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Treaty-Making For Standards Of Local Government: The European Charter Of Local Self-Government And Its Possible Application Beyond Europe

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Abstract

The paper takes a critical look at the application of the European Charter of Local Self-Government 1985 and considers the question whether its terms and mode of implementation have the potential for application beyond (the countries of the Council of) Europe.

Keywords

Law, public law, autonomy, local self-government, local government, European Charter of Local Self-Government.

TREATY-MAKING FOR STANDARDS OF LOCAL GOVERNMENT: THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT AND ITS POSSIBLE APPLICATION BEYOND EUROPE

Chris Himsworth

INTRODUCTION

This paper is prompted by three considerations:

1. The Constitution of the Republic of Korea includes provision for 'local autonomy'. Chapter VIII (Articles 117-118) contains outline rules on local authorities and their structures. I understand that there has also been recent discussion in the country of the need for the reform of local government.

2. There is, in Europe, treaty-based guidance on the conditions necessary for the legitimate conduct of local government in the form of the European Charter of Local Self-government of 1985 (hereafter 'the Charter').[1]

3. Although the Charter is indeed formally confined in its application to the Council of Europe member states, it does, therefore, apply on territory only about 400 kms from Seoul ie at the eastern limits of the Russian Federation. Some interest has also been shown in extending the application of Charter-based principles to countries beyond 'Europe'.

Thus, this paper is about the Charter: why it was created; its content; its implementation and enforcement; problems arising; and the application of Charter principles beyond Europe. The paper concludes with some questions inviting critical reflection on that wider application of Charter principles to countries, including perhaps the Republic of Korea.

THE CHARTER: ORIGINS TO ADOPTION

In October, 2010 the opportunity was taken to celebrate the 25th birthday of the European Charter of Local Self-government. The celebration was rather more subdued than that

[1] I should declare an interest here as the UK member of the Congress Group of Independent Experts on the Charter.

undertaken for the twentieth birthday at a conference in Lisbon in July, 2005. But that was perhaps in line with the restraints imposed on the Council of Europe, the Charter's parent organization, by the global financial crisis rather than because of any loss of confidence in the standing of the Charter itself. The Council of Europe's biggest contribution to international treaties has, of course, been in the area of human rights with the European Convention on Human Rights and Fundamental Freedoms ('the ECHR') adopted in 1950 but, in the Council's other principal area of focus – the promotion of democracy - the Charter (first opened for signature on 15 October 1985 and coming into force on 1 September 1988) has probably been its highest profile product. Certainly, for the Council of Europe's principal organ with a remit in this field - the Congress of Local and Regional Authorities of Europe ('the Congress') – the continuing responsibilities for the Charter have been its prime concern. The monitoring functions of the Congress will be considered later. But, from time to time in the life of the Charter, the Congress has stepped back from its routine work to publicize and to applaud the Charter's contribution. Conferences and other Congress-promoted events have been held, with an international, national or regional focus; and, in recent years, the Congress has taken the lead in promoting an initiative in relation to 'regional democracy' in parallel with the Charter at the local level. Virtually all the 47 members of the Council of Europe have signed and ratified the Charter. And, at a time when the Congress has been compelled to reassess its priorities and refocus its resources in conditions of financial constraint, it has been the monitoring of local and regional democracy which has been declared to be its highest priority.

The Charter's own Explanatory Report provides an outline of the background history of the Charter's own origins within the institutions of the Council of Europe, starting with the Council's demonstration of 'its appreciation of the importance of local authorities by establishing for them a representative body at European level which has since become the Standing Conference of Local and Regional Authorities of Europe'. The origins of the modern Charter are, however, often traced back to an earlier Charter created under the auspices of a different institution, the European Municipal Assembly, in Versailles in October 1953. This was the 'European Charter of Municipalities' which had itself emerged from what was known as the Seelisberg Declaration. Soon, however, the baton was picked up by the Council of Europe (and especially by its representatives of local and regional government) and after an extremely protracted process of debate and negotiation, the text of what became the modern Charter was agreed and opened for signature in 1985. One deliberate decision

made was that the Charter should indeed take the form of a binding international treaty rather than a mere aspirational declaration of intent. In the period since 1985, 44 of the 47 member states of the Council of Europe have signed and ratified the Charter.

THE CHARTER'S PROVISIONS

It may be valuable to set out in full the Charter's preamble:

'The member States of the Council of Europe, signatory hereto,

> Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;
>
> Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;
>
> Considering that the local authorities are one of the main foundations of any democratic regime;
>
> Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;
>
> Considering that it is at local level that this right can be most directly exercised;
>
> Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;
>
> Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;
>
> Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of

> autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,
>
> Have agreed as follows:'

Thus, it is in the preamble to the Charter that its aims and objectives are made clear. There it is declared that 'local authorities are one of the main foundations of any democratic regime'; that the 'existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen'; that 'the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power'; and that 'this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment'. It is to the pursuit of these ideals of local democracy and autonomy that the substantive provisions of the Charter are devoted. The Charter is a sort of Bill of Rights – for local authorities, rather than for individuals.

The Charter's substantive provisions seek to protect what are presumed to be the essential components of local autonomy. The principle of local self-government is to be recognised in domestic legislation and, where practicable, in the constitution (Article 2) and local self-government is stated to denote the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs (Article 3). Public responsibilities are generally to be exercised by those authorities which are closest to the citizen - an early articulation of the principle of subsidiarity which has, since 1985, achieved much wider recognition across Europe - and the powers of local authorities are normally to be full and exclusive (Article 4). The boundaries of local authorities should not be changed without prior consultation with local communities (Article 5). Local authorities should be able to determine their own internal administrative structures (Article 6) and the conditions of office of local elected representatives should provide for the free exercise of their functions, including the reimbursement of appropriate financial compensation for their expenses (Article 7). Any administrative supervision of the activities of local authorities should be exercised only in cases provided for by the constitution or by statute and should, in any event, normally aim only at ensuring compliance with the law and with constitutional principles

(Article 8). Very importantly, local authorities should be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers; resources should be commensurate with responsibilities; part at least of these resources should derive from local taxes and charges for which authorities can determine the rate; there should be financial equalisation between authorities; and, as far as possible, grants to local authorities should not be earmarked for the financing of specific projects but should be general in nature (Article 9). Local authorities must have the right to associate with each other and to co-operate to carry out tasks of common interest (Article 10). Authorities must have the right of recourse to judicial protection of their rights under the constitution and law (Article 11).

As is the case with other international treaties, the Charter offers the opportunity to ratifying states to make declarations determining the extent of their commitment to the treaty's terms. This has a special significance in the case of the Charter because, in addition to designating which of their local (and, if they wish, regional) authorities are to be beneficiaries of the Charter's terms, states are given a very generous opportunity to choose how many of the Charter's substantive terms are to be adopted by them as binding. As a part of the process of compromise between states as the Charter's terms were negotiated, states have been permitted to select as few as 20 of the total of 30 paragraphs of the Articles of Part 1 of the Charter, ten of which must be chosen from a list of 14 paragraphs (presumed to be the most important). In practice, however, many states have declared themselves bound by the entire Charter, although others have been much more selective.

IMPLEMENTATION AND ENFORCEMENT

Many of the terms of the Charter were deliberately cast in language which was both general and rather vague. We have also seen that states were given a certain latitude in the degree to which they signed up to the Charter's obligations. Subject to these qualifications, however, it was intended that the Charter should be treated as imposing real and binding obligations on ratifying states. It was no mere declaration of intent. No mere symbol of the ratifying states' democratic aspirations. The Charter was intended to be a serious guarantee of the autonomy rights which it proclaimed for local authorities. On the other hand, the Charter, unlike the ECHR, provides no Strasbourg-based court in which the Charter's rights may be vindicated. Instead, the expectation was that the principal means whereby those rights might be enforced would be through the Council of Europe's own monitoring of the application of the Charter

and the collective pressure of the Council's members which could be brought to bear. Those monitoring procedures and, in particular, the lead role of the Congress of Local and Regional Authorities in them are discussed below.

However, another possibility was that the Charter might become enforceable (on the initiative of local authorities themselves or otherwise) in the domestic courts of the countries to which it applied. There is no direct parallel between the Charter and, for instance, the ECHR and even less the EU Treaties but those regimes have, in their different ways, produced rights and obligations which are now to be regarded as, first and foremost, enforceable in the domestic courts of the member states. The extent to which that might also be the case, even if to only a limited degree, in relation to the Charter should also be considered.

We have already taken note of Article 11 of the Charter which provides for the 'legal protection of local self-government' in the form of a right of recourse of local authorities to a 'judicial remedy in order to secure a free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation'. This is not, however, a provision which purports to make the Charter's own terms (or those to which an individual state has acceded) directly enforceable in the domestic courts of a state. It does not in itself incorporate the Charter. What has to be examined, therefore, is the extent to which the Charter, simply by virtue of its status as an international treaty, is capable of achieving domestic recognition by courts. And that is a question which has been raised within the Council of Europe at a number of points in the Charter's history. Specifically it has been the subject of Recommendations and Resolutions of the Congress. In 1998[2] the Congress issued a Recommendation[3] on the incorporation of the Charter into the legal systems of ratifying countries and on the legal protection of local self-government. The Recommendation drew on the (Woehrling) report 'The Reception of the European Charter of Local Self-government in the Legal Systems of Ratifying Countries'[4] which insisted that the Charter 'should not be regarded as a set of non-binding recommendations but as an international treaty with legal force establishing duties for the states that have ratified it and rights for the local authorities belonging to those states'; that several Charter provisions

[2] Already by 1994 a Congress Recommendation on monitoring the implementation of the Charter (Recommendation (2) 1994) had noted that 'recourse to domestic courts in cases of non-conformity of national legislation with the Charter is not always possible'.
[3] Rec 39.
[4] CPL/GT/CEAL(3)22.

should be regarded as directly applicable legal rules; that other provisions must be interpreted in the light of Charter monitoring already carried out;[5] and that it was essential to incorporate the Charter into the domestic legal system by means of a formal acknowledgement of incorporation.

More recently, in 2010, the Congress returned to the question of incorporation and a further report was commissioned from a team headed by Professor Francesco Merloni, Chairman of the Group of Independent Experts. It is anticipated that this may make (rightly or wrongly) updated recommendations for the heightened recognition of the Charter in domestic legal systems.

Quite apart from formal legal recognition in domestic law, however, it also has to be borne in mind that the Charter may have a *political* effect domestically – for instance, if invoked by local authorities in their negotiations with central government. They can hope to hold governments to their international obligations.

But, as with any other treaty regime, it must be primarily to the mechanisms available at the *international* level that one will look for the most authoritative form of enforcement. As the Charter's Explanatory Report concedes, however, the 'Charter does not provide for an institutionalized system of control of its application, beyond a requirement for parties to supply all relevant information concerning legislative or other measures taken for the purpose of complying with the Charter'.[6] There is, therefore, nothing remotely equivalent to the European Court of Human Rights (or indeed the European Court of Justice). There is no provision at all in the Charter for either a tribunal to resolve alleged breaches or for anybody to take up the case of those claiming infringement of their Charter rights. There is no Compliance Committee, equivalent to that established under the Aarhus Convention. The Explanatory Report does recall that 'consideration was given to setting up an international system of supervision analogous to that of the European Social Charter' but instead it was felt possible to dispense with complex new supervisory machinery, given the existence already of the predecessor to the modern Congress. And, indeed, monitoring of Charter implementation by the Congress is the mechanism which has been adopted. The principal component is country-by-country scrutiny, the essential elements of which are (1) the selection of the

[5] For monitoring, see below.
[6] General Remarks.

country to be monitored; (2) the selection and appointment from the membership of the Congress of a rapporteur or rapporteurs; (3) the nomination also of a member of the Group of Independent Experts and a member or members of the Congress Secretariat in support of the rapporteurs; (4) the arranging and undertaking of a visit or visits to the country to gather information and opinion; and (5) the preparation of a report and recommendation for discussion and approval by the Monitoring Committee of the Congress and then their adoption and publication by the Congress itself. As of 2011, practically all ratifying states had been monitored at least once.

PROBLEMS OF INTERPRETATION AND APPLICATION

Using the procedures described in the previous section, the systematic monitoring of the states' performance under the Charter is, on the face of it, the same sort of activity that one encounters with other forms of treaty-based (or indeed constitutional) review. It is a matter of matching state law and practice against the terms of the Charter to establish whether the prescribed standard is being maintained. Questions of interpretation are necessarily involved. In the case of the Charter, two considerations combine to produce, in the substantive provisions (discussed above), language which, at key points, is difficult to interpret and apply. One is the linguistic generality necessary to accommodate the great variety of institutional tradition and practice across Europe. It is, of course, the declared ambition of the Charter to achieve exactly that general application but it is achieved at the price of abstraction and generality. The second, related, consideration is the reluctance of the founding states of the Charter to create too big a stick for their own backs. There was a need for a substantial 'margin of appreciation' to be accorded to them. What this has produced is language, at key points in the Charter, which is either expressly protective of state interests or which, through its generality, renders the limits of particular Charter standards so imprecise as to make hostile interpretation very difficult to sustain. Thus, in Article 3(1), the concept of local self-government is defined as the 'right… within the limits of the law, to regulate and manage a substantial share of public affairs'. 'Within the limits of the law' is a phrase used elsewhere – for instance, its use in Article 4(2) in relation to the right of local authorities to 'have full discretion to exercise their initiative' – and it is far from clear to what extent it is intended to, or does in fact, restrict the scope of the Charter right. And who, in monitoring mode, would presume to declare what actually amounts to a 'substantial share' of public affairs? Clearly a local government system which gave virtually no powers to local authorities should fail the test but, beyond that, what can be said, bearing in mind that, in many countries, local

authorities generally have nothing like the range and weight of functions familiar in, for instance, the United Kingdom or the Scandinavian countries?

Elsewhere in Article 4 there is a softening of the provision made by the use of such language as 'generally' and 'normally' and 'insofar as possible'. The important provision in Article 4(4) requiring powers to be 'full and exclusive' is qualified not only by 'normally' but also by 'except as provided for by the law'! In terms of the Charter, the state has apparently only to ensure that the undermining or limiting of local authority powers is done by the law to ensure Charter compliance. Similarly, Article 6(1), which is designed to ensure local authority freedom to 'determine their own internal administrative structures' is subject to the proviso 'without prejudice to more general statutory provisions'. The requirements of Article 7(2) for financial compensation for councillors are hedged about with the language of 'appropriateness'. And there are many more such instances.

Quite apart from the question of the non-specificity of much of the Charter's language and the lack of an international tribunal for its enforcement, it is quite reasonable to raise other questions about how well it can be applied across the great range of nations that now constitute the family of the Council of Europe. The Charter has never, of course, been intended to provide the basis for the comparative ranking of the extent to which the different member states comply. In a comparison between one country and another, it is unlikely that their relative degrees of Charter compliance could provide a meaningful analysis. But, for the Charter to maintain a significant degree of credibility, it has to be possible to demonstrate that it can be applied across a great range of national governmental situations. This is also, of course, by way of comparison, a characteristic which is assumed to be true of those treaties which guarantee individual rights. Despite the different histories of the ratifying states, and their different social, legal, political and cultural conditions, it is broadly assumed that the rights of individual human beings within those states can be assessed against the single set of standards of the ECHR. The Strasbourg Court can make its way through the surrounding conditions to make judgments on the condition of the single individual located within them. It does not matter, for instance, whether he or she inhabits a small or large country nor what governmental institutions are deployed there. Although there will always be a surrounding 'social' element in the judgment made, the legal question of whether an individual's rights are, on balance, being infringed can be meaningfully and fairly objectively assessed. There may, it is true, be recourse to the principle of the 'margin of appreciation' which enables the

Court to give the benefit of the doubt to a state and this can be the route to admitting the relevance of surrounding conditions to the determination of a case in circumstances where there is a degree of ambiguity. But, in general, the principle that the autonomous rights of the individual can be independently vindicated, whatever those surrounding conditions, shines through.

How far, on the other hand, can this be true of the right to autonomy of local authorities? It may, at the most general level, be possible to assert, in the Charter's preamble, that 'local authorities are one of the foundations of any democratic regime' but it is much less clear that a principle of such generality can be given, in the Charter's substantive provisions, the purchase it needs to ensure the application of its more specific standards. A 'local authority' does not have the universal set of institutional characteristics which identify the essence of an autonomy worthy of protection. Instead, a local authority's autonomy will inevitably be much more situation-dependent. Questions may be asked as to what are the relevant conditions that vary most across Europe and which may create the greatest comparative difficulties. Some that might be considered relevant are (1) the historical development of the state and its system of local government; (2) the size of the state; (3) its federal/non-federal character or sub-division into regions; and (4) the 'tradition' of local government eg the general strength of local powers, the degree of privatisation of local services, the extent of 'delegation' of state powers to local authorities and the arrangements for the state supervision of those authorities.

Taking these in turn and starting with the history of the state, the point that is most repeatedly and most significantly made is that the Charter was originally devised for a very different Europe - the Europe that was largely western Europe (including, of course, Turkey, and Cyprus) of the pre-1989 era. The Charter was drawn up on the assumption that most member states of the Council of Europe would have little difficulty in demonstrating their compliance with it. No one imagined that the Charter would soon be pressed into service as a means of providing standards of local democracy and as a measure of the transition to democracy of countries whose recent history had been dominated by the intense centralism of the communist systems. In some states, there had never been an experience of genuinely autonomous local government. In the period since 1989, the select group of 20 'western' countries have been joined by a group of others that have now achieved membership not only of the Council of Europe but also of the European Union, others that are candidates for

accession to the Union, and others which aspire to that condition. Others, however, for instance Russia and other parts of the former Soviet Union including the states in the Southern Caucasus, are not in these groups; and governmental conditions are hugely different from those in the pre-1989 Council of Europe member countries. But the Charter has been ratified by them all. A quite reasonable question to ask is whether the benchmarks of autonomy that the Charter offers can serve as a useful measure across such a broad spectrum of recent historical experience.

Another measure of difference of the Charter states is their size. Once again, the contrast with the ECHR is an apt one. When one addresses the condition of individual human beings, the reasonable assumption can be made that the minimum standards to be applied should not vary according to the size of the country in which the individuals live. In both Poland, Turkey and Russia, on the one hand, and Cyprus and Malta, on the other, prison conditions or the efficiency and justice of criminal trials can plausibly be measured by the same standards, so far as the impact on individual rights is concerned. Arguably, however, it is different with local democracy where, inevitably, so much depends upon the operation of local self-government as a system and where systems tend to vary very greatly according to their size. The size of a country may not directly determine the size of local government units - many large countries, France for example, have had a tradition of mainly small authorities[7] - but the relationship between the two levels of government and, therefore, the impact on local autonomy which is the product of that relationship are almost certain to be different. Nothing in the Charter speaks directly of the size of the countries to which it applies but it may be difficult to imagine how its standards can apply equally in all.

Perhaps more important still are the differences, for the purposes of Charter application, between, on the one hand, unitary states and, on the other hand, those states such as Germany, Switzerland, Austria and perhaps Belgium which are in the tradition of classical federalism, or those other states which have adopted fairly strong forms of devolved regional government, such as Italy, Spain or the United Kingdom. Once again, the Charter itself is silent on this matter. It is well understood and, indeed, made clear in the Charter's Explanatory Memorandum[8] that, whilst in unitary states, the autonomy of local authorities is to be measured by reference to their relationship with the institutions of the central

[7] France has over 36,000 communes.
[8] Eg in relation to Art 8 (supervision).

government, the relevant relationship in federal or quasi-federal systems is likely to be with the 'land', 'state' or devolved region. But whilst this expresses well enough the formally correct position, there are still clear differences between the functioning of states in which local authorities constitute all the decentralised government that there is and, on the other hand, those states in which democratic self-government operates at a number of levels. In the latter group there may be different pressures on the autonomy of local authorities simply because of the competition with the regional level for political space. Once again, the Charter is formally blind to these variations in governmental practice but it cannot be doubted that they may have a bearing on the degree of local autonomy the Charter is intended to protect.

The fourth characteristic varying from country to country was referred to above as the 'tradition' of local government. This may sound less convincing as an obstacle to the application of the Charter. It might be said that the whole point of a general set of rules and principles is that they can be applied, whatever the local practice or tradition of local government may be. The Charter is the means of establishing whether such practices or traditions are compatible with the principles of local autonomy, and, if not, questioning their validity. It must not bend to accommodate local circumstances. But there is, in practice, a difference in the application of Article 8 of the Charter (about administrative supervision) to those countries which have a formal institutionalised system of state supervision in place and those which do not. The same Article distinguishes between powers 'delegated' to local authorities and those powers which are the authorities' own. Such a distinction has more or less relevance depending on whether a state does or does not make use of the practice of 'delegation'. Whether or not, in the application of Article 3, local authorities have the power to regulate and manage a 'substantial share of public affairs', may depend on the general disposition of power within the state, providing, for instance, for greater or lesser degrees of service privatisation (something which has changed greatly across Europe since 1985) or for the use of other specialised forms of public provision such as a national health service. It is certainly the case that one effect of such variations has been the reliance of some countries on relatively large numbers of very small local authorities whilst others have smaller numbers of much more powerful authorities. Both situations appear to be capable, in principle, of being Charter-compliant. But they do reflect very different national approaches to the ways in which local self-government may be deployed. And, perhaps more controversially, they may reasonably result in differences of approach to the question of how far the business of local authorities can be legitimately controlled by central government. It may be said that central

governments are not justified in interfering with the decision-making of local authorities which, in any event, perform only very limited tasks of their own. Weak authorities should be allowed to enjoy their autonomous powers and the truth is that central government has little motivation to interfere with their operation. On the other hand, where large and powerful authorities perform significant functions such as the provision of secondary school education, spend a significant proportion of public revenues, have a significant capacity to affect national policy goals, and also have the capacity through the decisions they make to create unevenness of service provision across the country, there is a much stronger inclination on the part of central governments to intervene in the interests of a degree of equality and uniformity - whether by strong policy direction, financial controls or the monitoring of standards of service delivery. Arguably, the grant of strong local powers subject to a degree of central restraint produces the same overall degree of local 'autonomy' as the grant of weak local powers in the first instance. But that is not an argument which fits well with the apparent demands of the Charter, which itself makes no allowance for the relative strength of local authorities when it forbids policy-based administrative supervision.

This is a difficulty which is encountered in an acute form in the United Kingdom where there is undoubtedly a history of local authorities with broad powers and with responsibility for about 25% of total national public expenditure but where there are also corresponding concerns about the degree of central government intervention that these conditions have attracted. Should the United Kingdom be criticised, in Charter terms, for having relatively strong local government subject to relatively intrusive central controls rather than having a much weaker form of local government - but with correspondingly less central control - in the first instance?

EXTENDING THE CHARTER

The notion of extending the scope of the European Charter of Local Self-government can be given three different meanings. The first is the capacity of the Charter, like other treaties, to extend (or amend) its own coverage by the addition of supplementary agreements or Protocols entered into by some or all of the parties. One such Protocol – an additional Protocol on the right to Participate in the Affairs of a Local Authority – has, perhaps rather anomalously in the context of the Charter's overall purposes, recently (in 2009) been adopted. Two other draft Protocols had earlier been proposed by the Congress but were not

progressed by the Council of Ministers. They had been designed to strengthen and make more explicit the Charter's terms in various ways.

Secondly, there has been a Congress project to create, at the regional level, a sister Charter of Regional Self-government. That initiative was not, in the event, acceptable to the Council of Ministers Instead a non treaty-based instrument – the Reference Framework for Regional Democracy - was adopted in 2009.

Thirdly, another form that Charter extension has taken has been in the adoption of Charter ideas at the global level or in relation to other continents. Replacing an earlier version from 1985, a Worldwide Declaration of Local Self-Government was adopted by the International Union of Local Authorities ('IULA').[9] In its preamble, this declaration *inter alia* welcomed the success of the European Charter and proclaimed a series of 'principles of local self-government…to serve as a standard to which all nations should aspire in their efforts to achieve a more effective democratic process, thereby improving the social and economic well-being of their populations'. The structure of the European Charter is evident in the structure of the Declaration, as indeed is much of the text.

Subsequently the Congress itself became directly involved in a process instigated, once again, by IULA as a part of work undertaken by the United Nations Commission on Human Settlements (UNCHS Habitat) in the direction of a World Charter of Local Self-government.[10] The Congress first offered an opinion on an initial draft Charter in 1999 and then on a second draft in 2001. The draft was closely modelled on the European Charter and the Worldwide Declaration and was constructed in the form of a treaty inviting signature and ratification by states world-wide, including the possibility of subscribing to a minimum of 30 of its paragraphs including twelve from a specified core. Authentic versions of the text were to be in Arabic, Chinese, English, French, Russian and Spanish.[11]

The draft World Charter did not, however, make progress within the UN (Habitat) framework. Instead, a less ambitious project was launched to produce, eventually, the Habitat

[9] An organization which, in 2004, joined with the World Federation of United Towns and Cities to become (the World Organization of) United Cities and Local Governments.
[10] The story is told in appendix 1 to Opinion 17(2002) on the second draft World Charter of Local Self-Government (CPL(9)3(2002). See also 'Towards a World Charter of Local Self-Government': Joint consultation document UNCHS (1998).
[11] See UNCHS Paper HS/C/PC.1/CRP.7 (2000) appended to Opinion 17 (above).

programme's 'International Guidelines on Decentralization and the Strengthening of Local Authorities'. The Guidelines cannot bind states, although states are urged to respect them. The content of the Guidelines also presents a much weaker pattern of obligations. So, for instance, subsidiarity is proclaimed as a rationale for decentralization. In many areas, however, 'powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners… to develop to the point where they can be effective partners with other spheres of government and thus contribute fully in development processes'. Elsewhere there is some emphasis (under the rubric of 'administrative relations between local authorities and other spheres of government') on the need for constitutional and legislative recognition of local authorities and their powers; restrictions on supervision; and then on the need for sufficient financial resources – including the requirement that resources be commensurate with tasks and responsibilities. There is even a revival (retained from earlier drafts of the World Charter) of the requirement that any new transfer or delegation of tasks or responsibilities should be accompanied by 'corresponding and adequate financial resources' – a requirement dropped from the European Charter at the drafting stage. And the Guidelines require that a 'significant proportion' of financial resources should derive from sources whose rate is to be determined by local authorities. Other provisions demand citizen participation in the policy-making process.

At the sub-global level, there has been activity in some states in the direction of 'declarations' about local self-government – see, for example, the Australian Local Government Association's 'Declaration on the Role of Australian Local Government' of 1997. And one regional development of interest has been the approval in 2009 of the Ibero-American Charter of Local Self-government by the forum of Ibero-American local governments, with the ambition that it be adopted by a Summit of Ibero-American Heads of State and Government. The Charter (which refers to the European Charter in its Preamble) contains a list of obligations which draws (in a rather abbreviated form) on the European Charter. Because of the European membership of the organization of Ibero-American states (Andorra, Portugal and Spain) an interesting overlap of international obligations may emerge.

ISSUES RAISED

In the light of (1) the apparent success of the Charter in Europe and (2) the apparent capacity of the Charter to accommodate the very great variety of conditions of local government on

that continent and (3) the capacity of the content of the Charter to travel much more widely as a source of normative guidance (even if without Treaty status and without the enforcement mechanisms of the Congress), it is reasonable to pose some rather obvious questions.

How, in the first place, is this phenomenon to be explained? Is it not extremely surprising that the concept of local self-government has turned out to have such a robustness, such an ability to intervene so intrusively upon the freedom of states to regulate their own institutional arrangements? That is a pertinent question in relation to European states themselves but it becomes even more compelling for states in other parts of the world in relation to the provisions of a Charter devised in Europe. There are strong reasons for believing that the European experience may be unique. The Charter's content was created by representatives of European states in the light of their own Second World War inheritance and the Charter has since flourished under the conditions which followed the demise of the Soviet empire in Europe and the imperative in many of the new states to join the European Union and for whom local autonomy was an entry requirement. But perhaps the Charter has also captured values of institutional organisation which have a much wider universality? Could it be embraced, for instance, by the Republic of Korea?