

Governance between International Institutions:  
Conceptualising Competition, Division of Labour and Cooperation  
between the EU, Council of Europe and the OSCE

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Paper presented at the GARNET conference  
“The EU in International Affairs”  
Brussels 24 April 2008

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*Abstract*

*The paper analyses interaction modes between the EU, Council of Europe and OSCE in the area of human rights promotion. At the centre of the examination is the question of which interaction forms have evolved between these organisations and what conditions have triggered these behavioural patterns? The paper aims at filling in empirical knowledge gaps on the interaction of international institutions and further develops the very young research on regime interaction by generating scope conditions for interaction.*

## **1. Introduction**

This paper investigates interaction modes of international organisations in Europe which are working on human rights. The degree of overlap in membership between these three organisations is striking. All EU member states are members of the OSCE and the Council of Europe. Recent years have also seen a substantial increase in organisational overlap and a growing complexity in international crisis management in a variety of issue areas between the EU, Council of Europe and the OSCE. From this perspective, the project outlined in this paper assumes three dominant modes of interaction, namely cooperation with a high degree of interaction and even institutionalisation of cooperation, division of labour with a lower degree of interaction but a more clear separation of tasks, and open competition regarding competencies and resources. These interaction types are derived from Fritz Scharpf's (2000: 91) categorisation of interaction forms (unilateral action negotiation, majority decision-making and hierarchy) and correspond with preliminarily empirical observations of human rights activities of the three organisations. The main task of the research project is to inquire about the specific conditions for these different interaction modes. Which conditions provoke competition, under which circumstances is cooperation more likely to be achieved, which factors enable international institutions to divide labour between them? The project aims at identifying causal chains of action which allow for the identification of triggers for interaction modes. Starting with the dependent variable interaction type, the paper develops three (backward looking) hypotheses for each interaction mode, defining the conditions for each of them (Scharpf 2000:57-58). An inductive approach is followed which formulates general conditions for interaction and tests them in empirical cases. At the conceptual level the paper connects with the very young literature on regime interaction and the rationalist approach in international relations, highlighting costs and benefits of each interaction type. At this very early stage of research the paper only allows for presenting tentative outcomes.

The paper proceeds with the following steps: Section Two gives an overview of the literature and concepts on regime interaction. Section Three conceptualises interaction modes between international institutions and develops preconditions for each interaction mode. This section also aims at operationalising conditions for interaction and gives a brief overview of methodological instruments applied in this study. The following section outlines in brief the most important developments in the European human rights regime. The empirical analysis starts in the fifth section in which one case each for cooperation, division of labour and competition is selected. The last paragraphs summarise some preliminarily findings and tentative results.

## **2. Regime interaction**

Research in IR has only randomly investigated the interaction of international institutions. Although a literature has emerged which analyses regime-building processes, there exist only a few works that try to conceptualise the interaction of whole regimes or organisations. Consequently, research on interaction modes needs both a broad empirical basis and theoretical solid concepts at the mid-range theoretical level in order to operationalise conditions for interaction modes.

Current research in the field of regime interaction completely leaves out democracy and human rights promotion. It largely focuses on cooperation modes in international trade relations and environmental regimes (Gehring & Oberthür 2003, 2006). Empirically many policy fields remain unexplored. There are no studies investigating interaction modes between European institutions. Only the EU's involvement in the WTO (Knodt 2007) or other international conventions (Selin & Van Deveer 2003) have been analysed. However, the literature does not clearly define conditions for cooperation. The question of which interaction mode is causally triggered by which conditions remains unexplored.

With the examination of the European human rights regime and its three main actors, the EU, the Council of Europe and the OSCE, this paper opens a new chapter of empirical research on interaction modes. Particularly the European human rights system has undergone considerable changes in recent years. It has changed from being a fragmented regime and a "historical patchwork" (Murills 2001:328) to a more integrated system with substantial overlaps in the competencies of all three institutions.

Although globalisations effects such as the increasing legalisation of international affairs, the growing complexity of international conflicts and the interdependence of economies, or the EU's attempt to give itself a constitutional frame are well known, research has primarily focused on the relationship of nation states versus international institutions. Only recently have these globalisation effects reached a density which made overlaps in policy fields inevitable and long-lasting. For the European human rights regime the EU's growing engagement in human rights issue, such as the drafting of a Charter on Fundamental Rights or the setting up of field missions in third countries, has led to a considerable overlap with the competencies of the Council of Europe and the OSCE (Bailes, Haine & Lachowski 2008: 65-77). Human rights and democracy promotion now clearly belong to the EU's foreign policy strategy. The so-called "normative power Europe" has given inspiration to a whole new

debate on the EU's influence as norm promoter (Manners 2002, Youngs 2004, Diez 2005, Knodt 2007). However, this literature does not integrate the Council of Europe or the OSCE into its analysis and thus ignores the growing degree of overlap between these institutions. Indeed each organisation aims at accomplishing its own goals on its own home turf but this becomes more and more difficult to carry out in isolation from other organisations (Loewen 2006: 6).

In contrast to neoinstitutionalist approaches (Bulmer 1993, 1998) or liberal intergovernmentalism (Moravcsik 1993), the literature on the interaction of international institutions does not assume a principal-agent relationship between member states and international organisations. Comparably to the governance research, international institutions are seen as relatively independent actors with considerable leeway for autonomous action. International organisations are less a product of nation-states but much more a subject of their own intentions. Thus cooperation between institutions relies on decisions made within the organisations. The literature on regime interaction commonly agrees that interaction modes come into existence in circumstances in which a single organisation's capacity to act lies beyond its own capabilities and is thus influenced by external actors (Loewen 2006, Gehring/Oberthür 2006, Stokke 2001).

Research on interacting regimes is still in a very early phase and has thus not produced scientifically rigid models for interaction, nor have concepts been tested sufficiently in various policy areas. However, scholarship has come up with compiled typologies of interaction (Loewen 2006: 11-15 & Young: 1996). The most comprehensive analysis of regime interaction modes has been developed by Sebastian Oberthür and Thomas Gehring (2006a, b, c). They follow a rationalist approach looking for causal relations between two actors. Their concept of regime cooperation is primarily based on the identification of one institution as source organisation and the other as target institution, the latter being causally influenced by the former. Oberthür and Gehring work out four causal mechanisms that influence regime cooperation between two actors, namely "cognitive", "behavioral", "impact-level interaction" and "interaction through commitment".

Whereas the literature on regime interaction focuses primarily on conditions for cooperation, this paper also inquires about conditions for competition and non-cooperation or division of labour. Looking at these three interaction types not only accounts for the most likely interaction modes instead of giving preference to just one, but also brings methodological benefits. Conceptualising three interaction modes enables us to explore necessary conditions for interaction in several cases which allows us to acquire a higher

degree of certainty about their explanatory reach and causal relationship than would an enquiry into just one interaction type. Indeed in all cases in which one independent variable is assumed to explain the competition between organisations for example, it cannot at the same time explain the division of labour or cooperation between these institutions.

The regime interaction literature also takes recourse to regime theory developed by Rittberger, Hasenclever and Mayer (1996, 1997) who have worked out under which conditions international regimes emerge. Loewen (2006) and Schram (2001) have tried to transfer this knowledge to conceptualise regime interaction modes. Hasenclever et al especially emphasise interest, power and knowledge-based conditions which support regime formation (see also Sprinz 2003). The interest-based approach highlights individual gains of single actors active in the international arena. Cooperation is most likely if other actors share the same interests based on a positive cost-benefit evaluation. Thus a high degree of congruence in interests is related to potential cooperation profits. The power-based mechanism reduces the emergence of international regimes to the superior power bases of certain actors over others. The hegemon state can simply force a regime to emerge. Finally the knowledge-based approach helps to explain regime building by stressing the influence of so-called “transnational epistemic communities” (Haas 1992, 1997). As Peter Haas was able to demonstrate, these transnational knowledge communities support the emergence of international regimes. Loewen transfers these three categories of regime building to the conceptualisation of regime cooperation. He views regime interaction not only from the perspective of cost-benefit relations but really tries to define conditions under which regime cooperation is most likely. Interest, power, and the knowledge-based approach form the basic of minimal conditions for institutional cooperation. However, it remains to be seen whether these conditions alone are sufficient enough to explain cooperation or if they need further development. Loewen uses the source-target concept in a bilateral relationship. However he connects both actors with a feedback slope but does not further define its function.

Frequently the literature concentrates on synergy effects of cooperation and ways to increase effectiveness among organizations (Stokke 2001). This research regards utilitarian, normative and ideational cooperation as the most valuable interaction forms. Stokke’s approach is innovative because he not only tries to establish causal relations between actors but also looks at their interdependency on the utilitarian and normative level. He avoids speaking of source or target organisations but instead his more open and flexible model speaks of sending and receiving units. He therewith opens up the rather rigid causal frame put forward by Oberthür and Gehring.

For Stokke utilitarian cooperation is primarily connected to cost-benefit efficiency calculations. In those areas in which a high degree of overlap exists and in which institutions apply comparable instruments for accomplishing their goals and share common interests, cooperation offers attractive benefits over competition. The normative interplay Stokke introduces mentions overlaps in the institutions' normative framework. Non-discrimination norms can for example be found in the Council of Europe's human rights standards, the EU Racial Equality Directive or OSCE standards. This normative overlap creates a higher demand for cooperation in order to avoid competition between norm setting institutions. The ideational interplay of institutions, according to Stokke, assumes that international organisations are involved in a constant exchange process. They interchange for example best-practice procedures, the setting of strategic goals, or learn from each other in certain policy areas. A policy transfer thus also takes place between international institutions, and not only between international institutions and nation-states.

Based on the existing literature a number of minimal conditions for emerging interaction patterns between organisations can be identified. First, the degree of overlap in policy fields influences the choice for interaction. Second, the degree of congruence or divergence in interests decides the interaction mode. Third, interaction types are crucially influenced by future cooperation gains or costs.

### **3. Conceptualising interaction between international organisations**

As stated in the introduction, this paper categorises three interaction modes among international institutions - cooperation, division of labour and competition. For these three interaction types this section develops nine working hypotheses, conceptualising the very specific conditions for interaction modes. They are inductively generated from empirical analysis, investigating interaction modes between the EU, Council of Europe and OSCE. However, at the current research stage they will need further exploration and a wider empirical basis. These will undergo further exploration in the subsequent section with empirical examples from the European human rights regime. In addition, the project operationalises and further develops minimum conditions for regime interaction when there is an overlap in policy areas, congruence of interests, and cooperation costs and benefits. For the development of suitable working hypotheses on the interaction of international institutions one needs to integrate a couple of further conditions which are specific to the structural capabilities of the organisation under scrutiny, or the exact location and specification of

policy fields within institutions that allow them to be ranked accordingly and prioritised. Indeed it matters if overlap occurs in core competencies of organisations or in peripheral areas. The following working hypotheses formulate those conditions under which international institutions are most likely to cooperate, compete, or prefer a division of labour:

### *Overlap*

Obviously without overlap in policy fields any form of cooperation would lack its minimum requirement. However, the mere existence of overlapping areas of competence does not explain very much. The matter of which interaction mode is caused by overlap remains open, as the empirical analysis will show. It may equally explain competition and cooperation. Therefore one needs additional factors, such as the structural conditions of institutions, to make sense of overlapping fields of competences. Overlap varies in its importance to organisations, which causally affects their choice of interaction type. Indeed it matters if overlap occurs in core competence fields of institutions or only in peripheral areas. Therefore we can formulate the following tentative assumptions:

1. Cooperation is most likely when institutions overlap outside their core fields of competence or if they at least overlap in a peripheral area in one organisation and a core area in another.
2. A division of labour is most likely if international institutions overlap in their core competence fields.
3. Competition between organisations is most likely if there is significant overlap in core competence fields or if one core area of one organisation threatens to dominate a peripheral policy area of another organisation.

### *Congruence*

The congruence of interests needs to be further specified in order to operationalise interaction modes for international institutions. If two organisations share the same interests in one policy field, this situation can trigger cooperation or competition at the same time. The concept of congruence cannot explain which interaction type potentially prevails unless we integrate additional factors in the analysis. The case studies on interaction types show that the structural capabilities of institutions are a necessary condition but are not a sufficient one. By structural capability I mean the ability of organisations to accomplish their policy goals without external resources. Resources can be material (e.g. financial power) or immaterial (e.g. problem solving experience). We can formulate the following conditions:

4. The willingness to cooperate increases if the congruence of interests in a policy area is high and the structural ability of actors to accomplish their policy goals is low.
5. A division of labour is most likely to materialise if the congruence of interests in a policy field is low but the structural capacity to accomplish policy goals is high.
6. Competition between institutions is most likely if the congruence of interests and the structural capability to reach policy goals are high.

### *Interaction profit*

The attractiveness of cooperation or competition between institutions is crucially influenced by potential interaction gains or costs. Interaction gains should not only be seen as material profits but also as gains in reputation, or legitimacy. The following assumptions can be formulated:

7. Cooperation between institutions becomes more likely if cooperation gains are higher than free riding.
8. A division of labour is most likely to emerge if actors do not expect significant cooperation gains or if cooperation is costly.
9. In a situation of competition no cooperation gains exist but costs are significant. Free riding is more attractive than cooperation.

Here international institutions are assumed to be rational actors calculating costs and benefits of their interaction with other organisations. Whereas cooperative behaviour is mainly influenced by synergy effects and mutual gains through interaction, competition results from a higher benefit being perceived outside cooperation. The table below summarises the assumed necessary conditions in a simplified version.

**Table 1 Interaction modes between international organisations and their preconditions**

	Cooperation	Division of labour	Competition
Overlap	overlap in periphery or core and periphery	overlap in core fields of competence	overlap in core fields of competence or threat of domination in one field
Congruence of interests	high congruence low structural ability	low congruence but high structural ability	congruence and structural ability are high
Interaction profit	high gains	no gains	high costs

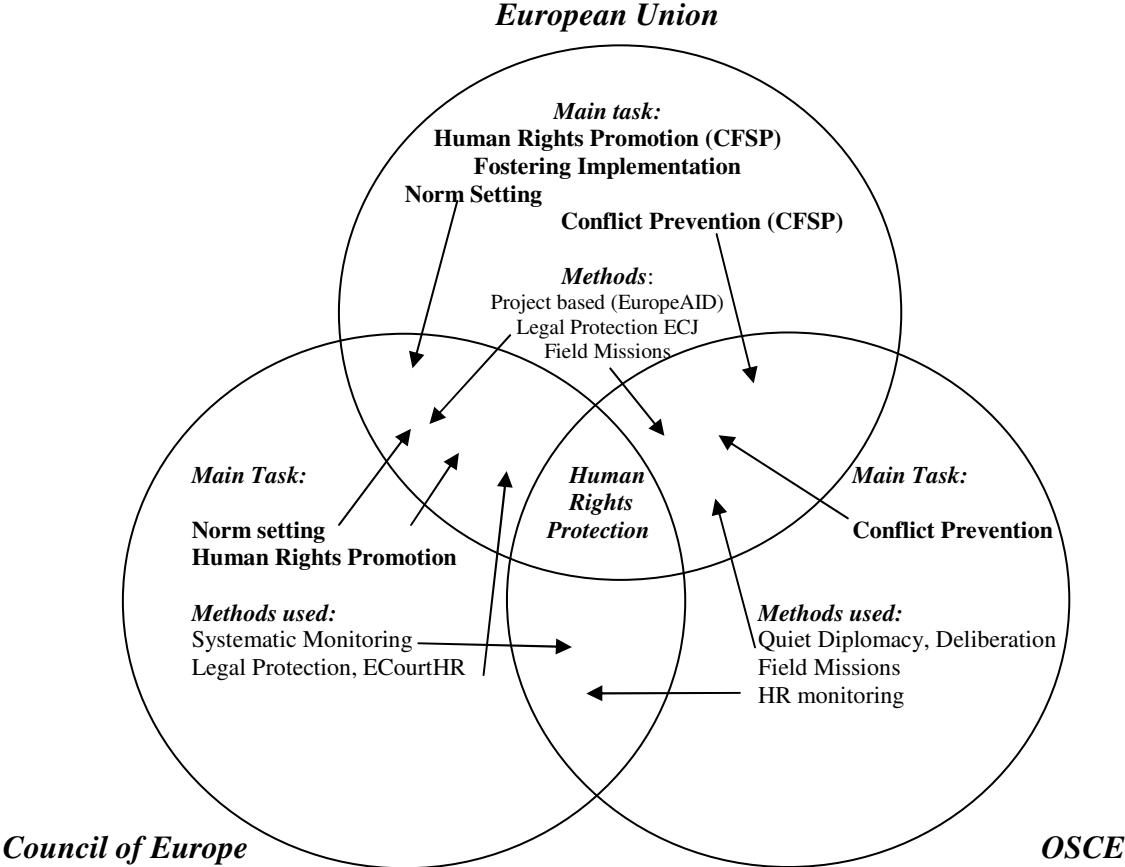
The project assumes a causal relationship between those factors mentioned in Table 1 and the interaction mode that has been developed between the institutions. The interaction modes, cooperation, division of labour and competition, form dependent variables which are assumed to be causally linked to those conditions formulated above. By definition competition defines a situation in which at least two actors contest the leverage of the other over resources or in our case leverage over a policy field. A division of labour separates the working of at least two actors in the same policy field into a number of individual working processes. Finally, cooperation describes a situation in which at least two actors liaise to reach a common purpose they would potentially not reach without pooling their resources. However, since this project follows an inductive approach it does not aim at testing hypotheses. Verification or falsification is accomplished through the method of process induction and process tracing and the observance of variance in the mentioned variables.

**4. The Triangle of Human Rights Promotion in Europe**

When looking at the European human rights system as a whole it can best be described as forming a triangle with the EU, Council of Europe, and OSCE as its apexes with substantial overlap between these institutions. As argued above, overlap in policy fields may lead to increased cooperation, division of labour or even competition. The European trend it is argued clearly indicates an increase in overlap in almost all areas of human rights protection. Thus intersection points between organisations become pivotal to our understanding of the entire system. In transforming the European human rights system, the classical role of norm-setting

is no longer exclusively reserved for the Council of Europe nor is the special emphasis on conflict prevention a privilege for the OSCE. Particularly the EU's increased human rights activities with the drafting of a Charter on Fundamental Rights, its emphasis on promoting human rights and democracy in relations with third countries and its growing involvement in conflict prevention and field missions has caused a significant increase in overlap between the EU, Council of Europe and OSCE. As Figure 1 shows there are hardly any policy areas in which there is no overlap between the organisations. Although each organisation has its own home turf, they at the same time share substantial parts of their traditional territory with other organisations. In the end the separation of tasks between institutions is no longer clear but becomes blurred very quickly. No single organisation can dominate the system. The promotion and monitoring of human rights in Europe is dispersed around the Council of Europe, EU and OSCE with their respective subunits such as the European Court for Human Rights of the Council of Europe, or the Office for Democratic Institutions and Human Rights of the OSCE or the EU's European Instrument for Human Rights and Democracy (EIDHR) and Fundamental Rights Agency.

**Figure 1 A Triangle of Human Rights Protection**



## **5. Modes of Interaction between the EU, Council of Europe and the OSCE**

In order to explore and further develop the necessary conditions for interaction modes the paper examines one case each of cooperation, division of labour and competition. The case selection follows variance on the dependent variable. The aim is to explore which conditions lead international institutions to choose a certain interaction type. While the literature on regime interaction emphasises the importance of the overlap of competencies, congruence of interest and interaction profit, international institutions react very differently to these conditions. Reactions indeed vary between institutionalised cooperation, division of labour and competition, as the empirical part of this paper will show. Thus an explanation of the variance in interaction modes needs further prerequisites. The project finds that the structural ability of institutions to reach their goals independently and the character of overlap are causally significant for the choice of interaction modes. The empirical sections below start with an example of successful cooperation, namely the relationship between the Council of Europe and the EU in the promotion of human rights and democracy in Eastern Europe at the policy level. For the examination of patterns of division of labour, the relationship between the OSCE and the Council of Europe in minority rights promotion is chosen, and finally the paper examines modes of competition between the EU and OSCE in sending out field missions and engaging in conflict prevention measures.

### **5.1. The EU/Council of Europe policy cooperation in human rights**

In recent years the Council of Europe and the EU have developed a common framework in which they elaborate and carry out the promotion of democracy and human rights norms. In April 2001 both organisations agreed on a “Joint Declaration on Cooperation and Partnership” which laid out basic rules for collaboration primarily at the project level in so-called Joint Programmes (JPs). In the subsequent years cooperation of the Council of Europe with the EU grew in importance which is reflected in the organisations’ Warsaw Declaration in 2005 and became even more visible in the “Memorandum of Understanding between the Council of Europe and the European Union” in 2007. All three documents emphasis a broad basis for cooperation when stating that the EU and the Council of Europe “will develop their relationship in all areas of common interest” (Memorandum of Understanding between the COE and EU, para. 9).

Following the above conjectures cooperation when actors significantly overlap in policy fields either only in peripheral areas of their institution or if there is considerable overlap in a core areas of interest in one organisation and in peripheral areas in the other. The EU and Council of Europe both recognise that they “share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law“ (Joint Declaration on Cooperation and Partnership 2001). Thus the degree of overlap in one policy area is clearly identified by both organisations. However, the relationship of the Council of Europe and EU in human rights issues is an asymmetrical one. The Council of Europe enjoys a greater leverage in human rights issues than the EU. Whereas human rights are a rather peripheral policy field for the EU they form a core field of activity for the Council of Europe. The Memorandum of Understanding notably reflects this view in its paragraph 10 which connotes “The Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe.“ The document is keen to assign to the Council of Europe the role as premier guardian of human rights in Europe. Paragraph 17 of the Memorandum clarifies the EU’s position with regard to the Council of Europe in human rights questions when stating that it “regards the Council of Europe as the Europe-wide reference source for human rights”. Thus the EU does not aim to compete with the Council of Europe in human rights issues and assigns itself a secondary role. Above it has been assumed that cooperation between the two organisations would occur without major problems since both institutions do not overlap in their core policy fields. The role of the Council of Europe as guardian for human rights is not challenged by the EU which provides the basis for longer-lasting cooperation. There seems to be no objective reason for the Council of Europe to fear the EU could interfere in its fundamental objectives.

Assumption 4 predicts cooperation when the involved organisations share a high degree of congruence in interests but have a low capability to accomplish their goals in isolation. As the previous paragraph has already shown, both organisations have a keen interest in promoting human rights and democracy in Europe and beyond. For the Council of Europe monitoring and promoting human rights is one of its first priorities and is one reason why the organisation was founded in the first place (Statute of the Council of Europe, 1949, Art. 1). It developed key European standards in fundamental rights and beyond. In the last six decades the Council of Europe has built a high reputation in setting and monitoring legal human rights standards with the ECHR forming the heart of European human rights norms. The EU only cautiously develops human rights standards. The TEU makes a reference to human rights in Article 6 which however does not constitute a substantive set of legal human rights norms. In 1999 the

EU adopted the EU Charter on Fundamental Rights which greatly borrows from the ECHR and only in a few points develops genuinely new human rights standards. The EU's engagement in the legal development of human rights standards is still limited. In many cases the EU refers to the Council of Europe human rights standards as the original source of reference. However, the EU is using its political weight in international relations and its financial means to promote and enforce human rights norms globally. EU accession conditionality for example helped Eastern European countries to consolidate their democracies more quickly. The EU was and is spending large sums for democracy promotion and human rights protection. The EU's European Initiative for Democracy and Human Rights for the years 2007-2013 receives an allocation from the central budget of 1 Billion Euros which makes the EU financially one of the biggest donors in this sector in the world. The promotion of democracy and human rights thereby also serve geo-strategic interests. The EU's borders are assumed to be more stable with democracy and human rights spreading. By speaking out for human rights the EU may further sharpen its profile as an independent actor in international affairs. Alongside Condition 4 we can claim that the Council of Europe and the EU share the same interest in human rights promotion. At the same time they are both constrained in their human rights approach. The Council of Europe is very much focussing on the legal enforcement of human rights but is incapable of exerting significant political power or running resource intensive implementation programmes. In comparison with this, the EU has hardly ever developed human rights norms on its own but is strongly involved in project-based human rights promotion and political lobbying. Indeed the fact that both organisations share the same goals in human rights issues but lack structural elements on either the legal side of human rights monitoring or policy implementation provides fertile ground for cooperation.

Referring to Condition 7 we can assume that cooperation is most likely if the involved actors can profit from mutual interaction benefits. This factor is one of the most often mentioned reasons for cooperation. The EU and the Council of Europe are indeed not only motivated to cooperate because they share common goals or because they do not overlap in their core areas of activity which potentially would be a cause for competition. A major reason for working together is the possible gains from cooperation and synergy effects. The Joint Declaration on Cooperation and the Memorandum of Understanding clearly highlight the effort to benefit from cooperation. The Joint Declaration on Cooperation states "Experience has shown that, by combining forces in this way, we have enhanced the complementarity of our activities and ensured maximum benefit for the countries concerned

(...). Cooperation in the various fields of action of the Council of Europe and the European Community should include all areas of common concern where such cooperation would be to mutual advantage.” (Joint Declaration on Cooperation 3 April 2001). Especially the last sentences make it very clear that mutual gain is a precondition for cooperation. It is only sensible to cooperate if both partners can expect a common benefit from it. Paragraph 12 of the Memorandum of Understanding equally highlights the importance of mutual gains when stating that “The co-operation will take due account of the comparative advantages, the respective competences and expertise of the Council of Europe and the European Union – avoiding duplication and fostering synergy –, search for added value and make better use of existing resources”. The importance of mutual gains through cooperation is further underpinned by hinting at potential costs that might emerge through non-cooperation. According to the Memorandum of Understanding, non-cooperation runs the risk of creating additional costs such as duplication of work or ineffective use of resources. Thus following a rationalist analysis, cooperation between the EU and Council of Europe appears as highly desirable because of its visible potential for common benefits.

The interaction profit is also related to the different structural orientation of the two organisations which the setting up of Joint Programmes addresses. While the Council of Europe does not have the material resources to run extensive implementation programmes at the project level, the EU does not enjoy the high reputation as a human rights actor like the council of Europe. Joint Programmes are profitable for the Council of Europe because they enhance the Council’s capabilities outside the narrow legal realm of human rights protection. JPs thus extend the reach of the organisation in a way which would not be possible without the EU’s decision to cooperate and especially to co-fund projects. But cooperation is also attractive for the EU because the Council of Europe brings in the accumulated expertise of more than 50 years of monitoring human rights in Europe. The common profit from cooperation also reaches far beyond the narrow calculation of project costs. Joint Programmes between the EU and Council of Europe primarily focus on countries at the EU’s external borders and beyond. Table 1 lists current JPs which are connected to human rights and democracy promotion. Democracy promotion in neighbouring countries is assumed to stabilise the EU’s external borders. Furthermore, the focus on South-eastern European countries in the JPs is of direct assistance for states which at present or in the future may accede to the EU. The EU may further profit from the Council of Europe’s moral authority on human rights issues in a way which is needed to develop its profile as a human rights actor exerting normative pressure on human rights violating states. Already in 2002 Ian Manners

stated that “[...] it is possible to think of the ideational impact of the EU’s international identity role as representing normative power.” In order to create a self image as a human rights promoter the EU needs to take recourse to the Council of Europe’s human rights documents and expertise.

The setting up of JPs is organised by the Directorate General for External Relations of the EU Commission and the Council of Europe's Directorate of Strategic Planning which works out objectives and targets for JPs. The Council of Europe however bears the responsibility for implementing the programmes and thus has the overweight in planning and carrying out JPs while the EU contributes more financial resources. Annual meetings between the Commission and Council of Europe staff as well as annual progress reports and evaluation of the JPs are foreseen in the Joint Declaration of Cooperation. JPs will be co-financed by both organisations with a 50 per cent share. However, in some case the EU provides for more than half of the funding. Currently cooperation between the EU and Council of Europe in the form of JPs show the highest degree of institutionalisation of any sector.

**Table 2 List of Joint Programmes (selection)**

<b>Civ-LEAD-NET</b>	Ukraine, Moldova, South Caucasus:Setting-up and Developing the Civil Society Leadership Network-EIDHR	<b>01/01/2008</b>	31/12/2009
<b>Media-Serb 2</b>	Support to promote freedom of expression and information and freedom of media in accordance with CoE/EU standards	<b>08/04/2006</b>	07/04/2008
<b>MLD-SC-Elections</b>	Support to free and fair elections- EIDHR	<b>01/01/2008</b>	31/12/2009
<b>MLD-SC-MEDIA</b>	Freedom of expression and information and freedom of the media - EIDHR	<b>01/01/2008</b>	31/12/2009
<b>MLD-UKR-ROMA</b>	Enhancing the domestic capacity on the national Roma related policies, and fighting negative stereotyping faced by Roma people - EIDHR	<b>01/01/2008</b>	31/03/2009
<b>Moldova-JU</b>	Increased independence, transparency and efficiency of the justice system	<b>02/10/2006</b>	02/04/2009
<b>Russia-Children</b>	Enforcing the rights of the child and re-integrating children at risk into society	<b>20/12/2006</b>	19/12/2008
<b>SEE-Roma</b>	Advancing equality, tolerance and peace: Equal rights and treatment for Roma - EIDHR	<b>22/12/2005</b>	21/03/2008
<b>Serbia-JU</b>	Project on the implementation of the National Judicial Reform Strategy- results achieved and challenges	<b>01/04/2007</b>	14/11/2007

<b>Turkey-ECHR</b>	Cascade training for Turkish lawyers on the European Convention on Human Rights (ECHR)	<b>20/12/2006</b>	30/11/2008
<b>Ukraine-JU</b>	Ukraine - Improving independence of the Judiciary	<b>01/06/2006</b>	31/12/2007
<b>Ukr-SC-Dem</b>	Ukraine and South Caucasus States- Promoting the democratic process	<b>29/12/2005</b>	28/04/2008
<b>Ukr-SC-HR</b>	Ukraine and South Caucasus- Fostering a culture of Human Rights	<b>05/12/2006</b>	04/12/2008
<b>Roma</b>	Roma	<b>01/01/2001</b>	30/06/2002
<b>Roma 2</b>	Roma II	<b>17/02/2003</b>	16/05/2005
<b>Turkey-HRRef</b>	Support to the implementation of human rights reforms	<b>01/12/2006</b>	30/11/2007
<b>Turkey-JU</b>	Judicial Modernisation and Penal Reform	<b>31/05/2004</b>	07/03/2007
<b>Turk-HR</b>	Human Rights training to the staff of the Delegation of the European Commission	<b>01/01/2007</b>	30/06/2007
<b>Ukr 4</b>	Ukraine IV	<b>20/02/2002</b>	19/08/2004
<b>Ukr 5</b>	Strengthening Democratic Stability in Ukraine	<b>01/12/2003</b>	31/05/2006

Source: Council of Europe website: <http://jp.coe.int/CEAD/JP/Default.asp>

## **5.2. Division of Labour between the Council of Europe and the OSCE**

This section analysis the interaction modes between the OSCE High Commissioner on National Minorities (HCNM) and the Council of Europe's Advisory Committee (AC) which monitors the Framework Convention on the Protection of National Minorities (FCNM). It is argued that a division of labour between these two institutions has been evolved which assigns different tasks to them within the framework of minority rights protection in Europe. According to the working hypotheses a division of labour is most likely to emerge when the involved organisations overlap in core fields of their competencies, when the congruence of interests and the structural ability to reach their own goals are high, and when potential cooperation benefits are minimal or even costly, but a division of labour is profitable.

The AC monitors the implementation of minority rights norms of the FCNM in 39 of the 47 Council of Europe member states. Under the FCNM which is the only document formulating legally binding minority rights norms in Europe, the contracting state parties are obliged to submit a report on the progress of implementation to the AC every four years. The AC reviews these reports and national laws touching upon minority rights issues and sends its conclusions to the state party. In a follow-up seminar in the respective country the AC further explains its findings and uses this opportunity to directly communicate with its state partner

and minority representatives. Since the norms in the FCNM are not directly litigable the opinion of the AC is not legally binding. However, the AC enjoys the highest authority in interpreting the FCNM norms and continuously develops the interpretation of the FCNM norms which due to their very vague formulation often acquire their meaning through application in countries. The protection of minority rights norms belongs to the AC's first priority and forms its core and sole responsibility (see FCNM Art. 26). Its existence solely depends on its ability to monitor the implementation of minority rights norms. It is therefore rather unlikely that the AC will engage in wide-reaching cooperation or even institutionalised cooperation since its only concern is the FCNM and its implementation in member states and its interpretation during application.

The HCNM also engages in minority rights protection but follows a different approach. The mandate foresees the HCNM will be an instrument for early warning. The HCNM is not an international representative who speaks out for all kinds of minority interests - his first goal is conflict prevention at the earliest moment (see mandate of the HCNM). The origin of the HCNM reaches back into the early 1990s which saw a brutal ethnic war in Yugoslavia. One aim of the HCNM is to stop ethnic tensions from spreading over into inter-state tensions. The main instrument is quiet diplomacy in order to avoid public pressure which could cause already existing tensions to further increase. The post of the HCNM enjoys a remarkable degree of independence. The HCNM can raise any issue at any time. This has the advantage of avoiding the bureaucratic and lengthy monitoring procedures of the classical state reporting system which often can only comment on decisions already made but cannot do anything during the decision-making. Despite a quite independent role, the HCNM has to lobby for political support from OSCE member states in order to put political power behind operations. As with the AC it appears rather unlikely that the HCNM would endeavour to share its core competencies which could potentially compromise its mandate. However, for both organisations a division of labour seems to be most promising because it does not challenge their core competence fields but allows for profiting from synergy effects without institutionalised cooperation.

The congruence of interest between the two institutions is high since they both specialise in the protection of minority rights and overlap geographically in many cases. However, the AC's first aim is the promotion of legal rights whereas the HCNM looks at minority issues from the perspective of conflict prevention. These different emphases in approach points to the advantages of a division of labour between these two actors. It is not immanently clear how cooperation could create an added value since the structural ability of both institutions to

accomplish their goals is not necessarily increased through cooperation. However looking at the situation from the perspective of division of labour, coordination makes sense since a certain degree of synergy effects may be realised. To some extent the HCNM may profit from an increased protection of minority rights on the legal basis as well as the AC implementation efforts gaining from OSCE conflict prevention measures. However, there are limits to this mutual benefit. The rights-based approach of the AC to minority protection can only partly be applied in conflict situations in which it might be necessary to negotiate political compromises, something which is not completely in line with the legal norms approach of the FCNM. Furthermore, both organisations pursue different techniques for the promotion of minority rights. Whereas the AC publishes its recommendations on each country and uses shaming as a pressure tool, the HCNM avoids such confrontational measures and instead looks for diplomatic solutions behind closed doors in order to not stir up an already existing conflict. In this context coordination does not only look at potential benefits from interaction but also tries to avoid unwelcome repercussions or interference from other institutions working in the same field.

The relationship between the OSCE and Council of Europe as a whole is laid down in Decision No 670 by the OSCE Permanent Council. The relationship of the organisations varies from sector to sector and can broadly be defined as being located between cooperation and division of labour. The distinctiveness of both organisations with their different approaches to human rights accounts for a division of labour and for better coordination. Decision 670 states that “various forms of co-operation between the two Organizations should be explored, such as joint meetings and joint activities, with more active involvement of the Member and participating States, in order to produce synergies and avoid unnecessary duplication, giving the fullest account however to the different nature and membership of the two Organizations, and making best use of their comparative advantages;” The document continues to argue that “the two Organizations need to work more closely together in identifying effective co-ordinated responses to the threats and challenges (...), on the basis of the principles of complementarity, transparency and democratic accountability, while respecting the autonomy, different membership and distinctive tasks of each Organization”. Thus policy coordination not only aims at pooling resources or profiting from mutual interaction gains, it also aims at dividing labour and maintaining a certain role identity. Interaction involving the HCNM and AC reflects this situation and can be located between division of labour and cooperation. In line with Decision 637 of the OSCE Permanent Council, a Co-ordination Group from the Council of Europe and the OSCE was inaugurated

in December 2004. At the 6<sup>th</sup> meeting of the Co-ordination Group in October 2007 the meeting report refers to the collaborative work of the HCNM and AC. The HCNM advised the AC on the further development of a draft commentary on the FCNM, enhancing the participation of national minorities in their home states. Furthermore, a joint publication “National Minority Standards – a compilation of the OSCE and Council of Europe texts” was published later in 2007. However, on a day-to-day basis policy coordination between the HCNM and AC is not institutionalised and is often sporadic and not often systematic.

### **5.3. The OSCE and EU: Competitors in field missions?**

Following the preliminary formulation of working hypotheses for competition modes we can assume that the likelihood of competition increases if organisations overlap in core areas of their activity field or if one organisation tends to dominate the other in a certain policy field, if they have a high congruence of interest and the structural ability to reach their goals, and there are high cooperation costs rather than benefits.

In the last decade the relationship between the EU and OSCE underwent substantial changes. The OSCE has developed into an organisation highly specialised in conflict prevention, nation- and state-building. Its premier instruments are field missions geographically located in Eastern Europe and Central Asia. As the Balkan region is one of Europe’s political hotspots, the OSCE set up large missions to Bosnia and Kosovo. Due to the EU enlargement rounds in 2004 and 2007 many of the OSCE field missions are now in direct proximity to the EU borders. While at the beginning of the last decade the EU had very limited capacity in the fields of conflict prevention, state-building or military intervention and it was hardly perceived as a recognisable actor in international affairs, this has changed considerably. Particularly the war in Yugoslavia has given rise to criticism about the EU’s incapability to secure peace and stability in its neighbourhood. Ethnic tensions in other Eastern European countries and the insecure transition process to democracy increased demands for the EU to become more active in conflict prevention and democracy promotion. The introduction of a High Representative for the EU’s Common and Foreign Security Policy was one major institutional step to remedy the EU’s incapacity in foreign affairs. The Lisbon Treaty further sharpens the EU’s foreign affairs coordination with the setting up of a European External Action Service which forms something comparable to a foreign ministry. The new High Representative for External Affairs, who is simultaneously Vice-President of the Commission, is supposed to increase the EU’s profile in foreign relations. Through the development of accession criteria the EU made accession conditional to compliance with

democratic rules and human rights standards. The Amsterdam and Lisbon Treaties meanwhile formulate common values and to a certain extent legitimise the promotion of democracy outside the EU's own borders. The changing role of the EU in international matters has been summarised by Javier Solana the EU's High Representative for its CFSP (25/09/02 Vienna). "It is inevitable, given the history of the EU, its expanding geography, its widening role in world affairs, and the irreversible process of globalisation, that it will increase its capacity to act as a political and security body in the world." Given the EU's expansion into classical fields of the OSCE there are good reasons to assume a growing competition between these two actors in the field of conflict prevention and state-building. The EU's attempt to get full operational independence from other organisations raises at least the necessity for better policy coordination or for a reshuffling of activities in order to avoid damaging competition.

It is hardly likely that both organisations will start an open wrangle for resources and issue areas or verbally attack each other. Such kinds of interactions would damage both institutions and undermine their effectiveness to work in this policy area. However, the consequences of competition may entail a re-branding of existing activity fields. The following paragraphs explore patterns of interaction in the area of police aid in conflict prone countries. This is indeed an area in which one can assume competition between the OSCE and EU. The degree of overlap in this area is striking - both organisations use the tool of police aid programmes, often in the same countries at the same time, as a state-building measure. Since police aid is one of the OSCE's core priorities it can hardly leave this field to other actors without risking a debate on its shrinking role in conflict prevention. For the EU police aid is of growing importance to secure the rule of law, stability and peace in its direct neighbourhood. In the field of police aid both organisations are capable of setting up their own assistant structures and would possibly be able to run their programme individually. Thus cooperation benefits seem to be rather small and the EU's growing interest in conflict prevention instruments forms a potential threat to the core responsibilities of the OSCE. All these conditions give reason to assume competition between the EU and OSCE in the area of police aid.

A comparative analysis of police aid from the EU and OSCE however reveals diverging patterns of interaction in a field of possible competition. Merlinger and Ostrauskaitė (2004) found out that although both organisations work in the same field they pursue different strategies to accomplish their goals. They follow different objectives within the field of policing and thus avoid open competition although there are good reasons to assume competition. In more concrete terms, on the one side the EU stresses the importance of law enforcement and of fighting against organised crime, and of the general abidance to the rule

of law and lawful conduct of police operations. On the other side, the OSCE has developed a special focus on community policing and sustainable conflict prevention. These different emphases in the same issue area in which both organisations have practically the same interests avoid competition as long as one organisation does not encroach into the others' field of activity. However, within the field of police aid the EU seems to occupy the more important part of law enforcement whereas the OSCE seems to occupy a niche which the EU has left. The niche strategy of the OSCE may have systematic patterns. In the field of non-discrimination the OSCE, the Council of Europe and the EU have simultaneously built up competencies. The EU has drafted a Racial Non-Discrimination Directive (2000/43EC) and is funding quite large mutual-tolerance building programmes and uses the European Monitoring Centre on Racism and Xenophobia (EUMC) and the recently set up EU Agency on Fundamental Rights (FRA) for promoting tolerance and monitoring discrimination in the EU. The Council of Europe promotes and monitors its human rights norms with respect to non-discrimination and uses shaming and blaming through its Commission against Racism and Intolerance (ECRI) which provides in-depth country reports on discrimination. In the area of non-discrimination, OSCE engagement does not seem to be needed at all since the Council of Europe and the EU already cover the most important aspects of this, such as legal protection against discrimination, monitoring of discrimination in Europe and tolerance building. What are left are only special focus areas which the two other organisations are not looking at in particular. The OSCE emphasis on hate crimes or intolerance towards Christians are niches that remained outside the core interest fields of the EU and Council of Europe. Potential competition in this area has prompted the OSCE to look for areas with less competition. This strategy at least allows the OSCE to remain active in its core fields of competence and to work on issues which others have found less compelling. Areas like community policing or hate crimes are undoubtedly important issue areas which deserve international attention and profit from transnational coordination. However, they can also be addressed within the broader frames of police aid within the EU or the Council of Europe. The OSCE's strategy to avoid open competition certainly guarantees it further engagement in its core competencies but also runs the risk of incremental marginalisation over time.

## **6. Concluding observations**

At this stage of research any concluding observations can only be tentative since the empirical analysis needs further development. In the case of inter-institutional cooperation the empirical

example does corroborate assumptions on minimum conditions for this interaction type. Mutual interaction profit and synergies from cooperation seem to be driving forces to enhance and maintain cooperation. The high congruence of interest within the EU and Council of Europe of which one finds evidence in several documents further allows the setting up of common structures like the joint programmes pattern. The fact that within this framework the EU clearly recognises the Council of Europe as guardian of human rights reduces the risk of competition and frictions between the two organisations. The EU seems to have made a conscious effort to take this step since human rights do not belong in its main field of activity and thus the Council of Europe is not pressured in its core field.

The analysis of division of labour also seems to correspond with the sketched out minimum condition for this interaction form. The HCNM and the AC perform very different tasks within the common framework of minority protection. It is assumed that the congruence of interest in their particular field is low, since the AC follows a rights-based approach and the HCNM uses diplomatic means for conflict prevention. The high degree of specialisation of each institution also allows them to pursue their tasks individually without the danger of external interference. However, the two institutions seem to have developed interaction forms that exceed a clear division of labour interaction mode. The involvement of the HCNM in norms setting and monitoring of the AC is obviously more than division of labour. Thus there seems to be a modest interaction benefit. Although both institutions follow different approaches to minority rights protection there is also room for mutual empowerment. Obviously the HCNM profits from the AC monitoring legal rights norms and the AC eventually gains from diplomatic interventions by the HCNM.

The last section has analysed modes of competition between the EU and OSCE in the area of police aid and to some extent non-discrimination policy. The empirical data could not directly investigate conditions for competition since organisations tend to avoid open conflicts. However, the OSCE's strategy of looking for niches that other organisations have not yet occupied or areas where others do not intend to become active can be interpreted as a consequence of competition. In the case of police aid from the EU and the OSCE a number of factors come together. The OSCE is challenged by the EU which has expanded into traditional competencies of the OSCE. Both organisations can set up police aid instruments individually and would be capable of pursuing their goals separately. At the same time both organisations share equal interests in state-building and conflict prevention which necessarily raises the question of how useful it is to have two missions in one place working on the same issue. There also seem to be no significant gains from cooperation.

The empirical analysis has shown that factors like overlap and congruence of interest are not causally significant in their own right. There is no variance in overlap and congruence under circumstances of cooperation and competition. In both situations one finds a high degree of overlap and congruence of interests. Only when combined with additional factors can a causal link be established. Cooperation seems indeed more likely when both organisations do not overlap in core competence fields. Likewise the congruence of interest needs to be connected with the structural capabilities of the involved institutions. In cases in which the structural ability of institutions to accomplish their own goals is low these institutions tend to cooperate, while in situations in which they can proceed individually and rely on their own capacities a division of labour or even competition becomes more likely. Furthermore, in those cases in which the interaction profit is low or even entails costs, institutions did not choose cooperation as interaction mode but in circumstances in which interaction is perceived as profitable cooperation becomes more likely to appear.

A more fine-grained analysis may reveal the causal significance of combining conditions for interaction modes. The structural ability of institutions to accomplish their own goals is not a sufficient condition for triggering a certain kind of interaction type. In both the case of division of labour and of competition the structural abilities of institutions is high. Thus it cannot causally account for the variance in interaction type. Only in combination with the congruence of interest does this factor reach causal significance. The character of overlap is of constitutive significance for all interaction types because the absence of any overlap would impede all three forms of interaction. Thus the congruence of interest and interaction profit with their sub-specifications is dependent on the character of overlap.

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