7(c).
³⁰ Article 7(d).
³¹ Article 7(e).
³² Article 7(f).
³³ Article 7(g).
³⁴ Article 7(h).
³⁵ 993 UNTS 3.
economic, social and cultural rights constitutes a realistic recognition of the fact that the resources available to governments are limited. It seems that the drafters of the Inter-American Convention on violence against women were also aware of the need to take such a realistic approach, particularly as many of the states within the Inter-American system are by no means wealthy.

The measures encompassed by article 8 include the adoption of programmes aimed at promoting awareness of the right of women to be free from violence, 36 and at modifying social and cultural patterns of conduct of men and women to counteract prejudices based on the idea of the inferiority or superiority of either of the sexes which legitimise violence against women. 37 States should promote the education and training of all those involved in the administration of justice, police and other law enforcement officers responsible for implementing policies for the prevention, punishment and eradication of violence against women. 38 They should ‘provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children’. 39 In addition, states should provide women who have been subjected to violence with access to effective readjustment and training programmes to enable them to participate fully in public, private and social life. 40

By contrast, the Council of Europe Convention on violence against women makes no reference to the concept of progressive realisation of the obligations contained therein. Rather, state parties are under an immediate duty upon ratification to comply with all of the provisions of the Convention. The decision to adopt such an approach may be reflective of the fact that many of the states within the Council of Europe are relatively wealthy, and therefore are more likely to have the resources to implement the measures immediately upon ratification. Nevertheless, the duties placed upon state parties by this Convention are extensive, and are certainly much more detailed than those contained within the Inter-American Convention. It is possible that a number of states within the Council of Europe, particularly the less wealthy nations, may be reluctant to sign and ratify the Convention due to the fairly substantial obligations it places on state parties.

36 Article 8(a).
37 Article 8(b).
38 Article 8(c).
39 Article 8(d).
40 Article 8(f).
Monitoring Mechanisms.

Under article 66(1) of the Council of Europe Convention on violence against women, implementation shall be monitored by a group of experts on action against violence against women and domestic violence, known as ‘GREVIO’. This body is to be composed of between 10 and 15 members, taking into account a geographical and gender balance. The Convention’s main monitoring mechanism is a reporting procedure. Under article 68(1), state parties must submit an initial report on national measures giving effect to the Convention’s provisions, for consideration by GREVIO. Subsequent reports should be submitted periodically at intervals to be determined by GREVIO. After consideration of the information received, GREVIO will prepare a draft report containing its evaluation of the state’s implementation of the provisions. This report should also contain proposals concerning the way in which the state should address any difficulties that have been identified. The draft report will then be conveyed to the state in order to obtain its comments. These comments will be taken into account by GREVIO when adopting its final report and conclusions. The final report will then be sent to the state in question.

Interestingly, the reporting mechanism found in the Council of Europe Convention is much more formalised and detailed than that contained in the Inter-American Convention. Under article 10 of the latter, states must simply include in their more general reports to the Inter-American Commission of Women information on measures which they have adopted in relation to the issue of violence against women, and on factors which contribute to the occurrence of violence against women in their particular jurisdictions. This obligation is drafted in somewhat vague terms. By contrast, the Council of Europe Convention contains detailed information on what will be expected of state parties in respect of the reporting procedure. In addition, the Council of Europe Convention will have its own specific monitoring body, whereas the Inter-American Convention falls within the ambit of the more general Inter-American Commission of Women.

It should however be noted that treaty reporting mechanisms tend to suffer from certain difficulties, as demonstrated by the problems encountered by the various UN human rights treaty reporting procedures. In relation to the reporting mechanism found in
CEDAW, Merry outlines several methods by which states can escape proper scrutiny. For example, the state may fail to write a report or do so only after a long delay. Even if the state does submit a report, this document may only be of a superficial nature. As Fortin comments in relation to the UN Convention on the Rights of the Child, the reporting mechanism relies on governments to subject their implementation programme to an objective and critical analysis before compiling their reports. The absence of any supervision or coercion over this can lead to reports painting an over-optimistic and complacent picture of governmental achievements.

The state may refuse to present its report even after submission. Alternatively, it may send only low-level government representatives to present the report or may avoid answering questions directly. The state may promise to make changes but omit to carry out these changes, or it may enter extensive reservations. It is possible that many of these problems may also arise in relation to the reporting mechanism under the new Council of Europe Convention on violence against women.

Unlike the Inter-American Convention on violence against women, the Council of Europe Convention does not incorporate an individual complaints mechanism. Under article 12 of the Inter-American Convention, any person or group of persons, or any nongovernmental entity, may lodge petitions with the Inter-American Commission on Human Rights concerning complaints of violations of article 7 of the Convention. It is noteworthy that it is only breaches of the obligations contained in article 7 regarding which complaints may be made. These duties are somewhat limited in nature. In particular, they do not include obligations on state parties to provide social support measures for victims, or to take measures to increase awareness among society of the issues involved in violence against women. These categories of duties are found in article 8 of the Convention, which is subject to the progressive realisation principle, and upon which complaints to the Commission cannot be based.

Although the Council of Europe Convention does not incorporate an individual complaints mechanism, nevertheless an inquiry procedure has been included. Under article 68(13), if GREVIO receives reliable information as regards a situation in which immediate attention is needed to prevent or limit the scale or number of serious violations of the Convention, it may request the urgent submission by the state party in question of a special report concerning the particular situation. In these circumstances, GREVIO may

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45 1577 UNTS 3.
designate one or more of its members to conduct an inquiry and to report urgently to GREVIO. Such an inquiry may include a visit to the state, should the state in question consent to such a visit.47

Conclusion.

In conclusion, the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence is certainly a significant development in the movement to combat gender based violence. As regards the particular issue of domestic violence, the Convention contains detailed provisions in relation to the measures which states should adopt in this area. In so doing, it relies heavily on the concept of due diligence which has played such an important role in the development of case law and principle in this area. A contextual analysis of the new Convention also demonstrates the developments in understanding of the phenomenon of domestic violence which have occurred in recent years. For example, the obligations placed upon state parties by the Council of Europe Convention are articulated in much greater detail than those contained within the Inter-American Convention, adopted almost 17 years previously. In addition, the Council of Europe Convention appears to recognise that domestic violence may also be perpetrated against men, an aspect of violence in the home which has only recently been investigated to any great extent.

The adoption by the Council of Europe of the Convention on violence against women is certainly very much to be welcomed. At the time of writing, a total of nineteen states have signed the treaty, with one ratification. In order for the treaty to enter into force, ten ratifications are needed. It is to be hoped that this quota will be achieved in the near future, and that this instrument will make an important contribution to the movement to combat both domestic violence and other forms of violence against women.

47 Article 68(14).