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The European Union and the Council of Europe: Difference, Duplication or Delegation?

“Governments should be more clear about who does what,” Terry Davis, Secretary General of the Council of Europe.

The Council of Europe is nearly 60 years old, and the European Union – dating from the Treaty of Rome – is nearly 50. Over that time both have grown spectacularly from relatively modest beginnings, to now form the two major organisations that group European states in international – and in part supranational – structures that span the continent.

It is often said that the Council of Europe (CoE) represents the intergovernmental branch that grew from the 1948 Congress of the Hague, while the European Union (EU) – originating in the European Coal and Steel Community – represents the supranational branch. There is much truth in this simple contrast of principle, even if the battle still rages – or at least the jury is still out – as to just what the nature of the European Union may be in the future.

The Council of Europe began as a grouping of ten Western European states, dedicating themselves in 1949 to the promotion of human rights and fundamental freedoms. It grew steadily over the next forty years with the accretion of other West European states as they were able to take on the responsibilities of membership. After the Fall of the Berlin Wall it expanded more quickly to include the emerging democracies of Central and Eastern Europe. In 1996 Russia was accepted into membership, and after the break-up of Yugoslavia its successor states also joined, most recently Montenegro in 2007. Of all states in geographic Europe only Belarus is not a member because of its unacceptable human rights record. With a total population of over 800 million, the Council of Europe now numbers 47 member states. (1)

The European Union, which began later as a smaller group of only six states, now includes 27 of the member states of the Council of Europe. And it represents a total population of just under 500 million. In terms of membership and population, the EU represents a majority in the CoE. In budgetary terms, four of the five “big payers” to the budget of the Council of Europe – France, Germany, Italy and the United Kingdom - are also member states of the European Union. Together they account for approximately half of the CoE’s budget. In measurable and objective

terms the European Union is evidently a force to be reckoned with within the Council of Europe.

The two organisations are often confused in the popular mind, not least because they both use the same flag and the same anthem. The flag of 12 gold stars on a blue background was originally adopted by the Council of Europe in 1955 as its official emblem, and subsequently adopted by the European Union in 1986. Beethoven's "Ode to Joy" was first adopted by the Council of Europe in 1972 and likewise taken over by the EU in 1986.

Coherence, Clout and Conventions

And yet – perhaps surprisingly - the European Union does not always punch with all its weight within the CoE. For a start, until the Treaty of Lisbon enters into force, the EU itself as opposed to its consistent member states does not possess the international legal personality to engage formally with certain instruments of the Council, in particular the European Court and the European Convention on Human Rights. When it does have that legal personality, the EU – in addition to its member states, all of whom have ratified the ECHR individually - can be expected to join the Convention and, as a signatory itself, to send an EU Judge to the Court of Human Rights. This will, however, require some changes to the statutes of the Council of Europe and the Court itself to allow a 'non-state' to join, and will thus require unanimity among existing members.

The EU member states do regularly 'caucus' in Strasbourg with separate meetings – usually weekly - in advance of decision-making at diplomatic level. But, as the Ambassador of one EU state put it, "The other states get a privileged view of the EU from inside, with member states disagreeing and bickering in front of them, since we go over the same issues in the wider framework of meetings of all 47". However, when push comes to shove and politically unacceptable situations need to be avoided – as when the uncontested election of a Russian candidate for President of the Parliamentary Assembly seemed assured in early 2008 – a consensus of the main political groups in the Assembly, predominantly headed by nationals from EU member states, did agree on an alternative procedure to ensure the election of a Spanish Socialist candidate into the post instead of the Russian.

A senior member of staff of the Commission acts as a representative at the Council of Europe in Strasbourg, effectively acting as an ambassador to the organisation, and her office provides a valuable source of

information and political reporting for the Commission on issues of interest. The Council of Europe itself maintains an office in Brussels to observe and liaise with the EU, and this too acts as a conduit for information and commentary on the activities of the EU which may have an impact on the Council of Europe. But both offices see their role essentially as one of observation rather than co-ordination.

Despite its lack of legal personality *qua* European Union, the EU is in practice more involved in Council of Europe activities than may at first meet the eye. In the legal form of the European Communities, the EU has signed and ratified 46 of the Council of Europe's current total of 203 Conventions. These Conventions relate to issues where there is justifiable Community competence, the first of them the 1958 Agreement on the Exchange of Therapeutic Substances of Human Origin and the most recent the 2007 Convention of Protection of Children from Sexual Exploitation and Sexual Abuse. The bulk of the signatures relate to health and education, cultural and environmental heritage, and terrorism and associated issues of international crime such as money laundering and corruption, areas where the European Community can claim competence based on one or other article of the Treaties.(2)

This is just one indication of the extent of overlap of activities and concerns between the two organisations and the degree to which the EU's member states are content collectively to subscribe to the international norms that these Conventions and Agreements establish.

Two further indicators are the numbers of Conventions which all member states have signed and ratified. This represents as it were the high water mark of joint agreement among the member states on CoE Conventions. The counterpart of this is the number of CoE Conventions that the EU member states have not ratified – in many cases not even signed. That represents the low water mark of lack of consensus among the 27.

Those EU states that have been members of the CoE for a longer number of years have had more opportunity to complete the process of ratification and their 'score' is generally higher, but they represent quite a wide spread none the less. The Netherlands leads the pack with 136 ratified Conventions from the total of 203. Cyprus, a member of the CoE well before it joined the EU, has ratified 121. The UK, for example, has ratified just 112. The leading state from Central and Eastern Europe is the Czech Republic with 98, and Hungary is last with just 72. That indicates that slightly more than a third of the CoE Conventions are currently the

‘common property’ of all EU member states, representing a network of common standards throughout the EU across a wide variety of issues.

At the other end of the spectrum are the CoE Conventions that EU member states have negotiated but subsequently not signed, let alone ratified. This is the negative of the previous positive picture. Here Hungary ‘leads’ the Central and Eastern European pack with 117 unsigned Conventions, followed by Estonia 115, Bulgaria 111, Latvia 110, Lithuania 107, Poland 106, Slovakia 105, Slovenia 94, the Czech Republic 93 and Romania 92. Among the older ‘Western’ member states, Finland has not signed 89 Conventions, Ireland 88 and Spain 80. The UK ranks with a middle group of Western states with 67 unsigned Conventions. The tail – positive in the sense that it reflects the strong attachment of these countries to most of the normative effort of the CoE – is composed of the Netherlands with 44, Belgium with 40, Italy and France with 39 each, Germany with 38 and Luxembourg with only 29 unsigned Conventions.

These figures reflect a very ragged pattern of acceptance of the European standards that CoE Conventions attempt to establish. It is arguable that some of these Conventions are extremely technical and with such marginal economic impact that it is not surprising that member states’ governments and parliaments are slow – if not reluctant – to complete the process of signature and ratification. But the counter argument equally applies. If the subject matter of the unsigned and unratified Conventions was of such little importance, why did the states in the Council of Europe go to the bother of negotiating them in the first place?

What the figures reveal is the very inconsistent pattern of different states in regard to their CoE undertakings. Failure to sign and subsequently ratify indicates at least hesitation and possibly opposition to establishing common standards even in the soft areas of policy covered by CoE Conventions. And the degree to which so many Central and Eastern European states have not yet signed the “acquis” of the CoE makes something of a mockery of the argument that the CoE was an active training ground (rather than just a passive antechamber) for them before they moved on to EU membership. The EU does not appear to exert friendly pressure on its member states to create a more coherent block of common standards through a co-ordinated pattern of signatures and ratifications among its members. It would have a stronger claim to be creating common standards of civilised behaviour across the continent even outside its borders if it did strive to make the *acquis* of the CoE an extension of the *acquis communautaire*.

The one exceptional Convention, however, that all member states subscribe to is the most fundamental, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. Individually all member states of the CoE have ratified the ECHR, and hence recognise the jurisdiction of the European Court of Human Rights. What remains outstanding is the EU's signature and ratification of this Convention, and this will not be addressed until the Treaty of Lisbon comes into force, establishing the necessary legal personality for the EU. Then all acts of the EU will be subject to the ECHR and will be justiciable before the European Court of Human Rights in Strasbourg, with access for individual litigants.

Partial Agreements

Relations between the EU and the CoE are not limited simply to the Conventions of the CoE and to the work of the offices of each organisation accredited to the other. The European Commission is also already involved in practical work alongside the CoE in many of the fifteen organisations set up on the basis of what are known as "partial agreements". In such arrangements a restricted number of CoE states establish and support organisations technically part of the CoE and initially subject to approval by the Committee of Ministers, but to all intents and purposes subsequently independent, with budgets and working methods established only by those members who wish to subscribe to the project. They may invite other states, members of the CoE or not, to join them, and on occasion the European Commission.

This is the case, for instance, with the European Audiovisual Observatory, set up in 1992. Its task is to collect and distribute statistical information about the European audio-visual industry, to policy makers and audiovisual industry professionals. The Observatory has 36 members plus the European Community represented by the European Commission, and so high has been the quality of its statistical work that the EU Statistical Office relies on its figures in certain areas rather than attempt to assemble its own.

The Venice Commission – formally the Council of Europe Commission for Democracy through Law - was set up two years earlier. It is similarly structured, but the European Commission there enjoys a special status as an Institutional Partner (short of full membership), representing the EU in the work of offering third countries legal advice on the development and functioning of democratic institutions and constitutional law.

One of the most successful partial agreements within the CoE is the European Pharmacopeia, (EDQM) an organisation that establishes compulsory common quality and safety standards for medicines in all member states. With 37 full members (including now – but not initially - all EU member states) and with seven further European states (including Russia) as observers, as well as thirteen additional observer states including China and the USA, the Pharmacopeia is on the way to establishing world-wide norms in this field on the basis of European definitions. For all non-technical decisions in the Pharmacopeia the EU votes in place of its member states, and national registers of medicinal standards are slowly being replaced by the growing body of Europe-wide and potentially world-wide norms elaborated here.

These and a number of other offshoots of the Council of Europe - such as the Pompidou Group, Eurimages, the North-South Centre, the Council of Europe Development Bank and the European Centre for Modern Languages – all offer examples of “variable geometry” co-operation among different groups of member states, sometimes with European Commission involvement, sometimes not. As a model it has proved itself successful in that it allows those states initially unimpressed with any initiative to stand back, while those who see advantage in it press on with other like-minded colleagues. Reluctant ones are still able to join later if the initiative proves successful. (3)

Covenants

The Council of Europe has also negotiated a number of multi-annual Covenants with the European Commission covering areas of mutual interest and concern, and relating to territorial areas beyond the EU though still within the membership of the CoE. In these countries – often potential candidates for membership of the EU - both the Council of Europe and the European Union as a whole appreciate the relevance and importance of the work they undertake together.

The most important of these Covenants is the “Partnership between the European Commission and the Council of Europe in the field of youth policy, youth research and youth work.” Established in 1998 and subsequently renewed, this Covenant defines a series of specific further education projects for European youth leaders covering European citizenship, human rights education and intercultural dialogue, as well as the mutual recognition of qualifications for youth work and the further development of policy in this field.

A similar co-operative Covenant exists in the field of cultural heritage, where the CoE has for many years encouraged events in member states at a specific date to mark the commonality of European cultural heritage. Co-financed by the European Commission, the relationship was formalised in a Covenant in 1999.

A more specific and more recent Covenant in this same area relates to the cultural and environmental heritage in the Balkans, where the relevant states are encouraged to respect, preserve and restore the cultural and natural heritage of both majority and minority communities with the financial support of the European Commission channelled through the CoE. This measure is seen as a contribution to maintaining peace and encouraging reconciliation in the region, and was most evidently called upon to assist in the restoration of Serbian Orthodox churches which were damaged during conflict in Kosovo.

Within the framework of such Covenants the two organisations also agree on designating European Days and Years for specific topics. Every October, for instance, a Day against the Death Penalty is declared, one of the defining common values of the wider Europe being either the abolition of the death penalty, or at the very least its suspension. The current year – 2008 – is designated the Year of Intercultural Dialogue by both parties, the Council of Europe elaborating an extensive White Paper on the subject and the European Commission co-financing the project of “Intercultural Cities”.

Joint Programmes

The CoE and the EU share common values and pursue common aims as far as the overriding issues of democracy, human rights and the rule of law are concerned. Hence it is not surprising that they collaborate on a number of Joint Programmes. (4)

Since their inception in 1993 there have been over fifty such Joint Programmes, essentially for co-operation with countries which have joined the Council of Europe since the collapse of communism across Central and Eastern Europe from 1989. In April 2001 an important step was taken through the signature by the EC and the CoE of a Joint Declaration on Co-operation and Partnership which, among other things, offers more systematic means of joint programming and priority setting, involving more extensive exchange of information and twice yearly meetings of senior officials.

Most Joint Programmes are country-specific. They cover four main groups of countries: a) S.E Europe/Western Balkans; b) Cyprus and Turkey; c) Russia, Ukraine and Moldova; and d) the three republics of the South Caucasus: Armenia, Azerbaijan and Georgia. Multilateral thematic Joint Programmes have also been carried out, regarding for instance national minorities, the fight against organised crime and corruption, and the development of ethics committees for the review of biomedical research. There have been other Joint Programmes for awareness-raising on the abolition of the death penalty, the preparation of the European conference to fight against racism and intolerance, action to promote the European Social Charter and a programme to strengthen democracy and constitutional development which was undertaken with the assistance of the Venice Commission.

Joint Programmes consist of a series of activities agreed between the EC and the CoE in consultation with the governments of the countries concerned. They are designed to facilitate and support legal and institutional reform, and often involve training courses, expert reports and advice to governments, conferences, workshops, seminars and publications and their dissemination. To date the emphasis has been on training and advice, but in some cases Joint Programmes have also offered some limited material and physical support, for instance with the establishment of the Albanian School of Magistrates and the State Publications Centre.

The EC and the CoE provide joint funding for the Programmes and the CoE is responsible for their implementation. In recent years the European Commission Delegations in the beneficiary countries have increasingly been involved. The smaller Council of Europe Information Offices in the field also support both planning and implementation. Funding is shared with the EC contributing at least 50% and often more of the total resources. A large number of Joint Programmes have been concluded with the EC's European Initiative for Democracy and Human Rights (EIDHR). Others have been concluded with TACIS and CARDS programmes. In 2002 a Joint Programme for Turkey became operational, with resources from the EU Enlargement funds, supplemented with smaller sums from the Council of Europe. In 2001 two Joint Programmes were established with the European Agency for Reconstruction (EAR), a decentralised agency of the EU that deals with assistance to Serbia and Montenegro (including Kosovo) and also to FYROM.

Currently the EU contributes approximately 35 million euros to these Joint Programmes, a more than negligible supplement to the overall budget of the CoE which amounts to slightly over 190 million euros.

Early efforts at co-operation

For many years there have been discussions within both organisations about how to structure relations between them. This grew particularly strongly in the 1980s as the Helsinki Agreement began to have effects within the countries of Central and Eastern Europe, encouraging human rights and environmental groups to challenge the authority of the Communist Party and to demand that states live up to the declarations they had signed and ratified.

In 1985, for instance, the Council of Europe's Committee of Ministers endorsed Resolution (85) 5 on 25 April expressing "its determination to promote closer co-operation between the Council of Europe and the European Community with the aim of achieving progress in co-operation within the largest possible European framework while fully respecting the differences in their nature and procedures". It went on to instruct the Secretary General "to initiate contacts with the competent bodies of the European Community for the purpose of elaborating with them concrete proposals designed to strengthen co-operation between the Council of Europe and the European Community".

Strengthened co-operation really meant improving mutual information between the EU and the CoE and ensuring where possible a common approach to practical issues where EU legislation was likely to overlap with existing CoE Conventions. But it also gave a green light to the search for areas of common interest in particular in neighbouring states, where joint projects could be established, a development that was to grow considerably in number and importance in later years.

There is, however, the disparity in staff numbers. The EU staff figures – all Institutions considered – are well over 30,000, while the CoE staff complement is barely 4,000. Also the staff remuneration for the CoE is less generous than that for the EU, a matter of occasional complaint and continuing envy. And the budget of the EU at about 150 billion euros is out of all proportion to that of the CoE at less than 200 million euros. (5)

As a result of these disparities the CoE tends to regard the EU as a 'big brother', not an elder but certainly a richer and a bigger sibling. Understandably this generates something of an inferiority complex in the

CoE and something of a superiority complex in the EU. It also leads to a certain pride among staff within the CoE in the quality and economy of their work, comparing their efficiency and delivery favourably vis-à-vis the European Commission in particular, a view reinforced to some degree by the preponderant role of the EU in funding the Joint Programmes while the CoE has responsibility for their delivery.

These considerations are grafted onto the continuing tension between Brussels and Strasbourg, the former seen more and more as the ‘capital’ of Europe and attracting considerable media attention, while the latter has a Cinderella role, only occasionally noticed by a larger and more boisterous Brussels.

To improve the flow of information the CoE has regularly invited the European Commission to attend its meetings. The reverse was less often the case, a lop-sided practice which continues to this day. The official situation was formalised in an exchange of letters between the Secretary General of the CoE and the Secretary General of the Commission in 1996 which, despite the best of intentions and the expression of mutual goodwill, has made little change to the uneven nature of the relationship.

The fall of the Berlin Wall did bring the spotlight back onto the Council of Europe in the 1990s for a while. The Council of Europe enlarged its membership more quickly than the EU, being seen often as the “antechamber” to EU membership. In the light of changing circumstances in Central and Eastern Europe, the two organisations signed a joint declaration on Partnership and Co-operation in 2001, confirming past engagements and current practice and institutionalising “joint programmes” with predominantly EU funding using CoE expertise for work in countries outside the EU but within the CoE. These programmes were seen by the EU as an additional mechanism for strengthening the democratic credentials of the emerging democratic states of Central and Eastern Europe and underlining their preparation for eventual EU accession, better meeting the political criteria of the Copenhagen Declaration.

Following the major EU Enlargement of 2004, when the EU came to represent the majority of member states within the CoE, relations between the two organisations clearly needed additional attention. Further enlargement of the EU would simply reinforce the EU majority within the CoE, and at a summit meeting of the Heads of Government of the Council of Europe in Warsaw in May 2005 the situation was reviewed.

Heads of Government called on the Council of Europe to concentrate on its core activities – support for democracy, human rights and the rule of law. The Warsaw Summit agreed, while strengthening the role of the Council of Europe, to clarify and rationalise its relations with other regional organisations, including the EU. Specifically the Heads of Government called for “a new framework for stronger co-operation and better exchange between the Council of Europe and the European Union, above all in those areas in which both organisations are active, as in the protection of human rights, democracy and the rule of law”. (6)

Jean-Claude Juncker, Prime Minister of Luxembourg, underlined the complementarity of the two organisations in his speech on that occasion, and was charged by the Summit with drawing up a report on relations between the two organisations.

Current attempts at Co-operation

Jean-Claude Juncker’s report was requested by the Heads of Government in his personal capacity, but it was set within an official framework for enhanced co-operation between the CoE and the EU.

The Report which was debated by the Parliamentary Assembly of the Council of Europe in April 2006 ranged widely over CoE and EU co-operation in a number of key fields. It also briefly considered the CoE’s contribution to the EU Neighbourhood Policy as well as the Stabilisation and Association Process for potential new EU members. It went on to review “European values on the ground” – youth, education, cultural co-operation and inter-cultural dialogue – before discussing Joint Programmes and the somewhat one-sided nature of consultation and co-operation at the institutional level. Finally it considered the issue of EU accession to the Council of Europe, and then made fifteen specific recommendations. None of these proposals is revolutionary, but they all point in the direction of better coordination of work between the EU and the CoE. Taken together, they almost amount to a vision of how the CoE could elaborate an enhanced role as the ethical underpinning for the economic function of the EU.

Proposal 1 refers to the accession of the EU to the ECHR. Within the framework of a ratified Treaty of Lisbon this step will be possible and – judging from EU statements to date – could be undertaken as soon as ratification is complete, the EU Council of Ministers takes the necessary decision, and all 47 members of the CoE agree.

Proposals 2 refers to the CoE as “the Europe-wide reference source for human rights” and together with proposals 3 and 4 suggests it (and in particular the Office of the Commissioner for Human Rights) be mainstreamed in any future work in this area by the EU. Specifically the Report calls for the new European Fundamental Rights Agency (EAFR) in Vienna to be restricted solely to dealing with fundamental rights in connection with the implementation of Community law. (8)

Proposal 5 concerns the promotion and strengthening of democracy. It calls for instruments of the CoE – the Venice Commission, the Forum on the Future of Democracy and the Congress of Local and Regional Authorities – to be more fully used by the EU.

Proposal 6 calls for a pan-European legal and judicial area “without dividing lines”, where the EU and the CoE intensify co-operation through instruments such as the Venice Commission, the European Commission for the Efficiency of Justice (CEPEJ), the Group of States against Corruption (GRECO) and Moneyval, a CoE instrument designed to counter money laundering, envisaging EU accession to these instruments in due course.

The EU and the CoE should create and use Joint Programmes as the “preferred vector” for co-operation under the Neighbourhood Policy of the EU, suggests proposal 7, making sure that the two organisations “plan, implement and assess them together”.

Proposals 8 and 9 call for “exemplary co-operation” in the fields of youth, education, culture and inter-cultural dialogue, stressing the prospect of an intra-European debate between the various components of European societies.

Proposals 10 to 14 concern the nature of institutional relations and the budget – specifically the frequency and level of meetings, inter-parliamentary links, the role and status of the Secretary General of the CoE, and the prospect of medium-term budget planning.

The final proposal concerns what Jean-Claude Juncker calls “the logical extension” of the various previous proposals, namely that the EU should join the Council of Europe, something which he envisages might be possible by 2010. As with the first proposal concerning accession specifically to the ECHR, this would also be possible in the wake of the ratification of the Lisbon Treaty and the agreement of all the members of the Council of Europe.

For all that the bulk of its proposals were modest suggestions for closer co-operation in a relatively pragmatic fashion, the Juncker Report received little explicit support by member states. For a number of interested parties, in particular within the European Commission, its stance was rather more pro-CoE than expected and its proposals tended to enhance the role of the Council of Europe. It appeared also at a time when several member states of the EU – and others in the wider CoE – were on the defensive about the protection of human rights in the light of investigations into CIA rendition flights and the related investigation by the Secretary General of the CoE into national human rights protection mechanisms. Few EU member states were prepared to be seen as active promoters of the idea of a stronger Council of Europe and of closer EU-CoE co-operation at this stage.

The Memorandum of Understanding between the EU and the CoE

By May 2007, however, the two organisations had hammered out a detailed Memorandum of Understanding (MoU) at diplomatic level to foster mutual co-operation, creating institutional mechanisms to reinforce co-operation in areas of common interest “in particular the promotion and protection of pluralistic democracy, the respect for human rights and fundamental freedoms, the rule of law, political and legal co-operation, social cohesion and cultural interchange.”(9)

The two organisations pledged to exchange views on their respective activities and to prepare and implement common strategies and programmes for an agreed series of priorities and areas of shared interest. They also undertook to respect their comparative advantages, respective competences and expertise, avoiding duplication and fostering synergy while searching for added value and making better use of existing resources. It represented not so much a new vision as a continuation of the status quo, but with better mutual information and more efficient use of existing resources.

Potential rivalry between the CoE and the Vienna-based EAFR was to be laid to rest in a bi-lateral agreement between the CoE and the EU. The MoU also promised to examine the prospect of early accession by the EU to the ECHR, and promised to ensure coherence of EU and CoE law regarding human rights, with the proviso that EU law might nonetheless provide “more extensive protection”. Co-operation was promised specifically concerning the protection of persons belonging to national minorities, the fight against discrimination, racism, xenophobia and

intolerance, against torture and ill-treatment, against trafficking in human beings, and for the protection of the rights of the child, for human rights education, and for freedom of expression and information.

On the rule of law the two organisations agreed in the MoU to “endeavour to establish common standards” but “without prejudice to their autonomy of decision”. They pledged early consultation in the process of elaborating standards in order to ensure coherence between them, but without the EU forgoing the right to establish “more far-reaching rules”. And on the pressing challenges facing European society such as the security of individuals, combating terrorism, organised crime, corruption and money laundering, the two organisations agreed to “continue to strive to develop appropriate forms of co-operation”.

It is seldom easy to decipher diplomatic language in documents such as the MoU, but it would appear that the EU and the CoE are marching together down the same road, though possibly at different speeds. Much of the language refers to broad common principles and extensive areas of common interest, but often reserving the right of the EU to do more – or differently – if so moved.

In the core area of democracy and good governance the wider CoE and the smaller EU appear to be closer together. They include fostering gender equality and greater participation of women in public life among their goals, and agree to use the Venice Commission’s extensive constitutional and legal expertise to promote democracy, citizen’s participation, democratic development and good governance among member states. The CoE’s Congress of Local and Regional Authorities and the EU’s Committee of the Regions are expected to contribute to these goals, as is the Centre of Expertise on Local Government Reform.

Under the heading of “Democratic Stability” in the MoU the two organisations commit to increased efforts in common towards “enhanced pan-European relations” covering countries aspiring to EU membership or within the EU’s Neighbourhood Policy. Importantly, both parties agree to develop Joint Programmes for this purpose, with all the budgetary and operational co-operation that these involve.

Intercultural dialogue and cultural diversity are given special treatment in the Memorandum of Understanding, with the CoE pledging to promote the ratification and implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression by its member states.

Both the CoE and the EU undertake to build “a knowledge-based society and a democratic culture in Europe, in particular through promoting democratic citizenship and human rights education”, and they commit to supporting the Bologna process for a higher education area by 2010 as well as education networks, youth and student exchanges, and “people-to-people contacts between Europeans throughout the continent”.

The topic of social cohesion is also addressed in the MoU, with both parties pledging co-operation “to support the efforts of member states to exchange good practices on social cohesion and solidarity – in particular in combating violence, poverty and exclusion and in protecting vulnerable groups”.

Practical arrangements for co-operation

The MoU clearly goes beyond the focus of the Juncker Report and is comprehensive in its approach, listing a wide range of activities in which there may be common interest between the CoE and the EU. To achieve the desired level of enhanced co-operation in the future the CoE and the EU undertake in the MoU to adapt their practical arrangements for information exchange and for consultation, both at political and at technical level within their shared priority areas.

The regular “quadripartite” meetings of the Council of Europe, represented by the Secretary General, and his equivalents in the Secretariats of the European Commission, the Council of Ministers and the European Parliament are to be pursued, and the door opened to ad hoc meetings on topical matters of common interest. Ways of associating political representation from the European Parliament and the Parliamentary Assembly of the CoE to these meetings are to be examined as well.

More frequent informal consultations between the Presidency/Troika of the EU and the Chairmanship/Vice Chairmanship of the Committee of Ministers of the CoE together with the Secretary General are encouraged, potentially also at the level of Ministers’ Deputies (Ambassadors) of the CoE and the Political and Security Committee (PSC) of the EU.

Closer parliamentary co-operation between the European Parliament and the Parliamentary Assembly of the CoE is to be based on a new arrangement between the two bodies. Negotiated in autumn 2007 even as the MoU was being finalised, this essentially foresees the presence of

representatives of each assembly attending selected meetings of the other, an initiative which, however politically desirable, is often - perhaps inevitably - frustrated by the difficulty of arranging timetables that are mutually convenient. To date only one such meeting of the EP's Conference of Presidents (of Political Groups) with the leaders of Political Groups in the Parliamentary Assembly of the Council of Europe has been scheduled (for August 2008).

Further co-operation is encouraged in particular between specialist bodies of the CoE such as the Human Rights Commissioner, the Committee for the Prevention of Torture and the European Commission against Racism and Intolerance and the relevant specialised bodies of the EU. Similarly the successful if low-key co-operation between the EU's Committee of the Regions and the CoE's Congress of Local and Regional Authorities is recognised and further co-operation encouraged. Even civil society is not neglected, with both European bodies encouraging NGOs and other representative bodies to contribute to the objectives shared by the CoE and the EU.

Both organisations also undertake to pursue their co-operation further by using the opportunities offered by existing Partial Agreements and the occasional meetings of specialised ministers. The CoE and the EU undertake to work together more closely in communication activity, coordinating the timetables of information campaigns, for instance, and possibly organising joint events. And both parties undertake to enhance and strengthen their "diplomatic" presence with each other, implying that the CoE's liaison office in Brussels will be strengthened as will the office of the European Commission's Representative in Strasbourg.

But it is in the area of Joint Programmes between the European Commission and the CoE that the MoU appreciates that co-operation stands to play a notably larger role. On-going co-operation here will be reinforced and activities could include "regional thematic programmes". Consultation on priorities and evaluation procedures will include in future both parties at an institutional level as well as the specific donor states.

Assessing Co-operation through Joint Programmes

Joint Programmes highlight both the strengths and weaknesses of the relation between the CoE and the EU.

On the positive side stands the good use made of the undoubted expertise of the CoE, whether in country specific or in broader thematic

programmes. Over the years the CoE – both staff, parliamentarians and local government delegates – have built up a deep understanding and an impressive network of contacts over a wide range of themes relating to modern governance. These range from public health and police procedures to education, by way of constitution-building, legal training and anti-corruption work. Experienced and dedicated officials in the CoE represent an invaluable human resource with an impressive institutional memory. In most areas of its concerns the CoE still manages to maintain a critical mass of secretarial and substantive expertise that makes it a useful partner for the EU.

But there is a negative side. Essentially for budgetary reasons the CoE often finds itself cast in the role of partner for others rather than independent actor. (10) In the very structure of the Joint Programmes with the EU, it is inevitably cast in the role of junior partner because of the greater budgetary clout of the European Union.

A change of funding policy by the EU could also put the role of the CoE in this relationship at risk. EU contributions to Joint Programmes typically make up between 15% and 20% of the CoE's total annual budget. Much of this flows through 'direct agreements' between the European Commission and the CoE. But the Commission is reported to be considering moving to 'open calls for tender' in future, a procedure which would put the CoE alongside competitors, including individual member states keen to underline their presence in some of the countries – such as Russia – where this work takes place. So-called 'twinning' of ministries, for instance, is one mechanism for transferring expertise where the member states individually have the edge over the CoE as an organisation. This change of procedure could affect the flow of funds in the Pre-Accession Instrument for the Western Balkans, the European Neighbourhood and Partnership Instrument (ENPI) - where in any case only 5% of the funds are reserved for technical assistance projects which match CoE expertise – and the European Instrument for Democracy and Human Rights (EIDHR). Under this last instrument it is understood that the Commission is even considering inviting suggestions for projects from potential partners in future, rather than spelling out a project and inviting responses. This new procedure may complicate matters further for the CoE, which could be required to obtain political clearance in advance of putting forward proposals, and hence might be delayed in replying to the point of no longer qualifying as a partner.

There is the further risk that the CoE – cast in this manner into the role of political consultancy to the EU – might be required to prepare many more

proposals than are finally accepted and financed. This is a role for which it is not prepared and which could require more staff resources, a solution currently barred by the 'zero real growth' policy for the CoE budget. Solutions that might involve reducing staff establishment or recruiting on short term contracts could destroy the unique advantage of the CoE's in-house expertise and its institutional memory.

Member states of the CoE – essentially the five big contributors to its budget – have kept the organisation on a tight budgetary rein for several years. Such expansion as has occurred has been restricted to the European Court of Human Rights, justified by the rapid growth of the case load.⁽¹¹⁾ But this has diverted resources from other activities of the CoE. This may well be in line with the priorities set out by the Heads of Government at the Warsaw Summit, where the CoE was expected to concentrate on its core activities, but efficiency savings can only go so far, and they have probably reached their limit after several years' budgetary stringency.

Some of the Institution's efforts have been diverted to securing funds from other sources. In that it has been modestly successful, securing additional voluntary contributions of approximately 10 million Euros a year from Scandinavian member governments, even from non-European observer states such as Japan and Canada, from the corporate sector and from the OECD. But such funds are almost always earmarked as operational funds for specific projects; only indirectly and marginally can they relieve pressure on the general budget of the organisation.

Behind the default position of many member states not to increase the relatively small budget of the CoE, even while contemplating relatively large increases for the much bigger budget of the EU, lies the policy uncertainty underlined by the Secretary General of the CoE in the quotation that heads this paper. The Warsaw Summit called on the CoE to concentrate on core activities; the MoU that followed the Juncker Report concentrated on procedural and administrative improvements to strengthen relations between the EU and the CoE. There still appears to be no clear EU vision of what the CoE might do, and no CoE vision is possible with an EU view on the issue.

Meanwhile, business will continue as usual, trimmed a little here, clipped somewhat there, as budgetary constraints bite, but also improved a little here and there as administrative changes lead to better mutual information and improved working methods. Pessimists might argue that the default position of "no vision" risks turning into stagnation. Optimists

might argue that “no vision” is the natural state of affairs for mature organisations, and that the current symbiosis between the CoE and the EU is a satisfactory *modus vivendi*.

Future Prospects

The CoE will continue to act as an antechamber for aspiring applicants for EU membership. That is the case already for Croatia and FYROM/Macedonia. Turkey likewise will try to maintain good relations and an active role in the CoE for the extended interim that may lead eventually to full membership of the EU. Other states of Eastern Europe appreciate this function of the CoE as well, both at parliamentary and local government level in particular. Nobody comes to the EU save by way of the CoE.

Joint Programmes could well expand – despite the procedural and budgetary difficulties of the moment – to make wider use of thematic expertise within the CoE, especially in the field of Justice and Home Affairs. Migration with all its associated weals and woes – both within the EU and between non-EU members of the CoE and EU member states – is an issue that has moved fast up the political agenda of every country and cries out for common responses. It touches many areas of CoE expertise, from human rights to education, from local democracy to trafficking and cross-border criminality. The EU will need the CoE to help solve many of its problems on this front.

The CoE and the EU may well co-operate more on wider regional issues that cross the border between states that are EU members and some that are not. The Baltic Initiative began within the European Parliament – thanks to the vision and dedication of a small number of concerned MEPs – but one could well image such a regional initiative that spans several EU states and Russia originating in the CoE. Likewise the current French Presidency’s initiative to strengthen Mediterranean relations - involving several EU member states and others both within and outside the CoE – might well also be co-ordinated at the Council of Europe. Other groupings in which Turkey might play a pivotal role could likewise be imagined, if the EU member states felt that the CoE was the appropriate locus for such regional/neighbourhood outreach.

2008 is the year of Intercultural Dialogue – declared so both by the EU and the CoE – an umbrella term that covers a large range of ‘soft’ diplomatic initiatives, many of them relating to states beyond the EU and even outside the CoE. ‘Soft’ the initiatives may be, but they sit four

square within the remit of the Council of Europe: supporting democracy, human rights and the rule of law, and they are of vital interest to the EU as well. The big issues concerned with Intercultural Dialogue will not end in December this year, and the Council of Europe could well become the main European locus for continuing dialogue between faiths, cultures and civilisations for many years to come.

The CoE offers the EU a uniquely helpful organisational instrument when addressing the four issues mentioned above. With its capacity for variable geometry through Conventions or Partial Agreements which involve only those states that are willing to engage on a particular issue at any time, the CoE avoids some of the institutional rigidity of the EU. At the same time it reassures the member states that the process remains essentially intergovernmental and hence under their control.

Developing the Joint Programmes of the EU and the CoE – in particular in the thematic area of Justice and Home Affairs, including migration issues – may also offer member states an acceptable way out of the temporary impasse in which the Lisbon Treaty now finds itself. Over the longer term more CoE activity in this area could build greater trust and co-operation between the members and non-members of the EU on this politically sensitive issue.

The failure of some EU states to ratify the Lisbon Treaty according to the original timetable – and possibly the need to review it to make it acceptable in Ireland, perhaps also in the Czech Republic and in Poland – delays the accession of the EU to the ECHR. This prolongs the status quo of relations between the EU and the CoE somewhat longer than initially appeared likely. The 27 member states will continue to dominate the CoE numerically and in budgetary terms, but their main European instrument – the EU – for the time being will not itself be an integral part of the CoE. Other activities will continue to link the two organisations, but in the accidental and some might say haphazard way they do today.

Some years ago in the EU context a Permanent Representative of a member state admitted in conversation, “We do not do the vision thing”. If that is still the case, it will be hard to establish a clear direction for the CoE in its relations with the EU, and vice versa, for the EU holds the key, with a majority of member states, the bulk of the population and with its member states as the largest contributors to the budget of the CoE.

FOOTNOTES

1. Dates of accession of individual member states to the Council of Europe are listed on the main website of the CoE www.coe.int
2. The list of Conventions to which the European Commission is a signatory may be found on the main CoE website under A – Z: search “Conventions”
3. The full list of Partial Agreements and the Institutions they have developed is given on the CoE website under A – Z: search “Partial Agreements”
4. For further details of Joint Programmes see www.coe.jp.coe.int
5. There is good reason for this disparity, since the former is an executive budget covering several policies with considerable operational expenditure – CAP, Research, Overseas Development, Structural Funds – while the latter is essentially an administrative budget with only small operational expenditure. But the subjective result of this disparity is that outside observers and staff in both organisations see the EU as affluent and occasionally wasteful, while the CoE appears poorly funded and extremely economical with its limited budget.
6. Quoting the document itself, this meant in detail: “A: Co-operation should be strengthened in all areas where it is likely to secure further progress on the path towards unity of all the European peoples concerned. It should aim at coordination and, if possible, concertation and joint activities. In this context, it would be desirable to identify periodically possible joint projects with a suggested timetable for their implementation. B: With a view to contributing to a deeper understanding and awareness of their respective actions, the existing arrangements and practices between the Council of Europe and the European Community concerning exchanges of information and co-operation should be facilitated, extended and intensified in a pragmatic way. C: The widest possible application of Council of Europe legal instruments should be sought. The possibilities of incorporating provisions of Community texts in Council of Europe instruments should be examined and Council of Europe Conventions to which the European Community could accede should be identified.”

7. For the Juncker Report entitled “A sole ambition for the European continent” see
<<http://assembly.coe.int/Documents/WorkingDocs/doc06/EDOC/0897>> Useful commentaries on the Juncker Report are to be found in the “Follow-up to the Juncker Report”, a document prepared for the CoE Committee of Ministers (ref CM-SUIVI3(2007)6 rev 3 dated 9.5.2007, and the statement on 10.5.2007 by the Norwegian President of the Committee of Ministers, Raymond Johansen, to be found in <www.regjeringen.no/en/dep.ud/about_mfa/other-political-staff/State-Secretary-Raymond-Johansen/Speeches-and-articles/2007/Statement-at-Council-of-Europe> Essentially they divide the Report into a long-term vision and a series of short-term recommendations, concentrating on the latter.
8. Despite the prospective encroachment onto the remit of the CoE that the EAFR seemed to represent, and the apparently disproportionate expense of the Agency in relation to the budget of the CoE, an agreement signed recently between the two organisations appears to have settled the issue of duplication by restricting the remit of the EAFR to the activities of the EU. See <http://eur-lex.europa.eu> dated 15.7.2008
9. For the full text of the Memorandum of Understanding see the European Union website which also offers an official overview of the subject of relations with the Council of Europe
<http://ec.europa.eu/external_relations/coe/index.htm>
10. Even in the field of election monitoring the CoE is usually called on in conjunction with the OSCE and – increasingly – the European Parliament, to send observers to check on the quality of elections, sometimes in its own member states, sometimes in third countries.
11. Simplification of Court procedures have been agreed by all CoE member states in Protocol 14 to the ECHR, but – as of August 2008 – Russia has still not ratified this Protocol. Hence cases – overwhelmingly from Russian litigants - accumulate before the Court. Justice delayed is justice denied.

A note on sources.

All information relating to the relationship between the EU and the CoE is in the public domain. The main websites of the two organisations -

www.coe.int and www.europa.eu - are the key starting points. Footnotes signpost readers more specifically to certain particular documents or add incidental detail. In addition several civil servants, diplomats and politicians have helped me in preparing this paper. In a number of cases they contributed on condition of anonymity and hence quotations and opinions have not been attributed to specific persons.