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Stefano Valenti

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The Drafting Process of Human Rights Soft Law: a Tool Facilitating Cooperation among States and beyond States

*Stefano Valenti**

Abstract: Soft law refers to non-binding norms like recommendations, guidelines or codes of conduct that influence behaviour of States and non-state actors. While not legally enforceable like hard law treaties, soft law offers flexibility to adapt to changing circumstances and can pave the way for future binding agreements. With this 'practitioner's paper' the author aims to provide an insight into this multifaceted, collaborative law-making journey which is the drafting and adoption process of international soft law instruments, particularly in the field of human rights. Based on his work-related experience, the author intends to highlight a specific aspect of the added value of the cooperation and synergy between States and non-state actors in international law making. The paper outlines a multi-stage process, from an initial issue identification through collaboration among States, NGOs, international organisations, academia and professional groups. It details then the establishment of drafting committees with government experts and other participants, followed by iterations of drafting, negotiations, revisions and consultations to build consensus. This process ends with the adoption of the soft law instrument, after which follow-up measures promote its implementation, assess impact and allow for potential revision. The author emphasises soft law making as a cooperation tool facilitating dialogue among diverse actors. In particular, public consultations during the drafting enhance inclusivity and legitimacy of the soft law instrument. Challenges include balancing flexibility with consistency, avoiding 'reinventing the wheel', and managing political interests. The paper lists at the end a few examples of soft law instruments and their making.

Keywords: Soft Law, Council of Europe, European Commission, OSCE/ODIHR, Civil Society, International Organisations, Human Rights, Paris Principles, Hate Crime, Equality Data, Human Rights Defenders

* University of Padua, Department of Philosophy, Sociology, Education and Applied Psychology. e-mail: stefano.valenti@unipd.it

** The author, a former staff member of the Council of Europe Secretariat, in observance with the relevant behavioural and ethical standards, has paid particular attention not to use or disclose confidential or sensitive information known by reason of his service with the Organisation.

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Introduction: The Soft Law Regulation of Emerging Human Rights Issues and its Added Value

Soft law refers to non-binding instruments such as agreements, set of principles, recommendations, guidelines or codes of conduct, that influence the behaviour not only of States but also of other actors both at international and national level (Santos 2020, 1-2). It is well known that, unlike hard law which is legally enforceable, soft law does not have the same legal force or obligations. Moreover, the non-binding nature of soft law and its proliferation at the expense of hard law can lead to varying interpretations and implementations among different States. However, soft law can pave the way towards hard law by 'testing the water' for future binding international treaties. There are numerous examples of soft laws as important stepping stones in the development of international human rights law, such as the 1963 UN General Assembly Declaration on the Elimination of All Forms of Racial Discrimination which led to the adoption in 1965 of a UN Convention with the same title, or, more recently, the 2020 Recommendation of the Committee of Ministers of the Council of Europe to member States on the human rights impacts of algorithmic systems, which was one of numerous soft law instruments leading to the adoption in 2024 of the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. However, the best example remains, after all these years, the Universal Declaration of Human Rights, adopted in 1948 which led the way to numerous UN treaties.

In any case, the added value of soft law instruments should not be measured only by its likelihood to become hard law. In comparison to hard law, it enjoys a higher degree of flexibility and can be adapted more easily to fast changing circumstances or new information, making it more effective than hard law. Soft law regulation can be particularly successful in areas requiring urgent intervention and adoption of common positions such as the protection of the environment, or in issues characterised by new and fast developments, such as artificial intelligence. In these fields soft law instruments take stock and promotes best practices which have proven to work well, particularly in order to promote and protect relevant Human Rights standards [1]. Moreover, these non-binding instruments, while not seeking to develop new standards provide some form of agreed interpretation about the application of existing hard-law provisions to

[1] See for example in the field of freedom of expression Council of Europe, Compilation of soft law instruments, retrieved from: https://www.coe.int/en/web/freedom-expression/adopted-texts (accessed: 14/04/2025)

matters or situations that were not explicitly foreseen in the original treaty (see below under 'Follow up measures' '*The use of soft law by the Courts*').

Last, but not certainly the least, the process of soft law making, from the preliminary stage of identification of issues, until the formal adoption of an instrument with norms and standards, has proven to be an excellent tool to facilitate cooperation between States and non-state actors, including non-governmental organisations (NGOs) and international organisations, as well as the private sector and academia.

It is beyond the scope of this contribution to examine exhaustively all aspects of soft law regulation. Its aim is rather to highlight the specific added value of the soft law making, as a useful tool facilitating cooperation, between States and beyond States, in particular in the Human Rights field. I have based my article on the practice of soft law drafting by international organisations and complemented it with personal observations from my previous working experience as international civil servant.

1. The Beginning of the Process: Identification of Issues and Synergies among Stakeholders

The drafting and adoption process of soft law texts involves multiple stages and stakeholders. For this reason, the process from the initiation phase till the adoption can last even years and continue further with the follow-up phases, such as the soft law's promotion among stakeholders, the facilitation and monitoring of its implementation and, possibly, its review in light of new developments in the relevant fields.

A *conditio sine qua non* allowing the start of the soft law drafting process is an intense and sometimes lengthy work related to the identification of issues in need of regulations or improvement, the bringing together of the necessary political will for the establishment of the administrative/institutional drafting machinery, and the allocation of the necessary funds and staff to make it work for a number of months, if not years. This preliminary phase requires intense political dialogue among member States of an international organisation. For example, it is not rare that this process is initiated by a single State or by the top officials of the international organisation itself with the support of (or part of) member States then leading to a political dialogue in institutions such as the European Parliament or the Parliamentary Assembly of the Council of Europe. Additionally, workshops with practitioners and civil society representatives can also be convened to discuss how certain issues and

recommendations/conclusions prepared at the end of these events can form the basis for the soft law text.

Identification of issues in need of soft law regulation can be also triggered by failings or shortfalls identified by human rights case law, such as the jurisprudence of the European Court of Human Rights. The initiation process can be shortened considerably in case of particular events (often tragic events) which raise concern among the public opinion and are echoed by media, showing evident gaps in existing regulations or norms at international level, and/or discrepancies in their implementation at national level. Particularly in the human rights field, initiatives of NGOs have affected both the content and process of soft law-making by fiercely and skilfully advocating for specific issues in need of a common approach by States.

According to my experience, the most successful initiation work, leading to the start of the soft law drafting, consists in a collaborative process involving various stakeholders, including (a group of) States, national and international NGOs, academia and even professional groups. Of course, international organisations, such as the UN, the EU, the OSCE/ODIHR and the Council of Europe, remain at the forefront of this process, but they badly need the above-mentioned ground work in order to be able to concretise its beginning and justify the allocation of the necessary funds, staff and expertise. Therefore, already in the initiation stage, synergies between States and non-state actors are key for a smooth start leading to a successful soft law drafting and to its adoption later on.

2. The Formal Start of the Process: Establishment of the Drafting Committee

Once the ground work described above has been successful, the drafting phase starts with a decision by an international organisation to create a committee with the task (or to assign to an already existing committee the task) of preparing an initial text during a predefined number of meetings. If this committee is created on *ad hoc* basis in the form of a sub-committee, the draft text will be discussed and reviewed at a later stage also by a committee (or committees) with a more general mandate in charge of steering the work of the sub-committee in question.

The formal decision mentioned above is concretised with the approval of the terms of reference of the committee[2]. This document will be the 'bible'

[2] Council of Europe, Terms of Reference and Working Methods of the Committee of Experts on Hate Crime Committee of Ministers Recommendation on combating hate crime.

of the committee and will specify in nitty gritty terms: its deliverables (i.e. what the committee is asked to 'produce'); its composition, thus making a clear distinction between participants (with or without the right of vote) and observers (without the right of vote); their number and required expertise for their nomination; finance and budgetary questions (such as whether the cost of travel and accommodation of participants will be borne by the organisation or not) and the number of meetings foreseen. More general rules of procedure of the committee are governed by standard rules applicable to all organisation's committees[3]. For example, in the case of the Council of Europe, these rules provide for the automatic inclusion of a representative of the Gender Equality Committee to ensure that gender is a mandated part of considerations during the drafting process.

Usually, the drafting work of a soft law instrument (but also of a hard law text, such as a treaty) is initially assigned to an *ad hoc* experts' committee with a more focused role than larger committees which have planning and steering functions. Contrary to the larger membership of a steering committee, *ad hoc* committees are usually composed of a limited number of member States' representatives and often include independent experts from academia or practitioners, representatives of other international organisations and civil society, bringing together specific expertise on selected matters. As we have already seen, all these participants do not have the same status, as usually only member States' representatives enjoy full membership while the others have only observer status. A restricted number of staff from the international organisation in question form the committee's secretariat in charge of the organisation of the committee's meetings, their running, reporting and follow-up work in between meetings. At the first meeting a committee's chair and vice-chair(s) are elected by the States' representatives. Of course, not all drafting processes have such a formal setting with a rigid status differentiation between participants and observers, who can instead contribute to the discussion on an equal footing.

It is pivotal to ensure that experts designated by their governments not only have the required expertise, but also the necessary motivation to bring the assigned work forward during the negotiation of the text and within the prescribed deadline. Moreover, it is not for granted that all the government representatives can take decisions on the spot in the name

[3] Council of Europe, Committee of Ministers Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, retrieved from https://coe.int/en/web/cahdi/meeting-documents/-/asset_publisher/4VYjIYTVPwqV/content/id/103472022 (accessed 14/04/2025)

of their national authorities on the different questions which arise during the committees meeting. In addition, States are not always represented by the same national expert in all the meetings. It could even happen that some of the most qualified and capable member States representatives are participating with precise instructions from their capitals to slow down the drafting progress or, at least, to 'water down' the draft text so that it does not risk to conflict with their national legislation.

It is therefore important to ensure that the independent experts chosen by the international organisation to support the drafting process do not only master the relevant subjects, but are also capable to show a fair amount of diplomacy to avoid harmful confrontations with the government experts during the negotiation on the content of the soft law. The same goes for the representatives of civil society organisations and of other international organisations participating as observers. In short, even at this initial stage of the drafting process it is pivotal to ensure among all participants not only an excellent knowledge of the subject, but also the 'art of diplomacy and compromise' to smooth out differences and create the necessary 'entente cordiale' within the drafting committee. On the contrary, a climate of 'us and them', such as NGOs or/and International Organisation representatives against States representatives, will not facilitate the progress of the committee's work towards an agreeable draft text.

In this context, the 'Sherpa' work relies heavily on the committee's secretariat staff, who should be backed up by its hierarchy in the task of smoothing differences, while keeping a good quality and meaningful text of the soft law. My experience tells that those secretariat 'Sherpa' carry a heavy weight of responsibilities all along the climb to the top of the mountain when the text is eventually approved/adopted. These responsibilities are a mixture of tedious but extremely necessary administrative work and a rather delicate, sometimes exhausting, informal role of 'go-betweener' between the committee participants themselves and also between the committee and the internal hierarchy of the organisation. The aim of this 'going back and forth' is to ensure consistency and continuity of the final 'product' of the committee with the work already done by the organisation in the same field. The coordination work within the organisation is due to the fact that what is produced is a framework for legal and policy action which can and should be implemented in its entirety by member States and not in a vacuum, as an articulation of standards and aims which the international organisation in question seeks to promote and achieve. Needless to say that a skilful management by the Committee's Chair and Vice-chair(s) would be also key in this endeavour all along the life span of the committee.

3. Drafting a Text: Discussion and Negotiation among Participants, Amendments and Revisions

The drafting process consists in producing an initial text which goes through multiple iterations, incorporating feedback from participants. Of course this process will imply negotiations during the committee's meetings but also in between meetings, where representatives from different countries discuss and seek consensus on the provisions via e-mails or even during on-line meetings. The goal is to achieve as broad a consensus as possible, though sometimes compromises must be made. Since this practitioner's paper aims to provide (hopefully) useful insights of the soft law making, we can distinguish the following phases of the process and their characteristics:

- *Initial discussion*: Participants come together at a first meeting to discuss the goals and scope of the draft as well as its structure. The outcome is usually summarised in a document agreed by the participants. Some documents may help the discussion, such as a background document containing an inventory of the relevant existing standards, definitions, common legislative and other approaches to the issue in question, relevant actors, etc. and a list of reference documents. The main purpose of this inventory is to know the existing regulations and avoid to 'reinvent the wheel'.
- *Preliminary outline*: On the basis of the first meeting's discussion, a restricted working group, usually made up by the committee's Secretariat and its independent experts, draws up a preliminary outline for illustrative purposes which serves to guide the potential areas that the committee of experts wish to consider throughout the drafting process. This very initial skeleton is approved by the Committee's chair and sent to the participants (possibly well) ahead of the following meeting. This 'skeleton' is pivotal to organise the future soft law drafting process, as soft law instruments go beyond strictly legal requirements and understandings, but takes an all-of-society approach to addressing a particular phenomenon, including not only suggested legal standards but also implementation measures, training requirements, policies, etc., thus requiring a clear idea of its scope and structure at a very early stage of the committee's work.
- *Initial draft*: At the second meeting, usually participants starts building 'muscles' around the approved 'skeleton' of the draft. This phase may well go beyond the second meeting and it is in my opinion the most 'creative' part of the process when all participants, possibly in a spirit of cooperation, contribute to shape the text of the soft law instrument.
- *Negotiations*: Once an initial draft is ready, the negotiation phase starts and is characterised by debates on specific wording, proposed amendments and compromises on controversial points. In theory definition of terms, common approaches and a clear scope should be set straight at the beginning as they are

the basis for the rest of the document (such as practical measures or specific recommendations, etc.). However, in reality, definition of these elements risks to monopolise the committee's discussion during several meetings. This is further complicated by the fact that government experts do not always receive precise instructions on how to amend the draft text from their capitals. It could be that only at a later stage concerns about the compatibility of the draft text with domestic legal frameworks and practice are raised. Similarly, other international organisations may alert the committee on potential conflicts with their already existing soft law or even hard law instruments. A way out would be the language of the draft which should provide member States with some flexibility in its implementation at national level.

- *Revisions*: At each meeting, the draft text is modified based on feedback and proposals that have emerged. To avoid long conversations on non-controversial issues during meetings, these can be addressed via tracked changes inserted in the revised draft prepared by independent experts, which is displayed on a big screen during the meeting. This 'technique' allows to save time to be used for the discussion on some of the key themes. Following this discussion, some modifications are agreed on the spot. However, in a few occasions the amendments proposed are not all coherent, thus requiring additional work in between meetings by the secretariat and independent experts to combine them without compromising the clarity and coherence of the draft.
- *Language versions*: Translation problems may arise when the text is to be prepared at the same time in more than one language having the status of original text. To prevent these problems, the committee should ideally 'co-author' at the same time the draft in these languages, for example in English and French in the case of the Council of Europe. In this ideal situation, there is no translation in the technical sense of the term, but rather a simultaneous preparation of equivalent legal texts in different languages, which takes into account the difficulties and the 'genesis' of each idiom. In this context, I found particularly helpful the presence in the drafting committee of experts with bilingual knowledge of legal terms. However, in the case of several official languages, or due to lack of time even with only two official languages, a considerable amount of work is dedicated by the committee's secretariat to the quality check of the other language versions prepared by the translators. This is because legal translation involves much more than the mere replacement of words by their equivalents in the other official language(s), as each language corresponds to a specific legal tradition and all language versions have to reflect the characteristics of each tradition (Pozzo 2018). Of course, the growing use of AI translation tools may ease this task but not to the point of making the quality check redundant. On the contrary, additional problems may arise due to the so called AI 'hallucinations' inventing inexistent terms.

- *Further meetings*: The discussion, negotiation and review phases are repeated until a consensus is reached, thus requiring intense work by the committee's secretariat and independent experts, with inputs also from other international organisations and NGOs in between meetings in order to accelerate the work of the committee and respect deadlines for the approval of the text. My experience is that constructive comments and feedback throughout the drafting process from participants, no matter if they are governments' experts, independent experts, representatives of international or non-governmental organisation, contribute to build a kind of 'team spirit' and ownership facilitating consensus. However, 'team spirit' is not enough, particularly when reaching consensus means seeking agreement on a text addressing issues which are to be understood by many member States with different legal systems. This process can require intense diplomacy on the part of the committee's secretariat, which I have described above as a kind of 'Sherpa' work.
- *Coffee break diplomacy*: another tool facilitating the advancing of the process and the solving of disagreements, for example on the wording of definitions, is the so called 'coffee break diplomacy'. Personally I never mastered such an art consisting in impromptu 'walks and talks' during coffee breaks along the corridors outside the meeting room, trying to smooth out differences and find compromises. However, I witnessed successful 'walks and talks' examples in the attempt to soften the position of committee's 'hardliner' participants, who at the resumption of the meeting became much more flexible on contentious issues, facilitating the reaching of a common position on specific subjects. Even dinners organised during the days when the committee is on session are not a boring social duty but really helpful to meet with other participants informally and have a personal connection through discussing family, pets, or even Netflix shows. All of this informal diplomacy, facilitated either by a cup of coffee during the meeting breaks or by a glass of good wine during dinners, are not useless appendices but tools that really helps in building the formation of a committee identity, where it is a collection of individuals working to achieve the best possible outcome, rather than many individuals seeking to have their own agendas delivered.
- *Explanatory memorandum*: Similar to hard law instruments, non-binding law instruments are often accompanied by explanatory memoranda aimed at providing clarity and context for the application of the soft law framework. The drafting of such documents, which is usually based on a preliminary text prepared ahead by the independent experts and the secretariat, is also part of the committee's work and it goes hand in hand with the progress and changes of the main text. Sometimes it serves as a kind of 'safety net' favouring consensus and compromise for the most contentious part of the main text. This specific function is played by the explanatory memorandum when it

is tasked to clarify key terms and phrases used in the soft law instrument to avoid ambiguity or discrepancies with other preceding texts and existing practice. Also explanations contained in the explanatory memorandum, regarding the intent behind certain recommendations or provisions serve the same purpose. It is also a tool to explain choices and set out, but not necessarily naming, the positions of different actors. This may help accept a soft law text if a particular position is explained in the explanatory memorandum.

- *Approval and adoption*: All the steps I have described above lead to the final committee's meeting aiming at the approval of the soft-law instrument and, only in certain cases, also of its explanatory memorandum. Usually, the text is regularly revised all through the process by other 'mother committees' which have a larger representation of member States and mandate, including the supervision of the experts' committee in charge of the drafting. This means that the approval by the experts' committee does not imply the formal adoption of the text, but only the end of the committee's work, while the text will continue its draft status with possible amendments till the final and formal adoption by the international organisation in question. This can occur in different ways, such as through a resolution in a UN body or at a conference of the States' governing body of the organisation, such as, for the Council of Europe, the Committee of Ministers (ambassadors who sit as deputies of their Ministers of Foreign Affairs). Other soft law text, such as guidelines, are not subject to a proper formal adoption by the highest governing body of an international organisation, but simply form part of the conclusions or final recommendations adopted at a conference.

4. Consultation: Gathering Outsiders' Inputs, Ensuring Inclusiveness and Enhancing Legitimacy

The drafting processes typically involve consultations with various stakeholders to gather inputs, ensure inclusiveness, and enhance legitimacy. Consultations should be initiated even before a formal decision to start the drafting process is taken. In this case, the consultation is part of the preparatory work, which has been already described above, and is required in order to build consensus or to collect inputs to the identification of issues in need of soft law regulation.

This process can be 'externalised', for example by contracting a consultancy firm in charge of running interviews/surveys and preparing a study which will be then discussed during one or more events with the aim to pave the way towards the start of a drafting process. Alternatively, or additionally, consultative meetings are organised with a specific public (in the Human Rights field it could be professionals, including lawyers or journalists, human

rights defenders, academics and representatives of national human rights and/or equality bodies, representatives of human rights NGOs, youth leaders, etc.) to pool together experiences, approaches and identifying specific areas. This initial consultation will also help to avoid the risk of 'reinventing the wheel' with an inventory of the *status quo* in terms of existing soft law (and hard law) instruments already regulating a specific issue.

> Once the drafting 'machine' has started, at some point further consultation is needed again as to ensure inclusiveness and legitimacy of the process, thus compensating for the limitations in terms of number and representativeness of the participants in the drafting committee, which is usually member States' driven (Petropoulou Ionescu and Eliantonio 2020, Chapter 2). As soon as there is an initial draft text agreed upon by the committee's participants, committee's 'outsiders' should be given an opportunity to provide inputs/comments. For this reason, consultation should be organised in an effective and transparent way in order to receive as many comments/inputs as possible from a variety of selected actors. Key, therefore, is the publicity given to the call for comments and its time frame in order to prevent the call from going unnoticed, with the consequent scarcity of inputs received and the possible feeling of frustration of those who may feel that they were left out or were not listened to.

Therefore, a wide publicity given to the open call for consultation is very important, unless the aim is to receive comments from a restricted qualified audience to avoid the risk of having to rework the text in a substantive way and necessarily reopen the discussion on parts on which a consensus had been reached after long discussions within the committee. However, in my opinion, efforts to obtain a large amount of feedback through an open consultation is needed to ensure inclusiveness and legitimacy of the entire process, even at the cost of lengthening the work of the committee. This is especially in view of the fact that matters, such as the protection of human rights, primarily concern vulnerable individuals and groups whose voices must be heard, in particular through the civil society, including organisations representing those groups. Moreover, soft law consists in sets of principles, recommendations, guidelines or codes of conduct which should be the result of a truly inclusive process to make them applicable in an effective and useful way.

5. Follow up Measures: Promotion, Implementation, Assessing Impact and Review

The process does not end with the adoption of the soft law instrument, which needs follow-up measures to promote its implementation, assess impact and allow for potential revision. We can distinguish the following phases that characterise the post-adoption process:

- *Promoting implementation*: After adoption, efforts are needed to promote the soft law instrument among States and other stakeholders to encourage adherence. In other words, it is in the interest of the international organisation which run the drafting process till the final adoption that the soft law regulation in question does not remain a piece of paper in a drawer, but instead is used to contribute to shaping responses in respect of the issue at stake. For example, high-level events with the participation of senior representatives of the parties involved in the drafting process (heads of States, ministries, top officials of international and non-governmental organisations, academia and professional groups) can serve to reaffirm the commitment of the stakeholders to the soft law instrument, raise a better awareness of the instrument itself and provide an opportunity to define the way forward to its effective implementation.
- *Providing guidance and support*: Supporting materials may be developed to help States and organisations implement the principles established in the soft law document. For example, during its early implementation period a compilation of promising practices can favour a larger and consistent implementation of the instrument adopted. Moreover, capacity-building programmes and tools supporting the implementation at national level can favour its compliance in a specific country and/or for a specific public or professional group.
- *Assessing impact*: While soft law lacks a formal enforcement mechanism, its effectiveness can be monitored through reporting mechanisms, and feedback from States and other actors can measure its implementation. This assessment can take many forms, such as a review report on the implementation of selected aspects of the soft law instrument; the use of a self-assessment tool with a number of questions intended to prompt a reflective and critical review of the implementation by stakeholders themselves; findings and recommendations of human rights monitoring bodies that lay out ways in which identified problems may be addressed by applying the principles and approaches contained in soft law instruments[4].
- living instruments'.ose groups'logue with of theation can be also
- *The use of soft law by the Courts*: Soft law regulations have no instruments of direct coercion and are applied only through voluntary acceptance, thus they cannot be used by a Court as a source of directly applicable standards. However, it is not rare that national and international Courts make explicit

[4] European Commission against Racism and Intolerance (ECRI) Sixth monitoring Report and Government comments on Italy, (2 July 2024) para. 48.

reference to soft law regulations in their judgments as a source of information, as well as for normative and empirical guidance[5]. It is also possible that the Court seeks in this way to strengthen the acceptance of its judgments. This reference to soft law may contribute to innovative interpretation of hard law, thus making human rights conventions in particular 'living instruments' in view of evolving circumstances which merit being specified for pragmatic application. Moreover, soft law may also be a useful tool for the parties before international or national courts to support interpretation of hard law such as treaties in their favour. This particular added value of the use of soft law by the Courts should not be underestimated when assessing its impact (Eliantonio and Stefan 2018, 462-464).

- *Revising as needed*: Based on the above mentioned impact assessment, revisions or updates to the soft law instrument may be considered to adapt it to new developments or contexts. This could be the case of the review and revision of soft law like recommendations which were adopted many years ago considering the significant legal developments that have taken place since, including, as already mentioned, international courts' case law. The revision of soft law instruments can be justified also by new trends in fields such as migrations due to a changed geopolitical situation and in order to prevent discrepancies in its application by member States to the detriment of the human rights of vulnerable groups[6].

6. Examples of Soft Law instruments and their preparation

United Nations 'Paris Principles' relating to the Status of National Institutions: These principles are a set of standards on obligation of each State to set up an independent human rights institution. They were drafted by a group of human rights practitioners and representatives of independent institutions (Ombudpersons) who participated in Paris in October 1991 in the first International Workshop on National Institutions for the Promotion and Protection of Human Right which was convened by the French Authorities(Burdekin 2011,15-16). These principles, officially the 'Principles relating to the Status of National Institutions', were adopted by the UN,

[5] See for example reference to Council of Europe Recommendation CM/Rec(2022)16 on Combating Hate Speech in paragraphs 62 and 209 of the 2023 Grand Chamber Judgement of the European Court of Human Rights in the case of Sanchez v. France, concerning the possibility of criminal conviction to sanction the use of hate speech.

[6] See for example the plan of updating Council of Europe Recommendation No. R(97)22 which contains guidelines on the application of the safe third country concept. Retrieved from https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/safe-third-country-concept

firstly at the UN World Conference on Human Rights in Vienna in 1993 and then were endorsed by the UN member States at the UN General Assembly later that year.

EU guidelines on improving the collection and use of equality data: These guidelines are intended to provide practical guidance to EU member States on how to gradually improve the collection and use of equality data, with a view to assist them in monitoring the implementation of relevant legislation, policies and measures they devise to that effect. These guidelines were developed by the Subgroup on Equality Data, an experts group coordinated by the EU Fundamental Rights Agency (FRA) with representatives of EU Member States and Norway, the European Commission and Eurostat. These experts' group was created in February 2018 by the EU High Level Group on Non-discrimination, Equality and Diversity, composed of representatives of all EU member States, to ensure cooperation and coordination in the development and implementation of policies and programmes that combat discrimination and promote equality. The draft guidelines prepared by the sub-group were then finalised and adopted the same year by the above mentioned High Level Group.

Council of Europe Recommendation on Combating Hate Crime: This recommendation sets out what should be done by Council of Europe member State institutions and other key stakeholders to effectively prevent and respond to hate crime. It contains a definition of the term 'hate crime' and a number of recommendations to key State institutions and other actors. The Recommendation was drafted by the Committee of Experts on Hate Crime which was established in 2022 as a subordinate body to two steering committees with a larger mandate, the European Committee on Crime Problems (CDPC) and the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI). The Recommendation was formally adopted by the Committee of Ministers of the Council of Europe on 7 May 2024. The Recommendation complements existing relevant instruments of the Council of Europe, including the Recommendation on combating hate speech and the Recommendation on preventing and combating sexism.

OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders: These guidelines aim to support OSCE participating States in the implementation of their human dimension commitments (Manton 2006, 18-20) related to the protection of human rights defenders. Following an initial stakeholders' meeting in June 2013, ODIHR held a series of sub-regional consultation meetings over a two-month period with human rights defenders from across the OSCE region, with the aim of identifying the key issues arising within diverse regional and country contexts. Further inputs were collected through an 'open call' to reach out to civil society more broadly. An advisory group

composed of human rights defenders and international experts assisted with reviewing and further developing early drafts of the guidelines. In May 2014, ODIHR held a consultation meeting with participating States to seek their views and inputs on the advanced and consolidated draft of the document.

Conclusion: Soft law making as a journey with many passengers and stages

I have described the process of soft law making by constructing it as a journey, or even a climb, with many stages and with many passengers or climbers, who do not know each other at the beginning, but who in the end almost become 'companions of fortune'.

Perhaps my description sounds a bit naïf and does not fit all soft law making processes, but I am convinced that the field of soft law gives more space to 'creativity' and synergies than the strictly legal field of hard law. Contributions of various sources and expertise, from the academic to the more practical inputs from professional groups and the private sector, as well as from the civil society, complement well the work of national experts and of the secretariat of an international organisation.

The most difficult task remains the trade-off between flexibility of approaches, leaving States enough room to adapt it to the national contexts, and consistency of principles. The greatest danger is the temptation to broaden the scope and purpose of the text too much, coupled with that attitude of wanting to 'reinvent the wheel' at all costs.

Of course, my professional experience remains limited to the drafting procedures of a particular international organisation, but I am convinced that most of the steps (and problems) I have described are common to other procedures. I hope I have made a small but useful contribution to showing from the inside how the drafting 'machine' works and what is needed to make it work well.

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