The European Convention on the Compensation of Victims of Violent Crimes: A Decade of Frustration

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Abstract

In July 1983, after nearly a decade of discussion, the Council of Europe adopted the European Convention on the Compensation of Victims of Violent Crimes. The Convention seeks to harmonize Europe’s existing crime victims compensation schemes by providing a set of guidelines for the treatment of domestic and foreign crime victims. The Convention thereby seeks to establish consistent victims compensation schemes in its member states. This Note argues that the Convention fails to address adequately the problem of cost, thus failing in its goal of uniformity. Part I of this Note discusses the theory of victims compensation and the Convention. Part II analyzes the various compensation provisions of several Council of Europe member states. Part III argues that the inadequacy of funding for victims compensation is frustrating the Convention’s goal of uniformity and proposes an amendment to the Convention to rectify this problem. This Note concludes that the Convention will only achieve its goal of unifying the compensation of victims if it is amended.
NOTES

THE EUROPEAN CONVENTION ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES: A DECADE OF FRUSTRATION

INTRODUCTION

As international crime rates have soared, so has the need to compensate victims of crime. In July 1983, after nearly a decade of discussion, the Council of Europe adopted the European Convention on the Compensation of Victims of Violent Crimes (the "Convention"). The Convention seeks to harmonize Europe's existing crime victims compensation schemes by providing a set of guidelines for the treatment of domestic and foreign crime victims. The Convention thereby seeks to establish consistent victims compensation schemes in its member states.

1. COUNCIL OF EUROPE, ECONOMIC CRISIS AND CRIME 10 (1985). The Council of Europe compiled detailed statistics on crime in its member states after World War II. Id. at 5-6. The Council of Europe conducted the study to correlate the relationship between a plunging economy and increased crime rates. Id. at 6. Additionally, some commentators assert that crime rates have escalated because "there are now far more cars and goods for people to steal." More Fines, but Longer Jail Terms Promised for Thugs, The Daily Telegraph, Feb. 7, 1990 at 8.

2. Statute of the Council of Europe, May 5, 1949, 87 U.N.T.S. 103 [hereinafter COE Statute]. The Council of Europe was formed on May 5, 1949 in order to restore Europe to a prosperous and influential continent in the post-war world. Id. art. 1, 87 U.N.T.S. at 104. The Council of Europe is currently comprised of 21 member states including: Austria, Luxembourg, Belgium, Cyprus, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. Y.B. Int'l Org. DO/448 (1983-1984). The countries marked with an asterisk are also members of the European Community. Id.


The European Convention on the Compensation of Victims of Violent Crimes, based on Resolution (77) 27, pursues the following aims:

a. To harmonise at European level the guidelines (minimum provisions) on the compensation of victims of violent crimes and to give them binding force.

States ratifying the Convention will have to comply with the principles laid down, either by amending existing legislation and administrative ar-
states. Contrary to the Convention’s intentions, however, many states fail to compensate crime victims, in part because compensation schemes are very costly. To date, only ten member states have signed the Convention and only six have ratified it.

This Note argues that the Convention fails to address adequately the problem of cost, thus failing in its goal of uniformity. Part I of this Note discusses the theory of victims compensation and the Convention. Part II analyzes the various compensation provisions of several Council of Europe member states. Part III argues that the inadequacy of funding for victims compensation is frustrating the Convention’s goal of uniformity and proposes an amendment to the Convention to rectify this problem. This Note concludes that the Convention will only achieve its goal of unifying the compensation of victims if it is amended.

I. COMPENSATION TO VICTIMS AND THE EUROPEAN CONVENTION ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES: HISTORICAL BACKGROUND AND GOALS

Once deemed a forgotten figure of the criminal justice sys-
tern, the crime victim is now being recognized. Legislative schemes to compensate victims of crime have grown in the last thirty years. In 1964, the United Kingdom established the first victims compensation scheme in Europe, the Criminal Injuries Compensation Act. Under the scheme, victims can recover damages for most injuries received from a criminal act, including compensation for medical expenses, loss of earnings, pain and suffering, and pecuniary losses to dependents of crime victims who have died as a result of a crime. Several countries, including France and Germany, also enacted vic-

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9. See Council of Europe, *Assistance to Victims and Prevention of Victims' Rights* 14-16 (1988) [hereinafter Assistance to Victims Report]. The need to recognize the victim in the criminal justice system has been given serious consideration for several reasons. Id. Crimes often have serious debilitating effects on victims that extend beyond physical injury. Id. at 14. Victims may suffer from haunting after-effects and psychological trauma. Id. In addition, victims often suffer what is called "secondary victimisation" when they testify against the offender in court and must relive the crime. Council of Europe, *The Position of the Victim in the Framework of Criminal Law and Procedure* 15 (1985) [hereinafter Position of the Victim Report].


14. Gesetz über die Entschädigung für Opfer von Gewalttaten (Opferentschädigungsgesetz - OEG) 1 BGB 1.1 (W. Ger.) (Act on Compensation for Victims of
A. Theory of Victims Compensation

Criminologists traditionally pose two arguments in favor of establishing crime victims compensation schemes. First, compensation schemes are favored on the basis of equity and social solidarity. This theory states that crime victims are victims of society and should be compensated by society for injuries they sustain. An extension of this theory proposes that governments have a responsibility to compensate victims because law enforcement officials fail to prevent crime from being committed.

The second argument for the adoption of state victims compensation schemes is that other possible sources of compensation have proven inadequate to compensate fully the victim. Governments traditionally look to three alternative sources of compensation: civil suits against the criminal, health and accident insurance policies, and expedited social security benefits.

Civil suits tend to be of limited use because the criminal is...
often unknown or unapprehendable. Moreover, even if known and apprehendable, the criminal is typically unable to pay a civil award to the victim. Civil suits are also costly to the victim, who may not want to risk bearing the cost of legal fees for an uncertain result, and thus may choose not to file suit.

Additionally, comprehensive insurance policies are often unavailable. Most carriers are hesitant to compensate the victims of intentional criminal acts because they fear that alleged victims might file fraudulent claims. Even when these insurance policies are available, however, they are often too costly to the victim and thus unobtainable.

Social security benefits are likewise inadequate as a substitute for victims compensation schemes. Under this approach, states grant periodic social security payments to crime victims.

21. 1978 REPORT, supra note 10, at 13. In the United Kingdom, for example, compensation recovered by the offender through civil suits and other sources is minimal. 1989 U.K. ANNUAL REPORT, supra note 11, at 23. In fact, the amount of compensation received by victims from offenders has decreased while crime has increased. Id.


23. Id. (discussing unsuccessful outcome of civil suits).

24. Id. at 20. Two types of insurance policies are relevant here. First, an individual may obtain private insurance against assault. Id. This type of insurance can be included in an individual's general household insurance policy. Id. Second, an individual may obtain an extension of civil liability insurance to intentional acts. Id. This second type of insurance regularly exists in the field of motor vehicle insurance. Id. Carriers, however, are hesitant to expand this type of insurance coverage because of the possibility of fraud. Id.

In 1988, the Council surveyed its member states regarding the insurance coverage pursued by individuals in respective states. ASSISTANCE TO VICTIMS REPORT, supra note 9, at 32-33. The survey revealed figures for insurance covering non-personal injuries, but did not include figures on private insurance against assault, or civil liability insurance for intentional acts. Id. at 33. Approximately eighty percent of households in the Federal Republic of Germany are insured against burglary and seventy percent of car owners are insured against theft. Id. In the United Kingdom, these figures are approximately eighty-four percent and ninety-five percent respectively. Id. The survey did not include figures on private insurance against assault, or civil liability insurance for intentional acts.

25. ASSISTANCE TO VICTIMS REPORT, supra note 9, at 33. "This type of insurance raises moral problems as well as legal and practical difficulties." 1978 REPORT, supra note 10, at 20. "Most legislations exclude from the field of insurance the consequences of intentional acts. Such exclusion is traditionally based on moral grounds and on the fear that certain people may be incited to commit crimes." Id. at 19.


27. Id. at 20.
victims, either to reimburse them for ongoing medical expenses or to compensate them for loss of earnings. Social security funds alone, however, generally do not satisfy the demand for compensation awards. 

Alternatively, some criminologists argue against the establishment of crime victims compensation schemes. The primary argument against the establishment of victims compensation schemes is the tremendous cost they impose on state treasuries. In 1988, the Council of Europe surveyed its member states regarding their views of victims compensation schemes. Some states emphasized that the enactment and operation of compensation schemes is handicapped by lack of funding. Other states reasoned that the funds distributed to crime victims under victims compensation schemes may serve society better if used in crime prevention programs, rather than in attempts to remedy past injuries.

A second argument against the establishment of victims compensation schemes is that they encourage public carelessness. Some states fear that individuals will not take precau-

28. Id.
29. Id. The 1978 Report notes that it is, however, very difficult to determine to what extent the appropriate payments could be made to victims in this particular framework. Although social security schemes could probably be adjusted so as to cover a victim's medical expenses, and to some extent loss of earnings, it is doubtful whether they are properly equipped to cover damage usually assessed by the courts, namely other financial losses and the pretium doloris.

30. Id. at 20.
31. Id. at 18. In 1989, over UK£76 million was expended for crime victims compensation in the United Kingdom alone. 1989 U.K. ANNUAL REPORT, supra note 11, at 8.
32. ASSISTANCE TO VICTIMS REPORT, supra note 9, at 24-37 (discussing member states' views).
33. Id. at 32. States that expressed this concern included the Netherlands and the United Kingdom, "particularly when the assistance services are being expanded." Id. Additionally, Greece, for example, has not established a national compensation scheme for crime victims because of the expense. Letter of Prof. Dr. Dionysios D. Spinellis, Greek delegate to the Council of Europe, Feb. 14, 1990 (copy on file at the Fordham International Law Journal office) [hereinafter Spinellis Letter].
34. 1978 REPORT, supra note 10, at 18. The 1978 Report notes that "the financial outlay would be better spent on preventing crime (increased police manpower, more and better technical aids for the police). The state has a duty to give priority to this task rather than to remedy the effects of crime." Id.
35. Id.
tions to prevent criminal activity if they can rely on a paternalistic state.\textsuperscript{36} Furthermore, it is argued that victims will no longer initiate civil suits against criminals if they can be compensated by the state, because the state is likely to have a much “deeper pocket” than the criminal.\textsuperscript{37}

B. The Council of Europe and the Compensation of Victims of Violent Crime

1. History of the Convention

In the 1960s, several member states of the Council of Europe established victims compensation funds.\textsuperscript{38} As a result of these developments, the Council of Europe Committee on Crime Problems (the “CECCP”) decided in 1970 to address the topic of crime victims compensation.\textsuperscript{39} In 1977, a CECCP subcommittee developed several principles on the compensation to crime victims, which were adopted by the Council as Resolution (77)27 on the Compensation of Victims of Crime (“Resolution (77)27”).\textsuperscript{40} Resolution (77)27 advised member states to establish victims compensation schemes that provide compensation to victims of intentional injuries who could not be compensated from other sources.\textsuperscript{41} Subsequently, various

\textsuperscript{36} Id. The report argues that “as such schemes are a form of paternalism, they might lead to an increase in crime, as offenders would lose all sense of responsibility and no longer care about their victims’ fate.” Id. It also argues that “[s]tate compensation schemes, especially if they covered damage to property, would make potential victims careless and discourage prevention efforts.” Id.

\textsuperscript{37} Id. The report notes that “[t]he victim would no longer have any incentive to co-operate in the prosecution of the offender.” Id.

\textsuperscript{38} See supra notes 70-142 and accompanying text (discussing establishment of victims compensation schemes in United Kingdom, France, and Germany); see also EXPLANATORY REPORT, supra note 4, at 4.

\textsuperscript{39} EXPLANATORY REPORT, supra note 4, at 1 (discussing Council of Europe’s need to compensate crime victims).

\textsuperscript{40} Resolution (77)27 on the Compensation of Victims of Violent Crimes, reprinted in 1978 REPORT, supra note 10, at 7-8 [hereinafter Resolution (77)27]; See EUROPEAN INTER-STATE CO-OPERATION IN CRIMINAL MATTERS, ch. XI, at 15 (E.M. Rappard & M.C. Bassiouni eds. 1984) (reprinting Resolution (77)27).

\textsuperscript{41} Resolution (77)27, reprinted in 1978 REPORT, supra note 10, at 7. Resolution (77)27 states that

the possibilities of compensation which are available to victims are often insufficient, in particular, when the offender has not been identified or is without resources... the state should contribute to compensate: a. anyone who has sustained severe bodily injury as a result of crime, b. the dependents of any person who died as a result of crime.

Id.
Council of Europe member states, including France and the Federal Republic of Germany, enacted state compensation schemes. Their policies, however, were not consistent. At the same time, a greater movement of students, migrant workers, tourists, and others between member states increased the need to unify victims compensation schemes.

In 1981, the CECCP instructed its subcommittee, the Select Committee on the Criminal and Social Policy (the "Select Committee"), to draft a convention on the compensation of victims of violent crime. The Select Committee relied upon Resolution (77)27 as a basis for its draft. The CECCP approved the Select Committee's draft and its explanatory report at its thirty-second plenary session. The Committee of Ministers of the Council of Europe adopted the Convention in

42. See supra notes 10-14 and accompanying text (discussing member states that have enacted victims compensation schemes).
43. See infra notes 146-49 and accompanying text (discussing inconsistencies among state victims compensation schemes).
44. EXPLANATORY REPORT, supra note 4, at 6 (discussing increased mobility of persons throughout Europe).
45. Id.
46. Id. The Select Committee met twice in 1982: first on February 24-26, and later on September 29-October 1. Id. Mr. J.G. Schatzler of Germany chaired the Select Committee, and experts from France, Iceland, Italy, Luxembourg, the Netherlands, Portugal, Switzerland, Turkey, and the United Kingdom also participated. Id. at 7. Mr. H.J. Schneider from Germany and Ms. J. Shapland of the United Kingdom attended as consultants. Id. In addition, observers from Canada were present. Id.
47. Id.
48. The Council of Europe is divided into two bodies, the Committee of Ministers and the Consultative Assembly. COE Statute, supra note 2, art. 10, 87 U.N.T.S. at 108. Each member state is entitled to one representative to serve on the Council of Ministers. Id. art. 14, 87 U.N.T.S. at 110. The Committee of Ministers is responsible for representing the Council of Europe in accordance with articles 15 and 16 of the Council of Europe Statute. Id. art. 13, 87 U.N.T.S. at 110. Article 15 of the Statute states:
(a) On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by Governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary-General.
(b) In appropriate cases, the conclusions of the Committee may take the form of recommendations to the Governments of Members, and the Committee may request the Governments of Members to inform it of the action taken by them with regard to such recommendations.
Id. art. 15, 87 U.N.T.S. at 111. Article 16 of the COE Statute states additional duties of the Committee of Ministers:
June 1983.49 On November 24, 1983, the Convention was opened for signature.50 Ten of the Council of Europe's twenty-one member states subsequently signed the Convention, and as of December 1, 1990, six member states have ratified the Convention.51

2. The European Convention on the Compensation of Victims of Violent Crimes

The Convention strives to establish uniformity among victims compensation schemes in the member states of the Council of Europe.52 The Convention sets forth guidelines to use in enacting compensation schemes or to augment existing schemes.53

Article 2 of the Convention provides that compensation should be available to victims who have directly suffered physical injury from an intentional crime of violence,54 and to the

The Committee of Ministers shall, subject to the provisions of Articles 24, 28, 30, 32, 33 and 35, relating to the powers of the Consultative Assembly, decide with binding effect all matters relating to the internal organization and arrangements of the Council of Europe. For this purpose the Committee of Ministers shall adopt such financial and administrative regulations as may be necessary.

Id. art. 16, 87 U.N.T.S. at 111. The Consultative Assembly on the other hand debates matters that are within the scope of the Council of Europe's goals. Id. art. 22, 87 U.N.T.S. at 114. The Consultative Assembly subsequently presents its conclusions in the form of recommendations to the Committee of Ministers. Id.

50. Convention, supra note 3, Eur. T.S. No. 116, at 6 (setting forth date Convention was opened for signature).
51. See supra note 7 (listing signatory and ratifying states).
52. Convention, supra note 3, preamble, Eur. T.S. No. 116, at 2. The introduction to the Convention states:
The Member States of the Council of Europe, signatory hereto, Considering that the aim of the Council of Europe is to achieve greater unity between its members; . . .
Considering that it is necessary to establish minimum provisions in this field;
Having regard to Resolution 77(27) of the Committee of Ministers of the Council of Europe on the compensation of victims of crime, [h]ave agreed as follows . . .
The Parties undertake to take the necessary steps to give effect to the principles set out in Part I of this Convention.

Id. art. 1, Eur. T.S. No. 116, at 2.
53. Id. The Convention indicates that parties must take any necessary steps to give effect to the Convention. Id.
54. Convention, supra note 3, art. 2(1)(a), Eur. T.S. No. 116, at 2. The Convention specifies that compensable injuries must have resulted from intentional offenses
dependent of a victim who has died as a result of such a crime. Article 2 of the Convention further provides that states shall compensate crime victims only if compensation is unavailable from "other sources." Article 4 contains a partial list of the types of damages that are recoverable under the Convention, including loss of earnings, medical expenses, funeral expenses, and loss of maintenance for the dependents of deceased crime victims. Individual member states are left to determine the types and levels of compensation granted.

because these are particularly serious. Id. According to the Convention's Explanatory Report, intentional offenses include poisoning, rape, and arson. Explanatory Report, supra note 10, at 12. In addition, the injury must be directly attributable to the crime. Id. Victims of violent crimes may include "anyone injured or killed in trying to prevent an offense, or in helping the police to prevent an offense, apprehend the culprit or help the victim." Explanatory Report, supra note 10, at 13. Article 2 of the Convention states that "compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished." Convention, supra note 3, art. 2(2), Eur. T.S. No. 116, at 2. Minors or persons adjudged mentally incompetent, for example, may not be subject to prosecution. Explanatory Report, supra note 10, at 13. Nevertheless, the state may still make reparation to the victims of such crimes. Id.

55. Convention, supra note 3, art. 2(1)(b), Eur. T.S. No. 116, at 2. Article 2 states, "[w]hen compensation is not fully available from other sources, the State shall contribute to compensate . . . the dependents of persons who have died as a result of such crime." Id. The Convention does not mandate compensation for injuries unrelated to the crime or for injury to property; see Explanatory Report, supra note 10, at 12 (discussing limitations on types of compensable injuries).

56. Id. art. 2, Eur. T.S. No. 116, at 2. Article 2, section 1 states that "[w]hen compensation is not available from other sources the State shall contribute to compensate: a. those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence; b. the dependents of persons who have died as a result of such crime." Id. art. 2, § 1, Eur. T.S. No. 116, at 2. Other sources of victims compensation have traditionally been civil suits against the criminal, insurance, and social security benefits. See supra notes 20-29 and accompanying text (discussing these other sources). Commentators generally agree that government compensation must not replace compensation from other sources. Tsitsoura, The European Convention on the Compensation of Victims of Violent Crimes, in Heuni, Helsinki Institute for Crime Prevention and Control Affiliated with the United Nations 133, 134 (1983). According to Ms. Tsitsoura, "it must be stressed that the aim of the European Convention on the compensation of victims of violent crimes is not to replace compensation by the offender with State compensation." Id.

57. Convention, supra note 3, art. 4, Eur. T.S. No. 116, at 2. Article 4 states that "[c]ompensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependents, loss of maintenance." Id.

58. Id. art. 5, Eur. T.S. No. 116, at 3. Article 5 states that "[t]he compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be
The Convention itself, however, regulates the number of compensation awards through several limitations. Compensation may be refused based on the victim’s conduct or financial situation. Furthermore, states may reduce compensation by the amount received from other sources, or deny compensation if granting it would be contrary to public policy.

Article 3 provides for compensation to certain individuals who are victims of crimes committed outside of their country of domicile. This provision attempts to unify member states’ compensation schemes by providing compensation to victims granted.”

59. Convention, supra note 3, arts. 7-9, Eur. T.S. No. 116, at 3; see infra notes 61-63 (setting forth text of articles 7-9).

60. Id. art. 8(1), Eur. T.S. No. 116, at 3; see infra note 63 (setting forth text of article 8).

61. Id. art. 7, Eur. T.S. No. 116, at 3. Article 7 states in part that “compensation may be reduced or refused on account of the applicant’s financial situation.”

62. Id. art. 9, Eur. T.S. No. 116, at 3. Article 9 states that: [with a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

63. Id. art. 8, Eur. T.S. No. 116, at 3. Thus, if the victim is wealthy or is involved in organized crime, the victim will not be eligible for a compensation award. Id. arts. 7-8, Eur. T.S. No. 116, at 3. The Convention explicitly precludes an award to a victim who is involved in organized crime. Id. art. 8(2), Eur. T.S. No. 116, at 3. Article 8 states:

(1) Compensation may be reduced or refused on account of the victim’s or the applicant’s conduct before, during or after the crime, or in relation to the injury or death. (2) Compensation may also be reduced or refused on account of the victim’s or the applicant’s involvement in organised crime or his membership of an organisation which engages in crimes of violence. (3) Compensation may also be reduced or refused if an award or a full award would be contrary to a sense of justice or to public policy (“ordre public”)

64. Id. art. 3, Eur. T.S. No. 116, at 2. Article 3 specifies that “compensation shall be paid by the State on whose territory the crime was committed: a. to nationals of the States party to the Convention; b. to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.” This provision is important because foreigners contribute to a country’s economic and social development. Explanatory Report, supra note 10, at 13-14. For example, migrant workers are entitled to the same protection in this respect as nationals domiciled within a country. Id.
regardless of domicile. The compensation must be paid to the foreign victim by the Council of Europe member state in which the crime was committed, regardless of whether the victim's own member state would afford similar compensation.

II. THE STATUS OF COMPENSATION SCHEMES IN COUNCIL OF EUROPE STATES

The victims compensation schemes of Council of Europe member states can be classified into three categories. First are ratifying states with established compensation schemes such as the United Kingdom, Sweden and France. Second are non-ratifying states with compensation schemes such as Germany and Norway. Third are non-ratifying states lacking compensation schemes such as Greece and Turkey.

Moreover, compensation schemes themselves traditionally vary in four areas. These areas are the types of damages covered, the levels of compensation awarded, limitations on awards, and the compensation of foreign nationals.

A. States That Have Ratified the Convention

1. The United Kingdom

The United Kingdom ratified the Convention in 1990. It has had a compensation scheme in place, however, since 1964 under the direction of the Criminal Injuries Compensation

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66. Convention, supra note 3, art. 3, Eur. T.S. No. 116, at 2; see Explanatory Report, supra note 10, at 14. This provision is a departure from the principle of reciprocity, which holds that a state should not compensate foreign victims unless the foreign state would reciprocally compensate its victims. Convention, supra note 2, art. 5, Eur. T.S. No. 116, at 2; see Explanatory Report, supra note 10, at 14. The Convention departs from reciprocity in order to provide adequate compensation to migrant workers, whose contribution to a country's economic and social development is recognized. Explanatory Report, supra note 10, at 13-14. The minimum provisions of the Convention also allow a state to compensate tourists and nationals of states not parties to the Convention. Id. at 14.
67. See infra notes 70-113 and accompanying text (discussing ratifying states with established compensation schemes).
68. See infra notes 114-34 and accompanying text (discussing non-ratifying states with compensation schemes).
69. See infra notes 135-42 and accompanying text (discussing non-ratifying states without compensation schemes).
70. Notification, supra note 7, at 1.
Board (the "U.K. Board"). The U.K. Board accepts applications for compensation from crime victims within three years of the crime's commission. On receipt of the application, the U.K. Board initiates an investigation with inquiries to the police, hospital, employers, and any other sources able to provide information on and verification of the crime.

The U.K. compensation scheme has been regarded as a liberal approach. First, the United Kingdom compensates victims for injuries that occur in the United Kingdom regardless of domicile. The scheme compensates victims for a broad range of crime-related injuries from physical harm, pain and suffering, loss of earnings and earning capacity, to an injury as minimal as loss of clothing. Awards may also be made to survivors of a victim who died as a result of a crime. The Board allots damages in accordance with common law by setting the amount at what a civil court would award for a similar injury.

The U.K. compensation scheme also includes restrictions on awards. The compensation scheme places a minimum threshold of UK£750 on awards. Any injuries valued at less

72. Id. at 3.
73. Id.
74. See Generous Aid to Crime Victims, 104 The Times (London) Feb. 23, 1990, at 9, col. 5. According to David Waddington, Home Secretary in London, "Britain's compensation scheme for victims of crime is the most generous in the world, paying out far more than Germany and France." Id. Nevertheless, the United Kingdom still has problems with providing adequate victims compensation. Id.; see infra notes 86-91 and accompanying text (discussing United Kingdom's financial difficulties associated with providing victims compensation).
75. 1989 U.K. ANNUAL REPORT, supra note 11, at 32. The scheme covers injuries occurring in England, Wales, and Scotland or injuries occurring on an English, Welsh or Scottish vessel or aircraft. Id. Now that the United Kingdom has ratified the Convention, its domiciliaries can receive compensation from other ratifying states if the crime was committed in such state. Convention, supra note 3, art. 3, Eur. T.S. No. 116, at 2.
76. 1989 U.K. ANNUAL REPORT, supra note 11, at 29.
77. Id. at 19. Most often, the Board will allot an amount to cover funeral expenses. Id. Sometimes, the Board further exercises its flexibility and awards amounts to cover loss of financial support based on loss of earnings. Id. In 1989, for example, a decedent's wife was awarded UK£68,689 for funeral expenses and loss of financial support. Id.
78. Id.
79. See infra notes 80-85 (discussing restrictions in U.K. scheme).
80. 1989 U.K. ANNUAL REPORT, supra note 11, at 17. The threshold amount was raised in 1990 from UK£550 to UK£750. Id. It is estimated that the increase in the
than UK£750 are not considered. The injury must be personal and directly attributable to a crime of violence. The scheme also requires that other sources be exhausted before the U.K. Board may grant funds. Civil suits against the criminal, accident insurance policies, and social security benefits are traditionally examined. Another limitation precludes awards due to the conduct of the victim.

Despite these limitations, the United Kingdom has been very generous in its distribution of funds since the scheme's inception in 1964. Nevertheless, some regard the money expended as inadequate because the number of applications made to the U.K. Board is increasing at a much faster rate than the number of compensation awards granted by the Board. Currently, the U.K. Board has a two-year backlog of over forty thousand cases, which can be attributed to the lack of available funds to meet the growing demand for compensation awards. In addition, the U.K. Board lacks the funds to in-

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82. Id. at 33.
83. Id. at 30. This limitation conforms with article 2 of the Convention, which calls for other sources to be examined first. Convention, supra note 3, art. 2, Eur. T.S. No. 116, at 2.
84. Convention, supra note 3, art. 2, Eur. T.S. No. 116, at 2; see supra notes 20-29 and accompanying text (explaining alternative sources).
85. Convention, supra note 3, art. 2, Eur. T.S. No. 116, at 2. The victim, for example, will not collect if intoxicated at the time the crime occurred, or if the victim provoked the criminal. Id.
86. 1989 U.K. ANNUAL REPORT, supra note 11, at 1, 8. In 1989, the U.K. Board granted compensation awards to 27,752 victims. Id. The average award ranged between UK£1,000 and UK£5,000. Id. The highest award, however, exceeded UK£300,000. Id. at 6. This applicant suffered multiple injuries, including a twisted back, while assisting a department store detective in apprehending a suspected shoplifter. Id. The U.K. Board awarded UK£87,781 for special damages, including five years loss of earnings. Id. The U.K. Board also awarded UK£220,000 in general damages for pain and suffering, loss of amenity and substantial future loss of earnings. Id. The U.K. Board awarded future loss of earnings because the applicant had a promising career ahead of him. Id.
89. Id. at 1-2.
crease personnel to expedite processing and thus reduce the backlog of cases. As a result, the backlog will continue to increase unless additional funding becomes available.

2. France

The French Act on Compensation for Victims of Offenses (the “French Act”) was enacted on March 5, 1977. It provides compensation to victims of crime for physical injuries inflicted by another person. Criminal proceedings, however, need not be initiated against the offender for the victim to be eligible for compensation.

The French Act provides compensation to French and foreign nationals injured during a crime committed in France. The French Act places several limitations on compensation awards. Compensation may be reduced or denied based on the victim’s conduct, his financial position, or the availability of other sources of compensation.

On December 30, 1988, France authorized the adoption of the Convention and subsequently ratified it on February 1, 1990. In addition to implementing the Convention, the Ministry of Justice of France plans to develop additional programs to provide better and more efficient aid to crime victims.

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90. Id.
92. FRENCH ACT, supra note 13, C. Pr. Pen. at 592.
93. Id.
94. Id. at 593. The injury must have caused death, permanent disability, or total incapacity from work for a period exceeding one month. Id.
95. Id. at 594. The injury must result from “wilful or involuntary acts which have the material features of an offense.” Id.
96. Id. at 593.
97. Id.
98. Id. at 594.
100. NOTIFICATION, supra note 7, at 1.
101. L'indemnisation des Victimes D'infractions, Conseil des Ministres du 24 Janvier 1990. The Ministry of Justice will participate in an inter-ministerial delegation to examine city and social urban development. Id. The delegation will jointly initiate a study to assess which victims are most economically and culturally disadvantaged. Id. at 1. The Ministry of Justice will also enhance aid to victims of terrorist acts. Id. To resolve small claims, the Ministry of Justice will encourage mediation.
3. Sweden

Sweden's Criminal Injuries Compensation Act (the "Swedish Act") came into effect in 1978 under the direction of The Criminal Injuries Compensation Board (the "Swedish Board"). The Swedish Act compensates both domestic and foreign victims for injuries caused by offenses that occur in Sweden. The Swedish Act compensates a wide range of injuries, including personal injuries, medical expenses, property damage, and damage to clothing, spectacles, and other items worn by the victim at the time of the crime.

Like most compensation schemes, the number of awards granted has increased dramatically in recent years. In 1989, the number of applications for personal injuries increased twenty-two percent over the previous year. Although the number of awards granted increased thirty-two percent, the number of cases decided has increased faster than the number of applications, a large backlog of cases remains.

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1. Victoms Compensation

102. Criminal Injuries Compensation Act, SFS 413 (1978) (Swed.).
103. Id. The Criminal Injuries Compensation Board (the "Swedish Board") decides claims brought under the Swedish Act. Id. § 12, at 5. Claims must be made within two years of the offense. Id. § 14, at 6. They are generally decided thereafter by the chairman, the vice chairman, or another member of the Swedish Board. Id. § 13, at 5. If the application for compensation warrants special attention for any reason, the decision must be made by a quorum of the Board. Id.
104. Id. § 1, at 1. A Swedish domiciliary may also claim compensation if the offense occurred outside of Sweden. Id. However, "[t]he Act does not apply in cases where the offense and the claimant have so little to connect them with Sweden that it is unreasonable that compensation be paid out of Swedish public funds." Id.
105. Id. § 2, at 1.
106. Id. § 5, at 1-2.
107. Id. § 3, at 1. Section 3 states that:
   Compensation is paid for damage to property where the offence has been committed by someone who is 1. an inmate of a penal institution, 2. registered with or detained in a young offenders' institution, 3. detained in a public institution for alcoholics or on parole from such an institution, but required to live in a specified hostel or home, 4. remanded in custody, or 5. similarly remanded in Denmark, Finland, Iceland or Norway.
   Id. Compensation is paid for property damage pursuant to section 3 if the victim's ability to support himself is jeopardized as a result of the property damage. Id. § 4, at 1.
108. Id. § 2, at 1.
109. Verksamhetsberättelse för Brottsskadenämnden 17 Budgetåret 1988/89. The number of personal injury applications increased from 576 in 1988 to 704 in 1989. Id. The number of cases decided increased respectively from 486 to 642. Id. Although the number of cases decided has increased faster than the number of applications, a large backlog of cases remains. Id. at 17-18.
demand far exceeded available funding. Similarly, the number of applications for property damages climbed one percent, while the number of awards granted for property damage increased twenty-four percent. As a result, government spending on victims compensation has more than doubled; nevertheless, a large backlog of cases continues to exist due to undecided cases filed in earlier years.

B. Non-Ratifying States With Compensation Schemes

1. Germany

Although Germany has not ratified the Convention, on May 11, 1976 it adopted a domestic crime victims compensation scheme, the Act on Compensation for Victims of Crimes of Violence ("The German Act"). The German Act applies to all victims intentionally injured by criminals within Germany or on a German ship or aircraft. The German Act limits its awards to physical injuries caused by willful acts. Compensation may be awarded to the victim of the crime or to the relatives of a victim who died as a result of injuries inflicted by the crime. In addition to being compensated for medical expenses directly caused by the offense, victims are also compensated for loss of earnings. Pain and suffering damages, injuries caused by negligent offenses, and property damages, how-

110. Id.
111. Id. at 17. The number of applications for property damage increased from 783 in 1988 to 791 in 1989. Id. The number of cases decided likewise increased from 670 to 828. Id.
112. Id. at 15-16. In 1989, more than 2,338,702 Swedish crowns were spent on compensation awards and administrative costs in Sweden. Id. In 1988, the amount was 978,506 Swedish crowns. Id.
113. Id. at 15-16.
114. German Act, supra note 14.
115. Id. § 1(1), at 2.
116. Id.
117. Id. § 5, at 3.
118. German Act, supra note 14, at 2. Victims are compensated for loss of earnings in proportion with their loss of earning capacity. Id. For example, if the victim's earning capacity has been reduced by over twenty-five percent, the government provides the victim with a pension irrespective of the victim's other income. Id. The amount of the pension is derived from the severity of the injury. Id. If the victim's earning capacity is reduced by over fifty percent, then a larger pension will be awarded. Id. If the victim is totally incapacitated, an additional amount will be awarded for nursing expenses. Id.
ever, are not compensable.\textsuperscript{119}

Additionally, the German Act limits the availability of awards in two ways. First, an award may be refused if the victim fails to report the crime promptly to the authorities.\textsuperscript{120} Second, the scheme has a strict reciprocity provision regarding the compensation of foreign nationals.\textsuperscript{121} Foreign nationals injured in Germany are explicitly ineligible for compensation unless a German national would also be eligible for compensation in the respective foreign country.\textsuperscript{122} Within the context of reciprocity, however, the German Act provides that the country in which the criminal activity occurs should be the country primarily responsible for compensating the victim.\textsuperscript{123} The German Act, however, states that if the criminal activity was not committed in Germany and another country compensates a victim domiciled in Germany, then Germany will subsidize the claim up to forty percent.\textsuperscript{124} The German Act also provides that if the location of the criminal activity is impossible to ascertain, the country in which the victim is domiciled should compensate the victim.\textsuperscript{125}

Unlike most crime victims compensation schemes, the German Act does not look to other sources of compensation.\textsuperscript{126} Rather, it relies on the state as the sole compensator.\textsuperscript{127}

\textsuperscript{119} Id. To recover for pain and suffering, the victim must bring a civil suit against the offender. \textit{Id.}
\textsuperscript{120} \textit{Id.} § 2(2), at 2.
\textsuperscript{121} \textit{Id.} § 1(4), at 2.
\textsuperscript{122} \textit{Id.}
\textsuperscript{123} \textit{Id.} § 4(1), at 2. Section 4(1) states that:
The country where the damages have occurred will pay for the damages. When this is not possible to ascertain, the statute looks to the country where the act occurred, the domicile or residence of the victim at the time of the act. If the victim is injured within this jurisdiction [Germany] and has no domicile here or was injured on a German plane or ship, then [Germany] will compensate the victim’s costs.
\textit{Id.} (translated by William R. Covey, Special Publications Editor, Volume 14, \textit{Fordham International Law Journal}).
\textsuperscript{124} \textit{Id.} § 4(2), at 2.
\textsuperscript{125} \textit{Id.} § 4(1), at 2; \textit{see supra note 123} (setting forth text of § 4(1)).
\textsuperscript{126} \textit{See supra} notes 19-29 and accompanying text (discussing other sources of victims compensation).
\textsuperscript{127} \textit{See supra} notes 19-29 and accompanying text (discussing other sources of victims compensation).
2. Norway

In Norway, the Act on Victims Compensation (the "Norwegian Act") provides that victims should be compensated by the offender but not by the state. The Norwegian Act establishes several areas of liability for the offender. For example, parents are liable to compensate victims for injuries caused by children under eighteen years of age if the parents did not exercise adequate supervision. Similar liability is established for employers whose employees injure others, and for guardians of insane persons who do not exercise adequate supervision.

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129. Id. § 26, at 763.
130. Id. §§ 1(1)-2(3), at 763-65.
131. Id. § 1-2(2), at 763-64. The statute states that parents are liable for the intentional or negligent acts of their children regardless of the parents' fault. Id. § 1-2(1), at 764. Section 1-2(1) states:

Parents are liable to compensate damage or injury caused by children or youth under 18 years if they have neglected to exercise adequate supervision or have otherwise failed to act in such manner as could reasonably be required of them under the circumstances, for the purpose of preventing damage.

Id. The parental liability, however, may be limited if the courts decide that such responsibility is unreasonably burdensome to the parent or guardian. Id. § 1-2(3), at 764.

132. Id. ch.1, at 763-64. Children under eighteen who injure others "are liable to compensate damage or injury which they cause intentionally or negligently, provided such obligation is considered reasonable in view of their age, development, conduct shown, financial ability and other circumstances." Id. § 1-1, at 763. Insane persons or persons caring for the insane may be liable to compensate victims of their intentional or negligent acts if such compensation is reasonable. Id. §§ 1-3, at 764. Section 1-3 state that:

(1) [a] person who is insane, mentally deficient, unconscious or in a state of similar mental derangement is liable to compensate the damage or injury which he causes, provided such liability is considered reasonable in view of the conduct shown, his financial ability and other circumstances. . . . (2) If anybody on account of inadequate supervision or care, incurs liability for damage or injury caused by such person as mentioned in item (1) above, the liability can be mitigated if it would be unreasonably burdensome in view of the conduct shown and the circumstances in general.

Id. An employer is liable to compensate employees who are injured on the job. Id. § 2-1, at 764. The employer's liability may be mitigated, however, if compensation is unreasonably burdensome to the employer, or the victim can be partially compensated by insurance. Id. § 2-2(1), at 764. Section 2-1 states that

[a]n employer is liable for damage or injury caused intentionally or negligently during an employee's performance of work or functions for the employer, taking into account whether the requirements which the aggrieved
The damages that are compensable by the offender under the Norwegian Act include expenses relating to physical injuries, medical expenses, loss of earnings and earning capacity, defamation, invasion of privacy, and compensation to the survivors of a decedent. The compensation payable, however, may be reduced by any insurance or social security benefits received by the victim.

C. Non-Ratifying States Without Compensation Schemes

Many countries have limited or no provisions for victims compensation and consequently have not ratified or even signed the Convention. Greece, for example, has signed, but not ratified the Convention. Furthermore, Greece does not have a national compensation scheme for victims and does not intend to enact one in the near future. Greece has not ratified the Convention or enacted a victims compensation scheme primarily because the state does not want to assume the high cost of a compensation scheme.

There are, however, other sources available to victims of crime occurring in Greece. First, under the Greek Penal Code, a victim of crime may bring an action for civil damages against the criminal in either civil or criminal court. Second, a victim may receive compensation similar to disability payments

person can reasonably make to the activity or service, have been neglected. The liability does not comprise damage or injury caused by the fact that the employee has exceeded the reasonable limits of his duties, considering the nature and range of the activity and the character of the work or function.

Id. 133. Id. ch. 3, at 765.
134. Id.
135. See supra note 7 (listing signatory and ratifying states).
136. See supra note 7 (listing ratifying states).
137. Spinellis Letter, supra note 33. According to Dr. Spinellis, Greece has no national victims compensation scheme. Our country has signed the Convention, but it has not ratified it so far and I do not think that this is going to be done in the near future. The reason is the one you mentioned: Victims' compensation schemes are considered to be costly. In the years following the signature of the Convention the budget of the Ministry of Justice has been always very restricted. At present Greece is facing generally very serious economic problems.

Id.

138. Id.
139. See POINKOS NOMOS, art. 315 (Greece); see also 1978 REPORT, supra note 10, at 42.
from his employer. 140 Third, a victim may receive compensation from private insurance policies that cover damages caused by third parties. 141 These policies, however, only cover acts such as traffic offenses and do not compensate for injuries resulting from violent crimes. 142

III. THE CONVENTION SHOULD BE AMENDED BECAUSE ITS PURPOSES HAVE BEEN FRUSTRATED

A. The Convention’s Goal of Uniformity Has Not Been Achieved

The Convention strives to establish uniformity among victims compensation schemes in Council of Europe member states. 143 The Convention seeks uniformity by establishing minimum guidelines for states to follow in either enacting new victims compensation schemes or amending existing compensation schemes. 144 The goal of uniformity, however, has not been achieved. 145

Several fundamental differences in compensation schemes underscore the lack of uniformity. 146 First, some states compensate relatively remote injuries while other states compensate only direct physical injury. 147 Second, some states impose

140. 1978 REPORT, supra note 10, at 42.
141. Id.
142. Id.
143. Convention, supra note 3, Eur. T.S. No. 116, at 2. The Convention states that the aim of the Council of Europe is "to achieve greater unity between its members . . . ." Id. preamble, Eur. T.S. No. 116, at 2. The aim of the Council of Europe is addressed in the COE Statute. The Statute of the Council of Europe states that the aim is "[t]o achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress." COE Statute, supra note 2, 87 U.N.T.S. at 104. Furthermore, the Council of Europe has stated that "[e]ffective assistance cannot be provided for victims unless all the services concerned act in a concerted manner." ASSISTANCE TO VICTIMS REPORT, supra note 7, at 20.
145. See infra notes 146-57 and accompanying text (discussing lack of uniformity). Further evidence of this lack of uniformity is that only ten of the twenty-one Council of Europe member states have signed the Convention. See supra note 7 (listing signatory states). Of those, only six have ratified. See supra note 7 (listing ratifying states).
146. See infra notes 147-49 and accompanying text (discussing primary categories in which compensation schemes differ).
147. The United Kingdom and Sweden compensate crime victims for damages as remote as loss of clothing. See 1989 U.K. ANNUAL REPORT, supra note 11, at 29; see also Criminal Injuries Compensation Act (Swed.), supra note 102, at 1. Other states, such as France and Norway, limit compensation to personal injuries resulting from
limitations on the level of compensation and the procedures required to receive that compensation. Finally, some states require reciprocity of compensation when compensating foreign nationals.

The primary problem frustrating uniformity, however, is that states lack the funds to pay the high cost of victims compensation schemes. Compensation schemes are very costly, and consequently, many member states are apprehensive about adopting a compensation scheme complying with the

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148. The United Kingdom requires crime victims to seek remuneration from other sources before applying to the state. 1989 U.K. ANNUAL REPORT, supra note 11, at 30. Germany, on the other hand, does not require victims to seek other sources of victims compensation. See German Act, supra note 14, at 2.

149. The compensation of foreign nationals is also treated differently among the non-ratifying states. Contrary to the Convention’s disregard of the doctrine of reciprocity, states such as Germany are apprehensive about compensating foreign victims if other states will not reciprocally do the same. See German Act, supra note 14, § 4, at 2. Article 3 of the Convention expressly calls for the payment of compensation to nationals of the states that are parties to the Convention, and furthermore, to nationals of all member states of the Council of Europe who are permanent residents in the state on whose territory the crime was committed. Convention, supra note 3, art. 3, Eur. T.S. No. 116, at 2. This provision seeks to unify the varying victims compensation schemes of the Council of Europe states by providing protection to European crime victims regardless of their nationality. Id. With increased movement of persons throughout Europe, it is necessary to protect victims of crime regardless of their nationality. EXPLANATORY REPORT, supra note 4, at 13-14.

Conversely, this provision has separated the member states by deterring many countries from ratifying and thus, frustrating the goal of unification for two reasons. Commentator Aglaia Tsitsoura predicted this problem prior to the Convention’s enforcement in 1983. Tsitsoura, The Role of the Victim in the Framework of Crime Policy—International Aspects, 8 VICTIMOLOGY: AN INT’L J. 47, 52 (1983).

First, if states were to ratify the Convention, they would be obligated to compensate foreign victims, but their victims may not be protected reciprocally in many non-ratifying states. Second, the compensation of foreign victims will further increase the costs of victims compensation schemes, thus making compensation of foreigners even less attractive.

According to Ms. Tsitsoura, provisions of the Convention establishing compensation for foreign victims, regardless of reciprocity, will certainly be accepted by some member states whose law has already adopted this solution. However, other member states may not be prepared to grant compensation to foreigners whose country of origin does not grant the same protection.

Id. Although Tsitsoura has not published recently on this topic, she remains the Head of the European Committee on Crime Problems and affirms her earlier beliefs that many countries have not ratified the Convention because of the reciprocity problem. Telephone interview with Aglaia Tsitsoura, Head of the European Committee on Crime Problems, Council of Europe (Jan. 27, 1990).
guidelines of the Convention. Article 2 should therefore be amended to list additional sources of victims compensation that would alleviate the strain on state treasuries and encourage more states to ratify the Convention.

The explicit intent of the Convention is for states to provide compensation to victims of crime only when other sources are unavailable. Due to the failure of other traditional sources of compensation, however, government funding has typically become the primary source of victims compensation. Government funding, however, is minimal in many states. As a result, victims frequently do not receive compensation until several years after their applications are filed, which can be debilitating to victims in need of immediate financial or medical assistance.

In recent years, the cost of compensation schemes has also increased dramatically due to the increased number of applications for compensation. Despite high expenditures, the United Kingdom, for example, cannot meet the demand for

150. Convention, supra note 3, art. 2, § 1, Eur. T.S. No. 116, at 2. Article 2 states that "[w]hen compensation is not fully available from other sources, the State shall contribute." Id. According to Aglaia Tsitsoura, Head of the European Committee on Crime Problems, "[i]t must be stressed that the aim of the European Convention on the Compensation of Victims of Violent Crimes is not to replace compensation by the offender with State compensation." Tsitsoura, supra note 56, at 134.

151. See supra notes 19-29 and accompanying text (discussing failure of other sources of victims compensation and predominance of state-funded victims compensation schemes).

152. ASSISTANCE TO VICTIMS REPORT, supra note 9, at 9-10.

153. See supra notes 88-91 and accompanying text (discussing backlog of victims compensation applications in the United Kingdom); supra note 113 and accompanying text (discussing backlog in Sweden). Backlogs occur for two reasons. First, state funds for victims compensation are limited and consequently, states can only settle a certain number of cases each year. Second, states lack the funds to increase personnel who could expedite the compensation process. This backlog can be debilitating because victims are often in need of immediate financial assistance to pay for medical and other expenses, but lack the funds to do so.

154. See supra notes 86-91 and 109-13 and accompanying text (setting forth statistics revealing increase in cost of crime victims compensation in United Kingdom and Sweden).

For example, when the United Kingdom established its Criminal Injuries Compensation Scheme in 1964, the U.K. Board received 2,452 applications for compensation. 1989 U.K. ANNUAL REPORT, supra note 11, at 1. By 1989, the total soared to 43,385, and the estimated total for 1990 is over 50,000. Id. As a result, the combined cost of compensation awards and administrative costs in the United Kingdom is nearly UKE80 million. Id. at 8. The Board awarded UK£69,381,286 to victims between April 1, 1988 and March 31, 1989. Id. Administrative costs were
compensation awards.\textsuperscript{155} Rising victims compensation expenditures have likewise caused problems in Sweden.\textsuperscript{156}

The expense of victims compensation schemes in ratifying states, such as the United Kingdom and Sweden, have in turn made non-ratifying countries apprehensive about ratification.\textsuperscript{157} As long as Council of Europe member states remain unwilling to ratify the Convention and their limited provisions for victims compensation remain unchanged, the Convention's ultimate goal of unification will remain frustrated.

\textbf{B. Proposed Amendments to the Convention}

With the problem of insufficient government funds frustrating the Convention's goal of uniformity, the Council of Europe should amend the Convention to provide states with added guidance in the compensation of crime victims. Specifi-

\textsuperscript{155} See supra notes 86-91 and accompanying text (discussing United Kingdom's problems in compensating crime victims).

\textsuperscript{156} See supra notes 109-13 and accompanying text (discussing Sweden's problems with settling cases expeditiously). In 1989, the number of applications for personal injury compensation increased twenty-two percent, creating a large backlog of pending cases. See supra note 109 and accompanying text (discussing increase in personal injury compensation). Furthermore, the average award of compensation granted increased thirty-two percent, making the cost of victims compensation very high. See supra note 112 and accompanying text (discussing increase in cost).

\textsuperscript{157} 1978 \textit{REPORT}, supra note 10, at 17-18. The fact that state compensation schemes are expensive has constantly been a deterrent to the enactment of victims compensation schemes. \textit{Id}. Aglaia Tsitsoura, Head of the European Committee on Crime Problems, affirms that states are hesitant to ratify the Convention because compensation schemes are so costly to governments. Telephone interview with Aglaia Tsitsoura, Head of the European Committee on Crime Problems, Council of Europe (Jan. 26, 1990).

Greece, for example, has signed the Convention but has not ratified because of the expense. \textit{See} Spinellis Letter, supra note 33, at 1. Other non-ratifying countries, like Italy and Norway, have established limited provisions for victims compensation, but have not yet established comprehensive national compensation schemes. Telephone interview with G. Polemeni, Director of the General Direction of Criminal Affairs of the Ministry of Justice in Rome (Feb. 28, 1990) (discussing Italy's lack of a uniform scheme of victims compensation); \textit{see generally} Norwegian Act, supra note 128, at 763. Norway's scheme extends liability to various types of offenders, but does not provide for state-funded compensation. \textit{Id}. 
cally, article 2 of the Convention should not merely state that other sources of victims compensation must be sought. Rather, article 2 should be amended to include a list of potential compensation sources for states to utilize.

The Convention currently recognizes three sources of funding for victims compensation: civil suits against the offender, insurance, and social security benefits. These sources alone have proven to be insufficient means for victims compensation. The "other sources provision" of article 2 should therefore be clarified by enumerating sources in addition to those that have traditionally failed. Each new source individually may not solve the problem; collectively, however, recourse to other sources could substantially alleviate the burden on state treasuries. The provision may assist states that have already ratified the Convention because it would provide several alternatives to government funding. Non-ratifying states may be encouraged to ratify the Convention because their fears of expending large amounts of government funds would be alleviated. By guiding states to limit the expense of victims compensation schemes, the Convention would come one step closer to unification.

Several alternative compensation sources exist. A partial list of sources that may be utilized follows.

a. Semi-Detention

Alternatives to imprisonment provide a potential source of compensation for victims of crimes. The Council of Europe has repeatedly discussed possible solutions to overcrowded prisons. Many of the alternatives suggested could serve to

158. Convention, supra note 2, art. 9, Eur. T.S. No. 116, at 3.
159. Id. In the United Kingdom civil suits are successful in less than one percent of the cases brought before the compensation board. 1978 REPORT, supra note 10, at 13. The U.K. Board is required to deduct from an award any sum that the victim has received from his assailant following a court compensation order. 1989 U.K. ANNUAL REPORT, supra note 11, at 8-9. The number of orders has waned in recent years to approximately 2,000. Id. In fact, the total compensation received by victims from civil suits was UK£341,275. Id.
160. COUNCIL OF EUROPE, ALTERNATIVE MEASURES TO IMPRISONMENT, 7TH CONFERENCE OF DIRECTORS OF PRISON ADMINISTRATIONS (1986) [hereinafter ALTERNATIVE MEASURES]. In 1972, the CECCP began discussing this issue, and, in 1976, its discussions were manifested in Resolution (76)10 on "Alternative Measures to Imprisonment" adopted by the Committee of Ministers in 1976. COUNCIL OF EUROPE, ALTERNATIVE PENAL MEASURES TO IMPRISONMENT (1976).
generate funds to compensate crime victims.\textsuperscript{161}

Semi-detention allows an offender to leave prison for a specified number of hours during the day to pursue employment.\textsuperscript{162} A working offender can thus generate funds to compensate partially the victim of his crime. Currently, many civil suits or compensation orders fail because the offender lacks the means to pay.\textsuperscript{163} Semi-detention, already practiced effectively in some Council of Europe states, combined with other sources of compensation, could alleviate the burden of victims compensation on state treasuries.\textsuperscript{164}

b. Fines

A second alternative to secure financial assistance to victims is the imposition of fines.\textsuperscript{165} Commentators argue that fines as a victims compensation alternative are of limited effectiveness because the non-payment of fines is punishable by imprisonment.\textsuperscript{166} Nevertheless, even limited payment of fines would increase the compensation available for crime victims.\textsuperscript{167}

\textsuperscript{161} ALTERNATIVE MEASURES, supra note 160, at 6. The Council of Europe stated that "[t]he interest in alternatives to imprisonment has been strengthened for ideological as well as for economic reasons." Id. Prison costs have skyrocketed, and the prospect of alternative measures would be financially beneficial for two reasons. First, the amount of prison costs would decrease. Second, the funds raised through some of the alternatives such as fines would increase available resources for victims compensation. Id. at 2.

\textsuperscript{162} Id. at 6.

\textsuperscript{163} See supra notes 21-23 and accompanying text (discussing failure of civil suits as alternative means of victims compensation).

\textsuperscript{164} ALTERNATIVE MEASURES, supra note 160, at 6. The Council of Europe surveyed its member states on the types of alternative measures to imprisonment instituted in each state. See generally id. According to the Council of Europe survey, in Belgium and Italy, the offender is required to spend at least ten hours a day in prison and fourteen hours in a work-related environment. Id. at 6. In France, semi-detention is allowed in cases where prison sentences do not exceed six months and the offender can offer evidence that he was employed prior to his sentence. Id. A similar program exists in Germany which allows prisoners to work during the week and serve their prison sentence during the weekends. Id.

\textsuperscript{165} Id. at 7. In the Netherlands, fines are imposed on offenders as an alternative to imprisonment in proportion to their economic means. Id. In France, fines may be paid in installments. Id.

\textsuperscript{166} Id.

\textsuperscript{167} Id. at 6. Fines should take precedence over any other financial sanction imposed on the offender because the victim must be protected and assisted as much as possible. POSITION OF THE VICTIM REPORT, supra note 9, at 9.
Some judges may be reluctant to impose alternatives to imprisonment because they fear that these alternatives will encourage recidivism. Government studies in Sweden and Denmark, however, have indicated that penal alternatives such as fines and semi-detention can be a better deterrent to crime than imprisonment.

c. "Son of Sam" Laws

Any funds derived by a criminal from the reenactment of a crime should be used to compensate crime victims. Such legislation, known in the United States as "Son of Sam" laws, is prevalent in the United States but not in Europe. "Son of Sam" laws require a criminal to surrender the proceeds from any public reenactment of their crime. Forty-one U.S. states and the U.S. federal government have enacted such...

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169. Id. at 23. The results of the studies rest on "the old criminological thesis that the less drastic a sanction, the better things will work out afterwards." Id. Other studies, in the United Kingdom for example, indicate that neither imprisonment nor its alternatives are more of a deterrent to recidivism. Id.
170. In 1977, David Berkowitz, also known as the "Son of Sam," terrorized New York City residents by committing a series of murders with his .44 calibre pistol. In re Johnson (Berkowitz), 103 Misc. 2d 823, 430 N.Y.S.2d 904 (Sup. Ct. Kings Co. 1979). Disturbed by the fact that he stood to profit from his criminal acts by selling the rights to his story, the New York Legislature enacted Executive Law 632-a. N.Y. EXEC. LAW § 632-a (McKinney 1972 & Supp. 1990). This law requires a criminal to surrender to the victims all proceeds from the reenactment of the crime. Id. In 1966, sections 620-35 of the New York Executive law was enacted to provide aid, care, and support to victims of crime. Id.
171. See infra notes 172-77 and accompanying text (discussing "Son of Sam" laws). The concept of providing crime victims with financial restitution by disgorging criminal profits was first advanced by the Reagan administration in 1982. Congress asked the Attorney General to develop a specific legislative proposal on how "restitution could be secured when a Federal felon profits financially due to publicity about his ideas," S. 2420, 98 Cong., 2nd Sess. (1984). Two years later, as part of the "Crime Control Act," Congress enacted a federal counterpart to the New York statute. The Crime Control Act was enacted to combat racketeering and drug trafficking by seizing the fruits of these crimes more effectively than The Racketeer Influenced and Corrupt Organizations Statute ("RICO") and The Comprehensive Drug Prevention and Control Act. Id.
173. 22 ALA. CODE § 41-9-80 (1989); ALASKA STAT. § 12.61.020 (1989); ARIZ. REV. STAT. ANN. § 13-4202 (1989); ARK. STAT. ANN. § 16-90-308 (1989); CAL. CIV. CODE ANN. § 2224.1(b) (Deering 1989); 10 COLO. REV. STAT. §§ 24-4.1-201 to 24-4.1-207 (1989); CONN. GEN. STAT. § 54-218 (1989); 7 DEL. CODE ANN., tit. 7, §§ 9101-9106 (rev. 1974); FLA. STAT. ANN. § 944.512 (West 1989); 15 GA. CODE ANN. §§ 17-14-30 to 17-14-32 (1990); 4 IDAHO CODE OF CRIM. PROC. § 19-5301
legislation.


174. 18 U.S.C. § 3681(a) (1988). Under the federal statute, criminal forfeitures are deposited into the Crime Victims Assistance Fund, and in turn are distributed to federal and state crime victims assistance programs. Id. “Forfeiture” applies to “[a]ll or any part of proceeds received or to be received by that defendant, or a transferee, of that defendant from a contract relating to a depiction of such crime in a book . . . or an expression of that defendant’s thoughts, opinions or emotions regarding such crime.” Id. Thus, any and all profits relating to the reenactment of the crime are covered by the statute including profits derived from books and movies, proceeds from the recitation of a lecture, and television appearances. Id. Funds are distributed, however, only after motions by the U.S. Attorney and a hearing involving the interested parties. Id.

The federal statute places several limitations on the seizure of criminal proceeds. Only convicted felons are within the statute’s reach. Id. Additionally, the crime must result in physical harm to the victim. Id. Despite these limitations, which are shared by most state counterparts, “Son of Sam” legislation has repeatedly been challenged as unconstitutional. See, e.g., Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd., 724 F. Supp. 170 (S.D.N.Y. 1989), aff’d Simon & Schuster, Inc. v. Fischetti, 916 F.2d 777 (2d Cir. 1990). Book publishers have claimed that “Son of Sam” laws violate the first amendment of the U.S. Constitution because they chill the offender’s right to free speech, and deprive the public of the right to know the offender’s thoughts regarding his criminal acts. Id. at 173. “Son of Sam” legislation has also been attacked as a violation of the due process clause of the fourteenth amendment of the U.S. Constitution. Id. at 174. Some critics allege that the forfeiture of proceeds is an unconstitutional pre-judgment interest. Id.

Despite challenges, Son of Sam laws have been held to pass constitutional muster. Simon & Schuster sued the New York State Crime Victims Board (the “Crime Board”) after the Crime Board declared that the publisher’s 1986 best-seller, Wiseguy: Life in a Mafia Family, by Nicholas Pileggi, was considered within the statute’s reach. Id. at 179-80. The Crime Board is now examining whether any proceeds from the movie version of the book, “Good Fellas,” should also be seized for crime victims. Squiers, “Son of Sam” Statute Held Constitutional: Victims’ Claim to Book Proceeds Allowed, N.Y.L.J., Oct. 4, 1990, at 1, col. 3. The district court in Simon & Schuster upheld the Son of Sam legislation, stating that it is only an indirect burden on speech and was
The London Press Council, an organization of London journalists, has adopted an uncodified version of the U.S. "Son of Sam" statutes.\textsuperscript{175} The Press Council Agreement (the "Agreement") forbids criminals or their families to accept payment for the publication of their memoirs.\textsuperscript{176} Although the Press Council Agreement is binding among newspapers, it lacks the enforcement power of a statute that would also bind book publishers and movie companies. A statutory complement modeled after the U.S. approach would be likely to increase the funds available to compensate victims and promote the goals of the Convention.\textsuperscript{177}

The enactment of "Son of Sam" legislation throughout

\textsuperscript{175} London Press Council, Agreement on Payment of Money to Criminals (1985).

\textsuperscript{176} Id. at 194-95.

\textsuperscript{177} Many U.S. courts have questioned whether the government has the right to seize criminal proceeds from the efforts of the criminal. \textit{See supra} note 174 (discussing constitutionality of Son of Sam statutes). This issue might also arise in other states.

Additionally, some commentators argue that adoption of "Son of Sam" laws might frustrate the ultimate goal of raising funds because criminals might be unmotivated to tell their stories if unable to profit from their crimes. Plaintiff's Notice of Motion, Affidavit of Michael Korda, editor-in-chief and senior vice-president of Simon & Schuster, Inc., Simon & Schuster v. Members of the New York State Crime Victims Board, 724 F. Supp. 170 (S.D.N.Y. 1989). Mr. Korda stated that

[i]n all my years of publishing, I have never seen an author, and rarely a primary source (one who will have to spend substantial time providing information to an author), who would be willing to undertake the necessary tasks without enforceable promise that he will be paid, and paid promptly . . . . Most do not have the financial resources to write without promise of recompense.

\textit{Id.} at 5.

This potential dilemma was discussed in \textit{Simon & Schuster}. The district court emphasized, however, that in its view continued reenactments would not be completely frustrated. \textit{Simon & Schuster}, 724 F. Supp. at 177.

Moreover, legislation could be modeled after the Florida statute which permits
Europe will not solve the problem of insufficient victims compensation funds. "Son of Sam" laws, however, are another step in the direction of expanding victims compensation funding and thus fulfilling the Convention's ultimate goal of uniformity.

**CONCLUSION**

Seven years have lapsed since the Council of Europe drafted the European Convention on the Compensation of Victims of Violent Crimes. Rather than achieving its ultimate goal of unifying the victims compensation schemes of Europe, the Convention's limited guidelines have separated member states. Unless the Convention is amended, the Convention's intentions will become meaningless and the prospect of unification will not be achieved.

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