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**DISCURSIVE DYNAMICS OF COMPLIANCE
INTERNATIONAL INVOLVEMENT IN NATIONAL MINORITY PROTECTION**

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Abstract of the thesis “Discursive Dynamic of Compliance: International Involvement in National Minority Protection”

The thesis is composed of five papers focusing on the international involvement in national minority protection on the example of two international organizations – the European Union (EU) and the Council of Europe. While the first paper (“Fuzzy-Set Qualitative Comparative Analysis of Minority Protection Rules in Ten New EU Member States”), co-authored with Guido Schwellnus and Lilla Balázs, performs a more ‘conventional’ analysis of external influence on domestic policies, by measuring the impact of the presence and strength of EU demands on the level of legal protection, the other four papers adopt a reflexive approach to compliance by stressing the importance of interpretation and negotiation. From this standpoint, judgments on compliance are seen as a result of interactive evaluation. Studying compliance in this perspective means addressing communicative processes leading to the establishment of intersubjective understandings of norms and states’ behavior, predominantly by being attentive to the actors’ discourse as well as to their motivations and position within political landscape.

I argue that discursive processes underpinning compliance appear most prominently in two types of settings: 1) where there are discrepancies between the standards of behavior for ‘internal’ and for ‘external’ use, or 2) where the monitoring procedures and evaluation protocols are only being developed due to the infancy of the institution or international norms. In both cases, concerns about instable or indeterminate legitimacy call for important discursive adjustments and negotiations. These two types of settings are addressed in the paper two and the papers three to five, respectively, on the example of the EU enlargement conditionality and the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM).

Thus, the paper “Enlargement, a success story”, co-authored with Lilla Balázs, looks closely at the content of EU demands by performing an analysis of their consistency. We develop and apply a detailed coding scheme of thematic issues on which demands were formulated, and compare the treatment of four candidate countries: Estonia, Latvia, Romania, and Slovakia. Inconsistency appears as a serious flaw of the requirements: in 35% of cases demands are not voiced consistently over time. An ‘objective’ evaluation of compliance with such an unstable reference seems an impossible task, and therefore claims of the conditionality’s efficiency are contingent on other motivations, such as self-interest of the old member states or random borrowing of findings from other existing monitoring mechanisms (for example, the Council of Europe’s, or the OSCE’s). The paper further discusses the construction of the Eastern enlargement as a ‘success story’, and links it to the EU’s internal and external legitimacy concerns.

The second type of setting is that of a new international treaty. For the study of the discursive dimension of compliance, new treaty dynamics constitute a distinctively suitable case, since processes of institutional negotiation and the development of a particular approach to evaluation are more evident here than in the case of older and more stable regimes. Staying within the domain of national minority protection, I focus on the only legally binding treaty in this area – the FCNM.

In the paper “Reporting under International Conventions: A Genre Analysis”, I run a genre analysis of state reports as a type of professional communication in order to identify conventional ways of composing these texts. Proceeding in three steps, the paper detects and describes genre patterns and variation on the levels of the text, sentence, and word. Findings support the idea of a progressive development of ‘genre competence’ in reporting as illustrated by the differences in the reports submitted by two kinds of states: ‘old democracies’ experienced in monitoring under international conventions, and novice ‘new democracies’.

The paper “Discursive Strategies in Diplomatic Communication” looks not only at the reports, but also at the treaty body’s discourse. Using insights of politeness theory, I distinguish two general strategies of discursive behavior of the participants: cooperation strategy, focusing on the good will and openness of the state, and independence strategy, giving preference to the state’s desire of autonomy. The paper utilizes the findings on the discursive strategies used in the exchange between the treaty body and two reporting states (Estonia and Finland) to check four theoretical explanations of monitoring: domestic logic, institutional explanation, dialogic dynamic and strategic calculations. The explanation that proves the most promising is a combination of the institutional and strategic logics: evaluation of the state’s policy by the treaty body is conditioned by the wish to treat different states equally and balance critique and praise, while states are relatively more or less open and self-critical dependent on prior experience in monitoring and differentiate the treatment of issues in relation to their sensitivity.

The paper “Negotiating Compliance: Discursive Choices in a Formalized Setting of Diplomatic Communication” brings together the formal aspects of diplomatic genre study and the framework on discursive strategies. On the basis of a thorough scrutiny of the monitoring documents’ structure and the use of strategies, the degree of freedom of the participants within the genre of diplomatic exchanges is analyzed. I conclude that there remains enough space for the actors to accommodate their contextual needs and discursive strategic preferences. It means that the parties are able to adjust the structural prescriptions to the considerations of thematic relevance or appropriateness and prove knowledgeable in selecting suitable tactics according to the relative priority of the issues.

Résumé de la thèse de doctorat “Dynamiques Discursives de la Conformité: Engagement International concernant la Protection des Minorités Nationales”

Le mémoire est composé de cinq articles qui analysent l’engagement international concernant la protection des minorités nationales sur l’exemple de deux organisations internationales – l’Union Européenne (UE) et le Conseil de l’Europe. Le premier article (“Analyse Comparative Qualitative de la Législation sur les Minorités Nationales dans les Dix Nouveaux Pays-Membres de l’UE”), co-écrit avec Guido Schweltnus et Lilla Balázs, procède à une étude plutôt conventionnelle de l’influence externe sur la politique domestique en appréciant l’impact de la présence et la force des demandes de l’UE concernant la protection législative des minorités. Les quatre autres articles adoptent une approche plus réflexive sur la conformité en soulignant l’importance de l’interprétation et de la négociation. Cette optique accorde beaucoup d’attention aux processus communicatifs qui mènent à l’établissement de compréhensions intersubjectives des normes et de la conduite des États. De ce point de vue, étudier la conformité signifie surtout se concentrer sur le discours des acteurs et sur leurs motivations, ainsi que leur positionnement au sein du paysage politique.

J’affirme que les processus discursifs qui sont à la base de la conformité apparaissent le plus en relief dans deux situations: 1) si la légitimité de l’évaluateur est mise en question, et 2) si les procédures de suivi et les protocoles d’évaluation sont en train d’être développés du fait du jeune âge de l’institution ou des normes. Dans les deux cas, les inquiétudes sur la légitimité problématique ou encore instable nécessitent des ajustements discursives et des négociations. Ces deux types de situation sont couverts dans les articles deux et trois à cinq, respectivement, sur l’exemple de la politique de conditionnalité pendant le dernier élargissement de l’UE et du suivi de la Convention-cadre pour la Protection de Minorités Nationales du Conseil de l’Europe.

Ainsi, l’article “Élargissement, une ‘success story’”, co-écrit avec Lilla Balázs, regarde de près sur le contenu des demandes de l’UE en examinant leur cohérence. À l’aide d’un schéma de codage détaillé des sujets sur lesquels les demandes ont été formulées, nous comparons le traitement de quatre pays candidats: Estonie, Lettonie, Roumanie et Slovaquie. Nous constatons une incohérence significative des demandes: dans 35% des cas les demandes ne sont pas cohérentes dans le temps. L’évaluation ‘objective’ de la conformité avec une référence aussi instable semble être impossible, ce qui signifie que les jugements sur la conformité aux demandes ont d’autres motivations comme, par exemple, des intérêts particuliers des ‘anciens’ pays-membres de l’Union, ou un emprunt aléatoire des résultats d’autres mécanismes de suivi (ceux du Conseil de l’Europe ou de l’OSCE en l’occurrence). L’article discute ensuite la construction de l’élargissement comme une ‘success story’ et la connecte aux préoccupations de l’UE au sujet de sa légitimité sur la scène interne ainsi qu’externe.

Le deuxième type de situation est celui d'un nouvel accord international. La dynamique de nouveaux accords internationaux convient particulièrement bien pour l'étude de la dimension discursive de la conformité, puisque les processus de la négociation institutionnelle et du développement d'une approche à l'évaluation sont plus évidents dans ce cas que dans les régimes enracinés. Toujours dans le domaine de la protection des minorités nationales, j'ai choisi de me concentrer sur le seul accord international légalement contraignant dans ce domaine – la Convention-cadre du Conseil de l'Europe.

Dans l'article "Rapports sous Conventions Internationales: Une Analyse du Genre", je mène l'analyse du genre des rapports étatiques comme un type de communication professionnelle pour identifier les façons conventionnelles de composer ces textes. Procédant en trois étapes, l'article discerne et décrit ces conventions sur trois échelons: ceux du texte, de la phrase et du mot. Les résultats supportent l'idée qu'une 'compétence de genre' dans la rédaction des rapports se développe progressivement, illustré par les différences dans les rapports soumis par deux types d'États: 'démocraties établies' expérimentées dans le suivi de conventions internationales, et 'nouvelles démocraties' novices.

L'article "Stratégies Discursives dans la Communication Diplomatique" examine non seulement les rapports, mais aussi le discours du Comité Consultatif de la Convention-cadre. En me basant sur la théorie de la politesse, je différencie deux stratégies générales dans le suivi: la stratégie de coopération, qui privilégie la bonne volonté des États et favorise un comportement autocritique, et la stratégie d'indépendance, qui satisfait le désir de l'État de préserver son autonomie. L'article utilise les résultats de l'étude des stratégies déployées par les parties du monitoring pour tester quatre théories sur l'essence du monitoring: domestique, institutionnelle, dialogique et de calcul stratégique. L'explication la plus adéquate s'avère être une combinaison des logiques stratégique et institutionnelle: l'évaluation de la politique étatique par le comité de suivi de la convention est conditionnée par le souci du traitement égalitaire des États et par le souci d'équilibrer la critique et des éloges. En ce qui concerne les États, il y a une différenciation du traitement des sujets de sensibilité inégale. En plus, il s'avère que l'attitude plus ou moins ouverte dans le processus d'échange dépend de l'expérience antérieure au sein d'autres mécanismes de suivi.

L'article "Conformité négociée: Choix Discursifs dans le Cadre Formalisé de la Communication Diplomatique" intègre l'étude sur le genre des textes du suivi et le cadre analytique sur les stratégies discursives. Sur la base d'une analyse détaillée des contraintes structurelles et des stratégies employées dans les documents faisant partie du mécanisme de suivi, la marge de manœuvre des participants est appréciée. Je conclus qu'il reste suffisamment de liberté aux acteurs pour satisfaire leurs besoins contextuels et répondre à leurs préférences stratégiques même dans l'environnement très rigide du genre diplomatique. Les parties sont en fait capables d'ajuster les prescriptions sur la structure des documents en fonction des considérations de pertinence thématique et se montrent habiles dans la sélection de tactiques appropriées par rapport à la priorité relative des questions.

Introduction

Introduction

Scholarly interest to the states' compliance with international law and international obligations has been very high in the last two decades, generating a body of literature where, according to some, as many as eleven different theoretical approaches can be distinguished¹. While in the last years the passion for new theory labels has faded, research on compliance has become more empirical and quantitative, especially in the domain of human rights². Researchers engaged with the issues of compliance define the main object of their inquiry in divergent ways, of course, partly under the influence of particular theoretical stances. Some are primarily interested in why states join international treaties and take on international legal obligations in the first place³, others focus on the integration of the international norms into domestic legislation or look beyond formal adoption at the changing patterns in legal and political behavior that follow such integration⁴. Several broad theoretical orientations are discernible in this research: Beth Simmons distinguishes four such approaches – realism, rationalism, domestic regime-based explanations and normative approaches⁵, while Oona Hathaway adopts a more general distinction between rational actor literature and normative models⁶.

Another way to analytically organize and make sense of the very large body of scholarly literature on compliance is to distinguish between 'behaviorist approaches' and 'reflexive approaches', as Antje Wiener does⁷. According to her distinction, behaviorist approaches see international norms as stable and focus on state behavior as a reaction to norms, while reflexive approaches "stress the role of discursive interventions as social practices" and acknowledge a possibility of the norms' contestation and transformation⁸.

Based on different assumptions about the character of norms, these two kinds of approaches tend to view them either as an independent variable explaining states' behavior or as a dependent variable

¹ Bradford distinguishes between realism, enforcement theory, rational choice theory, liberal theory, managerial theory, reputational theory, transnational legal process, legitimacy theory, constructivism, organizational-cultural theory, and personality theory (William Bradford (2004), "International Legal Compliance: An Annotated Bibliography", *North Carolina Journal of International Law and Commercial Regulation* 30).

² Beth Simmons (2010), "Treaty Compliance and Violation", *Annual Review of Political Science* 13: 273-296, p. 275.

³ See Simmons (2010) and Beth Simmons (1998), "Compliance with International Agreements", *Annual Review of Political Science* 1: 75-93 for an overview of this literature.

⁴ See for a distinction between formal and behavioral compliance Andreas Hasenclever, Peter Mayer and Volker Rittberger (1997), *Theories of International Regimes*, Cambridge University Press. More on 'effectiveness' of legal regimes as distinguished from compliance, see in Oran R. Young (ed.) (1999), *The Effectiveness of International Environmental Regimes. Causal Connections and Behavioral Mechanisms*, MIT Press; and David G. Victor, Kal Raustikala, and Eugene B. Skolnikoff (eds.) (1998), *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice*, Cambridge, Massachusetts: the MIT Press.

⁵ Simmons (1998).

⁶ Oona A. Hathaway (2005), "Between Power and Principle: An Integrated Theory of International Law", *Faculty Scholarship Series*, paper 836, Yale Law School Legal Scholarship Repository.

⁷ Antje Wiener (2004), "Contested Compliance: Interventions on the Normative Structure of World Politics", *European Journal of International Relations* 10: 189-234.

⁸ Wiener (2004), quote from p. 190.

shaped and actualized through social practices⁹. This distinction has to be nuanced since in line with reflexive sociology theorizing, in reflexive approaches norms are seen as both constructed and structuring¹⁰. Such a perspective allows to speak not only about socialization of actors into a community with shared values and norms¹¹, but also about the constitution and contestation of such normative structures¹². Reflexive approaches stress the importance of interpretation and negotiation: shared understandings cannot be based on a passive ‘consumption’ of ready-made norms, but are produced in processes of discursive exchange, through which a particular structure of meaning-in-use is established¹³. Contestation is unavoidable¹⁴ and may be even seen as beneficial, for it “sheds light on different meanings of a norm, thus enhancing the probability of establishing shared understandings”¹⁵.

The fact that norms get actualized through discourse¹⁶ underlines the mediated nature of knowledge about political reality – institutions, policies and actors: political language is in many ways political reality itself since “it is generally the language about political events, not the events themselves, that people experience”¹⁷. Therefore, processes of constitution and contestation of norms, values and identities take shape in the form of discourse¹⁸ and are reflected in official documents, political debates or policy documents¹⁹.

The mediated character of social reality makes compliance more elusive and difficult to identify. While behaviorist approaches acknowledge operational difficulties to estimate compliance²⁰, a clear

⁹ Some scholars still have signaled that seeing norms as variables in general is not warranted: Friedrich Kratochwil and John Gerard Ruggie (1986), “International organization: a state of the art on an art of the state”, *International Organization* 40(4): 753-775, p.768.

¹⁰ Wiener (2004): 200-201.

¹¹ Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.) (1999), *The Power of Human Rights. International Norms and Domestic Change*. Cambridge University Press; Martha Finnemore and Kathryn Sikkink (1998), “International Norm Dynamics and Political Change”, *International Organization* 52(4): 887-917; Frank Schimmelfennig (2001), “The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union”, *International Organization* 55(1): 47-80, p. 62.

¹² Christian Reus-Smit (2001), “Human Rights and the Social Construction of Sovereignty”, *Review of International Studies* 27: 519–38; Christian Reus-Smit (1997), “The Constitutional Structure of International Society and the Nature of Fundamental Institutions”, *International Organization* 51(4): 555-89.

¹³ Jennifer Milliken (1999), “The Study of Discourse in International Relations: A Critique of Research and Methods”, *European Journal of International Relations* 5(2): 225-254.

¹⁴ Michael Barnett (1999), “Culture, Strategy and Foreign Policy Change: Israel’s Road to Oslo”, *European Journal of International Relations* 5(1): 5–36.

¹⁵ Wiener (2004): 201.

¹⁶ Milliken (1999): 231.

¹⁷ Frank Fischer (2003), *Reframing Public Policy - Discursive Politics and Deliberative Practices*. Oxford: Oxford University Press, p. 56.

¹⁸ Roxanne L. Doty (1996), *Imperial Encounters*, Minneapolis: University of Minnesota Press.

¹⁹ Wiener (2004): 201.

²⁰ Thus, Peter Haas enumerates epistemological and methodological problems in evaluating compliance, including problems in conceptualizing compliance, false reporting, and unintentional noncompliance. Peter M. Haas (2000), “Choosing to Comply”, in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International System*, Oxford University Press. Hathaway highlights in this respect the lack of effective monitoring: Oona Hathaway (2002), “Do Human Rights Make a Difference?”, *Yale Law Journal* 111: 1935-2042. See also earlier concerns on the epistemological issues of identifying compliance in Richard A. Falk (1964), “On Identifying and Solving the Problem of Compliance with International Law”, *Proceedings of the American Society of International Law at Its Annual Meeting* 58.

behavioral “yardstick of success” is usually there²¹ and the states’ behavior is judged in reference to this rather stable standard. To quote Oran Young, “compliance refers to all behavior by subjects or actors that conforms to the requirements of behavioral prescriptions”²². On the other side, if the meaning of norms is intersubjectively defined, compliance has to be seen in light of the state’s and its partners’ understandings of what constitutes and what does not constitute a breach of obligations and what is to be acknowledged as compliant behavior²³. Criticizing positivist accounts of how norms work within regimes, Friedrich Kratochwil and John G. Ruggie underline the importance of the violation’s assessment by the community of actors, that is, the “intersubjective appraisal” of state behavior by other states and call for opening regime analysis to the “communicative rather than merely the referential functions of norms in social interactions”²⁴.

Studying compliance in this perspective means addressing communicative processes leading to the establishment of intersubjective understandings of norms and states’ behavior, predominantly by being attentive to the actors’ discourse. The focus on discourse and the affirmation of a relative character of norms and standards do not mean that the reflexive perspective is naïvely silencing power relationships or institutional contexts of negotiation and contestation. Discursive processes are subject to the logic of power struggle just as other political processes are, and “[t]he winner of the discursive struggle will define what will be taken to be reality with categories that will at the same time suppress alternative conceptions”²⁵ concerning the identification and definition of problems, their reasons and appropriate ways of addressing them. Since at any moment, different groups are struggling to impose their definition of the situation, underpinned by their different interests and goals²⁶, the winning perception is likely to be contested and at some point eventually replaced by other options. To sum up, “international obligations [are] social constructs that must be understood and analyzed in an intersubjective framework of meaning”²⁷.

While reflecting on the nature of their obligations, international actors may be conducted to reshape not only their ideas about the ways to act and react to the other actors’ behavior, but also to rethink and redefine their identity, their self-perception. As formulated by Doty, “any fixing of a discourse and the identities that are constructed by it can only be of a partial nature. It is the overflowing and incomplete nature of discourses that open up spaces for change, discontinuity, and variation.”²⁸This

²¹ Wiener (2004).

²² Oran R. Young (1979), *Compliance and Public Authority. A Theory with International Applications*, Baltimore: John Hopkins University Press, p. 4.

²³ Hedley Bull (1977), *The Anarchical Society. A Study of Order in World Politics*, New York: Columbia University Press.

²⁴ Kratochwil and Ruggie (1986): 774.

²⁵ Fischer (2003): 87. See also Maarten A. Hajer (1995), *The Politics of Environmental Discourse*, Oxford University Press.

²⁶ Murray Edelman (1988), *Constructing the Political Spectacle*. Chicago: Chicago University Press.

²⁷ Simmons (1998): 88.

²⁸ Quoted in Alun Jones and Julian Clark (2008), “Europeanization and Discourse Building: The European Commission, European Narratives and European Neighbourhood Policy”, *Geopolitics* 13: 545-571, p. 549. Barnett expresses the same view when he write: “Identities... are fundamentally social and relational, defined by

dimension highlights a specific understanding of communicative processes in international regimes and in international interactions more generally. For example, it calls for a more symmetrical treatment of the process of socialization²⁹, where the discourse produced by the socializing agency in order to induce compliance of the socialized actors and that produced by the socialized actors in response may be conducive to reshaping socializer's identity³⁰. This process is interactive and is more likely to bring results in cases where the demands of the socializing agent or its behavior in relation to the posited standards are claimed to be illegitimate. An example of such developments can be seen in the European Unions' reaction to critiques for being inconsistent in its internal and external policy and to the consequent questioning of its moral weight and legitimacy both internally and externally by reshaping its policies and attempting to create a coherent narrative on 'soft power'³¹.

Moreover, some institutional settings may favor a more symmetrical activity of the socializer and the socializee as concerns the establishment of standards against which compliance is judged. Such is the case of newly established regimes or sub-regimes, for instance, crystallization of norms and practiced around a new international treaty and its institutions. While the treaty itself is already a result of negotiations and contestations, its implementation and monitoring have to be realized through concrete practices and grounded in more or less consensual understandings of the ways to proceed. While norms may benefit from a transfer of legitimacy from the international institution supporting and promoting them³², legitimization of demands and compliance-gaining activities of the institution is a more complicated endeavor. Thus, Ruth Wodak and Gilbert Weiss distinguish three dimensions of legitimization: legitimization through idea, through process and through "standardization"³³. That is, the recognition of the institution as a legitimate actor (able to confer legitimacy to sponsored norms, but also relying on such norms itself) is conditioned upon the existence of a particular identity (with concrete cultural background), some valued principles of functioning (such as participation,

the actor's interaction with and relationship to others" (Michael Barnett, (1999), "Culture, Strategy and Foreign Policy Change: Israel's Road to Oslo", *European Journal of International Relations* 5(1): 5-36, p. 9).

²⁹ For calls for a more active role of the socialized actors, see Michael Zürn and Jeffrey T. Checkel (2005), "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State", *International Organization* 59 (Fall): 1045-1079, p. 1071; Payne, Rodger A. (2001), "Persuasion, Frames and Norm Construction", *European Journal of International Relations* 7(1): 37-61, p. 42; Jeffrey T. Checkel (2001), "Why Comply? Social Learning and European Identity Change", *International Organization* 55(3): 553-588, p. 570.

³⁰ For an overview of approaches concentrating on the changes in discourse of only one party of the interaction, see Ole Waever (2005), "Discursive Approaches", in Antje Wiener and Thomas Diez, *European Integration Theory*, Oxford University Press: 197-215.

³¹ Elsa Tulmets (2007), "Can the Discourse on "Soft Power" Help the EU to Bridge its Capability-Expectations Gap?", *European Political Economy Review* 7: 195-226; Ulrich Sedelmeier (2003), "EU Enlargement, Identity and the Analysis of European Foreign Policy: Identity Formation Through Policy Practice", *EUI Working Papers*, RSC No. 2003/13; Vincent della Sala (2010), "Political Myth, Mythology and the European Union", *Journal of Common Market Studies* 48(1): 1-19.

³² Inis L. Claude (1966), "Collective Legitimization as a Political Function of the United Nations", *International Organization* 20(3): 367-379; Connie Peck (1996), *The United Nations as a Dispute Settlement System*, The Hague: Kluwer Law Int.

³³ Ruth Wodak and Gilbert Weiss (2005), "Analyzing European Union discourses. Theories and applications", in Ruth Wodak and Paul Chilton (eds.), *A New Agenda in (Critical) Discourse Analysis*, Amsterdam/Philadelphia: John Benjamin: 121-136, namely p. 131.

democracy or efficiency), and a consistent application of consensual standards. All three elements are likely to be (re)actualized through practices, including practices of monitoring of the socialized actors' behavior.

Papers making part of this thesis focus on discursive dynamics of compliance in two cases particularly suitable and even calling for the use of a reflexive approach: first, on a case of contested norms (monitoring and evaluation by the European Commission of the candidate countries' national minority policy in the context of the Eastern enlargement of the European Union), and second, on a case of new international treaty (the Council of Europe's Framework Convention for the Protection of National Minorities, FCNM). I argue that discursive processes underpinning compliance appear most prominently in exactly such settings: either due to discrepancies between the standards of behavior 'for internal' and 'for external use' in the case of the EU enlargement conditionality³⁴, or to the infancy of the monitoring procedures and evaluation protocols in the case of the Framework Convention³⁵, the ensuing legitimacy concerns and contingency of compliance assessment call for significant discursive adjustments and negotiations.

The first case – contestation of norms within the process of the last enlargement of the European Union – has received an important attention of scholars focusing on discourse, identity and legitimacy. The issue of the European Union's identity construction – wider than the challenge of enlargement for the EU identity and underpinning it – has motivated original research at least since the beginning of the 1990s³⁶. These studies highlight the fact that although the European Union needs to recur to

³⁴ On this 'double standards' problem see, for example, Michael Johns (2003), "Do as I Say, Not as I Do": The European Union, Eastern Europe and Minority Rights", *East European Politics and Societies* 17(4): 682-699; James Hughes and Gwendolyn Sasse (2003), "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", *JEMIE* 1; G. Pentassuglia (2001), "The EU and the protection of minorities: the case of Eastern Europe", *European Journal of International Law* 12(1): 3-38; Bruno De Witte (2000), "Politics versus law in the EU's approach to ethnic minorities", EUI Working Paper RSC 2000/4, Florence: European University Institute; Bernd Rechel (2008), "What Has Limited the EU's Impact on Minority Rights in Accession Countries?", *East European Politics and Societies* 22(1): 171-191; Gabriel N. Toggenburg (2004), *Minority Protection and the Enlarged European Union: The Way Forward*, Budapest, Local Government Initiative; Gwendolyn Sasse (2008), "The politics of EU conditionality: the norm of minority protection during and beyond EU accession", *Journal of European Public Policy* 15(6): 842-860.

³⁵ Council of Europe (2004), *Filling the Frame. Five years of monitoring the Framework Convention for the Protection of National Minorities*, Proceedings of the conference held in Strasbourg, 30-31 October 2003, Council of Europe Publishing; M. Weller (ed.) (2006), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford: Oxford University Press; A. Verstichel, A. Alen, D. De Witte and P. Lemmens (eds.) (2008), *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?*, Antwerp-Oxford-Portland: Intersentia.

³⁶ Anthony D. Smith (1992), "National Identity and the Idea of European Unity", *International Affairs* 68(1): 55-76; Jürgen Habermas (1992), "Citizenship and National Identity: Some Reflections on the Future of Europe", *Open praxis: The bulletin of the International Council for Distance Education*, 12(1): 1-19; Soledad García (1993), *European Identity and the Search for Legitimacy*, London: Pinter; Brigid Laffan (1996), "The Politics of Identity and Political Order in Europe", *Journal of Common Market Studies* 34(1): 81-102; Daniela Obradovic (1996), "Policy Legitimacy and the European Union", *Journal of Common Market Studies* 34(2): 191-221; David Beetham and Christopher Lord (1998), *Legitimacy in the European Union*. London: Longman; Lene Hansen and Michael C. Williams (1999): "The Myths of Europe: Legitimacy, Community and the "Crisis" of the EU", *Journal of Common Market Studies* 37(2): 233-249; Thomas F. Banchoff and Mitchell P. Smith (1999), *Legitimacy and the European Union: the contested polity*, Routledge.

discursive constructions such as myths or grand narratives in order to gain legitimacy, its efforts are deemed to be highly contested or altogether unsuccessful. On the one hand, the idea of the European polity itself is contested³⁷, and, on the other hand, several ways of conceptualizing the EU compete on the ideological and discursive arena (EU as a problem-solving entity, as a value-based community or as a rights-based, post-national union), all calling for a different type of legitimation³⁸. Furthermore, contemporary attempts to generate European myths are “constrained precisely because they are *seen as* myths rather than as objective accounts of history”³⁹. As Anthony Smith puts it, this is “the new Europe’s true dilemma: a choice between unacceptable historical myths and memories on the one hand, and on the other a patchwork, memoryless scientific “culture” held together solely by the political will and economic interest”⁴⁰.

It does not mean, however, that myth-making activity has been stopped or that the European Union and its institutions do not produce any legitimizing discourse. Quite the contrary is true: as a response to internal and external criticism and to an evident disillusionment in the old narratives of Europe⁴¹, the European Union has been developing and elaborating on several new narratives on Europe and the nature of the European polity⁴², such as the myth of successful enlargement and, more generally, a myth of ‘soft power’⁴³.

Two first papers of the thesis address this issue. The paper “Fuzzy-Set Qualitative Comparative Analysis of Minority Protection Rules in Ten New EU Member States”, presenting results of a collective project funded by the Swiss National Science Foundation, and co-authored with Guido Schweltnus and Lilla Balázs, evaluates the relative importance of the EU’s influence on the level of minority protection in the candidate countries. The study looks for factors explaining all the significant changes in the level of legal protection in five issue areas (non-discrimination, education, language

³⁷ John Gaffney (1999), “Political Rhetoric and the Legitimacy of the European Union”, in Banchoff and Smith (1999): 199-211.

³⁸ Erik O. Eriksen and John E. Fossum (2004), “Europe in Search of Legitimacy: Strategies of Legitimation Assessed”, *International Political Science Review* 25(4): 435-459, p. 436.

³⁹ Hansen and Williams (1999): 238, emphasis in the original.

⁴⁰ Smith (1992): 74. Hansen and Williams believe however that myth can still be “added to ‘facts’ and ‘interests’, building upon the success of functionalism, but endowing it with a legitimating capacity otherwise lacking” (Hansen and Williams 1999: 239).

⁴¹ Hartmut Mayer (2008), “Is it still called ‘Chinese Whispers’? The EU’s rhetoric and action as a responsible global institution”, *International Affairs* 84(1): 61-79.

⁴² See the special issue 48(1) of the *Journal of Common Market Studies* (2010) on myth-making in the European Union and namely: Vincent della Sala (2010), “Political Myth, Mythology and the European Union”, *JCMS* 48(1): 1-19; Hannes Hansen-Magnusson, Antje Wiener (2010), “Studying Contemporary Constitutionalism: Memory, Myth and Horizon”, *JCMS* 48(1): 21-44; Andrea Lenschow and Carina Sprungk (2010), “The Myth of a Green Europe”, *JCMS* 48(1): 133-154.

⁴³ Francois Duchêne (1972), “Europe’s role in world peace”, in Richard J. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead*, London: Fontana: 32-47; Christopher Hill (1990), “European Foreign Policy: Power Bloc, Civilian Model – or Flop?”, in Reinhardt Rummel (ed.), *The Evolution of an International Actor: Western Europe’s New Assertiveness*, Boulder: Westview Press; Ian Manners (2002), “Normative power Europe: a contradiction in terms?”, *Journal of Common Market Studies* 40(2): 235-258; Elsa Tulmets (2007), “Policy Adaptation From The Enlargement To The Neighbourhood Policy: A Way To Improve The EU’s External Capabilities?”, *Politique européenne* 22: 55-80.

use, citizenship and protection of Roma) in ten Central and Eastern European Countries between 1997 and 2010. In addition to the presence and strength of external demands⁴⁴, such factors as the position of the government and institutional veto players towards national minorities, the level of mobilization of the nationalist section of majority and minority, the size of minorities, the duration of the government, and the departure level of protection were included in the analysis. While our results prove that under certain conditions the EU demands, linked to the prospect of membership, were effective in motivating an improvement in the legal protection of minorities, at times even overcoming strong domestic opposition, they also point out the importance of favorable domestic conditions. We conclude that “conditionality works indirectly through the differential empowerment of domestic actors with pro-compliance preferences rather than directly by offsetting the preferences of negatively-minded actors” (p. 16). Although this study does not deal with discourse in any more detailed manner than by distinguishing between different levels of urgency and clarity of EU’s demands (p. 3), it constitutes a building block for the second paper, which directly attacks the nature of EU requirements.

The second paper, “Enlargement, a success story”⁴⁵, co-authored with Lilla Balázs, goes beyond the characteristics of requirements advanced and described in existing literature on conditionality⁴⁶ and performs a detailed analysis of horizontal and vertical consistency of EU demands. By horizontal consistency we mean recurrent character of demands in the main monitoring documents of the pre-accession phase – Progress Reports, drafted by the European Commission on each negotiating state since 1998. By vertical consistency we mean the presence of the same demands in different types of

⁴⁴ On the notion of ‘political conditionality’, see Georg Sørensen (ed.) (1993), “Political Conditionality”, a special issue of the *European journal of development research* 5(1) and Karen E. Smith (1998), “The Use of Political Conditionality in the EU’s Relations with Third Countries: How Effective?”, *European Foreign Affairs Review* 3(2): 253-274. On the use of conditionality in the EU enlargement more closely, see Heather Grabbe (1999), “A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants”, Robert Schuman Centre Working Paper 12/99, European University Institute; Frank Schimmelfennig, Stefan Engert and Heiko Knobel (2003), “Costs, Commitment, and Compliance. The Impact of EU Democratic Conditionality on Latvia, Slovakia, and Turkey”, *Journal of Common Market Studies* 41(3): 495-517; Judith G. Kelley (2004), *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton University Press; Frank Schimmelfennig and Ulrich Sedelmeier (2004), “Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe”, *Journal of European Public Policy* 11(4): 661-679; Frank Schimmelfennig and Ulrich Sedelmeier (eds.) (2005), *The Europeanization of Central and Eastern Europe*, Ithaca, NY: Cornell University Press; Ulrich Sedelmeier (2008), “After Conditionality: Post-accession Compliance in the EU’s New Member States from East Central Europe”, *Journal of European Public Policy* 15(6): 806-825.

⁴⁵ European Commission, “Enlargement, Two Years After - An Economic Success”, COM(2006)200, 03.05.2006.

⁴⁶ These are determinacy, explicitness, recurrence, concreteness, legitimacy, intensity, and resonance. See Guido Schweltnus (2004), “Looking Back at Ten Years of EU Minority Conditionality vis-à-vis Central and Eastern European Candidate States”, *European Yearbook of Minority Issues* 4(5), 321-340; Frank Schimmelfennig and Ulrich Sedelmeier (2005), *The Europeanization of Central and Eastern Europe*, Cornell University Press, Ithaca; Heather Grabbe (2006), *The EU’s Transformative Power. Europeanization through Conditionality in Central and Eastern Europe*, Palgrave Studies in European Union Politics, Palgrave Macmillan; Bernard Steunenberg and Antoaneta Dimitrova (2007), “Compliance in the EU Enlargement Process: the Limits of Conditionality”, *European Integration online Papers* 11.

monitoring documents, that is, not only in Progress Reports, but also in summarizing Strategy Papers and Accession Partnerships.

We develop and apply a detailed coding scheme of thematic issues on which demands were formulated, and compare the treatment of four candidate countries singled out by the European Commission as the most problematic in relation to the protection of national minorities (Estonia, Latvia, Romania and Slovakia). We demonstrate that horizontal inconsistency is a serious flaw of the requirements: in 35% of cases demands are not voiced consistently over time. An ‘objective’ evaluation of compliance with such an unstable reference seems an impossible task, and therefore claims of the conditionality’s efficiency are contingent on other motivations, such as self-interest of the old member states or random borrowing of findings from other existing monitoring mechanisms (for example, the Council of Europe’s, or the OSCE’s). It is also possible to see the states’ compliance assessment as a result of “dialogue with the countries on their success in addressing issues under the political criteria”, as the Commission itself puts it⁴⁷.

Developing on the issue of the political nature of policy evaluation, the paper goes on to discuss the construction of the Eastern enlargement as a success story, and links it to the legitimacy concerns on internal as well as external scenes. We show that the Commission’s evaluation of the enlargement strategy was motivated by other reasons than the evaluation of the candidate countries’ policies and that it is therefore possible to identify multiple inconsistencies between the ‘findings’ in these two kinds of assessment. We conclude that “what resulted from this patchy and irregular effort to offer a new basis for solidarity and identity of the enlarged Union [and present it as a global normative actor] is a new narrative on almost unqualified success of enlargement, made possible by joint endeavor of the peoples, governments and EU institutions across the wider Europe”.

The second case, which is particularly interesting from the point of view of the reflexive perspective on compliance, is that of a new international treaty. Although processes of institutional negotiation and contestation as well as, more particularly, development of an approach to monitoring and evaluation go on in all regimes, including older, more stable, ones, they are more evident and easier to identify and study on the example of new treaty dynamics. Hence, new treaties constitute a more suitable case if one is interested in the discursive dimension of compliance. Staying within the domain of national minority protection, I have chosen to focus on the only legally binding treaty in this area – the new Framework Convention for the Protection of National Minorities of the Council of Europe. It was open for ratification in 1995 and entered into force in 1998. 39 countries are now parties of the convention and are at different stages of the monitoring process.

Within this new sub-regime, several important tasks had to be carried out before it could get a shape of a fully-fledged and functioning institutional framework. First of all, institutional arrangements had to

⁴⁷ European Commission, “Enlargement Strategy and Main Challenges 2006 – 2007”, COM(2006)649, Brussels, 08.11.2006, p. 6.

be performed in order to define the relationships between the treaty body – Advisory Committee (AC) – and the Committee of Ministers. The Advisory Committee had to establish itself as an autonomous actor, listening to the concerns of the Committee of Ministers, but not influenced by political biases. Only in that way could it build a reputation of an impartial evaluator in relations to individual countries⁴⁸. Also, the Secretariat, supporting the Advisory Committee in all its activities, had to be set up as to its staff, financing and operational configurations. Even if some of the members of the new Secretariat had previously worked in other similar bodies, the new institution had to define and develop its own “style of operation” in terms of procedures, rules, approaches and ethics. In order to provide stability to the process of monitoring and act as “organizational glue” within the sub-regime, the new Secretariat had to face and find individual ways to address the typical challenges secretariats usually face: political problems, financial problems, availability of resources, and social and cultural considerations⁴⁹.

Second, detailed procedures of monitoring had to be elaborated based on quite general prescriptions in the official documents. For example, the Advisory Committee had to decide what kind of information to use for evaluating the state policies in addition to the country reports. In a general way, the AC had to introduce and solidify an own information system, which is a crucial element of each regime. According to Ronald Mitchell, “information systems consist of “inputs” related to reporting on, monitoring, and verifying behavior and the state of the environment as well as “outputs” related to aggregating, processing, evaluating, publicizing, and responding to this information”⁵⁰. Although formulated in very mechanistic terms, this definition points out the essence of some problems the AC had to solve while establishing the monitoring procedure: what kind of information to seek, what sources to use and how, whether and at what stage make the information open and to what groups, etc. Moreover, all these issues had to be agreed upon by the Committee of Ministers.

Third, and perhaps most important for the interest of the present study, the Advisory Committee had to develop an approach to evaluation starting with general principles and priorities down to very concrete decisions on the structure and language of its opinions⁵¹. The formulations of the Framework Convention are broad since they meant to “address a complex subject covering a wide variety of factual situations”⁵² and as a consequence, the AC had to develop a way to interpret in a clear and

⁴⁸ Rainer Hofmann (2004), “The Framework Convention at the end of the first cycle of Monitoring”, in Council of Europe (2004): 19-28.

⁴⁹ Rosemary Sanford (1994), “International Environmental Treaty Secretariats: Stage-Hands or Actors?”, in Helge Ole Bergessen and Georg Parmann (eds.), *Green Globe Yearbook of International Cooperation on Environment and Development 1994*, Oxford University Press: 17-29.

⁵⁰ Ronald B. Mitchell (1998), “Sources of Transparency: Information Systems in International Regimes”, *International Studies Quarterly* 42(1): 109-130, p. 110.

⁵¹ On the issue of the structure, see the discussion of the formal, article-by-article, versus thematic approach to structuring opinions in Rainer Hofmann (2008), “Implementation of the FCNM: Substantive Challenges”, in Verstichel et al. (2008): 159-185, pp. 176-177.

⁵² John Packer (2004), “Situating the Framework Convention in a wider context: achievements and challenges”, in Council of Europe (2004): 43-51, p. 44.

consistent manner the vague terms such as “insufficient” access to media or financing⁵³ or the consequences of qualifications in the text of the Convention such as “where appropriate”, “as far as possible” or “if there is sufficient demand”. With time, results of these interpretations got reified in a body of opinions, which can be used as a basis for ulterior interpretations and can be even seen as “soft law” or “soft jurisprudence”⁵⁴.

As appears from the presentation of the three types of challenges (institutional and procedural aspects plus the task of developing an approach to evaluation), overcoming difficulties on the way to establishing itself as an authoritative expert actor – which is crucial to emerge as a source of authoritative interpretations of the states’ obligations⁵⁵ – a new treaty body is faced with numerous political and normative problems and needs appropriate rhetorical and discursive tools to solve them. The three remaining papers of the thesis address the discursive dimension of these processes.

As the FCNM belongs to international treaties with a report-based monitoring system, the whole procedure of monitoring and policy evaluation is very much different from the evaluation of compliance within the pre-accession stage of the EU enlargement. This time, actual communication takes place between the reporting state and the treaty body, an exchange of documents (reports, opinions, government’s comments, resolutions), which I suggest to consider as a written diplomatic negotiation. Within this exchange, the parties discuss the ways the norms are interpreted in concrete cases, the actions needed to remedy the defaults and the developments that may serve as a model for other countries’ policies.

Since the linguistic and discursive aspects of monitoring have not been studied in the literature yet, I begin with a genre analysis of state reports in order to identify the existing norms⁵⁶ and acceptable variation in this type of professional communication in the paper “Reporting under International Conventions: A Genre Analysis”. Genre analysis is a corpus-based approach to studying and describing conventional ways of composing utterances⁵⁷ and is therefore very suitable for an explorative study of the content of monitoring exchanges. Proceeding in three steps, the paper detects and describes generic patterns and variation on the level of the text, the level of the sentence, and the level of the word. The corpus for this study is composed by the first parts of 28 reports submitted by two kinds of states: ‘old democracies’ and experienced in monitoring under international conventions,

⁵³ Hofmann (2008): 170.

⁵⁴ Packer (2008): 45; Hofmann (2008): 162.

⁵⁵ On this aspect, see a case where the treaty body could not establish such a status (the United Nations’ Committee on the Elimination of Discrimination against Women, in the case of Netherlands), in Jasper Krommendijk (forthcoming), “The effectiveness of non-judicial mechanisms for the implementation of human rights”, *Human Rights and Legal Discourse* 2011.

⁵⁶ Generic norms for state reports in the normative, authoritative, meaning exist only at the level of the text structure. At other levels, ‘norms’ mean the most common way to proceed.

⁵⁷ Mikhail Bakhtin (1986), *Speech Genres and Other Late Essays*, Austin: University of Texas Press; John Swales (1990), *Genre analysis: English in Academic and Research Settings*, Cambridge: Cambridge University Press; Douglas Biber (1994), “An Analytical Framework for Register Studies”, in Douglas Biber and Edward Finegan (eds.), *Sociolinguistic Perspectives on Register*, Oxford: Oxford University Press: 31-56; Vijay K. Bhatia (1993), *Analysing Genre: Language Use in Professional Settings*, London: Longman.

and novice ‘new democracies’. Results show a difference between the two groups of countries in at least three respects: first, regarding the compliance with the authoritative generic norm at the level of the text; second, in the level of formality; and third, in the amount of in-group variation. On all the three aspects the group of ‘new democracies’ score higher than the ‘old democracies’. Together these findings support the idea of a progressive development of ‘genre competence’⁵⁸ in reporting.

I continue the analysis of the content of monitoring exchange by looking more closely at the discourse of the two parties in the paper “Discursive Strategies in Diplomatic Communication”. This time, the discourse of the treaty body is also under scrutiny, and the exchange is conceptualized as such on the basis of politeness theory⁵⁹. It is acknowledged that the monitoring process represents a danger for the image (‘face’) of the reporting state, since its actions are scrutinized, evaluated and – very likely – criticized by an external body. Two general strategies of possible discursive behavior are identified for the participants of the monitoring process: cooperation strategy, focusing on the good will and openness of the state, and independence strategy, giving preference to the state’s desire of autonomy.

Thus, this time I do not speak about ‘discursive behavior’ in terms of how the actors use the language within the process of monitoring, but in a wider understanding, covering choices such as being open and cooperative in providing information or reacting to critique – for the states, or showing a more or less critical vs. commending approach – for the treaty body. Based on the communicative needs of the parties and the general strategies, I establish a repertoire of second-order discursive strategies used in the monitoring exchange and run an analysis of twelve monitoring documents for two countries: Estonia and Finland. Since the analysis is made possible only by an interpretive coding of the full texts making part of the monitoring mechanism and is therefore more time- and effort-intensive, a stricter selection of countries than in the case of a genre analysis imposed itself⁶⁰.

The paper utilizes the findings about discursive strategies used in the exchange between the treaty body and the two reporting states to check four theoretical explanations of monitoring: domestic logic, institutional explanation, dialogic dynamic and strategic calculations. The explanation that proved the most promising – at least on the material from Estonia and Finland’s monitoring – is a combination of the institutional and strategic logics: evaluation of the state’s policy by the treaty body is conditioned by the wish to treat different states equally and balance critique and praise, while states are relatively more or less open and self-critical dependent on prior experience in monitoring and differentiate the treatment of issues in relation to their sensitivity.

⁵⁸ Bakhtin (1986). See a comparable concept of ‘pragmalinguistic competence’ in Janet Holmes and Dorothy F. Brown (1987), “Teachers and students learning about compliments”, *TESOL Quarterly* 21(3): 523-546.

⁵⁹ Penelope Brown and Stephen C. Levinson (1987), *Politeness: Some universals in language usage*, Cambridge University Press; Penelope Brown and Stephen C. Levinson (1978), “Universals in Language Usage: Politeness Phenomena”, in Esther N. Goody (ed.), *Question and politeness*, Cambridge University Press; Erving Goffman (ed.) (1967), *Interactional Ritual: Essays on Face-to-Face Behavior*, Garden City, NY: Anchor Books. For the use of politeness theory in the analysis of a professional genre, see Anna Trosborg (1997), *Rhetorical Strategies in Legal Language. Discourse Analysis of Statutes and Contracts*, Tübingen: Gunter Narr Verlag.

⁶⁰ The choice of Estonia and Finland is explained on the page 12 of the paper.

The fifth paper of the thesis (“Negotiating Compliance: Discursive Choices in a Formalized Setting of Diplomatic Communication”) brings together the formal aspects of diplomatic genre study and the framework on discursive strategies. The primary interest of the inquiry is to discover how the interplay between formal generic structures and schemes of diplomatic communication often reputed as ‘frozen’ and too rigid, on the one hand, and situational goals of the parties – on the other, is managed in monitoring. The corpus for this study is the same as for the paper on discursive strategies. On the basis of a thorough scrutiny of the monitoring documents’ structure and the use of strategies, the degree of freedom of the participants within the genre of diplomatic exchanges has been established. I conclude that there remains enough space for the actors to accommodate their contextual needs and discursive strategic preferences. The parties are able to adjust the structural instructions to the considerations of thematic relevance or appropriateness and prove knowledgeable in selecting suitable tactics according to the relative priority of issues. Eventually, when structural outlines prove ineffective, they may be ignored by the reporting states as well as by the monitoring body.

A Fuzzy-Set Qualitative Comparative Analysis
of Minority Protection Rules
in Ten New EU
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I. Introduction

Questions regarding the effectiveness of EU conditionality have been high up on the research agenda throughout the past decade. More specifically, minority protection has been considered a particularly important as well as theoretically crucial issue-area to assess, whether the EU has been successful to induce domestic change in applicant countries by linking the membership perspective to political conditions. So far, empirical results predominantly confirm a strong EU influence on the adoption of minority protection rules in candidate countries. It has also been established that softer mechanisms such as social learning and persuasion were not sufficient to induce change in this area.¹

This article builds on existing research on EU conditionality with regard to minority protection and tries to improve on it in several ways: first, by conducting a comparative analysis including all new EU member states from Central and Eastern Europe (CEE); second, by extending both the theoretical assumptions and the empirical analysis beyond EU accession; and third, by refining the domestic factors that play an important role not only as intervening variables in explanations based on EU conditionality, but also as factors that might in themselves be sufficient for the adoption of minority protection measures.

To this end, the article presents the main findings of a fuzzy-set Qualitative Comparative Analysis (fsQCA)² of the formal adoption and sustainability of minority protection rules in ten new EU member states over a 14-year period including pre- and post-accession phases (1997-2010). It

¹ Jeffrey T. Checkel, "It's the Process Stupid! Process Tracing in the Study of European and International Politics", 26 *ARENA Working Paper* (2005); Judith Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton University Press, Princeton 2004); Frank Schimmelfennig, Stefan Engert and Heiko Knobel, *International Socialization in Europe: European Organizations, Political Conditionality, and Democratic Change* (Palgrave Macmillan, Basingstoke 2006).

² fsQCA is a formalized method based on classic assumptions of comparative analysis, set-theoretic assumptions and Boolean algebra. Its aim is to find factors or configurations of factors that are either necessary or sufficient conditions for the expected outcome to occur. For an introduction to QCA in general and fsQCA in particular see Benoit Rihoux and Charles C. Ragin (eds), *Configurational Comparative Methods: Qualitative Comparative Analysis (QCA) and Related Techniques* (SAGE, Thousand Oaks 2009). For the analysis, the software fs/QCA 2.0 was used: Charles C. Ragin, Kriss A. Drass and Sean Davey, *Fuzzy-Set/Qualitative Comparative Analysis 2.0* (Department of Sociology, University of Arizona, Tucson/Arizona 2006).

was conducted as part of a research project funded by the Swiss National Fund (SNF) under the title “The Adoption, Implementation and Sustainability of Minority Protection Rules in the Context of EU Conditionality – A Comparative Analysis of Ten New Member States in Central and Eastern Europe”. The main research question is:

Under which external and domestic conditions are minority protection and non-discrimination measures adopted, maintained or revoked in new member states before and after accession to the EU?

We seek to explain positive and negative changes in formal rule adoption, that is, the adoption of legislation or policy programs in relation to the prior level of protection in five minority protection related issue-areas: non-discrimination, language use, education, citizenship and integration of Roma. In the context of EU enlargement, *non-discrimination* predominantly relates to the transposition of the EU anti-discrimination Directives. *Language use* refers to the use of minority languages in private and public life. *Education* includes two elements: education of and in the minority language. *Citizenship* refers to the legislation on naturalization and is relevant only for countries where a large part of minority population does not possess citizenship. *Integration of Roma* was singled out as an issue-area since it is usually regulated by specific policy programs and action plans.

For all five issue-areas and each government in the ten CEE states, the level of protection was coded,³ which allowed to identify relative change: positive developments on the one hand and the revocation of existing rules or the adoption of more restrictive laws and policies on the other. The significance of newly adopted rules is measured by how many levels they differ from the previously existing level of protection. In addition, we also included as the smallest possible change improvements or restrictions that were deemed important although they do not amount to reaching a higher or lower level of protection.

II. Theoretical Background

The theoretical starting point of the article is a rationalist ‘external incentives model’ of externally-driven rule adoption, which assumes actors to be rational utility maximizers calculating the material as well as political costs and benefits of rule adoption. From this perspective, the main driving force of rule adoption in candidate states is membership conditionality. The basic

³ Where applicable, all conditions and outcomes followed a 6-value fuzzy-scale. Fuzzy-scales are calibrated measures of set-membership and can take values between 0 (full non-membership) and 1 (full membership), with 0.5 as the crossover-point between ‘more out than in’ and ‘more in than out’ of the set. The 6 values are 0, 0.2, 0.4, 0.6, 0.8 and 1. For the coding rules regarding the outcomes and the conditions see Annex I.

prediction of the model is that a candidate state “adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs”.⁴ If costs are prohibitively high, rule adoption is not likely.

Although primarily concerned with the effectiveness of conditionality, the external incentives model does not preclude the possibility that rule adoption takes place without external pressure. Domestic factors may not only inhibit, but can equally facilitate or even cause rule adoption. The question to answer is therefore not only, under which domestic conditions EU conditionality is effective, but also to what extent it is necessary to induce positive developments in the field of minority protection.

In the post-accession phase, the external incentives model predicts low sustainability of externally-induced rule adoption. If conditionality is not replaced by other incentives, such as internal EU sanctions, the perspective of further improvement of the protection level looks rather grim. Moreover, if domestic conditions are unfavorable and important political actors claim a reverse to the status quo, with no veto players able to block such decisions, formal revocation of legislation may be expected. In the case of minority protection, which is not part of the *acquis communautaire* except for anti-discrimination rules, EU pre-accession conditionality is expected to only temporarily upset the domestic equilibrium and the calculations of political actors on this highly contested issue, and therefore, revocation after accession should be a real possibility.⁵

A. External and Domestic Conditions for the Adoption or Revocation of Minority Protection Rules

Empirical analyses based on the external incentives model have been so far weakened by an under-specification of the factor ‘domestic adoption costs’, which are often only broadly defined as opportunity, welfare or power costs faced by governments in candidate countries: “these costs increase the more EU conditions negatively affect the security and integrity of the state, the government’s domestic power base, and its core political practices for power preservation.”⁶ The analysis presented in this article relies on more systematic and fine-grained measurements of domestic factors contributing to political adoption costs.⁷

⁴ Frank Schimmelfennig and Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, 11(4) *Journal of European Public Policy* (2004), 661-679 at 664.

⁵ Gwendolyn Sasse, “Gone with the Wind? Minority Rights in Central and Eastern Europe before and after EU enlargement” (paper for the workshop “Ethnic mobilization in the New Europe”, Brussels 2006); Schimmelfennig and Sedelmeier, “Governance by conditionality ...”, 675. Jacques Rupnick, “From Democracy Fatigue to Populist Backlash”, 18(4) *Journal of Democracy* (2007), 17-25.

⁶ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, “Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey”, 41(3) *Journal of Common Market Studies* (2003), 495-518 at 499.

⁷ The focus is on political costs only, since opportunity costs do not arise because of the lack of ‘cross-conditionality’ between the EU and other international organizations and financial costs are assumed mainly to influence implementation.

International factors: external incentives

External incentives is the only international factor included in the analysis. It captures EU demands linked to positive incentives or negative sanctions before and after accession. This does not mean that other international organizations are deemed unimportant. In fact, due to the lack of internal minority rights standards, the EU has relied heavily on evaluations by the Council of Europe and the OSCE. This, however, makes it difficult to disentangle EU conditions from other international pressures.⁸

Prior to the accession, the EU gives candidate states positive incentives for compliance in the form of a membership perspective. According to the external incentives model, rule adoption depends on the following external conditions: the size of the reward, the credibility of delivering or withholding it, the strength of conditionality, and the determinacy of conditions.⁹ We assume that for the candidate countries covered in the analysis both the credibility of EU conditionality and the size of the most important reward – EU membership – were always high.¹⁰ This leaves the strength of conditionality and the determinacy of conditions as the central external factors to determine the likelihood of rule adoption. We therefore coded the urgency and clarity of EU demands on the basis of the progress reports and accession partnerships.

After accession, conditionality no longer applies since the reward is paid out, but in areas that are part of the *acquis* the internal sanctioning mechanism of the EU sets in. In the domain of minority protection this only applies to non-discrimination on the basis of race and ethnicity as legally defined in EU Directives. In this case, incentives are deemed to be strong when there is a direct sanction threat by the European Commission to the state non-complying with the EU law.

Domestic political factors: government and veto players

The most important set of domestic conditions refers to the policy preferences of the government in office.¹¹ First, the *government position on minority protection* depicts the position with regard to

⁸ Among other external factors brought up in the literature on state compliance with international obligations are reputational concerns, the nature of norms, the principle of reciprocity and the role of international norm entrepreneurs. Other scholars highlight processes of socialization and normative persuasion. For a recent overview of the field, see Beth A. Simmons, “Treaty Compliance and Violation”, 13 *Annual Review of Political Science* (2010), 273-296.

⁹ Schimmelfennig and Sedelmeier, “Governance by conditionality ...”; Schimmelfennig and Sedelmeier, “The Europeanization of Central and Eastern Europe”.

¹⁰ The analysis starts in 1997 with the first Accession Opinions issued by the EU Commission. From this date all applicant countries that finally became member states could assume that enlargement was going to happen and that states fulfilling the criteria would be accepted, while especially the exclusion of Slovakia from the first round of opening accession negotiations constituted a clear signal that political conditions were taken seriously by the EU.

¹¹ All codings were mainly qualitatively derived and based on the country expertise within the research team, but they were also checked against the expert survey data of the Chapel Hill dataset where applicable. See Liesbet Hooghe, Ryan Bakker, Anna Brigevid, Catherine de Vries, Erica Edwards, Gary Marks, Jan Rovny, Marco Steenbergen, “Reliability and Validity of Measuring Party Positions: The Chapel Hill Expert Surveys of 2002 and 2006”, 4 *European Journal of Political Research* (2010), 684-703. In general, there was a good fit between the Chapel Hill data and the values assigned by the team.

minority-related issues ranging between an ultra-nationalist anti-minority and a strongly pro-minority orientation. Since the external incentives model predicts that EU conditionality should overcome moderate resistance but fail if the political costs of compliance are prohibitively high, we have added another version of this condition, which specifically singles out governments with a very strong anti-minority position. In addition to the aggregated position of the government, the *inclusion of nationalist parties in government* is coded separately,¹² because it is likely to block the adoption of minority rights within an otherwise moderate coalition government.

This brings in the role of veto players, which are “actors whose agreement is required for a change of the status quo”.¹³ Veto player theory predicts increasing policy stability with a higher number of veto players, because it becomes increasingly likely that a change from the status quo will be blocked. However, a player will only veto a decision if s/he has both the institutional capability to veto and preferences that differ significantly from the government that proposes a policy.¹⁴

Four types of veto players are taken into account: first, the president, who usually has the power to veto legislation. Second, the most anti-minority coalition partner in government can block rule adoption by threatening to leave the coalition. Third, a parliamentary majority with the power to block a government decision can be present either in a second chamber with a different majority or in the first chamber in case of a government lacking parliamentary support on the issue. If a minority government needs to seek support from the opposition in order to be able to pass a law, the most pro-minority party acts as reference point, since it can be won over most easily. Fourth, while the constitutional court does not itself have a political position and cannot veto on its own initiative, it can add veto power to political actors that otherwise lack it.

We assume that one veto player is sufficient to block a decision and code the political position of the most anti-minority veto player when looking for positive change and the most pro-minority veto player for negative change. The *veto player position on minority protection* is coded in analogy to the coding used for the government position including an additional version focusing on very anti-minority veto players to account for the presence of domestic actors for whom complying with EU conditionality implies prohibitively high costs.

Domestic societal factors: size, mobilization and salience

A further set of conditions is linked to societal factors. The *size of minorities* could act as an indicator for both the political salience of adopting minority protection rules. If the respective measures only apply to very small communities, they are likely to be not politically very controversial, whereas large minorities are more likely to be considered ‘problematic’. The

¹² Cf. Kelley, “Ethnic Politics in Europe ...”, 32 and 49-50.

¹³ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton University Press, Princeton 2002), 17.

¹⁴ Schimmelfennig and Sedelmeier, “Governance by conditionality ...”, 675.

provision of costly goods is also a much higher financial burden if it applies to a large number of people.

Of course, large minorities can also act as a supportive factor for rule adoption by constituting a sizeable electorate or by being able to mobilize. We code this factor separately as the *mobilization for ethnic minority parties*, which is operationalized as the electoral support for ethnic minority parties. It shows which part of minority population votes for ethnic parties. In the CEE countries only large minorities (over 5% of the total population) show a high degree of mobilization, but they do not always do so – even large Roma minorities are usually not mobilized to any significant degree – so that large size is a necessary but not sufficient condition for ethnic minority mobilization.

As the counterpoint to ethnic minority mobilization, we code the *mobilization for nationalist parties* by measuring the electoral success of all (even moderately) nationalist parties in relation to the ethnic majority population. In general, higher nationalist mobilization should strengthen domestic resistance towards minority protection, not only by increasing the likelihood of anti-minority governments and veto players, but also by indicating to other political actors that an important part of society is leaning towards nationalist positions.

However, nationalist mobilization may work positively towards rule adoption if it is considerably high, but not so high that nationalist parties constitute a parliamentary majority. In such a constellation, a pro-minority government faced with significant nationalist opposition may find it more urgent to adopt minority protection rules. If the nationalists are strong enough to win the next elections and take over government, the window of opportunity to adopt minority-friendly rules may close. If, however, nationalist parties gain more than 50% support, it is unlikely that pro-minority parties form the government in the first place. Based on this reasoning, we included this variant as a separate condition by recoding nationalist mobilization so that the highest value is reached if nationalist parties gain 30-40% support. At the same time, low or very high nationalist mobilization leads to low values.

Mobilization might be a better indicator for issue salience than the mere size of minorities since large but inactive minorities might not attract much political attention. A clear link between the size of minorities and political salience of the minority-related issues is expected therefore only when minorities are mobilized. Salience is not expected to directly influence rule adoption, but should instead work as an ‘amplifier’ of the positions held by relevant political actors. Hence, high salience would induce pro-minority forces to increase their efforts to adopt policies that benefit minorities, while at the same time exacerbating resistance by actors holding a minority-skeptic position.

Control variables: level of protection, government duration and pre-/post-accession cases

We additionally included in our model three control variables: first, the *level of protection* is included because it is probable that the higher the established level of protection, the more difficult further improvements are (and conversely for negative change). Hence, for each case in question the departure level of protection is taken into account as a condition. This also allowed us to eliminate cases where the highest level (with regard to positive developments) or the lowest level (when looking for negative change) was already achieved, as in such instances no change in the expected direction is possible.

The reason behind the introduction of a second control factor, the *duration of government*, is that rule adoption might simply hinge on the time a government has to complete drafting, submitting and adopting legislation. Short-lived interim governments that remain in office for less than six months are excluded from the dataset, since it is unlikely that they have enough time to realize their political projects. Finally, we include the distinction between *pre- and post-accession stages* as a condition to control for the possibility that some solutions only work before or after accession to the EU.

B. Hypotheses for Positive and Negative Change

Although detailed predictions for all conditions specified in the previous section are not feasible, three main hypotheses regarding the conditions for positive and negative change in formal rule adoption can be derived from the theoretical assumptions of the external incentives model:

H#1: External incentives should induce positive change as long as the relevant domestic political actors (government and veto players) do not incur prohibitively high costs.¹⁵

This hypothesis lies at the heart of the external incentives model: strong and determinate conditions should overcome domestic resistance, if the expected reward for compliance outweighs the political adoption costs at the domestic level. Even a government opposed to minority protection should be swayed by conditionality, as long as it would not incur prohibitively high political costs from adopting minority-friendly rules. The same reasoning applies to veto players: if they are not too strongly opposed to minority protection, they should refrain from blocking positive change in order not to jeopardize their country's accession chances.¹⁶

¹⁵ In QCA-notation, this configuration reads as follows: INCENT*govprohib*vetoprohib→ CHANGE, with upper case spelling indicating the presence (i.e. a fuzzy-set value >0.5) and lower case the absence (<0.5) of a condition, * denoting a logical 'and', + a logical 'or', → a sufficient and ← a necessary condition.

¹⁶ In general, the position of governments and veto players towards EU membership also forms part of the theoretical expectation, as only political actors devoted to EU accession should react to conditionality. However, virtually all CEE countries in the period covered by our study show a political consensus on the desirability of EU membership, which leads to an empirically 'trivial' and theoretically meaningless finding

H#2: Positive change should occur independently of any external incentives, if a pro-minority government and no veto players with an anti-minority position exist.¹⁷

This ‘domestic path hypothesis’ captures a situation with favorable domestic conditions under which rule adoption can be expected without any external incentives: governments with a pro-minority position should be motivated to improve on the status quo, while pro-minority oriented veto players should refrain from blocking such legislation.

H#3: Negative change should occur when external incentives are absent and a combination of anti-minority government and veto players exists.¹⁸

H#4: Negative change should occur when EU conditionality is outweighed by a combination of a strongly anti-minority government with the absence of pro-minority veto players that could block the decision.¹⁹

These two ‘revocation hypotheses’ follow from the external incentives model, because in both cases domestic preferences against minority protection are not (or not sufficiently) countered by external incentives. Hypothesis H#3 states that if both the government and even the most pro-minority oriented veto player favor the revocation of existing minority protection rules and EU incentives are absent, the government will act on its preferences.

A scenario predicting negative change even in the presence of external incentives is captured by hypothesis H#4: even with conditionality present, a government might be compelled to revoke minority protection rules if it is so strongly opposed to protecting minorities that this preference outweighs EU incentives, and if veto players share a similar position, they would not block any downgrading of the protection level initiated by the government.

III. DISCUSSION OF THE RESULTS

On the basis of ten countries and five issues, the complete dataset collected in our project contains 248 cases.²⁰ Two separate datasets were constituted: one for the analysis of positive and another –

of pro-EU actors as necessary conditions for both positive and negative change. Hence, these factors were excluded from the analysis. The factors regarding prohibitively high adoption costs are also strongly biased towards the absence of such conditions, but despite the small number strongly anti-minority governments do figure as part of the sufficient conditions for negative change, so that the factors have been retained. Still, in the absence of many cases of extremely anti-minority actors, the existence of clear and strong EU conditions alone should theoretically be enough for positive developments in the vast majority of cases.

¹⁷ GOVMIN*VETOMIN → CHANGE.

¹⁸ incent*govmin*vetomin → NEGCHANGE.

¹⁹ (GOVPROHIB+govmin)*(VETOPROHIB+vetomin) → NEGCHANGE.

²⁰ Cases usually coincide with the duration of one government. Exceptionally, when a government stays in office for a significant time both before and after accession to the EU, one government term is split up into

of negative changes. After the elimination of the cases in which the highest (for positive change) or lowest (for negative change) achievable level is reached, 223 and 227 cases remain for the two different outcomes, respectively. Positive change is recorded in 93 cases: in 74 (out of the total of 143) pre-accession cases and 19 (out of the total of 80) post-accession cases. This means that a positive change in the level of protection occurred in about 52% of the eligible cases before EU accession, and in about 24% of post-accession cases. Hence, we can observe a significant slowdown of positive developments after accession. On the other hand, negative change is recorded in only twelve cases: seven pre- and five post-accession, which corresponds to a constant proportion of about 5%. Thus, the formal revocation of minority protection rules after accession has not happened on a large scale so far.²¹

A. Sufficient Conditions for Positive Change

The analysis of sufficient conditions for positive change, i.e. the search for configurations of factors that always or almost always lead to a positive outcome, produced four solutions with high consistency,²² which, taken together, account for 51 of the 93 instances of positive change.²³ In the following, the two solutions which include external incentives and the two solutions relying on domestic factors are discussed separately.

The external incentives-based solutions

The incentives-based solutions are both valid for the pre-accession period only. The first solution combines EU conditionality, a pro-minority government, and high mobilization for either nationalist or ethnic minority parties.²⁴ It covers a diverse range of cases from seven of the ten countries. The two cases that qualify best as ‘typical’ for this configuration are from Slovenia’s

two cases (pre- and post-accession). Conversely, if only the head of government is exchanged without any change in the governing parties, the terms are combined to constitute a single case.

²¹ See the results of an extensive interview study in Philip Levitz and Grigore Pop-Eleches, “Monitoring, Money and Migrants: Countering Post-Accession Backsliding in Bulgaria and Romania”, *Europe-Asia Studies* 62(3), May 2010, 461-479. However, in some countries the backsliding is more noticeable; for example, in Latvia (see Gwendolyn Sasse, “The politics of EU conditionality: the norm of minority protection during and beyond EU accession”, *Journal of European Public Policy* 15(6), 2008, 842-860).

²² In QCA, ‘consistency’ denotes how consistent the result is with the assumption that the chosen configuration is a necessary or sufficient condition for the outcome to be explained. ‘Coverage’ is a measurement of how much of the positive outcome is covered by the chosen configuration. In crisp-set analysis, based on dichotomous conditions and outcome, the values are percentages of cases: for consistency – the proportion of all cases in the configuration showing the outcome; for coverage – the proportion of the cases, which show the outcome, participating of the configuration. The more fine-grained data in fuzzy-set analysis also takes the ‘goodness of fit’ of the cases into account, so that, for example, inconsistent cases are treated as less important if they have only marginal membership in the configuration (slightly above 0.5) as opposed to full membership (1).

²³ Fuzzy-set consistency for the overall solution is 0.84 and coverage 0.69. For the QCA results see also Annex II.

²⁴ INCENT*GOVMIN*(MOBIL+NAT)*PRE → CHANGE (consistency 0.88, coverage 0.41, n=27 cases).

Drnovšek and Rop governments (2000-2004).²⁵ In general, Slovenia has been under comparably little EU pressure on the issues related to national minorities, as the protection of the recognized Italian and Hungarian minorities has always been evaluated as sufficient. The only issue-areas constantly addressed in the Commission's progress reports were the adoption of anti-discrimination legislation and the situation of Roma.

The necessity to adopt legislation transposing the EU non-discrimination *acquis* was mentioned since the 2000 progress report, and the first success was reported in 2002, when the workplace-related aspects of the directives were addressed. However, the Commission noted that “[f]urther progress is needed to ensure the full transposition and implementation of the EC antidiscrimination legislation.”²⁶ In April 2004, i.e. at the time of accession to the EU, Slovenia adopted a comprehensive Implementation of the Principle of Equal Treatment Act, which covers all grounds of discrimination covered by the EU directives and even additional grounds, so that Slovenia since then “generally complies with the Directives protecting against discrimination”.²⁷

With regard to measures to improve the situation of Roma, the situation was more complicated. Although the Slovene constitution calls for a special law regulating the status of Roma as a recognized ethnic community, such a law was not adopted until 2007. The government chose to regulate Roma-related issues through specific laws and policy programs, which was judged not sufficient by the European Commission and the Council of Europe. Thus, while the 2000 progress report assessed the situation as “on the whole satisfactory”,²⁸ it still called for policies promoting Roma integration in the fields of employment, health and education, and for changes in the Law on Local Government – an issue also addressed by the Slovene constitutional court in 2001, which ruled that the law was unconstitutional due to the lack of provisions for Roma representation. In the following years, several pieces of legislation were amended, including the laws on local government and elections as well as acts on education (whereby the practice of placing Roma children in special schools was formally abolished), media and culture. Taken together, this amounts to a significant improvement during the Drnovšek and Rop governments.

These positive changes were commended by the European Union as well as the Council of Europe: in 2002, the Commission concluded that “[g]ood progress has been made in this area”,²⁹ and the Advisory Committee for the Council of Europe's Framework Convention welcomed the

²⁵ Many of the cases uniquely covered by this solution only exhibit marginal positive developments, whereas the most cases showing improvements of at least one level lie at the intersection with one or even both of the domestic solutions, i.e. they display domestic constellations in which positive change also consistently happens regardless of explicit EU conditions.

²⁶ European Commission, “2002 Regular Report from the Commission on Slovenia's Progress towards Accession”, 9/10/2002, 24.

²⁷ M.K. Tratar, *Report on Measures to Combat Discrimination – Directives 2000/43/ EC and 2000/78/EC: Country Report Slovenia*, (European Network of Legal Experts in the Non-Discrimination Field, Brussels 2005), 2.

²⁸ European Commission, “2000 Regular Report from the Commission on Slovenia's Progress towards Accession”, 13/10/2000, 19.

²⁹ European Commission, “2002 Regular Report from the Commission on Slovenia's Progress...”, 27.

efforts undertaken by the government in several areas and commended the “existence of a genuine political commitment to helping the Roma”.³⁰ In sum, the improvements in 2000-2004 can be seen as a reaction to external incentives, although the fact that the government kept the momentum after the EU ceased to request further improvements suggests that either domestic factors or the efforts of the Council of Europe complemented and sustained EU conditionality.

The second incentives-driven solution extends the scope of effective conditionality to domestic situations with an anti-minority government. However, in this configuration either the mobilization of the minorities or the electoral success of nationalist parties must be low.³¹ An illustrative case for this solution is the Estonian government headed by Mart Laar from the nationalist Fatherland Union, which entered into office in March 1999. The rather moderate formulation of the government’s goals on the issues of education, culture and minority policy in general could not hide its nationalist position, evidenced, for example, by an explicit support for the idea of repatriating Russian-speakers that had immigrated during the Soviet rule, or a strong emphasis on the ethnic basis of the nation. At the same time, EU membership was considered a priority of foreign policy and a security guarantee.³² This government ‘inherited’ Partnership Accession guidelines from 1998 listing the requirement to “facilitate the naturalization process and to better integrate non-citizens including stateless children” among the short-term priorities.³³ The previous government had reluctantly but timely acted on the ‘stateless children’ component of the requirement by adopting the necessary legislation in December 1998. This step, however, was accompanied by a fervent opposition of nationalist parties, arguing that simplified procedures would reduce the minority population’s motivation to integrate and fearing an “explosive and uncontrolled increase in the number of citizens”.³⁴ Although rejecting the amendments when in opposition, Laar continued the liberalization of the naturalization procedures as head of the new government through a simplification of tests for disabled persons and young school graduates and a lowering of state fees.³⁵

³⁰ Advisory Committee of the Framework Convention for the Protection of National Minorities, “Second Opinion on Slovenia adopted on 26 May 2005”, 16.

³¹ INCENT*govmin*(mobil+nat)*PRE → CHANGE (consistency 0.87, coverage 0.34, n=14 cases). It should be noted that in this case both the high consistency and the comparatively high coverage are not so much due to a high number of consistent cases, but to the good fit of the relatively few cases under the configuration. In a crisp-set analysis, consistency is only 0.64 (9 of 14 cases in the configuration show positive change), which would not warrant to consider it a combination of factors sufficient for positive change.

³² “Coalition agreement of the Estonian Reform Party, Pro Patria and the Moderates” (1999), available online at <http://www.valitsus.ee/et/valitsus> (in Estonian).

³³ European Commission, “1999 Regular Report from Commission on Estonia’s Progress towards Accession”, 13/10/1999.

³⁴ Dovile Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States* (Ashgate, 2005), 80-81.

³⁵ European Commission, “2002 Regular Report from Commission on Estonia’s Progress towards Accession”, 09/10/2002.

In a move that may be seen as a ‘compensation’ for the concession on the naturalization issue,³⁶ the Estonian parliament had adopted restrictive amendments to the Language Law between December 1998 and February 1999, introducing language requirements in the professional sphere. This immediately provoked a vivid critique by the European Commission, the Council of Europe and the OSCE and the issue was included as a short-term priority in the Accession Partnership 1999. Laar, whose party had supported the language restrictions under the previous government, found himself under strong international pressure to limit the scope of the restrictions, and finally EU pressure proved effective:³⁷ the scope of application of the new language law more clearly delimited in 2000, and the language requirements to electoral candidates were abolished in 2001. The government’s position was also moderated on more general issues with a new version of the integration program adopted in 2000, and Laar distancing himself from the repatriation idea.³⁸ These developments were met with enthusiasm by the European Commission, which declared in 2000 that its requirements as regards citizenship and naturalization had been fulfilled and welcomed the amendments to the language law, although they did not restore the prior level of protection nor constituted a major step in this direction.

It has to be noted that the Laar government (and nationalist parties in general) did not enjoy a massive electoral support, since due to the very low turnout in the 1999 elections the government coalition was in fact supported only by 27% of the population.³⁹ The vote for ethnic parties, however, was quite significant: about 68% of all voters with minority background voted for two ethnic parties. However, the six seats in the Parliament held by these parties were neither sufficient to influence agenda-setting nor decision-making. With voters disinterested in nationalist struggles and the government’s attention being concentrated on socio-economic issues, the salience of national minority issues was lower than otherwise suggested by the setting and political preferences of the government. In these circumstances, external incentives proved effective in motivating – albeit limited – positive changes on the legislative level.

The domestic solutions

In addition to the external incentives-based solutions, the analysis also reveals two purely domestic paths to positive change irrespective of the presence or absence of external incentives. In contrast to the previous solutions, both domestic configurations also cover cases in the post-accession phase. However, the theoretically expected combination of pro-minority government and veto

³⁶ Budryte, *Taming Nationalism...*, 91.

³⁷ One indicator is the statement by then-President Toomas Hendrik Ilves on the perceived need to comply with the EU requirements (see Johnson quoted in Budryte, *Taming Nationalism...*, 83).

³⁸ David. J. Galbreath, *Nation-Building and Minority Politics in Post-Socialist States. Interests, Influences and Identities in Estonia and Latvia* (Ibidem, 2005), 133.

³⁹ Galbreath, *Nation-Building and Minority Politics...*, 128.

players (H#2) does not produce consistently positive outcomes on the full dataset, with all candidate countries taken into account.

Instead, the first domestic configuration combines a pro-minority government without nationalist parties with a medium (30-40%) nationalist mobilization.⁴⁰ This means that minority-friendly governments are very likely to adopt legislation or policies benefiting the minorities when they are faced with a considerably strong nationalist opposition.

The most typical examples for this domestic constellation can be found in Poland in 2003-2005, when social-democrat governments under the prime ministers Leszek Miller and – directly after EU-accession in May 2004 – Marek Belka passed the most significant minority-related legislation since the early 1990s. In 2003, Poland signed the European Charter for Regional or Minority Languages, adopted a nation-wide Program for the Roma Community in Poland, allowed the use of minority languages in public inscriptions, and also amended the labor code to transpose the workplace-related part of the EU's Race Equality Directive.⁴¹ Even more significantly, a comprehensive Law on Ethnic and National Minorities and on Regional Language was passed in 2004 after over a decade of preparation, which constitutes a positive development in the issue areas of language use, education and non-discrimination.⁴²

The domestic political constellation in these cases is notable for several reasons: first, the governments lacked a parliamentary majority after the minority-skeptical Peasant Party left the coalition, which removed a veto player and allowed legislation to be passed with support of the liberal opposition party. Second, it faced an already strong and rising nationalist opposition that would win both the presidential and parliamentary elections in 2005. In fact, the resignation of Miller as prime minister was a reaction to immensely weak opinion polls and defection from the governing party. The government could hence predict early on that it would lose the next elections to the nationalist parties, thus establishing a sense of urgency. The high nationalist mobilization also enhanced the salience of minority protection, which normally is not a very contentious issue in Polish day-to-day politics, mainly because of the small size and generally low mobilization of minorities.

In sum, the Polish cases give a strong example for a domestic path to the adoption of minority protection rules irrespective of EU conditionality. This should not be taken as an 'easy' case of self-socialization by a front-runner of democratic transition with little minority problems: neither the long delay of adopting the Minority Law nor the controversial debates surrounding it

⁴⁰ GOVMIN*natingov*MEDNAT → CHANGE (consistency 0.88, coverage 0.18, n=19 cases).

⁴¹ This is the only one of the Polish cases that intersects with the first external incentives-based solution (INCENT*GOVMIN*(MOBIL+NAT)*PRE. The non-discrimination case from 2004 is not part of this solution as it happened after accession, and the connection to EU incentives appears to be indirect at most.

⁴² Of all these positive developments, only those related to non-discrimination happened against a background of EU conditionality – and these appear to be the least convincing cases: full alignment of the Polish legal system to EU law in this area still remains to be achieved despite infringement procedures for non-transposition of the anti-discrimination directives being opened in 2007.

support such a view. Also, despite the preponderance of Polish cases in this solution, it would be premature to conclude that this is an idiosyncratic constellation, as the same domestic configuration is found in Bulgaria, Romania, and Slovakia, albeit much more often in combination with EU conditionality. These cases at the intersection of external incentives-based and domestic explanations will be discussed below.

Another domestic configuration that consistently leads to positive changes in minority-related legislation presents a long-serving pro-minority government (in the office for more than three years) faced with a low initial level of protection in an issue-area.⁴³ A prime example for this domestic configuration can be found in the Czech Republic, a country otherwise not well covered by the solutions provided by the QCA analysis. The social-democrat government of Miloš Zeman, which served a full 4-year legislative period (1998-2002) despite being dependent on the toleration of the main opposition party, introduced some of the first codifications of minority rights in the Czech Republic. The main developments during its term were the adoption of a Concept for Government Policy Towards the Roma Community in 2000 (updated in January 2002), and a Law on Ethnic and National Minorities in 2001, which for the first time replaced the ‘civic principle’ with the recognition of group-specific minority rights.⁴⁴ While the problematic situation of Roma was addressed by the progress reports, no EU demands had required the adoption of any minority protection legislation. At the same time, the improvements regarding anti-discrimination legislation remained limited, despite EU conditionality. Only the Employment Act (amended in 1999) and the labor code (amended in 2001) included specific anti-discrimination clauses, but the formulations did not fulfill all requirements of the EU non-discrimination *acquis*.⁴⁵ Insofar, EU conditionality does not explain the developments in the Czech Republic well.

Overlapping solutions

Several cases lie at the intersection between the first domestic solution combining a pro-minority government with medium nationalist mobilization, and the first external incentives-based solution.⁴⁶ These cases are specifically important, as they are often presented as ‘star cases’ for effective conditionality in situations when governments incurring prohibitively high political adoption costs are replaced by governments for which these costs are only moderate. However, they also feature domestic constellations that – as the Polish cases discussed above show – often lead to positive developments even without external incentives. One of these cases is the Romanian

⁴³ GOVMIN*DURA*level → CHANGE (consistency 0.90, coverage 0.37, n=21 cases).

⁴⁴ *Minority Protection in the EU Accession Process. Monitoring the EU Accession Process: Minority Rights* (Open Society Institute, Budapest 2001), 157.

⁴⁵ B. Bukovská and L. Taylor, *Legal analysis of national and European anti-discrimination legislation. A comparison of the EU Racial Equality Directive & Protocol No. 12 with anti-discrimination legislation in Czech Republic* (European Network of Legal Experts in the Non-Discrimination Field, Brussels 2001), 14.

⁴⁶ See Annex III for a Venn diagram showing the distribution of cases within the different solutions including unique and overlapping cases.

government headed by Prime Ministers Ciorbea, Vasile and Isărescu (1996-2000), a highly heterogeneous and volatile coalition of a predominantly right-of-center ideological orientation, united mainly in the common desire of holding power against the communist successor Party of Social Democracy in Romania (PDSR).⁴⁷ The inclusion – for the first time after the 1989 changes in Romania – of the Hungarian minority party into the government coalition constituted an important step forward in the overall domain of minority protection.⁴⁸

EU external incentives were present to various degrees in this period. The lack of a coherent strategy to tackle the Roma issue was a strong and explicit concern of the EC in its Progress Reports from 1998 and subsequent Accession Partnerships emphatically calling for the elaboration and implementation of a “strategy to improve economic and social conditions of the Roma” as a short-term priority.⁴⁹ Less strong, in the field of education, the EC reports in this period specifically deal with the establishment of the Petőfi-Schiller multicultural state university (1999).⁵⁰ In addition, the adoption of the Race Equality Directive in 2000 has been coded as an incentive for the adoption of national legislation in the field.

While the establishment of the multicultural state university never materialized, the 1999 adoption of an amended Law on Education constituted an important development in the area of education. The new law satisfied most minority demands by removing a series of previous limitations on education in mother tongue.⁵¹ A considerable progress in non-discrimination and in the context of virtually no active outside push, a highly encompassing government Ordinance on Preventing and Punishing All Forms of Discrimination was adopted in August 2000. Developments in the field of Roma protection were limited to legislation on access to education.

A somewhat similar example, the 1998 centre-right coalition government of Slovakia, headed by Mikuláš Dzurinda, set out to restore Slovakia’s democratic image, blemished under the previous government of Vladimír Mečiar. This government also included the Party of the Hungarian Coalition (SMK) and enacted some legislative changes to the benefit of minorities. During this period, strong EU conditionality was exerted towards Slovakia in the field of non-

⁴⁷ Pavel, Dan, “De ce nu s-a predat Coaliția? (Why has the Coalition not surrendered?)”. VIII(7) *Sfera Politicii* (2000), 2-11.

⁴⁸ Nevertheless, the cooptation of the minority party into the government was contested within the coalition itself, reflected in the lack of coalition unity on legislation in the domain of minority protection. This phenomenon, also present in the Slovak Government of 1998, discussed below, is captured in the coding of the anti-minority veto player.

⁴⁹ European Council, “Decision on the Principles, Priorities, Intermediate Objectives and Conditions Contained in the Accession Partnership with Romania”, 06/12/1999.

⁵⁰ European Commission, “1999 Regular Report from Commission on Romania’s Progress towards Accession”, 13/10/1999.

⁵¹ The *Law on Education No. 84/1995*, republished in the Official Gazette No. 606/10.12.1999, removed, most importantly, limitations for post-secondary, vocational and university education in minority languages (Chapter XII, Articles 118-126).

discrimination and the Roma, listed as short-term priority items in 1999 and 2000.⁵² In turn, the lack of progress on the adoption of minority language legislation was also specifically referred to in the 1998 Progress Report.⁵³

Within this context, the main developments in the field of minority protection in Slovakia, in this period included the adoption of two Strategies for Roma, as well as the 1999 Law on the Use of Minority Languages in Official Communication. Although the latter fell short of the expectations of the minority representatives who did not eventually vote on it,⁵⁴ this law restored the right to minority language use in the official communication abolished under the previous government.

The desire of overthrowing the successor communist party within the context of a general pro-Western shift is one element that also characterizes the third example: the 1997-2001 right-of-center government of Bulgaria, led by the Union of Democratic Forces (UDF), with Ivan Kostov as Prime Minister. In this case, EU external incentives focused mainly on the Roma issue, which was mentioned repeatedly as a continuous challenge and part of the short-term priorities spelled out in the Accession Partnerships.⁵⁵ Non-discrimination was considered problematic as well, and measures to improve the education of the Turkish minority were urgently requested.⁵⁶ Against this background, as a notable development in minority education, the Law on Educational Standards, Basic General Education and Curriculum of 1999 introduced mother tongue education into the regular curriculum as an obligatory subject.⁵⁷ In the same year, the Framework Program for the Integration of the Roma Minority was adopted, setting out strategic objectives in the field of Roma protection for ten years. At a more general level, the Framework Convention for the Protection of National Minorities was also ratified in this period.

B. Necessary Conditions for Negative Change

To get clearer results for the low number of cases featuring negative change (twelve out of the 227 cases in which negative change would have been possible), the analysis was conducted with dichotomized (crisp-set) data. Seven conditions are present in at least eleven of the twelve

⁵² European Commission, “1999 Regular Report from Commission on Slovakia’s Progress towards Accession”, 13/10/1999, “2000 Regular Report from Commission on Romania’s Progress towards Accession”, 08/11/2000.

⁵³ European Commission, “1998 Regular Report from Commission on Romania’s Progress towards Accession”, 04/11/1998.

⁵⁴ Szarka, László, “A szlovákiai Magyar Koalíció Pártjának kormányzati szerepvállalásáról (On the Government Participation of the Hungarian Coalition Party in Slovakia)”, 11(4) *Regio, kisebbség, politika, társadalom* (2000), 118-149.

⁵⁵ European Commission, “1998 Regular Report from Commission on Bulgaria’s Progress towards Accession”, 04/11/1998.

⁵⁶ European Commission, “2000 Regular Report from Commission on Bulgaria’s Progress towards Accession”, 08/11/2000.

⁵⁷ *Law on Educational Standards, Basic General Education and Curriculum*, published in the Official Gazette No. 67/27.07.1999, Art. 15, Par. 3.

instances of negative change and therefore qualify as necessary conditions.⁵⁸ Negative change thus only happens if an anti-minority government including nationalists is in the office and nationalist parties enjoy a massive electoral support, and when minorities are large and politically mobilized.⁵⁹ The high mobilization on both sides can be seen as an indicator of high issue salience.

While six conditions are in line with what should be theoretically expected, the seventh one – short duration – is somewhat puzzling. Why should a limited time in office support the occurrence of negative change? If anything, the time factor should enhance the prospects for change in both directions, whereas a lack of time should reinforce the status quo. This raises the suspicion that the duration condition picks up country-specific factors that are spuriously linked to government stability. In fact, seven out of the twelve instances of negative change in our sample happened in Latvia – a country with generally very short-lived governments, which is not linked to their position on minority protection. Therefore, no big importance should be attached to this factor.

So, the analysis of necessary conditions does not corroborate either of the hypotheses for negative change. What is necessary for rules to be revoked or replaced by more restrictive legislation is neither the absence of external incentives and pro-minority veto players (H#3) nor a government/veto player constellation that features strongly anti-minority actors resisting EU pressure to stop revocation (H#4). As in the case of positive change, salience indicated by high mobilization for both ethnic minority and nationalist parties seems to play an important role in enhancing the preferences of the government.

C. Sufficient Conditions for Negative Change

In order to get interpretable results, a crisp-set analysis was conducted for sufficient conditions as well: the fuzzy-set analysis gave generally low consistency levels. Since more than half (seven out of twelve) of the cases showing negative change relate to language use, an additional dichotomous condition was added in order to identify cases from this issue-area.

⁵⁸ govmin ← NEGCHANGE (consistency 0.92, coverage 0.14, n=76, i.e. 33% of all cases); NATINGOV ← NEGCHANGE (cons. 0.92, cov. 0.08, n=142, 63%); SIZE ← NEGCHANGE (cons. 0.92, cov. 0.08, n=146, 64%); MOBIL ← NEGCHANGE (cons. 0.92, cov. 0.11, n=103, 45%); NAT ← NEGCHANGE (cons. 0.92, cov. 0.07, n=147, 65%); mednat ← NEGCHANGE (cons. 0.92, cov. 0.06, n=179, 79%); dura ← NEGCHANGE (cons. 0.92, cov. 0.06, n=177, 78%).

⁵⁹ Such a combination of factors is rather rare and still does not always lead to a negative change. In fact, even positive change is not excluded in such a setting. For example, a nationalist Krasts government in Latvia was induced to adopt an important liberalizing legislation in the area of naturalization, even although its ideological monopoly at the time was unquestioned (with 70% of the majority electorate supporting nationalist parties). The very important and creative opposition to the liberalizing amendments was finally swayed by coordinated international pressure and EU external incentives in particular (Nils Muiznieks, Angelita Kamenska, Ieva Leimane, Sandra Garsvane, *Human Rights in Latvia in 1998* (Latvian Centre for Human Rights and Ethnic Studies, 1999), available at www.humanrights.org.lv, 13-14). In the same vein, Budryte claims that “[t]he desire to join the EU was the main reason why Latvia agreed to make changes to its Restorationist model in 1998” (Budryte, *Taming Nationalism...*, 116, see 117-120 for a detailed account).

The single solution with the best consistency that covers more than individual cases is the combination of a strongly anti-minority government and highly mobilized minorities with an already high level of protection in the area of language use.⁶⁰ Since high nationalist mobilization is a necessary condition for the existence of such strongly anti-minority governments,⁶¹ high issue salience can be interpreted to belong to the sufficient conditions for revocation. This solution partly resembles hypothesis H#4, but again adds that salience enhances government preferences. What is not confirmed is any influence of lacking external incentives (H#3) or veto players (which would have been expected by both revocation hypotheses).

An example of negative changes taking place in the pre-accession phase with strong conditionality is Latvia's restrictions of the use of minority languages in 1998-1999. In October 1998, the Krasts government initiated a chain of restrictive amendments in the domain of language use by adopting a new Civil Procedure Law with diminished guarantees of minority language use in courts. On the background of a forced liberalization of citizenship legislation, the next government led by Vilis Krištopans attempted to introduce extremely restrictive language legislation in order to protect Latvian language in an effort of what was called 'affirmative action'.⁶² The President vetoed the law initially voted in July 1999, and received immediate acclaim by the OSCE High Commissioner on National Minorities.⁶³ The new law was seen as a violation not only of international standards of minority protection, but of the Europe Agreement as well⁶⁴ and the international pressure on the Latvian government to amend the suggested legislation by introducing the principles of proportionality and precision was well coordinated and very explicit. The revised and moderated version of the law was finally adopted in December 1999 under the Šķēle government. The political position of the government was in fact clearly in favor of the restrictive version of the law, as demonstrated by the fact that the list of government priorities placed the protection of Latvian language higher than the EU membership goal.⁶⁵ Together with the timing (the law was adopted one day before the European Council announced which countries would be included in the next round of enlargement),⁶⁶ this speaks for the fact that the final moderation of the amendments was a result of external incentives.

⁶⁰ GOVPROHIB*MOBIL*LEVEL*LANG → NEGCHANGE (consistency 0.80 (4 out of 5 cases), coverage 0.33 (4 out of 12 cases)).

⁶¹ NAT ← GOVPROHIB (consistency 0.95, coverage 0.13).

⁶² Vaira Paegle, an MP from the People's Party, quoted in Budryte, *Taming Nationalism...*, 121.

⁶³ Statement by the OSCE High Commissioner on National Minorities, Max van der Stoep on 15 July 1999, available at <http://www.osce.org/hcnm/52687>.

⁶⁴ European Commission, "1999 Regular Report from the Commission on Latvia's Progress towards Accession", 13/10/1999, 18.

⁶⁵ Declaration of the Government, 15/07/1999, available at <http://www.mk.gov.lv/lv/mk/vesture/1999-2000/valdibas-deklaracija/> (in Latvian).

⁶⁶ Budryte, *Taming Nationalism...*, 121.

Nonetheless, this moderation cannot be claimed to be a full success of conditionality,⁶⁷ since a considerable downgrading of the level of minority rights protection was not prevented. In reality, guarantees of the use of minority languages in relations with authorities as well as in professional sphere were practically abolished disregard of the strong external demands. It is probable that a simultaneous pressure on highly politicized issues (such as citizenship and language legislation in Latvia in 1998-2000) proves counter-productive with clearly nationalist governments. The cost of complying with several important requirements may prove exceeding the government's pragmatism and readiness to compromise.

The same domestic configuration led to negative change under two Slovak governments, indicating that at least moderate generalizations can be drawn from the examples. The highly nationalistic and anti-democratic government headed by Vladimír Mečiar (1994-1998) adopted a State Language Law that repealed the provisions of the 1990 Law on minority language use in official communications and extended the compulsory use of Slovak to a large range of social and professional domains. Similarly, the 2009 State Language Law adopted by the post-accession 2006 center-left government under Robert Fico extended the compulsory use of the state language to additional domains, thus further restricting the use of minority languages.⁶⁸

IV. Conclusions

What conclusions can be drawn from the results of our fuzzy-set QCA of the formal adoption and sustainability of minority protection rules in ten new EU member states? At first glance, the analysis seems to support the established view that EU conditionality played an important role in inducing positive change in candidate countries in the field of minority protection: a considerable number of cases falls under the two external incentives-based solutions, representing almost two thirds of the cases covered by our four solutions and roughly one third of all positive developments. Moreover, the momentum slowed down significantly after accession, when EU conditionality ceased to exist and was not replaced by internal EU sanction mechanisms in most areas.

However, our findings suggest important refinements of the existing theoretical model, and also some caution regarding the 'success story' of effective conditionality. First, conditionality needs more favorable domestic conditions than predicted by the 'external incentives model'. Far from being effective as soon as conditions are clear and credible, and governments as well as veto players in 'target states' are devoted to EU accession and do not incur prohibitively high political costs for compliance (H#1), conditionality plays a supportive role for pro-minority governments far

⁶⁷ Cf. for a more optimistic view on the effectiveness of conditionality in this case Schimmelfennig et al., "Costs, Commitment and Compliance...", 495-51.

⁶⁸ Tóth, Károly and Kálmán Petőcz, "A kisebbségek nyelvhasználati és oktatási jogai Szlovákiában (Minority Language Use and Education Rights of Minorities in Slovakia)", 20(2) *Regio, kisebbség, politika, társadalom* (2009), 108-123.

more often than actually overcoming even moderate domestic resistance on the government level. This indicates that conditionality works indirectly through the differential empowerment of domestic actors with pro-compliance preferences rather than directly by offsetting the preferences of negatively-minded actors.⁶⁹ Although the second external incentives-based solution does include minority-skeptical governments, the empirical evidence is comparatively weak: not only does it cover few instances of positive change, the configuration also includes a considerable number of inconsistent cases.

Second, the analysis revealed an important influence of mobilization for either nationalist or ethnic minority parties. One possible interpretation is that the combination of ethnic minority and nationalist mobilization is an indicator for the salience of minority-related issues, which amplifies the position of the government towards minority protection, be it positive or negative. Hence, pro-minority governments are induced to act more decisively when the issue is salient, whereas anti-minority governments are only swayed by conditionality when salience is not too high. The supportive role of nationalist mobilization can also be found in one of the domestic solutions, where a significant nationalist opposition adds urgency to otherwise not very salient minority protection issues.

Hence, not only external incentives-based explanations but also hypotheses based on domestic factors alone (H#2) need revision: pro-minority governments and veto players alone are not sufficient to consistently produce positive developments. Moreover, the fact that the most significant changes are reported for cases lying at the intersection of external incentives-based and domestic solutions – among them cases often presented as prime examples for effective conditionality – begs the question whether external or domestic conditions are more important. At least it suggests that certain domestic configurations are particularly conducive to positive developments and in some cases even works in the absence of any external incentives for compliance.⁷⁰

Third, a most interesting ‘non-finding’ is that veto players play no role in any of the solutions. This might indicate that the categorical assumption that veto players will use their power to block any change going against their preferences is overstated. Presidential vetoes can often be overturned by qualified majority, and veto players might be swayed by side payments or package deals. A veto player might be forced to compromise and may influence a decision rather than completely block legislative projects. In such a case, our analysis reports a change against the will

⁶⁹ Schimmelfennig and Sedelmeier, “Governance by conditionality ...”, 664. This is also consistent with the finding that in transitional democracies domestic stakeholders are more likely to strategically use international treaties and external requirements to press their claims against opposing actors than in autocracies or stable democracies. See Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*. (Cambridge UP, Cambridge 2009).

⁷⁰ However, even in these cases international norms play an important role in the domestic debates. See Guido Schweltnus, “The Domestic Contestation of International Norms: An Argumentation Analysis of the Polish Debate Regarding a Minority Law”, 5(1) *Journal of International Law and International Relations* (2009), 123-154.

of the veto player, although the degree of change may be less than it would have been in the absence of veto players.⁷¹

Finally, the results speak against the assumption that the threat of infringement procedures and financial sanctions is an adequate replacement for credible membership incentives when it comes to inducing compliance: although internal sanction mechanisms are present in the field of non-discrimination, post-accession cases appear in neither of the two external incentives-based solutions. On the one hand, this supports the view that the post-accession slowdown is at least partly caused by the absence of EU membership conditionality. However, it may also be the result of a generally higher level of minority protection: although the domestic solution in which positive developments solely hinge on stable pro-minority governments and a low level of protection includes some post-accession cases, the majority can be found prior to accession.

As for negative change, the theoretical assumption that the absence of external incentives and pro-minority veto players should be necessary for the revocation of minority protection rules (H#3) is clearly refuted. Instead, anti-minority and nationalist governments, large size minorities and a high issue salience indicated by strong mobilization for both nationalist and ethnic minority parties are necessary conditions for negative change. The analysis of sufficient conditions partly corroborates but also refines hypothesis H#4: the combination of a strongly anti-minority government and high salience is sufficient for negative developments, if the case belongs to the issue-area of language use,⁷² and if it happens on the basis of a high level of protection, which might be a consoling aspect.

In any case, the domestic conditions for negative change are rare, so that the somewhat gloomy theoretical outlook on the sustainability of minority protection after accession and the end of conditionality seems to be overly skeptical – at least to this date and as long as formal legislation is concerned. This does not preclude, of course, that a ‘roll-back’ of minority protection may happen on the level of implementation, rendering the existing legislative frameworks an example of what researchers on compliance with EU rules in the CEECs have termed the “world of dead letters”.⁷³ Such an assessment is, however, beyond the scope of this article.

⁷¹ In some cases, this leads to differences in the interpretation of the same outcome between our analysis and existing research on the effectiveness of EU conditionality. Cf. Schimmelfennig et al., “Costs, Commitment and Compliance...”.

⁷² One possible explanation for the particularly problematic character of language rules might be that they are closely linked to questions of national identity and security. See Simmons, “Treaty Compliance and Violation”, 291.

⁷³ Gerda Falkner and Oliver Treib, “Three worlds of compliance or four? The EU-15 compared to new member states”. 46(2) *Journal of Common Market Studies* (2008), 293-313.

Annex: Coding Rules for Conditions and Outcomes

a) Conditions

INCENT

0	no conditionality / no EU rules
0.2	general Copenhagen criteria / <i>acquis</i> , but not explicitly mentioned
0.4	issue mentioned in general but no direct prescription
0.6	issue mentioned and considered 'problematic', but no concrete prescription
0.8	explicit prescription
1	short-term priority / direct sanction threat (infringement procedure)

GOVMIN

0	ultra-nationalist/authoritarian government
0.2	clearly anti-minority government
0.4	heterogeneous or weakly minority-skeptic government
0.6	heterogeneous or weakly pro-minority government
0.8	clearly pro-minority government (e.g. including minority parties)
1	extremely pro-minority government (led by minority party)

GOVPROHIB

0	(at least) clearly pro-minority government
0.2	weakly pro-minority government
0.4	weakly minority-skeptic government
0.6	-
0.8	-
1	(at least) clearly minority-skeptic government

NATINGOV

0	no nationalist party in government
1	nationalist party in government

VETOMIN

0	ultra-nationalist/authoritarian veto player
0.2	clearly minority-skeptic veto player
0.4	weakly minority-skeptic veto player
0.6	weakly pro-minority veto player
0.8	clearly pro-minority veto player
1	strongly pro-minority veto player (member of minority)

VETOPROHIB

0	(at least) clearly pro-minority veto player
0.2	weakly pro-minority veto player
0.4	weakly minority-skeptic veto player
0.6	-
0.8	-
1	(at least) clearly minority-skeptic veto player

SIZE

proportion of largest minority (or Roma for Roma integration issue)

0	<1%
0.2	1-2.5%
0.4	2.5-5%
0.6	5-7.5%
0.8	7.5-10%
1	>10%

MOBIL

vote share of minority parties in % of minority population

0	0-17%
0.2	17-33%
0.4	33-50%
0.6	50-67%
0.8	67-83%
1	83-100%

NAT

vote share of nationalist parties in % of majority population

0	0-10%
0.2	10-20%
0.4	20-30%
0.6	30-40%
0.8	40-50%
1	>50%

MEDNAT

vote share of nationalist parties in % of majority population

0	<20% or >50%
0.2	20-22.5% or 47.5-50%
0.4	22.5-25% or 45-47.5%
0.6	25-27.5% or 42.5-45% of majority population
0.8	27.5-30% or 40-42.5% of majority population
1	30-40%

PRE

0	post-accession case
1	pre-accession case

DURA

duration of government in months (governments <6 months are excluded from dataset)

0	6-12 months
0.2	12-24 months
0.4	24-36 months
0.6	36-42 months
0.8	42-48 months
1	>48 months

LEVEL*Non-Discrimination*

0	no non-discrimination provisions
0.2	general equality clause in the constitution

0.4	non-discrimination clauses in specific laws (only partial transposition of <i>acquis</i>)
0.6	non-discrimination clauses in specific laws (full transposition of <i>acquis</i>)
0.8	comprehensive anti-discrimination legislation
1	comprehensive anti-discrimination legislation including affirmative action

Language Use

0	private use
0.2	general human rights (e.g. translator before court)
0.4	public use e.g. in professional life
0.6	use in public signs
0.8	use in official documents and in communication with state authorities
1	minority language is official language

Education

0	no education of or in a minority language
0.2	minority language part of the curriculum
0.4	part of the curriculum taught in minority languages
0.6	complete curriculum taught in minority languages
0.8	own minority school system
1	own universities for minorities

Citizenship

0	practical impossibility to accede to citizenship
0.2	difficult naturalization procedure with restrictions (e.g. window system)
0.4	difficult naturalization procedure without exceptions
0.6	(moderately difficult) naturalization procedure with exceptions
0.8	(moderately easy) naturalization procedure with exceptions and incentives
1	easy, almost automatic naturalization

Integration of Roma

0	no special policy programs for the integration of Roma
+0.2	housing
+0.2	health and social security
+0.2	education and training
+0.2	dissemination of information and awareness raising
1	comprehensive long-term program including all issues

b) Outcomes

CHANGE

coding in relation to the level of protection as specified in LEVEL

0	restriction
0.2	no change
0.4	n.a.
0.6	small improvement (less than one level)
0.8	improvement (one level)
1	significant improvement (more than one level)

NEGCHANGE

0	no change or improvement
1	restriction

«Enlargement,
a Success Story»

«Enlargement, a Success Story»¹

Liudmila Mikalayeva

Lilla Balázs

Introduction

“Five years after the 2004 accessions, the enlargement has emerged as a major success for the EU and its citizens, fulfilling one of the original purposes of European integration.”

(“Five years of an enlarged EU”,

Communication from the European Commission,

Brussels, 20 February 2008)

Proclaiming the Eastern enlargement an unprecedented success of the European Union’s (EU) foreign policy has become a recurring element of the EU discourse and has been taken up in the academic literature, sometimes without questioning the background of this claim, sometimes with a healthy skepticism. Declining the ambition to reevaluate the EU enlargement strategy and policy, we want to have a closer look at the content and rationale of the self-congratulatory discourse.

We present this analysis on the background of a detailed study of the European Commission’s (EC) monitoring and assessment of candidate countries’ efforts to comply with the requirements in one particular area – that of national minority protection. Concentrating on the context, principles and criteria of evaluation, we identify internal mechanisms leading to particular evaluation results. We claim that while the evaluation of candidate countries’ policies was mainly conditioned by a lack of internal standards, self-interest and borrowing from other existing evaluations, the assessment of the enlargement strategy and enlargement as a whole is better understood as an effort of legitimation and identity-building by the EU in the context of internal and external criticism. This paper proceeds in four steps: first, it presents our approach to policy evaluation, second, it addresses the evaluation of candidate countries’ policy on national minorities, third, it focuses on the evaluation of the enlargement and fourth, it compares and discusses the results of the two evaluation enterprises.

¹ European Commission, Communication to the Council and the European Parliament, COM(2006)200, 03.05.2006.

I. Policy evaluation and enlargement

**“The policy process... is still about gaining and exercising power.
But the process is mediated through competing discourses...”**

(Frank Fischer, *Reframing Public Policy*²)

If we adopt the stages model of policy-making, dominating positivist research on evaluation, which, according to many, offers a useful heuristic for studying political processes³ and has an undeniable merit of being simple and clear, we are led to consider the evaluation of the enlargement policy as being based on the evaluation of the candidate countries' performance in meeting the EC requirements. Indeed, the EC communication 'Agenda 2000' makes the enlargement success conditional on the acceding countries meeting the political criteria and adopting the *acquis communautaire* assisted by the Union through pre-accession support⁴. Proclaiming enlargement successful, therefore, should rely on the positive findings about the fulfillment of the political criteria and the adoption of the *acquis communautaire* by the acceding countries, as established by the European Commission. Unfortunately, 'Agenda 2000' is mute on the concrete criteria of assessment: it vaguely mentions that the Commission's evaluation of political criteria is based on the "elements of the present situation which it [i.e. the European Commission] has been able to verify and confirm"⁵. In practice, criteria for assessment were constantly adjusted to reflect the changing situation in the candidate countries⁶ and the objectives, against which compliance was judged, proved to be a 'moving target' rather than a fixed reference⁷.

As we will demonstrate in this paper on the example of four candidate countries' policy towards national minorities, the record of satisfying the demands put forward by the European Commission was deemed to be mixed since the requirements themselves were not consistent⁸. Based on a thorough

² Frank Fischer (2003), *Reframing Public Policy - Discursive Politics and Deliberative Practices*. Oxford: Oxford University Press, p. 46.

³ Michael Howlett and M. Ramesh, (1995), *Studying public policy: policy cycles and policy subsystems*, Oxford: Oxford University Press.

⁴ European Commission (1997), "Agenda 2000 - Volume I: For a stronger and wider union" (DOC/97/6), Strasbourg, 15 July 1997, pp. 48, 69.

⁵ European Commission, "Agenda 2000...", p. 48.

⁶ Dimitry Kochenov (2008), *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law*, Austin: Wolters Kluwer, p. 52.

⁷ Giandomenico Majone and Aaron Wildavsky (1979), "Implementation as Evolution", in J. Pressman and A. Wildavsky, *Implementation*. Berkeley: University of California Press.

⁸ We have also demonstrated elsewhere that in practice the EC requirements were met only partly even in countries considered model pupils of accession compliance. See Guido Schwellnus, Lilla Balázs and Liudmila Mikalayeva (2009): "It ain't over when it's over: The adoption and sustainability of minority protection rules in new EU member states". In: Frank Schimmelfennig and Florian Trauner (eds.): "Post-accession compliance in the EU's new member states", *European Integration online Papers Special Issue 2*, Vol. 13, and Guido Schwellnus, Liudmila Mikalayeva and Lilla Balázs (*forthcoming*), "A Fuzzy-Set Qualitative Comparative Analysis of Minority Protection Rules in Ten New EU Member States", *European Yearbook of Minority Issues* Volume 9.

study of the EC progress reports on Estonia, Latvia, Slovakia and Romania, we show that about a third of the requirements advanced were not consistent, that is, were, for example, omitted without being addressed, or reformulated in a way that favored a positive evaluation. This last example is an illustration of how a policy evaluation may reflect not only a change in the actual practices, but an adjustment of expectations⁹. If a policy may be deemed successful due to a reformulation of the assessment criteria ‘on the go’, then evaluation is part of the policy process and is politically determined. The importance of criteria, serving as a reference frame, underlines the fact that empirical results never speak for themselves and that ‘facts’ rest on interpretations.

In terms of the research landscape, it has indeed become difficult to defend the stages model beyond the use in introductory textbooks, since it too easily seduces one into taking the analytical distinction between decision-making, implementation and evaluation for a logical differentiation of these processes in practice. In contrast to positivist accounts of evaluation, constructivists, such as Deborah Stone¹⁰ and Frank Fischer, see policymaking as an ongoing discursive struggle over meaning¹¹. In this struggle, “the definitions of problems, the boundaries of categories used to describe them, the criteria for their classification and assessment, and the meanings of ideals that guide particular actions” are debated, and the winning actors receive the power to shape and sustain particular views on political and social processes and events¹². In this perspective, policy evaluation is not a technocratic task of comparing the initial policy’s objectives with the results, as positivist scholars or many practice-oriented specialists would hold¹³, but a normative act¹⁴, a result of negotiations among groups with competing definitions¹⁵.

According to Vivien Schmidt, two main dimensions of policy discourse are an ideational dimension and an interactive dimension. While the ideational dimension covers a cognitive ‘mapping’, that is, “elaborating on the logic and necessity of a policy programme” and normative justification processes, that is, “demonstrating the policy’s appropriateness through appeal to... values”, the interactive dimension coordinates policy by providing for it a common language and framework and by presenting it to the public¹⁶. This process of discursive construction of political reality not only reflects a certain balance of power between actors supporting different views on the problem, its solutions and

⁹ George A. Boyne (2003), “What Is Public Service Improvement?”, *Public Administration* 81(2): 211-227, p. 223.

¹⁰ Deborah A. Stone (1988), *Policy Paradox and Political Reason*. Glenview, IL: Scott, Foresman and Company.

¹¹ Fisher makes an important point in distinguishing this perspective from conventional interest group politics: “Here groups have different interests, but they also define the problems and interests differently” (Fischer, *Reframing Public Policy...*, p. 62).

¹² Fischer, *Reframing Public Policy...*, p. 60.

¹³ See David Marsh and Allan McConnell (2010), “Towards a Framework for Establishing Policy Success”, *Public Administration* 88(2): 564-583, p. 565.

¹⁴ Mark Bovens, Paul ‘t Hart, Sanneke Kuipers (2006), “The Politics of Policy Evaluation”, in Michael Moran, Martin Rein, Robert E. Goodin (eds.), *The Oxford Handbook of Public Policy*. Oxford: Oxford University Press: 319-335, p. 319.

¹⁵ Murray Edelman (1988), *Constructing the Political Spectacle*. Chicago: Chicago University Press.

¹⁶ Vivien A. Schmidt (2002), *The Futures of European Capitalism*. Oxford: Oxford University Press, p. 211.

the extent to which different solutions are appropriate and efficient, but also may change the balance by empowering some actors at the expense of others¹⁷.

For instance, evaluating policy as successful strengthens its proponents, minimizes necessary adjustment efforts and can have a positive impact on financial and organizational decisions beneficial for the policy supporters and implementers. On the other hand, judging a policy to be a failure calls for a reconsideration of the chosen line, disempowers the policy's protagonists and redistributes resources. On a more general level, seeing policy as having failed can have much more fundamental political consequences: as argued by Mark Bovens and colleagues, a preferential interest to analyzing policy failure (over success, for example) may create a biased picture where policies appear to always malfunction and such a representation may give a stimulus for the growth of neo-liberalism¹⁸. It should be clear at this point, that such constructivist approach to policy evaluation is not an instance of radical relativism: both the objective and the subjective dimensions of policy success or failure need be addressed¹⁹. Yet it recognizes the multiplicity of interests involved in policy processes and extends the results of policy evaluation beyond client-oriented advice into the realm of political struggle, identity construction and legitimation, realized through discursive competition.

As consistently pointed out in scholarly literature, policy discourse (and especially evaluation) is unavoidably related to legitimacy²⁰, not only by presenting a policy programme as relying on "long-standing values and identity"²¹, but also by reiterating and solidifying those values and identity through policy success²². In the case of the European Union's discourse, the effort to gain legitimacy proceeded among other ways by (re)constructing policies as successful. This may be demonstrated on the example of the quote from the EC communication "Five years of an enlarged EU" placed in the epigraph of the introduction: "Five years after the 2004 accessions, the enlargement has emerged as a major success for the EU and its citizens, fulfilling one of the original purposes of European integration." This short quote is extremely rich if one examines it attentively. Two big themes emerge from it in an obvious way: a highly positive evaluation of the enlargement ("major success") and its presentation as a historical necessity and logical continuation of the integration process (reference to "original purposes"). Less explicitly, the quote posits the convergence of interests of the EU and its citizens, and the fact that they all benefited from the enlargement (it is a success for them). On an even more implicit level, the quote presupposes the existence of EU citizens as a group and, importantly,

¹⁷ Maarten A. Hajer (1995), *The Politics of Environmental Discourse*. Oxford: Oxford University Press.

¹⁸ M. Bovens et al., "The Politics of Policy Evaluation", p. 8.

¹⁹ Allan McConnell (2010), "Policy Success, Policy Failure and Grey Areas In-Between", *Journal of Public Policy* 30(3): 345-362, p. 351.

²⁰ See, for example, Mark Bovens, Paul 't Hart and B. Guy Peters (eds.) (2001), *Success and Failure in Public Governance: A Comparative Analysis*. Cheltenham: Edward Elgar.

²¹ Campbell quoted in Schmidt, *The Futures of European Capitalism*, p. 220.

²² On this aspect of enlargement policy, see Ulrich Sedelmeier (2003), "EU Enlargement, Identity and the Analysis of European Foreign Policy: Identity Formation Through Policy Practice", EUI Working Papers, RSC No. 2003/13.

hints at negative expectations voiced before the enlargement and claims they proved wrong. The quote thus appears to indirectly refute prior critique of enlargement and of the gap wide open between the elites and citizens. This case may be taken as an illustration of how discursive legitimation may work and how the EC's desire to "communicate enlargement more effectively"²³ may motivate a deviation from a more objective assessment of enlargement policy towards a stainless 'success story'.

In this perspective, individual country reports compiled by the EC since 1998 and Accession Partnerships may be seen not only as texts documenting the evaluation of the countries' policies by the EC, but as texts making part of the enlargement policy itself. In fact, they concretize EU demands and are therefore an integral element of the political process and not merely a record of the candidates' advancement towards membership. In a similar way, EC strategy papers on the progress of enlargement, drafted yearly since 1998, are not only a summary of the EC findings on candidate countries' response to demands, but primarily attempts to consolidate the principles of enlargement policy and justify the requirements.

In the following, we first present a detailed analysis of the EC monitoring documents dealing with national minority policy in four candidate states between 1997 and 2005, examining the content and logic of the EC requirements in this area. Next, we turn to the EC self-assessment in strategy papers and public discourse, contending that the unqualified claim of success – not entirely warranted, considering unstable criteria of assessment and the strategic underdevelopment – is primarily motivated by the concerns about the internal and external identity of the EU. We conclude that the enlargement 'success story' was confectioned in a way suitable to fit into the repertoire of new myths about Europe and refresh it in the face of rising weariness of old narratives of Europe.

II. Evaluation of candidate countries' policy

“[The candidate states] were able to set new rules and new legislation based on EU law and learned to implement it properly. Human rights were respected and minorities protected.”

(Günter Verheugen, European Commissioner for Enlargement, 2002²⁴)

To take a closer look at the construction of the enlargement 'success story', we have chosen to focus on the issue of national minority protection, as one of the most relevant areas of EU conditionality in the context of the last two EU enlargement rounds. Minority protection does not feature in the EU *acquis communautaire* and it is not enshrined in the European Charter of Human Rights, making the

²³European Commission (2009), Communication for the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2009-2010", COM(2009)533, Brussels 14 October 2009, p. 15.

²⁴ Günter Verheugen (2002), *Entering the Final Stage* Speech 02/602, The Economist Conference, Vienna, December 2002.

old Member States exempt from the principle. On the other hand, the requirement of “respect for and protection of minorities” appeared in the 1993 Copenhagen criteria for accession for fear of regional destabilization and has been applied to all candidate countries.

This ‘double standard’ nature of the minority protection issue makes it less likely to be accepted as a legitimate requirement by the acceding countries²⁵ and hence less efficient in prompting domestic changes when compared to other requirements featuring in the *acquis*. Nevertheless, some scholars have considered the overall progress of the candidate countries in minority protection satisfying and have evaluated the impact of conditionality in this issue as generally successful or successful in some cases²⁶, while the European Commission itself was extremely enthusiastic in its self-evaluation. The basis for such an assessment remains, however, questionable.

In order to address this uncertainty, in this part we study the consistency of the EU evaluation process applied to candidate countries in the area of minority protection. The EC considered minority protection issues to be the most problematic in four acceding countries: Estonia, Latvia, Romania and Slovakia, and singled these countries out on account of the minority situation during the pre-accession monitoring. We followed this special attention on part of the EU and chose these countries as the most appropriate cases for our study.²⁷ The corpus for our study of the EC evaluation of candidate countries’ policies is constituted first of all by all the Progress Reports, as the main monitoring instruments of candidate state progress, issued every fall from 1998. We also included the EC Opinions on the candidacy of the selected countries, issued in 1997, as well as the Comprehensive Monitoring Reports of 2003 (for Estonia, Latvia and Slovakia) and 2005 (for Romania). For Romania, there were two additional reports issued in 2006, which were also taken into account. In addition to

²⁵ See, for example, Michael Johns (2003), “Do as I Say, Not as I Do”: The European Union, Eastern Europe and Minority Rights”, *East European Politics & Societies* 17(4): 682-699; James Hughes and Gwendolyn Sasse (2003), “Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs”, *JEMIE* 1; Gaetano Pentassuglia (2001), “The EU and the protection of minorities: the case of Eastern Europe”, *European Journal of International Law* 12(1): 3-38; Bruno De Witte (2000), “Politics versus law in the EU’s approach to ethnic minorities”, EUI Working Paper RSC 2000/4, Florence: European University Institute; Bernd Rechel (2008), “What Has Limited the EU’s Impact on Minority Rights in Accession Countries?”, *East European Politics and Societies* 22(1): 171-191; Gabriel N. Toggenburg (2004), *Minority Protection and the Enlarged European Union: The Way Forward*. Budapest, Local Government Initiative; Gwendolyn Sasse (2008), “The politics of EU conditionality: the norm of minority protection during and beyond EU accession”, *Journal of European Public Policy* 15(6): 842-860.

²⁶ For example: Ulrich Sedelmeier, „After conditionality: post-accession compliance with EU law in East Central Europe”, *Journal of European Public Policy* 15(6): 806-825; Frank Schimmelfennig, Stefan Engert and Heiko Knobel, “Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey”, 41(3) *Journal of Common Market Studies* (2003), 495-518; Judith G. Kelley (2004), *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton University Press.

²⁷ In the case of Estonia and Latvia, the biggest international concern has been the Russian-speaking minority, representing from 28% (in Estonia) up to 40% (in Latvia) of the countries’ population. Moreover, a big part of these communities did not possess the citizenship nor mastered the language of their respective states at the moment when they entered into the accession process. In turn, both Romania and Slovakia have sizeable Hungarian minority communities demanding protection and specific rights. Further, the socio-economic exclusion and discrimination of the considerable Roma population has constituted a fundamental challenge in both countries.

these 31 reports, we looked at the Accession Partnership papers, drafted for Estonia, Latvia and Slovakia in 1999 and 2001, and for Romania in 1999, 2002 and 2003. These documents contain a list of policy priorities that are to be addressed in the short term, that is, until the following progress report, or in the medium term, meaning approximately five years.²⁸

Since 1998 the European Commission has been drafting yearly papers on the process of enlargement, called first “Composite Papers” and then “Strategy Papers” (note the meaningful change of name), which not only highlight the most important concerns to be urgently addressed by the candidate states, but also expose the principles of the pre-accession strategy (such as meritocracy, communication and conditionality) and provide a general framework and a certain ideological basis for the enlargement project as a whole. These documents were included in the corpus as well and as a result, it consists of 49 documents.

We have run a thematic content analysis of the corpus, based on a list of issues and coding categories elaborated for examining the content of the evaluation process²⁹. On the basis of an exploratory study of the monitoring documents, we have devised a list of issues within the domain of national minority protection with the aim of drawing comparable conclusions about the requirements present in each separate document from our sample. Based on the repertoire of requests formulated and concerns voiced by the European Commission, we distinguished six main issue categories, namely: Integration³⁰, Education³¹, Language use³², Administrative capacity³³, Citizenship³⁴ and the Roma³⁵.

²⁸ Heather Grabbe (1999), “A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants”, *Robert Schuman Center Working Paper* 12, European University Institute and Grabbe (2001), “How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity”, *Journal of European Public Policy* 8(4): 1013-1031.

²⁹ We consider only those parts of the documents that deal with the issue of minority protection.

³⁰ More specifically, the issue of integration refers to the establishment of conditions for the integration of minority communities either in general terms, through designing specific integration programs or awareness raising and minority involvement, or specifically targeting their linguistic, socio-economic, political, cultural or historical position.

³¹ The issue of minority education has been examined at the primary and secondary, as well as the tertiary levels, the former including sub-issues such as general concerns on the educational system, the availability of State language teachers or the development of teaching materials.

³² Language use requirements have been divided into four main categories: the first, general category includes the use of minority languages in personal names and personal documents. Minority language use in official communication refers to courts, administration and public authorities, school administration and requirements presented to candidates in elections. Language requirements in professional use have been subdivided into the public and private sector, whereas the fourth and fifth sub-categories of language use refer to public signs and the media.

³³ The category of administrative capacity-building encompasses requirements of financial and human resource development of various minority integration bodies such as the ombudsman, citizenship bodies, language training bodies or school systems.

³⁴ The category of citizenship requirements has been subdivided into three main subcategories: State language training made available to facilitate minority naturalization, general legal matters of citizenship such as residence permits and passports, non-citizen rights and general procedures of naturalization.

³⁵ The Roma issue constitutes a separate category of requirements, including general integration issues, such as anti-discrimination measures, the elaboration of integration programs, administrative capacity-building and legal status clarification. Further subcategories of requirements concerning the Roma specifically point to the necessity of these communities’ socio-economic, political, educational and cultural integration.

Each category is further subdivided into subcategories and smaller units, allowing for a precise tracking of requirements through years and across countries (see Annex I). Derived inductively, these categories are however commonly accepted in the literature as the most relevant ones for minority protection³⁶. We identify all the requirements in monitoring texts and link them to the specific issue categories. This makes it possible to track not only the presence or absence of a specific requirement but also to control for eventual reformulations.

In terms of pragmatic elements in the texts, we distinguish requirements and positive assessment ('commending the efforts'). Within the category of "requirements", we differentiate between explicit demands ("requests") and "problem statements," which identify deficiencies in policies or institutional setup without making a direct request of a change³⁷. For example, the following statement from the Commission's Report on Slovakia (1999) is classified as a request: "Particular attention should be paid to improving the situation of the Roma and to fight discriminatory attitudes in society". In turn, the following passage from the Commission's Opinion on the Estonian candidature (1997) is coded as problem statement: "The main weakness in the present system lies in the inadequate resources available for Russian speakers to learn Estonian in order to sit the naturalization test"³⁸. An example of a typical positive assessment can be found in the Report on Latvia (2001): "Since the last Regular Report, positive developments included further simplifications of the naturalization procedure..." (European Commission, Latvia, 2001). As in this analysis we are interested in the development of the requirements (as a standard against which the compliance is defined) rather than in the general evaluation of the country's performance, we only look at those instances of "commending the efforts" that follow requests and problem statements.

Tracking the 'fate' of requests and problem statements in the above-described issue categories, we aim at establishing the overall consistency of the evaluation process by looking at two specific aspects. Our operationalization of consistency includes, on the one hand, consistency over time, as a feature of requirements in a specific issue area in one type of monitoring document through the years (*horizontal consistency*). On the other hand, consistency across documents is a characteristic of requirements in a specific area in different monitoring documents in the same year (*vertical consistency*). Our unit of

³⁶ See, for example: Guido Schwellnus, Lilla Balázs and Liudmila Mikalayeva (2009), "It ain't over when it's over: the adoption and sustainability of minority protection rules in new EU member states", *European Integration Online Papers* 2(13).

³⁷ Cf. a distinction between "on record" and "off record" face-threatening acts in Penelope Brown and Stephen C. Levinson (1987), *Politeness: Some universals in language usage*, Cambridge University Press, pp. 60ff. In the case of 'off record' statements, there is more than one unambiguously attributable intention so that the speaker cannot have committed herself to one particular intent. Such statements leave a margin of interpretation and appreciation to the addressee, while also preserving a possibility of suitable ulterior interpretation for the speaker. On indirect requests, see also Shoshana Blum-Kulka (1989), "Playing it safe: The role of conventionality in indirect requests", in Shoshana Blum-Kulka, Juliane House and Gabriele Kasper (eds.), *Cross-cultural Pragmatics: Requests and Apologies*, Ablex, NJ: 37–70.

³⁸ While in the former case a direct request for an action is communicated, in the latter a diagnosis of the problem is offered, but the remedy is only implicitly suggested.

analysis is an issue category where a requirement appears at least once in progress reports or in the Opinion³⁹.

In order to establish the degree of horizontal consistency, we track the development of the issue coverage after a requirement is introduced. An issue may be covered consistently over time if:

- it is repeated in each subsequent report until the end⁴⁰;
- an issue is covered consistently over time if it is considered addressed and does not reappear as a requirement in any of the subsequent reports.

On the other hand, an issue is covered inconsistently over time if:

- it is omitted in at least one subsequent report, but reappears at some point;
- it is removed without being addressed and does not reappear in any of the subsequent reports;
- at some point it is considered addressed, but then a requirement reappears⁴¹.

Table 1 presents preliminary findings on issue categories, on which the European Commission Progress Reports formulated requests or problem statements, as well as on the different forms development a requirement can go through: omission, removal, integration with another issue and being addressed.

Table 1: Horizontal Consistency

	Consistent			Inconsistent				Integrated ⁴²	Total
	Repeated	Addressed	Total	Omitted	Removed	Reappearing	Total		
ESTONIA	4	8	12	2	5	1	8	3	23
LATVIA	10	4	14	4	2	-	6	-	20
ROMANIA	6	3	9	4	6	-	10	1	20
SLOVAKIA	11	3	14	2	5	-	7	4	25
Total	31	18	49	12	18	1	31	8	88

As the table shows, 35% of all the identified issues are covered inconsistently, that is, they are omitted from at least one of the reports or removed. We found only one instance of an issue reappearing as a requirement after having been considered addressed (the issue of minority education in Estonia). These findings are only preliminary and have to be cautiously interpreted, but they point namely to the necessity of a careful approach to taking the Commission monitoring documents as a reliable source for evaluating the success of the pre-accession policy.

³⁹ If a requirement appears only in the last year of the monitoring process, it is not taken into account, as it is too late for the EC to monitor the development of the situation and for us to track the evolution of the issue coverage.

⁴⁰ An exception is the Comprehensive report, which does not address the political criteria separately.

⁴¹ There is also a possibility that a request is integrated with another request and thus disappears from the initial issue category, but emerges in a different one. The integration of an issue with another one is a problematic case necessitating a considerable amount of interpretation and is not covered in this paper.

⁴² The number of problematic cases qualified as “integrated” is not large enough (9%) to bias our findings.

Further, there is no single way to interpret the logic and motivation of the different forms of development of requirements over time. Thus, removal of a request from subsequent reports may mean that the issue is not considered relevant for the minority protection anymore, it is considered addressed, but this is not explicitly stated in the subsequent reports, or that it is removed for various strategic reasons. Strategic removal may be based on different motives such as the desire to keep the total number of requests within a reasonable limit, or to enhance the importance of other requests, considered a priority. The removal of an issue might thus come from the general lack of EU standards on national minority protection, which can work in two ways. First, since the EU does not have its own norms on minority protection and ways to assess policy in this area in a coherent way, it uses other existing evaluations when they become available (on the implications of this practice, see below). Second, the lack of agreed-upon standards makes contestation of demands more likely and better founded and enhances legitimacy concerns on the part of the EU, pushing it towards dropping some of the demands. Another possible reason for an uneven appearance of requirements is that the pressure of interest groups may vary each year, so that certain issues may have not enough support in a given year to be included in the report. Similar motives can explain omissions of issues at certain years.

The assessment of an issue as addressed by the European Commission also raises some questions of interpretation. In some cases, the explanation is straightforward: for example, when a request was part of the accession partnership criteria and at some point this priority is assessed as “met to a large extent”, one can definitely see the request as “considered addressed”. However, in other cases, the developments which are commended and welcomed may not cover the entire range of the aspects criticized in previous reports. Or, “positive developments” can be mentioned in the documents, but it remains unclear whether these developments are seen as sufficient for not considering the issue as problematic or the request (problem statement) is removed or omitted.

As operationalized in our analysis, consistency of the EC evaluation also includes consistency across documents, or vertical consistency. This has been defined as a characteristic of requirements in a specific issue area across different monitoring documents of the same year. For an assessment of consistency across documents, we distinguish six different locations where a requirement can appear, each year. In the order of hierarchical importance, they are the following: the conclusion of the “Political criteria” part of the Progress reports, the “Accession partnership” assessment section in the Progress reports dedicated to the short-term priorities, the “Accession Partnership” assessment section in the Progress Reports dedicated to the medium-term priorities, the medium-term priorities section in a separate Accession Partnership paper, the short-term priorities part in separate Accession Partnership papers, and the Strategy Paper.

Each year, requirements in the domain of minority protection are expected to be consistent if requirements appearing at higher levels of importance also appear at all the lower levels. This means

that the requirements are selected from the lower-level, more comprehensive documents into the higher levels and do not emerge “out of nowhere”. Second, the requirements appearing under the Accession Partnership assessment in the reports and the separate Accession Partnership papers have to be identical. These separate Accession Partnership papers are not available for every year, but only for two years for Estonia, Latvia, and Slovakia, and for three years for Romania. Thus, this measure will be discreet.

Within this framework of analysis, our first finding is that Conclusions of the reports are more selective than the Accession Partnership sections. Therefore, it appears that our hierarchy is not correct at this point. We have to consider the whole report as a source for Accession Partnership requirements to have a non-controversial model of hierarchy.

It appears from the analysis that the Strategy Papers are indeed the most selective (except one case). Interestingly enough, the concerns raised in the Strategy papers for Estonia and Latvia are completely identical in all years except 1998, when Estonia still had not introduced amendments as to the naturalization of stateless children, and Latvia had done it already. There is also a surprising parallelism between the two countries’ accession partnership priorities (see Annex II).

Also, we have identified several inconsistencies between Accession Partnership priorities in the reports and in the separate papers: thus, for example, the issue of financial support appears in the separate Accession Partnership paper for Estonia in 1999, and not in the Progress Report’s corresponding section. This type of inconsistency may bring some ambiguity to the signals sent to the accession State.

A further interesting finding is related to Romania and the consistency between the Progress Reports and Accession Partnership priorities on the one hand, and the Strategy Papers, on the other. While the requirement of Roma integration steadily appears across the examined texts and sections, an additional issue appears erratically and exclusively in the 1999 and 2000 Strategy Papers. Cautiously worded, the requirement formulates a hesitant “hope” concerning the creation of a multicultural minority state university in Romania – an issue of high salience for minorities in Romania, possibly present due to an initial forceful external lobbying exerted on the European Commission. The mismatch between the Strategy Paper requirement and the other texts represents a further instance of requirement inconsistency and ambiguity.

As our findings seem to demonstrate, the European Commission’s approach to evaluating the candidate states’ progress in meeting the accession requirements may be rather confidently qualified as an ad hoc approach. This is not surprising, taking into account the above-discussed lack of EU minority protection standards that would offer a solid ideological basis, a unique frame of reference

and would confer legitimacy to the European Commission requirements⁴³. Instead, in the absence of its own standards, the EU made extensive use of Council of Europe and OSCE tools of minority protection monitoring and assessment. In turn, the inclusion of borrowed material (mainly from the Council of Europe's Advisory Committee of the Framework Convention for the Protection of National Minorities (AC FCNM) Opinions) was reflected in what we have identified as instances of horizontal inconsistency.

A good illustration of this phenomenon is the European Commission's borrowing from the Opinions issued by the AC FCNM on Estonia, Slovakia and Romania in 2002. These Opinions offered a detailed assessment of national minority protection in these countries and was used as an important point of reference in the EC reports of that year. In most cases, complete passages were borrowed and presented as direct quotations in the progress reports, leaving it up to interpretation whether and to what extent the AC FCNM requirements were endorsed by the European Commission itself. Often, these passages introduced new issue categories not covered in previous reports and in most of the cases these issues were subsequently removed or omitted. When the issue categories were not new, the AC FCNM assessments were more critical and their requirement – stronger.

In addition, the absence of common standards on national minority protection within the EU led to a weighted emphasis on issues of “personal” concern for the old Member States and thus had a further interesting impact on the issue coverage consistency. An example of this phenomenon is the introduction in the Strategy papers from 1999 and 2001 of a single concern for both Estonia and Latvia: the content (1999) and implementation (2001) of laws regulating the use of foreign languages. These laws in both countries had a big potential not only to complicate the life of the Russian-speaking minorities in these two countries, but also to jeopardize the freedom of movement for EU nationals, and therefore was very vividly criticized in the monitoring documents. A similar observation can be made with regard to the issue of Roma integration as it appears in the Strategy Papers dealing with Romania and Slovakia, with the Roma situation gradually emerging as a self-standing problem generally applicable to all countries in the region with sizeable Roma communities. This observation indicates rising EU attention to the marginalized Roma community, once Roma migration to EU countries becomes a hardly ignorable challenge for the Member States.⁴⁴ Further, this shift also replicates the pragmatic selectivity of requirements on issues potentially harmful for EU Member State interests, as opposed to a general commitment to minority protection.

Beyond the general lack of internal EU minority protection standards, the evaluation of the candidate countries' minority policy development was also motivated by the necessity of exercising the leverage

⁴³ See the concept of legitimization through process in Ruth Wodak and Gilbert Weiss (2005), “Analyzing European Union discourses. Theories and applications”, in Ruth Wodak and Paul Chilton (eds.), *A New Agenda in (Critical) Discourse Analysis*, Amsterdam/Philadelphia: John Benjamin: 121-136, namely p. 131.

⁴⁴ See also Heather Grabbe (2005), *The EU's Transformative Power. Europeanization through Conditionality in Central and Eastern Europe*, Palgrave Macmillan, pp. 16-17.

of conditionality, effective only in the pre-accession period⁴⁵ in the context of largely asymmetrical power relations between the EU and the candidate countries. Conceptualizing this asymmetry, Bahar Rumelili speaks about a “space of superior-inferior” maintained by the institution of candidacy, where the candidate countries appear as “lacking and inadequate”. This reinforces the leverage of conditionality exercised by the EU as a superior party⁴⁶, but also rendered monitoring and evaluation hinging on the EU’s power to shape the frame of reference in the individual EC Progress Reports. The degree of discretion in national minority policy evaluation and the assessment of the candidates’ compliance with political criteria in general that the EC enjoyed, together with the lack of a clear standard of evaluation and the superficial monitoring of candidate states⁴⁷, made some scholars claim that the decision on the compliance was finally “of purely psychological, rather than legal importance.”⁴⁸

III. Evaluation of the enlargement policy

“Enlargement has been a success story for the European Union and Europe as a whole.”

(Presidency Conclusions of the Brussels European Council, December 2006)

Respect for national minorities was but one element of the political criteria in the long list of the requirements that the European Union formulated for candidates to its membership. It has however attracted a significant criticism, especially in academic literature, mainly because of the absence of internal EU standards in this area⁴⁹. As we have demonstrated in the previous part, in addition to the lack of internal standards of minority protection, the European Commission failed to develop a consistent approach to the assessment of the minority policy in the candidate states.

It is therefore surprising to read already in the 2000 Strategy paper a declaration that “all the currently negotiating candidate countries met the political criteria”⁵⁰. Although the Commission nuances this statement by adding that some of the candidate countries still have to make some progress in the areas of human rights and minorities’ protection, in 2001 the conclusion is already more optimistic:

⁴⁵ The fact that provoked fears of a ‘backsliding’ after the accession of the candidate countries to the EU. See, for example, Gwendolyn Sasse (2006), “Gone with the Wind? Minority Rights in Central and Eastern Europe before and after EU enlargement”, paper for the workshop “Ethnic mobilization in the New Europe”, Brussels; Frank Schimmelfennig and Ulrich Sedelmeier (2004), “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European Public Policy* 11(4): 661-679, p. 675; Jacques Rupnick (2007), “From Democracy Fatigue to Populist Backlash”, *Journal of Democracy* 18(4): 17-25.

⁴⁶ Bahar Rumelili (2004), “Constructing identity and relating to difference: understanding the EU’s mode of differentiation”, *Review of International Studies* 30: 27-47.

⁴⁷ Bernd Rechel (2008), “What Has Limited the EU's Impact on Minority Rights in Accession Countries?”, *East European Politics and Societies* 22(1): 171-191.

⁴⁸ Kochenov (2008), *EU Enlargement and the Failure of Conditionality...*, p. 52.

⁴⁹ See note 25 above.

⁵⁰ Strategy paper 2000: http://ec.europa.eu/enlargement/archives/key_documents/reports_2000_en.htm

“reinforced protection of human rights, including rights of minorities... [is] now [a] common feature.”⁵¹

These statements have to be interpreted on the background of the individual progress reports and accession partnerships. Thus, for example, as late as in 2002, in the progress report on Latvia we have identified at least a dozen of concrete requirements and demands related to minorities’ protection with a conclusion that partnership accession priorities were “partially met”⁵². Also, if we look closer at the way the situation is evaluated in strategy papers, we see that the Commission speaks about “progress” or “encouraging developments” rather than about a stable level of protection⁵³. This is only natural due to the lack of clearly established standards and underlines the Commission’s margin of interpretation and appreciation regarding the candidate countries’ policies and efforts to meet the demands.

The need to anchor these demands, justify them and legitimize the ad hoc approach in evaluation and monitoring motivated the Commission to develop a discourse based on “common European values” and security concerns, analyzed in detail elsewhere⁵⁴. In this paper we claim that the controversial character of the minority protection component of political criteria was only one aspect in a larger set of legitimacy and identity concerns the European Union was facing at the moment, and that the (overly) positive general evaluation of its enlargement strategy was a response to these concerns at least as much as a response to the progress of the candidate countries in the pre-accession phase.

Going beyond individual requirements and policy areas of the pre-enlargement strategy, some scholars have claimed that the whole idea of conditionality is a highly controversial one⁵⁵. Dimitry Kochenov contends, for example, that “its application was so sporadic and inconsistent... that the core of the conditionality principle was undermined”⁵⁶. He points out that conditionality is in conflict with the ideals of unity and had not been applied before the Eastern enlargement⁵⁷. Moreover, the principle of solidarity is put into question by conditionality and the way it was realized in practice⁵⁸.

⁵¹ Strategy paper 2001: http://ec.europa.eu/enlargement/archives/key_documents/reports_2001_en.htm

⁵² Report on Latvia 2002: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/lv_en.pdf. See also Annex II.

⁵³ Strategy papers 2001 and 2002.

⁵⁴ Marika Lerch and Guido Schwellnus (2006), “Normative by nature? The role of coherence in justifying the EU’s external human rights policy”, *Journal of European Public Policy* 13(2): 304-321.

⁵⁵ Jan Klabbers (1999), “On Babies, Bathwater and the Three Musketeers, or the Beginning of the End of European Integration”, in Veijo Heiskanen and Kati Kulovesi (eds.), *Function and Future of European Law*, Helsinki: University of Helsinki; Christophe Hillion (2002), “Enlargement of the European Union: A Legal Analysis”, in Anthony Arnall and Daniel Wincott (eds.), *Accountability and Legitimacy in the European Union*, Oxford: Oxford University Press, 2002.

⁵⁶ Dimitry Kochenov (2006), “The Failures of Conditionality. EU Enlargement Law: A Plea for Reform of the Democracy Promotion Component”, Paper presented at the Jean Monnet Conference *Europe’s Democratic Challenges – EU Solutions?*, Università degli studi di Trento, 30 June - 1 July 2006, p. 2.

⁵⁷ Kochenov (2008), *EU Enlargement and the Failure of Conditionality...*, p. 53.

⁵⁸ Jileva, “Do norms matter?...”; Jacques Rupnik (2004), “Trois dilemmes de l’Union élargie: sécurité, souveraineté, solidarité”, in Chavance, Bernard (ed.), *Les incertitudes du grand élargissement: L’Europe centrale et balte dans l’intégration européenne*, Paris/Budapest/Torino : L’Harmattan.

Enlargement has proved exhausting for the old members, the European institutions and the candidate states and led to ‘enlargement fatigue’⁵⁹, on the one side, and a resentment of the “institutional tutors and pupils” dynamics, on the other side⁶⁰. Faced with accusations of incoherence of its foreign policy and especially its human rights’ dimension⁶¹, its weakness on the international scene⁶² as well as internal critique since the beginning of pre-accession policy⁶³ and especially after the failed referendums on the constitutional treaty⁶⁴, the main protagonist of the enlargement process – the European Commission – was facing an identity crisis and a ‘legitimacy gap’ to be filled⁶⁵. One of the ways to gain legitimacy, as has been argued above, is through a skillful use of policy discourse – for instance, by picturing policies as relying on long-standing values and identity, – or by recurring to narratives and myths to “reshape the social construction of the EU reality”⁶⁶.

In the remainder of this part we will demonstrate how, through the construction and use of discourse on the success of enlargement policy, the EU tried to solidify its identity as a benevolent normative actor on the global scene as well as its legitimacy as a polity. In this respect we totally support della Salla’s interpretation when he writes that “there has been a clear and consistent attempt to use myths to make sense of what the European Union does and to provide the normative and cognitive basis to see this as part of legitimate governing”⁶⁷.

The idea that the emphasis on success of the enlargement was a response to internal critique can be substantiated by the EC discourse itself. Thus, in the 2005 Strategy paper we read after a statement that the Eastern enlargement was a “remarkable success”: “Before 1 May 2004, the largest enlargement in the EU’s history was widely predicted to provoke major problems”⁶⁸. The paper goes on to deplore that this success has not been communicated well enough. It echoes similar concerns

⁵⁹ Frank Schimmelfennig (2008), “EU political accession conditionality after the 2004 enlargement: consistency and effectiveness”, *Journal of European Public Policy* 15(6): 918-937, p. 919.

⁶⁰ Wade Jacoby (2001), “Tutors and Pupils: International Organizations, Central European Elites, and Western Models”, *Governance* 14(2): 169-200.

⁶¹ José Ignacio Torreblanca (1997), “The European Community and Central Europe (1989-1993): Foreign Policy and Decision-Making”, PhD thesis, Instituto Juan March, Madrid; Jan Zielonka (1998), “Policies without Strategy: the EU’s Record in Eastern Europe”, in Jan Zielonka (ed.), *Paradoxes of European Foreign Policy*, The Hague: Kluwer: 131-145.

⁶² Robert Kagan (2002), “Power and Weakness”, *Policy Review* 113; Robert Kagan (2003), *Of Paradise and Power: America and Europe in the New World Order*, New York: Alfred A. Knopf.

⁶³ European Court of Auditors (1997), “Special Report n°3/97 concerning the decentralized system for the implementation of the PHARE programme (period 1990–1995) together with the Commission’s replies”, 97/C 175/02, *Official Journal of the European Communities*: 4–47; European Parliament (1997), “Programme PHARE, débats du Parlement européen, session 1997–98, compte-rendu in extenso des séances du 5 et 6 novembre 1997”, *Journal officiel de la Communauté européenne*, 4–508 : 43–47. See Elsa Tulmets (2007), “Policy Adaptation From The Enlargement To The Neighbourhood Policy: A Way To Improve The EU’s External Capabilities?”, *Politique européenne* 22: 55-80, p. 59.

⁶⁴ Hannes Hansen-Magnusson and Antje Wiener (2010), “Studying Contemporary Constitutionalism: Memory, Myth and Horizon”, *JCMS* 48(1): 21-44, p. 22.

⁶⁵ Andrea Lenschow, Carina Sprungk (2010), “The Myth of a Green Europe”, *JCMS* 48(1): 133-154, p. 134.

⁶⁶ Ian Manners (2011), “Symbolism in European Integration”, *Comparative European Politics* 9: 243-268, p. 259.

⁶⁷ Vincent della Sala (2010), “Political Myth, Mythology and the European Union”, *JCMS* 48(1): 1-19, p. 14.

⁶⁸ Strategy paper 2005: http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0561en01.pdf, p. 4.

raised already in the 2002 Strategy paper, which called for a “clear message” about the success of the pre-accession strategy and about the enlargement as a “win-win game” to be given “by all actors responsible for the success of the process”⁶⁹. It is reasonable to suggest that the need of a clear and unequivocal message about enlargement and pre-accession strategy accounted for a very swift passage from a commitment to “mak[e] a success of enlargement” in 2001⁷⁰ to the evaluation of the pre-accession strategy in 2002 and of the whole enlargement in 2005 as a success.

The Commission constantly credited the peoples and governments of the candidate countries for the success in the CEECs progress towards becoming stable democracies, which may be seen as an effort to “support the governments of these countries” in communicating the “nature of the EU” and the benefits of enlargement not only in the 2004 and 2007 but also in upcoming rounds of enlargement⁷¹. In this effort, a separate section “Communicating Enlargement” and a rubric “Success Stories” were created on the Commission’s website on enlargement⁷².

As readily taken up in scholarly literature, the enlargement was deemed to be the EU’s most successful foreign policy⁷³ having helped candidate states in building stable democracies thanks to the specific “soft power” approach adopted by the EU⁷⁴. While it is questionable what criteria the Commission used in order to assess the democratic character of the new entrants and whether the Commission had any standards at all in this area⁷⁵, in this case again the discourse may have been shaped more by a reaction to identity and legitimacy questions than by an ‘objective’ evaluation of the policy and its results. Thus, Nathalie Tocci and Elsa Tulmets both underline that the normative aspect of the EU policy was highlighted as a response to the Robert Kagan’s critique of the EU international weakness⁷⁶. For example, Tulmets sees the stress on the EU’s “soft power” in speeches by Benita Ferrero-Waldner, the Commissioner for External Relations and the European Neighborhood Policy, as an instance of such a reply to criticism⁷⁷.

⁶⁹ Strategy paper 2002: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0700:FIN:EN:PDF>, p. 8

⁷⁰ “Making a success of enlargement” is the title of the 2001 Strategy paper.

⁷¹ Strategy paper 2009: http://ec.europa.eu/enlargement/pdf/key_documents/2009/strategy_paper_2009_en.pdf, p. 15.

⁷² http://ec.europa.eu/enlargement/projects-in-focus/communicating-enlargement/index_en.htm

⁷³ European Commission (2003), “Wider Europe-Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours”, Communication to the Council and the Parliament, 11.03.2003.

⁷⁴ Olli Rehn, the Commissioner for Enlargement: Agence Europe (2005), “EU/Enlargement: The Commission pleads for ‘consolidation’ of enlargement process...”, *Bulletin Quotidien Europe* 9065, 10.10.2005, p. 2.

⁷⁵ Kochenov finds it striking that “even unable to demonstrate any more or less clear standard of democracy and the Rule of Law to promote, the Commission behaved throughout the pre-accession as if it was in possession of such a standard and as if it applied such a standard in practice” (“The Failures of Conditionality...”, p. 14).

⁷⁶ Nathalie Tocci (2008), “Profiling Normative Foreign Policy: The European Union and its Global Partners” in Nathalie Tocci (ed.) (2008), *Who is a Normative Foreign Policy Actor? The European Union and its Global Partners*, Brussels: Center for European Policy Studies: 1-23, p. 3; Elsa Tulmets (2007), “Can the Discourse on “Soft Power” Help the EU to Bridge its Capability- Expectations Gap?”, *European Political Economy Review* 7: 195-226, p. 201.

⁷⁷ Tulmets, “Can the Discourse on “Soft Power”...”, p. 201.

Whatever the motivation behind it – be it the EU’s strength or its weakness, – the discourse on “soft power” has been consistently used by the Commission in making claims about the enlargement. Already in the 2001 Strategy paper, the EU presents itself as a prominent and “well-placed” normative power with “substantial political and moral weight,” “espousing the same Treaty-based principles in their internal and external policies”. The 2006 Strategy paper puts it in a very academically-sounding way: “Enlargement reflects the EU’s essence as a soft power, which has achieved more through its gravitational pull than it could have achieved by other means.” As rightly noted by Manners, “from a discourse (or narrative) perspective, EU norms tell the story of legitimating the EU in political encounters... [and] progressive normative power provides a meta-narrative” about EU foreign policy⁷⁸.

From a comparative perspective, such self-description is rather a common feature in the discourse of big international actors than a specificity of the EU⁷⁹. Case studies collected in Tocci’s edited volume on normative global actors⁸⁰ demonstrate however that between the actor’s self-image and its perception by international partners there can be a considerable gap since “normativity is contested”⁸¹. As stated by Hartmut Mayer, “What is shouted out loudly with confidence... in Brussels is received elsewhere as nothing more than the old ‘whispers’”⁸².

The EU’s efforts to create a ‘European Narrative’⁸³ to present itself as an “important, influential and legitimate actor”⁸⁴ may turn out to be successful or not; what is important for us is that the development and carrying out of the enlargement policy was simultaneously an expression of the EU’s identity⁸⁵ and a contribution to the (discursive) construction of this identity. Thus, the incoherence between the EU demands to candidate countries and its internal standards have contributed to the inclusion of human rights as a formal part of the *acquis communautaire* in 1999⁸⁶, to the (re)direction of the deliberation on the EU’s foreign policy and collective understandings of it⁸⁷ and to the formulation of other EU policies, such as the neighborhood policy⁸⁸.

⁷⁸ Ian Manners (2004), “From civilian to military power: the European Union at a crossroads? Normative Power Europe Reconsidered”, CIDEL Workshop, Oslo 22-23 October 2004, p. 7.

⁷⁹ Nathalie Tocci and Ian Manners (2008), “Comparing Normativity in Foreign Policy: China, India, the EU, the US and Russia” in Tocci (ed.), *Who is a Normative Foreign Policy Actor?...*: 300-327, p. 301.

⁸⁰ Tocci (ed.), *Who is a Normative Foreign Policy Actor?...*

⁸¹ Tocci and Manners, “Comparing Normativity in Foreign Policy...”, p. 303.

⁸² Hartmut Mayer (2008), “Is it still called ‘Chinese Whispers’? The EU’s rhetoric and action as a responsible global institution”, *International Affairs* 84(1): 61-79, p. 63.

⁸³ Margot Wallström, European Commissioner for Institutional Relations and Communication Strategy, quoted in Hansen-Magnusson and Wiener, “Studying Contemporary Constitutionalism...”, p. 21.

⁸⁴ Solana quoted in Tulmets, “Can the Discourse on “Soft Power”...”, p. 202.

⁸⁵ Gergana Noutcheva (2008), “Enlargement Policy towards Central and Eastern Europe, 1989-2007: Normative Intended” in Tocci (ed.), *Who is a Normative Foreign Policy Actor?...*: 26-30.

⁸⁶ Mayer, “Is it still called ‘Chinese Whispers’?...””, p. 69.

⁸⁷ Ulrich Sedelmeier (2003), “EU Enlargement, Identity and the Analysis of European Foreign Policy: Identity Formation through Policy Practice”, EUI Working Papers, RSC No. 2003/13, p. 3.

⁸⁸ For example, Tulmets, “Policy Adaptation...”.

Conclusion

**“The Commission will complement [its] efforts by communicating the EU’s enlargement policy...
It will tackle myths by providing facts”**

(European Commission, “Enlargement Strategy and Main Challenges 2009-2010”⁸⁹)

In this paper we do not contend that the evaluation of the enlargement and the pre-accession strategy has been completely decoupled from reality and that the claims of success by the European Commission are futile attempts to put on brave face while performing badly. In the ideological and discursive struggle to gain legitimacy and retort criticism, the European Commission has acted as a rational political actor, using success as a ‘plot device’⁹⁰ for its policy justification. All political actors interested in a policy and benefiting from it tend to portray policy accomplishments, while masking problematic actions and contrary evidence that may counterbalance or invalidate claims of success⁹¹.

The Commission’s evaluation of the enlargement strategy was motivated by other reasons than the evaluation of the candidate countries’ policies and it is therefore possible to identify multiple inconsistencies between the ‘findings’ in these two kinds of assessment. While the evaluation of the candidate countries’ policies happened in an asymmetrical setting, where the EU was the only actor to judge on the policies’ results⁹², and was a one-time enterprise, the evaluation of the enlargement and the pre-accession strategy was played on a different field. It is better understood in the light of the identity and legitimacy crises, which propelled the EU towards looking for remedies, one of them being an active search and creation of myths about its polity⁹³. Such a choice is not surprising since narratives, or storylines, ‘condense’ large amounts of factual information and mix it with the normative assumptions and value orientations⁹⁴.

In 1996, Daniela Obradovic noted that “the lack of a mythological discourse of European integration makes dubious an attempt to enhance policy legitimacy in the EU”⁹⁵, thus not only strongly linking the concepts of legitimacy and myth-making, but also pointing out one possible direction to strengthen the legitimacy basis of the EU. The enlargement has provided to the EU a challenging occasion to add to the existing repertoire of narratives and meta-narratives on Europe, such as ‘European integration as

⁸⁹ COM(2009)533, Brussels, 14.10.2009.

⁹⁰ Barbara Czarniawska (2010), “The uses of narratology in social and policy studies”, *Critical Policy Studies* 4(1): 58-76.

⁹¹ Frank R. Baumgartner and Bryan D. Jones (1983), *Agendas and Instability in American Politics*, Chicago: University of Chicago Press.

⁹² In this setting, the European Commission was all at once a negotiator, broker and enforcer, as Alun Jones and Julian Clark put it: (2008), “Europeanization and Discourse Building: The European Commission, European Narratives and European Neighbourhood Policy”, *Geopolitics* 13: 545-571, p. 549. See also Noutcheva, “Enlargement policy...”, p. 28.

⁹³ Lenschow and Sprungk, “The Myth of a Green Europe”, p. 134.

⁹⁴ Fischer, *Reframing Public Policy...*, p. 87.

⁹⁵ Quoted in Hansen, Lene and Michael C. Williams (1999): “The Myths of Europe: Legitimacy, Community and the “Crisis” of the EU”, *Journal of Common Market Studies* 37(2): 233-49, p. 238.

the answer to war and peace in Europe'; 'European integration as the provider of economic prosperity'; 'European integration as the guardian of the European social model and way of life'; 'European integration as the catalyst for democratic transition and stabilization', – an addition especially needed since “these stories no longer convince”⁹⁶.

One of the hurdles of this myth-making process was the need to reconcile various interests within the EU so that the discursive practices incrementally elaborated by the Commission “represented a compromise between the different and sometimes contradictory political priorities of the member states”⁹⁷. This may be one of the reasons of an uneven elaboration of the enlargement strategy and its principles. In fact, although conditionality appeared as a principle of the enlargement early in the process, it was not until the moment the ten new member States had entered the Union, with Bulgaria and Romania at the end of negotiations and new candidates knocking at the door, that a new Commission and a new Commissioner on Enlargement took pains to elaborate an ideological basis for enlargement criteria and give a definition of ‘conditionality’⁹⁸.

What resulted from this patchy and irregular effort to offer a new basis for solidarity and identity of the enlarged Union is a new narrative on almost unqualified success of enlargement, made possible by joint endeavor of the peoples, governments and EU institutions across the wider Europe. Whether the European identity created in such discursive negotiations and reformulations⁹⁹ is efficient in filling the legitimacy gap and appearing closer to its citizens as well as stronger on the international scene, is still a question. What hopefully appears from this paper is that “even in an age of fluid identities and multi-level governance, we still need stories”¹⁰⁰ to help us understand and communicate policies and politics.

⁹⁶ Mayer, “Is it still called ‘Chinese Whispers’?..”, p. 77. See also Smith claiming that while the EU lacks a mythology, the ‘age of myth’ being over, it may appear too late to create one: A. D. Smith (1992), “National Identity and the Idea of European Unity”, *International Affairs* 68(1): 55-76.

⁹⁷ Tulmets, “Policy Adaptation...”, p. 58.

⁹⁸ Strategy papers 2005 and 2006.

⁹⁹ Michal Krzyzanowski (2005), “‘European Identity wanted!’ On discursive and communicative dimensions of the European Convention”, in Wodak and Chilton, *A New Agenda...*: 137-164, p. 139.

¹⁰⁰ della Sala, “Political Myth...”, p. 16.

ANNEX I. ISSUE CATEGORY LIST

0. 1. General evaluative remarks

0.2. International treaties

1. INTEGRATION

1.1. General integration of minorities

- 1.1.1. Integration program
- 1.1.2. Awareness-raising and involvement

1.2. Language integration of minorities

- 1.2.1. Language training (for professional use)
- 1.2.2. Language certification system (outside of naturalization)

1.3. Socio-economic integration of minorities

1.4. Political integration of minorities

1.5. Cultural integration

1.6. Historical issues

2. EDUCATION

2.1. Primary and secondary

- 2.1.1. General concerns on the education system
- 2.1.2. Teachers of State language
- 2.1.3. Teaching material

2.2. Tertiary

3. LANGUAGE USE

3.1. General use

- 3.1.1. Personal names
- 3.1.2. Personal documents

3.2. Use in official communication

- 3.2.1. Language use in courts
- 3.2.2. Language use in administration and authorities
- 3.2.3. Requirements to candidates in elections
- 3.2.4. School administration

3.3. Requirements in professional use

- 3.3.1. Public sector
- 3.3.2. Private sector

3.4. Public signs

3.5. Media

4. ADMINISTRATIVE CAPACITY

4.1. Administrative capacity of ombudsman

- 4.1.1. Reinforcing capacity
- 4.1.2. Creating new offices

4.2. Administrative capacity of citizenship bodies

4.3. Administrative capacity of language training bodies

- 4.3.1. Lack of teachers
- 4.3.2. Lack of teaching material
- 4.3.3. Funding

4.4. Administrative capacity of integration bodies

4.5. Funding school system

5. CITIZENSHIP

5.1. Language training for naturalization

- 5.1.1. Number of teachers of the State language
- 5.1.2. Cost of enrollment for courses

5.2. Legal matters of citizenship

5.2.1. Residence permits and passports

5.2.1.1. *Issue of permanent vs. temporary residence permits*

5.2.1.2. *Income requirements*

5.2.1.3. *Issue of exchanging old passports for new ones*

5.2.2. Rights of non-citizens

5.2.3. Political rights of non-citizens

5.2.4. Family reunification & immigration quota

5.3. Procedures of naturalization

5.3.1. Naturalization procedure as a whole

5.3.2. Language test rules

5.3.3. Cost of the enrolling for examination

5.3.4. Bureaucratic delays and barriers

5.3.5. Naturalization procedures for children

5.3.6. Citizenship / History test rules

5.3.7. Awareness measures

6. ROMA

6.1. General integration of Roma

6.1.1. Anti-discrimination

6.1.2. Integration program

6.1.3. Administrative capacity

6.1.2.1. *Police*

6.1.2.2. *Roma bodies*

6.1.4. Legal status

6.2. Socio-economic integration

6.2.1. Housing

6.2.2. Unemployment

6.2.3. Healthcare

6.3. Political integration and participation

6.4. Education

6.4.1. Access to education

6.4.2. Segregation of education systems

6.4.3. Teachers and teaching material

6.5. Cultural integration

ANNEX II. HORIZONTAL CONSISTENCY TABLES

ESTONIA	1998	1999	2000	2001	2002
Progress Report Conclusion	Naturalisation of stateless children	Language Law	Implementation of Language Law; Reinforcement of ombudsman; Integration of non-citizens	Integration of non-citizens; Naturalisation; Language training; Raising awareness; Implementation of Language Law; Financial resources	Naturalisation; Implementation of Language Law
Accession Partnership short-term in the Report	Naturalisation; Stateless children; Integration of non-citizens incl. stateless children; Language training	Naturalisation; Integration of non-citizens incl. stateless children; Language training; Language Law	<i>No requirement</i>	<i>No requirement</i>	Implementation of Language Law
Accession Partnership medium-term in the Report	N/A	Naturalization; Language training	Monitor Integration program implementation	<i>No requirement</i>	
Accession Partnership short-term separate document		Language Law; Integration of non-citizens; Language training; Financial support	N/A	Integration of non-citizens; Language training; Financial support; Implementation of Language Law	N/A
Accession Partnership medium-term separate document		Integration of non-citizens; Language training			
Strategy Papers	Stateless children	Language Law	<i>No requirement</i>	Implementation of Language Law	<i>No requirement</i>

LATVIA	1998	1999	2000	2001	2002
Progress Report Conclusion	Language learning	Language Law; Language learning	<i>No requirement</i>	No requirement	<i>No requirement</i>
Accession Partnership short-term in the Report	Naturalization; Integration of non-citizens incl. stateless children; Language training	Naturalization; Integration of non-citizens incl. stateless children; Language training; Shortage of teachers; Funds for language training	Implementation of language law; Shortage of teachers; Funds for language training	Implementation of Language Law	Implementation of Language Law; Naturalization; Integration of non-citizens; Financial support; Language training
Accession Partnership medium-term in the Report	N/A	Integration of non-citizens; Naturalization incl. stateless children	N/A	Shortage of teachers; Funds for language training	N/A
Accession Partnership short-term separate document		Language law; Integration of non-citizens; Language training; Financial support		Implementation of Language Law; Integration of non-citizens; Language training; Information campaigns; Financial support	
Accession Partnership medium-term separate document		Integration of non-citizens; Language training			
Strategy Papers	No requirement	Language Law	<i>No requirement</i>	Implementation of Language Law	<i>No requirement</i>

ROMANIA	1998	1999	2000	2001	2002	2003	2004
Progress Report Conclusion	Roma situation	Roma situation; Financial resources for Roma; Discrimination of Roma	Roma situation; Discrimination; Access to education	Implementation of Roma Strategy; Implementation of anti-discrimination law	Financial resources for Roma	Financial resources for Roma; Property restitution	Discrimination of Roma
Accession Partnership short-term in the Report	N/A	Elaboration and implementation of Roma Strategy	Elaboration of Roma Strategy	Implementation of Roma Strategy	Implementation of Roma Strategy; Implementation of anti-discrimination law	Minority Protection	Minority Protection
Accession Partnership medium-term in the Report		Implementation of Roma strategy; Discrimination; Employment; Education	Access to education	<i>No requirement</i>			
Accession Partnership short-term separate document		Elaboration and implementation of Roma Strategy	N/A	N/A	Implementation of Roma Strategy	Implementation of Roma Strategy	N/A
Accession Partnership medium-term separate document		Implementation of Roma Strategy; Discrimination; Access to employment; Access to education					
Strategy Papers	Roma situation	Roma situation; Multicultural university; Treatment of minorities	(Roma situation); Multicultural university	(Roma situation);	(Roma situation)	Implementation of Roma Strategy	<i>No requirement</i>

SLOVAKIA	1998	1999	2000	2001	2002
Progress Report Conclusion	<i>No requirement</i>	Roma situation; Discrimination of Roma	Minority protection; Roma situation	Implementation of Roma Strategy; Implementation of Minority Language Law; Roma situation	Roma situation; Discrimination of Roma
Accession Partnership short-term in the Report	Minority Language Law	<i>No requirement</i>	Roma situation; Discrimination of Roma	Roma situation	Roma situation; Implementation of Minority Language Law
Accession Partnership medium-term in the Report		<i>No requirement</i>	<i>No requirement</i>	Implementation of Minority Language Law	
Accession Partnership short-term separate document	N/A	Roma Situation; Discrimination of Roma	N/A	Roma situation; Implementation of Minority Language Law	N/A
Accession Partnership medium-term separate document	N/A	Implementation of Minority Language Law; Roma situation	N/A		N/A
Strategy Paper	Roma situation	<i>No requirement</i>	(Roma situation)	(Roma situation)	(Roma situation)

Reporting under International Conventions:
A Genre Analysis

Reporting under International Conventions: a Genre Analysis

Introduction

A conventional image of international negotiations is likely to be a summit held on an issue of global or local importance, where representatives of states (and possibly of international organizations) discuss conditions, concessions and reservations of an agreement. Likewise, the conventional image of diplomatic discourse is a speech made by an official of a ministry of foreign affairs in such a setting, or a written document produced by an anonymous author on the behalf of a state that addresses one or more party(ies). Diplomatic interactions and the means of attaining diplomatic goals have attracted close academic attention and have been thoroughly studied. Thus, the interest in the use of language in diplomacy is obviously not new.¹ However, analysis of diplomatic language with methods of text analysis is just emerging and still virtually absent from the literature.² The studies available usually focus on public speeches pronounced by diplomats or political figures in an international setting³ or on texts of international conventions.⁴

One of the reasons for this reticence and slow development is the fact that a significant amount of diplomatic communication is confidential, and gaining access to both the setting of its production and to its product – texts – is problematic. This is why there is more research on text and discourse analysis in negotiations in general⁵ than on diplomatic negotiations in particular.

In this situation of primary document shortage, I would like to point out the existence of a large unexplored stock of diplomatic texts not properly considered by analysts of discourse and language.

¹ Coral Bell, *The Conventions of Crisis: A Study of Diplomatic Management* (Oxford: OUP, 1971), Robert L. Jervis, *The Logic of Images in International Relations* (Princeton, NJ: Princeton UP, 1970), Jovan Kurbalija & Hannah Slavik (eds.), *Language and Diplomacy* (University of Malta: DiploProjects; Rommetveit, 2001), Ragnar Rommetveit, *On Message Structure. A Framework for the Study of Language and Communication* (London: John Wiley, 1974), Raymond Cohen, 'Diplomacy 2000 BC to 2000 AD', Paper presented at the Annual Conference of British International Studies Association, Southampton, 1995; Christer Jönsson & Martin Hall, 'Communication: An Essential Aspect of Diplomacy', *International Studies Perspectives*, vol. 4, n. 2, May 2003, pp. 195-210, Geert Hofstede, (2004). 'Diplomats as Cultural Bridge-Builders', in Hannah Slavik (ed.), *Intercultural Communication and Diplomacy* (Malta, Geneva: DiploFoundation, 2004).

² Sivan Cohen-Wiesenfeld, 'Le Discours Diplomatique dans la Correspondance Franco-Allemande 1871-1914', *Argumentation et Analyse du Discours*, vol. 1, 2008.

³ Olga M. Pasnich, 'Functional and Structural Specificities of Diplomatic Communication Texts', Auto-résumé of the thesis submitted for obtaining PhD title in linguistics (In Ukrainian) (Kyiv, 2001), Olga Doncheva-Navratilova, Olga, 'Interpersonal Meanings in the Genre of Diplomatic Addresses', *Brno Studies in English*, vol. 35, n. 2, pp. 129-143, Hafriza Burhanudeen, 'Diplomatic Language: An Insight from Speeches Used in International Diplomacy', *Akademika*, vol. 67, 2005, pp. 35-50; Hafriza Burhanudeen, 'Registers in International Diplomacy: Language of Speeches', in Wilaiwan Khanittanan & Paul Sidwell (eds.), *SEALSXIV: Papers from the 14th Meeting of the Southeast Asian Linguistics Society (2004)*, Volume 1, 2008, pp.59-66.

⁴ Germana D'Acquisto & Stefania D'Avanzo, 'The Role of 'Shall' and 'Should' in Two International Treaties', *Critical Approaches to Discourse Analysis Across Disciplines*, vol. 3, n. 1, 2009, pp. 36-45.

⁵ See a recent overview in, for example, Linda L. Putnam, 'Negotiation and Discourse Analysis', *Negotiation Journal*, April 2010, pp. 145-154.

To discover it, one needs to take a step back from the conventional idea of international negotiations as a bright and glorious moment when the parties meet and fix the setting for their future obligations. Instead, one should look into the routine of the subsequent interaction within the framework of the treaty obligations. This means retreating from the stage of the elaboration of an international consensus to the domain of its laborious technical realization and often problematic survival.

As a matter of fact, some international conventions have a report-based monitoring mechanism: after the convention is signed and ratified, states are required to report their compliance with the obligations to a treaty body within the international organization (IO). As a rule, an initial report from the state opens the first monitoring cycle, followed by an assessment by the IO's treaty body. Sometimes states have a possibility to reply to the assessment and then the political organ of the IO adopts a resolution on the state's respect of its obligations. The procedure continues after several years with regular reports. Among international conventions with this type of monitoring mechanism are the following: International Covenant for Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture, Inhuman or Degrading Punishment; Convention on the Rights of the Child; Framework Convention on Climate Change – within the structure of the United Nations; Charter for Regional or Minority Languages, and Framework Convention for the Protection of National Minorities – within the Council of Europe.

Hence, a part of the responsibilities of any ministry of foreign affairs is to regularly draft reports to IOs on the situation in the areas covered by international conventions. I suggest considering these discursive interactions as written negotiations between states and IOs on the extent of the respect of the convention and ways of improving compliance.

This article is an explorative study of state reports drafted within such monitoring mechanisms. It aims to identify conventional ways of writing reports in order to define the existing norms and acceptable variation. The method applied is genre analysis since this approach is “concerned with deepening the understanding of what is expected and conventionalized in [...] professional language practice”.⁶ The corpus used for this study comprises the first parts of 28 state reports submitted to the Council of Europe within the monitoring mechanism of the Framework Convention for the Protection of National Minorities (FCNM).

The remainder of the paper is divided into five parts. The first and second parts present the method and case selected. The three following parts focus on generic patterns at the level of the word, the level of the sentence, and the level of the text structure, respectively. Conclusions sum up the results.

⁶ Julia Isabel Hüttner, *Academic Writing in a Foreign Language. An Extended Genre Analysis of Student Texts* (Berlin: Peter Lang, 2007), p. 19.

1. Method and Corpus

1.1. Genre Analysis

In the literature there is no consensus on the use of the terms *register*, *genre*, *text type* or *style*. This article uses Mikhail Bakhtin's definition of *genre* as a relatively stable thematic, compositional, and stylistic type of utterances developed in a particular sphere of communication.⁷ Consequently, genre analysis is a corpus-based approach to studying and describing conventional ways of composing oral and written utterances. It can be used for evaluating 'normalcy' of a specific utterance by underlining the way it deviates from the most common way of composing similar utterances. Also, it is very useful for training non-native language learners and members of professional communities – such as lawyers, academic researchers or diplomats – to appropriately compose specific types of texts.

Two trends are distinguishable in genre analysis. One focuses on the rhetorical structure of the text, conventional 'moves' and their functions. The brightest representatives of this trend are John Swales and Vijay Bhatia who have studied predominantly academic and business genres. The second trend is a more linguistic approach looking not only at the text structure, but also at regularities in lexical and grammatical choices. Douglas Biber may be considered the most important figure promoting this trend. He prefers to call the analysis of situational language varieties *register studies*, but the choice of terms is not of great importance here as the central element in the definition of genre/register is purpose. According to Swales: "The principal criterial feature that turns a collection of communicative events into a genre is some shared set of communicative purposes."⁸ Hence, genres are essentially communicative ways to achieve certain goals. Discovering the whole set of these purposes requires effort and forces the researcher to look beyond obvious stylistic characteristics or some preconceived beliefs.

Procedurally, the essence of genre analysis (or register studies) has been clearly and concisely formulated by Biber: "Typical register studies have three components: description of the situational characteristics of a register, description of the linguistic characteristics, and analysis of the functional or conventional associations between the situational and linguistic features."⁹ In other words, statistics on generic patterns acquire meaning only in connection with a wider context of the document drafting. While it is not always possible to establish why exactly some patterns become conventionalized, it is reasonable to advance informed hypotheses about generic norms.

It is important to distinguish between linguistic competence¹⁰, communicative competence¹¹ and genre competence.¹² A text may be written in correct English and be tailored to the contextual and

⁷ Mikhail Bakhtin, *Speech Genres and Other Late Essays* (Austin: University of Texas Press, 1986), pp. 60-64.

⁸ John Swales, *Genre analysis: English in Academic and Research Settings* (Cambridge: Cambridge UP, 1990), p. 46.

⁹ Douglas Biber, 'An Analytical Framework for Register Studies'. in Douglas Biber and Edward Finegan (eds.), *Sociolinguistic Perspectives on Register* (Oxford: OUP, 1994), pp. 31-56, p. 33.

¹⁰ Noam Chomsky, (1965), *Aspects of the Theory of Syntax* (Cambridge, Massachusetts: MIT Press, 1965).

situational needs and still be unacceptable because the author violated important conventions of genre (wrong structure, wrong style or wrong topics). Displaying genre competence in a diplomatic setting is an important part of image creation¹³ and face work¹⁴ of the author, and this article offers a view on how different states manage this task.

For detecting and describing generic patterns, this paper proceeds in three steps, starting from the level of the word and moving to the level of the sentence and then to that of the text (see Table 1). While many aspects may be addressed on each level, the table illustrates only those selected for this study.

<p>LEVEL OF THE TEXT</p> <p>Text structure</p> <p>Topics covered</p>
<p>LEVEL OF THE SENTENCE</p> <p>Quoted speech</p> <p>Sentence length as an indicator of genre formality</p>
<p>LEVEL OF THE WORD</p> <p>Part-of-speech balance</p> <p>Use of modal verbs as an indicator of stance and genre hybridity</p> <p>Formulaic sequences</p>

Table 1: Three-step procedure of genre analysis

1.2. Case Selection and Corpus Description

The Framework Convention for the Protection of National Minorities was open for ratification in 1995 and entered into force in 1998. In 1999, states submitted first reports and now 39 countries of the Council of Europe are at different stages of the monitoring process, two thirds of them being already in the third cycle of monitoring. The Framework Convention was chosen because it covers a wide-range of countries and was adopted relatively recently. Since the Convention entered into force in 1999, it was among the first conventions with a report-based monitoring mechanism for the countries that regained independence at the beginning of the 1990s, so-called ‘new democracies’ (ND). Other countries were recognized as democracies *and* have had experience in drafting reports on human rights to international organizations (especially to the UN) prior to the ratification of the FCNM (‘old

¹¹ Michael A.K. Halliday, *Explorations in the Function of Language* (London: Edward Arnold, 1973).

¹² Bakhtin, *Speech Genres*.

¹³ Gyorgy Szondi, ‘Public Diplomacy and Nation Branding: Conceptual Similarities and Differences’, *Discussion Papers in Diplomacy*, vol. 112, 2008 (The Hague: Netherlands Institute of International Relations ‘Clingendael’); Simon Anholt, *Another One Bites the Grass: Making Sense of International Advertising* (NY: John Wiley & Sons, 2000).

¹⁴ Penelope Brown & Stephen Levinson, *Politeness: Some Universals in Language Usage* (Cambridge: Cambridge UP, 1987); Erving Goffman (ed.), *Interactional Ritual: Essays on Face-to-Face Behavior*. Garden City, NY: Anchor Books, 1967.

democracies', OD).¹⁵ Differentiating between these two groups of countries in the analysis allows to explore possible variation in their approach to the reporting.

In the first two cycles, state reports usually consist of two parts. The first part exposes the state's approach to the implementation of the Convention, and the second describes the implementation article by article. For this paper, only the first parts of the reports are analyzed as perhaps the most individualized parts – they provide background information helping to interpret the subsequent part(s). Moreover, the considerable size of the reports, ranging between 20 and 160 pages, would have made it nearly impossible to individually run a detailed analysis of a considerable number of whole reports.

Reports were chosen according to straightforward criteria. First, all of the fifteen reports from the first year of reporting (1999) were included in the sample. Subsequently, three state reports were excluded because the states claimed they had no national minorities on their territory and their ratification of the Convention should be regarded as an act of solidarity (Liechtenstein, San Marino and Malta). Second, two reports submitted in 2000 and authored by the 'old democracies' were added to the remaining twelve reports¹⁶ in order to balance the number of 'old' and 'new democracies'. The first parts of the first and second reports of these fourteen countries were included in the sample, which consists therefore of 28 texts (nearly 95'000 words). For some parts of the analysis, second parts of four selected reports were included, enlarging the corpus by 68'000 words.

2. Situational Characteristics of State Reporting

Since genre analysis relates the study of language to professional practice,¹⁷ it is essential to outline the context of the reporting under the FCNM before turning to the study of the texts' characteristics.¹⁸ This paper applies Biber's framework of situational characteristics in order to facilitate comparisons of this specific genre of diplomatic communication to other genres. The precise aim of this framework is to "specify the situational characteristics of registers in such a way that the similarities and differences between any pair of registers will be explicit."¹⁹

2.1. Communicative Characteristics of Participants

The addressor and the addressee are institutional authors. The reports are usually drafted by an official in the ministry of foreign affairs with the help of colleagues from other ministries and institutions concerned, checked and edited by supervisors and translated into English. The formal authorship is

¹⁵ Cyprus was included in this category because it had had by then experience in drafting reports at least since the 1980s, namely, to the UN.

¹⁶ The reports by Finland, Estonia, Romania, Hungary, Italy, the Slovak and the Czech Republics, UK, Cyprus, Denmark, Croatia and Ukraine.

¹⁷ Hüttner, *Academic Writing in a Foreign Language*. p. 19.

¹⁸ Here data from interviews with members of the Advisory Committee and its Secretariat and with officials involved in the process of drafting from Finland and Estonia are used.

¹⁹ Biber, 'An Analytical Framework for Register Studies', p. 41.

attributed to the Government of the state and the official addressee of the reports is the Advisory Committee of the FCNM – a body composed of up to eighteen independent experts appointed by the Committee of Ministers. The Advisory Committee is the direct addressee of the reports, but there are other potential audiences such as minorities themselves, national and international NGOs active in the domain of national minority protection, political parties, and kin-states of national minorities.

2.2. Relations between Addressor and Addressee

The issue of power relationships in this scenery is a nuanced one as it is often the case in an international setting. On the one hand, the *Framework Convention* is vague and not directly applicable and there are no effective ways to reward or sanction the states based on their level of compliance. As the name of the Advisory Committee itself indicates, its main role is to advise the states on how to perform better if political will is present. In the absence of political will, the Committee does not have a lot of tools; it can only formulate the most acute problems as first-importance issues in its communications to the Committee of Ministers. This body can – and usually does – include these points in the Resolution on the state as a means of shaming and blaming.

On the other hand, the interaction with the Council of Europe may be more important for ‘new democracies’. Thus, when twelve countries applied to the membership of the European Union (EU) in the latest round of enlargement, the EU put forward as criterion for admission respect of national minorities. Since the EU has neither its own norms nor a monitoring mechanism in this domain, it used the experience and expertise of the Council of Europe for judging the situation of national minorities in candidate countries. This indirect participation of the EU, able to provide real incentives and to impose sanctions (denying membership), made the interaction with the Council of Europe more significant.

2.3. Setting

Although only partly open, reporting is situated entirely in the public sphere, as it is an interaction between a state and an IO. The reports are usually made available to the public, but opinions on them appear after a considerable pause and usually only together with the Government’s comments. As to the drafting of the report itself, the practice varies: some states extensively use input from the interested local actors such as NGOs, some others do not involve civil society and draw on internal resources. The location where the reports and opinions are drafted is removed and, as a rule, significant laps of time separate individual moves in these written negotiations. In the first cycle, there could be up to two years between a state report and the opinion, and up to one year between the opinion and the Government’s comments. The second cycle and third cycles usually go faster. Also, there is a standard pause of five years between the reports.

2.4. Relation of Participants to the Text

In general, diplomatic language is a product of considered and attentive choice of words, constructions and structures that serve the best interest of the author and the state. As Nick rightfully notes, “nobody should nor indeed does assume that the words used [in diplomatic discourse] are the result of insufficient knowledge of a language, inadequate translation or even less – a momentarily bad mood!”²⁰ In the same vein, Pascual states: “There are few other messages which are so carefully and prudently drawn up...”²¹ Analyzing structural composition, syntactic and lexical choices in the reports, we keep this idea of intentionality in mind.

Still, reports are by far not the most carefully designed kind of diplomatic communication. Since they contain a lot of technical information and are usually quite long, mistakes, incoherencies and omissions are much more likely to occur and be tolerated in this kind of text than in shorter communiqués that have a more pronounced political dimension and more powerful addressees. Also, while the opinions are the main output texts and actually a *raison d'être* for the Advisory Committee, for the states the reports are just one of many other reports sent to international organizations. Consequently, there exist important time constraints due to concurrent activities: this may be the main reason behind quite common delays in submitting reports.

The addressor's attitudinal stance toward the text is removed and formal, although some sensitive issues, such as the national history account included in the first report, may have an important ideological dimension. As for the author's epistemological stance toward the text, *conviction* seems to be rather safe terminology, because one of the aims of the report's author is to demonstrate the state's good will in offering extensive and objective information on the issue.

2.5. Topics

The topics of the reports are strictly defined by the Convention's theme and the Advisory Committee's Outline designed to help the states draft their reports. The Convention's main topics are policy towards national minorities in such domains as education, participation, language use and non-discrimination. The expected content of the reports is a description of the national minorities' situation in the country (covering both legislative guarantees and implementation) on these issues including appropriate statistics and examples.²² Relevant information on the country's history, economy and social characteristics is also included.

²⁰ Stanko Nick, 'Use of Language in Diplomacy', in Kurbalija & Slavik, *Language and Diplomacy*, pp. 39-47, p. 44.

²¹ Edward Pascual, 'Pragmatics in Diplomatic Exchanges' in Kurbalija & Slavik, *Language and Diplomacy*, pp. 225-232, p. 231.

²² The first Outline gives very precise instructions as to the content of each suggested subsection of the report. Thus, for each article, five types of information should be present: 1) "narrative" with the description of the current situation and recent developments, 2) "legal" mentioning all the relevant legislation (to be also attached

2.6. Purposes and Goals

Some of the obvious purposes of the state in this interaction include: creating and maintaining a *good image* of the state on the international scene; guaranteeing *sovereignty* by minimizing the intervention of the IO into the internal affairs of the state; and *cooperation*, i.e. smoothing relations with the IO and creating a favourable and fruitful climate of mutual respect and collaboration. Among less obvious aims are the following: *instrumental use* of the interaction with the IO to gain bargaining power or improve the image on other scenes (this accounts for the possible presence of multiple audiences); aims related more directly to *domestic audiences* (for example, to smooth interethnic tensions by providing only specific types of information); aims attributable to the *drafting body* itself such as time- and effort-optimization of the drafting process.

If we adopt Biber's scale of purposes, one may say that the first purpose is to persuade: states aim to persuade the Advisory Committee that they do everything in their power to observe the Framework Convention. Therefore, the purpose of information transfer may be judged as having medium to high importance because persuasion necessarily relies on providing sufficient information on the matter. The fact that persuasion is prioritized over the information transfer reflects the possible selectivity of the information provided.²³ Empirically, many states prefer to present the existing legislation in detail (formal compliance) and provide less information on the actual practices (behavioral compliance), where presumably more problems may arise.

3. Level of the Word

On the level of the word, comprising lexical and grammatical choices, three of the numerous potential aspects to analyze were chosen for this paper: (1) the use of modal verbs hinting at the author's stance; (2) the part-of-speech balance reflecting dynamic versus static focus of the text; and (3) the use of pre-fabricated formulaic sequences indicating the level of formalization and mastery of the genre by individual authors. There is undeniably much more material in the texts than these dimensions, such as the use of technical terms, foreign words and key terms that unveil inter-generic interactions and thematic composition of the texts. Even so, for purposes of analytical focus this paper will limit itself to the aspects outlined above.

in appendix), 3) "state infrastructure" describing the institutional setup, 4) "policy" depicting concrete measures and programs, and 5) "factual" with the evaluation of implementation with statistics and survey data (Advisory Committee of the FCNM, 'Outline for reports to be submitted pursuant to article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities', 1998).

²³ For the support of this view, see Cohen-Wiesenfeld, 'Le Discours Diplomatique dans la Correspondance Franco-Allemande 1871-1914', pp. 3, 8.

3.1. Use of Modal Verbs

The use of modal verbs can reveal something about the author's stance on her own words.²⁴ For example, it can show how certain is the author about the information provided, whether the events recounted appear acceptable to the author, and how strong is the author's conviction in suggested developments. For the overview analysis of modal verb usage, this paper relies on Douglas Biber's three-pronged classification. Based on the study of verb meaning, he distinguishes among necessity modals (*must*, *should* and *shall*), possibility modals (*may*, *might*, *could* and *can*), and predictive modals (*will* and *would*).

From the analysis of state reports it appears that some states (Spain, Slovakia and Ukraine) do not make use of modal verbs at all. Also, the modal 'ought to' and the semi-modal 'going to' are not used in any of the reports. From the three categories of modal verbs, in the first cycle necessity modals are the most used (109 occurrences), while possibility and predictive modals are less common (78 and 72 occurrences, respectively).²⁵ However, in the second cycle the predictive and possibility modals are used more often (58 and 55 occurrences) than necessity modals (41). This second-cycle pattern is consistent with Biber's findings on the relative frequency of the three groups of modal verbs for his English corpus.²⁶

If we accept that the use of necessity modals for expressing an obligation constrains more than the use of predictive and possibility modals ("measures must be taken" versus "measures would be / could be taken"), it seems reasonable to suggest that the states become more reluctant to constrain themselves in the second cycle of monitoring. Possibly, the way the Advisory Committee used the commitments they had undertaken by expressing necessity of action in the first cycle makes the states more willing to formulate their promises in terms of desirability, possibility or planned actions using predictive and possibility modals in the second cycle.

Passing from absolute to relative numbers, one immediate finding is that in state reports modal verbs are rare travelers. In Table 2, frequencies of individual modal verbs in reports are displayed together with two reference values. The first reference value stems from the Corpus of Contemporary American English (COCA),²⁷ the only freely available important tagged corpus²⁸ that allows for comparisons. The sample is academic discourse on law and politics – the closest possible to the genre

²⁴ Casey Mari Keck & Douglas Biber, 'Modal Use in Spoken and Written University Registers: A Corpus-Based Study', in Roberta Facchinetti & Frank Palmer (eds.), *English Modality in Perspective: Genre Analysis and Contrastive Studies* (Berlin: Peter Lang, 2004), pp. 3-25, Douglas Biber, *University Language: A corpus-based study of spoken and written registers* (Amsterdam: John Benjamins, 2006).

²⁵ The categories are taken from Douglas Biber, *Dimensions of Register Variation. A Cross-Linguistic Comparison* (Cambridge: Cambridge UP, 1995), pp. 106-107. Based on the study of the meanings in which modal verbs are used in state reports, they are classified in the following way: necessity modals are *must*, *should* and *shall*; possibility modals are *may*, *might*, *could* and *can*; predictive modals are *will* and *would*.

²⁶ Biber, *Dimensions of Register Variation*, 107.

²⁷ <http://www.americancorpus.org/>

²⁸ "Tagged" means that each word has a tag attached to it with the information on its basic grammatical characteristics (part-of-speech tagging).

of state reports in COCA. The second reference column displays the data from the Longman Student Grammar of Spoken and Written English on the frequency of modal verbs in academic texts.²⁹

	<i>State Reports</i>		<i>1st cycle reports³⁰</i>		<i>Reference corpora</i>	
	<i>1st cycle</i>	<i>2nd cycle</i>	<i>OD</i>	<i>ND</i>	<i>COCA</i>	<i>Longman</i>
would	405	469	704	219*	2546	1400
shall	626	247	302*	516	169	150
could	184	247	127*	516*	1199	800
can	589	913	1167	574	2325	3000
should	460	567	671	391*	1111	1200
might	74	49	48*	49*	594	700
may	589	148	1073	273	1604	2800
will	920	962	1475	865	2284	2100
must	442	197	736	218*	880	1300

Table 2: Frequencies of modal verbs, per million words

All the modals except *shall* are used markedly less frequently in the reports than in reference corpora. The average frequency of modal verbs is 4'290 per million words (pmw) in the first cycle and 3'800 pmw in the second cycle.³¹ This contrasts with Biber's findings that situate the average frequency of modal verbs in English around 13'500 pmw.³² For those three cases where frequency data are suitable for comparison by group (*can*, *may* and *will*, see note 30), 'old democracies' use more modal verbs than 'new democracies'. In general, in the first cycle frequency of modal verbs is 6'300 pmw for 'old democracies' and 3'300 pmw for the 'new democracies'. However, the very low number of modal verbs in virtually all the reports makes it impractical to draw meaningful comparisons.

Shall is an interesting case. Williams notes that *shall* is the most widely used modal construction in legal texts in English.³³ Because it is only rarely used in all the other genres, *shall* is a clear marker of legal language, and its massive presence in state reports points out the hybrid nature of the genre and, indirectly, the high level of formality of state reports. Indeed, *shall* appears mostly in quotations from legal acts and in reported speech on legislation as shown in the following example: "The document ['The Fundamentals of the Estonian Cultural Policy'] states that decisions pertaining to cultural policy and allocation of funds *shall* be based, inter alia, on the following principles..."³⁴

²⁹ Douglas Biber, Susan Conrad, Geoffrey Leech, *Longman Student Grammar of Spoken and Written English* (Pearson Education Limited, 2002), p. 178. The values are approximate because originally they are displayed in a bar graph.

³⁰ In those cases where at least half of the states in the group did not use a given modal verb, an asterisk is placed by the value.

³¹ These are aggregated average values. There are two exceptions to the rule: UK in the first cycle had 9300 modal verbs pmw, Finland in the second cycle had 10000 modal verbs pmw. The UK's first report (its first part) contained an important piece from another genre – political speech, and it can be a reason of the deviation.

³² Douglas Biber, *Dimensions of Register Variation*, p. 107.

³³ Christopher Williams, *Tradition and Change in Legal English. Verbal Constructions in Prescriptive Texts* (Bern: Peter Lang, 2005), pp. 113-127.

³⁴ Government of Estonia, 'Report submitted by Estonia pursuant to article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities', 1999.

In many cases, occurrences of *shall* stem from the quotes from the Framework Convention. Indeed, *shall* appears with the frequency of 16'320 occurrences pmw in the FCNM and it is not even the highest value one can find in official documents.³⁵ The link between the hybridity of the genre of state reports and quotations is also established statistically: there is 3.4 times more reported speech in the first cycle than in the second, and 3.9 times more occurrences of *shall*. Also, 'old democracies' used *shall* substantially less frequently, demonstrating a less conservative approach.

3.2. Part-of-Speech Balance

The proportion of nouns to verbs is an indicator of the type of information presentation. Biber uses the nouns/verbs ratio in his multidimensional analysis to differentiate between texts that privilege dynamic versus static packaging of information.³⁶ The more the nouns outnumber the verbs in a text, the more static is the packaging of information and, generally speaking, the more formal is the genre. Static packaging is the most characteristic of official documents and the least of oral conversations.³⁷

In Biber's English corpus, the mean proportion of nouns is 18% and the maximum is nearly 30%. In state reports, the proportion varies between 31% and 39%,³⁸ which is a clear indicator of a formal genre with a conventionally low proportion of verbs. In the second cycle, the proportion of nouns is in most cases even higher; hence, this pattern remains consistent over time.

Country	First cycle		Second cycle	
	Nouns in %	Ratio nouns to verbs	Nouns in %	Ratio nouns to verbs
UK	32	1.91 ³⁹	38	2.57
Italy	32	2.60	32	1.94
Cyprus	32	2.81	33	2.59
Denmark	32	2.20	36	3.00
Finland	34	2.14	37	3.18
Austria	31	2.37	33	2.62
Spain	31	2.47	38	2.81
OD average		2.51		2.70
Standard deviation		0.3 (0.25)		0.4

Table 3: Proportion of nouns and verbs in the reports, 'old democracies'

³⁵ A study shows that *shall* is used with the frequency of 19'500 pmw in the UN Charter and of 21'200 pmw in the European Charter for Human Rights (D'Acquisto & D'Avanzo, 'The Role of 'Shall' and 'Should' in Two International Treaties', p. 40).

³⁶ Douglas Biber, Susan Conrad, Randi Reppen, *Corpus Linguistics. Investigating Language Structure and Use* (Cambridge: Cambridge UP, 1998), pp. 75-76.

³⁷ Biber, *Dimensions of register variation*.

³⁸ The reports (only text, without tables, headings and footnotes) were tagged with Stanford POS tagger (<http://nlp.stanford.edu/software/tagger.shtml>). Statistics on the frequency of parts of speech were obtained with the help of MAXQDA software (version 10, www.maxqda.com).

³⁹ The unusually low noun/verb proportion for the UK may be due to the fact that the first part of the report contains a political speech and is, consequently, a highly mixed genre.

For ‘old democracies’, the average weighted⁴⁰ ratio is 2.51 nouns to one verb in the first cycle, compared to 2.7 nouns to one verb in the second cycle. The standard deviation for this group is rather low: 0.3 for the first cycle (0.25 without the UK, see note 39), and 0.4 for the second cycle. This finding suggests that ‘old democracies’ have established a common understanding of the stylistic genre norm from their prior experience in drafting reports to IOs.

<i>Country</i>	<i>First cycle</i>		<i>Second cycle</i>	
	<i>Nouns in %</i>	<i>Ratio nouns to verbs</i>	<i>Nouns in %</i>	<i>Ratio nouns to verbs</i>
Slovakia	32	3.44	34	3.90
Romania	34	3.00	37	3.60
Ukraine	36	3.38	39	6.12*
Croatia	34	3.64	33	3.13
Hungary	37	2.80	37	3.48
Estonia	33	2.71	34	2.54
Czech Rep.	32	2.49	35	2.86
ND average		3.05		3.46 (3.23)
Standard deviation		0.43		1.18 (0.5)

Table 4: Proportion of nouns and verbs in the reports, ‘new democracies’

The average weighted ratio for the ND group is 3.05 nouns to one verb in the first cycle and 3.46 in the second cycle, which is somewhat higher than the corresponding values for the ‘old democracies’. The standard deviation is 0.43 and 1.18 in the first and second cycles, respectfully, and is therefore higher than for the ‘old democracies’. This result may be interpreted as proof of a lower level of genre competence for this group of countries.

Importantly, the standard deviation in the second cycle drops to 0.5 and the average value to 3.23, if Ukraine is not taken into account. In fact, the second Ukrainian report displays an exceptionally high ratio of nouns to verbs: 6.12 to one. The reason is the massive use of passive voice and nominalizations, which stylistically reads as an extremely bureaucratic ‘wooden’ language. The fact that in the first cycle Ukraine is not a clear outlier in the sample may mean that the difference is due to specific personal preferences of the author (or the translator) of the second report or to a change in internal instructions.

3.3. Functional Formulaic Sequences

When speaking about the level of formality of a text, one must mention the amount of pre-fabricated elements – those elements readily available to the author so that she does not have to use creativity. Examples of these elements are found in lexical bundles such as “for the sake of” or “taking into

⁴⁰ The nouns to verbs ratio of each country’s report is weighted according to the part of the text in the group’s corpus (% of words in the total word count). Thus, in the calculation of the mean value the largest report ‘weights’ more than a short one.

account.” Because of their ready-made character, formulaic sequences are processed more quickly than non-formulaic language and are therefore more efficient⁴¹. Besides, they possess a pragmatic utility when dealing with specific situations: as each genre presupposes accomplishment of a set of purposes, suitable ways and linguistic means of these purposes’ fulfilment develop and get conventionalized over time. Among them are particular formulaic sequences placed in appropriate places of text.⁴²

Because of their efficiency, formulaic sequences (FS) are used so often that some scholars believe that the ‘open choice’ principle is less applicable to language structure than the ‘idiom principle’.⁴³ According to different estimates, formulaic elements make up to 52% of naturally occurring speech.⁴⁴

This study focuses on functional formulaic sequences (FFS) and, more specifically, on the FFS that help organize information in state reports.⁴⁵ In contrast to idiomatic phraseological FS,⁴⁶ this group of FS is used for pragmatic purposes and is more easily acquired by all categories of genre learners than idiomatic FS. Consequently, one may expect more differences in their use based on the genre versus language proficiency.⁴⁷

The analysis of commonly occurring phrases of two and more words in the reports brought up fifteen such sequences. As reflected in Table 5, among the most frequently used FFS are *according to* and *in accordance with*. These formulaic sequences underscore the citational nature of the reports: after these FFS legal acts or official documents are mentioned or quoted. A very similar function is fulfilled by some other FFS: *on the basis of*, *based on*, and *in respect of*. Another group of FFS is designed to refer to and/or give additional information on specific topics and to introduce new topics: *as well as*, *in particular*, *for example*, *in addition*, *in (this) connection (with)*, *as far as*, and *i.e.*. The remaining three FFS (*referred to as*, *the fact that* and *the number of*) cannot be grouped as they fulfil different functions. While *referred to as* helps to introduce abbreviations and shortenings, the other two FS stand on the border between functional and idiomatic formulaic sequences.

⁴¹ Kathy Conklin & Norbert Schmitt, ‘Formulaic Sequences: Are They Processed More Quickly than Nonformulaic Language by Native and Nonnative Speakers?’, *Applied Linguistics*, vol. 29, n. 1, pp. 72-89.

⁴² Florian Coulmas, ‘On the Sociolinguistic Relevance of Routine Formulae’, *Journal of Pragmatics*, vol. 3, 1979, pp. 239-66, Florian Coulmas, *Conversational Routine* (The Hague: Mouton, 1981).

⁴³ John Sinclair, *Corpus, Concordance, Collocation* (Oxford : OUP, 1991).

⁴⁴ Britt Erman & Beatrice Warren. ‘The Idiom Principle and the Open-Choice Principle’, *Text*, vol. 20, 2000, pp. 29-62. This is true especially for English; see Biber et al., *Longman Student Grammar of Spoken and Written English*.

⁴⁵ The function of these formulaic sequences is to “act as a frame for the important content” and to “indicate which pieces of information are about to come” (Hüttner, *Academic Writing in a Foreign Language*, p. 98).

⁴⁶ This is Hüttner’s distinction. See Hüttner, *Academic Writing in a Foreign Language*, p. 96.

⁴⁷ Hüttner, *Academic Writing in a Foreign Language*, pp. 96, 92.

<i>Formulaic sequences</i>	<i>Total</i>	<i>HUN</i>	<i>AUS</i>	<i>CZR</i>
As well as	86	11	30	14
According to	65	12	13	11
In accordance with	49	17	4	10
In particular	42	2	9	6
in addition	39	7	15	5
In (this) connection (with)	39	23	7	4
Referred to as	38	18	0	14
The fact that	32	4	8	4
On the basis of	31	8	0	3
The number of	29	8	15	2
Based on	27	5	1	7
i.e.	25	12	3	2
For example	14	2	3	2
In respect of	12	0	2	5
As far as	11	0	5	1
Total	539	129	115	90

Table 5: Frequency of formulaic sequences in state reports (absolute numbers)

Turning to the relative numbers, one can see that the countries unevenly use formulaic sequences. While the average frequency of FFS in all the reports is 5'700 FFS pmw, this value is 10'400 for Austria and 8'700 for Hungary and the Czech Republic. If it is true that the frequent use of formulaic elements points to a higher genre competence and a higher level of genre formalization, we have to conclude that Hungary, Austria and the Czech Republic show one or both of these characteristics. It seems, however, that such a conclusion reaches too far. In fact, at the time of publishing their first FCNM report, Hungary and the Czech Republic had very limited experience of reporting to international organizations. Still, if this experience is not a crucial factor in developing the mastery of the genre quickly, there is a need for better conceptualizing the factors explaining the use and functions of formulaic sequences in state reports.

It is instructive to see, in connection with this finding, that the frequency of modal verbs in the reports of Hungary and the Czech Republic is closer to the values of 'old democracies' than 'new democracies'. Also, in terms of part-of-speech balance, in the ND group, Hungary and the Czech Republic together with Estonia show the lowest nouns-to-verbs ratio, close to the average of the 'old democracies'. This finding does not hold only for Hungary in the second cycle. If for other levels of analysis the findings are consistent with those presented here, it is reasonable to state that these three countries are the fastest learners in the sample, 'catching up' with more experienced reporters surprisingly swiftly and accurately.

4. Level of the Sentence

On the level of the sentence, several aspects may be chosen for analysis: for example, type (simple, compound and complex sentences), structure and length of sentence, patterns of linking parts of

sentences (use of conjunctions), etc. In this study, the focus is on the sentence length as an indicator of the level of genre formality and on the amount of quoted speech as an aspect of the hybrid nature of the genre (previously demonstrated by the use of the verb *shall*). Because most quotations stem from legal texts, it is expected that on average, reports with a bigger amount of quoted speech will also display longer sentences.

4.1. Average Sentence Length: Empirical Evidence

Table 6, in which three groups of states are distinguished according to average sentence length (<25; 25-30; >30 words), shows that only a few countries exhibit coherence in regards to the sentence length.⁴⁸ As a rule, the sentence length of individual countries changes rather markedly from the first to the second cycle: on average, the difference is of one third. Hence, the ‘state authorship’ seems not to be the defining factor. Nor is the text size: there is apparently no link between the size of the text and the average sentence length (ASL).

Country	ASL 1 st cycle	Words	Country	ASL 2 nd cycle	Words
Spain	18.93	568	Finland	26.35	1502
Finland	19.74	829	Croatia	26.73	1898
UK	21.11	1182	Czech Rep.	26.87	5294
Hungary	22.83	6279	Estonia	27.85	947
Estonia	24.46	2764	Austria	28.12	6159
Denmark	25.85	2042	UK	33.33	1533
Ukraine	27.76	3081	Hungary	33.79	8481
Czech Rep.	28.86	5108	Romania	34.27	8910
Romania	29.33	3666	Italy	35.57	498
Austria	29.47	4892	Slovakia	36.57	1097
Cyprus	31.97	4700	Denmark	37.2	1674
Croatia	37.45	6854	Cyprus	38.29	1340
Slovakia	39.86	837	Spain	38.5	154
Italy	40.22	11544	Ukraine	43.71	1049

Table 6: Average sentence length in the first and second cycles

Although the standard division of the cases into two groups seems in this context inappropriate, there is a chance that a difference exists between the reports of the ‘old’ and ‘new democracies’ (Table 7). There is indeed a difference in the weighted ASL, which is consistent through both cycles, but it is

⁴⁸ Austria, Slovakia and the Czech Republic show a difference in sentence length of less than 10% from the first to the second cycle. Italy, Estonia and Romania show a difference of less than 20%.

very small. Probably it cannot be considered important enough to allow for formulating conclusions on the level of formality in two groups.

<i>First cycle</i>	Weighted ASL for OD	28.09
	Weighted ASL for ND	29.12
<i>Second cycle</i>	Weighted ASL for OD	31.19
	Weighted ASL for ND	32.42

Table 7: Weighted ASL for first and second cycle

This level of analysis is strongly linked to the level of the word. The following example may illustrate this connection: in eleven out of fourteen cases longer sentences in one cycle than in the other also means a higher nouns-to-verbs ratio.⁴⁹ In the case of the second Ukrainian report not only the ratio of nouns to verbs is extremely high – 6.12, – but also the sentence length is surprisingly high – 43.71 words per sentence. In this aspect, the second Ukrainian report is almost as formal as the Framework Convention itself (45.3 words per sentence).

4.2. Relationship between Sentence Length and Quoted Speech

Given that the reports quote quite extensively not only the Framework Convention, but also domestic legal acts that tend to have quite complex syntax and long sentences, the ASL may be connected to the amount of quoted speech. To check for this effect, the proportion of the directly quoted speech in the reports was measured⁵⁰.

<i>Country</i>	<i>ASL 1st cycle</i>	<i>Quotes</i>	<i>ASL 2nd cycle</i>	<i>Quotes</i>
UK	21.11	32.40%	33.33	2.41%
Italy	40.22	7.49%	35.57	-
Cyprus	31.97	5.49%	38.29	13.73%
Denmark	25.85	-	37.20	-
Finland	19.74	-	26.35	-
Austria	29.47	4.52%	28.12	4.08%
Spain	18.93	-	38.50	-
Slovakia	39.86	-	36.57	-
Romania	29.33	4.94%	34.27	1.40%
Ukraine	27.76	-	43.71	-
Croatia	37.45	5.30%	26.73	-
Hungary	22.83	-	33.79	-
Estonia	24.46	0.04%	27.85	-
Czech Republic	28.86	0.92%	26.87	-

Table 8: ASL and proportion of quoted speech in state reports

⁴⁹ There are nine ‘pure’ cases and two cases where the ratio change between two cycles is insignificant (<10%).

⁵⁰ Only the text in quotation marks and structurally highlighted quotations were taken into account here. Reported speech (such as “the Committee concludes in its report that...”) was not included.

As is evident in Table 8, in the cases of Italy, Cyprus and Croatia, the higher proportion of quoted speech indeed leads to longer sentences on average. The evidence is opposing for the UK, but here the reason is the nature of the speech quoted: contrary to most of the other cases, the first UK report does not contain extensive quotations from legal acts, but a long political statement. The inclusion of political discourse brings the average sentence length down. However, overall, in too many cases quoted speech is absent in the first part of the reports or its proportion is minimal, which does not allow for making robust conclusions.

One can reasonably suggest that the proportion of quoted speech is higher in the second part of the reports, because it contains more factual information (including a description of the legal framework) and usually reproduces the relevant articles of the Framework Convention entirely. The ASL in the Convention is indeed high and there is also partial evidence from the first parts that quotations make the sentences longer. An analysis on a restricted sample was run to check for this regularity (Table 9).

		<i>Austria</i>	<i>Finland</i>	<i>Estonia</i>	<i>Czech Republic</i>
<i>Part 1</i>	ASL	29.47	19.74	24.46	28.86
	Quoted	4.52%	-	0.04%	0.92%
<hr/>					
<i>Part 2</i>	ASL	29.36	24.53	27.18	29.09
	Quoted	9.30%	17.20%	10.02%	14.71%

Table 9: ASL and proportion of quoted speech, first and second parts of first reports

The link between the amount of quoted speech and sentence length proved correct in three cases out of four. The Finnish report extensively quotes from the Convention, and due to the report’s small size (below 10'000 words), the quoted articles compose 17.2% of the text. The ASL in the second part therefore rises from 19.74 to 24.53 words. The same is true for Estonia. While for the Czech Republic the difference is minimal, for Austria the result is even reversed. Even so, the difference in the ASL of the two parts of the Austrian report is so small that it cannot unequivocally undermine the initial hypothesis.

5. Level of the Text

On the level of the text, choices may be made as to the compositional structure of the text and the topics used. Unlike grammatical, stylistic and structural aspects of report drafting on the level of the word and sentence, on the level of the text there exists a clear generic norm – the Outline provided by the Advisory Committee to facilitate both reporting and monitoring (see note 22). In this section, the amount of deviation from the Outline is studied to see how the states use generic resources.

5.1. First Cycle of Reporting

5.1.1. Formal Requirements to the Structure of the Reports

According to the Outline, the reports have to be divided in two parts and the purpose of the first part of the reports is to provide “an introduction on the way in which the Party has sought to implement the Framework Convention.”⁵¹ The second part should contain information on the implementation of the Convention, article by article. The Outline contains advice and requirements on how to structure the report and its content, and provides fragmentary comments on its style. This guidance on the structure and content can be seen as an authoritative norm: in this case, the addressor itself defines the criteria for composing state reports correctly.

The Outline states that the first part should contain the following ten points: (1) a recent general statement on the policy of the state concerning the protection of national minorities; (2) information on the status of international law in the domestic legal order; (3) information on the unitary or federal character of the state; (4) a summary overview of the relevant historical development; (5) relevant information on the demographic situation; (6) information on the existence of so-called minority-in-minority situations; (7) basic economic data; (8) description of measures, practices and policies which states consider to have worked particularly well in promoting the overall aim of the Convention; (9) indication of the efforts they have made to promote awareness among the public and the relevant authorities about the Convention; and (10) indication of issues on which the support and advice of the Advisory Committee would be particularly welcomed.

5.1.2. Deviation from the Norm

In the first parts of the reports two additional points (topics) not included in the Outline are generally used: table of contents (excluding Spain) and a general introduction (excluding Cyprus). Optional points are distinguished, appearing in at least four reports: list of appendices, list of relevant legislation, and a detailed overview of the relevant policy and law. Moreover, point 10 is not included by any of the countries and therefore is not established in practice as obligatory.

Some interesting conclusions can be drawn from the amount of deviation from the Outline in two groups of countries (Table 10). If we exclude the point 10 on which none of the states give information, we see that the ‘old democracies’ comply with the requirements of the Outline in approximately half of the cases (48% of omissions), while the ‘new democracies’ comply in more than two thirds (27% of omissions).

	<i>Cases</i>	<i>Omissions</i>	<i>%</i>
1. All countries and points	140	61	44 %
2. Old democracies	70	37	53 %
3. New democracies	70	24	34 %

⁵¹ Advisory Committee of the FCNM, Outline 1998, p. 2.

4. Old democracies without point 10	63	30	48 %
5. New democracies without point 10	63	17	27 %
6. Old democracies without Italy	60	36	60 %
7. Old democracies without Italy and point 10	54	30	56 %
8. New democracies without Slovakia	60	15	25 %
9. New democracies without Slovakia and point 10	54	7	13 %

Table 10: Deviation from the Outline in the first cycle

A closer look at the country data reveals an outlier pattern of two countries: Italy and Slovakia. Italy complies extremely well with the Outline and Slovakia fails rather badly. If we exclude these two countries from the comparison, the contrast becomes stronger: omissions by the OD rise to 56%, and the omissions of the ND fall to 13%, indicating a virtually full compliance with the Outline.

This result can be interpreted as showing that the ‘old democracies’ behave more freely within the monitoring procedure, while the ‘new democracies’ prefer to give the full information required. The points on which the difference is specifically strong are the information on economic data, minority-in-minority situation, nature of the state and general statement: these data are often omitted by the ‘old democracies’ or included in appendices. It is reasonable to assume that ‘old democracies’ judge this information widely known and therefore not worth including in the introduction. The difference of approach illustrates the fact that the ‘new democracies’ use the occasion of the introductory part to present their state as well as to confirm the adherence to the international standards and norms.

5.2. Second Cycle of Reporting

5.2.1. Formal Requirements to the Structure

In the second cycle the Outline is different,⁵² and there are only four points to be included in the first part of the report: (1) information on the follow-up activities; (2) steps taken to disseminate information about the Convention and the monitoring; (3) steps aimed at improving participation of the societal actors in the implementation of the Convention; and (4) information on the continued dialogue with the Advisory Committee.

5.2.2. Deviation from the Norm

The additional obligatory points detected in the first cycle still apply: table of contents (excluding Spain and Estonia) and general introduction are present in all the reports. Four additional optional points are identified: a general statement on the minority protection policy (in eight reports), information on new legislation (in seven reports), information on policy developments (in seven

⁵² Advisory Committee of the FCNM, Outline for reports to be submitted pursuant to article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities, 2003.

reports), and information on other reporting activities and international context in general (in four reports).

	<i>Cases</i>	<i>Omissions</i>	<i>%</i>
1. All countries and points	56	21	37.5 %
2. Old democracies	28	12	43 %
3. New democracies	28	9	32 %
4. Old democracies without Italy	24	12	50 %
5. New democracies without Slovakia	24	7	29 %

Table 11: Deviation from the Outline in the second cycle

Although the difference is not so marked in the second cycle, the pattern identified for the first cycle remains: the ‘new democracies’ comply better with the authoritative generic norm than the ‘old democracies’ (50% to 29% with Italy and Slovakia excluded).

Conclusion

How should we interpret the results of genre analysis on the three levels?

The generic norm is clearly formulated only on the level of the text structure: it prescribes which topics should be covered in which parts of the report. This makes the enterprise of defining the amount of deviation straightforward: if a topic prescribed is not covered, the state deviates from the norm. In this respect, the group of ‘old democracies’ – states established on the international scene as recognized democracies and having participated in monitoring mechanisms of other conventions before joining the Framework Convention – show a very high level of deviation. Except for one outlier, six other ‘old democratic’ states fulfill only half of the requirements in their first two reports. This high deviation seems surprising since the ‘old democracies’ have experience in reporting and should have developed genre competence. An explanation may be found in the phenomenon of ‘genre bending’ described by Bhatia: he points out that those actors who feel competent in a genre may use its resources creatively and ‘bend’ the genre to better fulfill their purposes. They ‘appropriate generic resources’ and behave more freely within the generic norm.⁵³

As to the ‘new democracies’, they show an exemplary level of compliance with the authoritative norm. Again with one outlier, six states of the group respect the instructions in 87% of cases in their first reports and 71% of cases in their second reports. It seems reasonable to assume that this conformity is a signal to the Council of Europe and larger international community about these newly independent states’ respect for the rules and procedures on the international scene. Such behavior could be intended by these states as a means to obtain recognition as members *à part entière* of the

⁵³ Vijay Bhatia, “Interdiscursivity in Business Letters“, in Paul Gillaerts & Maurizio Gotti (eds.), *Genre Variation in Business Letters*, Linguistic Insights vol. 24, 2005 (Peter Lang), pp. 31-54, p. 33.

international democratic community, both knowledgeable and respectful of its rules. The lower conformity in the second cycle only supports the suggestion about the non-linear connection between genre competence and compliance with the genre norms.

On the levels of the word and the sentence, no clear genre norm is present, ready to be used by the reporting states. While the ‘old democracies’ could apply their experience in drafting reports under other international conventions, the ‘safe choice’ for the ‘new democracies’, who had had little such experience, seems a traditionalist one – preferring a conservative style of legal and official genres. Consequently, one can anticipate a generally more formal style in the reports submitted by this group of states. Moreover, the understanding of a suitable style among the ‘new-comers’ is presumably more versatile than for the states familiar with the genre. It is reasonable to expect more in-group variation in the ‘new democracies’ cluster.

The results essentially support these hypotheses. Overall, the style of the reports of the ‘new democratic’ states is indeed more formal: longer sentences, a higher proportion of nouns, more frequent use of ‘shall’, fewer modal verbs in general. However, the data are not always suitable for making meaningful conclusions about the amount of in-group variation. While for the nouns-to-verbs ratio the ‘old democracies’ indeed show a lower in-group standard deviation than the ‘new democracies’, the generally rare use of modal verbs and functional formulaic sequences prevents rigorous comparison of the two groups on these grounds. There is also fragmentary evidence that some of the states, new to the reporting process, learn faster than others. In some aspects, the Czech Republic, Hungary and Estonia are closer to the group of ‘old democracies’ than to their ‘own’ group.

Some in- and between-group variation can probably be explained by the hybrid (mixed) nature of the genre of state reports. The hybridity is illustrated by the frequent use of the modal *shall* and quotations from legal acts and political discourse. It is likely that varying mixes of genres (diplomatic, legal, official, technical, and political) account for differences in syntax and lexicon of the reports of different states. A deeper analysis of this aspect of state reports may prove very instructive.

Although this paper presents only the first results of an explorative study of state reports, I believe that observations and generalizations made at this stage already provide a better understanding of the link between the context of this written diplomatic communication and linguistic components of the reports. In the current situation, where the research on linguistic characteristics of diplomatic texts is virtually absent, findings of this study bring new insights into the mechanics of everyday diplomatic interactions.

Discursive Strategies
in Diplomatic Communication

Discursive Strategies in Diplomatic Communication

Introduction

Any study of compliance with international obligations hinges on the process of policy evaluation: who and how defines whether a state is compliant with the obligations and what should be done to remedy for the eventual drawbacks? Depending on the principles of evaluation, the logic and rationale for action of the evaluators and the role of the evaluated actors in this process, compliance may be judged differently from case to case¹. Indeed, empirical findings about a policy do not speak for themselves and need to be interpreted based on particular criteria, which are more often than not politically defined². While the literature on compliance with international treaties is abundant and rich both theoretically and empirically³, the process of monitoring – which is key to the ‘diagnosis’ of states’ behavior – has received relatively little attention. The question ‘Whether and to what extent do the states comply with international obligations?’ has been predominant in the study of the state’s compliance, but another – and not less valid – take on the issue is to ask ‘Who and how evaluates state’s policies and their compatibility with international obligations?’⁴.

In the functional approach to international organizations, the assessment of the monitored state’s level of compliance with the treaty’s obligations – the normative function of monitoring – is given priority over other understandings of the essence of monitoring⁵. There are however other ways of approaching monitoring procedures, for example, by considering them as a site for discussion, “for continued exchanges of views and formation of knowledge and opinions”⁶, contributing not only to a rise in awareness about international norms and states’ obligations⁷, but also to a progressive

¹ Nancy Fraser (1989), *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory*, Minneapolis: University of Minnesota Press.

² Frank Fisher (1990), *Technocracy and the Politics of Expertise*, Newbury Park: Sage.

³ For a recent overview of political science research on treaty violation and compliance, see Beth Simmons (2010), “Treaty Compliance and Violation”, *Annual Review of Political Science* 13: 273-296.

⁴ Indeed, as Kratochwil and Ruggie note, “what constitutes a breach of an obligation undertaken within a regime is not simply an “objective description” of a fact but an intersubjective appraisal” (Friedrich Kratochwil and John Gerard Ruggie (1986), “International organization: a state of the art on an art of the state”, *International Organization* 40(4): 753-775, p. 774). On the issue of difficult assessment of compliance, see also Oren Young (1979), *Compliance and Public Authority*, Baltimore: Johns Hopkins University Press.

⁵ Rainer Hofmann (2008), “Implementation of the FCNM: Substantive Challenges”, in Annelies Verstichel, André Alen, Bruno De Witte and Paul Lemmens (eds.), *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?*, Antwerp/Oxford/Portland: Intersentia: 159-185, p. 181.

⁶ Neta C. Crawford (2002), *Argument and Change in World Politics. Ethics, Decolonization, and Humanitarian Intervention*, Cambridge University Press, p. 35; see also Sia Spiliopoulou Åkermark (2008), “The Added Value of the Framework Convention for the Protection of National Minorities (I)”, in Verstichel et al., *The Framework Convention for the Protection of National Minorities...: 69-90*, p. 88.

⁷ Xinyuan Dai (2007), *International Institutions and National Policies*, Cambridge University Press.

routinization, incorporation of specific types of discourse and issue definition into domestic and international discourse⁸.

Acknowledging the pertinence and value added of such approaches, this paper suggests a novel perspective: monitoring as a communicative event, a discursive exchange between the state and the monitoring body, which can be analyzed with the tools of discourse and rhetorical analysis. As gracefully worded by Vivien Schmidt, “although political scientists in recent years have generated lots of ideas about ideas, they have engaged in comparatively little discourse about discourse”⁹. In my study of the monitoring process, “language becomes part of data analysis for inquiry, rather than simply a tool for speaking about an extra-linguistic reality”¹⁰. I argue that such a perspective allows for a better understanding of the dynamic and the internal logic of the participants’ discursive behavior through opening up to scholarly attention an unexplored body of diplomatic texts. While diplomatic communication is in its mass confidential, documents serving as part of the monitoring mechanism of international conventions are easily available in electronic form and often in several languages¹¹. This is a large pool of unexplored data¹², able to shed light on individual cases and making possible comparisons over time and cases, given that every state in the international system drafts and submits reports on its respect of international agreements, and many international organizations have a special body tasked with considering and writing opinions on these reports.

This paper’s aims are 1) to demonstrate the usefulness of monitoring documents in offering new insight into the logic of monitoring process in the domain of human rights, and 2) to suggest an analytical tool for meaningful and rigorous analysis and comparison of these documents, going beyond the ‘block’ logic of speech acts or interpretive qualitative analysis. With the help of this analytical tool I distinguish different discursive strategies that the treaty body and the states employ within the monitoring process, and on this material will test four theoretical explanations of monitoring: domestic logic, institutional explanation, dialogic dynamic and strategic calculations.

⁸ Thomas Risse-Kappen, Steve C. Ropp, and Kathryn Sikkink (1999), *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press.

⁹ Vivien A. Schmidt (2008), “Discursive Institutionalism: The Explanatory Power of Ideas and Discourse”, *Annual Review of Political Science* 11: 303-326, p. 304.

¹⁰ Michael Shapiro (1981), *Language and Political Understanding: The Politics of Discursive Practice*, New Haven: Yale University Press, p. 14.

¹¹ Examples of international conventions having a report-based monitoring mechanism: International Covenant for Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture, Inhuman or Degrading Punishment, Convention on the Rights of the Child, Framework Convention on Climate Change or Charter for Regional or Minority Languages. For an overview of self-reporting monitoring mechanisms, see Elisabeth Kornblum (1995), “A comparison of self-evaluating state reporting systems”. *International Review of the Red Cross* 304, available online at <http://www.icrc.org/eng/resources/documents/misc/57jmbt.htm>.

¹² To my knowledge, the only study analyzing monitoring documents uses them merely as a source of information on policy: Johan Albrecht and Bas Arts (2005), “Climate policy convergence in Europe: an assessment based on National Communications to the UNFCCC”, *Journal of European Public Policy* 12(5): 885-902.

Monitoring of human rights treaties

Procedures of monitoring by a treaty body are a means of holding states accountable for their behavior and checking its compatibility with the declared positions¹³. The act of ratification already signals that the state is ready to open a discussion on its domestic human rights practices and accepts the fact that by joining a convention it restricts the range of possible policy justifications and ‘legitimation strategies’¹⁴. The self-reporting obligation imposes further constraints on sovereignty¹⁵, not mentioning the submission to regular critique by the treaty body. It seems obvious that monitoring in itself is procedurally challenging for the state and is not only a ‘transmission wheel’ inserted between external demands (obligations of the treaty) and the need for domestic compliance.

This part exposes four theoretical explanations of the state’s and the treaty body’s behavior within the process of monitoring. By ‘behavior’ I mean discursive practices conveying different attitudes of the participants to the monitoring exchange. Thus, a state may adopt an open, cooperative and self-critical attitude to reporting and replying to the treaty body’s critique or, alternatively, to demonstrate a defensive or even aggressive approach. Its discursive behavior should not necessarily be a prolongation (or a beginning) of state’s policy compliance (transposition and implementation); such a vision of the monitoring is only one possibility. Other logics – institutional, dialogic, and strategic – may prove more pertinent in explaining the content of monitoring exchanges on both sides. Indeed, the treaty body also chooses from a range of possible discursive approaches by being, for example, more or less critical towards the reporting state.

Domestic logic

This explanation of monitoring explicitly links it to domestic circumstances of the monitored state. Following the logic of a ‘two-level game’¹⁶, it argues that a government with a positive stance on the issues regulated by an international convention will show an open and constructive attitude to the process of monitoring. It will be more ready to recognize deficiencies and will not act aggressively to critique by the treaty body, considering monitoring as a possibility to exchange ideas on the best ways towards compliance. To such actors, monitoring will offer legitimate justifications of political efforts, reinforcing the government’s position in relation to any domestic constituency opposing the chosen course of action¹⁷.

¹³ Beth Simmons (1998), “Compliance with International Agreements”, *Annual Review of Political Science* 1: 75-93, p. 88.

¹⁴ Ryan Goodman and Derek Jinks (2003), “Measuring the Effects of Human Rights Treaties”, *European Journal of International Law* 14(1): 171-183, pp. 176, 180.

¹⁵ Louis Henkin (1994), “Human Rights and State Sovereignty“, *Georgia Journal of International and Comparative Law* 25: 31-46, p. 41.

¹⁶ Robert D. Putnam (1988), "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization* 42: 427-460.

¹⁷ Guido Schwellnus (2009), “The Domestic Contestation of International Norms: An Argumentation Analysis of the Polish Debate Regarding a Minority Law”, *Journal of International Law and International Relations* 5(1):

In this version, monitoring follows the same logic as the domestic policy on the issue: a positively minded government will be open and cooperative even on problematic issues, since it is presumably where the advice is most needed¹⁸. A negatively minded government, on the other hand, will show itself as an uncooperative – defensive or aggressive – interlocutor in the monitoring exchange. There is no motivation for such a government to be more or less open on different issues, since it is likely that it will oppose the idea of external monitoring of its policies in principle.

An equivalent of domestic logic for the treaty body is the ideology of its umbrella international organization (IO). It consists of two elements. First, a commitment of the IO to the values and principles contained in the international treaty it hosts: in the case of a human rights treaty, the ideological position of the IO corresponds to a full dedication to the letter and the spirit of the treaty. Second, a philosophy of action: if the main purpose of monitoring is “an assessment as to whether and to what extent the pertinent domestic legislation and administrative practice conforms to the international obligations resulting from a state’s ratification” of the treaty¹⁹, the monitoring body is ought to give an objective evaluation of the state’s policy²⁰. Hence, the better the state’s performance and the greater its compliance with the treaty, the more positive the evaluation.

Institutional explanation

Monitoring exchange is in its essence a type of diplomatic communication – a highly codified and even ritualized genre²¹ taking place in an institutional setting of an international organization and government structures. Focusing on institutions within a discursive approach means looking at the “ways utterances relate to the specific institutional contexts and practices in which they can be meaningfully stated and understood”²². It is the institutions which offer a framework for acceptable and expected discursive interactions²³, and therefore institutional logics may have an important impact on the monitoring process and supersede the normative logic of the treaty body²⁴.

123-154. On a more general level, on communicative dynamics engaged within international regimes, see Kratochwil and Ruggie, “International organization...”, namely p. 768.

¹⁸ In this logic, the state’s discursive behavior may be seen as one dimension of its compliance – discursive compliance, understood as compliance with the expectations of the monitoring institution as to the actor’s discourse.

¹⁹ Hofmann, “Implementation of the FCNM: Substantive Challenges”, p. 181.

²⁰ This reasoning is subject to the weaknesses of legal positivism to the extent that it relies on the possibility of an ‘objective’ assessment and at times may even explicitly deny any negotiation of the meaning of compliance on a case-by-case basis (f.ex., Sia Spiliopoulou Åkermark, “The Added Value of the FCNM (I)”, pp. 88-89).

²¹ Jovan Kurbalija and Hannah Slavik (eds.) (2001), *Language and Diplomacy*, Mediterranean Academy of Diplomatic Studies, DiploFoundation; Constanze Villar (2006), *Le discours diplomatique*, Paris: L’Harmattan; Iver B. Neumann (2007), “‘A Speech That the Entire Ministry May Stand for,’ or: Why Diplomats Never Produce Anything New”, *International Political Sociology* 1: 183-200.

²² Frank Fisher (2003), *Reframing Public Policy – Discursive Politics and Deliberative Practices*, Oxford University Press, p. 89.

²³ Schmidt, “Discursive Institutionalism...”, p. 314.

²⁴ Martha Finnemore and Kathryn Sikkink (1998), “International Norm Dynamics and Political Change”, *International Organization* 52(4): 887-917, p. 899.

As to the state's side, the monitoring documents, such as reports and comments on the treaty body's conclusions (opinions or observations), are usually drafted by the Ministry of Foreign Affairs. Although other authorities involved in the policy area under review usually actively participate in the process, the final text is shaped by a body not dealing with the implementation of the policies and may therefore be at least partly 'shielded' from domestic policy logic. As a result, treaty commitments are 'decoupled' from actual behavior, as institutional sociology scholars notice²⁵. Such institutional factors as relative expertise in reporting, direct experience of interactions with the concrete treaty body, or knowledge of the particular international organizations' logic of monitoring may prove more important for shaping the monitoring interaction than political preferences. State actors responsible for reporting may indeed privilege their direct experience within the monitoring exchanges or institutional interests, such as effort-optimization, over a more distant logic of domestic political processes.

Effects of relative experience on the behavior within monitoring processes may be different. State actors who are novice in reporting may show greater openness at the beginning of monitoring to establish cooperative relationships with the treaty body²⁶, while more experienced actors may demonstrate stable discursive patterns through subsequent cycles of monitoring²⁷. Alternatively, if a new monitoring process differs from the already established and experienced ones in intrusiveness, intensity and the level of critique²⁸, it may represent a surprise for 'veteran' actors and provoke more defensive reactions as compared with novice members who don't have a reference yet²⁹.

As to the treaty body, a plausible institutional logic is effort-optimization serving simultaneously the institution's value of equal treatment. In this approach, each state is praised and criticized in a comparable proportion, which saves the effort of individualization and prevents claims of prejudiced treatment.

²⁵ Simmons, "Treaty Compliance and Violation", p. 289. In this logic, the reasons behind joining treaties – also those which are closely monitored – are different from the reasons guiding actual human rights practices (Wade M. Cole (2005), "Sovereignty relinquished? Explaining commitment to the international human rights covenants, 1996-1999", *American Sociology Review* 70: 472-496, p. 492).

²⁶ Jeffrey Checkel (2005), "International Institutions and Socialization in Europe: Introduction and Framework", *International Organization* 59: 801-826. According to Finnemore and Sikkink, "if states seek to enhance their reputation or esteem, we would expect states that are insecure about their international status or reputation to embrace new international norms more eagerly and thoroughly" (Finnemore and Sikkink, "International Norm Dynamics...", p. 906).

²⁷ For the notion of 'genre competence', see Mikhail Bakhtin (1986), *Speech Genres and Other Late Essays*, Austin: University of Texas Press, pp. 60-64.

²⁸ Stefan Oeter and Alastair Walker, "The case of the federal republic of Germany", in Sia Spiliopoulou Åkermark (ed.), *International Obligations and National Debates: Minorities around the Baltic Sea*, Mariehamn: The Åland Islands Peace Institute, 2006: 227-299, p. 288.

²⁹ In contrast with the domestic logic, here we speak not about the ideological positions of the actors, but about their level of involvement in the institution of monitoring. Both positively and negatively minded governments may be novices in reporting, and their discursive behavior will be affected by their expectations as to the process of monitoring and their experience in similar institutional settings. It is true that the level of politicization of state administration should be not too high for these dynamics to dominate.

Dialogic dynamic

This explanation is a text-based response logic, theoretically underpinned by imitation and reciprocity phenomena³⁰. The reasoning is straightforward: a more open and cooperative report calls for a more open and praising opinion, and a more positive opinion calls for an open and cooperative response, in the form of comments or next report. Through such an exchange a constructive and productive relationship is established between the parties, enhancing the efficiency of the whole monitoring process. If, however, the start is not so positive, the dynamic is likely to be transmitted to the subsequent stages of monitoring and jeopardize the enterprise or at least moderate its results.

Dialogic explanation situates monitoring at an even more distanced stage from domestic political concerns than the institutional logic, but the two theories are not contrary to each other. Dialogic reasoning centers on the development of a reciprocal relationship between the treaty body and the state party, but this development happens within an institutional framework in any case. Still, depending on the case, the two explanations may lead to different empirical expectations.

Strategic calculations

This explanation highlights the possibility of strategic use of discursive resources within a self-interested logic of action³¹. In this setting, under-socialized actors are aware of the accepted and praised discourse within an institutional framework and (insincerely) adopt it when it seems useful for the satisfaction of their interests. In the case of international treaty monitoring, a strategic state actor will demonstrate openness and self-criticism, which are praised by international organizations and other states, only selectively. It will be ready to admit criticism and accept advice on issues that are neither very problematic nor highly politicized, but will be defensive and possibly aggressive on issues of high political salience and conflictuality. Openness on a selected number of issues thus compensates for the inability to accept negative assessment on other, more important, questions³².

As to the treaty body, the logic of compensation is also applicable. In the case of detailed and objective assessment of highly sensitive issues, the amount of critique may prove exceeding the capacities of the acceptable for the state – the treaty body has to be cautious in criticizing a sovereign actor. In order not to provoke an overly defensive or hostile reaction from the state, the treaty body

³⁰ Alvin W. Gouldner (1960), “The Norm of Reciprocity: A Preliminary Statement”, *American Sociological Review* 25: 161-178. See also research on the communication accommodation theory: Howard Giles and Nikolas Coupland (1991), *Language: Contexts and Consequences*, Keynes: Open University Press.

³¹ Frank Schimmelfennig (2001), “The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union”, *International Organization* 55(1): 47-80.

³² In general, the same selectivity approach may be relevant for the implementation processes as well: “It does not seem unreasonable to believe that a state might have some broad strategic interest in having a higher compliance rate in one area than in another or even within a regime category.” (George W. Downs and Michael A. Jones (2002), “Reputation, Compliance, and International Law”, *Journal of Legal Studies* XXXI: 95-113, p. 101).

may choose to balance the critique with an equal or comparable amount of praise³³, disregarding the performance of each individual state. This logic of compensation may therefore reveal itself in a constant proportion of critique and praise across different cases.

Having formulated the four possible explanations of monitoring process (summarized in Table 1 below), in the next part I will present an analytical tool for the analysis of monitoring documents allowing to check for the relative relevance of these explanations on an example of treaty monitoring.

Table 1: Summary of theoretical approaches and their predictions

Theoretical explanation	Reporting state	Monitoring body
Domestic	<i>Prolongation</i>	<i>Performance-based</i>
	Positive position on minorities – open, cooperative approach; Negative position on minorities – defensive or aggressive approach	Better performance – more praise; Worse performance – more critique
Institutional	<i>Experience-based</i>	<i>Equal treatment</i>
<i>version 1</i>	Less experience – more open in 1 st round, less open in 2 nd round; More experience – stable discourse	Proportion of praise and critique similar across cases
<i>version 2</i>	Less experience – more open in 1 st round, less open in 2 nd round; More experience – less open in 1 st round, more open in 2 nd round	
Dialogic	<i>Reciprocity</i>	
	More positive assessment – more open attitude	More open self-reporting – more positive assessment
Strategic	<i>Compensation</i>	
	More sensitive issues – more defensive or aggressive approach	Proportion of praise and critique similar across time

Discursive strategies in the monitoring exchange

It is rare that political and institutional actors within a specific situation cannot choose among different ways of action called for by different motivations, be these strategic or normative³⁴. Each of the exposed explanations of monitoring is able to suggest motivations for the participant actors. If the aim is, however, to compare the relevance of each version on the material of monitoring documents, the suggested theoretical logics inscribed in each of them should not penetrate into the measurement and bias the comparison results. What I suggest as a possible solution is to view the exchange between reporting states and monitoring body as communication and approach the monitoring documents as texts.

³³ On the logic of ‘balancing’, see Spiliopoulou Åkermark, “The Added Value of the FCNM (I)”, pp. 75-6.

³⁴ “[M]ost significant political choices are significant and difficult precisely because they involve two or more conflicting claims for action on a decision maker. Actors must choose which rules or norms to follow and which obligations to meet at the expense of others in a given situation, and doing so may involve sophisticated reasoning processes” (Finnemore and Sikkink, “International Norm Dynamics...”, p. 914).

Taking into account that the essence of monitoring is policy evaluation, which necessarily contains not only positive, but also negative assessment, as well as the sensitive character of diplomatic communication in general, a theory of communication designed for dealing with politeness and prestige of the actors is an appropriate choice. I refer to politeness theory, as developed by Goffman and especially by Brown and Levinson in the 1970s-1980s³⁵. Interested in how language use helps construct social relationships, Brown and Levinson developed on the Goffmanian notion of *face*, defined as “the public self-image that every member wants to claim for himself”³⁶ and distinguished its two main components. *Positive face* corresponds to the want of having a good image and being appreciated and approved of, and *negative face* corresponds to the want of protecting one’s autonomy and the right to non-distraction.

Importantly, there is no normative connotation to these terms: *positive face* is not ‘good’ and *negative face* is not ‘bad’. In fact, positive face reflects the desire of communication, recognition and social success, while negative face echoes the aspiration for independence and self-sufficiency. These wishes are relevant for collective actors as well as individuals³⁷, and are universal, although groups and cultures may show differences in how they cater for them³⁸. Each actor in a social setting is moved simultaneously by these two types of wishes, which may seem contradictory, but are mutually necessary. For example, an actor longing for appreciation and demonstrating consequently an overly adaptive behavior will most probably not be valued since lacking integrity and self-consciousness: in this vein, Pruitt and Smith point out that ‘face work’ is needed in order for negotiators to be seen as ‘firm’ or ‘tough’³⁹.

By attending to both dimensions of face, actors create and maintain their identity, in a process of interaction with the interlocutor(s)⁴⁰. Indeed, face “can be lost, maintained, or enhanced, and must be

³⁵ Erving Goffman (ed.) (1967), *Interactional Ritual: Essays on Face-to-Face Behavior*, Garden City, NY: Anchor Books; Erving Goffman (1971), *Relations in Public: Microstudies of the Public Order*, New York: Basic Books; Penelope Brown and Stephen C. Levinson (1978), “Universals in Language Usage: Politeness Phenomena”, in Esther N. Goody (ed.), *Question and politeness*, Cambridge University Press.

³⁶ Penelope Brown and Stephen C. Levinson (1987), *Politeness: Some universals in language usage*, Cambridge University Press, p. 61.

³⁷ On ‘national face’, see Elena Magistro (2001), “Promoting the European Identity: *Politeness* Strategies in the Discourse of the European Union”, *Critical Approaches to Discourse Analysis Across Disciplines* 1, 51-73; on ‘nation brands’, see Simon Anholt (2006), *Competitive Identity, The New Brand Management for Nations, Cities and Regions*, Palgrave Macmillan and Gyorgy Szondi (2008), “Public Diplomacy and Nation Branding: Conceptual Similarities and Differences”, *Discussion Papers in Diplomacy* 112, The Hague: Netherlands Institute of International Relations ‘Clingendael’.

³⁸ Judith B. White, Renée Tynan, Adam D. Galinsky, and Leigh Thompson (2004), “Face threat sensitivity in negotiation: Roadblock to agreement and joint gain”, *Organizational Behavior and Human Decision Processes* 94: 102-124.

³⁹ Dean G. Pruitt and D. Leasel Smith (1981), “Impression management in bargaining: Images of firmness and trustworthiness”, in James T. Tedeschi (ed.), *Impression management theory and social psychological research*, NY: Academic Press, 247-267.

⁴⁰ Van Dijk rightfully notes that this perspective does not mean that identities are in constant flux and are locally negotiated ‘on the spot’. Indeed, they are relatively stable, but complex entities, which may be differently enacted in different communicative situations (Teun van Dijk (2010), “Political Identities in Parliamentary Debated”, in Cornelia Ilie (ed.), *European Parliaments under Scrutiny. Discourse Strategies and Interaction*

constantly attended to in interaction”⁴¹. Therefore, behavior of actors may be at least partly explained by the motivations linked to the attendance of the dimensions of face – termed *face wants* or *face concerns*. It is equally important for interactants to be sensitive to the face wants of their interlocutors since communication is likely to proceed smoothly only when the face of all participants is safeguarded⁴².

Consequently, a diplomatic message has to be formulated in a manner that softens its negative impact, offers a ‘face saving room for the opposing party to respond in kind’⁴³, masks divergences⁴⁴, avoids ‘direct, brutal, primary and unproductive confrontation’⁴⁵, and guards against hurting a third actor or disclosing confidential information. Indirectness plays a central role in the achievement of these tasks, as it allows for testing the water, advancing under cover and, if needed, retreating without cost⁴⁶.

Since in concrete interactions, international actors are faced with finding the right balance between positive and negative face wants, the process of drafting a report consists of constant trade-offs between the demonstration of good will and openness (*cooperation strategy* linked to the positive face) and the avoidance of intrusions and minimization of changes (*independence strategy* linked to the negative face). Likewise, the monitoring body faces its own dilemma: its expert position and functional role call for providing comprehensive critique, but cautious and selective critique may prove more productive exactly because it better takes into account the face wants of the state. These two general strategies, linked to the considerations of prestige and public image, constitute the first dimension of the “decision space”⁴⁷ within which discursive choices are realized in monitoring processes⁴⁸.

Practices, Amsterdam: John Benjamins, p. 33). What is however true is that “social identities are construed, acquired, distributed, modified, challenged and abolished” by discursive means, especially in the case of politic and – I would add – diplomatic identities (p. 35).

⁴¹ Brown and Levinson, *Politeness...*, p. 61.

⁴² Norman Fairclough (1993), “Critical Discourse Analysis and the Marketisation of Public Discourse: The Universities”, *Discourse & Society* 4(2): 133-168.

⁴³ Kamel S. Abu Jaber (2001), “Language and Diplomacy”, in Kurbalija and Slavik, *Language and Diplomacy*: 49-54, p. 50.

⁴⁴ Dietrich Kappeler (2001), “Texts in Diplomacy”, in Kurbalija and Slavik, *Language and Diplomacy*: 201-206, p. 205.

⁴⁵ Edmond Pascual (2001), “Pragmatics in Diplomatic Exchanges”, in Kurbalija and Slavik, *Language and Diplomacy*: 225-32, p. 231.

⁴⁶ Jervis quoted in Constanze Villar (2005), “Pour une Théorie du Discours Diplomatique”, *Annuaire Français de Relations Internationales* VI, Brussels: Editions Bruylant : 45-61, p. 52.

⁴⁷ Nils Erik Enkvist (1991), “Discourse strategies and discourse types”, in Eija Ventola (ed.), *Functional and Systemic Linguistics. Approaches and Uses*, Berlin: Mouton de Gruyter: 3-22, p. 13.

⁴⁸ In the current operationalization, the underlying ‘face wants’ are always those of the state. This does not obviously mean that the AC has no ‘face’ to lose; its expert status may be endangered by pointing out inconsistencies in its assessment, bias, lack of attention to details, etc. However, the state is not only a participant in the interaction, but its actions constitute the central subject under scrutiny. Indeed, while the competence of the AC is normally not and cannot legitimately be directly put into question by the state, the AC, on its side, can and does put into question efficacy, proportionality and appropriateness of state policies. This is why the state’s ‘face’ is more explicitly and directly endangered in this interaction and why it is singled out in this paper.

The second dimension of the decision space is represented by generic and contextual purposes of texts making part of the monitoring process, which I suggest to label here *communicative needs*. Thus, state reports are primarily meant to inform the treaty body of the overall situation and recent developments in policy and practice in the relevant issue areas, while the main aim of the treaty body's conclusions is to give an assessment of these facts in the light of the obligations under the treaty. In the unlikely case of an exclusively positive assessment, both dimensions of the state's face are preserved: not only its actions are approved of, but no requirement of change is made thus totally respecting the state's autonomy. However, in a more likely case of a partly negative evaluation, the state's face is endangered by a *face-threatening act* (an FTA) and *redressive actions*⁴⁹ have to be performed. The 'dangerous' elements of the treaty's body assessment are critique and advice, both very clear FTAs. They have to be compensated for and reacted to⁵⁰ and, consequently, contribute to the constitution of the second dimension of the decision space. As a result, the two major communicative needs recognized for reporting states are providing information and reacting to critique; and the two major communicative needs of the treaty body are making critique and compensating for critique.

The decision space constituted by the two dimensions (general strategies and communicative needs) is presented in table 2. Intersection of a general strategy and a communicative need makes a second-order strategy, which can be defined as discursive response to a communicative need within the logic of a general strategy. For example, while providing information, a state may choose to focus on its positive face (show openness and constructive attitude) and adopt the strategy of sincerity, disclosing negative as well as positive information on its practices and even being self-critical on its performance. Alternatively, it may choose to concentrate on the negative face and present the information selectively, avoiding all compromising evidence. Throughout the text, different second-order strategies may be adopted by the actors, and there is no need for a general hierarchy of motivation.

Although in the politeness theory actors are rational and act strategically⁵¹, there is no reason to assume that only instrumental rationality may describe their behavior. The choice of any strategy may be motivated by a calculation, but also by considerations of institutional appropriateness, habit, or reaction of equivalent response (reciprocity). Importantly for the aims of this paper, the repertoire of strategies makes it possible to identify the predominant general strategy in the whole document and its

⁴⁹ "By redressive action we mean action that 'gives face' to the addressee, that is, that attempts to counteract the potential face damage of the FTA", Brown and Levinson, *Politeness...*, p. 69.

⁵⁰ This is true even for the initial report when no negative assessment is yet voiced by the treaty body, since the states may anticipate forthcoming reaction, adjust the way of presenting facts and may even preemptively defend themselves (see Mikhail Bakhtin (1984), *Problems of Dostoyevsky's Poetics*, Minneapolis: University of Minnesota Press, pp. 271, 319-22; Chaïm Perelman and Lucie Olbrechts-Tyteca (2000), *The New Rhetoric: A treatise on Argumentation*, Notre Dame, Indiana: University of Notre Dame Press).

⁵¹ Brown and Levinson, *Politeness...*, p. 59.

parts, compare texts of different actors and at different points in time and, ultimately, make conclusions about the author's motivations⁵².

Table 2⁵³: Repertoire of main strategies used in monitoring documents

General strategy Communicative need	Cooperation	Independence
	Strategies of the reporting state	
Providing information	Sincerity	Selectivity
Reacting to critique	Acceptance	Persistence
	Strategies of the treaty body	
Making critique	Sincerity	Selectivity
Compensating for critique	Approval	Strengthening the position

In the next part, this repertoire of strategies will be operationalized on the example of the monitoring of one human rights treaty and will help to test the four theoretical explanations of monitoring previously described⁵⁴.

Case and operationalization of theoretical explanations

Case selection

The human rights treaty chosen for the analysis is the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), which entered into force in 1998, – the only legally binding international treaty in this area. The monitoring of this treaty is performed by the Committee of Ministers of the Council of Europe, seconded in this function by an Advisory Committee (AC). It is the Advisory Committee which directly deals with the state policy and practice's assessment, supported by a permanent Secretariat. The AC is composed of up to 18 experts nominated by the Committee of Ministers, who do not represent their states, but act as independent impartial professionals. The first monitoring cycle starts with the submission of the initial state report, on which

⁵² While it is not possible to define whether the author truly *is* open-minded and whether she genuinely *believes* in the arguments advanced, discourse analyst should be able to reconstruct the underlying motivations driving the process of drafting by looking at the winning choices (see Charlotte Epstein (2011), "Who speaks? Discourse, the subject and the study of identity in international politics", *European Journal of International Relations* 17(2): 327-350 on uncovering state's identity by studying discourse).

⁵³ The strategies presented in Table 1 are those that could be classified as functional, that is, related to a major motivation. Other tactics identified in the documents can be seen as pragmatic rather than functional: giving general or background information, quoting from the interlocutor's or previous utterances, rephrasing the interlocutor's text, and answering interlocutor's questions. Although their study could bring useful insights, it is beyond the scope of this paper.

⁵⁴ At the current stage of research, the analysis of the use of cooperation and independence strategies by the monitoring body proved to be less instructive and suitable for testing the hypotheses than the use of praise and critique. At a later stage of the framework's development it is planned to combine these different measures.

an AC's opinion is issued. The state can react on the opinion by issuing government's comments, before the Committee of Ministers adopts a resolution on the country. States have to submit reports every five years. The monitoring documents are publicly available and retrievable from the website of the Council of Europe⁵⁵.

Two reporting countries – Finland and Estonia – were chosen on the basis of a number of criteria defined by the theoretical explanations of monitoring. To test the explanations, the countries selected need to have different expertise in monitoring procedures (important for the institutional explanation). Indeed, while Finland had had previous experience of reporting within the United Nations' system, for Estonia the initial report in 1999 was one of the first ever submitted. Then, in the two countries there should be more and less sensitive issues in the general area of national minorities' policy (important for domestic and strategic explanations). For example, the issues of language use and naturalization may be identified as the most politicized issues in Estonia, and in Finland the general degree of the debates on minority issues is lower, with some exceptions, such as issues of land use by the indigenous population (Sami). In addition, the small sample includes an old and a new state, potentially allowing to check for the different effects of reputational concerns⁵⁶. On the other hand, because of cultural affinity, Estonian and Finland should not fundamentally differ in the ways of addressing both dimensions of their face.

The documents analysed for this paper include four state reports, four opinions on state reports, and four comments on the opinions. The size of the corpus is about 177'000 words. Where it was appropriate and based on a detailed overview study of the texts, concrete tactics were spotted for each second-order strategy. For example, for the second-order strategy of sincerity in making critique (treaty body's side), the tactics of detecting a deficiency and making a request or a recommendation were distinguished⁵⁷. Each sentence and paragraph of the corpus was hand-coded with the help of text-analysis software (MAXQDA 10) according to whether it belonged to one of the defined tactics.

Operationalization of theoretical explanations

If the domestic explanation of monitoring processes is true, then the following hypotheses will prove correct:

⁵⁵ http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp

⁵⁶ It has been argued in the literature that new states pay more attention to their reputation than the established ones (Ibrahim F. Shihata (1965), "The attitude of new states toward the International Court of Justice", *International Organization* 19(2): 203-222). Some scholars argue that this is due to the fact that the new states have not yet developed multiple reputations in different areas of international interaction (Downs and Jones, "Reputation, Compliance...").

⁵⁷ Moreover, tactics expressing praise and those expressing critique were measured in addition to the tactics corresponding to the general strategies of cooperation and independence. In this version of analysis, praise and critique tactics brought more insight into the dynamics of discursive exchange and therefore it is the praise and critique proportion that was used for the analysis. The repertoire and coding based on it, however, allow for an alternative as well as disaggregated approach.

H1a: Monitoring texts (reports and comments) drafted under relatively more pro-minority governments in a country will exhibit the preponderance of cooperation strategy by being self-critical and accepting the pointed deficiencies, even on issues of specific sensitivity. Monitoring texts drafted under relatively more anti-minority governments in a country will exhibit the preponderance of independence strategy by avoiding disclosing negative information and rejecting critique.

H1b: Monitoring texts (opinions) drafted by the treaty body will contain more praise of better performing states.

If the first version of the institutional explanation of monitoring processes is true (*novices more open, experts show stable patterns through cycles*), then the following hypotheses will prove correct:

H2a: Monitoring texts drafted by states which are novice in reporting will be more open (exhibit the preponderance of cooperation strategy) in the first cycle, with diminishing effect in the second cycle. Monitoring texts drafted by states with significant experience in reporting will show a stable pattern of the use of cooperation and independence strategies in all monitoring cycles.

If the second version of the institutional explanation of monitoring processes is true (*novices more open, experts show a defensive reaction to a new monitoring process which appears more intrusive*⁵⁸), then the following hypotheses will prove correct:

H3a: Monitoring texts drafted by states with significant experience in reporting, surprised by the intrusiveness of the FCNM monitoring, will show a more aggressive stance in the first cycle of monitoring. ‘Novice’ states, without a reference in this respect, will be more open in the first cycle, with diminishing effect in the second cycle.

As to the discursive behavior of the treaty body, both versions of the institutional explanation lead to the same hypothesis:

H2b-H3b: Monitoring texts drafted by the treaty body will display stability in the use of cooperation and independence strategies across cases, but not necessarily across time⁵⁹.

If the dialogic explanation of monitoring processes is true, then the following hypotheses will prove correct:

H4a: Government’s comments drafted in response to a more positive opinion (containing more praise) will give preference to the cooperation strategy over the independence strategy.

⁵⁸ See Spiliopoulou Åkermark, ‘The Added Value of the FCNM (I)’, pp. 72-3 on this observation for the Council of Europe’s monitoring (as compared to the United Nations’ monitoring).

⁵⁹ Since the rules of discursive behavior are not yet well established for the FCNM monitoring, it is possible that they will evolve from the first to the second cycle. This is proved, for example, by the varying structure of opinions (see Liudmila Mikalayeva (forthcoming), “Negotiating compliance: Discursive strategies in the monitoring mechanism of international conventions”, *International Journal of Communication* Vol. 22/2, Fall 2011).

H4b: Treaty body’s opinions drafted in response to a more open (cooperative) report will contain more praise.

Finally, if the strategic explanation of monitoring processes is true, then the following hypotheses will prove correct:

H5a: Monitoring documents drafted by the state will exhibit a more cooperative stance on the less problematic issues and will be more independence-oriented when treating highly sensitive issues.

H5b: Treaty body’s opinions will balance critique and praise, displaying a comparable proportion of critique and praise across cases and time.

Data analysis

Having coded all the twelve documents in the corpus, I have found out that the state reports have to be used for testing the theoretical explanations with great precaution. Since my analytical tool is suited for measuring response to a previous utterance rather than describing the text as it stands, independently from the exchange, it proved problematic to establish the general strategic orientation of the initial reports by Finland and Estonia. The Estonian case appeared as a more problematic, with the whole number of functional strategies not exceeding 11 (compared with 50 strategies for Finland). Table 3 illustrates the proportion of cooperation versus independence strategy use in the monitoring documents drafted by Finnish and Estonian authorities.

Table 3: Proportion of cooperation to independence strategies in state documents

	1st Report	1st Comments	2nd Report	2nd Comments
Finland	15.7	1.3	7.3	4.2
Estonia	10	2.9	4	1.3

In order to check for the domestic explanation, we need to know the government’s stance towards minorities during the time of the documents’ drafting. The first report by Estonia was finalized and submitted under the Laar government with a moderately anti-minority stance, although I was more pragmatic than the nationalist governments of the beginning of the 1990s. The first comments were drafted entirely under this government. The second report was drafted and submitted under the Parts government, with an even more moderate position on national minorities; and the second comments were composed under the first Ansip government, which included centrists reputed for a more liberal stance towards national minorities than the other mainstream political parties of Estonia. Equally taking into account the generally weaker position of nationalists in the parliament during the time in

the office of the Parts and Ansip governments, the domestic explanation would predict a more cooperative approach in the second than in the first cycle of monitoring. What we can see from the table 3, however, is that the first-cycle documents are more cooperative.

As to the Finnish case, the issue of national minorities has had quite a low salience in the country’s three major political parties through both cycles of monitoring⁶⁰, with the position oscillating around neutrality point. The protection of Swedish-speaking population of Finland being well-developed and stable since decades, the rights of other minorities, such as Sami and Roma, got progressively recognized and codified since the 1990s⁶¹. No major political change in the policy or discourse on the issue of national minorities occurred between 1999 and 2006 (as evidenced also by the Advisory Committee’s findings about the positive policy developments in this period), which would predict a stability in the use of strategies. The data obtained in this study disproves this expectation, as both the reports and the comments show quite an important variation in the proportion of cooperation and independence strategies.

As to the performance of both countries in relation to the Framework Convention’s obligations, the AC members have noted an important progress achieved by Estonia from the first to the second round of monitoring⁶². In the case of Finland, it seems safe to note that the assessment of the country’s performance in the area of national minorities’ policy by the members of the Advisory Committee was stable and positive through the two cycles. The quantitative results (table 4) show indeed not a lot of variation in the proportion of praise to critique in the opinions. We can observe that the ‘domestic’ hypothesis holds for Estonia, but does not seem to be correct for Finland.

Table 4: Proportion of praise versus critique in AC opinions

	1st Opinion	2nd Opinion
Finland	1.3	0.9
Estonia	0.8	1.1

In the logic of the first version of the institutional hypothesis, Estonia would show itself more cooperative in the first cycle, while Finland would exhibit stable patterns of the use of strategies through the subsequent cycles of monitoring. A look at the table confirms the hypothesis for Estonia

⁶⁰ Chapel Hill data for 2006: Marco R. Steenbergen and Gary Marks (2007), “Evaluating expert judgments”, *European Journal of Political Research* 46: 347-366; http://www.unc.edu/~hooghe/data_pp.php.

⁶¹ For example, establishment of Sami Parliament in 1996, Article 17 in the new Constitution of Finland (1999), new Language Act (2003), new Sami Language Act (2003); establishment of the Office of the Ombudsman for Minorities.

⁶² I speak here of assessment external to the opinions themselves. See the evaluation by the President of the Advisory Committee, Prof. Rainer Hofmann in “Implementation of the FCNM: Substantive Challenges...”.

and disconfirms it for Finland, which shows a significant variation in the use of strategies. The second version seems more pertinent in that it is able to explain the less positive Finnish comments in the first cycle by a ‘shock’ effect, that is, by unpreparedness of Finland to face higher intrusiveness and coverage of the FCNM monitoring process than those it had experienced previously. The prediction of this hypothesis for Estonia is that the ‘shock’ effect will not be relevant for a new state, which had not experienced other instances of monitoring to compare with. The institutional hypothesis in its second version for now seems to offer a viable, although quite vague, explanation of the discursive behavior of two states.

For checking the truthfulness of the institutional hypothesis for the treaty body, we need to part with the aggregated proportions of praise and critique and look at the number of uses of different strategies in the opinions (table 5).

Table 5: Number of instances of praise and critique in opinions

	1 st Opinion		2 nd Opinion	
	Praise	Critique	Praise	Critique
Finland	31	23	51	54
Estonia	31	38	48	45

An interesting finding is that the number of instances of praise for two countries in both cycles is the same or almost the same (31 in the first cycle, 51 and 54 in the second cycle). Also, the number of critique differs less significantly in the second than in the first cycle (39% of difference versus 17%). With some necessary caution, we can conclude that there is indeed a ground to suspect an institutional dynamic towards an equal treatment of states, based on comparable amount of praise and critique not across time, but across cases.

Table 6: Proportion of strategies in monitoring documents

	1 st Report	1 st Opinion	1 st Comments	2 nd Report	2 nd Opinion	2 nd Comments
Finland	15.7	1.3	1.3	7.3	0.9	4.2
Estonia	10	0.8	2.9	4	1.1	1.3

Checking for the dialogic hypothesis, we find that in three cases out of four it does not hold. Thus, a less positive first opinion of Estonia is followed by more open and cooperative comments than the second, more positive opinion. Only in one case the dynamic makes sense from the point of view of the reciprocity argument: the second opinion on Finland is less positive in response to a less

cooperative report than in the first cycle. This evidence is however insufficient to claim the relevance of the hypothesis.

When it comes to the strategic explanation, the general proportion of strategies in the state’s reports is not enough. There is a need for a separate measure of strategies’ use on at least one issue that 1) is more or less sensitive than the other issues on average for each country; and 2) has different sensitivity for two countries. I suggest the issue of minorities’ participation as a suitable candidate⁶³. This issue is less sensitive than other in Estonia (in comparison to other issues covered by the Framework Convention, such as education or language use), and arguably more sensitive than a number of other issues in Finland (since it is linked to the question of land use by the Sami). It is also in general more sensitive in Finland than in Estonia. Comparing the discursive treatment of the participation issue to the use of strategies in the whole documents (reports and comments) allows to test the strategic explanation of monitoring.

Table 7: Treatment of the issue of participation

	1st Report	1st Comments	2nd Report	2nd Comments
Finland	3 (15.7)	1.5 (1.3)	1.3 (7.3)	1 (4.2)
Estonia	(-)10	9 (2.9)	6 (4)	0.7 (1.3)

Theoretically, we would expect for Finland a more pronounced defensive stance (independence-orientation) on the issue of participation than on all issues in general. The expectation is confirmed in three cases out of four. The fourth case is also not very strong evidence against the hypothesis, since the difference in the proportion of strategies is not too big (1.5 versus 1.3). We would expect for Estonia a more cooperative discursive behavior on the issue of participation than on all the issues in general. The test is complicated by the absence of data for the first report (there was only one strategy coded for the issue of participation in the first report, therefore making it impossible to calculate the ratio). In two out of the three cases on which the data are available, the hypothesis is confirmed: in the first comments and in the second report, in the treatment of the issue of participation, Estonia is more ready to recognize problems and accept critique than on other issues on average.

I admit that the evidence on the issue differentiation is insufficient to draw generalized conclusions: a more detailed study of the discursive treatment of several issues is necessary for making robust conclusions. It is however encouraging that an important part of the findings in this limited analysis

⁶³ It is covered by the Article 15 of the Framework Convention: “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

show the expected direction: a less open treatment of the participation issue (in comparison to the treatment of other issues) by Finland and a more open treatment by Estonia.

As to the monitoring body, the strategic explanation would predict an equal or comparable proportion of critique and praise across cases and time, which is not observed. However, the number of instances of critique and praise converges in the second cycle. Furthermore, the proportion of critique to praise converges as well (1.3 and 0.8 in the first cycle compared to 0.9 and 1.1 in the second cycle). This finding could point in the direction of a combined explanation: institutional-strategic logic.

Indeed, such a combination is possible since the expectations of the institutional and the strategic explanations are not mutually exclusive⁶⁴. For example, equal treatment of the states (institutional explanation) may well be realized through balancing praise and critique (strategic explanation). In the same vein, the differentiation between issues of different sensitivity (strategic explanation) may work together with the ‘novice effect’ and the ‘shock effect’. On the treaty body’s side, it appears that the development of an institutional standard of discursive behavior goes on between the first and the second cycles of monitoring⁶⁵. Converging patterns of strategies’ use in the second cycle back this idea and can be explained by the elaboration of a detailed common layout for the opinions in the second cycle. It can be argued that this structural standardization has a homogenizing effect on the use of strategies, since it explicitly indicates the place for praise and critique (under sections ‘positive developments’ and ‘outstanding issues’) as well as for recommendations. It is interesting to note that although such a common layout did not exist in the first cycle, the number of instances of praise was already identical for Finland and Estonia in the first opinion.

Concluding remarks

This paper aimed at demonstrating the usefulness of monitoring documents in offering new insight into the logic of monitoring process and at suggesting an analytical tool for the analysis of these documents allowing for meaningful and rigorous comparison between cases. With the help of this analytical tool I distinguished different discursive strategies that the treaty body and the states employ within the monitoring process and on this material tested four theoretical explanations of monitoring (domestic logic, institutional explanation, dialogic dynamics, and strategic calculations). On the basis of an analysis of twelve documents from the two cycles of monitoring of Finland and Estonia under the Framework Convention for the Protection of National Minorities, the explanation that proved the most promising appeared to be a combination of the institutional and strategic logics.

⁶⁴ It is also theoretically plausible since “[i]ndividuals and states take on roles because it is easier socially, as opposed to only and always acting strategically and instrumentally” (Checkel, “International Institutions and Socialization in Europe...”, p. 811).

⁶⁵ This idea is confirmed by an interview in the FCNM Secretariat (October 2010, Strasbourg).

It consists in claiming that the discursive treatment of states' evaluation in the documents drafted by the treaty body is conditioned by the need of an equal treatment of different states and by a balancing of critique and praise. As to the states, the explanation highlights institutional effects such as the 'novice effect' making a state inexperienced in monitoring show a more open attitude in the first cycle to build a reputation of a cooperative actor, and the 'shock effect', which explains the relative defensiveness of experienced reporters in the first cycle of the FCNM monitoring by a specific intrusiveness of the monitoring by the Advisory Committee, unexpected based on the previous experience of the state in comparable settings. At the same time, states differentiate the treatment of issues of different sensitivity, showing more restraint defensiveness) on highly sensitive issues, while compensating by openly and self-critically treating less problematic questions.

There remain several problems in the suggested framework waiting to be resolved. One resides in the fact that identification and coding of tactics, as any thematic coding, is made 'intuitively' based on the semantic content. There is no way of univocally deciding where a tactic begins and ends since tactics are hybrid, intertwined and nested. In a way, this experience may be compared to the hesitance of a debutant surgeon: while pictures and training wax models undeniably are useful learning tools and are relevant for understanding how body is organized, an actual surgery setting with a real dissected body presents quite a challenge of recognizing and applying neat theoretical concepts. Another problem is that some tactics and strategies are generally tricky to catch and measure. The tactic of avoiding negative information – the main tactic within the strategy of selectivity – is the best example of this problem. The fact that this tactic was not counted in this particular application of the framework means that the cooperative spirit of the reports may be overestimated in the statistical results.

These problems notwithstanding, the suggested analytical framework proved useful for analyzing texts belonging to the monitoring process of the Framework Convention, in particular, and for testing theoretical explanations of monitoring, in general. It thus hopes to contribute to the existing research on diplomatic communication and policy evaluation, taking a communication approach towards the monitoring procedures.

Negotiating Compliance:
Discursive Choices in a Formalized Setting
of Diplomatic Communication

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ABSTRACT

On the basis of a thorough scrutiny of documents making part of the monitoring mechanism of the Framework Convention for the Protection of National Minorities, this paper explores the relationship between prescriptions of the genre of diplomatic communication, on the one hand, and specific contextual purposes and goals of the actors, on the other. The degree of freedom within the genre of diplomatic exchanges is at the center of this study. Having analyzed the structure of documents and the use of strategies in state reports and monitoring body's opinions, I conclude that the parties are able to adjust genre prescriptions to the considerations of thematic relevance or appropriateness and prove knowledgeable in selecting suitable techniques according to the relative priority of the issues. Genre is therefore best seen as a resource and not only as a constraining factor in diplomatic communication.

Keywords: Diplomatic communication, 'face', genre, discursive strategies, negotiation, national minorities

1. INTRODUCTION

Diplomatic communication is an ambiguous term, which may be used either to refer to a specific area of professional communication or to a genre as well as to a particular linguistic and behavioral style. The first understanding of diplomatic communication links it to exchanges between states and states and international organizations (IOs), taking place in highly formalized and even ritualized settings such as bilateral negotiations, summits and assemblies of international organizations or

written communiqués. The second understanding results from an extension of the first sense and covers characteristics of communication in situations requiring tact and caution. Thus, one may speak of ‘diplomatic language’ referring to a polite and careful style, attentive to the expectations of the interlocutor and respectful of her integrity.

While ‘diplomatic language’ in its second understanding, that is, politeness in language, has received considerable attention in academic research¹, linguistic aspects of diplomatic communication as a professional genre have been only fragmentarily analyzed (Cohen-Wiesefeld 2008; for rare exceptions, see Villar 2005; Kubbalija and Slavik 2001; Jönsson and Hall 2003; Magistro 2001; Volkova 2008; Doncheva-Navratilova 2009). This lack of scholarly attention is due, at least in part, to the confidentiality of a significant amount of diplomatic communication. In fact, only the public political aspect of diplomacy is open for larger audiences and researchers, and in many cases gaining access to products of diplomatic negotiations is as hard as penetrating the setting of the exchanges.

This paper offers insight into discursive aspects of diplomatic communication on the material of a body of diplomatic texts readily available for analysis: documents serving as part of the *monitoring mechanism of international conventions*. Nowadays every state in the international system drafts and submits reports on its respect of international agreements, and many international organizations have a special body tasked with considering and writing opinions on these reports. These interactions are instances of ‘technical diplomacy’ (Villar 2005: 27) making part of the everyday work of foreign affairs ministries² and international organizations around the globe. Such exchanges may be considered as *negotiations* on the level and extent to which states fulfill the commitments undertaken in an international agreement. Major part of these negotiations functions in writing and is accessible to the public.

Diplomatic communication style has been described as (and accused of) being highly and even overly formalized, ‘frozen’, packed with euphemisms and ‘wooden language’ (Kubbalija and Slavik 2001; Villar 2005: 10-18), to the point of claiming that “diplomats never produce anything new” (Newman 2007). Indeed, structure, topics, and style of diplomatic texts are to a large extent predefined. In convention monitoring processes, it is often the case that the position, content and even formulations of each paragraph in state reports and monitoring body’s opinions are prescribed by a normative document or more or less formal conventions. It seems however obvious that reporting states

and monitoring bodies, while participating in monitoring activities, have specific needs and goals in each concrete case. In the framework of a highly formalized professional genre with pre-cut layout and wording, tailoring the message so that these contextual goals are attained seems to be a non-trivial task.

The aim of this paper is therefore to analyze how the interplay between formal generic (from *genre*) structures and schemes of diplomatic communication and situational goals of the parties is managed in the monitoring process of an international convention. In what way are the parties' choices restricted by the genre and what space is left for contextual adaptation?

The rest of the paper is structured as follows. After the analytical framework of the study is outlined in Part 2, Part 3 presents data on generic constraints on the structural and strategic levels and the options left open to the interactants on the example of texts resulting from the monitoring of Finland and Estonia under the Council of Europe's Framework Convention for the Protection of National Minorities. Part 4 concludes by addressing some implications of the findings.

2. ANALYTICAL FRAMEWORK

Genre may be defined as a relatively stable thematic, compositional, and stylistic type of utterances developed in a particular sphere of communication in response to a specific set of purposes characteristic for this sphere (Bakhtin 1986: 60-4; Swales 1990: 46). Hence, genres are essentially communicative ways to achieve certain goals. This part suggests a way of identifying and classifying the actors' goals within the convention's monitoring process: looking at their motivations through the lens of the politeness theory. It therefore tries to analyze professional diplomatic communication with tools developed for studying 'diplomacy' and politeness broadly understood.

2.1. *Communicative needs*

Since the primary component of genre is a set of specific contextual purposes, this section starts by identifying main purposes of texts making part of the monitoring process, which I suggest to label here *communicative needs*.

Since the essence of diplomatic communication within the monitoring process is the assessment of reporting country's implementation of the convention (its extent, areas, achievements and remaining drawbacks³), the main communicative need of reporting

states is to provide information on the convention's implementation and that of the monitoring body – to give an objective evaluation of the implementation, or, simply put, to make critique. In practice, there are different ways of providing information and making critique.

Hence, states may be motivated by concerns about their good image, smooth relations with the IO and the will to create a fruitful climate of mutual respect and collaboration, and consequently privilege full disclosure of not only positive, but also negative information on the convention's implementation. At the same time, they may want to minimize the intervention into their internal affairs⁴ and therefore pre-select the information by anticipating the monitoring body's critique and reacting to it. In addition to providing information, another communicative need of reporting states is therefore reacting to critique. Here again many choices are possible, the most basic being acceptance or refutation of criticism.

The monitoring body, on the other hand, may be more preoccupied with enhancing the state's image and comfort in the monitoring process by complimenting and acknowledging its efforts than with giving a fully objective evaluation and underscoring every problematic aspect. So, an additional communicative need recognized for the treaty body in the monitoring process is compensating for critique.

2.2. Politeness theory and discursive strategies

Considered from the point of view of the politeness theory, suggested by Goffman and developed by Brown and Levinson (1987), these and other goals are connected to two dimensions of actors' 'face': *positive face*, which corresponds to the want of having a good image and being liked, and *negative face*, which corresponds to the want of protecting one's autonomy. Through taking care of both dimensions of 'face', actors co-create their identity with their interlocutors⁵. It is vital for interactants to be sensitive to the 'face-wants' of their vis-à-vis since communication is likely to be successful only when the face of all participants is safeguarded (Brown and Levinson 1987: 61; Fairclough 1993).

In some communicative interactions, such as a convention's monitoring process, a number of communicative needs inevitably endanger the interlocutor's face. For example, advices and requests are threats to the 'negative face' of the actors since they impede on the actor's independence, while critique and disapproval endanger the 'positive face' by questioning the desirability of the actor's goals and

actions for others (Brown and Levinson 1987: 65 ff.). Such steps are ‘face threatening acts’ (FTAs), and there are different ways of minimizing their impact on the other party’s ‘face’. One way, according to Brown and Levinson, is to go ‘off record’: to make an FTA by producing an implicit or ambiguous statement⁶. Another way is to accompany an FTA with a ‘redressive action’, which “counteracts the potential face damage” and demonstrates that no face threat “is intended or desired” (Brown and Levinson 1987: 69-70)⁷.

In practice, positive and negative ‘face-wants’ may call for different discursive behavior and since multiple goals are likely to coexist in each concrete case without unambiguous hierarchy among them, the balance may titillate from one to another paragraph. The process of monitoring documents’ drafting consists therefore of constant trade-offs between what can be called the *cooperation strategy*⁸ the *independence strategy*. Cooperation strategy is linked to the ‘positive face’ and consists in demonstrating good will and openness. It is realized through a rather direct style with few ‘off-record’ steps and redressive actions. Independence strategy is linked to the ‘negative face’ and consists in avoiding intrusions and minimizing changes⁹. It favors implicit formulations, overt reference to the interlocutor’s interests and other redressive tools¹⁰.

Tables 1 and 2 illustrate the different combinations of communicative needs and general discursive strategies for reporting states and the monitoring body. Intersection of a communicative need with a general strategy gives a second-order strategy. For example, second-order strategy of sincerity consists in providing information while stressing the ‘positive face’ at the expense of the ‘negative face’. Examples of second-order strategies from actual monitoring documents will be presented and discussed in section 3.3 below.

Table 1. *Second-order strategies of reporting states*

Discursive strategy	Cooperation	Independence
Communicative need		
Provide information	Sincerity	Selectivity
React to critique	Acceptance	Contestation

Table 2. *Second-order strategies of monitoring body*

Discursive strategy	Cooperation	Independence
Communicative need		
Make critique	Directness	Indirectness
Compensate for critique	Praise	Justification

2.3. *Corpus*

This paper answers the question of how the interaction between generic constraints and contextual goals is managed in practice by taking an attentive look at the structural and strategic aspects of texts resulting from the monitoring of the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM). In each monitoring cycle, states submit reports on the implementation of the Framework Convention and, after the issue of the Advisory Committee's (AC)¹¹ opinion, provide their official comments (called 'government's comments'). The cycle is concluded when the Council of Europe's Committee of Ministers adopts a resolution, based on the opinion, comments and extensive discussions¹². These documents are publicly available¹³.

The analysis uses data from the first two cycles of the FCNM monitoring of Finland and Estonia (1999-2006). Finland was chosen as the first state to submit a report, and since it was (and aimed to be) a path-setter and a 'star pupil' in reporting and monitoring¹⁴. To enlarge the corpus and introduce a comparative dimension, Estonia was also included in the study. Estonia is similar to Finland as to the cultural, linguistic and geographic background, but differs from Finland in experience in reporting¹⁵ and relative strength in the negotiation¹⁶. Hence, its inclusion allows to control for differences in the AC's discourse towards more and less vulnerable reporting states.

The following part presents the formal prescriptions to opinions' and reports' compositional structure and identifies the extent to which these instructions are followed and the ways in which they are adapted to individual cases. Next, it exposes second-order strategies available to the parties and discusses the interaction and tension between structural prescriptions and strategic considerations on the example of the section covering the implementation of the Article 15 of the Framework Convention¹⁷ in each document.

3. DATA ANALYSIS

3.1. *Prescriptions on the structure of opinions and reports*

In the first cycle of monitoring, opinions of the Advisory Committee have a common layout, which defines the parts of the opinion and their content¹⁸. Each opinion consists of seven elements: table of contents, executive summary, description of the opinion's preparation, general remarks, specific comments on individual articles of the Convention, concluding remarks and a proposal for conclusions and

recommendations for the Committee of Ministers. Each paragraph is attributed a number, but there is no pre-defined structure for the evaluation of the implementation under each article and no heading of a lower level than Article 1, Article 2, etc. It seems, consequently, that prescriptions are not too rigid and strict yet.

In the second cycle of monitoring, the structure becomes more sophisticated: opinions have a five-level structure, compared to the three-level structure in the first cycle. Still, they consist of fewer elements: executive summary, table of contents, main findings, article-by-article findings, and concluding remarks. Paragraphs are numbered, and for each part, except for the summary and the table of contents, sub-parts are distinguished. In the main part of the opinion – article-by-article evaluation – thematic rubrics are distinguished within articles, e.g. relating to different minority groups. Within rubrics, common elements ‘findings of the first cycle – present situation – recommendations’ are consistently found. The description of the present situation breaks up into ‘positive developments’ and ‘outstanding issues’.

A more detailed common scheme signals that a clearer idea about the opinions’ structure had been developed within the AC and its Secretariat¹⁹, and a closer analysis of opinions shows that many formulations are now standard. Standardization serves simultaneously two aims: effort optimization (the AC needs to provide an expert opinion on an expanding number of countries) and equal treatment of states.

As to the reports, for each monitoring cycle, the AC suggested an outline for state reports in order to improve the quality and coherence of the monitoring process. The outline describes in detail how the reports should look like in terms of structure and topics²⁰. In the first cycle, the outline provides a complete layout for the report, including specific questions to answer under each section of an article. It recommends a four-level structure: part – article – paragraph – section. The suggested sections are the following: narrative – legal – state infrastructure – policy – factual. The first-cycle outline is 18 pages long.

In the second cycle, the outline suggests a three-level structure: part – sub-part – article. This outline is short (two pages) and much less detailed. The accent is made not on the meticulous presentation and technicalities, but on analytical qualities of the report. Thus, the report should not only present the relevant information on the convention’s implementation, but enter into direct dialogue with the previous opinion, react to the recommendations contained in the Committee of

Ministers' resolution and describe efforts aimed at maximizing the efficiency of the monitoring process.

To sum up, while the structure of opinions is formalized and standardized from the first to the second cycle, the structural prescriptions for state reports are relaxed but refocused from detalization to analytical interactivity. It remains to see whether these different dynamics influence the respective ability of the two parties to individualize their message.

3.2. *Structure of opinions and reports*

Formal prescriptions on topics, structure and style of monitoring texts take into account the main communicative needs of the parties (linked to the genre rationale) and to some extent also strategic considerations associated with their 'face-wants'. However, because of their general and formal character, such instructions may hinder the ability of individual actors to adjust the message to a particular situation. It remains to see whether formal prescriptions on the compositional structure of monitoring texts restrict the choices available to the actors and what space is left for adapting available schemas to their individual needs and purposes.

From the analysis of the opinions on Finland and Estonia it appeared that the AC individualized texts by sticking more or less strictly to the common structural guidelines. The following examples from the second cycle illustrate the four main options left open to the Advisory Committee.

First, the AC could cover or not a particular article: for instance, in the opinion on Finland there is nothing on articles 7, 11, 13, and 17, and in the opinion on Estonia there is nothing on articles 7 and 16.

Second, the AC could choose how many topics to cover under each article: the presentation under article 12 in the Estonian opinion is divided into five sub-parts, while for Finland there are only three sub-parts. Similarly, under article 13, there are four sub-parts in the Finnish opinion and three in the Estonian.

Third, the AC could decide on whether to use all the elements of the standard sequence 'findings – present situation (positive developments – outstanding issues) – recommendations'. It could either omit one of the elements, e.g. recommendations, or combine them: for example, e.g. 'positive developments' and 'outstanding issues'. Thus, in the second cycle, 27% of sequences in the opinion on Finland and 16% sequences in the opinion on Estonia are incomplete.

Finally, even within the limits of the section's generic aim there is space for variation as to the choice of strategies. For instance, praise and encouragement can be included in sections entitled 'outstanding issues' in order to rebalance massive critique. In practice however, the formal differentiation between 'positive developments' and 'outstanding issues' should have hindered the maneuvering capacity of the AC, since it was dropped from the third-cycle opinions' layout.

As to the reports, in previous research by the author, a genre analysis of 28 state reports showed that the structural instructions of the reports' outline did have an influence on the reports' composition. However, the structure suggested for the first, introductory, part of the report was followed more closely than the scrupulous prescriptions for the second part. In general, states that had had an experience in reporting to other international organizations before their first report under the FCNM, showed more deviation from the suggested structure. A plausible explanation of this fact is that these states had a certain 'genre competence' (Bakhtin 1986) prior to the entry into the new reporting procedure and felt freer in adapting the outline according to their own ideas about the reports' composition. The deviation from the suggested structure was higher in the second cycle of reporting, which confirms this hypothesis.

In the case of the two countries in our sample, in the first cycle, Estonia and Finland followed quite closely the suggested structure of the report. Finland adopted a five-level structure, grouping some articles under 'article clusters' and distinguishing topics within the elements of the suggested sequence 'narrative – legal – state infrastructure – policy – factual'. The Estonian report has three levels and generally also follows the outline.

In the second cycle, Finland followed the suggested outline very closely: its 105-page report is divided into three parts with different structure. The main part, presenting article-by-article implementation, has only two levels – article and topic. The second-cycle report of Estonia has a simple three-level structure (article – paragraph – topic) and does not follow the outline. The part 1 (on follow-up activities) and sub-part 1 of the part 2 (impact of the Resolution) are altogether missing.

The structural choices within the compositional guidelines identified for the Advisory Committee prove pertinent for state reports as well. The authors of state reports may choose to cover or not a particular article, e.g. article 19 in the second Finnish report; define what topics to cover under each article; omit some elements of the

structure, such as elements of the sequence ‘narrative – legal – state infrastructure – policy – factual’ or whole parts, introduce new elements into the sequence, e.g. differentiate between ‘legislation’ and ‘constitutional provisions’; and choose strategies within each structural element of the report.

More variance in the structure of the reports is partly due to the fact that the outline is but one prescriptive reference and other references may exist in different states. Moreover, since state reports are rather long (from 20 to up to 300 pages), there is also more space for maneuver.

3.3. *Strategies at the disposal of reporting states and the monitoring body*

3.3.1. *Repertoire of strategies used by the monitoring body*

When it comes to the way general discursive strategies of cooperation and independence are realized in the texts of the corpus, we have to recall the concept of second-order strategy. A second-order strategy is an intersection of a general discursive strategy and a communicative need, as illustrated in the tables 1 and 2. Thus, when the Advisory Committee makes critique by choosing the *cooperation strategy*, criticism will be direct since the selection of appropriate discursive means will be motivated by maximizing the explicitness and clarity of evaluation. Making a critique in this perspective boils down to two options, often adjacent in practice: making a problem statement by indicating existing deficiencies as in (1) and formulating a recommendation, request or advice on how to bring the situation in compliance with the Framework Convention as in (2).

(1) The Advisory Committee notes with concern that, in addition to minorities that the Government considers to be covered by the Framework Convention, representatives of a number of the groups characterized in the Report as "other minority groups" frequently report cases of de facto discrimination. (First Opinion on Finland)

Usually, acknowledging efforts goes hand in hand with requests and recommendations, thus balancing praise and critique (2).

(2) While acknowledging that some initiatives have been taken to fight these phenomena, the Advisory Committee finds it essential that Finland step up its efforts in this sphere and take additional measures, including in terms of investigation and prosecution of such incidents. (First Opinion on Finland)

When the focus moves to preserving the negative face of the state (*strategy of independence*), the AC's critique is rather indirect: it prefers 'nuancing the success' of policy rather than blatantly pointing out the drawbacks (3).

(3) While the possibility to introduce Roma language teaching in primary or secondary schools exists under the Comprehensive School Act, only a limited number of local authorities have in fact organized such teaching... (First Opinion on Finland)

In order to 'redress' the endangered face of the state, the AC can recognize the state's counter-arguments and, more generally, its need to find the right balance between different interests and values (4).

(4) The Advisory Committee agrees that it is often advisable, and fully in the spirit of the Framework Convention, to accompany minority language broadcasting with sub-titles in the state language. (First Opinion on Estonia)

According to the same logic of redressive action, the AC may provide backing for its negative opinions (5). Backing not only solidifies the authoritative position of the Advisory Committee, but also redistributes the responsibility for the critique between the AC and the author of the quoted opinion. In this way, the AC avoids the image of a constantly dissatisfied critical expert body and gains the role of a mediator, 'translator' and, at most, amplifier of already existing concerns.

(5) The Council of Europe's Commissioner for Human Rights has also made valuable recommendations to make the naturalization process more accessible. (Second Opinion on Estonia)

The AC may even find it necessary to explicate the need for an intervention in the domestic affairs of the state (6). This technique implicitly recognizes the state's sovereign rights and justifies the AC's 'interference' into the state's domestic affairs by hinting at the voluntary acceptance of obligations by the state through ratification of the Convention.

(6) For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify

the proper application of the fundamental principles set out in Article 3. (First Opinions on Finland and Estonia)

3.3.2. *Repertoire of strategies used by reporting states*

In the case of the reporting states, the *cooperative approach* to providing information on the status of minorities may be realized through the strategy of sincerity, whereby the state in its report explicitly points out deficiencies and drawbacks in the existing legislation or implementation (7). Sincerity in providing information therefore means a certain amount of self-criticism, which is a winning choice since the AC expects and encourages such an attitude (for example, by asking the states to indicate in their first-cycle reports in which areas the advice of the AC would be most useful)²¹. On the other hand, being self-critical is not evident because it endangers the state's negative and well as – more indirectly – positive face.

(7) However, in practice the protection afforded by law is not always sufficient. (Finland, First Report)

When reacting to critique, the cooperation strategy is realized through a second-order strategy of acceptance, which consists of recognizing deficiencies brought forward in the opinion (8).

(8) The Estonian authorities are aware of the extent of the problem and the importance of solving it... (Estonia, Second Comments)

Alternatively, if the stress is on the *negative face* concerns, the state, while providing information, will prefer to refrain from mentioning existing deficiencies (strategy of selectivity) or will focus on their reasons, which do not depend on the will of the central authorities (9). These limitations may even be attributed to the democratic nature of the state and implicitly linked to such principles as subsidiarity and local autonomy.

(9) Teaching has been impeded by inadequate financial resources in the municipalities in charge of the provision of instruction, the fact that the pupils are scattered to different places ..., lack of teachers, and inadequate textbook supply. (Finland, Second Report)

The strategy of selectivity also comes in the form of making 'special case' claims, which highlights cultural and historical contingency of international norms as in (10).

(10) The Government would, however, like to submit a general remark that while evaluating the situation in each Contracting State it is important to take into account the historical background of each State as well as demographic, economic, political and other developments in a given country. (Estonia, First Comments)

Reacting to critique with this approach (strategy of contestation) usually means rejecting critical comments as unfounded, misplaced or irrelevant (11) and providing backing for it (12).

(11) In the Government's view neither the National Board of Forestry nor any other authority has prevented the Sami from maintaining their own culture. (Finland, First Comments)

(12) [T]he High Commissioner on National Minorities of the OSCE... has publicly stated that the amended text of the Language Act is in conformity with Estonia's international obligations and commitments. (Estonia, First Comments)

A subtler variant of contestation is reframing the situation so that it no longer appears as a problem (13)²². Volkova calls this tactic 'pseudo-nomination': an attempt to accommodate the view on the situation by diplomatic subjects and the evaluation by external actors by changing the way the fact is presented (Volkova 2008:189). Similar logic is behind the concept of *decoupling* suggested by Meyer and Rowan. They refer to decoupling in situations where "affixing the right labels to activities" can be in itself enough to transform them into "valuable services" (Meyer & Rowan 1977: 349-350).

(13) The study revealed that the articles concerning ethnicity were usually appropriate, openly racist opinions only existed in certain letters to the Editor, and foreigners were hardly ever called by despising names. (Finland, First Comments)

In this case, it is not the AC's evaluation of the situation, but the definition of the situation as such that is put into question. In a way, this is a manipulative tactic since the state makes use of its main trump – access to full information from local actors (van Dijk 2006). By mentioning facts, statistics, opinions or study results not used by the AC, the state undermines the expert status of the monitoring body and, therefore, the basis of its assessments²³.

3.4. *Actual strategic choices in opinions and reports*

While examples of second-order strategies presented in the previous section give an idea of what discursive tools are at the disposal of reporting states and the monitoring body, the actors have a choice in how they use tools from these repertoires when treating specific topics in their texts. Making their choices, they give priority to different dimensions of ‘face’, but also to different discursive means of catering to it. To illustrate the actors’ maneuvering between positive and negative ‘face-wants’ and interactions between the structural prescriptions and strategic choices, this section analyzes in detail the monitoring documents’ section on the article 15 of the Convention. In the following discussion, in addition to a distinction between second-order strategies realizing the cooperation strategy and those realizing the independence strategy, instances of praise and critique in the AC opinions are identified.

By looking at the number of cooperation tactics versus independence tactics in state reports (cooperation/independence ratio, further referred to as the C/I ratio), we can identify if the state in this passage concentrates on its ‘positive face’ by providing full information (being self-critical) and eventually accepting the AC’s critique, or favors its ‘negative face’ by rejecting critique and providing situational accounts of deficiencies.

In the first Finnish report, the C/I ratio is equal to 3 and in the second report – to 1.3, which means that Finland becomes less self-critical in the second cycle. Since Estonia uses only one (cooperation) tactic in the first cycle, no ratio can be calculated for it then. In the second cycle, the report is largely cooperative (C/I ratio = 6). Interestingly, when rejecting critique, Finnish authors prefer framing techniques (for example, redefining the situation so that it does not appear as a problem anymore), while Estonian authors favor argumentative techniques (providing positive backing and giving reasons and explanations for deficiencies).

As to the Advisory Committee’s opinions, the C/I ratio is different for the two states and remains stable through the two cycles, as the table 3 demonstrates. The table shows that the AC opinions on Estonia are more direct.

Table 3. *Cooperation to independence ratio in opinions*

	First cycle	Second cycle
Finland	1.4	1.6
Estonia	2.3	2.3

In what concerns critique, it can be formulated in a more explicit way as a ‘problem statement’ or more implicitly and cautiously as ‘nuancing the success’. These types of critique are equally represented in the AC’s opinions on the Finland’s respect of the article 15, (3/3 in the first cycle and 6/6 in the second cycle), while for Estonia direct critique is three times more frequent than indirect (3/10 in two cycles).

Adjusting the relative directness of critique is however only one way of catering to the ‘face’ of the reporting state, for a number of redressive actions are at the disposal of the Advisory Committee. The first such technique, as presented in the previous section, is to overtly recognize the state’s interest, thus demonstrating openness to and respect of the state’s position and argumentation. Another technique is to provide backing, ‘spreading’ the responsibility for critique to other actors, who can legitimately voice concerns: for example, representatives of minorities, domestic human rights partisans or international organizations. What appears from the analysis of the corpus is that recognition is more often used in the exchange with Estonia (three times on article 15 and nine times in the whole opinion) than with Finland (one time on article 15 and four times in the whole opinion). However, backing is used by the AC almost exclusively in its opinions on Finland (on article 15 – five times vs. only once for Estonia, in the whole report – twelve times vs. the same one time for Estonia). This means that while the approach to the use of redressive actions in the treatment of different reporting states may be similar, the choice of specific techniques is not completely pre-defined.

As to the proportion of critique and praise (praise/critique ratio, further referred to as the P/Cr ratio), for both Finland and Estonia opinions become more balanced in the second cycle. As the table 4 shows, the P/Cr ratio rises from 0.8 to 1 for Finland and from 0.4 to 1.7 for Estonia.

Table 4. *Praise to critique ratio in opinions*

	First cycle	Second cycle
Finland	0.8	1
Estonia	0.4	1.7

Hence, in terms of the number of tactics used, the second opinion on Estonia contains more praise than critique. Remarkably, the P/Cr ratio and the opinions’ C/I ratio seem to have a very weak relation to the C/I ratio of the reports. Although it would be reasonable to suggest that a

comparatively more self-critical report would call for a more positive opinion or – under some conditions – to a more direct one, it proves that no such relationship exists in three cases out of four (the second, more positive opinion on Estonia follows a more cooperative report). Other factors, such as generic prescriptions or the state's characteristics, should have a bigger impact on the choice of tactics in opinions.

Finally, as concerns the states' comments on the AC's opinions, let's note that their aim is to react to critique rather than to provide information, although both aims are present. The comments usually try to minimize the negative character of the forthcoming Committee of Minister's resolution through argumentation or reframing (in addition to oral negotiations 'on the ground') and are therefore normally more independence-oriented. In the first cycle, still, the comments are cooperative (table 5). In the second cycle, the ratio diminishes to 1 for Finland and drops to 0.7 for Estonia. The Estonian comments are not only less cooperative, but also use fewer strategies (five vs. ten in the first cycle) and are less interactive: they present new information rather than directly engage with the AC's critique.

Table 5. *Strategies in the government's comments*

	First cycle	Second cycle
Finland	1.5	1
Estonia	9	0.7

Just as for the opinions, there seems to be no connection between the C/I or P/Cr ratio of the opinions and the predominant strategy in the comments. For example, the second, more positive, opinion on Estonia is followed by much less cooperative comments than the first, more negative, opinion.

4. DISCUSSION AND IMPLICATIONS

Do these strategic tendencies prove pertinent for the whole documents as well? In other words, do strategic preferences in a concrete section reflect the general preferences of the authors, based, among other factors, on generic prescriptions and following the patterns suggested by the compositional structure?

It appears that in nine out of the twelve documents in the corpus, the coverage of the article 15 is more independence-oriented than the document on average. This is true for all the opinions, which means that the AC is less direct in the treatment of the minorities' participation

issue than in covering other issues. Only Estonian first comments and second report do not follow this general pattern: Estonia is ready to be more self-critical on problems linked with the participation of minorities than on other aspects of policy towards minorities. In fact, only in one case (Finland, first comments) are the C/I ratios of the article 15 and the whole document almost identical (1.5 vs. 1.3).

It proves that the parties have the means to individualize their message by addressing different issues in an appropriate tone. This finding completes the results of the documents' structure analysis by confirming that an adjustment is possible even within a highly formalized generic norm.

It is time to see if the AC's treatment of Estonia and Finland differs in terms of strategies used in the opinions as a whole (table 6). What seems surprising is that the number of praise tactics is identical or almost identical for the countries: 31 in the first cycle, 48 and 51 in the second. What differs is the number of critique tactics: Finland is criticized 23 times in the first cycle and 54 in the second, while Estonia – 38 and 45 times respectively.

Table 6. *Instances of praise and critique in opinions*

	First cycle		Second cycle	
	praise	critique	praise	critique
Finland	31	23	48	54
Estonia	31	38	51	45

If to look at critique more closely, 70 to 74% or critique in the opinions is direct (cooperation-oriented). Only for the second opinion on Finland, the proportion of direct critique is higher – 83%. The variance in direct vs. indirect advice is more salient – 54 to 78%. The highest percentage is found in the first opinion on Estonia. This is consistent with our findings for the article 15: opinions on Estonia are more direct than those on Finland. This is however true only for the first cycle. In the second cycle, the AC is more critical, and more directly so, of Finland.

While the difference in the treatment in the first cycle could possibly be explained by a more vulnerable position of Estonia vis-à-vis the Council of Europe, the reversal of the differentiation in the second cycle puts this explanation into question. It is likely that the differences are due to other reasons, such as the actual opinion of the AC and Secretariat members on the situation in the country or the individual stylistic preferences of the authors.

What seems to follow from the analysis performed in this paper is that genre is best seen not exclusively as a set of strict rules and constraints, limiting the actors' freedom of choice, but as a resource they can use creatively. Genre is a resource since by narrowing down the range of possible strategies and techniques, it allows the actors to use their effort more effectively. It improves the prognosis and sets expectations as to the structure and content of the texts coming from the other party as well as offers a 'sketch' for the texts to be drafted. By providing discursive tools and ready schemes, genre reduces time- and effort-intensity of drafting. At the same time, it leaves enough space for adjustment where it is needed. It does not dictate the obligatory or appropriate discursive behavior down to particular techniques to be used in concrete cases; here, the choice is still open. Thus, the Advisory Committee may be more or less direct in its critique and use different redressive actions to preserve the 'face' of the reporting states. States may show more or less openness and self-critique on some issues than on others and use of different ways of rejecting critique or accepting it.

To conclude, the analysis demonstrated that within the generic prescriptions on the structure of documents, there remains enough space for the actors to accommodate their contextual needs and discursive strategic preferences. Not only are they able to adjust the structural instructions to the considerations of thematic relevance or appropriateness, but they also prove knowledgeable in selecting suitable tactics for taking care of the positive and negative 'face-wants' according to the relative priority of issues and other concerns. Ultimately, when structural outlines prove ineffective, they may be dropped or ignored by the reporting states as well as the monitoring body.

What merits underlining is the 'amount' of freedom in handling generic prescriptions. As was demonstrated, in the second cycle, 27% of sequences in the Finnish opinion and 16% sequences in the Estonian were incomplete. Still, this means that in 73% and 85% respectively, the Advisory Committee stuck to the general rule, making economies in time and effort and providing a clearer text for the states to read and grasp. It is therefore important not to overestimate the possibility – and the wish! – of the parties to depart from the generic outlines. These are indeed not only limits, but also a helpful basis for drafting texts and building a cooperative relationship within the monitoring process.

Although this paper did not aim at an exhaustive coverage and discussion of the discursive maneuvering capacity of international actors in the formalized framework of a diplomatic genre, it hopefully

provided insight into this issue by offering an analytical and methodological framework, providing examples from contemporary diplomatic negotiations and furthering academic reflection on the specificities of diplomatic communication.

NOTES

1. Politeness in this research is not understood in a narrow meaning of 'being polite' in interpersonal communication, but covers a wide range of practices with a "sociological significance altogether beyond the level of table manners and etiquette books" (Goffman quoted in Brown and Levinson 1987: 1).
2. This work has been taking such a prominent place that in 2002, the Secretary General of the United Nations (UN) brought up the issues of overcoming the reporting states' over-load and solving the problem of non-reporting and serious delays. These issues had been already singled out by the UN in 1984 (UN Secretary General 2002: 12-3; UN General Assembly 1984).
3. For an overview of self-evaluating state reporting systems, see Kornblum 1995 and Mitchell 1998. On individual conventions, see, for example, Minor 1994, Fischer 1982, Verstichel et al. 2008.
4. Indeed, even the obligation of 'self-reporting' is a derogation from the sovereignty idea (Henkin 1994: 41).
5. 'Face' is an attribute not only of individuals, but also of collective actors, such as states and international organizations, who use face as a resource in interactions (Magistro 2001; Ting-Toomey & Kurogi 1998; see Anholt 2000 and Szondi 2008 on 'nation branding').
6. In diplomacy, indirectness is central since it allows to test the waters, advance under cover and, if needed, retreat without cost (Jervis quoted in Villar 2005: 52).
7. Redressive action may consist in enhancing the 'positive face' of the interlocutor by acknowledging its wants, or be oriented at its 'negative face' by means of self-effacement, restraint and explicit recognition of the addressee's independence.
8. In this context, a strategy may be defined as "a goal-determined weighting-and-setting pattern of decision parameters" (Enkvist 1991: 13).
9. Although this is true for the monitoring body as well as for reporting states, states find themselves in a more vulnerable position: it is their actions that are evaluated and criticized. This accounts for the predominance of concerns about the state's face over the face of the monitoring body in this paper.
10. The author distinguishes eight most often-used second-order strategies, resulting from the intersection of the two main strategies with communicative needs of the parties. See Appendix for explanation and examples.

11. Within the Council of Europe's structure, the AC is the body directly responsible for monitoring the implementation of the Framework Convention. It is composed of up to 18 independent experts nominated by the Committee of Ministers, and is supported in its work by a Secretariat.
12. Writing its opinion, the Advisory Committee also uses additional sources of information such as 'shadow reports' by NGOs, or other expert opinions and the information obtained during state visits by a working group.
13. Available online: <http://www.coe.int/t/dghl/monitoring/minorities/>
14. This claim is sustained by author's interviews with officials of the Finnish Ministry for Foreign Affairs, October 2010, and with members of the AC Secretariat, May 2005.
15. For example, Finland had reported within an analogous procedure under to the UN Covenant for Civil and Political Rights.
16. Estonia's weaker position in the interaction was mainly due to its recent democratization, problematic demographic and political situation with national minorities and the attention of EU and NATO to the Estonian success in the implementation of the Framework Convention. Arguably, Estonia's candidate status in these two organizations made it more exposed to the AC's assessment and raised incentives for compliance with the AC's recommendations.
17. "The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them."
18. No document with the layout is publicly available. The high similarity of the opinions' structure allows to quite confidently conclude, however, that such a layout exists.
19. Author's interview in the AC Secretariat, October 2010.
20. Available online:
http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/
21. Advisory Committee on the Framework Convention for the Protection of National Minorities 1998: 2.
22. This tactic is usually rather implicit and expressed in longer passages. Here only a part of such a passage is quoted for illustration.
23. An interesting variant of the re-definition approach may be labeled 'putting into perspective'. It includes cases where the desirability of suggested changes is brought into question by advancing other values and social needs satisfied by the status quo. For example, in its first comments on the AC opinion, Finland stipulates that land disputes in northern Lapland have "many complicated aspects" and brings forward such principles as economic, ecological and social sustainability, the preservation of biological diversity and the productivity of the forests as the grounds for the actual political decisions. In the Comments' words, "the disputes most often involve a search for an equilibrium between various factors relating to sustainable development and employment."

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Conclusion

Conclusion

All the papers making part of this thesis look at monitoring as a critical aspect of compliance, since it is exactly through the state policies' monitoring by an external body and its evaluation of these policies in light of a certain standard of behavior or particular requirements that compliance becomes tangible. While the first paper includes external incentives (demands addressed at countries) in the list of the factors explaining domestic rule adoption and thus attempts to evaluate their effectiveness, the other papers question the content of monitoring more critically. Namely, I suggest that considering monitoring as an evaluation and a communicative process renders more visible the fact that compliance is discursively constructed and negotiated in institutional settings.

If we see the monitoring as policy evaluation, it becomes clearer that judgments on compliance are part of political process subject to the dynamics of group interests and power struggle. They are contingent upon the evaluator's motivations and its position in a political landscape and are, as a result, value-laden, linked to legitimation and identity construction. At the same time, such assessments are instances of policy discourse and are therefore inscribed in larger ideational and discursive processes. For example, Evert Vedung has argued that there is a link between ideas on the most appropriate ways of evaluating policies and more general public sector governance doctrines¹. For that reason, policy evaluation will rely upon an understanding of the political setting it is inscribed in and on the self-image of the evaluator as a political actor. If the evaluator perceives its legitimacy as contested and its identity as unsure or in flux, this will be reflected in the evaluations it realizes.

As discussed in the paper "Enlargement, a success story", the evaluation of the pre-accession strategy by the European Commission is more appropriately conceptualized as a response to its legitimacy and identity concerns than as an aggregation of its 'findings' on individual countries' progress and response to the demands. In the case of the Council of Europe, the situation is different. As noted in scholarly literature and sustained by my interviews in Estonia and Finland, the legitimacy of the Council of Europe in general and of the Advisory Committee for the Framework Convention in particular is not challenged in a serious way within the FCNM monitoring. It seems that the Advisory Committee has indeed managed to establish itself as an authoritative expert body. This of course does not mean that its critique is accepted without question by the states; still, its position in declaring equal treatment of the states² and the evaluation being based on a unique standard – the Framework Convention itself – is much stronger than in the case of the European Commission.

It would be in fact interesting to perform a deeper comparative study of the evaluative and meta-evaluative discourse of the European Union and the Council of Europe, for instance, their self-

¹ Evert Vedung (2010), "Four Waves of Evaluation Diffusion", *Evaluation* 16(3): 263-277.

² See, for example, an article by Sia Spiliopoulou Åkermark, a former member of the Advisory Committee: (2008), "The Added Value of the Framework Convention for the Protection of National Minorities (I)", in A. Verstichel, A. Alen, D. De Witte and P. Lemmens (eds.), *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?*, Antwerp-Oxford-Portland: Intersentia: 69-90.

evaluation and claims of the success of monitoring. Some evidence suggests that both international organizations engage in a construction of success when speaking about their activities. Two quotes – one from the European Commission’s 2005 strategy paper on enlargement, another from an article by Asbjørn Eide, former president of the Advisory Committee, – are introduced below as an illustration:

(1) “The latest enlargement was a remarkable success. Before 1 May 2004, the largest enlargement in the EU’s history was widely predicted to provoke major problems, such as institutional deadlock and massive flows of migrant workers. But in fact the adjustments have been limited and manageable. Meanwhile, the new Member States have brought in economic dynamism, helping to maintain and create jobs across the whole EU.”³

(2) “When the convention was adopted, there was considerable criticism by minority rights experts of its alleged weakness. It was seen to contain only vague programmatic standards... Fortunately, the international monitoring of its implementation has turned out to be considerably more effective than expected by the critics. The evolution in practice of the monitoring has made it more assertive – some governments might even consider it more intrusive – than most of the treaty bodies of the United Nations.”⁴

While important differences may be noticed in the style of the two passages, their structure and claims are very similar. It is especially worth underlining how their focus on success or effectiveness is linked to reported criticism and is constructed against it. An in-depth analysis of self-evaluative and self-congratulatory discourses in an institutional context could be an avenue of my future research.

If we concentrate on the understanding of monitoring as communication, it becomes possible, first, to see it not as a unilateral judgment by the evaluator, but as a negotiation on the state’s compliance, and second, to study it with tools suited for the analysis of communication, for example, by using insights from pragmatics or politeness theory.

Negotiation of compliance within monitoring is a much more complicated process than arguing about the extent to which the state conforms to the established standard of behavior or concrete requirements. It comprises a negotiation of the roles and relative power positions of the actors participating in monitoring⁵. The power to interpret the standard – an international treaty clause or a demand linked to conditionality – is not distributed once and for all and is subject to reconsideration. This is especially true in the case of more implicit demands, or hints (“problem statements” in the terminology of the thesis papers): since the meaning of such demands is particularly open for interpretation, compliance is likely to hinge on the relative weight of different readings. Another aspect of negotiation is the use of the resources available to the parties, such as information resources. In relation to this point, Ronald Mitchell notes that states can “trade off the benefits of transparency against other regime objectives”⁶. It means that they can ‘score points’ in the relationship with the

³ European Commission, “2005 enlargement strategy paper”, COM(2005)561 final, Brussels, 09.11.2005, p. 4.

⁴ Asbjørn Eide (2008), “Towards a Pan-European Instrument?”, in Verstichel et al. (2008): 5-17, p. 15.

⁵ On this point, see Jasper Krommendijk (forthcoming), “The effectiveness of non-judicial mechanisms for the implementation of human rights”, *Human Rights and Legal Discourse* 2011, p. 29.

⁶ Ronald B. Mitchell (1998), “Sources of Transparency: Information Systems in International Regimes”, *International Studies Quarterly* 42(1): 109-130, p. 113.

treaty body by sharing fuller information on their behavior. Indeed, demonstrating open attitude in the monitoring by providing self-critical information or positively reacting to critique can in principle at least partly ‘compensate’ for some imperfections in policies. In the case of the FCNM monitoring, the Advisory Committee at times explicitly commends states for their ‘open attitude’, declared goals and readiness to maintain a cooperative rapport with the Council of Europe. In this case, behavior within the monitoring is evaluated in addition to behavior in the policy area covered by the international treaty in question.

As I have attempted to demonstrate in the paper “Discursive Strategies in Diplomatic Communication”, approaching monitoring as communication and using analytical tools developed in communication research can prove useful not only for making conclusions on the level of the discourse. In this way, different theoretical explanations of the content of monitoring and the parties’ motivations have been tested using the data obtained by an application of pragmatics and politeness theory. What emerged as the best-performing explanation, at least for the two countries in the sample, is the logic of strategic calculations combined with institutional reasoning. This finding not only supports the view of the compliance evaluation as an institutional negotiation, but also casts some doubts on cultural determinism in compliance research.

As observed by George Downs and Michael Jones, “the idea of an immutable national character is inconsistent with the rhetoric of calculation”⁷, and evidence that, prompted by contextual considerations, same states (or same actors within states) behave in a significantly different way within monitoring exchanges, is at odds with culture-based explanations of compliance⁸. Moreover, as concerns the states’ discursive behavior through which reporting under the FCNM is realized, the findings of the paper running genre analysis of reports by two groups of countries – ‘old democracies’ and ‘new democracies’ – provides additional evidence that some kinds of difference between the use of linguistic resources by the reporting states are better explained by their relative ‘genre competence’ than by their belonging to one of the two groups. Bringing further support for this explanation, some of the novices in reporting, such as the Czech Republic, Hungary and Estonia, proved closer to the patterns characteristic for the experienced countries.

While the discursive behavior, as operationalized in the two papers on the use of strategies in monitoring documents, refers mostly to the states’ and the treaty body’s approach to the management of information and critique, it could be conceptualized in future research as covering the yet unstudied textual level of compliance. For example, one could look more closely at the demand and supply sides of information management by inquiring whether the states provide particular information or types of information asked for by the monitoring body (information on the implementation or statistics, for instance). Or, delving even further into the field of language, run a Bakhtin-inspired inquiry of the

⁷ George W. Downs and Michael A. Jones (2002), “Reputation, Compliance, and International Law”, *Journal of Legal Studies* XXXI: 95-113, p. 101.

⁸ Cf., for example, Gerda Falkner and Oliver Treib (2008), “Three Worlds of Compliance or Four? The EU15 Compared to New Member States”, Political Science Series, Institute for Advanced Studies, Vienna.

dynamics of vocabulary adjustment and narrative alignment. Indeed, if such a study manages to differentiate between discursive dynamics proper, happening quasi automatically within communicative exchanges⁹, as opposed to dynamics brought forth by strategic adjustments, it becomes possible to measure a new dimension of compliance – discursive compliance. It would cover an additional aspect of conforming behavior by describing (and possibly explaining) how much the discourse of the parties is mutually adjusted in the monitoring exchanges.

⁹ For Bakhtin's theory of communication, see Mikhail Bakhtin (1984), *Problems of Dostoyevsky's Poetics*, University of Minnesota Press; Mikhail Bakhtin (2006), *The Dialogic Imagination. Four Essays by M.M. Bakhtin*. M. Holquist (ed.), Austin: University of Texas Press; Mikhail Bakhtin (2006), *Speech Genres and Other Late Essays*, Austin: University of Texas Press.