‘The European Minority Rights Regime: Analyzing the Role of Expert Knowledge in European Organizational Overlap’

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Abstract

Following the end of the Cold War minority rights became an important part of democratization in Central and Eastern Europe. With minority rights a condition in the EU’s Copenhagen criteria of 1993, post-communist states were compelled to deal with minority issues as part of accession procedures. In the absence of EU acquis on minority rights, the OSCE and the Council of Europe have also played a role in monitoring candidates’ compliance with the ‘minority condition’ in the context of the 2004 and 2007 rounds of EU enlargement. This inter-organizational cooperation on minority rights constitutes the European minority rights regime. The aim of this paper is to explore the significant role of experts working for the three organisations who represent an epistemic community on minority rights in Europe. In doing so, we seek to expand Haas’ (1992) conceptual framework on epistemic communities in two ways. First, we point to the variable influence of members within the epistemic community and build on Verdun’s (1999) suggestion that the concept should allow for a potential hierarchy of experts. Second, we suggest that the concept needs to pay greater attention to the issue of a ‘consensual knowledge base.’ Even though there is no international consensus on what constitutes a ‘national minority’, we argue that an epistemic community can operate in contested policy issues when experts base their policy recommendations on a shared set of norms. In addition to these conceptual refinements, we show how an epistemic community helps drive an international regime. In this case, the epistemic community on minority rights helps the regime function as a process based on three constitutive elements: standard setting; standard implementation; and standard expansion. The article contributes to the literature on epistemic communities; international regimes; European organisations; and minority rights protection in Europe.

Introduction

Although international relations scholars pay great attention to why states cooperate in the international system, less attention has been paid to why international organizations cooperate. Such cooperation has been increasingly evident in the field of minority rights protection in Europe in what we describe as the European minority rights regime. In the lead up to the European Union enlargements in 2004 and 2007,
cooperation among European organizations on the issue of minority rights was an important part of the accession process. While the European Union was the main driver of minority rights as a condition of entry for candidate countries, the OSCE and the Council of Europe also played important roles in monitoring compliance.

As well documented elsewhere, the issue of minority rights gained some urgency for states and international organizations at the end of the Cold War (see Kymlicka, 2007: 173-246; Malloy, 2005; Schimmelfennig & Sedelmeier, 2005). International organizations including the UN, NATO, the EU, the OSCE and the Council of Europe were faced with the explosion of minority group grievances into ethnic conflict following the collapse of the Soviet Union and the break-up of the former Yugoslavia. Following the destruction in the Western Balkans in the early 1990s international organizations turned to address minority group grievances in Europe to help prevent the resurgence or ignition of conflict in vulnerable areas.

Will Kymlicka (2007: 197) explores the increased activity on the part of European organizations to deal with Central and Eastern European states’ treatment of their respective minorities. He notes that the first half of the 1990s saw a:

rapid consensus developed amongst all the major European organizations that the best approach to influencing the treatment of national minorities in post-communist countries was to establish minimum norms and standards, along with international mechanisms to monitor a country’s compliance with them.’

As we argue below, this increased convergence via shared norms and standards has led to considerable inter-organizational cooperation on minority rights which amounts to an international regime on minority rights (Kymlicka, 2007: 197).

Stephen D. Krasner (1982: 185) defined regimes as ‘principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area.’ This definition certainly has application to the increased convergence by international organizations via shared norms and standards on minority rights protection in Europe. The three organizations rely on each other’s standards, particularly the Council of Europe Framework Convention for the Protection of National Minorities, the OSCE set of guidelines and the European Union’s Copenhagen criteria. Arguably the expectations of the three organizations converge in
relation to the implementation and monitoring of these standards. In this article we argue that a central part of the regime is the work of experts who work within the respective three European organisations and constitute an epistemic community. We next review the literature on epistemic communities before exploring whether our case study fulfils the conditions set down in Peter Haas’ (1992) definition of an epistemic community. We then show that the European minority rights regime works as a process based on the activity of the epistemic community in standard setting, standard implementation and standard expansion. Ultimately, we argue that the concept of epistemic community has an important utility in explaining how the European minority rights regime functions. Moreover, we contribute to the conceptual debate by arguing for an appreciation of the variable influence of different members within an epistemic community. In the case of an epistemic community operating within a number of international organisations, some members may be more active and influential while others may be less so given institutional constraints and the preferences of their member states. We also suggest that the theoretical literature on epistemic communities and international regimes should seek to better understand the potentially nuanced consensus among experts on a complex policy issue such as minority rights.

The Epistemic Communities Approach

The literature on epistemic communities is linked to knowledge-based theories of international regimes which ordinarily falls within the social constructivist school in international relations scholarship (see Haas, 1989, 1992; Jacobs and Page, 2005; Sebenius, 1992). Ernst Haas (1980: 367-68) defines knowledge as ‘the sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy designed to achieve some social goal.’ As noted by Krasner (1982: 203), ‘knowledge creates a basis for cooperation by illuminating complex interconnections that were not previously understood’. Knowledge-based approaches to international regimes highlight the importance of epistemic communities as ‘channels through which new ideas circulate from societies to governments as well as from country to country’ (Haas, 1992: 27). Peter Haas’ book Saving the Mediterranean (1990) focused on the role of epistemic communities in relation to international cooperation
to reduce pollution in the Mediterranean Sea. He then refined the concept and defines an epistemic community as ‘a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area’ (Haas, 1992: 3). Thus, actors participate in a regime in order to pool resources and to set common standards in a complex issue area. For Haas, there are four elements of an epistemic community. He suggests that the professionals working within the epistemic community have:

(1) a shared set of normative and principled beliefs, which provide a value-based rationale for the social action of community members; (2) shared causal beliefs, which are derived from their analysis of practices leading or contributing to a central set of problems in their domain and which then serve as the basis for elucidating the multiple linkages between possible policy actions and desires outcomes; (3) shared notions of validity – that is, intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise; and (4) a common policy enterprise – that is, a set of common practices associated with a set of problems to which their professional competence is directed, presumably out of the conviction that human welfare will be enhanced as a consequence. (Haas, 1992: 3)

In addition to a shared set of principled and causal beliefs and a common policy enterprise, Haas (1992: 18) posits that these elements together with ‘a consensual knowledge base…distinguishes epistemic communities from various other groups’. Haas’ definition has since provoked an important debate among scholars on the utility of the concept to explain the impact of experts working in complex policy issues, the relationship between the epistemic community and other groups, and its merits as a key variable in explaining international cooperation. James K. Sebenius (1992) seeks to build on the concept of an epistemic community. He points to a potential weakness of the approach that ‘generally seems to separate cooperation and conflict and, as a theoretical matter, pays little explicit attention to the presence or resolution of conflict’ (1992: 365). Sebenius suggests the concept can be incorporated into the negotiation-analytic model of bargaining where an epistemic community ‘can be interpreted as a distinctive de facto coalition of “believers” whose main interest lies not in the material sphere but, rather, in fostering the adoption of its policy project’
(1992: 364). Focusing on environmental policy, Dave Tove (1999: 101) suggests that Haas’ framework accepts ‘a broadly positivist position concerning the role of scientists as the legitimate bearers of truth’ which, he argues is empirically ‘unjustified’. Yet Claire Dunlop (2000: 137) responds to Tove’s critique of alleged positivism in Haas’ framework and instead points to its ‘lack of theoretical refinement and rigorous empirical examination’. She argues that the ‘initial construction of the concept and its empirical undernourishment’ means that the framework fails to ‘provide a convincing conceptualisation of the connections between epistemic communities and wider groups’ (2000: 137). She notes that while there has been an increase in case studies using the approach, ‘the framework remains an inchoate one’ (2000: 141). Thus, there remains a need to employ the concept in a critical manner to ascertain its potential explanatory power.

Other scholars have sought to apply the concept of an epistemic community to empirical case studies in complex policy areas. Some of the literature explores international cooperation in the context of international regimes and how an epistemic community can shape the form of international cooperation (see Hjorth, 1994). The concept has also been applied to the domestic level to explain cooperation among public agencies in California (see Thomas, 1997). Much of the empirical work, however, focuses on the role of epistemic communities within the EU decision-making process given the EU’s institutional complexity and technical policy areas. Amy Verdun (1999: 316) points out that Haas’ definition of the epistemic community ‘does not mention anything about whether hierarchies may or may not exist within an epistemic community.’ She suggests that ‘Perhaps a certain hierarchy of its members could exist, which could give rise to some members having more, and others less, influence within the epistemic community’ (1999: 316). Antony R. Vito (2001) focuses on the role of an epistemic community within the EU decision-making process in relation to EU acid rain policy. He investigates how epistemic communities may define or alter EU policy-makers’ preferences. Importantly, he notes the constraining factor of EU institutions on the ‘entrepreneurial ability of epistemic communities’ (2001: 586). Vito (2001: 600) concludes that the epistemic communities approach has limitations as ‘EU and national institutions are often resistant to new ideas because of particular interests and institutional principles’.

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An Epistemic Community on European Minority Rights

The aim of this article is to determine how the concept of an epistemic community can help explain how the European minority rights regime functions. Thus, the focus is on the role of experts working within international organisations and how their cooperation maintains the international regime. So who are the experts that make up this epistemic community on minority rights in Europe? To what extent does the network of experts working on minority rights within the Council of Europe, the OSCE and the EU meet the conditions provided for in Haas’ definition? Moreover, as Haas (1992: 18) distinguishes an epistemic community from other groups on the basis of a ‘consensual knowledge base’, we need to consider the extent of consensus within the epistemic community on the contested issue of rights belonging to national minorities.

The OSCE, the Council of Europe and the EU have had specialist groups of people involved in managing their respective responsibilities and mandates in relation to minority rights issues. We argue that this community of experts working on human rights and minority rights in Europe has a considerable impact on the nature of inter-organisational cooperation and the development of minority rights protection. These experts work in various bodies in our three organizations under investigation. In the OSCE experts work for the High Commissioner on National Minorities (HCNM); the Office for Democratic Institutions and Human Rights (ODIHR); and the Central Secretariat. Experts have been particularly important for the work of the Council of Europe in bodies such as the Office of the Commissioner for Human Rights; the Advisory Committee for the Framework Convention for the Protection of National Minorities; the European Commission for Democracy through Law (better known as the Venice Commission); the European Commission against Racism and Intolerance (ECRI); and the Committee of Experts Relating to the Protection of National Minorities. In the European Union institutions, the situation is somewhat more nuanced as the EU does not have a minority policy and minority rights are not part of the acquis communautaire for candidate countries. Nevertheless, given the minority condition in the EU’s Copenhagen criteria, expertise required in the context of accession negotiations and cooperation with Council of Europe and OSCE experts, we can argue that the EU does have some experts that form part of the epistemic
community, particularly those working within DG Enlargement; DG Employment; DG External Relations; and the recently established EU Fundamental Rights Agency.

Returning to Haas’ definition, we need to consider whether this epistemic community meets the four conditions. First, the experts working within the three European organizations with some responsibility for minority rights issues have clearly shared ‘a set of normative and principled beliefs’ which provides a rationale for the promotion of minority rights protection in Europe. For instance, the Council of Europe and OSCE published a joint text on minority rights standards as the organisations have been ‘guided by the same values, striving for similar goals and sharing similar challenges albeit with different membership’ (Council of Europe, 2007a). EU actors also share these values for democracy, peace and stability and borrow from Council of Europe and OSCE standards in their work. Second, the members of the epistemic community have shared causal beliefs on the nature of minority rights questions and the potential risks involved where states do not address these issues. Arguably their causal beliefs lie in the motivations of international organisations to deal with the issue of minority rights following the inter-ethnic conflicts in the early 1990s following the collapse of the Soviet Union and destruction in the Western Balkans. Experts working on the standards produced by the organisations were obviously committed to the idea of minority rights as a measure to prevent conflict, promote regional stability and democracy, and address minority grievances. This concern for security and democracy formed the basis of the EU’s Copenhagen Criteria in 1993 which included respect for and protection of minorities.

Third, the experts working within the epistemic community have had ‘shared notions of validity’ or ‘internally defined criteria for weighing and validating knowledge in the domain of their expertise.’ The Council of Europe’s Framework Convention on the Protection of National Minorities (FCNM) is considered to be the main measurement tool used to monitor states’ compliance with minority standards. While the FCNM is not part of the EU’s acquis, and the European Commission cannot oblige states to ratify the Convention, the Council of Europe’s monitoring activities provide an important source of background information for Progress Reports and in the context of accession negotiations. Finally, we can argue that the experts have had ‘a common policy enterprise’ in the sense that they are guided by and

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1 Interviews with European Commission DG Enlargement officials, Brussels, February 2009
borrow from each other’s recommendations as set out in the respective international standards.

An important qualification should be noted here, however, which relates to the mandates of the different bodies within the three organisations. In particular, it must be stressed that the EU does not have an explicit minority policy. Even with the reference to minority rights in the Lisbon (Reform) Treaty, it is questionable whether the EU will have the capacity to develop competences in the minority rights policy issue, given the reluctance to do so by member states. Yet it is arguable that the officials working on enlargement, human rights and fundamental rights in the EU institutions see a common policy enterprise with the experts in the other two organizations. As one official put it, the EU does not need to develop an explicit minority rights policy: there is ‘no need to reinvent the wheel’ as ‘the wheel was invented perfectly by the Council of Europe.’ And certainly, the epistemic community on minority rights in Europe share what Haas’ definition conceptualises as the basis for a common policy, ‘the conviction that human welfare will be enhanced as a consequence.’ Indeed, one Council of Europe official described her work as something akin to ‘the cause’ that promises to benefit the position of minority groups in multi-ethnic states.

In conceptual terms, however, we might question the extent to which Haas’ framework allows for the differences in capacity enjoyed by the various expert bodies in the three organisations. As noted above, some research suggests that Haas’ definition should be clarified to allow for a hierarchy or variable influence of members within the epistemic community (Verdun, 1999: 316). On the basis of evidence from this case, we suggest that the experts working within EU institutions on human rights and fundamental rights have less influence on the development of the regime given their institutional constraints. As we show below, much of the activity comes from Council of Europe and OSCE experts as the arguable ‘leaders’ of minority rights protection. Thus, this case confirms that members within an epistemic community need not be equal. Indeed, some may have more influence than others given their capacity to act as defined in their organisation mandate. Conversely, other members may, in effect, have a weaker position due to institutional constraints. In the case of the EU, these constraints are due to the lack of competences on minority rights

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2 Interview with official in the Council of the European Union, Brussels, February 2009
3 Interview with Council of Europe official, Strasbourg, December 2008
and some member states’ reluctance to expand the Union’s role in this complex policy issue.

Given the complexity of minority rights issues, Haas’ conceptualisation of an epistemic community’s ‘consensual knowledge base’ is particularly relevant for our case. Certainly, there is consensus among the relevant experts that minority rights protection is important for peace and stability in Europe. There is also consensus on the importance of the existing standards as guidelines for minority protection. There is not, however, consensus that minority rights protection has to be an explicit pre-requisite for liberal democracy. While Kymlicka (2007: 43) is right to acknowledge that ‘denying the existence of minorities, or treating them as politically inconsequential, is seen as evidence that one is not yet ready to be a member in good standing in the club of liberal democracies’, it is important that experts on minority rights do not (openly) question the democratic values of states, such as France, that do not recognise minorities. Moreover, there is no international consensus on what constitutes a ‘national minority’. An important question then, is whether the absence of an internationally defined and agreed definition of national minority matters for our case. Does this restrict the work of the epistemic community on minority rights in Europe? Arguably this lack of consensus on a definition does not impact greatly on the experts’ activities and the maintenance of the regime. Indeed, OSCE HCNM Knut Vollebaek suggests that creating a definition is not a goal of the international organisations and that the lack of a definition provides opportunities to offer experience, expertise and instruments in different countries.4 Another expert argues that the lack of a definition is not problematic as ‘there will never be a definition unless it is the lowest common denominator’ which may exclude some minority groups.5 This suggests that on a complex policy issue such as minority rights we need to consider the meaning of a ‘consensual knowledge base’ for the concept of epistemic community. This knowledge base need not dictate consensus in definitional terms. Moreover, there appears to be consensus within the epistemic community that a definition of what constitutes a national minority is not necessary and may even be detrimental to the ‘common policy enterprise.’ The epistemic community on minority rights arguably finds a way through this potential problem via cooperation. This

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4 Interview with OSCE HCNM Ambassador Knut Vollebaek, The Hague, December 2008
5 Interview with Council of Europe official, Secretariat of the Framework Convention on National Minorities, Strasbourg, November 2008
commitment reaffirms the agency on the part of the experts who promote minority rights protection in the absence of an internationally agreed definition.

The Impact of the Epistemic Community in Minority Rights Standard Setting, Standard Implementation and Standard Expansion

In this paper we want to go further than suggesting some conceptual refinements to the epistemic community concept. To make a further contribution to the literature we focus on how the work of the epistemic community helps explain the operation of the regime. The experts within the three organizations have made declarations and agreements on enhanced cooperation on minority rights. Importantly, the actors working within these institutions recognise that they work within a broader network of experts. One OSCE official referred to the frequent contact among these experts on various documents and recommendations as something akin to ‘a minority rights mafia.’\footnote{Interview with OSCE official, December 2008} A Council of Europe official confirmed her close working relationship with experts in other institutions, recognizing that it is ‘always the same faces, which is very good in a way, very reassuring in a way…’\footnote{Interview with Council of Europe official, Strasbourg, December 2008} Another said that one of the strengths of the Council of Europe ‘is to be able to mobilise a network, really a range of highly qualified experts’ on minority rights.\footnote{Interview with Council of Europe official, Secretariat of the Framework Convention on National Minorities, Strasbourg, November 2008} While some of these experts do not work for the Council of Europe on a permanent basis, they do, nevertheless have a mandate ‘to monitor the implementation of the treaties…and take decisions in the form of a collegiate body with the support of a professional secretariat.’\footnote{Interview with Council of Europe official, Secretariat of the Framework Convention on National Minorities, Strasbourg, November 2008} Council of Europe Commissioner for Human Rights Thomas Hammerberg described the interaction among different bodies involved in human rights and minority rights protection as ‘building on one another’s work all the time’.\footnote{Interview with Council of Europe Commissioner for Human Rights, Thomas Hammerberg, Strasbourg, November 2008} Indeed, as the next section demonstrates, experts have been largely responsible for the development of the European national minority rights regime. As Krasner (1982: 185) notes, international regimes ‘have been conceptualized as intervening variables standing...
between basic causal factors on the one hand and outcomes and behavior on the other.’ What can be known about the operation of the regime as the intervening variable? In order to show the operation of the regime we focus on three constitutive elements which serve as the basis of inter-organizational cooperation on minority rights: standard-setting; standard implementation; and standard expansion.

*Cooperation via Standard-Setting*

Standard-setting by European organisations in the early 1990s was the first step in the sequence of inter-organizational cooperation and, hence the functioning of the European national minority rights regime. While each of the three organizations established standards on minority rights (albeit less so in the case of the EU), they have borrowed from and relied on each other’s standards and instruments to carry out their activities.

The OSCE has made a considerable contribution to standard setting in the field of minority rights. At its first summit, held in Helsinki in 1975, the CSCE signed the Helsinki Final Act. While Basket III of the Final Act reinforced the ‘Human Dimension’ of achieving European security, it did not go far in establishing European standards of national minority rights. Under the 1989 Vienna Concluding Document the participating states are to ‘take all the necessary legislative, judicial and other measures and apply the relevant international instruments by which they may be bound, to ensure the protection of human rights and fundamental freedoms of persons belonging to national minorities within their territory.’ In the 1990s the OSCE HCNM set about to refine standards of protection beginning with the Hague Recommendations Regarding the Education Rights of National Minorities. To date, there have been six sets of recommendations and guidelines on minority rights. In addition to the Hague Recommendations (1996), along with the Institute for Inter-Ethnic Relations the High Commissioner has orchestrated the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998), Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999), Guidelines on the use of Minority Languages in the Broadcast Media (2003), the Recommendations on Policing in Multi-Ethnic Societies (2006), and the Recommendations on National Minorities in Inter-State Relations (2008).
National Minorities (OCSE, 1996). This trend of HCNM consultation with other experts has continued, most recently with the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (OSCE, 2008b). Although the OSCE’s standards do not establish legal obligations for its member states, its standards do have an important political impact. The OSCE also makes reference to standards set by other organizations. For instance the OSCE HCNM’s Lund Recommendations stated that ‘Lasting peace and stability on this continent are possible only if the UN Declaration on the Rights of Minorities and the Framework Convention for the Protection of National Minorities are fully implemented’ (OSCE, 1999).

The Council of Europe can be regarded as the benchmark of human rights and minority rights standards. While the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) set out a number of fundamental rights, it was not until the 1990s that the organization turned to establishing a standard that focused explicitly on minority rights. In 1993 the Council of Europe established the Committee for the Protection of National Minorities to establish a European treaty for minority rights protection. The Committee established the Framework Convention for the Protection of National Minorities in 1994. Notably, the OSCE HCNM and the European Committee had some input into the creation of the Framework Convention. Indeed, it has been claimed that a majority of the legal provisions in the Framework Convention stemmed from the formulation of OSCE political commitments (Moran, 2008: 3). A Council of Europe official said that the ‘hard law instruments of the Council of Europe have drawn a clear inspiration from the soft law and the Copenhagen OSCE commitments from 1990.’

While the Framework Convention does not define to whom it applies (see Wilson, 2000: 10) the document does go far in establishing a set standard for minority protection in Europe. Moreover, the treaty goes further than international treaties on human rights which partly pertain to linguistic and/or religious minorities. The Framework Convention is used as the basis standard for national minority protection in Europe and is referred to by the other organizations, most notably the European Commission in the context of its annual reports in accession procedures. The Council of Europe also refers to the standards set by others. In November 2006 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1773

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12 Interview with Council of Europe official, Strasbourg, November 2008
inviting member states to ensure national minorities have access to public broadcast media with reference to a number of instruments including the OSCE HCNM 2003 Guidelines on the Use of Minority Languages in the Broadcast Media (Drzewicki & De Graaf, 2006: 447). Drzewicki & De Graaf (2006: 447) argued that the ‘message of Recommendation 1773 constitutes a precedent that has built a valuable bridge between the OSCE and the Council of Europe for their common and well-coordinated action in the field of minorities.’ The OSCE and the Council of Europe recently published a jointly prepared book on minority rights standards where the standards of each organization are listed, the legally binding commitments of the Council of Europe and the politically binding commitments of the OSCE (Council of Europe, 2007a).

While the EU has held the most leverage in terms of conditionality, it has established the least coherent set of standards for national minority protection. The EU Charter of Fundamental Rights adopted in 2000 did not have a specific minority rights provision. For political reasons backed by a desire not to duplicate what has been done by others, minority rights are not part of the acquis communautaire. Thus, the EU has sought to ‘outsource’ standards set by other international organizations. These outsourced standards include the guidelines set out by the OSCE HCNM and the Council of Europe’s Framework Convention. The EU has, however, established some norms of its own with the Copenhagen criteria of 1993 which called for the respect of national minorities as a condition for membership and the Race Equality Directive. There is some speculation on whether the EU will move to develop its own minority policy with a legal basis in the future. The Lisbon Reform Treaty inserted Article 1(a) into the 1992 Treaty on European Union providing that the EU ‘is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.’ Notably, it has been claimed (Drzewicki and De Graaf, 2006: 437) that the former OSCE HCNM Rolf Ekéus helped persuade the Irish Foreign Minister under the EU presidency to insert a specific minority rights clause into the 2004 European Constitution that eventually led to the minority provision in the Lisbon Treaty. Because there are obvious political problems with a distinct, fully-fledged

13 Interview with European Commission official, Brussels, February 2009
minority rights policy, the EU may likely continue to promote the norms and standards set by its minority rights ‘partners’, or even ‘leaders’, the Council of Europe and the OSCE.

Cooperation via Standard Implementation

From the early 1990s the OSCE and the Council of Europe established a number of institutions to monitor whether post-communist countries were implementing the various international norms. In the enlargement process the European Commission has responsibility for assessing candidate countries’ compliance with accession criteria. Thus, the three organizations all have some responsibility for monitoring and promoting the implementation of international standards on minority rights. Our research shows that there is considerable inter-organizational cooperation on the implementation of shared norms and standards.

An important part of the OSCE HCNM’s activities is to undertake field trips and diplomacy as a way to encourage reform in the OSCE area (see Zellner, 1999). In carrying out his responsibilities to help prevent inter-state conflict the High Commissioner refers to the Council of Europe’s Framework Convention and uses his mandate to promote ratification of the treaty. Indeed, the HCNM’s mandate states that ‘In considering a situation, the High Commissioner will take fully into account the availability of democratic means and international instruments to respond to it, and their utilization by the parties involved’ (CSCE, 1992). According to HCNM Director Ambassador Brendan Moran (2008: 2), the Framework Convention ‘has become from its very outset one of the most essential instruments which the High Commissioner makes a regular use of.’ It is notable that the High Commissioner has demonstrated his ‘co-responsibility’ in promoting the ratification of the Framework Convention ‘with as little as possible recourse to declarations and reservations’ (Moran, 2008: 3).

In this way, it is argued that the HCNM ‘fulfils a role of bridge between the Framework Convention and states which participate in the OSCE but are not members of the Council of Europe’ (Moran, 2008: 3-4).

As the HCNM is a central point of contact with the Council of Europe within the OSCE-Council of Europe Coordination Group, it is arguable that this cooperation and the promotion of the Framework Convention have been important for the development of the High Commissioner’s role. According to Drzewicki and De Graaf
(2005: 324) ‘enhanced cooperation’ has made the High Commissioner responsible not just for conflict prevention measures ‘but also on the protection and promotion of minority rights. The functional approach of the HCNM has moved on even further and embraces contact on specific minority issues with bodies’ such as the PACE, that were outside the Coordination Group’s initial terms of reference. The Coordination Group has led to a more institutionalized mode of cooperation as the result of ‘a shift from the mutual exchange of information and the coordination of numerous endeavours to the organization of joint initiatives (e.g. education, seminars and workshops) (Drzewicki and De Graaf, 2005: 324). For instance, the HCNM and the Council of Europe jointly participated in a Ukrainian-Romanian monitoring exercise within the framework of the Treaty of Cooperation and Good Neighbourliness between Romania and Ukraine. At the request of the Ukrainian and Romanian governments, the two organizations had responsibility for monitoring the situation of Romanians in Ukraine and Ukrainians in Romania. The HCNM and the Council of Europe then ‘advised the two sides on substantive and procedural issues and expressed their intention to continue to participate in further missions’ (Drzewicki and De Graaf, 2006: 445).

The monitoring activities of the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities are crucial for standard implementation. The Advisory Committee is made up of independent experts which monitors the implementation of the FCNM on a country to country basis. As noted above, the OSCE HCNM promotes the ratification of the Framework Convention and works in close cooperation with the Advisory Committee, so much so that one official remarked that this cooperation could not be extended, save merging the two operations! The Council of Europe’s Commissioner for Human Rights also conducts country visits in his mandate to give a comprehensive evaluation of the human rights situation in member states. While much of his focus is on the Convention for Human Rights, he recommends the ratification of the FCNM where appropriate, as in the Latvian case to protect the Russian minority (see Council of Europe 2003; 2007b). In assessing the ‘implementation deficit’ of human rights standards in the wider Council of Europe area, Commissioner for Human Rights Thomas Hammerberg pledged to further strengthen cooperation with OSCE ODIHR

15 Interview with Council of Europe official, Secretariat of the Framework Convention for the Protection of National Minorities, Strasbourg, November 2008
The Council of Europe’s European Commission against Racism and Intolerance also undertakes monitoring activities with relevance for national minority rights because groups including the Roma are often the most vulnerable in society. In doing so, ECRI consults with the Council of Europe Secretariat on the FCNM to coordinate country visits and also the OSCE ODIHR on its non-discrimination activities and the HCNM on specific issues relating to national minorities.\(^\text{16}\)

There are, of course, important differences among the institutions in terms of how they monitor standard implementation. The OSCE HCNM and the Council of Europe Commissioner on Human Rights have mandates to respond to situations on the ground. These might be termed ‘rapid reaction forces’ in contrast to the monitoring undertaken by the Council of Europe Advisory Committee on the Framework Convention which ‘is a much more thorough analysis on long-term processes entrenched in a country, not only at the legislative level but also at the policies and what effect they have on the ground.’\(^\text{17}\) Moreover, the HCNM works in confidentiality given the mandate for ‘quiet diplomacy’ which is intended to encourage parties to be ‘more co-operative and forthcoming if they know that the discussions will not be revealed to the outside world’ (www.osce.org).

Given its significant leverage over candidate countries’ accession to the EU, the European Commission has particular responsibility for monitoring compliance with minority rights standards. Following Agenda 2000, the European Commission publishes Regular Reports (now Progress Reports) to ascertain the compliance of candidate conditions with the EU accession criteria, including minority rights under the Copenhagen criteria. The reports allude not only to the EU’s own criteria, but also standards set by the OSCE and the Council of Europe. Hughes and Sasse (2003, 16) argued that ‘the Reports do not systematically assess the structure and operation of institutional frameworks or policies for dealing with minority groups’. Yet it is arguable that they consistently highlight the key issues and progress (or lack thereof) made by the candidate countries. Moreover, the European Commission’s referencing of international instruments for minority rights is likely to become more systematic in the future. The 2007 Memorandum of Understanding between the Council of Europe

\(^{16}\) Interview with ECRI official, Strasbourg, December 2008

\(^{17}\) Interview with Council of Europe official, Secretariat of the Framework Convention for the Protection of National Minorities, Strasbourg, November 2008
and the European Union (2007: 4) stated that the ‘European Union regards the Council of Europe as the Europe-wide reference source for human rights. In this context, the relevant Council of Europe norms will be cited as a reference in European Union documents. The decisions and conclusions of its monitoring structures will be taken into account by the European Union institutions where relevant.’

Cooperation via Standard Expansion?

It should hopefully be clear that a key part of our argument on the role of the epistemic community on minority rights is that the experts’ activities help explain the functioning of the regime as a process of inter-organizational cooperation on minority rights protection. This cooperation should be viewed as an open-ended process that has evolved on the basis of shared norms and standards to cooperation on the monitoring and implementation of these standards. Thus, the objective of the organisations has been on the implementation of existing standards throughout Europe rather than the creation of new ones. Yet it is also arguable that the experts within the three organisations seek to broaden their remit and use existing standards to deal with the evolving challenges to minority rights protection in Europe. Such challenges arise from identifying measures to protect working migrants defined as ‘new minorities’, the increased focus on ‘kin states’ or the issue of discrimination and exclusion of the Roma community.

As noted above, it is notable that the EU inserted a minority clause into the Lisbon Reform Treaty. Indeed, some might argue that there are signs that the EU is in the process of developing its own minority policy. Drzewicki and De Graaf (2006: 437) argued that the insertion of the minority rights clause into the treaty means that ‘For the European Union, this will create specific legal obligations and open vast opportunities for further standard-setting and policy-making in the field of national minorities, an area much too neglected before.’ Similarly, a Council of Europe official commented that with the Lisbon Treaty, there would be ‘somewhat stronger legal and even a constitutional basis for the EU to become even more active in the field of minority rights once this treaty has entered into force,’

18 On the basis of our research in Brussels, however, EU officials are sceptical that the Lisbon Treaty will generate

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18 Interview with Council of Europe official, Secretariat of the Framework Convention for the Protection of National Minorities, Strasbourg, November 2008
such developments given the expected opposition from member states led by France.¹⁹ The potential for a stronger monitoring role for the EU in the field of minority rights would not be without challenges for the other two organizations, and the Council of Europe in particular. It has been argued that if the EU were to develop a role in monitoring states’ obligations in terms of human rights and minority rights, the Council of Europe would lose some of its strength as the human rights watchdog in Europe.²⁰

There is also evidence that the other two organizations are seeking to expand existing standards and norms to offer guidelines on topical issues which have become prominent. In 2007 the Council of Europe’s Venice Commission published its Report on Non-Citizens and Minority Rights which was drafted in consultation with a number of other international organizations (Venice Commission, 2007).²¹ The Venice Commission believed there was need for a common position on minority rights for non-citizens as it had become increasingly clear from monitoring reports of the Advisory Committee of the FCNM that some states excluded some groups from minority rights due to a citizenship requirement.²² The report focused on the issue of whether non-citizens should benefit from minority rights protection. It stated that while the ‘inclusion of a citizenship requirement in a general (domestic) definition is, formally speaking, not in violation of any legally binding international instrument…such an inclusion is, however, to be considered as a restrictive element’ (Venice Commission, 2007: 35). The report noted that for the HCNM too, citizenship should not be a basis upon which to deny minority rights protection. The Venice Commission concluded that states should be encouraged to abstain from introducing a citizenship criterion in a domestic definition or declaration of the FCNM and to extend minority rights provisions to non-citizens.

Minority rights experts within the OSCE and the Council of Europe also produced a report on Dual Voting for Persons Belonging to National Minorities (Venice Commission, 2008). At the request of the OSCE HCNM, the Venice Commission

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²⁰ Interview with Council of Europe official, Secretariat of the Framework Convention for the Protection of National Minorities, Strasbourg, November 2008
²¹ The Council of Europe Advisory Committee on the FCNM; the Committee of Experts of the European Charter for Regional or Minority Languages; the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe; the OSCE HCNM; and the Office of the UN High Commissioner for Human Rights
²² Interview with Venice Commission official, Strasbourg, December 2008
Commission examined a document drafted by the High Commissioner and concluded that dual voting may be applicable in cases if full participation by minorities is not ensured by other measures; it has a transitional character; and concerns a small minority (Venice Commission, 2008). The Venice Commission noted that the Advisory Committee of the FCNM had not envisaged ‘provisions aimed at ensuring the representation of national minorities’ and that ‘the issue of dual voting was not considered’ (Venice Commission, 2008). While the report on dual voting was recognised as ‘not a standard or even soft law’, it was nevertheless advice based on the ‘conviction of [the HCNM] and the Venice Commission.’ The recent work on minority rights involving experts in the different institutions was described as a ‘drop in the ocean’ for the ‘advancement of standards’ whereby the main problem is not the cooperation among organizations but that ‘minority protection is such a difficult sector [and] always take time before you drag [states] along, even worse than human rights.’

In 2008, the OSCE HCNM published a new set of recommendations in 2008, the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (OSCE, 2008). While relations between states where a state has a ‘kin’ minority in a neighbouring state is hardly a new challenge, the HCNM sought to provide ‘greater clarity on how States can pursue their interests with regard to national minorities abroad without jeopardizing peace and good neighbourly relations’ (OSCE, 2008: 2). Importantly, the High Commissioner consulted a number of other minority rights experts in the preparation of the document including officials from the Venice Commission and the Advisory Committee of the FCNM. One official remarked that such an exercise amounted to ‘the elaboration of standards, the refinement of standards’ applied to the issue of national minorities and ‘kin states.’

The advancement or expansion of standards on minority rights is less clear-cut than the initial standard-setting or even the ongoing focus on standard implementation on minority rights in Europe. Arguably the idea of advancing standards to deal with new problems or old problems in a new way reinforces the conceptualisation of inter-organizational cooperation on minority rights as a process. There is a network of experts who together form an epistemic community as a ‘special kind of de facto
natural coalition of “believers” who seek to ensure ‘the adoption of the community’s policy project’ Sebenius (1992: 325). As denoted above by the question-mark, however, further research is needed to track the developments in minority rights protection as undertaken by the epistemic community.

Conclusions

We can conclude that the network of experts working on minority rights issues within the Council of Europe, the OSCE and the EU form an epistemic community as set out in Haas’ framework. The concept has considerable utility in helping explain the role of knowledge in international cooperation and international regimes. We suggest that the concept needs to better acknowledge the variable influence of different members within the epistemic community which may be affected by institutional constraints. Thus, we argue for a more nuanced appreciation of the potential impact of an epistemic community working within the remit of international organisations; while some members may seek to develop and expand policy commitments and standards (and may even hope to ‘drag’ states along with them), they may be constrained by their institutional mandates and member state preferences. We also suggest that the framework’s ‘consensual knowledge base’ may need to be clarified in the absence of an agreed definition of the policy issue in question.

This focus on the epistemic community on minority rights in Europe helps explain how the regime functions as a process of inter-organizational cooperation founded on three constitutive elements: standard-setting; standard implementation; and standard expansion. Standard-setting was the first step in cooperation whereby the three organizations borrow from and rely on each other’s standards. With a set of shared norms the three organizations have since focused on monitoring their implementation. The challenges of implementation have led to more institutionalised modes of cooperation and a number of joint initiatives. Moreover, the three organizations take each other’s findings into account, as evidenced by the European Commission’s progress reports in the context of accession procedures. Finally, it is arguable that the regime has seen some significant attempts by experts to advance or refine existing standards to deal with complex minority rights issues. While the notion of ‘standard refinement’ or ‘standard expansion’ might be more descriptively ‘fuzzy’
than standard-setting and standard implementation, it may yet prove to be an interesting part of the European minority rights regime worthy of further research.
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