Note from the Editors

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This is the first issue of *CFSP Forum* produced by the new editorial team. We want to express our thanks to Karen Smith the founding editor of the *CFSP Forum* for all the hard work that she has done in establishing this publication as a key resource for scholars and practitioners in its coverage of developments in policy practice and scholarship.

This issue opens with an analysis of the EU's response to the recent events in Georgia. This is followed by two further articles examining first the dynamic between the Council Secretariat and Commission in decision-making and then the relationship between the EU and the Council of Europe.

We would very much welcome your comments on this issue and your suggestions for future content. Please contact us via email at cfspforum@lists.bath.ac.uk

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Assessing the costs of EU hesitancy in Georgia

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The Republic of Georgia erupted in conflict last month as the simmering dispute between the state and its powerful neighbour finally boiled over. The EU responded swiftly to the violent conflict between Russia and Georgia in and around the breakaway regions of South Ossetia and Abkhazia. The EU Presidency, led by French President Nicolas Sarkozy, brokered a ceasefire agreement on 11 August, and EU Foreign Ministers have since agreed to contribute a 200-strong observer mission to the region as part of an international team. Additionally, the EU has provided emergency assistance and has promised up to €11 million for post-war reconstruction in Georgia.

The war has highlighted the latent danger of so-called 'frozen' conflicts, and is sending ripples of instability across the post-Soviet space. Notwithstanding the EU's central and visible role, the war has also revealed the serious ramifications of the EU's hesitant foreign policy in its neighbourhood, and in Russia's borderlands in particular. EU actions since the ceasefire agreement are a case of too little, too late: the lack of EU involvement in conflict resolution to date, the absence of a membership perspective for Georgia, and the lack of a common EU policy towards Russia all contributed to the decision by the Georgian leadership to launch a military attack on South Ossetia on 7 August. The robust military response by Russian armed forces came as a surprise to no-one, and the prospects for international cooperation to address peace and

security problems have sunk to an all time low since the end of the Cold War. EU member states must take some of the blame for this situation. A reassessment of the EU's role in the region is required, and a commitment to deeper and long-term engagement is imperative.

The costs of conflict
According to an International Crisis Group (ICG) report, preparations for a Russian assault in Georgia had been underway for some months, with the construction of military buildings, the repair of rail links in South Ossetia, and the increase in Russian peacekeeping numbers in Abkhazia.[1] Skirmishes between Georgian and South Ossetian forces had been escalating over the summer, and it seems that Russian troops were waiting for Georgian forces to launch an attack. Russian tanks moved into the South Ossetian capital of Tskhinvali in the early hours of the 8 August after Georgian forces had shelled the city and retaken several Ossetian villages. Coach loads of volunteer fighters from North Ossetia joined the Russian army[2] in a replay of the original conflict of 1991. Russian troops also entered by land and sea via Abkhazia, and proceeded to destroy military bases and infrastructure in western Georgia. Abkhaz forces moved into the Kodori Gorge, the only region in Abkhazia still controlled by Georgia, and, with Russian air support, attacked Georgian bases and expelled Georgian civilians. The result of this short, but intense conflict is at least several hundred civilian and military deaths, the displacement of 192,000 Georgians and Ossetians, and the destruction of Georgian military and civilian infrastructure.[3] Russian forces have consolidated their positions in both breakaway regions, and are refusing to pull back to the pre-conflict ceasefire lines until an agreement on an international peacekeeping/monitoring mission can be reached. The prospects for Abkhazia and South Ossetia's peaceful reintegration into the Georgian state are worse than ever, and progress made as a result of years of confidence building and reconstruction by international organisations has been shattered in the space of a few weeks.

The costs of the conflict will extend beyond Georgia. The war is likely to have a destabilising impact on other regional conflicts and governments. The delicate coalition in Ukraine collapsed in acrimony on 2 September, unable to agree on a collective response to the crisis. There has been speculation that Russian interference might spill over to Ukraine, which has the largest Russian minority in Europe, and where half of the country's population are Russian speakers.[4] The crucial EU-Ukraine Summit on 9 September ended in disappointment for Ukraine - it failed to elucidate a clear statement from the EU on a membership perspective.[5] The recognition of the de facto states by the Russian President Medvedev on 26 August may further entrench the positions of other de facto regimes. Moldova is fearful that Russia might recognise the independence of Transdniester, another breakaway region it supports. There is also the danger of this in Nagorno Karabakh, the Armenian-held de facto state within Azerbaijan territory. At the very least, the prospects for progress in the Organisation for Security and Cooperation in Europe (OSCE)-led peace process (the Minsk Process) have plummeted further, since Russian and United States (US) representatives comprise two out of three of the principal negotiators.[6]

Projecting stability?
While local actors are responsible for the conflict, preventive engagement by the EU may have helped to curb Georgian President Mikheil Saakashvili's rash actions in South Ossetia. The term featured prominently in the European Security Strategy of 2003, in which the EU stated its ambition to 'act before countries around us deteriorate' and rightly claimed that 'preventive engagement can avoid more serious problems in the future.'[7] 'Projecting stability' was the cornerstone of the EU's long-term conflict prevention policy, first laid out in detail in the 2001 Communication on Conflict Prevention.[8] According to former Commissioner for External Relations, Chris Patten, the projection of stability was the EU's 'essential mission'.[9] The EU has not heeded its own rhetoric in the case of the South Caucasus. Moreover, much of what the EU has funded in Georgia and the breakaway territories – in terms of infrastructure as well as confidence building and community initiatives - has been destroyed or negated by the war, and conflict resolution will be even more difficult now.

What more, then, could the EU have done? A more pro-active role in conflict resolution may have contributed to greater stability in the de facto states. The European Neighbourhood Policy (ENP) has a conflict resolution dimension, but the EU has not developed its role in this area, despite statements by the European Commission that it stands ready to develop conflict resolution initiatives. The negotiating mechanism for the South Ossetian conflict, the Joint Control Commission (JCC) has been stalled in recent years, and the European Commission's role as observer on economic issues had a minimal impact. The EU was not involved in the United

Nations (UN) Abkhazian peace process. The EU preferred not to be directly involved in the negotiation procedures for either of the conflicts, focusing instead on confidence building and economic initiatives. It may regret this lack of involvement now, since it lost the opportunity to press the importance of non-violent solutions to the conflicts on the local leaders. However, the EU lacks influence in Georgia in comparison to the United States, who Russia has accused of arming and backing the Georgian offensive. The sale of weapons to Georgia, alongside the provision of military training, reflects poor judgement from the US: the Georgian government's increased military spending, contrary to the advice of international advisers, indicated non-peaceful intentions.[10]

The EU could have gained influence by offering Georgia a membership perspective – arguably the EU's most effective conflict prevention tool. Given Georgia's European ambitions, it is unlikely that its government would have launched a military assault on Tskhinvali if it meant the suspension of a Stabilisation and Association Agreement. Fundamental disagreement about the geographical scope of the EU and the role of the EU in the post-Soviet neighbourhood has prevented the Union from carrying out one of its key external objectives: the projection of stability across Europe. Resistance to enlargement is a common theme in the EU's history, but, as Tomas Valasek has argued, enlargement has enhanced member states' stability in the past, and the new EU members on the EU's borders 'have the same legitimate need for stability' in the future.[11]

Crisis response, not conflict prevention
Instead of investing in conflict prevention, the EU has gone into crisis response mode. The EU Presidency has taken on the role of principal mediator in the Georgian-Russian conflict: negotiating the ceasefire and securing a deal with Russia on the 8 September on the withdrawal of Russian forces from Georgia. The EU is sending a fact-finding mission, will be appointing another EU Special Representative to deal directly with the Georgian crisis, and is contributing 200 personnel to an international observer mission to monitor the ceasefire and the withdrawal of Russian forces. Relations with Georgia will be intensified, with the adoption of visa facilitation measures and the establishment of a free trade area.[12] After an initial disagreement between member states on how to respond to Russian military action, the EU's foreign policy machinery has been more systematically engaged. This engagement contrasts sharply with EU action in

Georgia prior to the current crisis. While the EU launched its first ever Rule of Law mission in the country in 2004-05, disagreements between member states meant that the opportunity to launch a border monitoring mission on the Georgian-Chechen border in 2005 was lost. Democracy promotion features prominently in Georgia's ENP Action Plan (agreed in 2006), but EU influence did not prevent the violent government crackdown on opposition demonstrators in Tbilisi in November 2007. In the aftermath of the closure of independent media and the declaration of a state of emergency, the ICG warned that the country was 'sliding towards authoritarianism'.[13] President Saakashvili's actions vis-à-vis the de facto regimes in recent months should have prompted intensive diplomacy by EU representatives, especially in light of the growing antagonism between Georgia and Russia. Arguably, EU action now is too little, too late.

What now?
The crisis in Georgia, as one commentator reminds us, 'tells us a lot about our present, delicate, international system of states'.[14] Recent discord in the UN Security Council over Kosovan independence, the placing of US military bases in Poland and the Czech Republic, and the sorry state of cooperation within the OSCE, indicate that international security cooperation is failing badly. The Georgian crisis represents a turning point for cooperation in the pan-European area, and it is largely down to the EU to ensure that it proceeds on an upward rather than a downward trajectory. A new Cold War may be an option for the US, but it is not an option for the EU, and would be disastrous for the EU's neighbours. Engagement with the neighbourhood and with Russia should be at the forefront of the EU's approach. Restoring the OSCE as a viable forum for cooperative security, with Russia as a full and equal partner, would be a key step forward in this process.[15] It is also important that the EU draws a wider lesson from this conflict: preventive engagement would have cost a fraction of what the EU will now spend on civilian missions, emergency aid and in the reconstruction of destroyed infrastructure (much of which it funded in the first place).[16] Adding the human cost of war to the cost-benefit analysis makes a compelling case for ending the reactive trend in EU foreign policy.

Forging a common policy towards Russia will undoubtedly be challenging. The EU's pragmatic focus on a ceasefire and Russian troop withdrawal is clearly masking member state divisions on how to deal with Russia. Some member states favour

punishing Russia for its actions, and as a result of this pressure, the EU agreed to suspend talks on a new EU-Russia partnership on 1 September.[17] Yet freezing out Russia further is not compatible with eastern member states' support for future EU enlargement: the EU needs to adopt a policy of engagement, not coercion, in order to extend peace in the long-term. On the other hand, clearly the EU has to 'salvage what it can from a very difficult situation', and must signal to Russia that partnership is 'incompatible with Russian military incursions into neighbouring states'.[18] Careful diplomacy rather than sanctions, and the political will to form a constructive Russia policy is required. The EU must reverse its hesitant neighbourhood policy: with enhanced engagement and a long-term membership perspective, it can put conflict prevention back at the core of its external relations agenda.◊

[1] International Crisis Group, 'Russia vs Georgia: The Fallout,' Europe Report No. 195, 22 August 2008.
[2] 'Armed Cossacks pour in to fight Georgians', *The Guardian*, Saturday 9 August 2008.
[3] ICG, 'Russia vs. Georgia'. Casualty figures in the ICG report are from Russian and Georgian sources. Refugee figures are based on an UNHCR briefing note released 12 September at http://www.unhcr.org/news/NEWS/48ca3d5f2.html.
[4] Andrew Wilson, 'After Georgia: is Russia next?' EUobserver, 5 September 2008, http://euobserver.com/24/26697
[5] Ian Traynor, 'Wary EU balks at pledge of integration for Ukraine' *The Guardian*, 10 September 2008, http://www.guardian.co.uk/world/2008/sep/10/russia.ukraine
[6] See comments by Tom de Waal in Claire Bigg, 'Georgia Woes Could Send Ripple Through Other Frozen Conflict', Radio Free Europe/Radio Liberty, 27 August 2008, http://www.rferl.org/content/Georgia_Woes_Ripple_Other_Frozen_Conflicts/1194375.html
[7] 'A Secure Europe in a Better World' European Security Strategy, Brussels, 12 December 2003, page 11.
[8] Communication on Conflict Prevention, European Commission, 11 April 2001 (COM (2001)211 final).
[9] Chris Patten, 'Projecting Stability' *The World Today*, vol. 56, no. 7, July 2000, pp. 17-19.
[10] Liz Fuller and Richard Giragosian, 'Georgia: What Is Behind Expansion of Armed Forces?' Radio Free Europe/Radio Liberty, 19 September 2007, http://www.rferl.org/featuresarticle/2007/09/955634FF-BA39-49FB-8396-F8CF1AEA7BC2.html
[11] Tomas Valasek, 'What does the war in Georgia mean for EU foreign Policy?' Centre for European Reform Briefing Note, August 2008, page 5.
[12] 'Russia Agrees Troops Pullout from Georgian Heartland Within 'Month'' Radio Free Europe/Radio Liberty, 9 September 2008, http://www.rferl.org/content/Russia_Agrees_Troops_Pullout_From_Georgia_Heartland/1197424.html; Renata Goldirova and Elitsa Vucheva, 'EU secures deal on Russia withdrawal', EUobserver, 8 September 2008, http://euobserver.com/9/26708; Presidency Conclusions, Extraordinary European Council, Brussels, 1 September 2008 (12594/08).
[13] International Crisis Group, 'Georgia: Sliding Towards Authoritarianism' Europe Report No. 189, 19 December 2007.
[14] Paul Kennedy, 'Georgia is important. But what it tells us about global politics is far more so' The Guardian, Saturday August 16, 2008.
[15] Emma J Stewart, 'Restoring EU-OSCE Cooperation for Pan-European Conflict Prevention' *Contemporary Security Policy*, Vol. 29, No. 2, pp. 266-284.
[16] Michael E. Brown and Richard N. Rosecrance, *The Costs of Conflict* (Lanham/Oxford: Carnegie Corporation, 1999).
[17] Elitsa Vucheva, 'EU-Russia talks suspended until Moscow withdraws troops', EU observer, 1 September 2008, http://euobserver.com/24/26670
[18] Nicu Popescu, Mark Leonard and Andrew Wilson, 'Can the EU win the peace in Georgia?' European Council on Foreign Relations Policy Brief, August 2008, http://www.ecfr.eu.

Commission versus Council Secretariat: an overview of bureaucratic rivalry in European foreign policy[1]

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Various scholars have made mention of the incoherence – if not the turf battles – between the European Commission and the Council Secretariat in European foreign policy.[2] This article gives an historical overview of how the inter-institutional relations between both institutions have developed and what the areas of contention are. The main argument is that after the Amsterdam Treaty (1999), the Council Secretariat has filled the political vacuum left by the Commission in the second pillar.[3] On the way, it has naturally come across the European Commission, whose strategy it had been to incrementally become more involved in the Common Foreign and Security Policy (CFSP). Recently, relations have improved through pragmatic day-to-day cooperation, but structural problems remain, and they are regularly displayed.

Historical overview of inter-institutional relations

Throughout the first decades of European Political Cooperation (EPC) (1970-1993), the European Commission was a 'guest rather than a participant'.[4] Following repeated French attempts to keep it at arms length in this *domaine réservé*, the member states agreed to only invite the Commission in boundary dossiers. The Commission therefore played a role when sanctions were discussed; when Community instruments were required for the political aims of EPC; and during the association negotiations with the Central and Eastern European countries after 1989. Through its Community expertise, access to Community funding and delegations, the European Commission tried to make a constructive contribution in order to further its competences in foreign policy cooperation. This strategy worked: whereas in the 1970s it had to fight for every invitation, in 1981 it became 'fully associated' with EPC, and by the end of the 1980s it was participating on major dossiers.[5] The European Commission proved to be a source of consistency between Community policies and EPC – this was its *raison d'être*.

Because of the limited involvement of the European Commission, the member states also discussed other possibilities for administrative support. Yet their wish to keep foreign policy coordination in their own hands led them to delegate these tasks to the Presidency. Already after three years they realised that this presented a heavy burden for the Presidency, and various burden-sharing measures were introduced. The Troika Secretariat of the London Report (1981), in which the outgoing and incoming Presidency detached one civil servant to the Presidency-in-office, is one example. With the ambitious Single European Act (1987), the member states felt that this was no longer sufficient and finally decided to create an independent small-scale Brussels-based secretariat. This secretariat would support the Presidency in its administrative duties. Over time, it became the guardian of the procedural orthodoxy and it drafted some speeches and answers to parliamentary questions for the Presidency. The conceptual work remained mostly in the hands of the latter.[6]

With the Commission looking after consistency, and the EPC Secretariat providing administrative support, their activities initially had little overlap. The EPC Secretariat took over tasks from the Presidency and from the European Correspondents, but not from the European Commission. This did not imply that the creation of the EPC Secretariat was not resented in the Commission, but simply that it did not lead to bureaucratic conflict, as the division of tasks was clear.[7] The problems that occurred under the Single European Act had more to do with the Commission's own role in European Political Cooperation *vis-à-vis* the member states and its competence-maximizing strategy.

The position of the European Commission became the subject of debate again during the negotiations on the Maastricht Treaty (1993). After its role in the 'Europe'-agreements and as coordinator of international aid to the Central and Eastern European countries, it was acknowledged that the Commission should play a more prominent role in the CFSP. In return, however, the integrationist member states also had to accept that the European Commission would not be at the helm of foreign policy cooperation. That the Commission gained a shared rather than exclusive right of initiative illustrates this compromise. Apart from the political negotiations, it was furthermore a question of whether the Commission, with little foreign policy expertise, would be capable of playing a central role.[8] To deal with this caveat, the member states therefore also increased the administrative capacity of the EPC Secretariat and integrated it into the Community's Council Secretariat. It

became known as the 'CFSP unit'.

A number of observers have commented on the performance of the European Commission in the early years of the CFSP. Its internal conflicts and almost continuous reorganisations are frequently mentioned as factors hindering its capacity to make a constructive contribution.[9] A further question-mark remains regarding its restricted use of its shared right of initiative. Some argue that the Commission was reluctant to confront the member states; others mention that the Commission was simple obstructing the whole process, as its political leadership believed that CFSP 'was not the right tool'.[10] Whatever the reason, the fact remains that the European Commission was not forthcoming – particularly not on dossiers it did not consider as 'foreign policy', such as Africa – and most of the initiative thus had to come from the Presidency. The Presidency in turn increasingly started looking at the Council Secretariat for input during the decision-making phase, while it was up to the Commission (and the member states) to put forward the appropriate instruments for implementation.

Amsterdam and beyond

The Amsterdam Treaty (1999) essentially reiterated this division of labour. With the strengthening of the Council Secretariat through a political and military dimension, the member states underlined that the Commission's role was secondary and different from the first pillar.[11] Within the European Commission this led to two seemingly contradictory developments. Firstly, some resented the fact that the Council Secretariat under Javier Solana with the Policy Unit was actually doing what they considered the Commission's job. As the political standing of the High Representative increased, the European Commission was defending its territory. Secondly, Chris Patten succeeded Hans van den Broek as the Commissioner for External Relations. As a British Tory (rather than a Dutch integrationist), he appreciated that the Commission was not the indispensable actor in the CFSP and preferred the pragmatic road: 'If [the ministers in the Council] were obliged to choose between backing Javier Solana or me, there was only one possible outcome'.[12] The Solana-Patten message – that differences cannot be displayed – also had an incremental effect on the cooperation at desk officer level.[13] They pragmatically learnt that consulting each other led to increasing returns.

Currently, the roles on most dossiers between the European Commission and the Council Secretariat are clear, as the instruments determine the actors. In the Western Balkans, the Stabilisation and Association Process (SAP) is a typical Commission-driven policy, where the European Commission acts on a mandate of the Council, then reports back to the Council, after which the Council decides. The Council Secretariat is taking the lead on the CFSP instruments, such as the European Security and Defence Policy (ESDP) missions. In the case of Bosnia-Herzegovina, there is furthermore a clear understanding that the 'double-hatted' UN High Representative/EU Special Representative (EUSR) does not take executive decisions using the Bonn powers in areas that fall under the SAP in order to promote some local ownership. Such arrangements also apply for Kosovo and FYROM.[14] Similarly in the Southern Caucasus, the Council Secretariat takes the political lead with the EUSR, while the Commission is implementing some technical projects under the various Community instruments.[15] In the Middle-East, Solana plays an active role during the non-proliferation discussions with Iran and as part of the Quartet; the Commission provides financial support. The Barcelona process, on the other hand, falls within the scope of the Community, and the Council Secretariat plays a minor role.[16]

The fact that the personal relationship at the political level under Solana and Patten was good and that Commission and Council Secretariat officials found *modus vivendi* does not mean that the underlying problems were solved. While the instruments determine the actors, it is the actors that choose the instruments. In choosing the instruments, fundamental questions arise over what defines a crisis, the short-term, the political, and how to demarcate the first and second pillar. The Treaties do not provide an unambiguous answer and 'grey areas' thus continue to exist between the activities of the Commission and the work of the Council and its Secretariat. These are often causes for conflict. In the remainder of this article two of the most pressing grey areas – civilian crisis management and representation in third countries – will be discussed.

Civilian crisis management and external representation

In the formative years of civilian crisis management (2003-2005), there was a lot of bureaucratic debate, which has subsequently 'coloured the general views on the relationship between the Commission and the Council Secretariat'.[17] Previously, the European Commission had played an active part in civil protection, civil administration, and humanitarian tasks. With, for example, the Technical Assistance for the CIS (TACIS) or the European Development

Fund (EDF), it used to make funding available for external consultants or NGOs to carry out tasks in third countries. These instruments did not cover everything, but the Community had a clear legal basis in article 177(2) to 'contribute to the general objective of developing and consolidating democracy and the rule of law' in third countries.[18] Furthermore, the Community Stability Instrument can be used, *inter alia*, to support effective civilian administration (article 3(2)(c)). Accordingly, election monitoring falls these days under the Community.[19] Lastly, DG Environment has a Monitoring and Information Centre (MIC) for the purpose of civil protection, which has been used for natural disaster response in many third countries.[20]

It is thus a small wonder that the European Commission got agitated when the member states decided during the European Council in Feira (2000) to also include these issues as priority fields for civilian ESDP missions.[21] When the member states in the eyes of the European Commission, started to duplicate structures in the Council Secretariat, relations turned sour. In 2004 for example, the Commission objected to the rule of law ESDP mission in Georgia pointing at its own activities and stating that it did not consider this country in a state of crisis.[22] These bureaucratic tensions, however, reached a climax during the Aceh Monitoring Mission (2005). Throughout the negotiations on the Memorandum of Understanding, the Commission had financially supported Ahtisaari's office.[23] Therefore the Commission suggested making a substantial contribution in the actual mission under the political control of the Political and Security Committee. However, following a heated debate between the Council and Commission's legal services, the member states refused any Commission involvement. It could pay for the mission with the CFSP budget; not participate in it. For the Commission it was an important lesson learned. Since the discussions over Aceh, the Commission has been emphasising the use of Community instruments rather than ESDP.[24]

The stringent way in which the Commission applies the financial regulations of the CFSP budget also causes tensions with officials from the Council Secretariat; particularly the complicated procurement procedures negatively correlate with the quick launching of a civilian ESDP mission. In the trade-off between urgency and financial accuracy, the bottom-line however is that the Commission's stance prevails.[25] One of the reasons why the ESDP operation in Afghanistan was delayed by nine months resulted from the fact that officials of the Council Secretariat claimed that the high procurement standards could not be met on the ground. With the Kosovo Rule of Law (EULEX) mission, the European Commission has been more cooperative, understanding the importance and salience of the issue. Yet the recent decision by the Council Secretariat on 26 July to start the 120-days transition period without consultation led to some tensions.[26]

Related to the European Commission's role in crisis management is the recent proliferation of 'security issues' (e.g. energy security, green security, human rights, security sector reform). The Commission particularly feared that defining everything as 'security' would strengthen the second pillar at the expense of longer-term topics such as development and humanitarian assistance ('second-pillarisation').[27] Its legal service in particular felt that is was necessary to draw the line between Community and CFSP competences. On its own initiative rather than on the suggestion of a relevant Directorate-General, the legal service therefore went to court over a Council Decision implementing the ECOWAS/small arms joint action.[28] On the basis of article 47, the European Court of Justice recently ruled that in cases of a double-objective (e.g. development and security) and in cases where action could be taken under the Community, action should be taken under the Community.[29] While nobody expected the Commission to go to court, this ruling did fill in a few blanks. The effect of this ruling remains unknown, but it is fair to assume that there might be less CFSP joint actions on grey area topics.

A second major point of dispute concerns the institutional arrangements with regard to external representation. Debates on the External Action Service and the EU delegations have proceeded, but in the run-up to the new treaty the problems surrounding 'double-hatting' – of which there are currently two cases – have been less well-documented. In the first case, the decision-making on the position of the EUSR/Head of Delegation in Macedonia was relatively easy. The Council could accept a Commission official for the post in light of the future candidate status and the phasing out of the ESDP operations. The supporting departments on the ground were furthermore kept completely separate with a Commission delegation and EUSR support staff. When the Council discussed similar arrangements for Addis Ababa, Bosnia and Afghanistan, competence issues became visible. In the case of Addis Ababa (Ethiopia), the Council had its own candidate, who, following Commission staff regulations, first had to join the Commission before being able to become Head of Delegation.[30] When the merger of the supportive departments was discussed, DG Development pre-empted the

negotiations by seconding a Commission official as head of the political service. Given the risk of a precedent, in which Commission officials are taking political positions, the Political and Security Committee was outraged.[31]

With regard to the transitional period in Bosnia-Herzegovina and the possible double-hatting, Solana and Rehn published a joint report in 2006. This report did, however, not discuss the details. The Commission and the Council Secretariat were, for the moment, saved a debate due to the lack of progress on the ground and due to the Russians blocking in the Peace Implementation Council the phasing out of the Office of the High Representative.[32] This is likely to become a debate in the near future. For Afghanistan the member states also discussed double-hatting at all Council levels. The term of the Commission's Head of Delegation was, however, not yet over. The Commissioner personally confronted the member states that is should accept its official and that the Commission could not just break the rule just to please them.[33] The member states subsequently abandoned for the time being the idea of double-hatting in Afghanistan, fearing again a precedent when automatically choosing the Commission's candidate.

Conclusion

This article has described how the relationship between the Council Secretariat and the European Commission has developed over time. While it has focused on a number of tensions between both institutions, it must also be emphasised that such conflicts also occur on a national level between the various ministries. It is furthermore important to state that avoiding the concentration of power is one of the basic principles of our democratic order. The division of labour also brings to mind an explicit divide-and-rule strategy of the member states. That having been said, the bureaucratic rivalry between the European Commission and the Council Secretariat does lead to inconsistencies, which damages the effectiveness of European foreign policy as a whole. ◊

[1] This article is based on interviews with (former) officials from the Council Secretariat, the European Commission, and the Permanent Representations in the period 2006-2008.
[2] For example: David Allen, 'Who speaks for Europe? The search for an effective and coherent external policy', in John Peterson and Helen Sjursen (eds), *A common foreign policy for Europe? Competing visions of the CFSP* (London: Routledge, 1998); Thomas Christiansen, 'Intra-institutional politics and inter-institutional relations in the EU: towards coherent governance?', *Journal of European Public Policy*, vol. 8, no. 5, 2001, pp. 747-769; Brian Crowe, 'A common European foreign policy after Iraq?', *International Affairs*, vol. 79, no. 3, 2003, pp. 533-546; David Spence, 'The European Commission and the Common Foreign and Security Policy', in

David Spence and Geoffrey Edwards (eds), *The European Commission* (London: John Harper, 2006); Fraser Cameron, An Introduction to European Foreign Policy (London: Routledge, 2007).
[3] Simon Duke and Sophie Vanhoonacker, 'Administrative governance in the CFSP: Development and practice', *European Foreign Affairs Review*, vol. 11, no. 2, 2006, pp. 163-182; Hylke Dijkstra, 'The Council Secretariat's Role in the Common Foreign and Security Policy', *European Foreign Affairs Review*, vol. 13, no. 2, 2008, pp. 149-166.
[4] Interview, national official.
[5] Simon Nuttall, *European Political Co-operation* (Oxford: Clarendon Press, 1992).
[6] Ibid.; Elfriede Regelsberger, 'The Setup and Functioning of EPC/CFSP', in Elfriede Regelsberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels (eds), *Foreign Policy of the European Union: From EPC to CFSP and Beyond* (London: Lynne Rienner, 1997).
[7] Simon Nuttall, 'The European Commission and European Political Cooperation', in David Spence with Geoffrey Edwards (eds), The European Commission (London: John Harper, 2006).
[8] Interview national official.
[9] Simon Nuttall, *European Foreign Policy* (Oxford: Oxford University Press, 2000); Simon Duke, 'The Commission and the CFSP', *EIPA working paper*, no. 1, 2006; Cameron, 'Introduction', see note 2.
[10] Ibid.; for the second part: interview with Council Secretariat official.
[11] Dijkstra, 'Council Secretariat', note 3.
[12] Chris Patten, *Not Quite the Diplomat: Home Truths about World Affairs* (London: Allen Lane, 2005), p. 156.
[13] Interview, Council Secretariat official.
[14] Interviews, Commission and Council Secretariat officials.
[15] Interview, Council Secretariat official.
[16] Ibid.
[17] Interview, Commission official.
[18] See also: Frank Hoffmeister on the recent ECOWAS/Small arms ruling, 'Inter-pillar Coherence in the European Union's Civilian Crisis Management', in Steven Blockmans (ed.), *The European Union and International Crisis Management: Legal and Policy Aspects* (The Hague: T.M.C. Asser Press 2008).
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[20] Interview, Commission official.
[21] Catriona Gourlay, 'European Union procedures and resources for crisis management', *International Peacekeeping*, vol. 11, no. 3, 2004, pp. 404-421; Ursula Schroeder, 'Governance of EU Crisis Management', in Michael Emerson and Eva Gross (eds), *Evaluating the EU's Crisis Missions in the Balkans* (Brussels: CEPS, 2007).
[22] Xymena Kurowska, 'More than a Balkan Crisis Manager: The EUJUST Themis in Georgia', in Michael Merlingen and Rasa Ostrauskaité (eds), European Security and Defence Policy: An Implementing Perspective (London: Routledge, 2008).
[23] Pierre-Antoine Braud and Giovanni Grevi, 'The EU mission in Aceh: implementing peace', *EU-ISS Occasional Paper*, no. 61, 2005.
[24] Ibid.
[25] Interview national official.
[26] Interview Commission official.
[27] Gourlay, 'European Union procedures'; Schroeder, 'Governance', see note 21.
[28] Council Decision 2004/833/CFSP.
[29] Interviews Commission officials.
[30] Geoffrey Edwards and David Rijks, 'Boundary Problems in EU External Representation', *SIEPS report*, no. 6, 2008.
[31] Interviews Commission and national officials.
[32] Interviews Commission and Council Secretariat officials.
[33] Ibid.

New Modes of Cooperation between the EU and the Council of Europe

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The EU's growing engagement in human rights, such as the drafting of a Charter on Fundamental Rights, the promotion of democracy in the EU neighbourhood 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.[1] Human rights and democracy promotion now clearly belong to the EU's foreign policy strategy. The notion of 'normative power Europe' has given inspiration to a whole new debate on the EU's influence as a norm promoter.[2] However, this literature does not analyse the growing degree of organisational overlap between the EU and Council of Europe. Each organisation aims at accomplishing its own goals on its own home turf, but this becomes more and more difficult in isolation from other organisations.[3] Therefore this article examines modes of organisational interplay between the EU and the Council of Europe. Furthermore, it explores those conditions which enable both organisations to cooperate more closely in the area of human rights and democracy promotion.

Research in international relations has only randomly investigated the interaction of international institutions. Although a literature exists which analyses regime-building processes, there are few studies that try to conceptionalise the interaction of whole regimes or organisations. 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.[4] Empirically many policy fields remain unexplored. Few studies investigate interaction modes between European institutions. Only the EU's involvement in the WTO, UN or other international conventions has been analysed at greater length. Although the effects of globalisation such as the increasing legalisation of international affairs, the growing complexity of international conflicts, 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.

Cooperation in human rights

In recent years, however, the Council of Europe and the EU have developed a common framework for 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 between 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 emphasise 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'.[5]

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'.[6] Thus the degree of overlap in the area of human rights and democracy promotion is clearly identified by both organisations. However, the relationship between 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 the core field of activity for the Council of Europe. The Memorandum of Understanding notably reflects this view in its paragraph 10 which states '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. 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.

A further positive condition for cooperation is the high degree of congruence in interests, but the structural limitations of both institutions. Both organisations have a keen interest in promoting human rights and democracy in Europe. 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.[7] It developed basic European standards in fundamental rights and other areas. In the last six decades the Council of Europe has built a high reputation in setting and monitoring legal human rights standards with the European Convention on Human Rights (ECHR) forming the heart of European human rights norms. The EU only cautiously develops human rights standards. The Treaty on European Union (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 on 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. The promotion of democracy and human rights thereby also serves geo-strategic interests. The EU's borders are assumed to be more stable with the expansion of democracy and human rights. By speaking out for human rights the EU may further sharpen its profile as an independent actor in international affairs.

Indeed 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.

The EU and the Council of Europe are 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.' The last sentence in particular makes 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 '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 highly desirable because of its visible potential for common benefits.

Mutually beneficial cooperation is also related to the different structural orientation of the two organisations which the setting up of JPs 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 yet enjoy the high reputation as a human rights actor like the Council of Europe. JPs are desirable 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. JPs 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 states violating human rights. 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 European 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 ancillary 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 cases the EU provides for more than half of the funding. Currently, cooperation between the EU and Council of Europe in the form of JPs shows the highest degree of institutionalisation of any sector.

Conclusion

Recent years have seen growing cooperation between the EU and Council of Europe. This article has focused on how the EU and the Council of Europe complement each other in the promotion of human rights norms and democratisation. Three conditions are laying the ground for this cooperation. Cooperation has become possible because the two organisations significantly overlap in the area of human rights and democracy promotion. This overlap has not provoked competition because it is still a peripheral policy area for the EU in which the EU recognises the leading role of the Council of Europe for which human rights belong to its core area of activity. Second, both organisations share virtually the same interests in the promotion of human rights, and their structural limitations provide options for cooperation and complementation. On the one hand, cooperation is attractive for the EU because it profits from the Council's expertise and reputation in human rights issues. On the other hand, the EU complements the Council of Europe's rights-based approach with implementation programmes which the Council of Europe would not be able to run to the present extent without the EU. Third, cooperation generates a profitable situation for both sides. While the Council of Europe broadens its repertoire of instruments and thus increases its impact beyond the legal protection of human rights, the EU further sharpens its profile as a human rights actor in international relations.◊

[1] Alyson J. K. Bailes, Jean-Yves Haine & Zdzislaw Lachowski, 'Reflections on the OSCE-EU Relationship' *OSCE Yearbook 2007* (Baden-Baden: Nomos, 2007), pp. 65-77.
[2] Thomas Diez, 'Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'' *Millenium*, vol. 33, 2005, pp. 613-63; Michéle Knodt, Regieren im erweiterten Mehrebenensystem, Internationale Einbettung der EU in die WTO, *Zeitschrift für Internationale Beziehungen*, 2007, pp. 101-129; Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' *Journal of Common Market Studies* vol. 40, no. 2, 2002, pp. 235-258; Richard Youngs, *The European Union and the Promotion of Democracy. Europe's Mediterranean and Asian Policies* (Oxford: Oxford University Press, 2001).
[3] Howard Loewen, 'Towards a Dynamic Model of Interplay Between International Institutions' *GIGA Working Papers*, No. 17, 2006, p.6.
[4] Sebastian Oberthür & Thomas Gehring 'Conceptual Foundations of Institutional Interaction' in Sebastian Oberthür & Thomas Gehring, eds. *Institutional Interaction in Global Environmental Governance: Synergy and Conflict*

among International and EU Policies (Cambridge, MA: The MIT Press, 2006).
[5] Memorandum of Understanding between the Council of Europe and the European Union, 2007, para. 9.
[6] Joint Declaration on Cooperation and Partnership between the Council of Europe and the European Commission, Strasburg 3 April 2001.
[7] Statute of the Council of Europe, 1949, Art. 1.

Table 1 List of Joint Programmes (selection)

Civ-LEAD-NET	Ukraine, Moldova, South Caucasus: Setting-up and Developing the Civil Society Leadership Network-EIDHR	**01/01/2008**	31/12/2009
Media-Serb 2	Support to promote freedom of expression and information and freedom of media in accordance with CoE/EU standards	**08/04/2006**	07/04/2008
MLD-SC-Elections	Support to free and fair elections- EIDHR	**01/01/2008**	31/12/2009
MLD-SC-MEDIA	Freedom of expression and information and freedom of the media - EIDHR	**01/01/2008**	31/12/2009
MLD-UKR-ROMA	Enhancing the domestic capacity on the national Roma related policies, and fighting negative stereotyping faced by Roma people - EIDHR	**01/01/2008**	31/03/2009
Moldova-JU	Increased independence, transparency and efficiency of the justice system	**02/10/2006**	02/04/2009
Russia-Children	Enforcing the rights of the child and re-integrating children at risk into society	**20/12/2006**	19/12/2008
SEE-Roma	Advancing equality, tolerance and peace: Equal rights and treatment for Roma - EIDHR	**22/12/2005**	21/03/2008
Serbia-JU	Project on the implementation of the National Judicial Reform Strategy- results achieved and challenges	**01/04/2007**	14/11/2007
Turkey-ECHR	Cascade training for Turkish lawyers on the European Convention on Human Rights (ECHR)	**20/12/2006**	30/11/2008
Ukraine-JU	Ukraine - Improving independence of the Judiciary	**01/06/2006**	31/12/2007
Ukr-SC-Dem	Ukraine and South Caucasus States- Promoting the democratic process	**29/12/2005**	28/04/2008
Ukr-SC-HR	Ukraine and South Caucasus- Fostering a culture of Human Rights	**05/12/2006**	04/12/2008
Roma	Roma	**01/01/2001**	30/06/2002
Roma 2	Roma II	**17/02/2003**	16/05/2005
Turkey-HRRef	Support to the implementation of human rights reforms	**01/12/2006**	30/11/2007
Turkey-JU	Judicial Modernisation and Penal Reform	**31/05/2004**	07/03/2007
Turk-HR	Human Rights training to the staff of the Delegation of the European Commission	**01/01/2007**	30/06/2007
Ukr 4	Ukraine IV	**20/02/2002**	19/08/2004
Ukr 5	Strengthening Democratic Stability in Ukraine	**01/12/2003**	31/05/2006

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

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