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Towards a Council of Europe convention to combat trafficking in organs, tissues and cells of human origin

Report¹

Committee on Social Affairs, Health and Sustainable Development

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Summary

The Council of Europe convention against trafficking in human organs, once it has been adopted by the Committee of Ministers, will be the first legally binding international instrument devoted solely to organ trafficking. This is why it must be as complete as possible in order to prevent and combat this worldwide phenomenon which contravenes the most basic standards in terms of human rights and human dignity.

The recommendations made in this report are mainly intended to elaborate the provisions of the preliminary draft convention relating to measures for the prevention of organ trafficking, the protection of victims and national and international co-operation against such trafficking, as well as to combat "transplant tourism". It is especially necessary to consider the particular vulnerability of organ donors and recipients, to accord special protection to certain categories of people, and to take into account the importance of having the widest possible geographical scope and a stringent and effective implementation for the convention. Finally, it is suggested that a road map be elaborated for the additional protocol against trafficking in human tissues and cells.

1. Reference to committee: [Doc. 12492 rev](#), Reference 3746 of 11 March 2011.



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A. Draft recommendation²

1. The Parliamentary Assembly welcomes the preliminary draft Council of Europe convention against trafficking in human organs. Closely associated with the preparation of the convention from the outset, the Assembly considers that this text represents the culmination of several years of efforts by the Council of Europe in the field of organ trafficking.
2. The Assembly notes that, at this stage, it has not been considered advisable to prepare an additional protocol against trafficking in human tissues and cells, largely due to the absence at both national and international levels of complete and harmonised regulation of the removal and use of tissues and cells. It nevertheless emphasises that, like organ trafficking, the trafficking of tissues and cells of human origin constitutes a grave threat to human rights and to public and individual health.
3. The Assembly points out that, once it has been adopted, the convention will be the first legally binding international instrument devoted solely to organ trafficking. This is why the Assembly takes the view that the convention must be as complete as possible in order to prevent and combat this worldwide phenomenon which contravenes the most basic standards in terms of human rights and human dignity.
4. With regard to the latter, the Assembly notes that questions relating to the prevention of organ trafficking, the protection of victims and national and international co-operation to combat such trafficking are not sufficiently detailed in the preliminary draft convention. It also notes that the draft leaves States complete freedom to decide whether donors and recipients may be prosecuted when they are involved in organ trafficking. Whatever position member States may take on this matter, the Assembly argues that these two categories of persons, because of the specific nature of their situation, which can sometimes be summed up as a “matter of life or death”, may find themselves extremely vulnerable.
5. The Assembly underlines the utmost importance of protecting vulnerable persons, in particular children (under the age of 18), persons without (full) legal capacity and persons deprived of their liberty.
6. The Assembly notes with concern the practice followed by certain patients who travel abroad in order to obtain organs in return for payment, a practice widely referred to as “transplant tourism”. In this context, it is particularly concerned about allegations that some States which are not members of the Council of Europe trade organs removed from prisoners and from executed detainees.
7. Given that organ trafficking occurs worldwide, extending beyond the territory of the Council of Europe's member States, the Assembly calls for the future convention to have the broadest possible geographical scope. It also emphasises the importance of stringent and effective implementation of the convention, so that it can bring the desired added value to the work of the Council of Europe.
8. Consequently, the Assembly recommends that the Committee of Ministers:
 - 8.1. complete the provisions of the preliminary draft convention relating to measures for the prevention of organ trafficking, the protection of victims and national and international co-operation against such trafficking, paying particular attention to measures to deal with the shortage of organs which is one of the main reasons for that trafficking, in particular by setting up a system of presumed consent for the removal of organs from deceased persons;
 - 8.2. include a provision in the convention on “mitigating circumstances” which includes, *inter alia*, the consideration of the particular vulnerability of organ donors and/or recipients who have committed the offences established in the convention, or refer to that particular vulnerability in the explanatory report to the convention, specifying that it should be taken into account when the penalties which may be applicable to these two categories of persons are determined;
 - 8.3. include a provision in the convention whereby the usual dual criminality rule is not applicable, in order to combat “transplant tourism”;
 - 8.4. include a provision in the convention prohibiting the removal and use for transplantation purposes of organs from persons deprived of their liberty, living or deceased;
 - 8.5. include a provision in the convention according special protection, including in matters of consent, to children (under the age of 18) and persons without (full) legal capacity;
 - 8.6. provide for the convention to be opened for signature by non-member States of the Council of Europe as soon as it has been adopted;

2. Draft recommendation adopted unanimously by the committee on 19 November 2012.

8.7. provide for reporting requirements for the Parties, while encouraging the committee of the parties (the monitoring body) to carry out its duties bearing in mind the objective of ensuring that the convention is stringently and effectively implemented;

8.8. decide on a roadmap for the preparation of the additional protocol against trafficking in human tissues and cells.

9. The Assembly also recommends that the Committee of Ministers urge those member States which have not yet done so to sign and ratify the other two Council of Europe conventions which relate to the combating of trafficking in human organs, namely:

9.1. the Convention on Human Rights and Biomedicine (ETS No. 164) and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186);

9.2. the Convention on Action against Trafficking in Human Beings (CETS No. 197).

B. Explanatory memorandum by Mr Marquet, rapporteur

1. Introduction

1. In 2008, the Council of Europe and the United Nations decided to draw up a joint study on “Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs”. The joint study, published in October 2009, concluded that it was necessary to prepare an international legal instrument establishing a definition of trafficking in organs, tissues and cells of human origin and setting out measures to be taken to prevent such trafficking and to protect the victims, as well as criminal law measures to punish trafficking.

2. At the same time, the Parliamentary Assembly, alerted by the stories described in the memoirs of Carla Del Ponte,³ began an investigation into allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo.⁴ This investigation gave rise to the adoption of [Resolution 1782 \(2011\)](#), bearing the same title, in which the Assembly agreed with the conclusion of the joint study that an international legal instrument on the subject should be drawn up.

3. Thus, when, in July 2011, the Committee of Ministers decided to set up a committee of experts to prepare a draft convention against trafficking in human organs, this marked the culmination of several years of efforts by the Council of Europe in this field. It should nevertheless be pointed out that the principle whereby the human body and its parts should not, as such, give rise to financial gain has been covered by texts of the Organisation since as long ago as 1978.⁵ In 1997, the Convention on Human Rights and Biomedicine (ETS No. 164), known as the “Oviedo Convention”, reaffirmed this principle in a legally binding instrument (Article 21), and, on that same basis, its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186) prohibited organ trafficking (Article 22). That protocol still remains the only legally binding international instrument to establish such a prohibition.

4. Under the terms of reference of the Committee of Experts on Trafficking in Human Organs, Tissues and Cells (PC-TO), the committee is to prepare a draft criminal law convention against trafficking in human organs, and, if necessary, a draft additional protocol to the draft convention against trafficking in human tissues and cells. To this end, the PC-TO has held four meetings.⁶ On behalf of the Assembly, and more particularly its Committee on Social Affairs, Health and Sustainable Development, it was my privilege to participate in the first three meetings of the PC-TO. Furthermore, during the Assembly’s June 2012 part-session, our committee held an exchange of views with Dr Hans-Holger Herrfeld, the Chairperson of the PC-TO. This provided the opportunity to present the Assembly’s point of view during the convention drafting process. In the same context, the previous version of this report, in which the Assembly’s point of view was set out in detail, was forwarded to the PC-TO.

5. On 19 October 2012, the PC-TO adopted the final version of the preliminary draft convention against trafficking in human organs. It decided that, at this stage, it was not advisable to prepare an additional protocol against trafficking in human tissues and cells. The preliminary draft convention is soon to be examined by the European Committee on Crime Problems (CDPC) at its plenary meeting on 4-7 December 2012.⁷ The CDPC will take position, *inter alia*, on those questions on which it has not been possible to reach a consensus within the PC-TO and will adopt a draft convention to be submitted to the Committee of Ministers.

2. A criminal law convention

6. The terms of reference of the PC-TO required it first and foremost to prepare a draft criminal law convention against trafficking in human organs. In doing so, the PC-TO was instructed to ensure that the text provided added value, particularly in respect of issues relating to the criminalisation and prevention of trafficking in human organs and in respect of assistance to victims and international co-operation.

3. Former Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY), which is responsible for judging persons accused of serious violations of international humanitarian law committed on the territory of former Yugoslavia since 1991.

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

5. Resolution (78) 29 of the Committee of Ministers on harmonisation of legislations of member States relating to removal, grafting and transplantation of human substances.

6. The first in December 2011, then in March, June and October 2012.

7. In the meantime, the CDPC has approved the preliminary draft convention; however, it decided to postpone consideration of the preliminary draft explanatory memorandum until a later meeting.

7. As finalised by the PC-TO, the preliminary draft convention is a classic criminal law convention with provisions mainly devoted to the definition of the acts constituting organ trafficking (substantive part) and to the rules relating to prosecution of such acts (procedural part). Measures are of course proposed with a view to the protection of victims, to the prevention of trafficking and to co-operation, but these are either directed to criminal law or dealt with succinctly. Thus, while the text is very detailed in respect of international co-operation “in criminal matters” and of the protection of victims’ rights and interests during “criminal proceedings”, it is much less so in respect of prevention and victim protection measures outside the criminal law context. For example, in order to prevent organ trafficking, one of the proposals is for transparent systems for transplantation and equitable access to these services, but without emphasis on the need to take measures which could make it possible to deal with the shortage of organs, when one of the main reasons for organ trafficking is precisely that shortage. The fact that it is specified in the explanatory report that “equitable access to transplantation services” also means that the States Parties should endeavour to ensure that there is sufficient access to organs in my opinion reduces the crucial question of shortage to that of access, which is not appropriate. Similarly, the text says that victims should be assisted in their physical, psychological and social recovery, but gives no indication of how such assistance is to be provided, for example by guaranteeing them access to emergency medical care. Furthermore, the only co-operation measure (outside the criminal law sphere) proposed by the text is the designation of a national contact point for exchange of information pertaining to trafficking in human organs.

8. This approach, which gives precedence to the criminal law aspect of the future legal instrument, seems to be consistent with the terms of reference given to the PC-TO by the Committee of Ministers, at least at first sight.⁸ However, it is less consistent with the procedure adopted for recent Council of Europe conventions based on the “4P principle”, which deal with a given problem area, not only in terms of criminal law (prosecution of the perpetrators), but also from the angle of crime prevention, victim protection, the promotion of appropriate policies and national and international co-operation.⁹ This comprehensive approach does indeed have the merit of guaranteeing greater added value in relation to the question dealt with. It seems important to emphasise this difference between the preliminary draft convention and those conventions based on the “4P principle”. In fact, by embarking on preparation of the first legally binding international instrument solely devoted to organ trafficking, the Council of Europe is attempting to meet a major challenge. Whatever difficulties may arise, such a challenge implies first and foremost a great responsibility, namely that of preparing the most complete possible instrument in order to prevent and combat this extremely serious worldwide phenomenon which contravenes the most basic standards in terms of human rights and human dignity.

9. Consequently, I consider it vital to complete the provisions of the preliminary draft convention relating to the prevention of organ trafficking, the protection of victims and national and international co-operation to combat such trafficking. This does not necessarily entail the addition of extremely detailed provisions; general formulations could be opted for and possibly backed up by examples set out in the explanatory report. In this context, the convention should advocate first and foremost the introduction of measures to deal with the shortage of organs. In this respect it could suggest, *inter alia*, the setting up of a system of presumed consent for the removal of organs from deceased persons. Furthermore, the explanatory report could refer to other systems such as official and compulsory registration of people’s wishes (whether or not they wish to be donors). It could also suggest the running of campaigns to raise public awareness of organ donation, in order to increase the numbers of donors. Where international co-operation is concerned, the setting up of an inter-State and/or regional transplantation entity centralising requests for organs and organ availability should be considered, in order to increase the efficiency of transplantation operations, *inter alia* by improving the selection of the most suitable recipient among the patients on the waiting list.¹⁰ Similarly, special arrangements could be made at borders in order to detect cases possibly entailing organ trafficking. Finally, at national level, practical means of detecting trafficking in organs might be suggested, such as identifying cases of patients who “disappear” from waiting lists or who seek anti-rejection treatment.

8. Since the beginning of the work, I have maintained that the terms of reference of the PC-TO were worded sufficiently flexibly to leave it plenty of room for manoeuvre in respect of the scope of the provisions on prevention, assistance to victims and international co-operation. I have even gone further previously and said that, in so far as the terms of reference required the draft convention to provide added value on these issues, it was the PC-TO’s duty to supplement the relevant provisions.

9. Recent examples of such conventions are the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, “Istanbul Convention”), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, “Warsaw Convention”) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, “Lanzarote Convention”).

10. Co-operation mechanisms of this kind already exist between certain member States. Austria, Belgium, Croatia, Germany, Luxembourg, the Netherlands and Slovenia, for example, co-operate in the context of Eurotransplant.

3. Decision on the preparation of an additional protocol against trafficking in human tissues and cells

10. The PC-TO has decided that, at this stage, it is not advisable to prepare an additional protocol against trafficking in human tissues and cells. This decision was largely due to the “incomplete” or inadequate nature of national regulations governing the removal, preservation, distribution and subsequent use of tissues and cells of human origin, or in some cases the lack of regulations, as well as the extreme diversity of the regulations in question. While certain international instruments establish general principles in this respect, they do not cover the whole range of possible uses of tissues and cells. In fact, the principles appearing in the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186), also applicable to cells, govern only the field of transplantation, whereas those appearing in Recommendation Rec(2006)4 of the Committee of Ministers on research on biological materials of human origin (including cells and tissues) are confined to the research sphere.¹¹

11. Like the trafficking of organs, the trafficking of human tissues and cells constitutes a grave threat to human rights and to public and individual health. Cases reported in the media revealing a possible trade in body parts of dubious origin for use in the making of medical products (such as bone grafts)¹² and the points raised in the joint Council of Europe/United Nations study only confirm this statement, and also show the need to prepare an international legal instrument against the trafficking of human tissues and cells. However, bearing in mind the difficulties set out in the previous paragraph, it would be sensible to move step by step and to start by establishing the common general principles relating to the removal, conservation, distribution and use of tissues and cells, given that these principles should cover all the fields in which they are used. Subsequently, on the basis of these principles, non-compliance with which could constitute the basis for a definition of the acts of trafficking of tissues and cells, an additional protocol against such trafficking could be prepared.

12. If this proposal is adopted, the relevant common general principles could be established in a binding instrument, possibly in the form of an additional protocol to the Oviedo Convention, during the period 2014-2015. Work on preparing an additional protocol against trafficking in tissues and cells could begin immediately after that first text came into force.

4. Questions of law and ethics

13. Article 4 of the preliminary draft convention defines illicit removal of organs. Article 4.1 reads as follows:

“1. Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:

- a. where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;*
- b. where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;*
- c. where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.”*

14. This article is worded so as to leave to the discretion of States Parties the determination of which persons are punishable in the event of illicit removal. Hence, the preliminary draft convention does not take a position on the difficult issue of whether or not donors and recipients should be punished if they are involved in organ trafficking.¹³ Without prejudging any debate of principle as to the legitimacy, or even utility of punishing these two categories of persons, it is necessary, in the determination of the penalties which may be applicable to them, to take account of the specific nature of their situation. In fact it is usually the case that the context in which donor and recipient find themselves makes them extremely vulnerable: for a donor, selling an organ

11. At the level of the European Union, there is Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. However, the principles established in that instrument apply only to cases where tissues and cells are used for therapeutic purposes.

12. www.publicintegrity.org/2012/07/17/9543/human-corpses-are-prize-global-drive-profits.

13. Under Article 2.2, the activities mentioned in Article 4.1 are amongst the activities considered to be organ trafficking.

might be the only way of possibly escaping from poverty, whereas for a recipient suffering from a potentially fatal illness, purchasing an organ might be the sole means of survival. Thus, in order to guarantee that the future legal instrument is geared to the realities of organ trafficking, and more specifically to ensure that any penalties imposed on donors and/or recipients are fair and proportionate, a provision on “mitigating circumstances” should be added to the preliminary draft convention. This provision should include, *inter alia*, the consideration of the particular vulnerability of organ donors and/or recipients who have committed the offences established in the convention. Alternatively, the explanatory report to the convention could refer to that particular vulnerability, specifying that it should, if relevant, be taken into account when the penalties which may be applicable to donors and recipients are determined.¹⁴

15. In conjunction with the above point, I note with satisfaction that the preliminary draft convention considers the commission of the offences that it establishes against a child to be an aggravating circumstance. In fact, in so far as children are particularly exposed to this form of crime, it is very important for the future convention to contain such a provision.

16. Another issue that deserves to be broached is “transplant tourism”, the practice whereby certain patients travel abroad to procure organs in exchange for payment. In a context in which this practice, according to a World Health Organization (WHO) estimate in 2004, represents 10% of all transplantations in the world, it seems essential to adopt means of applying the measures set out in the convention beyond the territories of the States Parties. Otherwise “lawless zones” might well considerably limit the convention’s impact. One such means entails, in respect of the offences for which the convention provides, doing away with the usual dual criminality rule.¹⁵ The objective of this approach would be to combat “transplant tourism”, and this would be fully in line with the spirit and aims of the future convention. This possibility was initially provided for in the preliminary draft convention, before being deleted at the last meeting of the PC-TO. I therefore propose that it be restored to the text.

17. Still in relation to “transplant tourism”, the practice of procuring organs in countries which allow the transplantation of organs removed from prisoners and/or executed detainees deserves particular attention.¹⁶ Under Article 4.1.b and c of the preliminary draft convention, such a practice should be considered to be illicit removal if it involves payment of a certain amount in return for the organ removed. Even in the absence of such payment, it can be argued that prisoners are not truly in a position to give consent freely and may be subject to coercion.¹⁷ In fact, this could be applied generally to every person deprived of his or her liberty. In the absence of such consent, the definition of illicit removal of organs (Article 4.1.a) would also apply.

18. Concerning issues associated with the consent of persons deprived of their liberty, I believe that it is important for the convention to prohibit purely and simply the removal and use for transplantation purposes of organs from these persons (living or deceased). Moreover, without necessarily being deprived of their liberty, the same kind of issue could occur for persons without (full) legal capacity, in particular children, who need special protection in this context. Therefore, the convention could include a provision according special protection, including in matters of consent, to children (under the age of 18) and persons without (full) legal capacity.

5. Monitoring of implementation of the convention

19. Since the beginning of the work of the PC-TO, I have emphasised the importance of stringent and effective implementation of the criminal law conventions, and particularly those dealing with cross-border crime, a category into which organ trafficking generally falls. I have also said from the outset that a committee of the parties is rarely the most effective monitoring mechanism, particularly if there are no reporting

14. This is already done in paragraph 67 of the explanatory report relating to persons who may be considered to be victims of organ trafficking: “The negotiators were of the opinion that most persons who would qualify as victims of trafficking in human organs are by definition vulnerable, e.g. because they are financially severely disadvantaged, which is the case for many persons who agree to have an organ removed against financial gain or comparable advantage, or because they are suffering from severe or even terminal diseases with little chances of survival, which is the case for many recipients of organs.”

15. This possibility is provided for in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and constitutes a significant added value of that convention.

16. In fact, according to certain “serious allegations”, China is trading organs removed from executed detainees (a “Dear Colleague” letter sent by two US Congressmen asking their fellow House of Representatives members to co-sign a letter to Hillary Clinton states that “serious allegations suggest unimaginable abuses have occurred” in organ transplantation practice in China. This letter follows a congressional hearing on 12 September 2012 on the subject of “Organ Harvesting of Religious and Political Dissidents by the Chinese Communist Party”).

17. Assembly [Recommendation 1611](#) (2003) on trafficking in organs in Europe.

requirements. I had therefore proposed that reporting requirements for the Parties be included in the convention. Alternatively, I had proposed that the competent committees, namely the CDPC and the Committee on Bioethics (DH-BIO), be given a greater role in monitoring and/or that provision be made for a more specific monitoring mechanism for the convention, similar for example to those for which the Istanbul and Warsaw Conventions provide.

20. The preliminary draft convention establishes a committee of the parties, whose task is to supervise application of the convention and to facilitate the collection, analysis and exchange of information, experience and good practice between States and the effective use and implementation of the convention and, where appropriate, to express an opinion on any question concerning the application of the convention and to make specific recommendations to the Parties concerning its implementation. Provision is made for the Assembly, the CDPC and the other competent intergovernmental or scientific committees of the Council of Europe to each appoint a representative to the committee of the parties. Provision is also made for the CDPC to be kept regularly informed of the activities of the latter committee, which will draw up its own rules of procedure.

21. According to the preliminary draft explanatory report, the rules to be adopted by the committee of the parties must be drafted in such a way as to ensure that the implementation of the convention is effectively monitored. Provision is made for the participation in the monitoring mechanism of bodies other than the Parties, such as the Assembly, in order to guarantee a truly multisectoral and multidisciplinary approach.

22. In the absence of reporting requirements, the effectiveness of such a monitoring system will depend on the goodwill of the States Parties. This amounts, in my opinion, to taking the risk of adopting a convention which will not, or not fully, be implemented. This is not compatible with the Council of Europe's efforts to give its work added value. I therefore invite the Committee of Ministers to include reporting requirements for the Parties, while encouraging the committee of the parties to carry out its duties bearing in mind the objective of ensuring that the convention is stringently and effectively implemented.

6. Geographical scope of the convention

23. The PC-TO has decided to refer to the CDPC the question of the geographical scope of the convention. There are currently two proposals on this matter: one is that the convention be opened for signature by States which are not members of the Council of Europe as soon as it is adopted by the Committee of Ministers,¹⁸ and the other is that it should be possible for them to accede to the convention once it has come into force.¹⁹ Both opening to signature and accession are subject to invitation by the Committee of Ministers, and where accession is concerned, provision is made for the relevant invitation to be subject to consultation and to the unanimous consent of the Parties to the convention.

24. Given that organ trafficking occurs worldwide, extending beyond the territory of the Council of Europe's member States, the Assembly should call for the widest possible geographical scope for this convention. In this context I should like to reiterate that the convention, once it has been adopted, will be the first legally binding international instrument devoted solely to organ trafficking. It will fill a blatant gap at international level, and it would be highly regrettable for non-member States to be excluded from its scope. In this context, it should be made possible for non-member States to participate in the convention as soon as the text has been adopted by the Committee of Ministers, and even prior to its entry into force. This would encourage the largest possible number of non-member States to participate in the convention. Postponing that possibility until the convention's entry into force and making the procedure extremely cumbersome (namely making the invitation from the Committee of Ministers subject to consultation and unanimous consent of the Parties to the convention) would amount to more or less ruling out such a possibility. In this respect, it is important to point out that the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health (CETS No. 211, "Medicrime Convention"), which also deals with a problem of international scope, opted for the possibility of participation by non-member States, even prior to its entry into force, and that one State which is not a member of the Council of Europe recently signed it²⁰ (another non-member State has expressed its wish to do so in the near future).

18. Apart from those non-member States which participated in the preparation of the convention and those which have observer status, for which the convention will be opened for signature as soon as it is adopted (Article 28 of the preliminary draft convention).

19. Apart from those non-member States which participated in the preparation of the convention, for which the convention will be opened for signature as soon as it is adopted (Articles 28bis and 28ter of the preliminary draft convention).

20. The State concerned is Guinea, which signed the convention on 10 October 2012.

25. Still in connection with this point, I note with satisfaction the first proposal, which sets at five the number of ratifications, acceptances or approvals required for the convention's entry into force.²¹ The Assembly should support such a proposal, which is intended to avoid any needless delay in the convention's entry into force, while reflecting the belief that a minimum number of Parties is needed in order to be able to begin to take up the challenge of combating trafficking in organs.

7. Conclusions

26. It is an arduous task to prepare an international legal instrument against the trafficking of human organs. This field is in fact an awkward one, particularly because of the technical nature of the issues relating to the transplantation of organs and the differences in national legislation on the subject. The PC-TO has thus taken up a huge challenge, and can only be congratulated on the quality of the work that it has done.

27. It is now for the CDPC and the Committee of Ministers to deal with the issues set out in this report. My proposals in this respect may be summarised in the following terms:

- complete the provisions of the preliminary draft convention relating to measures for the prevention of organ trafficking, the protection of victims and national and international co-operation against such trafficking;
- include a provision in the convention on “mitigating circumstances” which includes, *inter alia*, the consideration of the particular vulnerability of organ donors and/or recipients who have committed the offences established in the convention, or refer to that particular vulnerability in the explanatory report to the convention, specifying that it should be taken into account when the penalties which may be applicable to these two categories of persons are determined;
- include a provision in the convention whereby the usual dual criminality rule is not applicable;
- include a provision in the convention prohibiting the removal and use for transplantation purposes of organs from persons deprived of their liberty, living or deceased;
- include a provision in the convention according special protection, including in matters of consent, to children (under the age of 18) and persons without (full) legal capacity;
- provide for reporting requirements for the Parties, while encouraging the committee of the parties to carry out its duties bearing in mind the objective of ensuring that the convention is stringently and effectively implemented;
- opt for the convention to be opened for signature by States which are not members of the Council of Europe as soon as it has been adopted by the Committee of Ministers;
- decide on a roadmap for the preparation of the additional protocol against trafficking in human tissues and cells.

21. This was also the approach adopted in the Medicrime Convention.