

**'Form But Not the Function?'**  
**Dilemmas of European Human Rights and**  
**Democracy Promotion in Russia**

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A thesis submitted  
for a degree of Doctor of Philosophy

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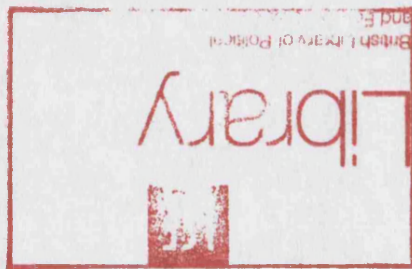
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## **Abstract**

The Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE) and the European Union (EU) are all outspoken about their goal to see Russia developing into a democratic state that respects human rights. This thesis explores cooperation on human rights and democratisation between these organisations and Russia: how the organisations promote European norms in Russia, how the cooperation has developed over the years, and what kind of impact the interaction has had – first of all, on Russia but secondarily also on European norms and on European organisations – and why.

These questions are examined through three empirical case studies on different sets of norms that the OSCE, CoE and the EU actively promote in Russia: the institution of a human rights ombudsman, the abolition of the death penalty and free and fair elections. European documents clearly define these norms, and Russia has explicitly declared its commitment to implement them.

The thesis advances both the theoretical discussion on the interplay between international cooperation and domestic change, and our practical knowledge on how the policies of these organisations have influenced developments in Russia.

As regards theory, the thesis argues that the theoretical democratisation and socialisation models reflect the universalistic optimism of the post-Cold War era. Developments in Russia do not support this optimism. Basing analysis on the three empirical cases, it is suggested that instead of viewing socialisation as a one-way transference of norms, greater attention should be accorded to the interaction that takes place between the actors, and that the clear-cut stages of development inherent in the socialisation and democratisation models do not always grasp the essence of the change and may, in fact, restrict our analysis.

Policy-wise, it is argued that the European human rights and democratisation strategies towards Russia have by and large failed because they are based on similarly over-optimistic expectations, typical of the zeitgeist of the post-Cold War years. The thesis warns that if an exception is granted to Russia with regard to once-agreed norms, the

normative base for European cooperation will be weakened. In the long run, this could have a negative impact on the legitimacy of the European organisations.

## Declaration

I hereby declare that the work presented in this thesis is my own and has not been submitted before for any degree at this or any other university.

A handwritten signature in black ink, appearing to read 'Sinikukka Saari'.

Sinikukka Saari

Helsinki, 25 January 2007

## Acknowledgements

This thesis sprung from a desire to understand why the expectations at the end of the Cold War about the "new world order" never quite materialised. Many of my original hunches and ideas ended up in a rubbish bin, but some of them developed into more specific ones, which are studied in this thesis. This initial desire still looms identifiably in the background.

This thesis would have not seen the daylight without many important institutions and people to whom I owe a great deal. First of all, I would like to express my gratitude to the Helsingin Sanomat Centenary Foundation and for the Academy of Finland and its Russia in Flux programme for their generous financial support. The Helsingin Sanomat Centenary Foundation funded the first two years of my studies in London, and the Academy of Finland the latter two.

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Helsinki, 25 January 2007



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## List of Abbreviations

ACEEEO	Association of Central and East-European Elections Officials
BRIC	Brazil, Russia, India, China
CBSS	Council of the Baltic Sea States
CEES	Central and Eastern European States
CFSP	Common Foreign and Security Policy (EU)
Cheka	<i>Vserossiiskaia chrezvychainaia komissiiia po bor'be s kontrrevoliutsiei i sabotazhem</i> (VChK), All-Russian Extraordinary Commission for Combating Counter-revolution and Sabotage
CHR	Commissioner for Human Rights (CoE)
CIA	Central Intelligence Agency (US)
CM	Committee of Ministers (CoE)
CoE	Council of Europe
CSCCE	Conference on Security and Cooperation in Europe
CPT	Committee for the Prevention of Torture (CoE)
EAD	Electoral Assistance Division (UN)
EAU	Electoral Assistance Unit (UN)
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECHO	Humanitarian Aid Office (EU)
EIDHR	European Initiative for Democracy and Human Rights (EU)
EIM	European Institute for the Media
EP	European Parliament (EU)
EU	European Union
FSB	<i>Federalnaia sluzhba bezopasnosti</i> , Federal Security Service
HR	Human rights
KPSS	<i>Kommunisticheskaia Partiiia Sovietskogo Soiuzza</i> , Communist Party of the Soviet Union
KPRF	<i>Kommunisticheskaia Partiiia Rossiiskoi Federatsii</i>
LDPR	<i>Liberal'no-Demokratichskaia Partiiia Rossii</i> , Liberal Democratic Party of Russia
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
NKVD	<i>Narodnyi komissariat vnutrennih del</i> , People's Commissariat for Internal Affairs
MEP	Member of the European Parliament
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PCA	Partnership and Cooperation Agreement
PPC	Permanent Partnership Council (EU-Russia)
RF	Russian Federation
RSFSR	Russian Soviet Federated Socialist Republic
SPS	<i>Soiuz pravyh sil</i> , Union of Right Forces
SU	Soviet Union

TACIS	Technical Assistance to the Commonwealth of Independent States Programme (EU)
TsIK	<i>Tsentralnaia izbiratelnaia komissii</i> , Central Electoral Commission
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	UN High Commissioner for Refugees
US	United States
USSR	Union of Soviet Socialist Republics
Venice Commission	European Commission for Democracy through Law (CoE)

## CHAPTER 1

### THEORETICAL INTRODUCTION TO DEMOCRACY AND HUMAN RIGHTS PROMOTION

*This chapter identifies the general points of departure for this thesis. It commences with a critical assessment of current research on democratisation and state socialisation. Central research questions and the structure of the study are formulated on the basis of the theoretical analysis. The latter part of the chapter outlines the research design and the source material used, and addresses some methodological questions and central concepts.*

#### 1 Modelling Domestic Social Change

Since the mid-1970s, a growing number of states have moved away from authoritarian, human-rights-trampling rule and striven towards a more democratic and humane form of government. The last group of states to join this so-called "third wave" of democratisation<sup>1</sup> was the former socialist Central and Eastern European States (CEES) in the late 1980s and early 1990s. The latest wave of democratisation was characterised by a growing internationalisation of the democratisation process and the debate by which it was accompanied. Other states, international organisations and various transnational actors, such as non-governmental and quasi-governmental organisations, actively participated in democracy and human rights promotion in "target states".

The internationalisation of human rights and democratisation is a sign of the growing interconnectedness of actors in the globalising world. The traditional division between "internal" and "external" policy fields has increasingly become blurred.<sup>2</sup> State sovereignty has begun to be interpreted in a more flexible way. Democratic rule and respect for human rights have become the only means by which states can gain unquestioned international legitimacy. International actors are concerned about human rights and democracy internationally because they are considered essential elements in

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<sup>1</sup> Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), pp. 109-63.

<sup>2</sup> This is highlighted in particular in the literature on global governance and post-modern security threats. See, for example, Didier Bigo, "Internal and External Security(ies): The Möbius Ribbon," in *Identities, Borders and Orders*, eds. Mathias Albert, David Jacobson, and Yosef Lapid (Minneapolis: Minnesota University Press, 2001); David Held, *Democracy and Global Order: From the Modern State to Cosmopolitan Governance* (Stanford: Stanford University Press, 1995); R.B.J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993).



the construction of long-term stability and regional security. Democratic states are often considered to be more reliable, predictable and cooperation-seeking players in the game of international affairs.<sup>3</sup> Humanitarian and normative considerations also matter. According to current international law, human rights are considered to be universal, and all states are obliged to respect them. A great many states agree that it is an international duty to also defend human rights outside their own borders for humanitarian reasons; the disagreements among states primarily revolve around the question of legitimate means by which this duty should be conducted.<sup>4</sup>

International normative concerns are also closely connected with the processes of deepening cooperation and integration in a globalising world. The wider and deeper the cooperation, the more normative concerns the actors have towards each other. The European states, for instance, share a web of overlapping institutional structures and a set of well-established norms and values that states have agreed to respect. This is both a prerequisite and a result of deepening cooperation.

There are thus three interlinked background conditions for the topic of this thesis: the process of the division between internal and external becoming increasingly blurred, the internationalisation of human rights and calls for democracy, and the link between normative concerns and integration. These developments have attracted the interest of growing numbers of researchers since the 1960s. Members of the English School were among the first to draw attention to normative concerns in international politics. Hedley Bull theorised on the international society of states, which accommodated and encouraged cooperation among its members.<sup>5</sup> Later, in the 1980s, John Vincent drew

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<sup>3</sup> This idea, which is commonly referred as democratic peace theory, has long roots. Immanuel Kant proposed this idea already in 1795 in his work *Perpetual Peace*. The theory has been developed further and debated actively since the late 1960s. See, for example, Lee James Ray, *Democracy and International Conflict: An Evaluation of the Democratic Peace Proposition* (Columbia: University of South Carolina Press, 1995).

<sup>4</sup> Peter R. Baehr and Monique Castermans-Holleman, *The Role of Human Rights in Foreign Policy*, 3rd ed. (Houndmills, Basingstoke: Palgrave Macmillan, 2004).

<sup>5</sup> Cooperation is naturally possible without shared norms, but then cooperation is likely to be non-institutionalised, ad hoc based and less effective. See the reprinted article, Hedley Bull, "The Grotian Conception of International Society," in *Hedley Bull on International Society*, eds. Kai Alderson and Andrew Hurrell (Basingstoke and London: Macmillan Press, 2000), pp. 95-124.

attention to the growing role of human rights in international relations.<sup>6</sup> Since then, many of the issues have inspired vivid scholarly debates. There has been discussion on the "normative power" of Europe,<sup>7</sup> on the changing essence of the concept of state sovereignty,<sup>8</sup> and on the perspectives of global governance.<sup>9</sup> In particular, the appearance of Constructivism as a mainstream school of International Relations has brought state identities and the role of norms and values in international politics into the limelight of research.<sup>10</sup>

This thesis focuses on the issue of domestic change and how it is – and how it could be – supported from the outside. It looks into the interaction process between Russia and the Organisation for Security and Cooperation in Europe, the Council of Europe and the European Union, and explores the dynamics of the interplay between international cooperation and domestic change. The thesis draws from theories that have explained transitions to democratic and human-rights-respecting rule in its analysis of how democracy and human rights are in practice promoted in Russia by international organisations, and why this promotion has not been successful. The study does not engage in philosophical or moral debates on the justification of human rights promotion in third states, nor does it envisage how things should be in a perfect, ideal world. Essentially, the thesis takes the world as it is, and tries to make some sense of it through its analysis. By offering a more complete understanding of developments, one is better

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<sup>6</sup> R. J. Vincent, *Human Rights and International Relations*, 3rd ed. (Cambridge: The Royal Institute of International Affairs and Cambridge University Press, 1987).

<sup>7</sup> Ian Manners, "Normative Power Europe: A Contradiction in Terms?," *Journal of Common Market Studies* 40, no. 2 (2002).

<sup>8</sup> See, for example, Thomas Biersteker and Cynthia Weber, eds., *State Sovereignty as Social Construction* (Cambridge: Cambridge University Press, 1996); Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999); Alexander Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, no. 2 (1992).

<sup>9</sup> Held, *Democracy and Global Order: From the Modern State to Cosmopolitan Governance*.

<sup>10</sup> Emanuel Adler, "Seizing the Middle Ground: Constructivism in World Politics," *European Journal of International Relations* 3, no. 3 (1997); Ronald Jepperson, Alexander Wendt, and Peter Katzenstein, "Norms, Identity and Culture in National Security," in *The Culture of National Security*, ed., Peter Katzenstein (New York: Columbia University Press, 1996); Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics."; Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999; reprint, 2000).

equipped to provide an explanation of how certain kinds of behaviour are possible, or likely, and why.<sup>11</sup>

Reflecting the general approach of the thesis outlined above, the theories considered here are mid-range, practice-oriented theories on democratisation and state socialisation to international norms. They both seek to explain major normative change in domestic politics, and how that change is likely to take place. These theoretical frameworks will be explored in the following sections.

### **Democratisation**

The democratisation of states has been explained in a number of ways. These explanations often tell us more about the zeitgeist of the particular period, than about the "objective" dynamics of democratisation process. While the earlier theories usually highlighted the importance of structural issues, such as the stage of economic development, culture and historical experience – often in a very deterministic fashion – more recent theories suggest that there are no fundamental preconditions for democracy. Democracy may be more difficult to establish in some states due to cultural and other structural issues, but in principle, it is a feasible task. This more recent strand of literature has been labelled as "transition literature" or "transitology".<sup>12</sup> Transitology represents the mainstream in current democratisation literature.

There are some underlying assumptions that are typical for the transition paradigm of this third wave of democratisation. Guillermo O'Donnell and Phillippe Schmitter have developed these points in their contribution to the edited book *Transitions from Authoritarian Rule: Prospects for Democracy* (1986). Since then, many researchers have followed their points, either explicitly, or – more frequently – implicitly.

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<sup>11</sup> Alexander Wendt, "On Constitution and Causation in International Relations," *Review of International Studies* 24, no. 5 (1998): pp. 104-105.

<sup>12</sup> See the seminal, agenda-setting pieces of this school: Guillermo O'Donnell and Phillippe C. Schmitter, "Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies," in *Transitions from Authoritarian Rule: Prospects for Democracy*, eds. Guillermo O'Donnell, Phillippe C. Schmitter, and Laurence Whitehead (Baltimore: Johns Hopkins University Press, 1986); Dankwart A. Rustow, "Transitions to Democracy: Towards a Dynamic Model," *Comparative Politics* 2, no. 3 (1970).

In all its simplicity, democratisation of transition societies is expected to be a three-phase process moving from totalitarianism towards genuine democracy.<sup>13</sup> The first step towards democracy is taken when the authoritarian society opens up and begins to *liberalise* state-society relations. Repression is diminished, and the room for political debate grows. Civil society gains strength gradually through the mushrooming and strengthening of NGOs. Although political liberalisation is often accompanied by economic reforms, transitologists are primarily concerned with the process of political liberalisation. According to O'Donnell and Schmitter, liberalisation is the "process of making effective certain rights that protect both individuals and social groups from arbitrary or illegal acts committed by the state or third parties".<sup>14</sup> Liberalisation does not yet mean that political freedoms are completely respected at all times, and that rulers are accountable to their subjects; liberalisation is only the opening of the window for democratic change.<sup>15</sup> Schneider and Schmitter claim that the general indicators for liberalisation are the following:<sup>16</sup>

1. The regime makes significant concessions on human rights.
2. There are no – or at least very few – political prisoners.
3. Tolerance for opposition increases.
4. There is more than one legally recognised political party.
5. There exists at least one recognised opposition party in parliament.
6. There are trade unions or professional associations, which are not controlled by state agencies or governing parties.
7. There is an independent press and access to alternative means of information that are tolerated by the government.

The initial liberalisation can stem from different sources; it can be, for example, the result of negotiation within the ruling elite, or it may be that the opposition outside the

---

<sup>13</sup> These phases are clearly explained, for example, in Carsten Q. Schneider and Philippe C. Schmitter, "Liberalization, Transition and Consolidation: Measuring the Components of Democratization," *Democratization* 11, no. 5 (2004).

<sup>14</sup> O'Donnell and Schmitter, "Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies," p. 7.

<sup>15</sup> Schneider and Schmitter, "Liberalization, Transition and Consolidation: Measuring the Components of Democratization," p. 61.

<sup>16</sup> *Ibid.*: p. 64.

government pressures the government to make concessions.<sup>17</sup> The sources of the change are first and foremost domestic, and international actors are expected to play a relatively restricted and modest role in the development. The growing freedom is likely to lead to growing demands from the oppositional elite and/or the broader civil society and/or the more liberal part of the elite and/or the outside actors, such as international organisations, transnational networks of activists, and other states. The government may agree to negotiate with the opposition, or to hold competitive elections. However, the government may also at times respond to the strengthening of the opposition by moving to suppress it. If such a backlash does not occur, the state is expected to progress gradually towards the next phase.

In order to access the next stage of *transition*, a democratic breakthrough is needed. The breakthrough is embodied in the first free, multi-party elections, the so-called founding elections.<sup>18</sup> The new democratically elected government aspires to further democratisation, and establishes new democratic structures that usually include a new democratic constitution guaranteeing basic political rights and freedoms. According to Schneider and Schmitter, there are eight items on the transition mode list:<sup>19</sup>

1. Oppositional social/political movements enter into public negotiations with the government.
2. There exist open conflicts within the administrative apparatus of the state over public policies, which are acknowledged by the government.
3. Legal reforms, which are intended to limit arbitrary use of power by the regime, are introduced.
4. Constitutional/legal changes, which eliminate the role of non-accountable powers of veto-groups, are introduced.
5. A constitution, which guarantees equal political rights and civil freedoms to all citizens, has been ratified.
6. Founding elections have been held.

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<sup>17</sup> See Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, pp. 121-63.

<sup>18</sup> O'Donnell and Schmitter, "Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies," pp. 61-64.

<sup>19</sup> Schneider and Schmitter, "Liberalization, Transition and Consolidation: Measuring the Components of Democratization," p. 66.

7. The founding elections have been free and fair.
8. The results of the founding elections have been widely accepted.

Subsequent to the establishment of all necessary structures, the process of democratisation will gradually proceed to the phase of *consolidation of democracy*. During the consolidation of democracy, democratic institutions, procedures and policies will become deeply rooted and well-functioning practices. By way of definition, Larry Diamond suggests that consolidation is "a discernible process by which the rules, institutions and constraints of democracy come to constitute 'the only game in town', the only legitimate framework for seeking and exercising political power".<sup>20</sup> Consolidation is the most crucial and most difficult phase to enter. Schneider and Schmitter suggest the following criteria for measuring the degree of consolidation of democracy:<sup>21</sup>

1. No significant political party advocates major changes in the existing constitution.
2. Regular elections are held and their outcomes are respected.
3. Elections are free and fair.
4. No significant parties or groups reject previous electoral conditions.
5. Electoral volatility has diminished.
6. The actions of elected officials/representatives are not constrained by non-elected veto-groups.
7. A first rotation-in-power or significant shift in alliances of parties in power has occurred within the rules already established.
8. A second rotation-in-power or significant shift in alliances of parties in power has occurred within the rules already established.
9. Agreement (both formal and informal) has been reached on the rules governing the association formation and behaviour.
10. Agreement (both formal and informal) has been reached on the rules governing the executive format.
11. Agreement (both formal and informal) has been reached on the rules governing the territorial division of competencies.

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<sup>20</sup> Larry Diamond, "Introduction: In Search of Consolidation," in *Consolidating the Third Wave Democracies. Themes and Perspectives*, eds. Larry Diamond, et al. (Baltimore: John Hopkins University Press, 1997), xvi-xvii.

<sup>21</sup> Schneider and Schmitter, "Liberalization, Transition and Consolidation: Measuring the Components of Democratization," p. 68.

12. Agreement (both formal and informal) has been reached on the rules governing the rules of ownership and access to mass media.

### *Debates around democratisation*

Democratisation theorists are good at categorising and analysing the state of democracy within a state but they are often vague about how states enter and progress on the scale of transition. Many researchers have settled for emphasising the inherent uncertainty of democratisation. Samuel Huntington, for example, expects that many of the newly born democracies would be caught in a "reverse wave" and would eventually fail to consolidate the democratic system.<sup>22</sup> Although he lists many possible reasons for the phenomenon, he maintains that there is something inevitable and natural about the sequence of the waves. The transition paradigm concentrates on the nature and degree of democratic change in the target state. It does not specify the exact causal mechanisms of change, nor does it usually look outside the target state, that is, how international actors may influence the outcome. Transitologists have been vague about the explicit causal links in the process, and have therefore faced accusations on occasion of an inability to offer a proper theory of democratisation.<sup>23</sup> To many their categorisations merely constitute a general approach to the analysis, rather than a testable theory with "if X, then Y" claims.<sup>24</sup>

However, in practical terms their points have widely been interpreted as a theory. The phases of liberalisation, transition and consolidation have made their way to the common vocabulary of democracy promotion and are often taken as a definite model of democratisation. Despite the fact that theorists and promoters often admit that states can – and sometimes do – take backward steps, or stall at one of the stages of the model there is a strong teleology implicit in this transition paradigm.<sup>25</sup> All analysis takes place

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<sup>22</sup> Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, pp. 13-33.

<sup>23</sup> For a good overview of the democratisation literature, see Graeme Gill, *The Dynamics of Democratization: Elites, Civil Society and the Transition Process* (Houndmills, Basingstoke: Macmillan Press, 2000).

<sup>24</sup> Valerie Bunce, "Should Transitologists Be Grounded?," *Slavic Review* 54, no. 1 (1995): p. 123.

<sup>25</sup> Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13, no. 1 (2002): p. 7; Marina Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism* (Washington DC: Carnegie Endowment for International Peace, 2003), pp. 12-14.

in terms of the democratisation model, and hence development completely outside the model goes unaccounted for.

The democratisation model is a comprehensive model for the evaluation of the nature and degree of democracy in a target state. Because of its comprehensive nature, it cannot be as such applied to specific issues of democracy, such as specific human rights. Therefore, in this thesis the model is used first and foremost in Chapters 2 and 7 in the evaluation of the degree and nature of democracy generally in Russia.

### **Socialisation**

By contrast to the democratisation theorists, who allegedly have failed to offer a "proper" theory with "if X, then Y" claims, the Constructivist socialisation theorists aim to do precisely that. Constructivist socialisation theorists direct their attention more specifically to the ways in which international rules and norms are transferred from one party to another, usually from a state, international organisation or transnational network to another state. The socialisation literature looks at fundamental domestic social change as a multi-level process of norm adaptation, and endeavours to reveal the causal mechanisms and modes of action involved in the transformation process. The socialisation literature has not been restricted to the study of human rights and democratic norms: there have also been studies, for example, on transference of security and environmental norms.<sup>26</sup>

The socialisation literature draws heavily on democratisation literature. The characteristics of different phases of socialisation are very similar to the phases of democratisation described above. Their difference lies, first and foremost, in their focus, selection of actors and levels of analysis. Socialisation literature explores the interplay between international, transnational and domestic levels, and hypothesises about the causal mechanisms at play. In contrast, the democratisation model settles for describing the general changes that are taking place in the target state.

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<sup>26</sup> Matthew Evangelista, *Unarmed Forces: The Transnational Movement to End the Cold War* (Ithaca: Cornell University Press, 1999); Oran Young and Marc Levy, "The Effectiveness of International Environmental Regimes," in *The Effectiveness of International Environmental Agreements*, ed., Oran Young (Cambridge, MA: MIT Press, 1999).



The most comprehensive attempt to formulate a multi-level model of socialisation is found in a volume titled *Power of Human Rights: International Norms and Domestic Change* (1999), edited by Thomas Risse, Stephen Ropp and Kathryn Sikkink. The editors outline a particular model of socialisation to human rights, which shares the same underlying assumptions as democratisation theory: the theory is universally applicable, the phases of development are very similar in both models, and there are no structural – for example economic or cultural – conditions that should be met before change is possible (besides the establishment of transnational networks between domestic groups and outside actors).

The "spiral model" draws a trajectory of state socialisation to international human rights norms, and singles out the causal mechanisms as well as the dominant actors at play in each of the stages of development. It embraces interplay between international, transnational, state and sub-state levels. The most important factor in the process is claimed to be the formation and sustainability of a transnational human rights advocacy network. The network links domestic and transnational actors together with international organisations, western public opinion and western governments.<sup>27</sup> This is also the most significant point on which the socialisation model differs from the democratisation model. Whereas the Risse-Sikkink model highlights the importance of civil society challenging the regime, the democratisation literature emphasises the importance of elite bargaining. Both models make predetermined assumptions about the pathways of change.

The Risse-Sikkink socialisation model is Constructivist inasmuch as it combines rationalist, material interest-based causal mechanisms (bargaining, instrumental calculations) with more socially constructed mechanisms (argumentative rationality, habitualisation). Its analysis is rooted in the Constructivist understanding, which asserts that states seek to act according to their identities. Identities are definitions of self in relation to others, and they are constructed – and reconstructed – in intersubjective

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<sup>27</sup> Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights: International Norms and Domestic Change*, ed., Thomas Risse and Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), p. 5.

processes between states and international structures.<sup>28</sup> States care about their international reputation and can become entrapped in their own words. Alongside material gains and power, values and norms matter in international relations.<sup>29</sup>

The model understands state socialisation to international norms in a more comprehensive fashion than Realists or Institutionalists. Realists view socialisation simply as the principle that all states are forced to respond to the constraints of international anarchy in a similar fashion, that is, to imitate the strategies of their rivals.<sup>30</sup> Institutionalists also downplay socialisation by claiming it influences only state strategies: institutions encourage a certain type of behaviour through sanctions, changes in domestic balances of power or by making states consider their international reputation.<sup>31</sup> In contrast, Constructivists believe that socialisation may change a state's identity, its interests and behaviour.

The Risse-Sikkink model of socialisation is by no means the only attempt by Constructivists to explore the mechanisms of socialisation in international cooperation. In recent years there have been a number of studies on international norm socialisation, in particular within the European and human rights studies camps.<sup>32</sup> Many of these studies have brought valuable contributions to the debate. For instance, recent studies have highlighted specific scope conditions that condition the socialisation process in an

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<sup>28</sup> Peter J. Katzenstein, "Introduction: Alternative Perspectives on National Security," in *The Culture of National Security: Norms and Identity in World Politics*, ed., Peter J. Katzenstein (New York: Columbia University Press, 1996), pp. 23-25.

<sup>29</sup> Naturally, there are different variations of social constructivism: mainstream "modernist", "rule-based", "commonsense" and more post-modern constructivists. Despite all their differences, the points made here are common to all of these approaches. On different variations of constructivism, see, for example, Adler, "Seizing the Middle Ground: Constructivism in World Politics."; Ralph Pettman, "Commonsense Constructivism and Foreign Policy: A Critique of Rule-Orientated Constructivism," in *Foreign Policy in a Constructed World*, ed., Vendulka Kubálková (Armonk, New York: M.E. Sharpe, 2001).

<sup>30</sup> Kenneth N. Waltz, *Theory of International Politics*, 2nd, revised ed. (Reading, Massachusetts: Addison-Wesley Publishing Company, 1983), pp. 74-77.

<sup>31</sup> Lisa L. Martin, *Coercive Cooperation: Explaining Multilateral Economic Sanctions* (Princeton: Princeton University Press, 1992), pp. 240-47.

<sup>32</sup> Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton: Princeton University Press, 2001); Ronald H. Linden, ed., *Norms and Nannies: The Impact of International Organizations on the Central and East European States* (Lanham: Rowman & Littlefield Publishers, 2002); Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton: Princeton University Press, 2001); Michael Zürn and Jeffrey T. Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation State," *International Organization* 59, no. 4 (2005).

illuminating way.<sup>33</sup> Nevertheless, since the majority of these writings draw from the Risse-Sikkink model, it is appropriate to take their model as the reference point for this study.

#### *Risse-Sikkink model of socialisation*

The five-phase socialisation model (see Table 1) starts with a *repressive society* in which human rights norms are denied. Only if and when the transnational advocacy network succeeds in putting the norm-violating state on the international agenda, the process moves to the next phase. During the second phase of *denial*, there is growing international awareness of human rights violations taking place in the target state. Transnational advocacy groups gather information on violations and lobby for the cause internationally. The government is expected to deny the validity of international human rights norms and insist that the criticism is a violation of the non-interference principle in international relations.<sup>34</sup>

However, if international pressure continues and escalates, the government is likely to make minor concessions to pacify the international criticism. The third phase is thus characterised by *tactical concessions* on human rights issues by the repressive government. The government is acting purely out of instrumental calculations: it is trying to get something out of the concession in the human rights field (economic assistance, for example). As in the democratisation literature, the spiral model expects concessions eventually to facilitate further social mobilisation in the target country. At this stage, the state moves towards more enduring change in human rights and democratisation policies or, alternatively, it may result in a backlash in human rights. Improvement in human rights is more often than not accompanied by a change of regime, whereas a backlash is expected to be carried out by the repressive government remaining in power. The potential backlash is expected to be merely a temporary

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<sup>33</sup> In particular, Jeffrey T. Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," *International Organization* 59, no. Fall (2005); Frank Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," in *Norms and Nannies: The Impact of International Organisations on the Central and East European States*, ed., Ronald H. Linden (Lanham: Rowman & Littlefield Publishers, 2002).

<sup>34</sup> Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," pp. 22-24.

suspension in the progress towards human rights socialisation.<sup>35</sup> During the phase of tactical concessions, the dominant mechanisms at play are, first, strategic bargaining and instrumental adaptation on the government side, and consciousness-raising, dialogue and persuasion on the advocacy network side. As the next phase of the prescriptive status of human rights nears, an "argumentative self-entrapment" takes over, and argumentation and persuasion will become the dominant causal mechanisms. The phase of tactical concessions corresponds roughly to the *liberalisation* phase in the democratisation literature. Both models presume that once the government opens the door for limited liberalisation, socialisation to democracy and human rights will almost automatically follow. The governments seem to have only marginal influence over this, as they are bound to become "trapped in their own words" and lose control over the situation.<sup>36</sup>

The next stage of the *prescriptive status* of human rights denotes that the target state's government accepts the validity of human rights norms without reservations. The state commits itself domestically and internationally to the implementation of human rights norms and standards. The government creates institutional arrangements in order to secure human rights for its citizens. There may still be some problems in the implementation of international human rights standards, but the government is firmly committed – both in words and in deeds – to the values, and strives for their implementation. The official discourse on the norms becomes consistent throughout, regardless of the audience. During this phase, the dominant mechanisms at play are, first, consciousness-raising, dialogue and persuasion, and later institutionalisation. The phase of prescriptive status corresponds again roughly to the stage of *transition* in the general democratisation model.

The final stage in the socialisation to human rights is *rule-consistent behaviour*. This phase corresponds to the *consolidation* period of the democratisation model. Risse and Sikkink maintain that during this final stage, the processes of institutionalisation and habituation reign, and the norms become firmly internalised by the target state and its society. During this phase, human rights become fully institutionalised, norm

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<sup>35</sup> Ibid., p. 26.

<sup>36</sup> Ibid., p. 27.

compliance becomes a habitual practice, and they are implemented effectively and consistently.<sup>37</sup>

**Table 1: Socialisation model**

	Repression	Denial	Tactical concessions	Prescriptive status	Rule-consistent behaviour
<b>Dominant actors</b>	Transnational human rights networks	Transnational human rights networks	Transnational networks and domestic opposition	National governments and domestic society	National governments and domestic society
<b>Dominant mode of action</b>	Instrumental rationality	Instrumental rationality	Inst. rationality → rhetorical action → argumentative rationality	Argumentative rationality and institutionalisation	Institutionalisation and habitualisation
<b>Description</b>			Modest liberalisation, domestic opposition gains strength, pressure leads to regime change or controlled liberalisation	After breakthrough, norms uncontested: ratification of HRs conventions, constitution confirms HRs, HRs institutions established etc.	Human rights norms are fully institutionalised domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law

**Table 2: Democratisation model**

	Liberalisation	Transition	Consolidation
<b>Description</b>	State opens up, reforms start, civil society gains strength and leads to regime change or controlled liberalisation	Democratic breakthrough in the form of free elections and a new constitution, institutional and legislative reforms, political negotiation between political actors	Implementation and institutionalisation of democratic institutions, habitualisation

**Sources:**

**Table 1:** Adapted from Thomas Risse and Kathryn Sikkink: "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." In *The Power of Human Rights: International Norms and Domestic Change*, edited by Thomas Risse and Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), pp. 25-33.

**Table 2:** Adapted from Carsten Q. Schneider and Philippe C. Schmitter. "Liberalization, Transition and Consolidation: Measuring the Components of Democratization." *Democratization* 11, no. 5 (2004): pp. 59-90.

*Debates around socialisation*

The Risse-Sikkink model of socialisation is clearly not the only model of socialisation. Indeed, many researchers have outlined their own models and research agendas for the study of state socialisation.<sup>38</sup> Nevertheless, the model is consistently used as a reference point in the subsequent articles. As stated earlier, the subsequent articles primarily

<sup>37</sup> Ibid., pp. 11-34.

<sup>38</sup> Kai Alderson, "Making Sense of State Socialization," *Review of International Studies* 27, no. 3 (2001); Checkel, "International Institutions and Socialization in Europe: Introduction and Framework."; Trine Flockhart, "'Complex Socialization': A Framework for the Study of State Socialization," *European Journal of International Relations* 12, no. 1 (2006); Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues."

endorse the predominant characteristics of socialisation process as outlined in the Risse-Sikkink model, making only smaller adjustments and additions to it. Despite the lively debate that has taken place on state socialisation, the main theses of the Risse-Sikkink model have not been challenged.<sup>39</sup> Many of these contributions have, however, helped to bridge some of the shortcomings of the model.

One of the most crucial points of criticism has been the bias against the ruling elites embedded in the model. Socialisation to international norms naturally does not always occur as a result of transnational network and civil resistance. Sometimes the change in a state takes place through top-down processes: that is, the elite internalises the norms first and society follows their example. The democratisation literature has traditionally seen normative change as essentially an elite-led process, with civil society and international actors being of secondary importance. Few socialisation theorists would go quite so far as to concur with this view, but many of them do recognise that there are more possible pathways to internalisation than the Risse-Sikkink model suggests.<sup>40</sup>

Another addition to the model has been the realisation that domestic structures such as culture may also condition the socialisation effect of international norms. Daniel C. Thomas, for example, has claimed that domestic identity should be added to the analysis as an independent variable. He claims that gaps between the rhetoric in the international arena and the actual implementation of norms domestically stems from incompatible domestic and international identities. The change in identities can either encourage the socialisation development or influence it negatively.<sup>41</sup> Thus, according to Thomas, domestic structures matter more than the Risse-Sikkink model suggests. Various other

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<sup>39</sup> See, for example, Alderson, "Making Sense of State Socialization."; Checkel, "International Institutions and Socialization in Europe: Introduction and Framework."; Flockhart, "Complex Socialization!: A Framework for the Study of State Socialization."; Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues."; Cameron Thies, "Sense and Sensibility in the Study of State Socialisation: A Reply to Kai Alderson," *Review of International Studies* 29 (2003); Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*; Zürn and Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation State."

<sup>40</sup> Jeffrey T. Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization* 55, no. 3 (2001): pp. 558-59; Flockhart, "Complex Socialization!: A Framework for the Study of State Socialization," pp. 97-100.

<sup>41</sup> Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, pp. 15-17.

researchers have also raised similar points concerning the importance of the domestic structures and their interaction with the international system.<sup>42</sup>

More generally, a considerable amount of work has been conducted to identify scope conditions for the normative impact of international norms – an issue which the Risse-Sikkink model leaves almost untouched.<sup>43</sup> Frank Schimmelfennig, for example, argues that the socialising impact depends upon the normative power, authority, and material bargaining power of the socialising agent. In addition to these features, domestic conditions and issue- and norm-specific conditions are also likely to play a part in the socialisation process.<sup>44</sup> There have been other critical points made in the debate, yet frequently they have been met with more criticism than applause by other researchers.<sup>45</sup> The points of convergence in the debate on socialisation have, nevertheless, been more dominant than the points of divergence. There are three typical features of the socialisation research in international relations:

1. The dominance of international and (sometimes) domestic structures over agents. Once certain conditions have been met and the process has been kicked off, the process progresses almost automatically. There is little need for active politics after the initial kick-off stage and socialisation pathways are predetermined.
2. Norms are the moving force of the socialisation process. Norms are often considered little black boxes that are, and will remain, unchanged. The cultural side of socialisation is considered – if indeed considered at all – of secondary importance.
3. Socialisation is considered essentially a one-way adaptation process of those little black boxes known as norms. Norms are transferred from the international system to the

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<sup>42</sup> Jeffrey T. Checkel, "Norms, Institutions, and National Identity in Contemporary Europe," *International Studies Quarterly* 43, no. 1 (1999); Thies, "Sense and Sensibility in the Study of State Socialisation: A Reply to Kai Alderson."

<sup>43</sup> Checkel, "International Institutions and Socialization in Europe: Introduction and Framework."; Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," pp. 14-15.

<sup>44</sup> Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues."

<sup>45</sup> A case in point is Alderson's attempt to define socialisation as an outcome rather than a process, which led to growing confusion. See Alderson, "Making Sense of State Socialization."; Thies, "Sense and Sensibility in the Study of State Socialisation: A Reply to Kai Alderson."

domestic field. Socialisation may fail, but the failure only affects the target state; it does not reflect back to the system, nor does it affect the norms.

These three sets of potential problems are, in part, the same as the potential problems in the case of democratisation. The points are evaluated against the empirical case studies in Chapters 4, 5, and 6.

This thesis argues that the socialisation model fundamentally reflects the ideas of the transition paradigm and the basic features of democratisation literature. The socialisation model is more developed theoretically with its rigorous study of causal mechanisms and their scope conditions than the democratisation framework. It is also more broadly applicable than the earlier models of democratisation as it relates to various specific norms, not just the democratisation process in general. The socialisation model framework runs through the entire thesis; contrary to the democratisation model, it can be applied to the specific case studies elaborated in this study. Nevertheless, it is claimed here that the Constructivist literature on socialisation is a further development of the ideas first articulated in the transition literature. Both of these models reflect the optimistic zeitgeist of the post-Cold War years.

## **2 Thesis Outline**

### **Goals of the thesis**

The aim of this thesis is to advance both theoretical discussion on the interplay between international cooperation and domestic change, and our practical knowledge of how the interaction has influenced Russia, the norms in question, as well as the organisations themselves and their policies. The main empirical research questions revolve around these themes: how the organisations promote human rights and democracy in Russia, how the cooperation has developed over the years, and what kind of impact the interaction has had on the actors, their policies and the norms. These practical findings will be contrasted with the theoretical debate on democratisation and, in particular, on socialisation: can the theories explain developments and how, and to what extent, do they do that; if and when they fail to explain the developments, how and why do they do that?



The thesis includes three empirical case studies on different sets of norms. Through the cases, the thesis aims to provide a nuanced picture of the development that escapes the stereotypical black-and-white generalisations offered by the western, and Russian, media. The thesis looks at long-term and everyday cooperation between the actors, which rarely makes the headlines but is likely tell us more about the true state of the relationship between Russia and European organisations than the eye-catching stories in the newspapers. This picture will be contrasted with the wider discussion on the nature of the Russia-Europe relationship in the concluding chapter of this thesis.

### **Timeframe and focus**

The thesis studies the socialisation efforts of the organisations and their impact on Russia's human rights policies. Due to the primacy of this task, the timeframe is flexible. It is considered more important to ensure that all relevant measures taken by the actors are covered in the study, than to set exact dates for the start and finish of the analytical timeframe. In each of the cases, the analysis starts whenever the cooperation has started to intensify between the actors. The periodisation of the case studies flexibly follows the dynamics of developments concerning the norms: Chapter 4 has been periodised according to the terms of Russian ombudsmen, Chapter 5 according to general trends in the abolitionist discussion in Russia, and Chapter 6 according to electoral cycles at the federal level. There is also a strong continuity between the Soviet era and Russia. Unlike the experience of perhaps other former socialist states, there is strong continuity between the Soviet and the post-Soviet periods: in Russia, no former dissidents ascended to leading positions, no charges were ever brought against former party leaders or KGB generals who were responsible for systematic violations of human rights, and even the national anthem of the Soviet Union was reintroduced as the anthem of the Russian Federation. As Johan Matz convincingly argues, Russia has not only claimed to be a successor state of the Soviet Union in the judicial sense, but also in a more profound, identity-related way which helps to make sense of the post-Soviet international reality.<sup>46</sup> Due to this feature, it is also important to draw attention to the Soviet roots of Russian developments. This is done in Chapter 2.

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<sup>46</sup> Johan Matz, *Constructing a Post-Soviet International Political Reality: Russian Foreign Policy Towards the Newly Independent States 1990-95* (Uppsala: Uppsala University, 2001).

This thesis studies the cooperation between Russia and the European organisations on an intergovernmental level, and the developments in Russia on a federal level. Hence the attention is directed towards governmental actors. However, it is not the purpose of this study to claim that states or international organisations are unitary actors. The interests of sub-state and non-state actors are mediated to the state level through complex processes of interest transformation. Although the thesis refers to "Russia" as an actor, this is only a shorthand term for persons acting in the name of the Russian Federation (such as the president, ministers, members of diplomatic service and administration).

The chosen approach for this thesis is policy- and outcome oriented. It does not look inside the institutions' or Russia's decision-making bodies and trace how their policies came into being. The thesis directs its attention to the interaction between the actors, and not to the internal decision-making processes of the actors. The thesis fills a void in the current literature; cooperation as an interactive, continuous process that may also have unintended consequences has so far received little attention by researchers.<sup>47</sup>

### **Source material**

Instead of looking at the decision-making processes of the OSCE, CoE, EU and Russia, the study is interested in the policies and the arguments backing the policies of these actors. The primary research material consists of texts and documents on human rights cooperation produced by the OSCE, the CoE and the EU and, on the other hand, by the representatives of the Russian state. A wide range of Russian and western newspaper articles have also been used in the analysis.

In order to find relevant Russian newspaper material, the study takes advantage of the *Integrum* database, which is the largest full-text Russian-language database. The database includes both newspapers and journals. This method has proved to be time-effective and it has enabled the use of several journals and newspapers. *Integrum* covers only the post-Soviet period; to cover the earlier years, this study has used *The Current*

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<sup>47</sup> Kate O'Neill, Jörg Balsiger, and Stacy D. VanDeveer, "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate," *Annual Review of Political Science* 7 (2004): p. 168.

<sup>48</sup> Alderson, "Making Sense of State Socialization," p. 427.

*Digest of Soviet and Post-Soviet Press* database, which unfortunately is not as comprehensive as Integrum. The most important publications are those that represent the "official" or influential opinion. For a long time, most Soviet publications reflected the official opinion, and it was only in the late 1980s that some diversification started to emerge. Since 1993, the Russian government has had its own official newspaper, *Rossiiskaia Gazeta*.

On the level of European organisations, the sources include reports, documents, resolutions, decisions and statements by the decision-making bodies, as well as by other organs involved in human rights cooperation with Russia. It is also necessary to underline that as the primary interest of this study is multilateral cooperation, it concentrates on analysing comments made by the European institutional bodies and officials, not by the representatives of member states. Several interviews of the representatives of the European organisations have been carried out. These interviews have been used mainly as background material and an additional check for the arguments advanced in this thesis.<sup>49</sup>

The methods used in this study reflect its practical orientation. Following the principle of taking the world as it is, it takes policies as well as arguments and comments surrounding them as they are. Naturally, comments are not, however, treated as facts: instead, they are interpretations of reality, which happen to have certain authority and thus impact on the social world surrounding them. From this vantage point, the motivations of the speaker are secondary – most important is the "speech-act"; the fact that the words are uttered to the public and that other actors may respond to the words.<sup>50</sup>

Reflecting again the practical orientation, this study engages first and foremost in the causal form of inquiry, whilst a constitutive mode of explanation is, for the most part, left aside.<sup>51</sup> The main task of the thesis is to explain what has happened, and why it happened the way it did. Only at the very end are the findings of the causal form of

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<sup>49</sup> A complete list of interviews and interviewees is provided to the examiners separately.

<sup>50</sup> On speech-acts, see J. L. Austin, *How to Do Things with Words*, eds., J.O. Urmson and Marina Sbisa, 2nd ed. (London and New York: Oxford University Press, 1965).

<sup>51</sup> Wendt, "On Constitution and Causation in International Relations," p. 105. Hollis and Smith label the constitutive mode of explanation as Understanding, and the causal form of inquiry as Explaining. See Martin Hollis and Steve Smith, *Understanding and Explaining International Relations* (Oxford: Clarendon Press, 1992).

inquiry contrasted with more static, constitutive questions, such as what the nature and prospects of the relationship between Russia and these organisations are. The thesis draws its evidence from process-tracing, which is a rather typical method for causal analysis.<sup>52</sup>

In general, the study is sceptical about finding universal "truths" that can be generalised across different cases. It is, however, agreed that a certain degree of objectification is possible by fixing the criteria of knowledge in a particular research setting. Within this setting, one can construct a representation of reality and examine causal relations between the elements included in it.<sup>53</sup> This is precisely what this study does by engaging in a causal form of inquiry through process-tracing. After doing this, the study locates structures that enable an understanding of the relationship between the actors.<sup>54</sup>

### **The case selection**

The thesis explores the causal links through three different empirical case studies. These cases study the interaction and its results around three different sets of norms, which the OSCE, the CoE and the EU have actively promoted in Russia, and by which Russia has agreed to be bound. The whole cooperation process is placed under scrutiny: how it started, which instruments and strategies have been employed, and what impact the cooperation has had on Russia, on the norms in question, as well as on the European actors, and why.

This study looks at the effectiveness of European human rights and democracy promotion in only one state. The most important reason for this focus is that a large, comparative study often narrows the scope of analysis, and many potentially important aspects are left out. An in-depth, single-state study allows the researcher to bring in

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<sup>52</sup> On process-tracing, see Stephen Van Evera, *Guide to Methods for Students of Political Science* (Ithaca: Cornell University Press, 1997); Wendt, *Social Theory of International Politics*.

<sup>53</sup> Cf. Christer Pursiainen, *Beyond Sovietology: International Relations Theory and the Study of Soviet/Russian Foreign and Security Policy* (Helsinki: The Finnish Institute of International Affairs, 1998), pp. 34-35; Kristi Raik, "Democratic Politics or Implementation of Inevitabilities? Estonia's Democracy and Integration into the European Union," (University of Turku: 2003), pp. 31-33.

<sup>54</sup> This is the point at which the study turns to a constitutive mode of explanation. However, unlike Hollis and Smith, it is claimed that the constitutive mode of inquiry (understanding) is more than mere description; its aim is also to explain the nature of more static structures. See Hollis and Smith, *Understanding and Explaining International Relations*.

more variables and analyse their relations more flexibly. General democratisation studies have been notably weak in causal explanation, which is a reflection of their preference for large, cross-country comparisons. Too wide and too general a focus is often inadequate to uncover the causal mechanisms at play.

In addition to looking at developments in one state, the study also looks at the policies of three major European intergovernmental organisations: the OSCE, the CoE and the EU. Whilst acknowledging that particularly in normative questions the organisations form their policies in interaction with each other, most researchers have concentrated on the policies of one organisation only.<sup>55</sup> This approach clearly makes the researcher's job easier, but also gives a somewhat distorted picture of developments, as the norms and cooperation are often developed in dialogue with other European organisations. The organisations' overlapping memberships make coordination between them relatively easy, and coordination and common action between them have become increasingly a formalised practice. All this goes unaccounted for when only the policy of one organisation is studied. In addition, single-organisation studies often give too much credit to one organisation – changes in policies are often due to the common efforts of these organisations, rather than just one.<sup>56</sup>

The thesis has chosen to focus on three sets of norms and the international cooperation around them. The empirical case studies are the institution of a national human rights ombudsman, the abolition of the death penalty, and free and fair federal elections. These are all issues on which the OSCE, the CoE and the EU have sought to influence Russian domestic policy. All these norms and the criteria for their implementation are clearly defined in the documents of the organisations. The Russian representatives have also agreed to be bound by these norms. The responsibility over the implementation of these norms can be located at the federal level in Russia.

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<sup>55</sup> For an example of a multi-organisational approach, see Elena Jurado, "Complying with 'European' Standards of Minority Protection: Estonia's Relations with the European Union, OSCE and Council of Europe" (DPhil Thesis, Oxford University, 2004).

<sup>56</sup> An example of this kind of research is Ian Manners' study of the abolition of the death penalty. While the article's study of the nature of the EU's external action is indisputable, its study of the EU's influence on the issue of the abolition of the death penalty suffers from one-sidedness and sloppiness in important details. Manners, for example, claims that Russia continued executing prisoners until 1999 (which is simply untrue), completely disregards the importance of the CoE membership process, and gives too much attention to EU's contribution to the issue. See Manners, "Normative Power Europe: A Contradiction in Terms?," pp. 250-51.

### *Norm-specific scope conditions*

Literature on norm- and issue-specific scope conditions for socialisation has also directed the selection of these particular norms. In his book *The Power of Legitimacy among Nations* (1990), Thomas Franck argues that international rules have a stronger ability to induce voluntary compliance by states if the rule and the rule-making process is characterised by *determinacy, symbolic validation, coherence and adherence*.<sup>57</sup> In a nutshell, determinacy means transparency and textual clarity of the norm - the clearer the norm, the more likely its implementation.<sup>58</sup> Symbolic validation means that some ritualistic act or tradition gives the norm greater legitimacy, and thus pulls strongly towards implementation. This could be, for instance, the act of signing a treaty or passing a law.<sup>59</sup> Coherence implies that the norm is interpreted and implemented widely and consistently. The more coherent the practical application of the norm, the more likely its implementation is. Finally, adherence refers to a norm hierarchy. Norm hierarchy refers to the existence of an organised chain of norms. For example, there exists a primary rule of respect for human rights, and secondary rules about its practical interpretation and implementation. The rule is likely to oblige states if there exists a framework of organised normative hierarchy.<sup>60</sup>

In addition, other researchers have added the variables of international consensus on the norm (this comes close to Franck's coherence criterion).<sup>61</sup> The stronger the international consensus, the more likely the implementation of the norm is. It has also been argued – in a commonsensical way – that the less material resources are needed, the more likely the norm implementation. In particular, this is the case when the requirements exceed

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<sup>57</sup> Thomas M. Franck, *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990), pp. 48-49.

<sup>58</sup> A similar point is made in Jeffrey W. Legro, "Which Norms Matter? Revisiting the 'Failure' of Internationalism," *International Organization* 51, no. 1 (1997).

<sup>59</sup> See also Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance," in *Handbook of International Relations*, eds. Walter Carlsnaes, Thomas Risse, and Beth Simmons (London: Sage Publications, 2002), p. 546.

<sup>60</sup> Franck, *The Power of Legitimacy among Nations*, p. 184.

<sup>61</sup> Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," p. 15.

the material capabilities of the state.<sup>62</sup> Finally, it has also been suspected that technical norms are more easily adopted by states than political ones.<sup>63</sup>

According to Franck's criteria, all of the norms under scrutiny in this thesis are strong in their appeal for implementation. Their textual wording and interpretation is clear in the European context and there is a requirement of their symbolic validation. There exists a strong European consensus on the norms, and they are coherently interpreted and implemented throughout Europe. This is also embodied in their wide symbolic validation across the continent. Furthermore, there is a highly developed norm hierarchy on all of these issues. All these general, principled norms include secondary rules, which further define their interpretation and implementation criteria. These secondary norms set the specific conditions for implementation, such as ratification of certain protocol, technical conditions for ensuring the secrecy of the ballot, and so forth. In all of the case studies, the degree of adherence (that is, norm-hierarchy) is high. Thus, according to Franck's criteria of determinacy, symbolic validation, coherence and adherence, the pull for implementation of the norms is high.

The norms under scrutiny differ with regard to the last two norm-specific conditions, as different amounts of material and political resources are required to implement them. The institution of a human rights ombudsman is the most "technical" of these norms. The budgetary implications are also fairly limited and public opinion is likely to be largely in favour of, or at least indifferent to, such a norm. The norms of abolition of the death penalty and free and fair elections are, however, interpreted as having major political significance on both sides. The abolition of the death penalty is often claimed to have significant material consequences, yet the actual number of convicts executed has been low since the Gorbachev years.<sup>64</sup> The resources needed are less material and

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<sup>62</sup> O'Neill, Balsiger, and VanDeveer, "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate," p. 165.

<sup>63</sup> Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," p. 15.

<sup>64</sup> For example, in 1993 Russia executed 3 persons and in 1994 10 people. See Council of Europe, Parliamentary Assembly, *Opinion: Russia's Application for Membership of the Council of Europe*, Doc. 7463. However, contrary to a decade long pattern of decreasing execution numbers, from January 1995 to August 1996, Russia executed 139 prisoners. See Anatoly Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," in *The Death Penalty: Abolition in Europe* (Strasbourg: Council of Europe, 1999), p. 133.

more political: a clear majority of Russians favours the death penalty.<sup>65</sup> In the case of free and fair elections, the resources needed are first and foremost material. At face value, most Russians favour the concept of democracy, but a significant amount of resources are needed to reform Soviet-era election practices and to create preconditions for truly democratic and competitive elections (such as the establishment of party system) throughout Russia.<sup>66</sup>

In conclusion, on the one hand the norms are strong and clear, which should make their implementation and gradual internalisation by Russia a likely outcome. On the other hand, the norms are different enough to make their comparison relevant, and likely to advance our knowledge on the causal links between norms and outcomes.

#### *Further scope conditions for socialisation*

The case selection section already explored the scope conditions related to norms. Recent Constructivist studies have also outlined possible scope conditions for successful socialisation with regard to international, domestic and environmental conditions.

According to Frank Schimmelfennig, one of the preconditions for successful socialisation on an international level is an *asymmetrical relationship* between the international actors and the state in question. This structural condition will make the state more sensitive to the policies of the organisations. For softer argumentative and ideational socialisation processes to occur, the organisations need to have normative power. This *normative power* arises from unquestioned authority and legitimacy of the organisation. In order to instigate more instrumental socialisation mechanisms, the organisation will require superior *material bargaining power*. It needs to be able to pursue coercive action effectively and credibly.<sup>67</sup>

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<sup>65</sup> According to an opinion poll by FOM institute carried out 18-19 February 2006, almost 75 per cent of Russian respondents regarded the death penalty as an acceptable practice. See Angelika Nussberger and Dmitry Marenkov, "Death Penalty," *Russian Analytical Digest*, no. 10 (21 November 2006): p. 5.

<sup>66</sup> According to an opinion poll by the Levada center, in April 2004, 55 per cent of Russian respondents expected expansion of democracy from Putin. See Lilia Shevtsova, *Putin's Russia*, 2nd, revised ed. (Washington DC: Carnegie Endowment for International Peace, 2005), p. 353.

<sup>67</sup> Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," pp. 14-15.



There are also several domestic conditions that influence the efficiency of international socialisation efforts. The efforts are enhanced if the norm in question enjoys strong *domestic salience*. This means that the domestic norms, values, interests and practices do not clash with the international norm, which is being promoted by the international actors. The more domestic salience the international norm has, the more likely the mechanisms of argumentation, persuasion as well as institutionalisation are. Secondly, *domestic structures* play an important role in defining which pathways of socialisation are likely to be decisive. The structures determine whose interests are likely to prevail if a contestation over the norm occurs. For example, programmes directed towards the state are unlikely to produce a strong pull for implementation if the structure of the state is fragmented and weak, and the opposition forces outside the state structures constitute the main source of power in the state.<sup>68</sup> Related to this, one can add the commonsensical criterion of *material capacity* to enforce reforms.<sup>69</sup>

In addition to norm-specific, international and domestic conditions, one must also consider environmental conditions. Ernst Haas has suggested in his work on learning that change in behaviour is more likely when there are high levels of desirability, possibility and urgency.<sup>70</sup> This can be generalised into a hypothesis on state socialisation. Desirability of normative change means that there is a problem that needs to be solved, or that there is strong pressure from below, above and/or outside to adopt the norm in question. Possibility of change rests upon the availability of means of reassessment (for example new information and knowledge on the issue). Urgency, on the other hand, means that change is more likely when there is the time pressure of a crisis situation and issue salience is high.

### **Central issues and concepts**

Before proceeding further, clarification of a few issues and concepts is needed. The issues elaborated in this section are all important conceptual cornerstones of this thesis,

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<sup>68</sup> Ibid.

<sup>69</sup> See, for example, O'Neill, Balsiger, and VanDeveer, "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate."

<sup>70</sup> Ernst B. Haas, *When Knowledge Is Power: Three Models of Change in International Organizations* (Berkeley: University of California Press, 1990), pp. 27-28.

namely international norms, human rights, international cooperation and its effectiveness and impact, and international human rights policies.

### *International norms*

Norms, or more specifically, the dominant interpretations of the norms, have the capacity to influence social and political worlds, and how people perceive those worlds and their own place in them.<sup>71</sup> According to the Constructivist understanding of norms, norms are standards of appropriate behaviour for actors with a given identity in world politics.<sup>72</sup> Norms are guiding principles, rules of action, for states in the pursuance of their national interests. They can be broken, but they still constitute the standards against which the actors will be judged by the community. If identities change, the standards of appropriate behaviour also change.

Many Constructivist researchers have dedicated their work to proving that alongside material conditions, norms matter. Their point is that – contrary to Realist beliefs – normative structures can determine interests, identity and action of agents. Their ambition has, however, often led them to view norms as static "black boxes". An example of such research is Daniel C. Thomas' book *The Helsinki Effect: International Norms, Human Rights and the Demise of Communism* (2001), which studies CSCE norms and their impact in eastern Europe. Thomas treats the norms as fixed even though his empirical research seems to suggest that the interpretations of norms changed during the process of cooperation on both sides, and it was really the political framing and interaction that mattered, and not the norms *per se*.<sup>73</sup> When referring to international norms, researchers are in fact often referring to the dominant interpretations of the norm. Even the norm of state sovereignty, which is often seen as fixed and immutable, has changed and varied significantly over the years.<sup>74</sup> The same applies to the concept of

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<sup>71</sup> Hans Peter Schmitz and Kathryn Sikkink, "International Human Rights," in *Handbook of International Relations*, eds. Walter Carlsnaes, Thomas Risse, and Beth Simmons (London: Sage Publications, 2002), p. 517.

<sup>72</sup> Katzenstein, "Introduction: Alternative Perspectives on National Security," p. 5.

<sup>73</sup> Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*.

<sup>74</sup> Christian Reus-Smith has convincingly demonstrated that sovereignty has never been absolute in its nature but has always been tied to the question of legitimacy and ethics. See Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton: Princeton University Press, 1999), pp. 3-11.

human rights.<sup>75</sup> It is not only that international normative structures influence state behaviour, but also state behaviour directs the development of norms. It is therefore essential to open up international norms and admit that they are constantly contested and reconstructed by states and other actors.

Rather than artificially fixed norms, this study takes the cooperation process as its point of reference. This choice is important: it underlines agency as opposed to structures, and reflects the aspiration to define socialisation in terms of political choice rather than a natural, pre-determined process.<sup>76</sup> The study is structured around specific European human rights norms, but its analytical focus is on the interaction process surrounding these norms.

### *Human rights*

Analytically, the concept of human rights has two dimensions. Firstly, human rights relate to relations between the state and its citizens. This is the domestic norm of human rights. Secondly, in the modern world human rights are also international norms, which bind states but speak directly to individuals. If a state does not provide protection of its citizens' rights, it breaks the rules of international law. That means that other states, groups and individuals have a right to act against the state by means of the tools at their disposal. The international dimension and the idea of an individual as a subject of international law are more recent than human rights as a domestic norm. The breakthrough happened only after the Second World War, and the institutional framework for its protection is still globally weak.<sup>77</sup>

Without denying the universality of human rights, this study claims that human rights norms need to be adjusted to fit the domestic identities and structures. In a way, human rights have become an "empty signifier"<sup>78</sup> – a term that everybody in principle seems to

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<sup>75</sup> On the contested nature of norms, see, for example, Jan Klabbers, "The Meaning of Rules," *International Relations* 20, no. 3 (2006): pp. 296-98.

<sup>76</sup> Thies, "Sense and Sensibility in the Study of State Socialisation: A Reply to Kai Alderson," p. 549.

<sup>77</sup> For an overview of the general internationalisation of human rights, see, for example, David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), pp. 28-50.

<sup>78</sup> On empty signifiers, see Ernesto Laclau, "Discourse," in *A Companion to Contemporary Political Philosophy*, eds. R. E. Goodin and P. Pettit (Oxford: Blackwell, 1993).

agree with, but whose contents and implications for practical policy are fiercely debated.

An example illustrates the point: there is hardly any doubt that both, say, the United States and Sweden are democracies and agree on human rights norms. Nevertheless, they interpret these norms very differently. The role of the state in providing human rights is different, and so is the general willingness to enter into international commitments that restrict state sovereignty. The significance of economic and social rights is also viewed very differently in these two states. Despite these crucial differences, human rights still constitute an important building block in the state identities of both states. Certain minimum standards and their exact application can naturally be defined by common agreement, by signing a convention or joining an organisation, which is given the right to define the norm. Nevertheless, even in these cases some domestic characteristics and dynamics will remain. Peter Juviler has labelled this approach "contextualism". He emphasises that instead of unqualified universalism or cultural relativism, it should be acknowledged that a given country's interpretation of human rights invariably reflects all aspects of its history, institutions and political circumstances.<sup>79</sup>

In order to escape the "empty" nature of the concept of human rights, this study has climbed down the ladder of abstraction and specified the human rights norms and their evaluation criteria using the European documents on the issues. The study has thus taken a practical step towards identifying concrete, tangible human rights norms.

#### *International cooperation and its effectiveness and impact*

International cooperation is commonly defined as the action "of working together towards the same end, purpose, or effect"<sup>80</sup>. This definition does not say anything about the nature of the process, or the reasons and motivations behind the need to cooperate. It does, however, imply that once the goal has been reached, cooperation would dissolve. This has also been a typical way of thinking in International Relations. Realists do not

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<sup>79</sup> Peter Juviler, "Political Community and Human Rights in Postcommunist Russia," in *Human Rights: New Perspectives, New Realities*, eds. Adamantia Pollis and Peter Schwab (Boulder: Lynne Rienner Publishers, 2000), p. 115.

<sup>80</sup> Oxford English Dictionary Online, Oxford University Press at <<http://www.oed.com/>>.

believe in the prospect of long-term institutionalised cooperation, as all states are viewed as primarily seeking to defend their own national interests against other states in a world of zero-sum games.<sup>81</sup>

Neo-liberal institutionalism and regime theory challenge this pessimistic view by claiming that the relations between states are not necessarily a question of immediate gains and zero-sum logic; occasionally, when the interests of states coincide, they are capable of long-term cooperation in order to improve their absolute gains in the international system. Neo-liberal institutionalism shares Realism's state centrism and conception of states as rational unitary actors.<sup>82</sup>

In the 1990s, these positions were increasingly challenged, particularly by Constructivists. Constructivism emphasises the social character of international relations. States and their understanding of themselves and others are fashioned through their interaction with other international actors (states but also international organisations, transnational advocacy groups, international media and so on). Material interests and power matter, but so do the norms and identities of actors. International cooperation can even start developing into deeper integration as disparities between the actors' identities are reduced.

This study draws from the Constructivist school of thought, and sees cooperation as an iterated, non-linear and open-ended process, which may have a transformative impact on actors, and on international and domestic structures (such as norms).<sup>83</sup> Thus, cooperation is seen in this thesis as a more complex – and potentially more contradictory – process than traditional cooperation theory drawing from Functionalist

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<sup>81</sup> Waltz, *Theory of International Politics*, pp. 104-07.

<sup>82</sup> Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), pp. 243-51.

<sup>83</sup> On the "new wave" of cooperation theory, see O'Neill, Balsiger, and VanDeveer, "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate," p. 151.

ideas would allow.<sup>84</sup> The cooperation process may have important unintended consequences, which do not conform to the formal, agreed goals of cooperation.<sup>85</sup>

To clarify this point, the thesis draws attention to both the *effectiveness* of the cooperation in a Functionalist sense, and the *impact* of the cooperation in the broader "new wave" of cooperation theory sense. Effectiveness is defined as the ability to "achieve stated goals or objectives, judged in terms of both output and impact".<sup>86</sup> Impact, on the other hand, refers in this thesis to the wider, by and large unintended impact on the target state, the international organisations and their policies, as well as on the norms that are the very object of cooperation.<sup>87</sup>

The criteria for assessing the impact of cooperation are, by definition, open-ended. With regard to effectiveness, this study has directed its attention to three aspects. The first criterion is naturally meeting the formal requirements (for example, passing a law or ratifying a treaty). Legislation must meet the standards set by the international norm. Secondly, the norm needs to be accepted in the general discourse of state representatives. The discourse needs to be consistent regardless of the intended audience. This study focuses on the federal level in Russia, and thus studies only the discourse at the federal level. The third criterion for evaluation of the effectiveness of the norm promotion policies will be the consistency of practical implementation, and the degree of institutionalisation of the norm. Effective cooperation encourages and contributes towards the formal adaptation, consistent national discourse, practical implementation and institutionalisation of the norm.

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<sup>84</sup> Classical Functionalist theory as outlined by David Mitrany sees international cooperation as essentially non-political, pragmatic, and inherently rational action in order to solve common problems of welfare. See David Mitrany, *A Working Peace System* (London: The Royal Institute of International Affairs, 1943).

<sup>85</sup> Neither do international organisations necessarily act in a rational and effective way to achieve their goals. See Michael N. Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999): p. 726.

<sup>86</sup> This definition is a mainstream one in general evaluation of assistance programmes. It is used, for example, by the US environmental protection agency as well as by the Center for Program Evaluation of the US Bureau of Justice Assistance.

<sup>87</sup> On the debate around the concept of effectiveness, see George W. Downs, "Constructing Effective Environmental Regimes," *Annual Review of Political Science* 3 (2000); O'Neill, Balsiger, and VanDeveer, "Actors, Norms and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate," pp. 163-64.

### *International human rights policies*

Human rights policies of states have external and internal dimensions. Internal human rights policy refers to how a state implements human rights norms and treats people in its territory, whereas external human rights policy refers to how a state seeks to influence human rights in other states.

Further, both internal and external policies can be multilateral or unilateral by nature. Internal multilateral human rights policy allows for multilateral supervision of the domestic practices of that state. External multilateral human rights policy means that a state promotes the establishment of international supervisory bodies, and uses multilateral instruments in its external human rights policy. Internal unilateral human rights policy values national sovereignty over multilateral human rights structures with supervisory powers. External unilateral human rights policy means that a state actively promotes human rights in other states, but prefers to act outside multilateral settings.<sup>88</sup>

**Table 3:** Dimensions of human rights policies

	<b>Unilateral human rights policy</b>	<b>Multilateral human rights policy</b>
<b>Internal human rights policy</b>	No international supervision of domestic practices is allowed	State allows for multilateral supervision of domestic practices
<b>External human rights policy</b>	Unilateral (or bilateral) promotion of human rights in others states	Use and promotion of multilateral instruments when seeking to influence human rights policy of other states

**Source:** Kathryn Sikkink: "The Power of Principled Ideas: Human Rights Policies in the United States and Europe." In *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, edited by Judith Goldstein and Robert O. Keohane. New York: Cornell University Press, 1993.

This typology clarifies the basic relations between Russia and the three European organisations. This study focuses upon the ways in which the multilateral human rights policy of the OSCE, the CoE and the EU influences the internal human rights policy of Russia. In general, internal and external human rights policies in Europe have become

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<sup>88</sup> Kathryn Sikkink, "The Power of Principled Ideas: Human Rights Policies in the United States and Europe," in *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, eds. Judith Goldstein and Robert O. Keohane (New York: Cornell University Press, 1993), pp. 142-43.

increasingly multilateral in recent decades.<sup>89</sup> Following the general European trend, Russia is expected to allow multilateral supervision in its internal human rights policies through the European institutional framework.

International organisations and states are often accused of double standards in their external human rights policies: states which commit similar human rights violations are often targeted with different human rights policies by the organisations.<sup>90</sup> On this basis, many have argued that human rights are only a pretext to other, material interests of international actors.

However, certain researchers openly back a differentiated approach to states, rather than one consistent policy for all states. For example, Rein Müllerson claims that a differentiated approach can be supported by at least two claims. First, it can be argued that since the target states are different from one another, the policies towards them should also differ. States vary a great deal not only geographically and economically (two factors that the critics have been eager to point out), but also socially and politically. The second argument in favour of differentiated approaches to human rights violations by third states is that the human rights violations that seem similar on the surface may have very different causes and effects on society. Thus, the practice of international law and politics should, in fact, be individualised on the basis of the specific characteristics of the actors.<sup>91</sup> Further, Müllerson argues that the principled approach to international law ought to be one that takes into account not only relevant principles and norms and context, but also the consequences, or at least the potential or foreseeable results, of the application of these principles and norms to unique situations.

Müllerson's example illustrates the point. He argues that a humanitarian intervention could possibly restore human rights in a small state where strong internal opposition

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<sup>89</sup> There have been various attempts to answer the question of why European states agree to limit their sovereignty and allow international supervision of their internal human rights policies. The explanations vary from identity politics of the European project, to intentional "locking in" future domestic policies. See Jack Donnelly, "An Overview," in *Human Rights and Comparative Politics*, ed., David P. Forsythe (Tokyo: United Nations University Press, 2000); Andrew Moravcsik, "The Origins of International Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, no. 2 (Spring 2000).

<sup>90</sup> See, for example, Karen E. Smith, *European Union Foreign Policy in a Changing World* (Cambridge: Polity, 2003), p. 116.

<sup>91</sup> Rein Müllerson, *Human Rights Diplomacy* (London: Routledge, 1997), pp. 118-20.



already exists, but it is far less likely to be successful in a geographically wide, regionally very powerful and strongly assertive state with distinctive historical traditions and limited opposition. Even if the *norms* are naturally the same to every state, the policy *instruments* towards the states differ on the basis of the state characteristics. The policy instruments should be changed if they are not effective, that is, able to reach the stated goals. A good external human rights policy is effective and produces few unwanted consequences. This sort of double standard is based on clear-headed, objective analysis, and it is almost inevitable in international relations: international actors are limited in their ability to change events in other countries in a positive direction, thus they are required to choose and be selective.<sup>92</sup> However, even Müllerson is critical of what he calls subjective double standards – those not dictated by rational and prudent calculations of one's ability to change the course of action but by a subjective attitude towards violators.

### **Chapter outline**

*Chapter 2* provides a historical background for the thesis. It looks into the general developments of democracy and human rights in the Soviet Union and post-Cold War Russia. The developments will be assessed against the democratisation and socialisation models. This chapter provides a basis upon which the case study chapters are later built.

*Chapter 3* discusses the general internationalisation of human rights, and outlines a general framework of the current European human rights and democratisation policies towards Russia.

*Chapter 4* provides the first of the three case studies on norm socialisation. It addresses the question of whether Russia has internalised the European norm of a human rights ombudsman. The European organisations promoted the establishment and functioning of such an institution in Russia. This norm can be described as rather "technical", and it is not likely to clash with domestic norms or policy priorities.

*Chapter 5* looks into the question of abolition of the death penalty in Russia. This is clearly a more normative and principled issue than the norm of an ombudsman in the

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<sup>92</sup> *Ibid.*, p. 121.

previous chapter for the European organisations and Russia alike. The European norm is likely to clash with previously held beliefs and popular opinion in Russia, which is likely to make the internalisation of the norm more difficult.

*Chapter 6* concentrates on the development of free and fair elections in Russia. This issue can be described as a fundamental question for the European organisations. In the democratisation and socialisation models, free and fair elections are often considered to constitute a turning point, a watershed after which the process of democratisation will take its own course. The organisations have attached great value to this particular norm.

*Chapter 7* sums up the findings, compares the cases with each other systematically, and links them to the theoretical discussion. It contemplates the significance of the findings for both practical policy and academic research.

## CHAPTER 2

### HUMAN RIGHTS AND DEMOCRATIC NORMS IN THE RHETORIC AND POLICIES OF THE SOVIET UNION AND RUSSIA

*This chapter provides a historical background for the empirical case studies. First, the chapter looks into the Soviet thinking on human rights and international relations. It describes how the Soviet Union responded to the internationalisation of human rights. It analyses the developments that led to the collapse of the Soviet Union, and outlines Russia's subsequent policies on the issues of human rights and democratic norms. The chapter further explores how these general developments fit into the models of democratisation and socialisation outlined in Chapter 1.*

#### 1 Socialism and Human Rights

The Russian communist revolution of 1917 was a great leap into the unknown. No one had any experience in building a socialist society, and the guidelines set by Marx and Engels were, even at their best, vague. In accordance with historical materialism, the development was expected to proceed through clear stages towards communism. Every stage of development was characterised by its means of production that determined society's social structure. Relations of production were the fundamental base; legal and political systems were part of the secondary superstructure. Historical materialism was reflected also in the Soviet legal thinking. The law was supposed to be based on the interests of the working class during the transition years to socialism. Later, when socialism was already established, the law would reflect the interests of the people. Finally, when the communist society arrived, the state and its legal system would cease to exist: in the society of total harmony, law was simply unnecessary.<sup>93</sup> Socialist society loomed in the minds of revolutionaries as a humane system defending the oppressed people. At last, people would be free of the exploitation of capital – and hence truly free for the very first time.

Socialist legal theory saw the legal system as an instrument of the ruling class to maintain their power and denied universal values and morality.<sup>94</sup> Universal rights and values were a myth invented by the ruling class in order to secure their dominance. The

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<sup>93</sup> See V.M. Chkhikvadze, ed., *The Soviet State and Law* (Moscow: Institute of State and Law, Academy of Sciences of the USSR, 1969), pp. 216-17.

<sup>94</sup> See, for example, G. I. Tunkin, *Theory of International Law* (London: Allen & Unwin, 1974), p. 82.

nature and content of rights and freedoms depended on the nature of the society.<sup>95</sup> Human rights were considered to be benefits granted by the state and they did not exist outside the state.<sup>96</sup> Thus, even legal theory viewed rights in an instrumental fashion.

Human rights constituted a two-sided issue in socialist legal theory. The theory stressed the importance of the collective, common good and the responsibilities of citizens as opposed to individual freedoms, which were considered to be bourgeois.<sup>97</sup> The starting point for thinking was, however, that an individual would voluntarily choose to serve the collective: rights and duties were different sides of the same coin. Socialist thinking did not see the rights of the individual as a counterweight to the state because it was thought that in a socialist society the interests of the state and the individual would be the same. Obedient fulfilment of one's duties was also caring for one's own rights and interests.<sup>98</sup>

In practice the socialist system put economic and social rights before political rights and freedoms.<sup>99</sup> It was, however, officially maintained that Soviet citizens also had much wider civil rights and freedoms than was ever possible in a capitalist society. The Soviet Union was claimed to be based on true democracy.<sup>100</sup> The fact that there were not many options in elections was explained officially by the strong unity of the Soviet people.

The Soviet reality was always far from the picture that the state propaganda tried to promote: the Communist Party of the Soviet Union (*Kommunisticheskaia partiia Sovietskogo Soiuz*, KPSS), which claimed to represent the will of the people, governed the state in a totalitarian manner. The party asserted that it interpreted the principles of Marxism-Leninism in all policy sectors according to scientific methods, and that it was

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<sup>95</sup> Because of this, Soviet scholars avoided using the term human rights (*prava cheloveka*) until the mid-1960s. Before that, rights of the individual were referred as citizen rights (*grazhdanskije prava*). See Georg Brunner, "Recent Developments in the Soviet Concept of Human Rights," in *Perspectives on Soviet Law for the 1980s*, eds. F. J. M. Feldbrugge and William B. Simons, *Law in Eastern Europe* (The Hague: Martinus Nijhoff Publishers, 1982), p. 37.

<sup>96</sup> Tunkin, *Theory of International Law*, p. 182.

<sup>97</sup> R. J. Vincent, *Human Rights and International Relations* (Cambridge: The Royal Institute of International Affairs and Cambridge University Press, 1986), p. 64.

<sup>98</sup> Chkhikvadze, ed., *The Soviet State and Law*, p. 209; Voijn Dimitrijevic, "Freedom of Opinion and Expression," in *Human Rights in a Changing East/West Perspective*, eds. Allan Rosas and Jan Helgesen (London: Pinter Publishers, 1990), p. 63.

<sup>99</sup> Vincent, *Human Rights and International Relations*, p. 64.

<sup>100</sup> Chkhikvadze, ed., *The Soviet State and Law*, p. 183.

leading the society towards the complete fulfilment of communism.<sup>101</sup> The legal system did not have the autonomy that is typical of western legal systems. Even if it was claimed that a strict "socialist legalism" existed, the party and the state were in fact above the law and they were not bound to their promises of human rights.<sup>102</sup> As a vanguard of the revolution, the party claimed to know what the socialist people needed better than the people knew themselves.

The communist party's dominance, and the fact that the rights of the individual were defined on the basis of the interests of the state, underpinned the paternalism of Soviet state and society.<sup>103</sup> The state reimbursed obedience by taking care of its citizens and promising benefits such as social security, employment and education. If an individual did not realise that the interests of the society were also in his or her interests, then that person had failed as a citizen. He or she was an outsider, and did not deserve the rights and freedoms of true, honest citizens. According to this logic, the dissident was not punished on the basis of his or her opinions, but as a result of his or her crime against the collective.<sup>104</sup> Soviet understanding of rights was contrary to the natural law tradition, which has strongly influenced western legal thinking. According to the natural law tradition, rights are considered to belong to each and every citizen on the basis of humanity – regardless of his or her personal characteristics or merits.<sup>105</sup>

A summary of the main characteristics in Soviet thinking and practice on human rights, which all have been passed on to present-day Russia in one form or another, is in place.<sup>106</sup> The first of the special features was the predominance of the state, and the belief that the common good overrides individual freedoms. The second characteristic was the general instrumental approach to human rights; it was accepted that rights always serve someone's interests. Thirdly, it was typical of the Soviet human rights

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<sup>101</sup> Arfon Rees, "The Soviet Union," in *Foreign Policy and Human Rights. Issues and Responses*, ed., R. J. Vincent (Cambridge: The Royal Institute of International Affairs and Cambridge University Press, 1986), p. 61.

<sup>102</sup> Harold J. Berman, "The Struggle for Law in Post-Soviet Russia," in *Western Rights? Post-Communist Application*, ed., A. Sajó (The Hague: Kluwer Law, 1996), pp. 41-42.

<sup>103</sup> Marshall S. Shatz, *Soviet Dissent in Historical Perspective* (Cambridge and New York: Cambridge University Press, 1980), p. 125.

<sup>104</sup> Rees, "The Soviet Union," p. 62.

<sup>105</sup> Vincent, *Human Rights and International Relations*, p. 63.

<sup>106</sup> See, for example, Grazyna Skapska, "The Legacy of Anti-Legalism," in *Marxism and Communism: Posthumous Reflections on Politics, Society and Law*, ed., Martin Krygier, *Poznan Studies in the Philosophy of the Sciences and the Humanities* (Amsterdam: Radopi, 1994).

policy that the official rhetoric on human rights was misleading, and in conflict with the real state of affairs.

### **Non-intervention versus human rights**

Soviet legal thinkers claimed that human rights as an international issue was one of the progressive features of international law, and a fruit borne through determined action by the Soviet Union and other socialist states.<sup>107</sup> The SU was active at UNESCO and in the drafting of the UN Human Rights Covenants of 1966 (the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights). The SU ratified both of these covenants in 1973. Nevertheless, the Soviet Union insisted that international cooperation on human rights matters had rigorous limits that had to be respected.

Despite the international human rights conventions, the rights of the individual were considered to be strictly an internal matter for states. This was due to the fact that states had different social and economic systems. Law was always political by nature, as it reflected the desires of their ruling class. Socialist states could never agree to be bound by the decisions by international tribunals whose judges would have represented the interests of the capital. Human rights as such did not exist outside a state.<sup>108</sup> According to this way of thinking, the goal of international human rights cooperation should not be the development of international commitments, but rather to support and encourage states to formulate domestic laws for the protection of human rights.<sup>109</sup>

International cooperation on human rights was subjugated to state sovereignty, non-interference in internal affairs and self-determination of states which were considered

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<sup>107</sup> Tunkin, *Theory of International Law*, p. 315. The fact that the Soviet Union had abstained from voting on the Universal Declaration in 1948 was justified on the basis that it put too little emphasis on social and economic rights.

<sup>108</sup> *Ibid.*, p. 82. In this respect, the Soviet Union's participation in the Nuremberg and Tokyo tribunals after the Second World War had been exceptional. Soviet scholars tried, nevertheless, to hold on to the principle of territoriality. They explained clumsily that the criminal courts were dealing with crimes that did not belong to any particular place. In other cases, the jurisdiction belonged to the state in which the crime was committed. See F. I. Kozhevnikov, "Law and Customs of War," in *International Law*, ed., F. I. Kozhevnikov (Moscow: Institute of State and Law, Academy of Sciences of the USSR, 1962), p. 452.

<sup>109</sup> K. Y. Chizhov, "Population in International Law," in *International Law*, ed., F. I. Kozhevnikov (Moscow: Institute of State and Law, Academy of Sciences of the USSR, 1962), p. 140.

the most fundamental principles of international law.<sup>110</sup> Soviet legal theorists and representatives interpreted these principles rigorously: even public criticism - not only by state officials, but also by NGOs and private individuals - was against the non-interference principle.<sup>111</sup>

The Soviet Union's approach to human rights as an object of international relations leaned on two practices. Firstly, a typical Soviet practice was the propagandist ratification of human rights treaties and documents, and the international employment of human rights rhetoric without implementation of human rights domestically. Secondly, the Soviet state leaned on the ultimate primacy of a conservative interpretation of state sovereignty over human rights obligations.

## **2 Human Rights Enter the East-West Agenda**

"[I]n recent periods some Western circles have been in effect trying to circumvent these principles [of peaceful co-existence and non-interference in internal affairs] by proposing something like a new edition of the 'cold' or, if you prefer, 'psychological' war. I am referring to the campaign conducted under the hypocritical slogan of 'defending human rights' in the socialist countries."<sup>112</sup>

Despite the fact that the socialist states did not consider human rights issues to be a topic that other states were allowed to comment on, it entered the political east-west agenda almost unnoticed through the CSCE process in the 1970s.

Brezhnev launched his Peace Programme in 1971. This programme was aimed at improving relations with western states through disarmament and widening cooperation,

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<sup>110</sup> Arie Bloed and Fried van Hoof, "Some Aspects of the Socialist View of Human Rights," in *Essays on Human Rights in the Helsinki Process*, eds. Arie Bloed and Pieter van Dijk (The Hague: T.M.C. Asser Instituut, Martinus Nijhoff Publishers, 1985), p. 39.

<sup>111</sup> International Association of Democratic Lawyers, *Law in the Service of Peace: Two Conceptions* (Brussels: 1963), p. 41. The only exception to these fundamental principles was the case of broad and systematic oppression that threatened international peace and security. However, even in such cases, states should not criticize oppressive governments on their own. Action was only allowed in the framework of the United Nations Security Council.

<sup>112</sup> L. I. Brezhnev, *Socialism, Democracy and Human Rights* (Oxford: Pergamon Press, 1982), p. 82. Speech at the World Congress of Peace Forces in Moscow in September 1973.

especially in the economic field.<sup>113</sup> One of the main propositions outlined by the Peace Programme was to organize a pan-European security conference.

This proposal was not altogether new but the western attitude had gradually changed in the spirit of détente and German Ostpolitik in the late 1960s. The western European states gave their conditional support to the proposal under the condition that the topics of human rights and individual freedoms, human contacts and the free flow of ideas would be added to the agenda, and that the United States and Canada would be invited to take part to the conference alongside the European states.<sup>114</sup> The Soviet Union agreed to the demands.

In 1972, European states (excluding Albania), Canada and the United States began preparatory negotiations on the Conference on Security and Cooperation in Europe upon invitation by Finland.<sup>115</sup> Proper negotiations proceeded in three phases: first, a meeting of foreign ministers in Helsinki in July 1973; second, long negotiations in Geneva; and finally a conference and ceremonious signing of the Final Document by the heads of state in Helsinki in August 1975.

Before and during the negotiations, the SU made some superficial concessions on human rights – for example, it increased the number of Jewish people allowed to leave

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<sup>113</sup> The initiative was brought about for various reasons. The Soviet Union wanted to bring the arms race to a standstill at the point when the Soviet and the American nuclear weapon arsenals were still roughly equal. It also wanted to strengthen its position through a formal confirmation of the post-war territorial arrangements, and stop the diplomatic rapprochement of China and the United States. Additionally the Soviet Union also sought to address its economic stagnation by increasing trade and the exchange of technology between the eastern and western blocs. See, for example, Geoffrey Roberts, *The Soviet Union in World Politics. Coexistence, Revolution and Cold War 1945-1991* (London: Routledge, 1999), p. 66.

<sup>114</sup> Soviet foreign minister Molotov brought up the idea for the first time already in 1954. The Soviet state was eager to get a general recognition of inviolability of the existing borders in Europe and the existence of two German states. The Soviet proposal was renewed in different forms over the years but the plan did not receive much support from western states. See John J. Maresca, *To Helsinki: The Conference on Security and Cooperation in Europe 1973-1975* (Durham: Duke University Press, 1985), p. 4.

<sup>115</sup> The 35 participating states in the first CSCE conference were Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Democratic Republic of Germany, Denmark, Federal Republic of Germany, Finland, France, Greece, Hungary, Holy See, Iceland, Ireland, Italy, Liechtenstein, Luxemburg, Malta, Monaco, Netherlands, Norway, Portugal, Poland, Romania, San Marino, Soviet Union, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States of America and Yugoslavia.



the country<sup>116</sup> and ratified both 1966 UN Human Rights Conventions in 1973.<sup>117</sup> This was an easy way to gain positive international attention with very little practical significance.

However, signs of change were already starting to emerge in the early 1970s. Transnational human rights organisations were becoming more active with regard to human rights violations in the Soviet Union and pressuring their own governments to demand stricter reciprocity in international cooperation. In addition to the CSCE negotiations in which human rights were linked to other issues, the US also linked bilateral aid with socialist states to freer emigration policy in 1974.<sup>118</sup>

The Soviet Union responded to the growing internationalisation. Brezhnev claimed that the campaign was imperialistically motivated, and its purpose was to eliminate the achievements of socialism. As a warning, Brezhnev tightened the Soviet Union's visa exit policy.<sup>119</sup> The idea behind the gesture was to demonstrate that the west could not pressure the Soviet Union into making concessions on human rights. Despite the doubts, the Soviet Union did not pull out of the CSCE negotiations.

### **The Helsinki Process kicks off**

After years of negotiations, the 35 participating states adopted the Helsinki Final Act in a summit meeting in 1975. The document reflected the bargaining between the socialist and capitalist Participating States. The document was claimed to be "politically binding" and it fell into three "baskets", or areas of cooperation.<sup>120</sup> The signing of the document

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<sup>116</sup> Rees, "The Soviet Union," pp. 70-71.

<sup>117</sup> Brunner, "Recent Developments in the Soviet Concept of Human Rights," p. 37.

<sup>118</sup> On Solzhenitsyn's arrest and the CSCE negotiation, see Maresca, *To Helsinki: The Conference on Security and Cooperation in Europe 1973-1975*, pp. 89-90.

<sup>119</sup> Brezhnev, *Socialism, Democracy and Human Rights*, p. 82. In 1973 Jewish applicants were given 34 733 exit visas, in 1974 20 642. Commission on Security and Cooperation in Europe, *The Helsinki Process and East-West Relations: Progress in Perspective. A Report on the Positive Aspects of the Implementation of the Helsinki Final Act 1975-1984* (Washington DC: Commission on Security and Cooperation in Europe, 1985), p. 117.

<sup>120</sup> The Final Act was claimed to be a politically and morally (but not legally) binding document. In practice, this formulation had only little significance because the authority of a document signed by 35 heads of state is considerable. See Suzanne Bastid, T., "The Special Significance of the Helsinki Final Act," in *Human Rights, International Law and the Helsinki Accords*, ed., Thomas Buergenthal (Montclair: Allanheld, Osmun & Co, 1977), pp. 11-19.

started a cooperation process, which had long-lasting effects on east-west relations, as well as on the liberalisation process and its dynamics in the socialist states.<sup>121</sup>

The first basket consists of ten guiding principles of cooperation and a document concerning security questions, such as confidence-building measures and disarmament; the second basket concentrates on cooperation in the field of economics, science and technology, and environment and cooperation in the Mediterranean area; the third basket deals with cooperation in "humanitarian and other fields". The Final Act did not set clear guidelines for the future of the CSCE but mentioned only the place and time of the next CSCE meeting. In practice, the CSCE participating states convened approximately once in every 2-3 years and the meetings lasted for several months, sometimes years during the Cold War era.

The guiding principles of the declaration between participating states were:

- 1) sovereign equality, respect for the rights inherent in sovereignty,
- 2) refraining from the threat or use of force,
- 3) inviolability of frontiers,
- 4) territorial integrity of states,
- 5) peaceful settlement of disputes,
- 6) non-intervention in internal affairs,
- 7) respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief,
- 8) equal rights and self-determination of peoples,
- 9) cooperation among states, and,
- 10) fulfilment in good faith of obligations under international law.

These principles reflect a degree of bargaining between western and socialist states: the socialist states succeeded in securing the principles of the inviolability of frontiers, territorial integrity of states and non-intervention; whilst the western states managed to obtain the inclusion of respect for human rights and fundamental freedoms (seventh principle) on the list.

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<sup>121</sup> See Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*.

The third basket treated human rights issues in a more practical manner. Its four chapters covered human contacts (for example the improvement of conditions for tourism, re-uniting families), information (improvement of the exchange of and access to information, improvement of working conditions for foreign journalists), cooperation and exchanges in the fields of culture and education (for example, the development of different kinds of exchange programmes). The participating states pledged, for example, to cut application fees for family reunification and to grant multiple visas for foreign correspondents.<sup>122</sup>

Despite the fact that the text of the Final Act reflected perhaps more the western conception of human rights, the Soviet authorities took it for granted that the document would be interpreted on the basis of Soviet legal theory. First and foremost this meant that human rights claims would be subjugated to the more fundamental principle of non-intervention.<sup>123</sup> According to the Soviet view, this meant that public criticism of Soviet human rights policy would not be allowed.<sup>124</sup> The Soviet representatives underlined a sentence in the Final Act which stated "the questions relevant hereto must be settled by the States concerned under *mutually acceptable conditions*".<sup>125</sup>

Within the socialist camp, the Final Act was considered a victory for Soviet diplomacy, and likely to prop up the status of the Brezhnev's political leadership. This confidence was demonstrated through the publication of the text of the Final Act in widely circulated newspapers *Izvestiia* and *Pravda*.<sup>126</sup> However, the document was not received by the people in quite the way that was anticipated by the leadership. Even if the majority of Soviet people might have been more or less indifferent towards the CSCE,

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<sup>122</sup> See the Helsinki Final Act, points 421-470. Reprinted in Maresca, *To Helsinki: The Conference on Security and Cooperation in Europe 1973-1975*, Appendix II, pp. 284-88.

<sup>123</sup> See Arie Bloed and Pieter van Dijk, "Human Rights and Non-Intervention," in *Essays on Human Rights in the Helsinki Process*, eds. A. Bloed and P. van Dijk (The Hague: Martinus Nijhoff Publishers, 1985), p. 64.

<sup>124</sup> *Ibid.*, p. 65.

<sup>125</sup> On the Soviet interpretation, see I. S. Sergeyev, "Co-Operation in the Humanitarian Field," in *European Security and Co-Operation: Premises, Problems, Prospects*, ed., Cherkasov P.P. et al. (Moscow: Institute of World Economy and International Relations, USSR Academy, 1977), pp. 264-77.

<sup>126</sup> Ludmilla Alexeyeva, *Soviet Dissent: Contemporary Movements for National, Religious and Human Rights* (Middletown: Wesleyan University Press, 1985), pp. 335-36.

an outspoken minority started to refer to the Final Act in their appeals for human rights and fundamental freedoms almost immediately after the document was signed.<sup>127</sup>

### **Empowering transnational actors**

"But public attitudes toward Helsinki underwent a slow evolution. Gradually, the Final Act came to be seen less as a Western confirmation of the status quo in Europe and more as a potentially usefully weapon for supporting human rights in the communist countries. The CSCE increasingly appeared as a unique basis for raising human-rights-related issues with the USSR and the East-European governments and a unique forum for discussion for these issues."<sup>128</sup>

While negotiations about the Final Act were ongoing, very few – if any – of the western diplomats truly believed that the text would change the oppressive practices in the Soviet Union. Even if the western representatives disapproved of the Soviet human rights policy, most states were not willing to risk cooperation in other areas for the sake of human rights.<sup>129</sup> However, this attitude started to change already in the 1970s, in the US in particular. International public opinion started to pay more attention to the Soviet violations of human rights. Activist networks pressured western governments to conduct a tougher policy on human rights questions towards the socialist states. This development became apparent also in the CSCE process.<sup>130</sup>

In the late 1970s there was a remarkable proliferation of NGOs, associations and institutions dedicated to monitoring the implementation of CSCE commitments and pressuring governments to take a stronger stance on these matters.<sup>131</sup> Many inter-governmental organisations (for example, the Council of Europe and NATO), different groups in public administration (for example, the US Commission on Security and Cooperation, the Helsinki Review Group in the UK), NGOs and coalitions (for example, Helsinki Committees and Helsinki Watch Groups in the CSCE states) and

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<sup>127</sup> Joshua Rubinstein, *Soviet Dissidents: Their Struggle for Human Rights* (Boston: Beacon Press, 1980), p. 215.

<sup>128</sup> Maresca, *To Helsinki: The Conference on Security and Cooperation in Europe 1973-1975*, p. 207.

<sup>129</sup> *Ibid.*, p. 43.

<sup>130</sup> See, for example, Joseph L. Noguee and Robert H. Donaldson, *Soviet Foreign Policy since World War II*, 3rd ed. (Exeter: Pergamon Press, 1988), pp. 288-302.

<sup>131</sup> Virginia Leary, "The Implementation of the Human Rights Provisions of the Final Act: A Preliminary Assessment: 1975-1977," in *Human Rights, International Law and the Helsinki Accord*, ed., Thomas Buergenthal (Washington D.C.: The American Society of International Law, 1977), pp. 113-27.

religious groups and associations (for example, the World Council of Churches) and research institutes (for example, the European Cooperation Research Group and the EastWest Institute) prepared reports on implementation of the Final Act. This development led to a gradual change in the attitudes of political actors, diplomats and journalists alike. Direct, public pressuring became more acceptable.<sup>132</sup> Critical comments on Soviet human rights policy were voiced also from former allies: a number of western communist parties publicly stood out from the socialist camp.<sup>133</sup>

### **Empowering Soviet dissidents**

The CSCE not only inspired western activists, but also a small group of dissidents in the Soviet Union and in eastern Europe. The first Helsinki monitoring group was founded in Moscow in May 1976.<sup>134</sup> The basic idea of these Helsinki groups was to gather information on the human rights violations of the socialist states, and transmit this information to western governments and the general public. Within the Soviet Union, the working method was to prepare reports that were delivered not only outside the USSR with the help of foreign correspondents and diplomats, but also to the Soviet state authorities and elsewhere in the Soviet Union, through an underground network of activists.

The Helsinki movement spread rapidly throughout the Soviet Union: in November 1976 similar groups were formed in Ukraine and Lithuania, in January 1977 in Georgia and in April 1977 in Armenia. In addition to the Helsinki groups, the following years also witnessed an establishment of related groups with a narrower focus, such as the Christian Committee for the Defence of Freedom of Belief and the Working Group for

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<sup>132</sup> See David Davies Memorial Institute of International Studies, "From Helsinki to Belgrade: Report of the Helsinki Review Group," (London: 1977), p. iv.

<sup>133</sup> The dividing moment was the Soviet suppression of the demonstrations in Prague in 1968. This movement for "new internationalism" was led by the strong communist parties of Italy and, after Franco's death in 1975, Spain. See Robert L. Hutchings, *Soviet East-European Relations: Consolidation and Conflict, 1968-1980* (Madison: The University of Wisconsin Press, 1983), pp. 207-16.

<sup>134</sup> The first group was called the Initiative Group for the Implementation of the Helsinki Accords. See Alexeyeva, *Soviet Dissent: Contemporary Movements for National, Religious and Human Rights*, pp. 340-41; "Sbornik dokumentov obshchestvennoi gruppy sodeistviia vypolneniiu khelsinkskikh soglashenii," (New York: Khronika Press, 1976), pp. 5-7.

the Investigation of Psychiatry for Political Purposes.<sup>135</sup> The CSCE framework seemed to unify the previously fragmented opposition: regardless of the poor resources available for dissidents, in a short period different groups and organisations formed a geographically and thematically wide network of cooperation both within and outside the Soviet Union.<sup>136</sup>

There were also interesting developments behind the official curtains. For example, Iuri Kashlev, a Russian diplomat who took part in several Soviet delegations at the CSCE meetings, later claimed that the CSCE was a tool for the more liberal foreign ministry officials in their attempt to cause rifts in the rigid ideology of the state socialism.<sup>137</sup>

The Soviet government replied to the rebirth of dissident activism in traditional, repressive ways. The security service KGB intimidated the leading activists and published compromising articles on them in the Soviet Union and abroad.<sup>138</sup> Later, the methods became harsher. Some western governments appealed to the Soviet government for the sake of the activists, but this action had little impact.<sup>139</sup>

### **The grip tightens**

In a very short period of time, the CSCE Helsinki document succeeded in incurring some serious rifts in the unquestioned power and totalitarian ideology of the CPSU. The Soviet government did not want to admit that it had evaluated the development incorrectly and lost in the CSCE deal. Its solution was to publicly insist that it was satisfied with the CSCE, but simultaneously to tighten its grip on the dissidents.<sup>140</sup>

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<sup>135</sup> "Sbornik dokumentov obshchestvennoi gruppy sodeistviia vypolneniiu khelsinkskih soglashenii," pp. 47-49.

<sup>136</sup> Alexeyeva, *Soviet Dissent: Contemporary Movements for National, Religious and Human Rights*, p. 340.

<sup>137</sup> Juri Kashlev, "CSCE: The Unique Experience," *OSCE ODIHR Bulletin* 3, no. 3 (1995): pp. 27-28.

<sup>138</sup> Yuri Orlov, *Dangerous Thoughts: Memoirs of a Russian Life* (New York: William Morrow, 1991), pp. 193-95.

<sup>139</sup> William Korey, *The Promises We Keep: Human Rights, the Helsinki Process and American Foreign Policy* (New York: Institute for EastWest Studies, 1993), p. 62.

<sup>140</sup> The new Soviet constitution of 1977 confirmed the ten guiding principles of the Helsinki Final Act in its section on Soviet foreign policy. See *Constitution of the Union of Soviet Socialist Republics (1977)*, 7 October 1977.

Denying the linkage between human rights and the CSCE, the Soviet Union decided to harden the repression of human rights activists at home just before the second CSCE meeting in Belgrade in 1977. The aim was to eliminate the leaders of the opposition. Later on, in late 1979, the attack against the dissidents hardened further.<sup>141</sup> This time the authorities did not settle for arresting the most well-known figures, but committed itself to rooting out all underground activism from the Soviet Union. On the whole, the change in Soviet policy signalled that it had decided to ignore western criticism and all the implications that such action would have for its international reputation.<sup>142</sup>

The final blow for détente was soon to come: in December 1979 the Soviet army invaded neighbouring Afghanistan. The official explanation was that the legitimate Afghan government had asked for military help from the USSR against foreign military groups.

After the war in Afghanistan had started, it was clear to everybody that détente had come to the end of its road. The turn of the decade witnessed growing fear of superpower conflict. This general feeling was reflected in the presidential election campaigns in 1980. The election of Ronald Reagan and his speeches about the "evil empire" further increased the tension between the two superpowers.<sup>143</sup>

Daniel C. Thomas claims the CSCE process pushed the development in the socialist states from the phase of simple repression towards a more active denial of human rights norms.<sup>144</sup> The Soviet Union had adopted the Helsinki Accords with simply strategic calculations in mind. The leadership was unprepared for the developments that followed. Unprecedented social mobilisation abroad and in the socialist countries, transnational activism and sustained pressure from the groups and western governments took the Soviet leadership by surprise.

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<sup>141</sup> See Alexeyeva, *Soviet Dissent: Contemporary Movements for National, Religious and Human Rights*, p. 372.

<sup>142</sup> *Ibid.*, p. 367.

<sup>143</sup> Noguee and Donaldson, *Soviet Foreign Policy since World War II*, pp. 317-18.

<sup>144</sup> Daniel C. Thomas, "The Helsinki Accords and Political Change in Eastern Europe," in *The Power of Human Rights: International Norms and Domestic Change*, eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *Cambridge Studies in International Relations 66* (Cambridge: Cambridge University Press, 1999), pp. 208-09.

The leadership's reaction to the social mobilisation around human rights was to activate its own propaganda efforts and, when it became clear that this was not enough, to suppress all independent activism in the SU by force. Soviet propaganda claimed that western standards of human rights were not applicable to its case: it insisted that it implemented "socialist human rights" which were different from western ones. When words proved insufficient, hard repression was used against the activists: they were sentenced to years in prison or, in a few cases, exiled abroad.<sup>145</sup> Even if the SU claimed that human rights criticism was a violation of the norm of non-intervention, it did not pull out of the CSCE process, but instead attacked the western governments by accusing them of human rights violations. It thus paradoxically started to talk – even if perversely – the "human rights talk".

The harsh action by the state against the dissidents made their cases well-known abroad and increased transnational activism. This had an impact on the opinion of at least the more liberal-minded members of the elite. The leading Soviet expert on superpower relations describes the situation in his memoirs:

The campaign against the dissidents involved only a relatively small number of people. But it had a noticeable negative effect abroad, and it poisoned the political atmosphere at home, worsened the already repressed circumstances in culture, in social thought, and in the attitudes of all thinking people.<sup>146</sup>

Paradoxically, by crushing the marginal opposition, the state made them martyrs of freedom and their message became well-known. Against the backdrop of hard repression and cruel human rights violations, the Soviet rhetoric about humane, socialist interpretation of human rights sounded shallower than ever. Despite the massive propaganda campaign that the Soviet Union launched, the international appeal of Soviet socialism weakened dramatically during the 1970s and 1980s.

The significance of the CSCE process lay in the fact that it offered a forum around which transnational contacts could develop, and an arena within which the issues were periodically discussed internationally. The review sessions underlined the inconsistencies in Soviet rhetoric and practice, and the CSCE provided an arena where

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<sup>145</sup> In the special case of Andrei Sakharov, internal exile and cutting contacts with the outside world were used.

<sup>146</sup> Georgi Arbatov, *The System: An Insider's Life in Soviet Politics* (New York: Times Books, 1992), p. 232.



western governments could act publicly according to their "convictions". New forms of cooperation also developed: many western diplomatic missions started to use the NGO material as their source information when preparing negotiations, and at least the US mission included some NGO activists in their mission so they could participate in the CSCE meetings.

Even if the impact of the practical, concrete achievements of the CSCE and détente was much greater in countries like Eastern Germany, Hungary or Poland, their impact in the SU should not be altogether disregarded. This period witnessed a considerable increase in human contacts (tourism, correspondence, etc.) across the iron curtain, and general knowledge of the western societies grew considerably in the socialist states during this period. The more privileged members of Soviet society in particular – usually party members, credited foreign political experts and academics – could travel more widely in the western states than ever before. During their trips, many of them could not help but notice that things were not as bad in the west as Soviet propaganda commonly claimed.<sup>147</sup>

### *Evaluation*

The prospect of the Soviet Union becoming socialised to western interpretations of human rights looked fairly gloomy in the 1970s and 1980s. The scope conditions on both the international and domestic levels, as well as norm-specific and environmental conditions, all showed preference for non-socialisation and avoidance of cooperation. First and foremost, the asymmetry between the actors was not strong enough. The Soviet Union was one of the superpowers and could define its own terms of engagement. It controlled the socialist bloc in eastern Europe and could defend its socialist conception of human rights in the name of the whole socialist bloc. Secondly, the Soviet Union did not see the European organisations as authoritative actors. The EC and the CoE were considered bastions of reactionary forces, and their norms were considered bourgeois and therefore not applicable to socialist states. The CSCE was the fruit of the Soviet Union's action and therefore the Soviet Union regarded it positively. Nevertheless, the CSCE was not seen as an independent authoritative body, but instead

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<sup>147</sup> Gordon B. Smith, *Soviet Politics: Struggling with Change*, 2nd ed. (New York: St. Martin's Press, 1992), pp. 102-03.

as a workhorse for pursuing Soviet interests. Because of the Soviet Union's independence from the system, the organisations had very limited bargaining power. It is true that the SU suffered from poor economic performance, and was thus interested in developing economic relations, trade and exchange of technology in particular within the CSCE process. Its willingness to make concessions in order to secure gains in other fields nevertheless proved to be rather limited. The fact that the Soviet state could not compete with the capitalist world was becoming clearer by the day, but at the time there was not a great sense of urgency which would have pushed the Soviet leadership to look for other solutions. The extent of the problems remained hidden from the public (and possibly from the leadership, too).

Even if the Soviet Union claimed to respect human rights and freedoms, it explicitly resigned from the western interpretation of human rights norms. Although there existed modest human rights cooperation between the parties, the very concept of human rights was, nonetheless, contested. The concept of human rights was seen as inherently political by the Soviet Union. The norm and issue specific conditions were, consequently, not particularly encouraging for further cooperation. Needless to say, the domestic conditions were particularly hostile towards the adoption of western norms.

Democratisation theory would categorise the Soviet Union as an authoritarian state. Despite some manoeuvres, there were no signs of democratisation taking place in the Soviet Union: there were no significant concessions, there were great numbers of political prisoners, no opposition was allowed, there was only one legally recognised party, no independent associations or trade unions were allowed and there was no independent press. The socialisation model would define the pre-Gorbachev Soviet Union as being in the state of denial. Despite the fact that no significant progress was made in practical terms, the international and transnational actors succeeded in placing the topic of human rights on the international agenda. There was a growing international awareness of the human rights violations committed by the Soviet Union. The transnational network engaged in both shaming the Soviet state and in moral consciousness-raising of western governments with some success.<sup>148</sup>

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<sup>148</sup> See, for example, Korey, *The Promises We Keep: Human Rights, the Helsinki Process and American Foreign Policy*, pp. 21-59.

### 3 Liberalisation in the Soviet Union

In the early 1980s, the Soviet Union's future prospects were starting to look hopelessly gloomy. International tension was high, and the Soviet economy and international reputation was in ruins. General pessimism was highlighted by two successive leaders who were hopelessly old and sick, and who both died in office soon after their nomination to the post. Andropov died of kidney failure in February 1984 and his successor Konstantin Chernenko died in March 1985.

After Chernenko's death, the Politburo decided to change the course by electing the much younger Mikhail Gorbachev to become the new Soviet leader. Even if it was already evident that Gorbachev represented something of a change, the contents or the final goals of this change were not clear – not even to Gorbachev himself.<sup>149</sup> From the early 1980s onwards, Gorbachev had regularly consulted a group of more liberal experts on economy, law and international politics. The challenge was to apply this academic discussion to practice.<sup>150</sup>

The term *perestroika* (restructuring) was launched already during Gorbachev's first year in office. Perestroika was the general term for reforms in various policy areas. The goal for the reforms was *uskorenie* (acceleration) – that is, rapid growth, both in quantity and in quality, of the Soviet economy. Perestroika was comprised of four different strategies: the formation of an interest-based society and economy, the practice of public criticism and new openness, democratisation of political processes and the formation of a state based on the rule of law.<sup>151</sup> However, liberalisation took shape gradually and unevenly in different issue areas.

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<sup>149</sup> Mikhail Gorbachev, *Memoirs* (London: Doubleday, 1996), pp. 401-04.

<sup>150</sup> See Archie Brown, *The Gorbachev Factor* (Oxford 1996: Oxford University Press, 1996), pp. 59-61; Stephen F. Cohen and Katrina vanden Heuvel, *Voices of Glasnost: Interviews with Gorbachev's Reformers* (New York: W.W. Norton & Co., 1989), pp. 41-42, 118-22; Robert G. Herman, "Identity, Norms and National Security: The Soviet Foreign Policy Revolution," in *The Culture of National Security: Norms and Identity in World Politics*, ed., Peter J. Katzenstein (New York: Columbia University Press, 1996), p. 298.

<sup>151</sup> David Lane, *Soviet Society under Perestroika*, 2nd ed. (London: Routledge, 1992), p. 13.

The big break came only after the serious accident at a nuclear power station in Chernobyl, Ukraine in April 1986.<sup>152</sup> The accident confirmed that the old culture of hiding the facts, avoiding responsibility and general disregard of human suffering was still prevalent in the Soviet Union. After the accident, a new emphasis was put on human rights, openness and the democratisation of society. Human rights violations were admitted for the first time in full-scale. Political prisoners were freed, and emigration from the Soviet Union was allowed on a bigger scale.<sup>153</sup>

It was only at this stage that the Soviet leadership fully accepted and acknowledged the universality and inviolability of human rights. Its attitude towards democracy was, nevertheless, more ambivalent.<sup>154</sup> Gorbachev believed that the principles of democracy could be fostered within the socialist one-party system. However, the process of liberalisation eroded the whole basis of the system, and its legitimation rapidly weakened. Particularly following the deepening of the economic crisis, and the drop in standards of living in the Soviet Union, socialism seemed to have less and less to offer. Now that the old enemy propaganda had been abandoned and it was admitted that socialism needed to borrow "some external structures from the bourgeoisie democracy"<sup>155</sup>, it was ever more difficult to find a justification for the socialist system in general.

An important step in the process of Soviet democratisation was the creation of a new parliament, the Congress of People's Deputies (*S"ezd narodnyh deputatov*) of the Soviet Union. Its elections took place in 1989. The elections were free and competitive but they were not multi-party elections: alongside party candidates there were some independent ones. A large proportion of seats were reserved for party candidates and candidates of state-supported organisations.

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<sup>152</sup> Gorbachev, *Memoirs*, p. 189.

<sup>153</sup> Robert D. English, *Russia and the Idea of the West: Gorbachev, Intellectuals, and the End of the Cold War* (New York: Columbia University Press, 2000), p. 220. One of the very first political prisoners to be freed was Nobel Prize Winner Andrei Sakharov in December 1986. Gorbachev made him a personal phone call encouraging him to "go back to your patriotic work". Cited in English, *Russia and the Idea of the West: Gorbachev, Intellectuals, and the End of the Cold War*, p. 223.

<sup>154</sup> Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore: John Hopkins University Press, 1996), p. 380.

<sup>155</sup> Anatoli Adamishin, "Humanity's Common Destiny," *International Affairs (Moscow)* (1991): p. 11.

Liberalisation also meant that those hostile to reform could have their say. Their ranks grew as the national tensions and separatism spread in the republics, the economy got worse and the Soviet empire abroad started to crumble. People became increasingly disillusioned with democracy and reform. This resulted in some hesitation at the top level, but more conservative moves did not help either – it seemed to drive away Gorbachev's liberal and conservative allies alike.<sup>156</sup> When the policy was corrected back to the liberalisation course, it was already too late and the spiral towards the collapse of the Soviet Union had already begun.

Soviet foreign policy changed dramatically as well. The main thesis of *new thinking* (*novoe myshlenie*) was that the world should not be divided into competing camps according to their social systems, but that security was in essence common and global by nature. Interdependence tied states to one another. Peace should be understood as an active process of cooperation, not just lack of conflict.<sup>157</sup> The Soviet Union sought to join the community of democratic states and to become a "normal" state. Human rights and humanitarian cooperation were claimed to be at the centre of the new foreign policy.<sup>158</sup> The new Soviet emphasis gave renewed hope for the eastern European states for freedom.

Many researchers credit international contacts for this reformulation of Soviet thinking. Thanks to détente – and the CSCE – international contacts between Soviet academics and their western counterparts had increased considerably. Increased human contacts, the possibilities for travel and tourism, and research cooperation between eastern and western institutes gave new and fresh insights to scientists, researchers, party officials and some fortunate Soviet citizens.<sup>159</sup>

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<sup>156</sup> Ronald Grigor Suny, *The Soviet Experiment: Russia, the Ussr and the Successor States* (Oxford: Oxford University Press, 1998), p. 457.

<sup>157</sup> English, *Russia and the Idea of the West: Gorbachev, Intellectuals, and the End of the Cold War*, pp. 147-57.

<sup>158</sup> Smith, *Soviet Politics: Struggling with Change*, p. 313.

<sup>159</sup> English, *Russia and the Idea of the West: Gorbachev, Intellectuals, and the End of the Cold War*, pp. 151-53; Evangelista, *Unarmed Forces: The Transnational Movement to End the Cold War*; Herman, "Identity, Norms and National Security: The Soviet Foreign Policy Revolution," pp. 295-96; Thomas Risse-Kappen, "Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures, and the End of the Cold War," *International Organization* 48, no. 2 (1994): pp. 196-200.

The Soviet behaviour at the 3rd CSCE meeting in Vienna (1986-1989) reflected this fundamental rethinking underway at the top. During the course of the meeting, the initial reserved attitude of the Soviet delegation was soon replaced by reform euphoria and positive enthusiasm. After the Vienna meeting, the human rights question in east-west relations changed its character: in the new meetings of human dimension, questions concerning dissidents and the right of expression were replaced by minority and nationality questions.<sup>160</sup>

### *Evaluation*

Perestroika and Gorbachev's new thinking shook the balance of the international system and the whole outlook of Europe. Negative scope conditions for deepening cooperation and shared norms turned into positive ones: asymmetry between Russia and the European organisations started to grow, and Russia made it known that it wanted to be judged by the common European standards. It gradually renounced the promotion of the idea of different, socialist interpretation of human rights and democratic freedoms and agreed that there was only one set of standards on these issues, namely the western one. This strengthened the moral authority of the European organisations. The Soviet policy highlighted the importance of multilateralism and this gave the organisations more material bargaining power vis-à-vis Russia. Also, as the dreadful state of the Soviet state and economy was brought into the light, the western actors' material bargaining power increased. The Soviet Union became increasingly dependent on western economic assistance.

The environmental conditions were also apt to encourage socialisation to western norms. First of all, the crisis of the Soviet state was rapidly accelerating and there was a great urgency to find new solutions. The magnitude of the problems the Soviet Union faced was unprecedented and made its leadership more open towards western norms. The western model was readily available for the Soviet Union, and western actors actively encouraged the SU to follow its example.

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<sup>160</sup> Harm J. Hazewinkel, "Paris, Copenhagen and Moscow," in *The Human Dimension of the Helsinki Process: The Vienna Meeting and Its Aftermath*, eds. A. Bloed and P. van Dijk, *International Studies in Human Rights* (Dordrecht: Martinus Nijhoff Publishers, 1991), pp. 128-42.

The democratisation model would classify the SU during the perestroika period as a state amidst liberalisation. The Soviet leadership started making considerable concessions on human rights: the political prisoners were freed, and tolerance of opposition grew enormously during these years. There were still shortcomings with regard to the requirement of recognised political parties, but civil society associations were relatively well tolerated. Perhaps most impressively, the once rigidly controlled media became increasingly independent and the pluralistic atmosphere was strengthened. The Soviet Union would thus rate fairly highly when judged against the criteria of liberalisation.<sup>161</sup>

The socialisation model would argue that after the denial phase of the early 1980s, the Soviet Union had entered the so-called phase of tactical concessions. In practice, this implies that a state would start by making some cosmetic changes in order to pacify international criticism. These cosmetic changes would encourage both domestic and international criticism and lead to growing pressure. This pressure would again push the government for more changes. Gradually the processes of argumentation both internationally and domestically, as well as domestic coalition-building, would take the liberal reforms to a new level. Subsequently, the domestic government would not deny the validity claims. The development is likely to lead to the change in the government.

Developments during the Gorbachev years fit the socialisation model in broad outline, though some minor clarifications must be made. It is probable that Gorbachev acted, at least to some extent, out of ideological conviction from the start, although his reforms became more far-fetched and ambitious from the latter half of 1986. The process of argumentation and persuasion was clearly present, in particular on the international level. The domestic liberal opposition, on the other hand, remained weak, and the strongest pressure came from the nationalist and hard-line communist camps. The liberal reforms and increased protection of human rights were essentially elite-initiated and the pressure to make more concessions from below remained weak throughout the period. The domestic structure of the Soviet Union was elite- and state- dominated and societal structures were – and remained – underdeveloped (in contrast to what the

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<sup>161</sup> Schneider and Schmitter, "Liberalization, Transition and Consolidation: Measuring the Components of Democratization," p. 64.

socialisation model suggests). Nevertheless, as long as the liberal government stayed in power, the prospects of state socialisation to human rights remained fairly positive.

### **Spiral towards the end**

By the turn of the decade, it was evident that democratisation was not possible in a one-party system and that it was time to make a decision whether to maintain the system or democratise the country without it. The liberal reform-minded members abandoned the party in 1991. The Baltic declarations of independence triggered the spiral of events leading to the end of the Soviet Union. Soviet troops were sent to Vilnius where they seized a television tower and killed 13 unarmed protesting civilians in summer of 1991. The tension was high across the Baltic States.

The democratisation process was having a hard time: after the euphoria of an almost-democratically elected parliament, the obvious lack of results and bitter political confrontation resulted in a sullen atmosphere and disillusionment with pro-democratic reform policies. Democratisation efforts were failing the credibility test in the eyes of the Russian people. The coup was the beginning of the end of the Soviet Union.<sup>162</sup>

The conservative hard-liners of the CPSU decided that their time to seize power had arrived. A group of old hard-line communists launched a coup attempt in order to restore the CPSU's monopoly and save the SU in August 1991.<sup>163</sup> Gorbachev was kept under house arrest in his datcha in Yalta where had been in enjoying his summer holiday.

The democratically elected president of the Russian Soviet Federated Socialist Republic (*Rossiiskaia Sovetskaia Federativnaia Sotsialisticheskaia Respublika*, RSFSR), Boris

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<sup>162</sup> Richard Sakwa, *Soviet Politics in Perspective*, 2nd ed. (London: Routledge, 1998), p. 78.

<sup>163</sup> The plotters included important figures: Vice President Gennadyi Ianaiev, Prime Minister Valentin Pavlov, Interior Minister Viktor Pugo and Minister of Defence Dmitri Yazov, Politburo Member Egor Ligachev, KGB head Vladimir Kryuchkov. See Graeme Gill and Roger D. Markwick, *Russia's Stillborn Democracy? From Gorbachev to Yeltsin* (Oxford: Oxford University Press, 2000), p. 108.



Yeltsin<sup>164</sup>, led the opposition forces in Moscow. He became the leader and icon of the democratic protest that took to the streets of Moscow. Finally, the army tanks that were sent to take control of the unrest in Moscow turned against the communist plotters. The coup attempt ended peacefully in 21 August 1991, and Gorbachev returned to Moscow.

The power balance between Gorbachev and Yeltsin shifted as a result of the coup crisis. Gorbachev never quite succeeded in regaining his position and authority. Yeltsin, the hero of the resistance, became ever more clearly the leading figure at the top.<sup>165</sup> The Baltic states seized the moment to pull out of the Union. As most western states backed Baltic independence, the weakened Soviet Union had to let them go.

The final blow to the unity of the Soviet Union was the Ukrainian referendum on independence in December 1991. The overwhelming majority of Ukrainians backed full independence of the Ukrainian republic. After the referendum, the leaders of Russian, Ukrainian and Belarusian Republics met in Belovezhskaya Pushcha where they declared the end of the Soviet Union. They formed a new, looser Commonwealth of Independent States (CIS). Later in December eight other newly independent states joined the CIS. Four days later Gorbachev announced his resignation and the Soviet Union ceased to exist.<sup>166</sup>

### *Evaluation*

According to the democratisation model, the final years of the Soviet Union witnessed growing signs of the state moving towards the phase of transition. Despite the fact that the party system remained non-existent, opposition forces entered politics and started negotiating with the government (Gorbachev and Yeltsin). There existed open conflict within the state apparatus over public policies, and this was acknowledged by the government. It could not, though, be resolved. Legal reforms which were intended to limit the arbitrary use of power by the state were introduced, and constitutional changes

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<sup>164</sup> According to the transliteration system used in this thesis (Library of Congress system without diacritics), Yeltsin's name should be written El'tsin but as the form 'Yeltsin' is so commonly used an exception will be made in this case. The same applies to other widely known figures and movements. Examples include Empress Elizabeth (Elizaveta), Viktor Yushchenko (Iushchenko), Grigory Yavlinsky (Grigorii Iavlinskii) and Yabloko (Iabloko).

<sup>165</sup> Peter Juviler, *Freedom's Ordeal: The Struggle for Human Rights and Democracy in Post-Soviet States* (Philadelphia: University of Pennsylvania Press, 1998), pp. 52-62.

<sup>166</sup> Gill and Markwick, *Russia's Stillborn Democracy? From Gorbachev to Yeltsin*, p. 109-11.

were made in order to guarantee that non-accountable powers would progressively be eliminated from the decision making process. Gorbachev gradually became the only major player without any degree of authorisation from the people. There were major steps towards democracy: the president of the Russian Federation was elected in completely free and competitive elections, and the Supreme Soviet was also elected in free but only partly competitive elections. If one disregards the fact that the party system remained underdeveloped, the Soviet Union could be considered to have entered the stage of transition.<sup>167</sup>

Just as the socialisation model would suggest, the events took over and Gorbachev was ousted from power. This time, however, the challenge against the federal government came from the elites of the republics who were not necessarily pro-human rights liberal reformers. In the end, the centre completely forewent its legitimacy, and the republics seized the momentum and gained control.<sup>168</sup> Human rights norms did not play a significant role in the regime change. Instead of demands from below to defend human rights, it was the prolonged insistence on a one-party system and the handling of the national question that proved fatal for the Soviet Union. The socialisation model would assert that the final years of the Soviet Union constitute a move from the tactical concessions towards the prescriptive status of the forthcoming Yeltsin era.

The socialisation model explains relatively well how the transnational links were formed, and how the transnational network activated the western public opinion and governments to act in defence of human rights in the Soviet Union. It also explains the processes of shaming, arguing and persuasion involved in the international cooperation between the European actors and Russia. The significance of the dissident groups, for example the Helsinki groups, in the Soviet Union was to do with the fact that their activism and tragic fates roused liberal western actors. This then resulted in tension in international relations. The aggravation of the international situation, on the one hand, and the international discussion on human rights, on the other hand, made the liberal elite more prone to start the liberalisation programme in the Soviet Union.

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<sup>167</sup> Gill, *The Dynamics of Democratization: Elites, Civil Society and the Transition Process*, p. 193.

<sup>168</sup> *Ibid.*, pp. 210-11.

What the model does not grasp particularly well is domestic developments in Russia. Liberalisation did not lead to a popular movement for democracy and human rights. To this day, calls for democracy and human rights have not resonated with the masses, but instead have remained the preserve of a small, urban group of people. The strongest opposition gathered around national independence movements in the republics. The speed of the dismantling of the Union bypassed democratically structured organisations which were only just starting to take shape. There was certainly freedom, but the change of power took place before democratic institutions – such as the formation of political parties, multi-party elections, the development of relations between civil society and the state – had been properly developed.<sup>169</sup>

#### **4 Post-Soviet Russia and Human Rights and Democratic Norms**

##### **A distressed society in search of national identity and interests**

"I have met with dozens of my fellow [foreign] ministers [...] and I often ask them: Do you have what is always demanded of me – a conception of national interests, a conception of foreign policy? The first reaction is that no one can understand the point of the question, and the second reaction is to ask: A conception of what?"<sup>170</sup>

The period from the end of the Soviet Union until the end of 1993 was characterised by a search for national identity, and for a definition of national interests that was congruent with that identity. This was no easy task amid the huge structural challenges facing the nation: the economic and political, as well as social, systems had to be transformed completely. The search commenced with a considerable degree of continuity with Gorbachev's pro-western liberalisation discourse, only it was tuned to a higher level: Russia was part of Europe; it was seeking full integration into western institutions and it wanted to be judged by western values and norms. The desire to see Russia a "normal", "civilised" state was so great that the issue of being patronised by the western states and institutions did not play a great role in Russian foreign policy thinking.<sup>171</sup>

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<sup>169</sup> Linz and Stepan, *Problems of Democratic Transition and Consolidation*, pp. 387-90.

<sup>170</sup> Foreign minister Andrei Kozyrev's reply to a question on Russian national interests in *Nezavisimaja Gazeta*, 1 April 1992.

<sup>171</sup> Richard Sakwa, *Russian Politics and Society*, 3rd ed. (London: Routledge, 2002), p. 351.

### *State of political transformation*

In the early years, the economic transformation was put first on the list of priorities; political and constitutional transformation was to follow.<sup>172</sup> This decision had major implications for the development of Russia. The "shock therapy" of rapid market liberalisation and privatisation of state enterprises, and their dramatic consequences unfolded before there were clear rules on the division of power and labour between the state structures, many of which were inherited from the Soviet era without any major changes.

An example of a Soviet-inherited institution was the parliament of Russia – the Congress of People's Deputies and its sitting chamber, the Supreme Soviet of the RSFSR. The congress had been elected in relatively free and competitive elections in March 1990. Also, Boris Yeltsin had been elected as the head of the Russian Republic in democratic elections in June 1991, still during the Soviet reign. The constitution in force was still the constitution of the RSFSR which had been adopted in 1978 and amended a great many times since then. In November 1991, the Congress and the Supreme Soviet had temporarily given up their right of executive control and given Yeltsin the status of head of government and the right to issue decrees.<sup>173</sup>

As the impact of the economic shock therapy began to be felt by Russian society, political tensions between the Supreme Soviet and the president – who was in charge of the economic policy – rose, and the situation started to escalate. The social, and even economic, costs of the monetarist policy, which fitted the Russian realities badly, were extremely high: price liberalisation led to the withering of industrial production; by November 1992, consumer prices had risen 22-fold, and between 1990 and 1995 Russian GDP fell by some 50 per cent.<sup>174</sup> Standards of living fell, and the state and many enterprises were unable to pay wages to their employees. As a result of the chaos created by the economic policy, the Supreme Soviet and its chairman, Ruslan Khasbulatov, sought to re-establish its authority over the government. Khasbulatov's role as prime minister of a sort was backed by the Russian Constitution of 1978, still in force. Yeltsin, on the other hand, relied on his undisputable democratic credentials.

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<sup>172</sup> Linz and Stepan, *Problems of Democratic Transition and Consolidation*, pp. 390-97

<sup>173</sup> Presidential decrees were the equivalent to law.

<sup>174</sup> Sakwa, *Russian Politics and Society*, pp. 284-85.

The relationship between the president and parliament deteriorated gradually into a deadlock during 1993. In April, Yeltsin's position was strengthened by a referendum in which the majority of Russians showed confidence in him and called for new legislative elections. There was considerable shilly-shallying over possible compromises on both sides over the months. However, neither side was ready to back down in the end. The crisis escalated into a full-blown conflict in late September 1993. On 21 September, Yeltsin terminated the activities of the Supreme Soviet and the Congress of People's Deputies in a television address. All legislative functions would be transferred to the new Federal Assembly consisting of the State Duma (*Gosudarstvennaia Duma*) and Federation Council (*Sovet Federatsii*). The elections for such a body – which so far only existed in the draft constitution – would be held in December 1993. Until the elections, Russia was to be ruled by presidential decrees and government resolutions.<sup>175</sup> The Constitutional Court was also suspended.<sup>176</sup>

The Supreme Soviet and the emergency meeting of the Congress responded by adopting a series of counter-decrees. Yeltsin was suspended and vice-president Rutsoi was declared to be in power. What followed was a hostile stand-off between the president and the parliament with deputies seizing the parliamentary building. This situation turned into a violent confrontation on 3 October. Rutskoi called his supporters to attack the Moscow's mayor's office and the Ostankino TV centre. Yeltsin declared a state of emergency and, on 4 October, sent tanks and armed forces to empty the parliamentary building by force. An estimated 146 people died in the violent conflict and several opposition publications and organisations were suspended. Nevertheless, more than anything else, the conflict was an intra-elite struggle, in which the Russian people were bystanders.<sup>177</sup>

The new constitution – which was accepted through a narrow majority in a referendum in December 1993 – confirmed the supremacy of the presidential rule. The president appointed the prime minister and formed the government. He also formed and headed

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<sup>175</sup> The constitution later confirmed this presidential right to issue decrees which are equivalent to law unless overridden by a law passed by both the upper and lower chambers of the Federal Assembly.

<sup>176</sup> Gill and Markwick, *Russia's Stillborn Democracy? From Gorbachev to Yeltsin*, pp. 140-66.

<sup>177</sup> *Ibid.*, pp. 164-65.

the Security Council, and determined the course of domestic and foreign policy. He had the right to initiate laws and issue decrees which have the force of law. The Duma had only little powers to oversee the strong executive.

The first multi-party parliamentary elections were held simultaneously with the constitutional referendum. The election results were a surprise to the president's camp. The opposition to radical market reforms showed their strength in the elections by gaining a majority, and the popularity rates for Yeltsin personally started their downward spiral. This suggested that people had grown tired of the downward-spiralling economy, growing economic inequality and social problems, and the general feeling of insecurity. The politics of the president shifted more clearly towards the centre. There was less talk of liberal values and market reforms, and foreign policy towards the west became both more assertive and more active towards the "near abroad", in other words the former Soviet Republics.

The changes in the domestic structure were typical for the Russian tradition: the head of state became stronger at the expense of the legislature. As a result of weak material capabilities, the power of the centre was not absolute by any means. Russian regions continued to enjoy considerable freedom and hold considerable power. At this point, Russia's material capacities were extremely weak, a fact which was reflected in the reform programme. Yeltsin considered economic reforms a priority over political, legislative and institutional reforms. These economic reforms, however, failed to bring any short-term benefits to the people, and therefore endangered the whole reform process.

According to the democratisation theory outlined in the previous chapter, Russia was making progress in its transition to democracy. The party system had begun to develop, even though – apart from the Communist Party – parties remained weak coalitions. Gradually, after the constitutional crisis, the opposition entered into negotiations with the ruling elite. The new democratic constitution and the so-called founding parliamentary elections were major steps in the process of democratisation. The constitution confirmed not only the democratic system, but also the rights and freedoms of citizens. The results of the founding elections were widely accepted, and after the elections a time of relative political stability emerged. However, despite the

constitution, which eliminated the role of non-accountable powers of veto-groups, the unofficial networks of the rich and powerful started to develop during this period. Nevertheless, Russia seemed to rate fairly highly on the democratisation scale, and appeared to be progressing expectedly towards the consolidation phase.

The socialisation model would interpret the fall of the Soviet Union and the emergence of the new, democratic Russia as a transition to so-called prescriptive status. A democratically elected leadership introduced new standards of human rights protection through legislative and constitutional reforms. They sought to institutionalise human rights norms throughout society and the state system. The leadership attempted to introduce institutional mechanisms for citizens to lodge complaints about human rights violations (the constitution promised the establishment of a human rights ombudsman as well as independent judicial channels). The discursive practices of the government on human rights were consistent regardless of the audience. Both international and domestic audiences were promised further reforms to further both democracy and human rights. The government engaged in deepening cooperation and dialogue with international actors on human rights and engaged in dialogue with their critics. Although implementation of the European norms of human rights was still far from European standards, it seemed at the time that there was a sustained effort to implement the norms, however slowly that may happen.

### *Foreign policy*

The Russian Federation became the "continuer state" of the Soviet Union. It took the responsibilities and privileges of the former superpower – including its seat at the UN Security Council and nuclear arsenal. Russia seemed to follow in the footsteps of the Soviet diplomacy. The orientation of Russian foreign policy was pro-western, and Russia emphasised the importance of abandoning the Cold War mentality and structures.<sup>178</sup> Russia clearly wanted to integrate into western institutions and be judged by the same standards. It applied for CoE membership in 1992.

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<sup>178</sup> Sakwa, *Russian Politics and Society*, pp. 352-53.-

The primary goal for Russian foreign policy was to secure favourable external conditions for domestic reforms. Global questions and Russian foreign policy interests were of secondary importance.

However, as the horrific implications of the shock therapy recommended by western actors became evident, the popularity of a pro-western liberal policy began to sink rapidly. There was increasing wistfulness about the old Soviet times that had at least offered order and certainty about the future. A great many people also found Russia's dwindling international role hard to accept. Russian newspapers often painted a picture of rich western states taking advantage of Russia's weakness.

The international scope conditions remained highly favourable to socialisation to European norms. The relationship was highly asymmetrical as Russia was dependent on foreign assistance for its reforms programme. Russia had to do its best to meet the conditions set by international institutions funding the reforms. The material bargaining power of even the European organisations was high. Russia wanted to join the CoE which gave the organisation the upper hand with Russia. Russia also hoped that the CSCE would develop into a stronger security organisation, and was thus ready make concessions in other questions, such as human rights. The authority of the CoE in particular was strong and strengthening constantly as new members joined the club, and thus strengthened the European consensus on the norms.

The environmental conditions remained similar to those prevailing in the Gorbachev era. There was still a sense of urgency to reform the state, and the western model was the one that international actors encouraged Russia to follow. It was both possible, and desirable, for Russia to become socialised to European norms.

### **Disenchantment and normative hesitation**

"Those who had a hand in the emergence of "buccaneer capitalism" in its truly unbridled forms and in an entire class of the super rich through the impoverishment of millions of people, have no moral right to consider themselves defenders of human rights."<sup>179</sup>

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<sup>179</sup> Aleksei Kiva, member of the Commission on Human Rights of the President of Russian Federation in *Rossiiskaia Gazeta*, 21 February 1997.



In the period following the constitutional crises, the president consolidated his power, and different political and economic elites became increasingly intertwined. The period also evidenced the birth of a new class of superrich, the so-called oligarchs. Political life was characterised by relative stability. Gradually, the ruling elite became also more skilled at manipulating elections and negotiating with each other off the scene.

Despite the fact that Russia's engagement with the European organisations increased and institutionalised during this period, its policies became less liberal. Its foreign policy became more assertive, and more emphasis was put on Russia's claimed status as a great power and its geopolitical interests in the near abroad. The foreign policy had a clear ideological spin: in international relations, Russia often insisted on issues which it knew could never materialise. The war in the Russian republic of Chechnya and Russia's disregard of human rights created constant tensions with western actors.

During and after the presidential elections of 1996, the non-democratic features of Yeltsin's rule became increasingly apparent. In order to finance his election campaign and to stay in power he made deals with the rich business elite: in return for loans, the businessmen obtained a privileged position in the targeted sales of shares of the most profitable state enterprises.

### *State of political transformation*

The new constitution of 1993 contained formal guarantees of democracy, even if the president was extremely strong and the checks on executive power were rather weak. In reality, however, democratic structures continued to be ill-functioning.

The ruling elite attempted to consolidate its power and stabilise the political situation after the crises of 1993. One sign of this was Yeltsin's Civic Accord – a political initiative whose aim was to consolidate the centre's power, promote social compromise and civic reconciliation. The accord was accepted by the Duma in April 1994 and it was in effect for two years.<sup>180</sup> Yeltsin's grip on power was weakened by his ill-health and his control of the regions of Russia remained limited.

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<sup>180</sup> Gill and Markwick, *Russia's Stillborn Democracy? From Gorbachev to Yeltsin*, p. 182.

In December 1994, the conflict in the Russian republic of Chechnya escalated into a full-blown war. The war demonstrated that the Security Council, headed by the president, had become a central actor in Russian political life. Russian armed forces showed gross disregard for humanitarian law by indiscriminate bombardment and the establishment of so-called filtration camps. Most crimes were handled with impunity. The war was hugely unpopular in Russia, and the human rights violations in Chechnya raised wide international criticism. The EU suspended the signing of the Interim Agreement on trade<sup>181</sup>, and the CoE suspended consideration of Russia's membership application.<sup>182</sup> The Russian Foreign Ministry replied by issuing a statement 16 January 1995. In the statement, the ministry accused western actors of overreacting, and claimed that due to the nature of the Chechen question, human tragedies and losses were virtually inevitable. The statement claimed that the decision was a mistake and demonstrated long-standing stereotypical ways of reacting to Russian events. However, the statement also assured that Russia was ready to cooperate in the question of human rights protection in Chechnya with international organisations. The statement applied pressure on the organisations by drawing parallels between the European action and the rise of Russian opposition to liberal reforms, and claimed that the European criticism jeopardised the restoration of constitutional order in Russia.<sup>183</sup> This claimed link between strengthening domestic illiberal opposition and criticism levelled at the government for human rights violations has been invoked many times since by the Russian representatives when faced with western criticism. Nevertheless, despite tensions and fiery debate surrounding Chechnya, Russia became a CoE member in 1996 – while the war was still ongoing. It was hoped that membership would strengthen Russia's commitment to the European norms and values. Russia ratified the European Convention of Human Rights in 1998, and submitted itself to the jurisdiction of the European Court of Human Rights.

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<sup>181</sup> The suspension of the signing of the Interim Agreement on trade lasted from January to July 1995. It was finally signed on 17 July 1995. European Union, European Commission, *Press Release: Interim Agreement with Russia*, 5 July 1995, IP/95/696.

<sup>182</sup> The CoE suspended the procedure for consideration of Russia's membership application on 2 February 1995 and resumed the consideration on 27 September 1995. Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership in the Council of Europe*, No. 193.

<sup>183</sup> The statement was published in *Rossiiskie vesti*, 17 January 1995.

There were two elections during this period: first, the 1995 parliamentary elections and in 1996 the presidential elections. The parliamentary elections witnessed a fragmentation of the liberal opposition and the general polarisation of politics. The shares-for-loans scheme, which secured a practically limitless budget for the Yeltsin re-election team, created a group of overwhelmingly rich and powerful "oligarchs" who were highly influential in Russian economic and political life. Instead of democratic structures, it was these unofficial networks which held the true power in Russia. The system was designed to serve elite interests – not the interests of impoverished Russians struggling to get by.<sup>184</sup> One of the few concessions was Yeltsin's presidential election promise to seek a peaceful solution to the conflict in Chechnya. The hostilities ceased in 1996.

Despite the fact that Yeltsin was re-elected in 1996, public opinion viewed him and his politics in an extremely negative light. His reforms that were carried out in the name of liberal democratic values earned a bad name for human rights and democratic values: they were commonly seen as serving the interests of the west and Russian economic and political elites, rather than increasing the well-being of ordinary Russians. Human rights defenders were increasingly seen as "fifth columnists". The real Russian interests were framed in terms of stability, order and security.<sup>185</sup>

Although it became increasingly evident that the interests of the people and their opinions played only a limited role in Russian political life, open criticism was generally well tolerated by the regime. However, towards the end of Yeltsin's rule, there were attempts to gain greater control over the media. Nevertheless, the general atmosphere remained pluralistic.

The Russian economy remained very weak during Yeltsin's regime. The worst crisis hit in August 1998, when the Russian currency was devalued and millions of people lost all their savings. The state was effectively bankrupt. The effects of the crisis were reflected in political life in the form of instability. After the crises, Yeltsin constantly switched prime ministers, blaming them for the misfortunes. That is, until Security Council

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<sup>184</sup> Boris Kagarlitsky, *Russia under Yeltsin and Putin* (London: Pluto Press, 2002), pp. 107-08.

<sup>185</sup> See, for example, Viatcheslav Morozov, "Human Rights and Foreign Policy Discourse in Today's Russia: Romantic Realism and Securitisation of Identity," (Copenhagen: Copenhagen Peace Research Institute, 2002).

Secretary and FSB (*Federalnaia sluzhba bezopasnosti*, Federal Security Service) head Vladimir Putin was nominated as the prime minister in August 1999.

There were considerable shifts in the domestic environment during this period. The ruling elite at the centre attempted to strengthen its position vis-à-vis the regions and legislature by behind the scenes manoeuvring with powerful business elites, artificially created political parties and similar tactics to those of the so-called political technologists. The counterbalance to the centre's efforts was only its own weakness and inability to implement its plans fully.<sup>186</sup> It was characteristic of the development that the rhetoric remained relatively liberal, and the European norms were not challenged as such. But behind the liberal facade, illiberal, undemocratic changes took place (for example, related to elections). Also, the European model and the norms the European actors were promoting in Russia received less resonance in Russia than they had earlier. The western-inspired reforms had not brought the desired results, and therefore the general atmosphere developed into one of a more reserved nature.

The formal criteria of the democratisation model do not identify the problems that emerged in Russia's democratic transition. The media was still free of state control, different parties negotiated with each other, debate on public policy existed within the state apparatus, elections were held and declared free and fair by international observers, and no political player challenged the results of the elections. Everything, it seemed, went according to the democratisation plan.

The more nuanced model of socialisation tracks some of the bumps in the socialisation process, but only minor ones with regard to the consistency of the discourse. The gap between domestic and international discourse seemed to be gradually widening. Since Russia was, however, actively engaged in European normative cooperation and never openly challenged the norms, it still seemed from the outside that Russia was doing its best to implement the norms. Otherwise, Russia seemed to be meeting the criteria of prescriptive status rather easily. It had ratified all major human rights conventions, and had promised to adopt the optional protocols too, human rights were guaranteed in its constitution and there were several institutionalised mechanisms for Russians to lodge

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<sup>186</sup> Andrew Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World* (New Haven: Yale University Press, 2005), pp. 93-95.

complaints concerning human rights violations (human rights ombudsman, domestic legal remedies, ECtHR). Thus, when analysing the Russian development through the prism of the socialisation model, Russian general development looked positive. As with the democratisation model, everything seemed to be going according to the grand plan of state socialisation. However, as the empirical Chapters 4, 6, 7 demonstrate, this conclusion was premature.

### *Foreign policy*

Russian strategic goals remained more or less the same as in the previous "romantic" period in foreign policy: while it wanted to establish itself as a regional great power, the domestic transformation still came first. During this period, however, the substance and rhetoric of its foreign policy changed.<sup>187</sup> Its national interests were defined in more conservative geopolitical terms. Russia craved for international recognition of its great power status. First and foremost, its allies in the near abroad should recognise Russia's leadership and its legitimate interests in the region. Also, western allies should have granted Russia special status as a great power. The call was a principled one, and not backed by Russia's power and abilities in international relations. Russia did not withdraw from cooperation with the west, but bargaining became tougher: Russia wanted more political and material concessions from its western allies. A greater emphasis was placed on state sovereignty, and references to European values became fewer.<sup>188</sup>

Despite this general trend – or perhaps, indeed, as a result of it – Russia's relations with the European organisations were institutionalised during this period. This trend was best exemplified by Russia's accession to the CoE in 1996. In security policy, there were many problematic questions which created tensions in Russia's relations with the west. At the forefront was NATO enlargement. In 1999 Poland, Hungary and the Czech Republic joined NATO despite Russia's fierce opposition. A further difficult issue was the Kosovo war in 1999 with NATO's bombing of Serbia, Russia's traditional ally in the Balkans. Russia's rhetoric was strong on these issues, although it was clear from the beginning that concessions from the other side were not forthcoming.

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<sup>187</sup> Sakwa, *Russian Politics and Society*, pp. 352-53.

<sup>188</sup> See, for example, Matz, *Constructing a Post-Soviet International Political Reality: Russian Foreign Policy Towards the Newly Independent States 1990-95*.

The scope conditions on the international level started to shift during this phase. The material bargaining power of the European organisations grew weaker during this period. After Russia gained membership in the CoE, the material bargaining power of the institution shrank. As it became evident that the OSCE was not going to become an alternative security organisation to NATO, Russia's enthusiasm for the OSCE also came to an end. As a result of growing disagreements over issues of Chechnya, Kosovo and NATO, as well as the poor results of the western-inspired reforms, the moral authority of the European organisations started to diminish gradually in the eyes of Russian representatives.

### **Illiberal stability and pragmatism**

"This may be the first time in recent years that Russia hasn't caved in to pressure from abroad. In light of what happened during the Balkan war, using this tactic in conducting a dialogue with the west about an internal Russian problem is justified."<sup>189</sup>

The subsequent period commenced with Vladimir Putin's quick rise to the position of the man in charge in Russian politics. He was first nominated as prime minister in August 1999. He then became acting president at the beginning of 2000, and in March 2000 was elected to become the second president of Russia.

From the beginning, Putin's image has been a tough one: he had once been a KGB officer, and more recently the head of the FSB and of the presidential Security Council. His background was not in politics, and it is probable that this constitutes one of the reasons that the Russians chose to trust him. His toughness came into demand as a series of bombs exploded in Moscow and Dagestan in late August and early September 1999 killing hundreds of Russians. The targets were mostly blocks of flats.<sup>190</sup>

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<sup>189</sup> Article by Dmitri Gornostaev commenting on a meeting between Russian Prime Minister Vladimir Putin and American President Bill Clinton in Oslo where the US president voiced concerns about human rights in Russia. *Nezavisimaia Gazeta*, 3 November 1999.

<sup>190</sup> The first bomb exploded on 31 August in a Moscow shopping centre, the second was a car bomb in front of a block of flats of Russian soldiers in Dagestan, the third bomb exploded on 8 September in block of flats in Moscow and the final bomb exploded in another block of flats on 13 September, also in the suburb of Moscow. It is not entirely clear who was behind the bombings. The Russian officials accuse Chechen rebels but all attempts at independent inquiry have been forcefully obstructed.

Because of the bombings, Russians now wholeheartedly supported the launching of the second Chechen war. Putin's popularity rates rose with the war and his calls for western states to mind their own business and ease their criticism on the issue. For many Russians, Putin symbolised an internally and externally stronger Russia.

Putin's attempts to consolidate his power were helped by the fact that the Russian economy has developed extremely favourably. This is partly because the devaluation of the currency in 1998 revived national industrial production. Most of all, however, the economic revival has to do with the simple fact that world oil prices have been on a steep and steady rise in the 2000s.

After 9/11, Russia seized the moment and announced its support for the US-led fight against terrorism. This strategic opportunism seemed to work fairly well at the beginning, with western actors embracing Russia for its new-found pragmatism. Gradually however, western actors have become more critical of Russia and its illiberal, undemocratic tendencies, such as restricting the space for independent, non-governmental action, for selective use of the law, for the running down of independent media and for manipulating elections, just to name a few of the areas that have stirred debate.

### *State of political transformation*

In 1999 the war in Chechnya recommenced after a series of explosions of blocks of flats were carried out in the name of Chechen rebels. The new Russian prime minister, Vladimir Putin, was the face of the new Chechen campaign and he very much identified himself with the plea for an externally stronger and internally unified Russia. It soon became evident that power was increasingly in the hands of the prime minister and his allies associated with the security complex, and less and less with physically weak Yeltsin and the business oligarchs. His tough image appealed to a growing body of Russians, and popularity rates for the war and Putin himself rocketed.

President Boris Yeltsin unexpectedly resigned in his New Year's speech at the turn of the millennium. As the prime minister, Vladimir Putin became the acting president for

three months before the presidential elections. In March 2000, he won the presidential elections overwhelmingly.

The main mission for Putin's first term in office was to strengthen the federal administration and its control of the republics. He wanted to cut back the political autonomy of the regions and establish his own "power vertical" in the regions.<sup>191</sup> The plan was unveiled in a presidential decree in May 2000. The decree effectively reorganised the administrative structure of Russia by creating seven federal super-districts to supervise the 89 subject territories of the federation and stripping the provincial executives of their representation in the Federal Council, and strengthened the president's powers to remove provincial executives from office.<sup>192</sup> These initiatives increased Putin's powers immensely in the regions.

Putin has also sought to impose control on the once powerful oligarchs and cut short their political ambitions. A central tool in controlling the oligarchs and civil society, as well as regional leaders, has been the selective application of law and the power of administrative reorganisation.<sup>193</sup>

Putin's domestic policies have been labelled as "managed" – or more recently "sovereign" – democracy. The overriding idea of such a way of thinking is that "too much" pluralism and freedom weakens society. The characteristics of a managed democracy include an extremely powerful president and weak institutions, state control of the media and civil society, and manipulation of elections in order to legitimise decisions made by the elite.<sup>194</sup> Despite the fact that Putin's policies are aimed at strengthening the state, the long-term implications are likely to be the opposite. The

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<sup>191</sup> Kagarlitsky, *Russia under Yeltsin and Putin*, pp. 271-72.

<sup>192</sup> Eugene Huskey, "Political Leadership and the Centre-Periphery Struggle: Putin's Administrative Reforms," in *Gorbachev, Yeltsin, and Putin: Political Leadership in Russia's Transition*, eds. Archie Brown and Lilia Shevtsova (Washington DC: Carnegie Endowment for International Peace, 2001), pp. 115-16.

<sup>193</sup> Archie Brown, "Evaluating Russia's Democratisation," in *Contemporary Russian Politics: A Reader*, ed., Archie Brown (Oxford: Oxford University Press, 2001), pp. 565-66.

<sup>194</sup> Michael McFaul, Nikolai Petrov, and Andrei Ryabov, "Introduction," in *Between Dictatorship and Democracy: Russian Post Communist Political Reform*, eds. Michael McFaul, Nikolai Petrov, and Andrei Ryabov (Washington DC: Carnegie Endowment for International Peace, 2004), pp. 14-21.



system encourages ineffectiveness, and there are no guarantees of what the future brings as so much depends on one person.

In many ways, Putin continued enforcing the same policy, but more effectively and in a slightly harsher manner than Yeltsin had since about 1996. However, the general political atmosphere changed. Russians were less and less interested in politics, and the political language of the elite changed. Lilia Shevtsova describes the change in political discourse:

"Just a few years earlier, everyone had spoken of reform, progress, renewal, modernization, and democracy. [...] Now completely different words filled the air – stability, statehood, order, sovereignty, greatness, power, patriotism. The change in symbolic words and rhetoric in general signified the new content of politics."<sup>195</sup>

The increasing state control, particularly over the media, did deviate from European norms in such a manner that international actors and transnational civil society have become increasingly worried. In a short time, Russia seemed to have regressed back to the pre-liberalisation phase of the democratisation model in several fields. The Communist Party was the only real opposition party left in parliament, there were hardly any independent trade unions in Russia, independent media was under considerable threat and access to alternative information became increasingly restricted in many regions. Despite the fact that elections were held at regular intervals, they failed to meet European standards and thus could not be considered as fair. In the new situation, virtually no debate over public policies took place within the state apparatus. Nevertheless, the system still retained features of democracy, and therefore it was difficult for foreign observers to categorise the changes taking place in Russia.

The analysis based on the socialisation model is doomed to underplay the significance of the changes in Russia. There were constitutional guarantees for human rights and institutionalised mechanisms for complaining about human rights abuses. There were only doubts concerning the discursive practices, which became more defiant and less apologetic over the years. The sustained effort to implement the norms was also increasingly in doubt. There were relatively few signs of a habituation of European norms in Russia. There was a degree of institutionalisation, in particular Russian

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<sup>195</sup> Shevtsova, *Putin's Russia*, p. 164.

involvement in the European cooperation itself became well-established practice, but otherwise the performance was uneven.

The development of domestic conditions was mixed. Putin strengthened his grip on power, and the domestic structure became strongly state-dominated. The state, however, became more hostile towards European organisations and norms, presenting new norms which challenged the European ones. Thus the domestic salience of the norms weakened. On the other hand, the material capacities to carry out desired reforms increased significantly as the state control and economic performance grew.

### *Foreign policy*

When the international war on terror was declared by the US following the terrorist attacks in September 2001, Russia was quick to seize the opportunity by giving its strong support to the US and framing its own war in Chechnya in similar terms. The Russian leadership emphasised that it was now high time to let go of Cold War geopolitical thinking, and fight against the common enemy of international terrorism together, united.

Putin emphasised pragmatism and a realistic evaluation of the international situation in his foreign political decision-making. His goals in the area of foreign policy were to establish Russia as a respected international player, to change and improve relations with the west and open up real – not illusory – foreign policy options, and to restore national self-respect.<sup>196</sup>

Putin has proved able to manoeuvre adeptly in international relations. He made a virtue out of necessity by accepting NATO enlargement in 2000 and the sending of US soldiers to Central Asia. Russia has attempted to establish itself as an important player and constructive contributor in developing a new global security. Its reactivation and deepening of relations with NATO and sober analysis of the situation improved its reputation in the international arena. The declaration of international war against terror in 2001, and the huge increase in world oil prices following that, strengthened Russia's

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<sup>196</sup> Bobo Lo, *Vladimir Putin and the Evolution of Russian Foreign Policy* (London: The Royal Institute of International Affairs and Blackwell Publishing, 2003), p. 123.

new-found confidence that it will be accepted to the international society of civilised states on the basis of shared interests instead of liberal humanistic values of the west.<sup>197</sup>

Recently, however, the tensions between the west and Russia have started to grow again. These tensions have grown from ideological differences: it has been more difficult than Russia may have thought for the western actors to accept Russia's deviation from democratic norms and growing illiberalism. Furthermore, Russia's direct interference in the elections in Ukraine (and before that in Georgia) has raised severe criticism. Russia has grown increasingly wary of any western political influence in the CIS states. Russia has engaged in an offensive; it has claimed that the west plays by double standards and thus these standards should be reformed.<sup>198</sup>

There were major shifts in the international and environmental conditions which had ramifications for Russia's openness to European socialisation efforts. First of all, the asymmetry between the actors diminished as the Russian economy got back on its feet and oil prices continued to rise. The authority of the organisations became increasingly challenged by Russia, and the material bargaining power of the organisations became increasingly limited. With regard to environmental conditions, the sense of urgency eased with the Putin regime. The state seemed to be developing and prospering, and there was no major pressure from below to change policies.

## 5 Conclusion

To sum up, both the democratisation and the socialisation theories seem to describe developments fairly accurately until 1996. The Soviet Union and then the Russian Federation liberalised rapidly. Certain dynamics suggested in the socialisation model did not match the development in Russia, but with minor corrections concerning the socialisation pathways, the model seems a fairly useful tool of analysis.<sup>199</sup>

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<sup>197</sup> Ibid.

<sup>198</sup> Jennifer Moll and Richard Gowan, "Losing Ground? Russia's European Commitments to Human Rights," (London: The Foreign Policy Centre, 2005), p. 8. These claims are studied more in detail in Chapters 6 and 7.

<sup>199</sup> See, for example, Jeffrey T. Checkel, "International Institutions and Socialization," *ARENA Working Papers*, no. 5 (1999).

The problems with explanatory power of the socialisation model start with the latter half of Yeltsin's era. During this time the dualist approach developed and matured: on the one hand, Russia was pledging its commitment to European norms and values, but, on the other hand, it was simultaneously acting in ways which were contradictory to them. Real decision-making procedures were non-transparent, as the power was actually held by unofficial networks of money and power. The liberal reforms which were introduced were often superficial, and everyday business was carried out through informal channels.

The contradictory, misleading policies continued and strengthened during Putin's time in power. The fact that the administration's aim was not the consolidation of democracy but the consolidation of its power became gradually more evident.<sup>200</sup> The socialisation model, however, sees hardly any deviation from the prescriptive status phase even now. As the evaluation sections demonstrated, the criteria were by and large met, yet that fact hardly grasps the true state of affairs in Russia today. Despite general claims supporting democracy and human rights, many of the more specific, secondary human rights norms are not met in Russia. The following empirical chapters examine these dynamics in greater detail.

Russia's structural position vis-à-vis the European organisations has strengthened in recent years. However, despite improvements in the state of Russia's economy, and a considerable reduction in its dependency on international assistance during the time under scrutiny, changes in international or domestic scope conditions do not explain the change of heart towards European norms. Active political choice, not change in structural conditions, seemed to be behind the changed approach.

One may also contemplate the potential role of Soviet heritage: the collective good was easily prioritised over individual rights, and human rights were often regarded in an instrumental fashion; they were commonly seen as serving the interests of someone. It is true that human rights democratic norms have less domestic salience in Russia than, for example, in many CEES. A whole generation had been brought up and grown old in the Soviet system, and thus no one had experienced even limited freedom or democracy

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<sup>200</sup> Shevtsova, *Putin's Russia*, pp. 225-28.

before the mid-1980s. The fact that terms such as human rights and democracy were actively used and perversely cultivated by the Communist Party further added to the general confusion on the content of the concepts. The Soviet rhetoric was always in stark contrast with reality, and this practice had already seriously discredited the concepts.<sup>201</sup> A reason for weak civil society activism can be found in the fact that the Soviet society had created a flattened social structure and paternalistic culture that encouraged general societal passivity.<sup>202</sup> It was accustomed to allowing a detached elite rule while it minded its own business. The regime change brought little change to this. However, Soviet heritage does not tell us why the traditional model became gradually more appealing to Russian leadership than the European one.

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<sup>201</sup> However, according to opinion polls, most Russians do want democracy. See *Ibid.*, p. 353. Also, interestingly, 71 per cent of respondents believed that Russia should improve relations with the west in May 2005. See opinion poll by Levada Center; available at <<http://www.levada.ru/nadezhdy.html>>.

<sup>202</sup> On Russian discourses that reproduce this absence of civic engagement, see Tatiana Rogovskaia, "Russia," in *Post-Communist Democratization: Political Discourses across Thirteen Countries*, eds. John S. Dryzek and Leslie Holmes (Cambridge: Cambridge University Press, 2003), pp. 92-113.

## CHAPTER 3

### EVOLUTION OF HUMAN RIGHTS COOPERATION IN EUROPE

*This chapter provides a general picture of the European framework for human rights cooperation. It looks at the human rights policy strategies and mechanisms of the OSCE, CoE and EU. It also contemplates the structural imbalance between the actors, and how that is reflected in their relationships and the dynamics of cooperation.*

#### 1 Construction of the European Human Rights Framework

European institutions represent the most effective and far-reaching framework for the protection of human rights in today's world. Since the end of the Second World War, western Europe has in many respects been the trailblazer for broader international institutionalisation of human rights norms.

Prior to the Second World War, human rights were not considered to be an appropriate topic in international relations, but instead a violation of the principle of sovereignty of states. Human rights were considered an internal affair of each and every sovereign state. There were few exceptions to this general rule: for example, the international ban on slave trade and later on slavery, the Hague Convention on rules of war, the work of the League of Nations on minority issues and the early work of the ILO on the rights of workers. Nevertheless, these issues are best seen as restricted deviations from the international norm of non-interference in human rights issues in other states.<sup>203</sup>

Immediately after the Second World War, there was a strong common political will to enhance international human rights protection multilaterally, but the spirit faded as the Cold War began to advance. One of the first steps towards international human rights protection was the post-war tribunal in Nuremberg. It considered cases of crimes against peace, war crimes and – for the very first time in modern history – crimes against humanity. The charter of the tribunal affirmed the principle that in some instances, citizens had a duty not to obey the orders of the national authorities in the name of universal humanitarian principles.<sup>204</sup> This principle has often been seen as a

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<sup>203</sup> Forsythe, *Human Rights in International Relations*, p. 21.

<sup>204</sup> United Nations, International Law Commission, *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*, no. 82. Text available at <<http://deoxy.org/wc/wc-nurem.htm>>.

groundbreaking move towards the internationalisation of human rights norms – even if the application of the norm was selective and only defeated parties were tried for their crimes.<sup>205</sup>

Other important steps strengthening human rights internationally followed: the establishment of the United Nations in 1945 and the acceptance of the Universal Declaration of Human Rights in 1948. The text of the UN Charter is still wary of the sovereignty implications of human rights norms and makes reference only to 'promoting and encouraging' respect for human rights. The Declaration of Human Rights is not a legally binding document; it only sets out the objectives for governments to pursue.<sup>206</sup>

At the European level, the development to protect human rights internationally was swifter. The Council of Europe was created in May 1949 in London. The main goals of this western European organisation were to defend human rights, parliamentary democracy and the rule of law, develop continent-wide agreements to standardise member countries' social and legal practices and to promote awareness of a European identity based on shared values.<sup>207</sup>

The first big success of the CoE was the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in 1950.<sup>208</sup> The Convention set up a mechanism for the enforcement of the obligations set by the treaty. The European Court of Human Rights – which was established after eight ratifications in 1958 – considered complaints made by other member states. Individuals, groups of individuals or NGOs, could apply to the European Commission of Human Rights which could launch a case in the ECtHR on an individual's/a group's behalf. States could opt out of this procedure when signing the

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<sup>205</sup> See, for example, Held, *Democracy and Global Order: From the Modern State to Cosmopolitan Governance*, pp. 101-02.

<sup>206</sup> The declaration is nowadays widely considered to constitute a part of customary international law and thus binding on individuals and states alike, even if states have not signed the document. The declaration has also served as the basis for two legally binding international human rights covenants: the Covenant for Civil and Political Rights (1966) and the Covenant for Economic, Social and Cultural Rights (1966).

<sup>207</sup> See Council of Europe, *Statute of the Council of Europe*, 5 May 1949, CETS No. 001. Text available at <<http://conventions.CoE.int/treaty/en/Treaties/Html/001.htm>>.

<sup>208</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, CETS No. 005. Text available at <<http://conventions.CoE.int/Treaty/en/Treaties/Html/005.htm>>.

Convention. This arrangement was later replaced by Protocol No. 11 which makes direct individual complaints possible. The idea that individuals could take their states to an international court for failing to respect their human rights was revolutionary. Even if individual petitions could only be made against those states that had not opted out from the appeals procedure, it was an important step towards the recognition of individuals as legal subjects of international law. By now, all CoE member states have voluntarily limited their state sovereignty by signing the Protocol No. 11.<sup>209</sup> The nature of their internal human rights policy thus became multilateral. During the Cold War years the CoE was characteristically an organisation focused on the codification of the European values through the creation of a common western European legal framework.

In addition to the strengthening trend of states committing themselves to international human rights obligations, some European states started to move towards the adoption of explicit external human rights policies towards other states.<sup>210</sup> From the very beginning these policies embraced multilateralism. In fact, external human rights policy was already made possible by the ECHR, which made it possible to make state complaints about human rights violations in other states. However, states turned out to be rather conservative in their use of this right in practice. This attitude started to give way to a more active attitude towards human rights violations in other states: after the military coup d'état in Greece in 1967, the Netherlands, Denmark, Norway and Sweden filed a case at the ECtHR against the military government in Greece for violations of human rights (of Greek nationals) during the coup.<sup>211</sup> The Council of Europe was ready to expel Greece in 1970, but the Greek government decided to withdraw from the organisation (and denounced ECHR) just a couple of hours before the decision was to be taken. Greece resumed its membership only after democratic rule had been restored in 1974.<sup>212</sup> A number of liberal European states revised the interpretation of the norm of non-

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<sup>209</sup> Protocol No. 11 became valid in 1998 after all CoE member states had ratified the protocol. Thus all citizens of CoE member states can appeal to ECtHR.

<sup>210</sup> See Sikkink, "The Power of Principled Ideas: Human Rights Policies in the United States and Europe."

<sup>211</sup> First, Denmark, Norway, Sweden and Netherlands filed individual cases against Greece on 24 January 1968. Later, on 16 July 1970 Denmark, Norway and Sweden filed a joint case against Greece. The cases are commonly referred as the Greek cases. See Clovis C. (Jr.) Morrison, "The European Human Rights Convention System as a Functionalist Enterprise," *Universal Human Rights* 1, no. 4 (1979): p. 84.

<sup>212</sup> Information provided by the CoE at <[http://www.coe.int/T/E/Com/About\\_Coe/crises.asp](http://www.coe.int/T/E/Com/About_Coe/crises.asp)>.



interference in internal affairs of states. Human rights were increasingly seen as an issue of international concern.

Another important phase in the development of the European human rights protection framework started with the Helsinki Process in 1975. The Participating States comprised socialist, neutral and non-aligned states, as well as NATO states from Europe and North-America. The formative idea of the CSCE was to look at security from a wider, more comprehensive perspective. This perspective comprised military, economic, environmental and humanitarian aspects, and underlined mutual gains of the competing camps.

The CSCE's contribution to the European development was that it placed the issue of human rights explicitly on the east-west agenda. The human rights dialogue that took place within the framework of the CSCE was naturally very different from the efficient human rights cooperation within the CoE structures. Concrete, practical results in the humanitarian field were modest improvements in the exchange of information or human contacts. Even if very little was achieved in terms of lessening the repression by the socialist governments, several researchers have suggested that the CSCE process was a major factor in the development leading to the reconstruction of Soviet identity in the late-1980s and ultimately to the collapse of communism.<sup>213</sup>

Until the early 1990s the CSCE remained a negotiating body, which lacked all permanent institutions and all its decisions were adopted by consensus among the participating states. The initial conference of 1975 was followed by review conferences. These meetings reviewed the implementation of CSCE commitments and negotiated further commitments between participating states. Smaller-scale expert meetings on specific themes were also organised within the CSCE framework. The CSCE process was essentially about institutionalised high-level multilateral dialogue, which attracted much more publicity and NGO activity than normal bilateral contacts between heads of state.

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<sup>213</sup> See, for example, Gregory Flynn and Henry Farrell, "Piecing Together the Democratic Peace: The CSCE, Norms, and the "Construction" of Security in Post-Cold War Europe," *International Organization* 53, no. 3 (1999); Korey, *The Promises We Keep: Human Rights, the Helsinki Process and American Foreign Policy*; Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*.

The EU was also an international human rights actor already during the Cold War. Its external human rights policy started to develop with the start of foreign policy cooperation in the early 1970s – even if its founding documents do not actually mention human rights. The EU's early external human rights policy consisted of human rights promotion, and its typical tools were assistance programmes, low-key persuasive diplomacy and occasional joint declarations. It has deployed stronger instruments of pressure only since the late 1980s.<sup>214</sup>

To sum up, during the Cold War years the human rights regime in Europe suffered from the politicised atmosphere and the dominance of superpower relations. The ideological confrontation divided the continent and made human rights cooperation extremely difficult. In the spirit of *détente*, some institutionalised dialogue emerged within the CSCE framework and human rights became an "allowed" topic in east-west relations. In practical terms, however, very little was achieved. In essence, the real achievement of the east-west human rights cooperation and dialogue in the 1970s and early 1980s was simply to put the issue on the international agenda. In the light of the socialisation theory described in Chapter 1, this can be considered a major achievement even though it did not lead directly to any positive concessions by the Soviet Union.

### **Perestroika and European human rights cooperation**

When the reform programme launched by Mikhail Gorbachev truly started to penetrate state structures and society in the Soviet Union, human rights cooperation – and gradually the whole institutional framework – in Europe started to change. After years of frustration and doubts about the whole mission, western policy-makers and diplomats were finally greeted with enthusiasm and a willingness to make significant concessions on a great many policy fronts by the Soviet Union: disarmament and military reform, economic cooperation, human contacts and human rights and security cooperation. The Soviet Union's talk of a "common European home" based on shared values demonstrated its willingness to accept the European interpretation of human rights. New significant steps enhancing the shared normative basis between the competing blocs were taken, the most significant of them being the CSCE Charter of Paris for New Europe signed in November 1990. The Charter aimed at overcoming Cold War political

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<sup>214</sup> Smith, *European Union Foreign Policy in a Changing World*, pp. 101-02.

divisions and to unite Europe and the west as a united value-based society stretching – as the CSCE has often argued since then – from Vancouver to Vladivostok. The Charter of Paris also established the new permanent CSCE structures, namely the Office for Free Elections (since 1992 the Office for Democratic Institutions and Human Rights) in Warsaw, a Conflict Prevention Centre, and a secretariat in Vienna.

The Soviet Union also reached out for closer ties with the CoE and the EU. The organisations were supportive of the reforms taking place within the Soviet Union but set limits to their engagement. Although the Soviet Union was talking about *demokratizatsia* (democratisation), its vision of political pluralism was still far from European standards.<sup>215</sup> The Soviet leadership still believed in the one-party system and the guiding role of the Communist Party at all levels of society. The engagement was primarily in the form of publicly expressed political support and goodwill towards the reformist leadership.

These changes within the Soviet Union shook the balance of the international system and opened doors for increased cooperation. The prospects for internalisation of the western norms of human rights and democracy were looking increasingly positive. First of all, the Soviet Union gave up its position as an alternative source of norms and agreed to be bound by western ones. This meant that the asymmetry between the actors grew. The Soviet Union also acknowledged the moral authority of the organisations. The organisations, in particular the CSCE, had considerable bargaining power in normative matters. The CSCE could link issues of hard security to issues of human rights and human contacts. The Soviet Union seemed to be open to persuasion by the European organisations.

The environmental conditions also favoured the organisations. There was a growing sense of urgency in the Soviet Union. The magnitude of the crises only started to unfold as the reforms started. Faced with the massive crises, the Soviet leadership showed a new openness to European norms and standards as way of resolving the legitimacy crises both at home and abroad. The European institutions, in particular the CSCE, did their best to accommodate the need for deepening cooperation in Europe.

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<sup>215</sup> Linz and Stepan, *Problems of Democratic Transition and Consolidation*, p. 380.

## Post-Soviet era and European human rights cooperation

Huge political changes taking place in Europe at the turn of the decade created both new opportunities as well as threats for the regional organisations, and pushed them to review their focus, membership, institutions and working mechanisms.

### *The Conference/Organisation for Security and Cooperation in Europe*

After the Cold War, the CSCE changed its institutional outlook in two phases, first in 1992 and then in 1995. New offices include the permanent Secretariat and its Secretary-General, the Parliamentary Assembly (1991), the rotating Chairman-in-Office (1991), the Office for Democratic Institutions and Human Rights<sup>216</sup> (1990, 1992), the High Commissioner on National Minorities (1992) and the Representative on Freedom of the Media (1997). Reflecting its institutional transformation, its name was changed to the Organisation for Security and Cooperation in Europe (OSCE) in January 1995. Currently, its decision-making bodies consist of Summits and the Ministerial and Permanent Councils. In short, each Summit is preceded by a Follow-up Conference where the OSCE commitments are reviewed and future summit documents are negotiated. The Ministerial Council is convened in those years when no Summit takes place. The Permanent Council consists of senior diplomats and meets weekly in Vienna. Decisions are made unanimously at all levels.

After the Cold War, the "human dimension" (which was formerly known as the third basket) became the main area of OSCE activity alongside conflict prevention and resolution activity. Its human dimension is often approached from a security angle – for example, in active work against human trafficking.<sup>217</sup>

Despite its institutional restructuring, the OSCE still relies mostly on "quiet diplomacy" and confidence-building through high-level, in-camera diplomacy and dialogue. The OSCE has been also particularly active in flexibly combining various types of preventive and post-facto measures in conflict-ridden places. Its main human rights

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<sup>216</sup> Originally it was called the Office for Free Elections (1990). Its name changed to ODIHR in 1992 when its mandate was widened. The mandate was further enhanced in 1994.

<sup>217</sup> In December 2003 the Ministerial Council decided to establish a post of OSCE Special Representative on Combating Trafficking in Human Beings. The first Special Representative started her work in May 2004.

policy instruments are norm development and standard setting, political action (which is fairly "soft" in its nature), monitoring and technical assistance.<sup>218</sup> Standard setting means that the OSCE first invites discussion on norms and tries to formulate documents based on these common norms. A good example of this is the Copenhagen document of 1990 in which the states outlined agreed standards for free and fair elections. This document is used as the basis for OSCE election observation and other cooperation in the field.

Political measures in human rights promotion means, first of all, a variety of political dialogue taking place at various levels. In the case of the OSCE, this mainly happens in Summits and in Council meetings. Fairly open-ended discussion also takes place in the Parliamentary Assembly between the parliamentarians of the Participating States. The dialogue thus continues to be mainly high-level, confidential discussion. Secondly, political action can also take the form of pressure and even coercive action by the other participating states. The OSCE prefers soft measures to harder pressure instruments. Political bargaining through the offering of material incentives is in practical terms also not relevant in its case. Political pressure can be exercised in confidence (for example in the form of in camera diplomatic consultation) or publicly by invoking the so-called Vienna and Moscow Mechanisms. These mechanisms allow states to raise questions relating to human rights in another participating state and the establishment of ad hoc missions of independent experts to assist in the resolution of a specific human dimension problem. However, states are usually rather cautious in their exertion of pressure on other OSCE participating states.<sup>219</sup> The ultimate punitive measure is a suspension of membership. There are no exact rules on this question – as the OSCE is by its nature inclusive and does not have entry conditions, problems in implementation need to be very serious before this option is considered. The only precedent is Yugoslavia whose membership was suspended from 1992 until November 2000.

Monitoring can be considered the middle ground between political pressure and technical assistance. Human rights monitoring and election observation keep mild

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<sup>218</sup> See Maxime Tardu, "The European Systems for the Protection of Human Rights," in *Human Rights: International Protection, Monitoring, Enforcement*, ed., Janusz Symonides (Aldershot: Ashgate and UNESCO Publishing, 2003), pp. 135-64.

<sup>219</sup> Until now the Moscow Mechanism has been established five times. The most recent case was in December 2002-March 2003 when it was invoked by ten participating states in relation to Turkmenistan.

pressure on a state and often raise international awareness on the issue at hand. The purpose is also to educate the target state on the standards and the best ways to achieve them. Monitoring reports often include recommendations for domestic policy-makers. In the OSCE context, monitoring is usually carried out by states themselves and these reports are mostly confidential. In case there is a threat of growing tension and human rights violations, the High Commissioner for National Minorities and the Representative on Freedom of Media may exercise early-warning mechanisms such as consultations and the issuing of a report to the Chairman-in-Office and the Permanent Council. The ODIHR also monitors human rights in participating states and assists states in protecting human rights. The OSCE may also establish ad hoc field missions and special representatives of the Chairman-in-Office in various regional "hot spots" before or after violations of human rights have taken place. The establishment of OSCE field missions takes place only with the approval of the state in question. Mission mandates vary from case to case, but they usually combine technical assistance, monitoring and early-warning or fact-finding functions.

Technical assistance is often conceived as the least controversial instrument in human rights promotion. This is not necessarily the case, as many political decisions are involved even for supposedly "technical" cooperation; for example, are the resources directed to state institutions, political parties or NGOs? The OSCE's human rights technical cooperation includes human rights education, training of key professions, national institution building and action for strengthening civil society and non-governmental organisations.

The Soviet Union was one of the founding members of the CSCE process, and Russia has also actively participated in OSCE activities. It has taken part in all negotiations on the OSCE norms and standards, and agreed with the outcomes. The OSCE currently has around 30 technical cooperation programmes or projects with Russia (none of these programmes is dealing exclusively with Russia). These programmes are organised through the ODIHR and seek long-term results in the prevention and protection of human rights.

Despite the consensus principle in OSCE decision-making and the fact that Russia has been among the Participating States defining the principles, Russia has challenged the

core mission and the norms of the OSCE. The attack began in 2004 when Russia's OSCE delegation presented a statement on behalf of nine CIS states, accusing the OSCE of double standards and interference in the internal affairs of some of its member states.<sup>220</sup> It claimed that human rights and democracy promotion had become too dominant an issue in the work of the OSCE. Since then, Russia has renewed its criticism several times and threatened the organisation, for example by withholding its budget contributions to the organisation. It has openly called for renegotiation of some OSCE norms, particularly those relating to elections.<sup>221</sup> Reflecting the pressure to restructure and streamline its activities, the organisation established the Panel of Eminent Persons to review the work of the OSCE in December 2004.<sup>222</sup> The current crises of the OSCE will be studied in more detail in Chapter 6, which focuses on the issue of free and fair elections in Russia.<sup>223</sup>

### *The Council of Europe*

Since the end of the Cold War, the Council of Europe has profoundly refocused its activities. The CoE transformed itself from essentially a western European organisation into a heterogeneous organisation of 46 European member states. It promotes and provides assistance for human rights, the rule of law and democracy in its new member states, alongside the traditional tasks of developing continent-wide agreements to standardise its member states' social and legal practices, as well as encouraging educational and cultural cooperation between the member states. The main decision-making body of the CoE is the Committee of Ministers, which is composed of the foreign ministers of its member states (or their Strasbourg-based deputies). Modest institutional redevelopment has taken place since the end of the Cold War: the post of

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<sup>220</sup> The document was signed by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan. The bloc has crumbled away since the statement was issued, as there have been popular uprisings in Ukraine and Kyrgyzstan. Also Moldova is increasingly looking towards the west.

<sup>221</sup> Most recently these claims were echoed at the OSCE meeting in Brussels on 5 December 2006 in a discussion on Kazakhstan's chairmanship in 2009. Despite the fact that no western organisations have ever endorsed elections held in Kazakhstan, Russia backed Kazakhstan's bid. Russian foreign minister Sergei Lavrov further claimed that if the OSCE were to choose to concentrate on humanitarian issues, the organisation should change its name, which might lead many states to reconsider whether they want to remain part of such an organisation. See *Financial Times*, 5 December 2006.

<sup>222</sup> The panel published its final report and recommendation on 27 June 2005. So far, the process has not proceeded much further than this.

<sup>223</sup> "Fundamental crises" was the phrase used by an OSCE PA member interviewed on 12 December 2006.

Commissioner for Human Rights was established in 1999. Other human rights-relevant institutions include the Parliamentary Assembly (PACE), Secretary General and the Secretariat's Directorate General II, which deals with human rights questions. PACE has advisory powers and is an important agenda-setter within the CoE.

The CoE's policy has been described on occasion as more "principled" than the OSCE's or EU's human rights policy due to its normative, even moral, emphasis.<sup>224</sup> The CoE is particularly active in norm development and standard setting. It has traditionally attempted to develop continent-wide, legally binding agreements and its authority in developing consensus on and codifying European values is indisputable. In addition to this, the CoE has been increasingly active in political engagement and the application of pressure on various levels. The establishment of the Commissioner for Human Rights is an example of this multi-level engagement approach. The Commissioner has actively brought up issues that he has considered worthy of international attention, and also tried to get states more actively engaged with the organisation by visiting CoE member states. The Secretary General may also exercise political pressure by, for example, issuing authoritative public comments. An important part of the dialogue between Russia and the CoE happens within the Committee of Ministers, PACE, and the CoE Secretariat (DG II).

The most efficient political instrument that the CoE has deployed has without any doubt been the membership application process. The Parliamentary Assembly plays a crucial part in the application process, although the Statute of the Council of Europe has no special provision relating to the involvement of the PACE in the process. However, in practice the Committee of Ministers refers membership applications to the PACE.<sup>225</sup> Due to the vagueness of the membership condition in the Statute, the PACE has drawn up a more specific doctrine for admission. The PACE set up a system which involves visits to the applicant countries, election observation, consideration of legal systems,

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<sup>224</sup> Jurado, "Complying with 'European' Standards of Minority Protection: Estonia's Relations with the European Union, OSCE and Council of Europe", p. 10.

<sup>225</sup> The PACE's significance in CoE decision-making has strengthened over the years considerably and there have been suggestions to make its involvement more an official one. For more details see Council of Europe, Parliamentary Assembly, *Recommendation on the Institutional Balance at the Council of Europe*, 2 October 2006, Rec 1763.



expert studies, appointment of special rapporteurs and extensive committee work. The Assembly also controls the timetable of the application procedure.<sup>226</sup>

During the membership bid, the states commit themselves to CoE norms, some of which are considered essential preconditions for the membership. The requirements are not cast in stone: the CoE bodies may agree that declared goodwill and intention to implement the norms in the future are sufficient, and they can grant membership. If the progress towards the implementation of the norm is not considered sufficient, the application process may be suspended or the application can be declined.<sup>227</sup> The membership application process involves a great amount of political bargaining, shaming and possibly even coercive political measures.

There are two different official monitoring mechanisms within the CoE. The first monitoring mechanism was launched in 1994 and involves the Committee of Ministers. It reviews specific issues and takes place behind closed doors in an atmosphere of confidence. The second monitoring procedure was established a year later and takes place at the PACE. This system involves only new member states, and is ended when there is enough evidence of consistent compliance with the membership requirements. The PACE reporting system was strengthened in 1997 with the establishment of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). The decision to close or to re-open the monitoring mechanisms is clearly a major political decision and has raised debate within the organisation. In order to bridge the gap between monitored and non-monitored states, periodic reports of all member states' implementation of CoE norms from 2006 will be attached to the annual progress reports of the Monitoring Committee.<sup>229</sup>

Other CoE monitoring is treaty or ad hoc based. Many European conventions that the CoE has drafted include a specific monitoring mechanism. For example, the European

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<sup>226</sup> Speech by former Secretary General of the PACE Bruno Haller in September 1998. Text available at < [http://www.asgp.info/Publications/CPI-English/1998\\_176\\_03-e.pdf](http://www.asgp.info/Publications/CPI-English/1998_176_03-e.pdf)>.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Council of Europe, Parliamentary Assembly, *Resolution on the Progress of the Assembly's Monitoring Procedure*, 29 June 2006, Res 1515.

Convention for the Prevention of Torture established a monitoring committee, which visits member states and issues reports on their implementation. Also the human rights commissioner may issue reports based on his visits that are more ad hoc by nature. He can also address early-warning reports on any relevant question to the Committee of Ministers or PACE. The commissioner's mandate is very flexible: in addition to monitoring, the commissioner may contact governments and provide advice and information on protection of human rights.

The failure to implement CoE norms may result in coercive action by the organisation. The Charter of the CoE does recognise the possibility of suspension or abolition of membership (Greece was about to get suspended in 1970 but resigned before the decision was carried out). Less harsh punitive measures include the suspension of voting rights in the PACE (Russia's voting rights were suspended for 9 months in 2000). The CoE may also in principle suspend cooperation and assistance programmes with a particular state. However, the employment of coercive methods is exceptional. The CoE mainly relies on moral condemnation and shaming of the state, rather than political sanctions.

Many of the political dialogues taking place at the lower levels of the CoE framework are relatively technical by nature. They form an integral part of various technical assistance programmes. The aim of these dialogues is first and foremost to offer know-how and advise local actors on the ways in which to implement European standards in national legislation and practices. In the post-Cold war era, the CoE and the EU have worked closely together for the promotion of European values in democratising post-Soviet states. One of the instruments of the partnership is the network of so-called joint programmes. Some of the programmes are thematic, whilst others are country-specific (for example, a joint programme for Russia). The country-specific programmes consist of technical assistance projects aimed at facilitating institutional reform and support for the legal system. The majority of these technical assistance programmes are directed specifically towards key professionals, such as judiciary and ombudsmen. At the moment, Russia takes part in the legal assistance and the freedom of expression and media programmes.

Russia applied for CoE membership in 1992, and became a full member following prolonged negotiations in 1996. The negotiation process was suspended for a year in 1994 due to gross human rights violations in the republic of Chechnya. At the time of the admission it was commonly acknowledged that Russia did not meet the formal requirements for membership, but the decision was made on the basis that membership would encourage the Russian government to carry out the planned reforms and enhance the implementation of Russian human rights commitments. Problems did not cease to exist even after Russia's accession. Russia's voting rights in the Parliamentary Assembly were suspended for nine months in 2000 – again due to human rights violations in Chechnya.

Russia has signed several human rights treaties under the CoE. The most important of these is the Convention for the Protection of Human Rights and Fundamental Freedoms. Currently, there are over 30 000 applications lodged against Russia.<sup>230</sup> Other important human rights-related conventions, which Russia has signed, include the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Framework Convention for the Protection of National Minorities.

Russia has recently raised similar criticism towards the CoE as it did earlier towards the OSCE. When Russia took the chairmanship of the CoE Committee of Ministers in May 2006, its representatives declared that Russia would use its chairmanship to fight against the perceived western bias against Russia. It was also suggested that the PACE should renounce its monitoring of the implementation of Russian membership obligations.<sup>231</sup> These claims will also be studied in more detail in Chapter 6.

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<sup>230</sup> According to ECtHR statistics during the period of 1 November 1998 to 30 June 2005 there had been 31 426 applications lodged against Russia. 22 976 of those had been allocated to a decision body, of which 14 178 had been declared inadmissible or struck off. 664 applications had been referred back to the government and only 138 had been declared admissible. Altogether 52 judgements had been given on Russian affairs. The numbers tell a sad story of the incapability of the Court to manage the growing flow of applications from the new CoE member states. European Court of Human Rights, *Official Statistics for the Period 01.11.1998 to 30.06.2005*, Strasbourg, 11 July 2005.

<sup>231</sup> Mikhail Kamynin according to *Interfax*, 17 May 2006. See <[http://www.interfax.ru/e/B/0/0.html?id\\_issue=11518020](http://www.interfax.ru/e/B/0/0.html?id_issue=11518020)>.

## *The European Community/Union*

During the Cold War, the Soviet attitude towards the EC was always sceptical and suspicious. Gorbachev's desire to reform the Soviet economy and increase trade with western states was soon reflected in a new Soviet policy on Europe. The EC was, however, essentially seen as an economic organisation – despite the fact that "our common European home" became the catch phrase of the late 1980s.<sup>232</sup> The changed Soviet attitude led to negotiations between the EC and Russia that resulted in a joint declaration in 1988, and the conclusion of a Trade and Cooperation Agreement in 1989. The EC's, and later the EU's, response to the break-up of the SU was reactive, and the EU seemingly lacked a clear strategy or vision as to the way in which Russia might fit into the grand European integration plan. Also Russian policy towards the EU was weak: the EU occupied a much less prominent place in Russian foreign policy than other European institutions. The policy towards the EU was at the beginning positive, but rather low-key.<sup>233</sup>

Since then the relationship has intensified and become more institutionalised. Currently Russia "easily comes first in the time and energy that the EU has devoted to developing relations with outside partners".<sup>234</sup> The degree of political dialogue and institutional frameworks between the EU and Russia are unique. EU-Russia cooperation comprises various fields such as trade, economic cooperation, justice and home affairs issues and external security, as well as cultural and educational cooperation. EU-Russia relations, including human rights and democracy promotion in Russia, fall mainly within the remit of the Common Foreign and Security Policy of the EU.

EU-Russia relations differ remarkably from the relations between the CoE and OSCE and Russia. First of all, as Russia is not a member of the EU – and it does not appear likely that it will become one – but it has close, institutional and multi-level relations

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<sup>232</sup> Vladimir Baranovsky, *Russia's Attitudes Towards the EU: Political Aspects* (Helsinki: Finnish Institute of International Affairs and Institut für Europäische Politik, 2002), pp. 101-02.

<sup>233</sup> Hiski Haukkala, "The Making of the European Union's Common Strategy on Russia," in *The EU Common Strategy on Russia: Learning the Grammar of the CFSP*, ed., Hiski Haukkala, *Programme on the Northern Dimension of the CFSP* (Helsinki: Finnish Institute of International Affairs and Institut für Europäische Politik, 2001), p. 25.

<sup>234</sup> Rolf Schuette, "EU-Russia Relations: Interests and Values – a European Perspective," *Carnegie Papers*, no. 54 (2004): p. 1.

with the EU. The EU's political agenda is much wider than the OSCE or CoE frameworks and this means, at least in principle, that the EU has more tools at its disposal. On the other hand, as Russian membership of the organisation is not on the cards, it has less leverage regarding the issue of human rights and democracy. Nevertheless, the EU claims that a precondition for the current "strategic partnership" between Russia and the EU is shared values (as defined by other organisations such as the OSCE and the CoE). Stepping up cooperation is conditional on Russia's implementation of shared norms based on the common values.

The EU's external relations have had a human rights dimension almost from the very beginning.<sup>235</sup> The EU human rights promotion traditionally leaned towards soft measures, such as assistance programmes and declaratory diplomacy.<sup>236</sup> External democracy promotion has deployed more robust instruments since the late 1980s and early 1990s.<sup>237</sup> The main actors in the EU's external human rights policy are the Council of the EU and the Commission, the Presidency and the High Representative for the CFSP. In 2005, the High Representative, Javier Solana, nominated a Special Representative on Human Rights. Furthermore, the European Parliament actively promotes and monitors human rights internally, as well as in third states.<sup>238</sup>

The EU has set clear criteria for its new member states on many issues, including democracy and human rights. Also in relations with Russia, the EU emphasises the importance of common values and norms as set out by the UN, Council of Europe and the OSCE, and later confirmed in the bilateral Partnership and Cooperation Agreement

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<sup>235</sup> Smith, *European Union Foreign Policy in a Changing World*, p. 101.

<sup>236</sup> For an overview of this "soft approach", see Richard Youngs, "European Union Democracy Promotion: Ten Years On," *European Foreign Affairs Review* 6 (2001): pp. 355-61.

<sup>237</sup> The Treaty on European Union (Maastricht Treaty) considerably strengthened the role of human rights and democratic principles in the policies of the EU. The treaty considers respect for human rights and fundamental freedoms to be one of the objectives of the Common Foreign and Security Policy (CFSP) and development cooperation. Article J.1 (Article 11 since the Treaty of Amsterdam, 1997) states that one of the objectives of the CFSP shall be to "develop and consolidate democracy and rule of law, and respect for human rights and fundamental freedoms". European Union, Office for Official Publications of the European Communities, *Treaty on European Union (Maastricht Treaty)*, 7 February 1992, 92/C 191/01. The Commission's action in the field of external relations is also guided by compliance with the rights and principles contained in the EU Charter of Fundamental Rights (which was officially proclaimed at the Nice Summit in December 2000) in order to promote coherence between the EU's internal and external approaches.

<sup>238</sup> See the general information provided by the EU's website at <[http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/com01\\_252\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf)>.

which entered into force on 1 December 1997. The PCA's Article 1 states that the objectives of the partnership include the strengthening of political and economic freedoms, and supporting Russian efforts to consolidate its democracy.<sup>239</sup> The PCA also includes the now standard "essential element" clause whose violation may give grounds for the termination or suspension of the agreement:

"Respect for democratic principles and human rights, as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, underpins the internal and external policies of the Parties and constitutes an essential element of partnership and of this Agreement."<sup>240</sup>

Although the provision has never been invoked by the EU towards Russia, the EU suspended the signing of the Interim Agreement between the EU and Russia (concerning trade provisions of the PCA) for six months in January 1995.<sup>241</sup> The EU has also adopted declarations and issued statements on the Russian human rights situation and has redirected TACIS technical assistance to human rights for a year in 2000 (again due to human rights violations in Chechnya).

The PCA created an institutional framework for political cooperation and dialogue between the EU and Russia. It established official semi-annual summits between Russia and the EU troika<sup>242</sup> and an annual Cooperation Council, which was replaced by a Permanent Partnership Council (PPC) in June 2003. The Permanent Council can meet in different ministerial formations as often as is considered necessary. The PCA also created bodies at senior official and expert levels, namely the Cooperation Committee and its subcommittees, but Russia has refused more subcommittee meetings (apart from customs matters) since 2003, and no Cooperation Committee has taken place since 2004.<sup>243</sup>

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<sup>239</sup> Article 1, European Union and the Russian Federation, *Agreement on Partnership and Cooperation between the European Union and the Russian Federation*, 24 June 1994, L/CE/RU/en 3.

<sup>240</sup> Article 2, *Ibid.* The EU has included similar clause to all its major external treaties since 1995.

<sup>241</sup> See European Union, European Commission, *Press Release: Interim Agreement with Russia*.

<sup>242</sup> According to the Amsterdam Treaty the EU troika consists of the representatives of the current presidency, the Council of the EU, the European Commission and usually, at the current presidency's request, also the next, incoming presidency.

<sup>243</sup> Information provided by the EU at

<[http://ec.europa.eu/comm/external\\_relations/russia/intro/index.htm](http://ec.europa.eu/comm/external_relations/russia/intro/index.htm)>.

In addition to the PCA, other important documents defining the EU-Russia relations include the EU's Common Strategy on Russia (1999-2004) and the corresponding Medium-Term Strategy on EU relations (1999-2009) by Russia, documents on Four Common Spaces between Russia and the EU, joint summit statements, the EU's TACIS programme and internal EU policy papers.<sup>244</sup> The common spaces between the EU and Russia include the Common Economic Space, the Common Space of Freedom, Security and Justice, the Common Space of External Security, and the Common Space of Research and Education, Including Cultural Aspects. In May 2005, the parties agreed on Roadmaps outlining the short- and medium-term instruments for the creation of the four spaces.

The European Parliament is also involved in EU-Russia cooperation. It has an active parliamentary cooperation committee, which is composed of members of the European Parliament (EP) and the Duma. The function of the committee is engage in political dialogue and cooperation. The parliament can also apply pressure by issuing declarations.

Six main instruments are deployed in the EU's promotion of human rights in third states: 1) country-specific common strategies and other internal documents, 2) human rights clauses in bilateral agreements (such as Article 2 of PCA), 3) political dialogue (in meetings and summits) and diplomatic means (such as demarches and declarations), 4) special human rights dialogues with some states, 5) monitoring in the form of human rights reports and 6) technical assistance in human rights issues. All these instruments are deployed in Russia-EU cooperation.<sup>245</sup>

The primary methods by which EU human rights policy is conducted in the case of Russia are high-level political dialogue and political pressure. The EU can link human rights to other issues, which – at least in principle – accords a degree of leverage to the EU in its policy also towards non-members. The EU's main weakness in pursuing an efficient human rights policy – and general policy over all – towards Russia has been the lack of coherence among the positions between the Union itself and its individual member states. Big member states (such as the Germany, France, Italy, sometimes the

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<sup>244</sup> Schuette, "EU-Russia Relations: Interests and Values – a European Perspective," p. 2.

<sup>245</sup> Ibid.

UK and most recently Poland) and the immediate neighbours of Russia in the EU often formulate their own positions on Russian matters, which sometimes contradict the common positions taken by the EU.<sup>246</sup>

The issue of human rights in the CFSP has strengthened over the years, as was demonstrated by the appointment of a personal Representative for Human Rights in the area of CFSP in January 2005. The EU also started a practice of regular, semi-annual human rights consultations with Russia in 2005.

The EU's human rights monitoring is conducted within its political framework without any special monitoring mechanisms or institutions. The European Parliament has published an annual report on human rights in the world since 1984. The Council has published its own annual report on human rights development, and how the EU has developed its human rights policy to meet the challenges, since 1999.

The EU also has various assistance programmes in Russia, some of which deal with human rights questions. The aid and its aims are outlined in the Indicative Programme for Russia, and are carried out through the EU-Russia Cooperation Programme within the TACIS framework. The European Union established the European Initiative for Democracy and Human Rights (EIDHR) in 1999 in order to streamline its human rights and democracy promotion assistance.<sup>247</sup> This aid, channelled through EIHRD, is directed primarily to NGOs and international organisations, and it is complementary to governmental assistance programmes. A special Human Rights and Democracy Committee was established in 1999, which supervises and coordinates the EU aid for human rights and democratisation. The Committee is headed by the Commission and composed of member states.<sup>248</sup>

The organisations have paid increasing attention to coordinating their policies and cooperating with each other in order to reach the common goals since the end of the

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<sup>246</sup> For example, general frustration over a lack of harmony led to a major review of the EU's policies in 2004. *Ibid.*: p. 1.

<sup>247</sup> The EIHRD will be replaced by a new financial instrument from 2007 onwards. See European Union, European Commission, *Press Release: A New Financial Instrument to Promote Democracy and Human Rights*, 29 June 2006, IP/06/891.

<sup>248</sup> See EIHRD website at <[http://ec.europa.eu/europeaid/projects/eidhr/index\\_en.htm](http://ec.europa.eu/europeaid/projects/eidhr/index_en.htm)> .



Cold War. In particular, the CoE and the EU have been consciously developing a more effective coordination of policies and closer cooperation.<sup>249</sup> They have a network of joint programmes aimed at facilitating institutional reform and support for the legal system. Such a programme has covered Russia since 1996.<sup>250</sup> The EU and CoE also cooperate in other areas, and coordinate positions to defend and promote democratic principles, the rule of law and human rights in political and senior official level meetings.<sup>251</sup> Coordination between the OSCE and EU also takes place; there has been an increase in EU support for OSCE-led activities, and the organisations have created some joint technical assistance programmes and projects in the field of human rights and democracy promotion.<sup>252</sup> There is a special unit for the OSCE and CoE relations in the Multilateral Relations and Human Rights Directorate within the DG External Relations of the European Commission.

**Table 4:** Summary of policy instruments and main characteristics of the human rights policy of the OSCE, CoE and EU towards Russia

	OSCE	Council of Europe	European Union
<b>Membership</b> (as of 1 January 2007)	55 participating states from Europe, Central Asia and North America; CSCE was originally a Russian initiative and it was included from the beginning of negotiations in 1973	46 members states from Europe and near-by areas; Russia applied for membership in 1992 and was accepted in 1996	27 European states; Russia has not applied for membership
<b>Basic documents organising relations with regard to Russia</b>	- All major OSCE documents	- Statute of the CoE - ECHR (ratified by Russia 1998) and its additional protocols	- PCA (signed in July 1994, entered into force December 1997) - Documents on Four Common Spaces - Joint Summit Declarations - Internal documents on EU-Russia relations (e.g. Medium-Term Strategy by Russia or Commission Communication from 9 February 2004)
<b>Decision-making institutions*</b>	- Summits - Ministerial Council - Permanent Council	- Committee of Ministers	- European Council - the Presidency - the High Representative for CFSP

<sup>249</sup> See, for example, Jean-Claude Juncker, "Council of Europe - European Union "a Sole Ambition for the European Continent", (Strasbourg: Council of Europe, 11 April 2006).

<sup>250</sup> There are 35 such programmes and joint activities and they involve currently over EUR 30 million (the EU's contribution is EUR 19.3 million and CoE's is EUR 11.5 million)

<sup>251</sup> The top level summit meetings between the Secretary General of the CoE and the Chairman of the Committee of Ministers of the CoE and the President of the Council of the EU and the President of the European Commission are organised twice a year. For example, in March 2000 they coordinated their positions in a quadripartite meeting between the EU and the CoE on the question of Chechnya. See European Union, Council of the EU, *Press Release: 15th Quadripartite Meeting EU/Council of Europe*, 14 March 2000, PRES/00/68.

<sup>252</sup> Organization for Security and Cooperation in Europe, "Office for Democratic Institutions and Human Rights Annual Report 2005," (Warsaw: ODIHR, 2005). See also speech "The EU and the OSCE: the Shape of Future Cooperation" by High Representative for the CFSP Javier Solana on 25 September 2002. Available at <<http://ue.eu.int/uedocs/cmsUpload/72254.pdf>>.

	OSCE	Council of Europe	European Union
<b>Institutions dealing with human rights issues**</b>	<ul style="list-style-type: none"> <li>- Decision-making bodies</li> <li>- Chairman-in-Office</li> <li>- Parliamentary Assembly and its president</li> <li>- ODIHR</li> <li>- Representative on Freedom and Media</li> <li>- High Commissioner for National Minorities</li> </ul>	<ul style="list-style-type: none"> <li>- Decision-making bodies</li> <li>- Secretary General and Directorate General of Human Rights (DGII)</li> <li>- Commissioner for Human Rights (since 1999)</li> <li>- PACE and its chairman</li> </ul>	<ul style="list-style-type: none"> <li>- CFSP framework (see above)</li> <li>- Commission, and relevant DGs</li> <li>- EP and its president and relevant committees and subcommittees</li> <li>- Personal Representative of the High Representative on Human Rights</li> </ul>
<b>Special structures with regard to Russia</b>	<ul style="list-style-type: none"> <li>- OSCE Assistance Group to Chechnya during 1995-2002</li> </ul>	<ul style="list-style-type: none"> <li>- PACE Rapporteur on Chechnya</li> <li>- CoE Human Rights Experts to Chechnya during 2001-2004; now ad hoc -based)</li> </ul>	<ul style="list-style-type: none"> <li>- Semi-annual summits b/w EU troika and Russia</li> <li>- Permanent Partnership Council (+ Cooperation Committee and its subcommittees)</li> <li>- Parliamentary Cooperation Committee</li> </ul>
<b>Special human rights frameworks</b>	<ul style="list-style-type: none"> <li>- Human Dimension (Vienna and Moscow mechanisms)</li> </ul>	<ul style="list-style-type: none"> <li>- ECHR and ECtHR</li> </ul>	<ul style="list-style-type: none"> <li>- European Initiative for Democracy and Human Rights</li> <li>- Semi-annual bilateral human rights consultations (since 2005)</li> </ul>
<b>Human rights policy instruments</b>	<p>1) HR assistance:</p> <ul style="list-style-type: none"> <li>- Assistance and cooperation programmes (now around 30 with Russia)</li> <li>- Election assistance</li> <li>- Field missions (field mission in Chechnya 1994-1999)</li> </ul> <p>2) Monitoring:</p> <ul style="list-style-type: none"> <li>- Fact-finding and rapporteur missions (mission in Chechnya)</li> <li>- Personal representatives of the Chairman-in-Office</li> <li>- Ad-hoc steering groups</li> </ul> <p>3) Political measures:</p> <ul style="list-style-type: none"> <li>- High level exchange of information on questions relating to HD</li> <li>- Suspension or abolition of membership</li> </ul> <p>4) Norm-setting:</p> <ul style="list-style-type: none"> <li>- adopted documents since 1975 (only "politically", not legally binding)</li> </ul>	<p>1) HR assistance:</p> <ul style="list-style-type: none"> <li>- cooperation programmes (two currently with Russia)</li> <li>- ad hoc advisors</li> <li>- election Assistance</li> </ul> <p>2) Monitoring (CM, PACE, CHR)</p> <p>3) Political measures:</p> <ul style="list-style-type: none"> <li>- in camera consultation by CHR or CM</li> <li>- resolutions, recommendations, statements</li> <li>- suspension of voting rights in PACE (suspension of Russia's voting rights for 9 months in 2000)</li> <li>- suspension or abolition of membership or cooperation programmes (the postponement of the consideration of Russian membership application in 1995)</li> </ul> <p>4) Norm-setting:</p> <ul style="list-style-type: none"> <li>- formulation of legal binding human rights treaties (e.g. ECHR)</li> <li>- membership conditions</li> </ul>	<p>1) HR assistance:</p> <ul style="list-style-type: none"> <li>- TACIS, ECHO and EIDHR (with Russia)</li> </ul> <p>2) Monitoring of human rights by PACE and the Council</p> <p>3) Political measures:</p> <ul style="list-style-type: none"> <li>- conditionality (Ratification of Interim Agreement delayed for 6 months in 1995)</li> <li>- political and economic sanctions (TACIS aid redirected to human rights projects for 6 months in 2000)</li> <li>- diplomatic measures and political dialogue</li> <li>- human rights consultations since 2005</li> </ul> <p>4) Norm-setting:</p> <ul style="list-style-type: none"> <li>- agreed common values as essential elements in PCA (Art. 2)</li> </ul>

\*In the case of the EU: decision-making structures within the CFSP framework; in the case of the OSCE: decision-making structures in the areas of political cooperation (excluding economic and security issues).

\*\*The EU: Institutions dealing with *external* human rights policy

## 2 International Human Rights and Democracy Promotion Strategies

The previous section outlined the instruments available to the OSCE, CoE and EU when attempting to influence the human rights and democratisation policies of Russia. This section explains the types of considerations that underpin the selection of particular human rights instruments and the kind of impact they are likely to have, according to

the theories of democratisation and socialisation models outlined in Chapter 1. This section begins by outlining the general policy options and then proceeds to the European human rights strategies towards Russia.

### **Selection of human rights policy instruments**

Human rights instruments are often divided into soft (or positive) and hard (or negative) instruments. *Soft measures* are designed to engage the target state and its society positively in human rights cooperation. Typical measures include assistance and educational programmes at various levels of society, and confidential human rights monitoring and dialogue with the government and administration. It is hoped that confidential dialogue and monitoring will invoke normative suasion and persuasion, and that technical assistance will invoke learning, institutionalisation and habitualisation.

Even though soft measures can target domestic actors at many levels, they do not challenge the authority of the government. Confidential dialogue and technical assistance are used when the government is considered to be open towards normative suasion and/or has already accepted the norms in principle, but is still failing to implement them due to insufficient resources.<sup>253</sup> Technical assistance is often considered to be apolitical capacity building because it does not directly challenge the legitimacy of the government in question at any level.

On the other hand, *hard measures* attempt to invoke the mechanisms of shaming, material pressure and bargaining. Typical "hard" instruments include coercive action based on membership and treaty conditionality, linking unrelated political issues together and public criticism. The pressure instruments can thus be material or discursive.

The extreme pressure instrument is military intervention, which often openly challenges the entire legitimacy of the government of the target state. More conventional pressure methods hope to invoke the mechanisms of strategic calculation, instrumental

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<sup>253</sup> On mechanisms at play in socialisation, see Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," pp. 11-12; Zürn and Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation State," pp. 1051-54.

adaptation, arguing and persuasion.<sup>254</sup> It seems logical to expect that after the norms have been accepted and internalised, there is less need for pressure from the outside. Once the government is pro-democracy and pro-human rights, the outside actors interested in supporting democracy and human rights often shift to political support and engagement. Liberal governments, which are aspiring to carry out difficult reforms in order to secure the consolidation of democracy, are often faced with populist, illiberal opposition. In situations like this, international actors often find it necessary to openly support the liberal government, and thus ease political pressure on the government. The "high-end" political pressure is changed to political support and "low-end" technical assistance programmes in order to support the liberal government against domestic illiberal forces.<sup>255</sup>

Most states and international organisations interested in promoting democracy and human rights use both soft and hard measures towards the target state. These measures usually target several levels simultaneously: for example, government, regional and local administration as well as civil society actors. The particular combination of instruments and agency levels reflect the institutional traditions of the organisations, as well as their evaluation of the situation in the target state.

The democratisation literature is quiet about the role of the international actors and their possible impact on developments in the target state. The socialisation literature, on the other hand, makes several predictions about the causal mechanisms in the socialisation process, and the ideal policy for international actors. At the start of the process (during the phases of repression and denial), the most efficient strategy is one that supports opposition and dissident groups in the target state and shames the repressive government. The international shaming and pressure on the government, and material and moral support for dissident groups will empower non-governmental forces striving for change. This pressure from below and outside will eventually push the government into tactical concessions. The democratisation model describes the following phase

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<sup>254</sup> Ibid.

<sup>255</sup> Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism*, p. 12.

more neutrally as liberalisation. The liberalisation phase will, according to the democratisation model, witness a "resurrection of civil society".<sup>256</sup>

Civil activism will grow and flourish which is likely to lead to changes in the political scene. Democracy and human rights programmes at the liberalisation/tactical concessions stage should mainly target civil society and the independent media, because these will push for further liberalisation and empowerment of civil society, as well as encourage societal debate. These programmes should be combined with sustained public pressure and coercive action when needed against the undemocratic and human rights violating government.

After the regime has been overthrown or it has started "controlled transformation", the state is considered to have entered the phase of transition, during which human rights have a prescriptive status. The starting point for programmes should now be that the regime in power is pro-democracy, and pro-human rights, and whose intention is to further strengthen democracy and respect for human rights. It may still lack knowledge and resources, but its acceptance of the requirements and norms is clear. The practical consequence of this is that international actors should ease the "high-end" pressure. Instead they should show support for the friendly government by being patient and flexible with their demands. This encouragement may mean the acceptance of the target state into the organisation or giving other political and/or economic carrots to the target state's government. During the transition/prescriptive status phase, the assistance is geared towards exchange of institutional know-how and education for NGOs, political parties and administration, election-observation and assistance. The programmes are usually low-end projects that aim at making newly established institutions more efficient through assistance and education.<sup>257</sup>

The mode of social action is now argumentative debate within the state. In addition to this, institutionalisation and habituation play an increasing role. With international support and encouragement, the target state slowly moves towards the consolidation/rule-consistent behaviour phase. International programmes now should

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<sup>256</sup> O'Donnell and Schmitter, "Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies," p. 26.

<sup>257</sup> Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism*, p. 197.

concentrate on further strengthening the rule of law and democratic institutions, as well as civil society. The policies remain supportive of the government, but it may be slightly easier for the international organisations to engage in constructive criticism now as the conditions are more stable in the target state. Risse and Sikkink argue that it is important to keep up the pressure from below and from the outside during this phase, in order to guarantee the full institutionalisation of the norms.<sup>258</sup> Finally, the norms will be internalised by a state, and the rule-consistent behaviour will be habitual, fully institutionalised practice.

### **European multilateral human rights policies vis-à-vis Russia**

Contrary to the generalisation of the socialisation model and the general categorisation of instruments into soft and hard ones, practical external human rights policies tend to mix soft and hard measures and target various levels of society. They often both pressure and support the government. International actors often have democratisation considerations in mind when they plan their strategies; sometimes instrumental considerations and their own material interests influence the particular policy choice more.

When considering the European multilateral human rights policies towards Russia, one can distinguish some shifting trends. During Gorbachev's perestroika, the European organisations welcomed and encouraged the development. The EU and the CoE did not have institutions to engage with the Soviet Union, so they settled for discursive and limited economic support. The OSCE, on the other hand, started restructuring its whole institutional structure in order to engage with the liberalising socialist states. The western states kept the pressure high throughout Gorbachev's time in power, and at times the tension was almost palpable, for example during the Baltic states' struggle for independence.

The collapse of the Soviet Union appeared to follow a path that the democratisation and the socialisation models would have predicted: liberalisation lead to growing activism, and the Gorbachev regime was soon replaced by the more liberal and democratic Boris Yeltsin. Russia seemed to have shifted from Gorbachev's liberalisation towards the

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<sup>258</sup> Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," p. 33.

prescriptive status phase. Increasingly as the 1990s progressed, Yeltsin's position was threatened by the communists. Yeltsin was considered to represent the democratic, liberal forces, which needed western political and financial support. Russia was granted membership in the CoE and treated as a strategic partner by the EU.

Throughout the 1990s, the western leaders supported the Yeltsin regime in spite of growing evidence of institutionalised deviation from the western-supported norms. Since the late 1990s there have been clear signs that Russia has decisively moved away from the western norms of democracy and human rights.

In recent times, the European organisations have been ill at ease over Russia. On the one hand, they have attempted to pressure Russia, and the CoE and EU have even used mild coercive methods on occasion in order to get their message through. These attempts have not brought any significant results, and now the trend seems to be towards more discreet engagement programmes and the avoidance of political conflicts with Russia, although recently there have been more calls to tighten policy towards Russia.<sup>259</sup> Nevertheless, the European strategies emphasise engagement above all else.

#### *Evaluation of international scope conditions*

The relationship between Russia and the European organisations can be evaluated through the prism of basic international and environmental scope conditions outlined in Chapter 1. The relationship between Russia and European society embodied in these organisations is clearly asymmetrical. On the most basic level, European organisations are the norm-makers and Russia is left with the role of a norm-taker.<sup>260</sup> Russia has acknowledged the legitimacy of this asymmetry by seeking a closer relationship with them and agreeing to be judged by their standards.

The European organisations do have relatively high moral authority. This is particularly the case with the CoE which is often seen as the most "moral" and principled one of the

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<sup>259</sup> See, for example, Moll and Gowan, "Losing Ground? Russia's European Commitments to Human Rights."

<sup>260</sup> See, for example, Hiski Haukkala, "A Norm-Maker or a Norm-Taker? The Changing Normative Parameters of Russia's Place in Europe - a Historical Analysis" (paper presented at the "Russia's European Choice?" Conference, St. Petersburg, September 2006).

three organisations.<sup>261</sup> This attitude is a reflection of the CoE's narrower, normative focus. Most importantly, the organisations set the standard of legitimacy in Europe.<sup>262</sup>

The material bargaining power of the institutions is also fairly high. In particular, this was the case with the CoE before Russia's accession to the organisation. It was the only one of the organisations, which could offer membership in a respected club to Russia after its liberalisation had started. After Russia's accession, the CoE's conditionality has been mainly moral condemnation, and material bargaining has been a secondary method. The EU is a strong actor and therefore has a relatively high material bargaining power. Russia is interested in the EU and dependent on its policies. Trade to Europe constitutes more than 50 per cent of Russia's overall exports. In reality, however, this dependency is downplayed for example by the fact that the European states are dependent on Russia's oil and gas supply. Nevertheless, the EU could in principle use issue linkage more effectively than the other organisations. The OSCE's material bargaining power is relatively modest, since all of its major decisions are adopted by consensus. Therefore, Russia can block its decisions and, as a major budget contributor, Russia can also threaten the organisation by withdrawing its budget contributions.

### **The wider context: Russia's place in Europe**

As a way of concluding this chapter, a general consideration of the specific nature of the relationship between Russia and the European organisations is in order. The OSCE, CoE and the EU are all value-based intergovernmental organisations. For the purposes of this study, they can be conceptualised as forming a European "international society". According to Hedley Bull, society of states (international society), exists when:

"[...] a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions".<sup>263</sup>

International society is thus different from an anarchical international system. An international system is a looser framework where states engage with each other without

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<sup>261</sup> Jurado, "Complying with 'European' Standards of Minority Protection: Estonia's Relations with the European Union, OSCE and Council of Europe", pp. 9-10.

<sup>262</sup> Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," pp. 8-9.

<sup>263</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 2nd ed. (New York: Columbia University Press, 1977), p. 13.



the acceptance of a common set of rules and common institutions. However, even in international societies, order rests on a tension between power, common interests and common values.<sup>264</sup>

Although Bull and other members of the English School were mostly referring to a global international society, the discussion can be applied on a European level. In fact, Barry Buzan has suggested that the neglect of the regional dimension is one of the most obvious shortcomings of the English School.<sup>265</sup> In recent years there have been efforts to bridge this evident gap. Diez and Whitman, for example, define the European international society as being founded upon more informal norms, rules, institutions and boundaries than a more formal "EU international society". Their definition comes very close to the understanding of the European international society this thesis promotes: namely, the overlapping circles of norms, values and institutions of the OSCE, CoE and the EU.

Hedley Bull further differentiated between solidarist and pluralist international societies. In a pluralist society, the common values that states share are mainly procedural and no substantive value consensus is needed. A pluralist society is built around the idea of coexistence and reflects an ethic of difference.<sup>266</sup> The common rules and norms provide a structure of coexistence, built on the mutual recognition of states as independent and legally equal members of society, the unavoidable reliance on self-preservation and self-help, and the freedom to promote their own ends subject to minimal constraints. The function of international institutions in a pluralist society is to mitigate conflicts, not to solve and end their existence altogether. The pluralist society of states aptly depicts relations between the European international society and the Soviet Union during the Cold War years. There existed common norms and rules about state conduct, such as non-proliferation treaties, respect for non-interference in international affairs and so on, but the scope of these common rules was restricted and wary of any implications to

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<sup>264</sup> See Bull, "The Grotian Conception of International Society," pp. 95-124.

<sup>265</sup> Barry Buzan, *From International to World Society? The English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004), p. 206.

<sup>266</sup> Kai Alderson and Andrew Hurrell, "Bull's Conception of International Society," in *Hedley Bull on International Society*, eds. Kai Alderson and Andrew Hurrell (Basingstoke and London: Macmillan Press, 2000), p. 7.

traditionally understood sovereignty. The norms were procedural rather than constitutive in character.<sup>267</sup>

On the other hand, a solidarist international society is a more far-reaching framework of cooperation where the independence of the members is more restricted for the benefit of the whole. According to Andrew Hurrell, there are four distinctive features of solidarism. The first feature refers to the content of norms. The norms are constitutive rather than merely procedural. They involve more extensive schemes of cooperation, which try to guarantee peace and security, to solve common problems and to sustain common values – such as the promotion of human rights and political democracy. Secondly, the process of norm creation is open to a wider range of actors, both states and non-state actors. The sovereignty of states is interpreted in a more liberal way, and there is a move away from explicit consent to consensus. Thirdly, in a solidarist society norms and state behaviour are to be judged against some shared notion of a common good, or some generally acknowledged set of shared values or moral purposes. Finally, the implementation of these shared norms is more effective than in a pluralist society. In a solidarist society, common norms are more effectively implemented as coercive intervention is possible in the name of common goals and/or values.<sup>268</sup> This solidarist vision is what Bull means by the "Grotian conception" of international society in his writings. Bull himself believed that there is an inherent tension between inherited pluralist conceptions of international society and aspirations towards more solidarist schemes.<sup>269</sup>

The post-Cold War relationship between the European international society and Russia can well be characterised by this solidarist framework. The degree of institutionalisation is much higher than during the Cold War years, the interaction takes place on many levels, and non-state groups actively participate in defining the normative agenda between the actors. Coercive instruments have been created in order to better implement the norms in Russia and elsewhere in Europe. The creation of the European Court of Human Rights, and the fact that Russian individuals are able to file complaints against

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<sup>267</sup> James Mayall, *World Politics: Progress and Its Limits* (Cambridge: Polity, 2000), p. 14.

<sup>268</sup> Andrew Hurrell, "Order and Justice in International Relations: What Is at Stake?," in *Order and Justice in International Relations*, eds. Rosemary Foot, John Lewis Gaddis, and Andrew Hurrell (Oxford: Oxford University Press, 2003), pp. 39-40.

<sup>269</sup> Alderson and Hurrell, "Bull's Conception of International Society," p. 15.

their own state using the European channel is illustrative of the high degree of solidarism between the parties. The concept of sovereignty is clearly more restricted, and the goals of the cooperation more ambitious than they previously were. The shared, constitutive values are officially considered to be the very basis of the relationship.

Thus, in principle, the nature of the relationship appears relatively clear-cut. Russia is a member of the European solidarist state society, and neither Russia nor the European organisations are seriously advocating anything else. Yet, in practical terms there are major tensions surrounding the implementation and interpretation of these common norms and values.<sup>270</sup> The next three empirical chapters explore in detail where these tensions stem from and how they are dealt with on a practical level.

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<sup>270</sup> See, for example, Neil MacFarlane, "Russian Perspectives on Order and Justice," in *Order and Justice in International Relations*, eds. Rosemary Foot, John Lewis Gaddis, and Andrew Hurrell (Oxford: Oxford University Press, 2003), p. 176.

## CHAPTER 4

### NORM OF A HUMAN RIGHTS OMBUDSMAN

*This chapter looks at the ways in which the European organisations have interacted with Russia on the question of a national human rights ombudsman, and analyses the development of the ombudsman institution in Russia. Finally it evaluates the effectiveness of the European action, and links up developments with the discussion on scope conditions and the socialisation model outlined in Chapter 1.*

- "What associations does the word 'ombudsman' bring into your mind?"
- An exotic dish
- A bus"<sup>271</sup>

#### 1 Background to the Norm of a Human Rights Ombudsman

The origins of national human rights institutions (NHRIs) can be tracked to early 19th century Sweden. The basic task of the modern ombudsman institution is to investigate – on his or her initiative or on a citizen's complaint – unlawful action by state authorities towards citizens. In addition, the tasks may include human rights education and promotion, and other related activities. The crucial point is that the ombudsman is guaranteed such resources and institutional arrangements that he or she can work independently without any political interference.

The ombudsman institution is generally considered to be an efficient way to promote good governance and human rights protection – particularly in states whose judicial system is still weak.<sup>272</sup> Complaining about human rights violations to an ombudsman is more accessible, cheaper and faster than judicial channels of complaint. International organisations, such as the United Nations and the Council of Europe, and international non-governmental organisations have therefore actively supported the proliferation of NHRIs and NHRI standards around the world.

The UN has acted as a standard-setter on the question: it has addressed the development of national human rights institutions since 1946. In 1978 the UN Commission on

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<sup>271</sup> Answers by Russian public to a question by a seminar speaker in an international conference funded by the CoE on the ombudsman institution in Moscow on 31 October–November 1999, quoted in *Advokat*, 17 December 1999.

<sup>272</sup> See Linda Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection," *Harvard Human Rights Journal* 13, no. Spring (2000): p. 3.

Human Rights published international guidelines for national and local human rights institutions, and in 1991 it adopted the Principles Relating to the Status of National Institutions (the so-called Paris Principles). These principles were passed as a General Assembly resolution in 1993.<sup>273</sup>

The Paris Principles urge that NHRIs' independence should be guaranteed by a constitution or a statute, and they should have complete autonomy from the government, a broad mandate, adequate powers to investigate and sufficient material resources at its disposal. The document recommends that NHRIs should be allowed to submit opinions, recommendations, proposals and reports based on their investigations either on their own initiative or on a citizen's complaint to relevant state authorities and to publish them. Common areas of competence include investigation of any human rights violation, unlawful administrative practice and shortcomings of national legislation. Human rights education and the promotion of international cooperation and treaties are typical additional tasks.<sup>274</sup>

Some observers have criticised international organisations for promoting the adoption of very similar types of national human rights institutions even in cases where these types do not fit into the domestic culture. Because most assistance programmes are tied to these international standards, governments are eager to establish such institutions, even in cases where political will is otherwise lacking. The establishment of the ombudsman does not guarantee proper functioning or true independence of the institution.<sup>275</sup>

However, although NHRIs may be similar to each other, they are not identical. Linda Reif has divided the most common types of national human rights institutions into the categories of classical *ombudsmen*, *human rights commissions* and *hybrid human rights ombudsmen*.<sup>276</sup> These types reflect the national characteristics and tradition, as well as the times when the institution was established.

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<sup>273</sup> United Nations, General Assembly, *Resolution on National Institutions for the Promotion and Protection of Human Rights*, 85th Session, A/RES/48/134.

<sup>274</sup> Ibid.

<sup>275</sup> See Sonia Cardenas, "Adaptive States: The Proliferation of National Human Rights Institutions," *Carr Centre for Human Rights Working Papers*, no. 1 (2004): p. 3.

<sup>276</sup> Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection," pp. 7-16.

### *Classical ombudsman institution*

The modern ombudsman institution started to spread outside Scandinavia in the 1960s and 1970s. This "classical" form of ombudsman monitors the conduct of public administration. The ombudsman is elected by a legislature and it has the power to launch investigations upon receipt of a complaint or on his (or her) own motion, investigate and make recommendations and report to the government and legislature on the activities of the office. The classical ombudsman does not make legally binding decisions but relies on persuasion, recommendation and publication. The classical ombudsman does not have an explicit human rights mandate, but human rights questions form a central part of his or her tasks in practice.<sup>277</sup>

### *Human rights commissions*

Human rights commissions or complaints offices have become more common over the past thirty or forty years. Some states have adopted both a human rights commission and an ombudsman, but most states have just one NHRI. Human rights commissions have an express mandate to protect and promote human rights. The commission may be appointed by the executive, the legislature or some combination of the two. Typically the powers of human rights commissions include some or all of the following: providing advice to the government on human rights law and policy, conducting research, undertaking human rights education and investigating complaints made by members of the public on human rights violations. Commissions have the right to make recommendations, but they also often function as a conciliator between the parties to resolve the matter or refer the dispute to binding forms of settlement such as tribunals and courts.<sup>278</sup>

### *Hybrid ombudsmen*

Most recent NHRIs have typically been hybrid offices, combining the roles of commissions and ombudsmen. They are often called human rights ombudsmen and they usually have extensive mandates. A hybrid ombudsman institution undertakes a dual role: it protects and promotes human rights and monitors administration. The office

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<sup>277</sup> Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Leiden: Martinus Nijhoff Publishers, 2004), pp. 2-4.

<sup>278</sup> Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection," pp. 10-11.

resembles the ombudsman institution in that it is more common for one person to hold the office, and that it usually does not have the power to examine complaints in the private sector. It is also usually appointed by the legislature. On the other hand, they resemble the commission model in that their role often includes human rights education, advice and protection.<sup>279</sup> The hybrid ombudsman institution started to take root with the so called third wave democratisation in Southern Europe in the 1970s, then spread to Latin America and, most recently, to CEES.

## 2 The Ombudsman Institution as a European Norm

The European institutions have taken the UN definition and recommendations as a starting point for their regional action. At the European level, the Council of Europe has been the most important institution promoting the ombudsman institution in Europe. It has urged all its member states to establish such institutions in the recommendations by the PACE (1975 and 2003)<sup>280</sup> and the Committee of Ministers (1985 and 1997)<sup>281</sup>. It has also organised meetings and training for the European ombudsmen since 1970s. Almost all European states have a NHRI but they vary in form and focus.<sup>282</sup> For example, Finland and Sweden have classical ombudsman offices without explicit human rights mandates. Their offices do, however, take care of human rights matters.<sup>283</sup>

The other European organisations have also supported the proliferation of the ombudsman institution. The CSCE adopted declarations calling the participating states to establish NHRIs in Human Dimension Meetings in Copenhagen (1990) and Moscow

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<sup>279</sup> Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, pp. 7-11.

<sup>280</sup> See Council of Europe, Parliamentary Assembly, *Recommendation on the Conclusions of the Meeting of the Assembly's Political Affairs Committee with the Ombudsmen and Parliamentary Commissioners in the Council of Europe Member States*, 29 January 1975, R 757; Council of Europe, Parliamentary Assembly, *Recommendation on the Institution of Ombudsman*, Rec 1615 (2003).

<sup>281</sup> Council of Europe, Committee of Ministers, *Recommendation on the Establishment of Independent National Human Rights Institutions*, 30 September 1997, No. R (97) 14; Council of Europe, Committee of Ministers, *Recommendation on the Institution of the Ombudsman*, 23 September 1985, No. R (85) 13.

<sup>282</sup> Italy is the only EU member state without a national ombudsman institution. Nevertheless, it has an extensive network of regional ombudsmen. Of CoE member states, Switzerland does not have national NHRI either, but it too has regional ones at the canton level.

<sup>283</sup> More information at the Finnish Ombudsman's site at <http://www.oikeusasiamies.fi/Resource.phx/ea/english/index.htm> and at the Swedish site at <http://www.jo.se/Page.aspx?Language=en>.

(1991). In 1998, the OSCE dedicated its annual Human Dimension Seminar to the topic of NHRIs. The ODIHR has provided assistance in coordination with the CoE and the UN to numerous NHRIs. There exists a certain division of labour between the CoE and OSCE: the CoE provides general technical assistance for the establishment and running of ombudsman institutions, and the OSCE provides specialised assistance to some of them through its field missions in particular states.<sup>284</sup>

The EU promotes the NHRIs in its member and accession states, and also established the supranational post of a European Ombudsman in 1995. Its support for ombudsman institutions in third states has, however, been more modest and taken place through joint action with the CoE. The EIDHR has provided assistance for strengthening democracy and human rights. One of the EIDHR programmes with Russia is a joint programme with the CoE to promote the institution of an ombudsman in Russia.<sup>285</sup>

In summary: there is a consensus among the European organisations that the institution of an ombudsman is an essential requirement for a rule of law society based on the respect of human rights. Judicial procedures are often both time-consuming and expensive, and therefore alternative channels are fundamentally important.

### **3 European Promotion of an Ombudsman Institution in Russia**

After Russian membership in the CoE, the organisation has been monitoring the ombudsman question in its Honouring of Obligations and Commitments Reports and offered suggestions on ways in which to develop the institution further. The question of NHRI falls within the priorities and the field of expertise of the CoE, and thus it is only natural that it has been the most active institution cooperating with Russia on the question. It presumably possessed greater leverage over the matter while the membership negotiations were still ongoing. Even if the establishment of the ombudsman institution was hardly the most burning issue on the agenda, it was important and mentioned in every review report by CoE institutions, alongside other legislative issues. The establishment of NHRI could also be interpreted as a sign of

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<sup>284</sup> In particular, the OSCE has been helping to establish, and assisting the functioning of, ombudsman institutions in the Balkans.

<sup>285</sup> See European Commission European Union, "Supporting the Development of Civil Society in Russia: European Union Support for Strengthening Democracy and Human Rights in Russia at Grass-Roots Level," (Brussels: 2001), p. 10.



political will to comply with European standards by the Russian authorities, as the establishment of the institution does not require vast resources.

The CoE has cooperated actively with the Russian ombudsman by providing assistance and including the Russian ombudsman into the European network of national ombudsmen, first under the Directorate General II and after 1999 under the CoE Commissioner for Human Rights. The network meets in various seminars and at the Round Table with the European Ombudsmen organised every second year.<sup>286</sup> In reality, the interaction between the ombudsmen is even more frequent since they meet each other at various seminars that are not officially organised by the CoE – for example, at the meetings of the European Ombudsman Institute.<sup>287</sup> However, the CoE serves as the main point of exchange between the national ombudsmen in Europe. This kind of continuous and close interaction, it is hoped, will facilitate the processes of persuasion and learning.

In summing up the basic characteristics of the European norm on the institution of a national ombudsman, it is helpful to refer back to the norm specific scope conditions outlined in Chapter 1. The norm is a strong one with regard to textual clarity of the standards. There is a collection of both European and UN documents backing the requirements, in addition to the historical experience of dozens of European states. There is some variation with regard to the practical interpretation of the norm; the form of national human rights institution varies from country to country. The basic principles are nevertheless clear. There is no international treaty on the ombudsman institution which would be required to be signed. Therefore, the symbolic validation is not as high as it could be. However, the symbolic validation of the norm became stronger in 1994,

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<sup>286</sup> See Council of Europe, Commissioner for Human Rights, *Conclusions of the Meeting between the Western European Ombudsmen and the Commissioner for Human Rights*, 1 December 2000, CommDH(2000)5.  
<<https://wcd.coe.int/ViewDoc.jsp?id=983691&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679>>.

<sup>287</sup> The European ombudsman institute is an independent association domiciled in Innsbruck, Austria. It was established in 1988 to promote and study the ombudsman institution in the European context. Today, virtually all European ombudsmen are members of the association. Other members include academics and officials with keen interest in the ombudsman issue. See <<http://members.tirol.com/eoi/index.htm>> for more information.

when the Council of Europe made the ombudsman institution a requirement for membership.<sup>288</sup>

Despite some variation in the form of NHRIs in Europe, there is, however, a consensus that such an institution is a requirement for a human-rights protecting rule of law society. The call to establish an ombudsman institution is a specialised, secondary norm. The *grundnorm* behind it is efficient human rights protection; it must be ensured that there is an independent body considering the complaints of ordinary people. Therefore, the adherence of the norm was also propitious for socialisation to take place. The norm has a fairly low political profile and can thus be considered as a relatively technical one, which in the literature is presumed to constitute a favourable condition for smooth implementation. Furthermore, the fact that relatively speaking the fulfilment of the norm does not require vast resources contributes positively towards the likelihood of implementation.

## **4 Developments in the Soviet Union and Russia**

### **Early aspirations and a bitter end 1990-95**

The early ombudsman dialogue took place within the CSCE framework and influenced Russian intentions to form such an institution in the early 1990s. The topic of NHRI was discussed in a series of human dimension meetings in 1990-1999. The first concrete reference to the ombudsman institution can be found in the first draft for the new constitution of the RSFSR in 1990, prepared by a constitutional commission's working group under the Congress of People's Deputies of Russia. This article was included in all later versions of the draft constitution.<sup>289</sup>

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<sup>288</sup> These criteria were outlined in an experts' report in 1994 and later confirmed by the PACE's opinion on 25 January 1996. Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership of the Council of Europe*, No. 193 (1996); Council of Europe, Parliamentary Assembly, *Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards*, 7 October 1994, AS/Bur/Russia (1994) 7.

<sup>289</sup> See information provided by the official website of the Russian human rights ombudsman <<http://www.ombudsman.gov.ru/institut/a-history.shtml>>.

In November 1991, the Supreme Soviet of the RSFSR adopted The Declaration of Human Rights and Civil Liberties.<sup>290</sup> This document mentioned the aim of establishing the institution of the representative on human rights, and the first draft bill on the representative was prepared in the Committee on Human Rights of the Supreme Soviet of the RSFSR. This was all conducted in the throes of the Soviet Union's collapse that culminated on 25 December 1991 when Mikhail Gorbachev relinquished his presidency of the Soviet Union. The Russian Federation emerged as an independent state, and the regional Supreme Soviet and the Congress of People's Deputies were transformed into the national legislature of a new independent Russia.

The Russian Federation became involved in CoE cooperation in January 1992 when it was granted special guest status in the Parliamentary Assembly. The CoE had several assistance and cooperation programmes with Russia in the field of human rights and legal reforms. The Russian Federation applied for membership of the CoE in May 1992. In 1994, legal experts evaluated whether or not Russia met the basic membership requirements outlined by the Statute of the CoE, namely genuine democracy, respect for the rule of law and human rights. Their comprehensive report also highlighted the question of the ombudsman institution after which it was considered to be one of the membership requirements.<sup>291</sup>

Soon the policies of the Congress of People's Deputies – a body inherited from the Soviet times – and the more reform-orientated president clashed, and a political deadlock developed between them. As the Parliament refused to accept the president's economic reforms, the legislative process became chaotic: the president issued decrees that contradicted the written laws, many of them inherited from the Soviet Union. The regional organs, for their part, ignored the presidential decrees or made up their own

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<sup>290</sup> See the 1998 annual report by the Russian human rights ombudsman: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 1998 godu,"* (Moskva: 1998). Available at <<http://www.ombudsman.gov.ru/doc/ezdoc/98.shtml>>.

<sup>291</sup> This requirement was confirmed upon Russia's accession. The PACE noted in its opinion (paragraph 7, point v.) that it was required that "new laws in line of Council of Europe standards will be introduced: on the role, functioning and administration of the Procurator's office and the Office of the Commissioner for Human Rights [...]"; according to the document "the Russian Federation shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 7". Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership of the Council of Europe*.

laws. In December 1992, the parliament refused to extend the president's special decree powers. Despite the fact that the new Constitutional Court backed the parliament, President Yeltsin announced the assumption of emergency powers and his intention to hold a referendum on the people's support of him and his policy in April 1993. To the surprise of many, the president won the vote of confidence. After the vote, Yeltsin was able to convene a convention to draft a new constitution that would hopefully settle the division of power in Russia. As could be expected, the draft constitution clearly favoured the president and the federal level over the parliament and regional level.<sup>292</sup>

Meanwhile, the democratic deadlock continued and practically no normal legislative functions were carried out. Finally in September 1993 the president issued a decree, which ordered the disbanding of parliament and set parliamentary elections under the new constitution yet to be voted on. Yeltsin justified his move by referring to the April referendum and the fact that the new parliament would be elected democratically, whereas the old parliament had been elected only semi-democratically (a certain proportion of seats had been reserved for the Communist Party candidates). The decision violated the 1978 Constitution of RSFSR, which was still in place. However, the legitimacy of the Constitution was very weak and it had already been amended hundreds of times. Under these circumstances, all major western states gave their support to President Yeltsin, whom they saw as the guarantor of democracy and liberal reforms in Russia. A great part of the Duma deputies opposed Yeltsin's action and refused to leave the parliamentary building. The power struggle continued for several days until the resisters and their supporters decided to seize control of the Ostankino TV centre. The attempt was unsuccessful and the next day the Russian army emptied the parliamentary building by force.<sup>293</sup>

The power struggle revealed the fragility of Russian society: the nation stood divided in the midst of great disarray and uncertainty about the future. In an attempt to consolidate the nation, the president established a presidential Human Rights Commission (*Komissiiia po pravam cheloveka pri prezidente Rossiiskoi Federatsii*), headed by a chairman in November 1993. President Yeltsin appointed Sergei Kovalev, a well-known human rights activist and a former Soviet dissident, as its chairman (*Predsedatel'*

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<sup>292</sup> Gill and Markwick, *Russia's Stillborn Democracy? From Gorbachev to Yeltsin*, pp. 163-65.

<sup>293</sup> Sakwa, *Russian Politics and Society*, pp. 45-53.

*komissii po pravam cheloveka*). The institution resembled an ombudsman institution: the Chairman of the Commission saw himself as the guarantor of citizens' rights and accepted complaints from the citizens, investigated them, issued reports, suggestions and appeals to relevant state bodies. However, the institution did not meet the standards of a NHRI because the commission was part of the presidential administration and its independence was not institutionally guaranteed.

Kovalev's first report mainly dealt with human rights violations which had occurred during the seizure of the parliament. The report "On the observance of human and civil rights in the Russian Federation", prepared in July 1994, was based on materials obtained from law-enforcement agencies, complaints and petitions from citizens, and on the commission's own investigations – some of which were conducted in cooperation with non-governmental and international organisations. For a while, Kovalev as the Chairman of the Human Rights Committee acted as de facto ombudsman.<sup>294</sup>

In December 1993, the new Russian Constitution was approved by a referendum. It mentioned the ombudsman institution, that is, national representative for human rights (*Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*) which was to be elected by the legislature.<sup>295</sup> However, before coming into being, a federal law needed to be passed on the exact conditions of the ombudsman institution. A federal constitutional law requires a two-thirds majority in the Duma and the approval of Federation Council, which can also make amendments to the text and send it back to the Duma. As with all laws, it further requires final approval by the president. In a state as divided as Russia was in the 1990s, the adoption of the law was doomed to be a time-consuming process.

Despite the fact that there was no law on the ombudsman, the newly-elected Duma decided to elect an ombudsman in January 1994. The election was carried out on the basis of a "constitutional norm". The problem was, however, that without a proper law,

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<sup>294</sup> In November 2004 this institution was changed into the Council for Facilitating the Development of Civil Society Institutions and Human Rights (*Sovet pri Prezidente Rossiiskoi Federatsii po sodeistviu razvitiu institutov grazhdanskogo obshchestva i pravam cheloveka*). The institution is now more clearly under the presidential administration and its main task is to draw up proposals for the president on questions concerning civil society and human rights. The Council is chaired by Ella Pamfilova. See <<http://sovetspamfilova.ru/>> for further details.

<sup>295</sup> See Chapter 5, article 103 (e). *Constitution of the Russian Federation (1993)*, 12 December 1993.

the independence of the institution could not be guaranteed. Confusing all institutional divisions, the deputies agreed to elect the Chairman of the President's Human Rights Commission, Sergei Kovalev, to become the first national Human Rights Ombudsman. The whole episode was somewhat obscure, and the practical significance of the decision proved to be limited. Kovalev had already interpreted his role as the chairman of the presidential commission along the lines of a human rights ombudsman: he was investigating specific violations of human rights by federal agencies on the basis of citizens' complaints, and attempting to act as independently as possible.<sup>296</sup> Kovalev thus continued working as before, only now with an additional title. Kovalev's tasks were difficult to carry out in the prevailing circumstances: the ombudsman-cum-chairman had no guarantees of his independence and, adding to his dependency, he had very limited resources at his disposal.<sup>297</sup>

By the end of the 1994, the conflict in the Chechen Republic had escalated into a full-scale war. The human rights ombudsman and the chairman of the human rights committee, Sergei Kovalev, became one of the most prominent and outspoken critics of Russian military action in Chechnya. His uncompromising criticism of the war and action to expose human rights violations committed by the military forces in the area brought him many enemies, particularly within the political elite.

Kovalev was not the only critic of the war in Chechnya. International organisations including the OSCE, CoE and EU expressed serious concern over the issue of human rights violations in the area – even if none of the organisations challenged the claim that the Chechen question was otherwise Russia's internal affair. As noted in Chapter 2, the conflict created major tensions between the European organisations and Russia. The war also reflected negatively on the ombudsman question.

Later, in January 1995, Russia issued an official statement to the PACE in which the Russian leaders solemnly vowed to comply with all the recommendations of the Council of Europe in the field of human rights. The document was signed by President Yeltsin, Prime Minister Viktor Chernomyrdin, the President of the Federation Council Ivan

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<sup>296</sup> See Kovalev's interview in *Izvestiia*, 22 January 1994. His office did not, however, perform any educational functions.

<sup>297</sup> *Ibid.*

Rybkin and the Duma Chairman Viktor Shumeiko.<sup>298</sup> The document was a direct appeal to the CoE to reconsider their decision to suspend the consideration of Russian membership. The chairman of the PACE, to whom the special message was sent, replied by stating that although it was necessary to suspend the process, the Council's leadership had no fundamental objections to admitting Russia.<sup>299</sup>

The ombudsman-cum-chairman, Sergei Kovalev, infuriated the Russian leadership by demanding that the CoE should not admit Russia before the military action in Chechnya had ended and law-based order restored. Kovalev's outspoken opinions were too much for many Russians. National-patriotic Duma deputy, Sergei Baburin, proposed a motion for Kovalev's dismissal from the post of the ombudsman and the motion was successful (240 to 75 with 3 abstentions).<sup>300</sup> There was an attempt by some of the representatives to overrule the decision by voting again but the appeal was refused.

Kovalev's dismissal demonstrated all too vividly how easily the ombudsman institution could be politicised in Russia. All international documents outlining the basic principles of NHRIs underline the importance of its independence and autonomy from political actors and state structures. During these early years, the institution lacked all guarantees of independence: there was no fixed term, secured funding or legislation. This confusing episode demonstrated a burning demand for legislative guarantees of institutional independence. The desire to create the ombudsman institution without the necessary legal guarantees turned into a political farce. In the end, very little changed with Kovalev's dismissal – he continued working just as before, now only as the chairman of the presidential human rights commission.

Despite its continuing brutal military action in Chechnya, Russia did make some concessions to international pressure. Russia agreed to establish a special human rights commission for Chechnya and to work with an OSCE assistance group in the conflict

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<sup>298</sup> Council of Europe, Parliamentary Assembly, *Appendix to the High-Level Russian Message of 18 January 1995 (Addendum II to the Report Russia's Request for Membership of the Council of Europe)*, 2 January 1996, Doc. 7443.

<sup>299</sup> Council of Europe, Parliamentary Assembly, *Effects of Russia's Accession on the Organisation (Addendum IV to the Report Russia's Request for Membership of the Council of Europe)*, 2 January 1996, Doc. 7443.

<sup>300</sup> *Segodnia*, 11 March 1995.

zone in March 1995.<sup>301</sup> In September 1995, the Committee of Ministers of the Council of Europe recognised Sergei Kovalev's work for human rights in Russia and awarded him with the European Human Rights Prize.<sup>302</sup> This, however, did not help Kovalev at home. In the increasingly hostile atmosphere, and without any autonomy from the state bodies, his tasks became practically impossible to carry out. Acknowledging this, Kovalev resigned from his post in an open letter to President Yeltsin that was published in January 1996 in *Izvestiia*.<sup>303</sup> Kovalev's resignation led to a mass exodus from the human rights commission. With only three remaining members, in practical terms the commission ceased to exist.<sup>304</sup> Despite these developments in Russia, the CoE was nonetheless making preparations to accept Russia as its 39th member. Kovalev thus seemed to have lost his fight.

A brief summary of the achievements in the development of the institution of a human rights ombudsman in Russia from 1991 to January 1996 is in order. The greatest achievement was the fact that the new constitution of 1993 made a reference to the establishment of such an institution. This was a major step toward the implementation of the European norm. Constitutional guarantees are part of the European standard. There was also some early experimentation with the institution without legislative guarantees, but this experiment proved to be a miserable flop. The question of the ombudsman institution became increasingly politicised in Russia, and the prospects of adopting the federal law were dim. The election of an ombudsman without proper legislative and financial guarantees ultimately did more harm than good to the goal of adaptation, by further politicising the institution and blurring the institutional lines between the presidential human rights commission and an independent ombudsman.

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<sup>301</sup> See Organization for Security and Cooperation in Europe, Permanent Council, *Decision on the Establishment of an OSCE Assistance Group to the Russian Federation*, 1995, PC.DEC/35. Its main tasks included the promotion of peace and respect for human rights, fact-finding, assistance to institution-building and democratisation, advice on legal issues and election assistance. It also provided and coordinated humanitarian aid to the region. The assistance group consisted of six OSCE experts who were appointed by the OSCE Secretary General.

<sup>302</sup> The prize was given to Kovalev and posthumously to Raoul Wallenberg. See Council of Europe, Committee of Ministers, *Resolution on the Award of the European Human Rights Prize*, 22 June 1995, RES(95) 5.

<sup>303</sup> *Izvestiia*, 24 January 1996.

<sup>304</sup> *Nezavisimaia Gazeta*, 7 February 1996; *Izvestiia*, 25 January 1996.



## *Evaluation*

The scope conditions were primarily favourable for the socialisation to the norm of an institution of an ombudsman by Russia. As previously noted, the norm was high on determinacy and adherence, and it was considered to be a relatively uncontroversial, low-politics issue. There was a Europe-wide consensus on the norm: there were no challenges to it.

The international conditions were also highly favourable to straightforward norm implementation. First of all, there was significant asymmetry between the players – Russia was seeking to join the European club, and therefore open to the socialisation efforts of the European organisations, in particular those of the CoE. The CoE's authority on the issue was unquestionable in Russia and elsewhere at the time. Due to Russia's membership application, the CoE had superior bargaining power on the issue. There were many big problems between Russia and the European organisations, such as the war in Chechnya, and one might therefore have expected Russia to adopt less controversial membership conditions, such as an ombudsman institution, quickly in order to show its general commitment to comply with the European requirements.

The environmental conditions were propitious for socialisation, too. Russia was building its system anew and modelling itself on the western and, in particular the European, example. After the socialist experience had gone wrong, it was open to new information on state–society relations. The European institutions were eager to guide Russia in its reforms and provide information and education on institutional questions, such as the establishment of an ombudsman institution.

The domestic conditions were perhaps more controversial than the scope conditions on other levels, but they were not exclusively negative either. The institution as such fitted the Russian traditions of personified institutions very well.<sup>305</sup> One person, an ombudsman, embodied the institution, and thus it may have been easier for Russians to approach an ombudsman than a faceless commission or a board. At the beginning, it seemed that there was political will to implement the norm as quickly as possible – the

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<sup>305</sup> See Yuri Pivovarov, "Russian Political Culture and Classical Political Culture," *Pro et Contra* 10, no. 3 (2002): pp. 23–40.

Duma elected the ombudsman even if the legislation was still lacking. Nevertheless, the domestic situation became gradually less favourable to the implementation of the norm, as human rights became a major issue of divergence between the European institutions and Russia. As mentioned earlier, the controversy over the war in Chechnya reflected negatively on the ombudsman question.

With regard to the question of impact and effectiveness of European action, the organisations seemed successful in placing the requirement of a human rights ombudsman institution on the Russian reform agenda. Russian discourse consistently supported the European goal and there was progress in the legislative field, too: the article on the human rights ombudsman in the new constitution was a necessary step towards implementation of the norm. Nevertheless, practical implementation, institutionalisation and even essential legislation were still lacking. Thus, the European organisations were partly successful in meeting their stated goals with Russia. Russia's inability to meet the norm did not have any major impact on European cooperation or the interpretation of the norm. The norm did not hold such political significance that would have attracted public attention or made the lack of implementation a symbolic, political act.

The socialisation model's take on Russian development on this issue would be that Russia had recently moved from the phase of tactical concessions to prescriptive status. The development was still to some extent hesitant and uncertain, but there was general political will to implement the human rights norms advocated by the European institutions. Russia did care about international public opinion and it did want to become a member in the Council of Europe. The government thus did its best to implement the norm. The difficulties with the implementation arose primarily from inexperience and lack of knowledge on the issue. The Russian official discourse on the issue was consistent, and it was willing to bind itself to the norm internationally. The norm was institutionalised in the constitution, only the federal law and practical implementation was lacking. The model would expect that as long as no dramatic change of power took place, and international pressure continued as before, socialisation to the norm would be no more than a question of time.

## CoE membership as an incentive for compliance 1996-98

Despite Kovalev's proposition that Russia ought not to be admitted before the war in Chechnya had finished, the Russian Federation was officially accepted as a member of the Council of Europe on 28 February 1996, while the war was still ongoing.<sup>306</sup> Ultimately, it turned out that Russia's human rights record in general was not a decisive factor in the process: the CoE decided that Russia had shown sufficient evidence of good faith and willingness to implement the requirements in future.<sup>307</sup>

The CoE's decision must be evaluated against the background of Russian political reality in the mid-1990s. The CoE's refusal of membership would have run the risk of marginalising the liberal, pro-European strand in Russian politics. Even a liberal-minded politician, pro-western (and the human rights ombudsman of the Russian Federation since February 2004) Vladimir Lukin, interpreted CoE's postponement decision as "insulting and discriminatory" against Russia, especially while countries such as Ukraine and Moldova were being admitted to the organisation. He even went so far as to suggest that Russia should withdraw its application for membership in protest.<sup>308</sup> This was precisely the kind of reaction that the CoE did not want to cause. More negative developments followed: the Duma elections in December 1995 showed all too clearly that pro-western attitudes were becoming marginalised Russia: The Communist Party of the Russian Federation (*Kommunisticheskaia partiia Rossiiskoi Federatsii*, KPRF) won in 70 of Russia's 89 regions, and further took a considerable share of the single-seat election districts. Vladimir Zhirinovskii's ultranationalist Liberal Democratic Party of Russia (*Liberal'no-Demokraticheskaia Partiiia Rossii*, LPDR) came second with 50 seats and 11 per cent of the total vote. The liberals were clearly pushed permanently to the margins.

As the threat of the turning of domestic opinion against the CoE and international marginalisation of Russia became more apparent, the CoE concluded that more could be achieved by engaging Russia instead of excluding it from the cooperation. It was also

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<sup>306</sup> Council of Europe, Committee of Ministers, *Invitation to the Russian Federation to Become a Member of the Council of Europe*, 8 February 1996, RES(96) 2.

<sup>307</sup> See Council of Europe, Parliamentary Assembly, *On Russia's Request for Membership in the Light of the Situation in Chechnya*, Resolution 1055. Resolution 1055 (1995), point 11. <<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta95/eres1055.htm>>.

<sup>308</sup> *Segodnia*, 7 September 1995.

hoped that the membership offer would strengthen the more liberal-minded political groups in Russia.<sup>309</sup>

Russia was expected to fulfil a significant part of these requirements within a year after becoming a member of the Council of Europe. Most importantly, Russia had to ratify the ECHR,<sup>310</sup> reform the Prosecutor's Office (the Procuracy), adopt a law on the ombudsman on human rights, make amendments to laws on national minorities, fundamental political freedoms, freedom of religion, and remove all obstacles to the freedom of movement and the right to choose one's place of residence. It also promised to improve the conditions of convicts, transfer the institutions of appeal to the authority of the Ministry of Justice and impose a moratorium on capital punishment from the day of accession to the Council of Europe, and to abolish the death penalty totally within three years.<sup>311</sup>

Despite the fact that there was neither a law on the ombudsman nor an acting ombudsman,<sup>312</sup> some degree of clarification started to develop between the posts of the chairman of the presidential human rights commission and the ombudsman institution to-be. In May 1996, Yeltsin issued a decree "On the Russian President's Human Rights Commission", establishing the makeup and mandate of the body.<sup>313</sup> It was formally a standing committee of the presidential administration whose task was to assist the president as the guarantor of citizens' rights. Even if Yeltsin's step was politically motivated, it brought needed clarification to the tasks and differences between the commission's chairman and the ombudsman.

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<sup>309</sup> Interview with a member of CoE Parliamentary Assembly and a member of the working group on Russia, 24 May 2005.

<sup>310</sup> Including protocols 1, 2, 4, 7, 9, 10 and 11 to the Convention.

<sup>311</sup> This was to be done by ratifying protocol 6 to the Convention on Human Rights and Fundamental Freedoms. Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership of the Council of Europe*. At the time there were also those who seriously doubted the advisability of taking Russia in. See, for example, Peter Smithers, "Why the Council of Europe Should Put Conglomerate Russia on Hold," *International Herald Tribune*, 2 February 1995. Smithers was Secretary General of the CoE from 1964 to 1969.

<sup>312</sup> The Law on the Ombudsman was drafted and even approved by the Duma April 1996 – only to be returned from the Federation Council with amendments that the Duma did not agree with. *Nezavisimaia Gazeta*, 18 April 1996 and 11 July 1996; the law finally passed by the Duma again in December 1996 and it was signed by President in February 1997. *Kommersant*, 26 December 1996.

<sup>313</sup> *Rossiiskie Vesti*, 23 May 1996.

At the same time, Yeltsin named new members to the commission, including a new chairman. The new chairman could not have been more different from Sergei Kovalev: Vladimir Kartashkin was a professor of law who had published several books on human rights during the Soviet regime in an attempt to justify the Soviet Union's human rights policy against western critics. Kartashkin promised to view the Chechen problem more "objectively" than his predecessor and seek more constructive cooperation with the authorities.<sup>314</sup> The commission resumed its work in November 1996, and the topic of the first meeting was that of measures to protect the rights of Russian citizens abroad. The agenda of the meeting even included the question of creating a special reaction force to protect the lives of Russian citizens abroad.<sup>315</sup> The general attitude towards the question of human rights had clearly changed.

On 25 December 1996, after three years of consistent efforts, the Federal Constitutional Law "On the Representative of Human Rights" was finally accepted.<sup>316</sup> The law created a typical "hybrid ombudsman" with an express and relatively expansive human rights mandate. His activities were to be guided by the Russian Constitution, the Federal Constitutional Law on Representative of Human Rights, and by the norms and principles of international law. The law on the ombudsman met all the formal European, and UN, standards of independence of the institution.<sup>317</sup>

The Representative is elected by the State Duma upon a nomination by the president, the Federation Council, any Duma deputy or a Duma coalition. A candidate needs the support of two-thirds of the Duma deputies (300 votes out of the total 450) in order to become the ombudsman. His term of office is five years – a year longer than the terms of the president or Duma. According to the mandate of the ombudsman, the role of human rights protector is complemented with the tasks of supporting the improvement of human rights legislation of the Russian Federation and its consistency with the norms

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<sup>314</sup> See Kartashkin's interview in *Rossiiskaia gazeta*, 25 May 1996.

<sup>315</sup> *Pravda*, 6 November 1996; *Segodnia*, 6 November 1996.

<sup>316</sup> The law *Ob Upolnomochennom po pravam cheloveka v Rossiiskoi Federatsii*, Federal'nyi konstitutsionnyi zakon ot 26 Fevralia 1997 g. N 1-FKZ.) is available at <<http://www.ombudsman.gov.ru/institut/a-fkz.shtml>>.

<sup>317</sup> See United Nations, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (Center for Human Rights, 1995).

and principles of international law, promoting international human rights cooperation and providing human rights education.<sup>318</sup>

Significantly for the human rights protection function, no area of administration is excluded from the jurisdiction of the office. The Representative is able to investigate the armed forces, the police, the prison system, and security forces. Even the proclamation of a state of emergency does not limit his competences or mandate. In keeping with the international NHRI standards, the ombudsman considers cases based on individual complaints, or may upon his own initiative initiate investigations on suspected human rights violations of a more general nature. On finding a violation of rights and freedoms, the Representative may issue recommendations to state bodies, address the Duma and request the organisation of special hearings on the issue. He is also entitled to publish his findings, issue reports on questions he considers important or take the case to court or a competent administrative body, General Prosecutor or the Constitutional Court and participate in the court proceedings himself.<sup>319</sup>

Overall, the law painted a picture of a capable ombudsman institution with an efficient working apparatus at his disposal. A broad mandate is helpful in a state that is emerging from a long repressive regime and that suffers from widespread corruption. Both human rights education and effective human rights protection functions are vital for the consolidation of society based on democracy, rule of law and respect for human rights. However, the efficiency of the NHRI always depends on the domestic political culture and concrete socio-economic situation in which it is embedded. A comprehensive mandate does not always guarantee effectiveness, and a more limited one does not necessarily preclude it.<sup>320</sup>

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<sup>318</sup> See the Federal Constitutional Law *Ob Upolnomochennom po pravam cheloveka v Rossiiskoi Federatsii*.

<sup>319</sup> See Chapter IV in *Ibid*. The mandate of the ombudsman has been widened and specified since the passing of the law. The most recent change concerned the right to initiate the establishment of a parliamentary investigative commission on reported massive human rights violations. *Interfax*, 18 October 2006.

<sup>320</sup> John Hucker, "Bringing Rights Home: The Role of National Human Rights Institutions," in *Human Rights Protection: Methods and Effectiveness*, ed., Frances Butler (The Hague: Kluwer Law International, 2002), p. 35.

However, even the law was unable to solve the problem of the politicisation of the ombudsman issue in Russia. Despite the fact that the law stated that the ombudsman should be elected a month after the legislation was approved, the Duma proved unable to agree on any of the candidates. To be elected as an ombudsman, one candidate has to receive absolute majority, which meant 300 votes out of 450, and the quarrelsome Duma simply could not reach a consensus on the issue.

Around 1996-97 a wider debate on human rights and the role of human rights activists started to emerge in Russia, and this debate partly explains why agreeing on the ombudsman became so problematic. The so-called human rights movement appeared to be splitting into two parts: the "democrats", that is the former Soviet-era dissidents (such as Sergei Kovalev) became increasingly marginalised while a new group of pro-state actors were promoted to leading positions. One of the most active promoters of this pro-state approach was researcher and political commentator, Aleksei Kiva, who wrote several articles on the subject during the year.

In his articles – most of them published in the government's official newspaper *Rossiiskaia Gazeta* – Kiva argued that old dissidents such as the former chairman of the presidential human rights committee and ombudsman, Sergei Kovalev, were doing more harm than good to the cause of human rights. His main claim was that the old generation of human rights defenders (*zazhitniki*) did not know how to work constructively towards the realisation of human rights and that they were consistently opposed to whoever was in power – despite the fact that they had been democratically elected – simply as a matter of principle. According to him, this attitude stemmed partly from the traditional utopianism of Russian intelligentsia, partly from their personal experiences as dissidents during the Soviet era. In his view, their radicalism and distaste for any compromises was akin to religious fanaticism. Kiva claimed that this irrational extremist policy of the older generation of activists had in fact led to a drastic narrowing of the field of activity and discredited them in the eyes of the Russian people.<sup>321</sup>

There is no question about the tendentious and populist nature of Kiva's attack. He had recently been appointed as a member of the Presidential Human Rights Commission,

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<sup>321</sup> See *NG–Stsenarii*, 29 April 1997. *NG–Stsenarii* is a monthly supplement to *Nezavisimaia Gazeta*.

and in his articles he promoted the commission's new agenda, which highlighted the issues of the rights of Russian citizens living abroad (meaning, of course, first and foremost Russians living in the former Soviet Republics, particularly in the Baltic States) and the social and economic rights of "ordinary Russians".<sup>322</sup>

In summary, the biggest achievement concerning the question of the ombudsman institution was the passing of the Federal Constitutional Law on the Ombudsman in December 1996. The formal legislative requirements for the norm implementation were now, finally, officially met. A touchstone for the socialisation proved not to be the formal legislation, but its practical implementation. The Duma members were unable to reach a consensus on the person to hold the office. This inability to reach an agreement reflected the shifts in the general atmosphere and in the discourse on human rights defenders in Russia. The general discourse became increasingly hostile towards "western-minded" liberal human rights defenders who were seen as a hostile force acting against Russian interests.<sup>323</sup>

### *Evaluation*

There were no major changes in the general norm-specific conditions during the period from 1996 to early 1998. They remained positive for implementation of the norm. There were, however, more fundamental changes with regard to the international and environmental conditions to socialisation. The asymmetry and the material bargaining power of the CoE diminished considerably with Russia's accession to the organisation. It was hoped, however, that the positive decision on membership would encourage other, softer socialisation mechanisms such as persuasion and institutionalisation. This strategy relied on the supposed moral authority of the organisation in Russia.<sup>324</sup> The decision to admit Russia reflected the CoE's fear that further postponement of Russian membership would erode the CoE's authority in Russia. The general discourse in Russia implied that the openness to western models and norms of human rights was losing its popularity among Russians. Human rights were increasingly seen as something foreign and, respectively, Russian human rights defenders were seen as "fifth columnists"

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<sup>322</sup> *Izvestiia*, 4 June 1997 and 5 June 1997.

<sup>323</sup> See Morozov, "Human Rights and Foreign Policy Discourse in Today's Russia: Romantic Realism and Securitisation of Identity."

<sup>324</sup> Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership of the Council of Europe*.



representing the interests of foreign powers. Instead of looking up to the European example, the Russian leadership started to emphasise the special nature of the Russian system. The Russian leadership was increasingly disappointed with the modest results of the pro-European approach and was now looking for other, more home-grown solutions to its problems. Domestically, the desirability of the norm adoption thus weakened. The domestic conditions overall changed discouragingly for norm socialisation. First of all, the fairly technical norm of a human rights ombudsman became increasingly politicised, which had a negative impact on the prospects of implementation of the norm. Both the president and the legislature seemed unwilling to attempt to solve the stalemate over the issue. This was not attributable to any lack of resources, rather a simple lack of political will.

The European organisations seemed to have very little impact on the Russian willingness to implement the norm on a practical level. The European pressure and example had been fundamentally important in the legislative work, but once that was carried out, the effectiveness of the organisations seemed to stall. The CoE's repeated appeals for implementation had little impact on the quarrels in the Duma.

Russia's hesitation over the implementation did not have an impact on European norms or cooperation at large. This was likely to have been because most European states saw the norm in a fairly technical light; the norm was regulative rather than constitutive. Hence the implications of non-conformity were also less harmful to the larger community.

Although progress towards implementation of the norm seemed to be exasperatingly slow in Russia, the development could still be explained by the socialisation model. Russian discourse did not challenge the norm of the ombudsman as such, but merely could not come to terms with any of the potential candidates. The discourse on the obligation to implement the norm was positive and consistent. The official discourse and the formal, legislative adaptation to the norm were positive and reflected the prescriptive status of the norm. The practical implementation was still lacking, but as the European institutions maintained the pressure for Russia to accelerate the process, the practical breakthrough was likely to take place at some point. The

institutionalisation of the formal requirements had thus taken place, but institutionalisation of the practical implementation was nowhere in sight.

### **Institutionalisation of the norm or a case of individual learning? 1998-2003**

The split over the human rights issue within the political elite became even deeper when the first human rights ombudsman was finally elected in May 1998.<sup>325</sup> Oleg Mironov was a lawyer by education but had not taken any interest in human rights questions prior to his election. Mironov was a communist Duma deputy in favour of a strong state and the war in Chechnya. His election was generally interpreted as a move backwards in human rights protection and several human rights NGOs expressed their concern over the issue. Mironov did make some half-hearted attempts to cooperate with human rights NGOs at the start of his term but the well-known human rights organisation Memorial, for example, refused to work with Mironov claiming that they did not want to be complicit in creating the "illusion that there actually exists a human rights ombudsman" in Russia. Altogether 12 organisations signed a complaint letter against Mironov's conduct.<sup>326</sup>

Mironov's early comments on the war on Chechnya, the death penalty, the priority of socio-economic rights and the need for a more "constructive" approach towards the state raised suspicion among outside observers. He also urged, rather precariously, that his office should not be seen as a "main complaints office" for private citizens.<sup>327</sup> After all, this was exactly what the office was meant to be for. At first Mironov's office was also severely under-funded which made it difficult to act even on questions in which he was interested.

By surveying the available documents by the Russian human rights representative, it is possible to draw a general picture of the main fields and methods of the ombudsman's activity during Mironov's tenure, his shifting foci and priorities as well as the changes in

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<sup>325</sup> *Kommersant*, 21 May 1998; *Segodnia*, 23 May 1998; *Novye Izvestiia*, 23 May 1998.

<sup>326</sup> *Moskovskii Komsomolets*, 22 June 1999.

<sup>327</sup> Mironov's interview in *Novye Izvestiia*, 2 December 1998.

the body of citizens' complaints.<sup>328</sup> This will help in evaluating the degree of institutionalisation and socialisation to the norm in Russia.

As envisaged by the Federal Constitutional Law on the Ombudsman, the methods at the ombudsman's disposal consisted of investigating complaints, monitoring practices by the authorities, reporting and making suggestions on laws and practices, providing human rights education and cooperating constructively with domestic and international actors in order to encourage human rights protection in Russia. He did not, however, possess the right to make legal initiatives or ask for opinions or interpretations on existing laws from the constitutional court.<sup>329</sup> He brought up the limitations in his mandate in the 1999 report, and also requested that the law should provide some enforcement measures to make politically responsible persons reply to his appeals and take action on the questions.<sup>330</sup>

The number of individual and collective complaints has increased steadily. In 1999 the ombudsman received 22 815 complaints, while in 2005 the number had risen to over 54 000 complaints per year.<sup>331</sup> There are various factors influencing the increase: first and foremost it shows that Russians have learned about the institution and how to use its services, and that his activity has increased and the service provided has improved. In addition to receiving written complaints, the ombudsman has also offered consultation for citizens over the telephone, as well as personal consultation at the office in Moscow from 2000 onwards. This has been possible due to a significant increase in the number of employees – in 1998 the ombudsman had approximately 10 employees under him, whereas at the beginning of 2004 the number of employees had reached 176.<sup>332</sup> The

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<sup>328</sup> Annual and special reports by the ombudsman 1998-2003 and published letters, appeals, opinions and statements from years 2000-2003. All available in Russian at <<http://www.ombudsman.gov.ru>>.

<sup>329</sup> See the law *Ob Upolnomochennom po pravam cheloveka v Rossiiskoi Federatsii*.

<sup>330</sup> See 1999 annual ombudsman report: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 1999 godu," (Moskva: 1999).

<sup>331</sup> See 2003 and 2005 annual ombudsman reports: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2003 godu," (Moskva: 2003); *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2005 godu," (Moskva: 2005).

<sup>332</sup> See Lukin's interview, *RIA Novosti*, 25 March 2004. Text available at <[http://www.eng.yabloko.ru/Publ/2004/AGENCIES/040325\\_2\\_ria\\_novosti.html](http://www.eng.yabloko.ru/Publ/2004/AGENCIES/040325_2_ria_novosti.html)>.

organisational structure of the office has also evolved: currently the ombudsman institution includes Office of Citizens' Rights, Office of Human Rights Education, Information and External Relations, Press Service Department, Financial Department and Administrative Office. The ombudsman also has an extensive Expert Council at his disposal. Its members consist of legal experts, other specialists, and political actors within the human rights field as well as representatives of human rights non-governmental organisations.<sup>333</sup>

**Table 5:** Complaints to the ombudsman office 1998-2005<sup>334</sup>

<b>Year</b>	<b>Complaints received</b>
1998 (22 May onwards)	6 978
1999	22 815
2000	24 985
2001	30 056
2002	33 455
2003	36 634
2004	48 231
2005	54 617
<b>Total</b>	<b>257 771</b>

Generally, the complaints have come from across Russia, and complaints from distant districts have increased with the ombudsman's regional visits. Most complaints have concerned human rights violations due to criminal activity and civil rights violations. Other significant problem areas are social and economic rights, violations of labour rights and the human rights violations of military servicemen. The relative shares of these categories have remained rather similar from year to year.

Reflecting Mironov's outspoken claims in the press, the 1998 and 1999 reports gave a clear priority to social and economic problems, in particular the right to work.<sup>335</sup> Against the background of the economic crises in 1998 and widespread practice of unpaid wages and lost savings, the focus is understandable. Nevertheless, there were later at least three important shifts in his annual reports: the reports considered a greater variety of

<sup>333</sup> See the website <<http://www.ombudsman.gov.ru/apparat/a-struct.shtml>> for further details.

<sup>334</sup> Sources: Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2003 godu."; Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2005 godu."

<sup>335</sup> Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 1998 godu."; Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 1999 godu."

problems, the priority areas shifted, and the reports started to use human rights NGO material as a source and make positive remarks on their actions. Many observers took note that during his tenure, Mironov became much more critical towards the state authorities than was expected at the beginning.<sup>336</sup>

**Table 6:** Complaints by issue area<sup>337</sup>

1999	2001	2003	2005
Criminal law 31.3% Civil rights 21.8% Labour law, work 14.1% Problems related to dwelling place 10.7% Social security and pensions 6.7% Judicial system 5.6% Armed forces 5.4% Refugees and forced migrants 1.6%	Criminal cases 50.1% Dwelling place 23.3% Work, labour law 7.6% Social security, pensions 6% Maladministration 3.7% Armed forces, military servicemen 5.5% Refugees and forced migrants 1.7% International law 1.3%	Civil rights: 57.8% Social rights 24.2% Economic rights 16% Political rights 1.5% Cultural rights 0.5%	Civil rights 44.73% Social rights 34.9% Economic rights 16.41% Political rights 3.6% Cultural rights 0.36%

One of his newer priority areas was arbitrary rule and torture by the interior ministry officers and human rights violations within the "criminal-executive" system (meaning the Interior Ministry officials and the correction system under the Justice Ministry).<sup>338</sup> Other important topics were the rights of military servicemen and other socially

<sup>336</sup> See comments by a representative of a US-based ombudsman organisation at <[http://www.usombudsman.org/ServicesActivities/2001\\_Conference/International\\_Update1.PDF](http://www.usombudsman.org/ServicesActivities/2001_Conference/International_Update1.PDF)>.

<sup>337</sup> Sources: Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 1999 godu."; Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2001 godu," (Moskva: 2001); Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2003 godu."; Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2005 godu."

<sup>338</sup> See special report by the ombudsman on human rights violations by the officers of the Interior Ministry and the correction system under the Ministry of Justice: Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Spetsial'nyi doklad o narusheniiah prav grazhdan sotrudnikami Ministerstva vnutrennih del Rossiiskoi Federatsii i ugovovno-ispolnitel'noi sistemy Ministerstva iustitsii Rossiiskoi Federatsii," (Moskva: 10 Oktiabr 2000).

vulnerable groups<sup>339</sup>, human rights violations connected with the Chechen conflict and the closely related problem of internally displaced persons in neighbouring areas. These themes were all discussed at length in annual and special reports, statements and opinions, and in manifold personal appeals. Some serious and widespread human rights problems appeared on the pages of his reports fairly late: it was only in 2003 that he mentioned at any length the worrisome restrictions of press freedom and wide-spread use of violence and threats towards critical journalists, as well as the problems in the freedom of religion.

International cooperation is also a central part of the ombudsman's tasks. International bodies with whom the ombudsman cooperates on permanent basis include the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees (UNHCR), the UN Development Programme, the European Commission, Council of Europe, the PACE, the ECtHR, the CoE's Committee for the Prevention of Torture (CPT), the ODIHR, and the Council of the Baltic Sea States (CBSS). The Russian ombudsman meets with his European peers on both a bilateral and multilateral basis. Multilateral cooperation takes mainly place within the structures of the CoE, the CBSS or the European Ombudsman Institute.<sup>340</sup> Mironov was immediately taken into the European ombudsman cooperation. Despite the fact that Mironov's office suffered from severe under-funding at the beginning of his term, he was able to travel abroad to international ombudsman meetings and other CoE related events due to CoE funding.<sup>341</sup>

Domestically the ombudsman cooperates and coordinates his activities with the network of regional ombudsmen. Their number has increased only slowly, as the legislation only

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<sup>339</sup> See special report by the ombudsman on violations of the rights of persons suffering from mental disorders: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Spetsial'nyi doklad o sobliudenii prav grazhdan, stradaiushchih psichicheskimi rasstroistvam,"* (Moskva: 16 Iiuni 1999). See also special report on violations of the rights of military servicemen *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Spetsial'nyi doklad o narushenii ustavnyh pravil vsaimootnoshenii mezhdu voennosluzhashchimi pri otsutstvii mezhdu nimi,"* (Moskva: 17 Iiuni 2000).; and special report on the rights of disabled people, *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Spetsial'nyi doklad: Prava i vozmozhnosti invalidov v Rossiiskoi Federatsii,"* (Moskva: 10 Sentibria 2001). All available at <[http://www.ombudsman.gov.ru/doc/a-sp\\_doklad.shtml](http://www.ombudsman.gov.ru/doc/a-sp_doklad.shtml)>.

<sup>340</sup> See 2002 annual ombudsman report: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2002 godu,"* (Moskva: 2002).

<sup>341</sup> *Itogi*, 6 July 1999.

encourages but does not oblige regional governments to establish them. Currently there are 33 regional ombudsmen in the 89 regions of Russia.<sup>342</sup> This state of affairs naturally adds a considerable amount of extra work to the workload of the federal ombudsman. Other cooperation partners include the General Prosecutor, Ministries, the President and the Presidential Human Rights Commission (since 2004 the Council for Facilitating the Development of Civil Society Institutions and Human Rights).<sup>343</sup>

The European technical cooperation seemed to bear fruit as Mironov's cooperation with both domestic and international non-governmental human rights organisations gradually deepened. Mironov himself singled out the year of 2001 as a particularly significant year in which cooperation between NGOs and the office of the ombudsman was consolidated. His partners include the International Red Cross, Amnesty International and Human Rights Watch, Memorial and the Helsinki Moscow Group. He coordinated his trip to Chechnya with the Moscow Helsinki Group in 2002, which can be interpreted as a sign of growing mutual trust and appreciation.<sup>344</sup>

Mironov's reorientation did not go unnoticed by Russian societal groups and leaders. In October 2000, Mironov published a critical special report on human rights violations by the officers of the Interior Ministry and the Ministry of Justice. In the report he studied torture by the police and serious defects in the judicial system. He also criticised the new criminal code for consisting of overtly police state methods. In December, the government-owned newspaper *Rossiiskaia Gazeta* published an open complaint letter to President Putin signed by Mironov's ten employees. The main arguments of the letter were that Mironov had displayed double standards and a manipulative political mind in his work – for instance by "declaratively criticising Russian authorities of mass violations of human rights in Chechnya while shunning debate on the anti-Russian action in the Council of Europe", by stamping down the rights of his own employees while declaring his determination to protect labour rights, and by discrediting Putin's new leadership. They further claimed that Mironov did not care about Russian problems and only wanted to please western public opinion. Echoing the practices of old Soviet "kompromat", the letter even claimed that some of his innumerable trips abroad had

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<sup>342</sup> As of 1 November 2006. The list of regional ombudsmen is available at <http://www.ombudsman.gov.ru/links/a-sub.shtml>.

<sup>343</sup> See footnote 294.

<sup>344</sup> Mironov's interview in *Moskovskie Novosti*, 5 September 2002.

even been financed by groups connected with the CIA.<sup>345</sup> Simultaneously with the publication of the letter, Duma deputy Vladimir Semenov from the pro-government Unity Party (*Edinstvo*) suggested that the mechanism of the removal of the ombudsman outlined in the law on the Representative should be simplified.<sup>346</sup>

Mironov replied to the attack by claiming that the letter was evidently a custom-made attack on behalf of some quarters of the Russian administration which were displeased with his report on human rights violations committed by the officers of the Interior Ministry and Ministry of Justice.<sup>347</sup> Interestingly, human rights activists – who had once protested against his election to the post of the ombudsman – spoke now in Mironov's defence. They even published a letter of "unconditional support" for Mironov in which they dismissed the letter as completely groundless. They claimed that despite their earlier differences, Mironov had grown as a professional and begun to act for the protection of human rights in a more balanced manner.<sup>348</sup> They wrote that the denunciation letter was so groundless that they would not have even bothered to take action against it, had it not been published in the official governmental newspaper. All characteristics of the attack against Mironov tally with the old Soviet tradition that had taken ground anew in Russian politics (see Chapter 6). During the Soviet times, the kompromat campaigns always began with a tendentious open letter or article in *Pravda* and soon after the disclosure, the person was discredited and removed from his office.

However, the letter did not stop Mironov from cooperating actively with the European structures and criticising the Interior and Justice Ministry's actions. In December 2001, Mironov welcomed the visit by the European Committee for the Prevention of Torture to Russia by publicly claiming that torture by authorities continued to flourish in Russia, as the state authorities had completely disregarded his report's suggestions and personal appeals. All in all, Mironov showed remarkable independence of opinion given the low expectations at the start of his term. This attitude had its drawbacks: in autumn 2002

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<sup>345</sup> *Rossiiskaia Gazeta*, 2 December 2000.

<sup>346</sup> *Rossiiskaia Gazeta*, 16 December 2000.

<sup>347</sup> *Rossiiskaia Gazeta*, 2 December 2000.

<sup>348</sup> The letter was published on 16 December 2000 in *Rossiiskaia Gazeta* and it was signed by Ludmila Alexeeva, B. Borshchev, M. Poliakova, S. Pashin and L. Ponomarov – all well-known human rights activists.



Mironov complained in an interview that president Putin had only agreed to meet him once shortly after he had been elected president in 2000.<sup>349</sup>

It seemed that the targeted ombudsmen collaboration was successful in socialising, if not the whole of Russia, at least the ombudsman Mironov. Mironov, for his part, was clearly a novice entering an established institution with older members. His reports and comments also indicate that he truly wanted become an established member in the network and was, for instance, ready to interpret his membership on the board of the European Ombudsman Institute in May 2002 as a sign of his "growing authority within the network".<sup>350</sup>

This did not mean that they were like-minded on every question, but simply that there was a growth of shared meaning. Mironov also criticised international organisations. For example, the 2002 report of the human rights ombudsman takes a closer look at the evolving international human rights cooperation. In addition to many positive developments mentioned in the report, the ombudsman claims that there still exist a number of problems in the relationship. Mironov claims that the Russian ombudsman has supported countless suggestions by the CoE, but when he has made suggestions to the CoE – for instance on organising seminars on the development of democratic institutions in North Caucasus and issuing joint publications in the field of human rights – a "constructive reaction from the part of the Council of Europe has not followed".<sup>351</sup> The report urges that European cooperation should be more reciprocal and more institutionalised by nature. One cannot help but wonder if these words are a serious point of criticism or just directed to appease the domestic audience – especially when the ombudsman was a year before publicly accused of yielding to western demands. Nevertheless, the 2002 report mentions legal issues, the introduction of CoE norms and standards as well as established working methods in the field of human rights as the main areas of constructive cooperation.<sup>352</sup> The ombudsman has actively supported the introduction of European standards and ratification of many European human rights

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<sup>349</sup> Mironov's interview in *Moskovskie Novosti*, 5 September 2002.

<sup>350</sup> See 2002 annual ombudsman report: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2002 godu."

<sup>351</sup> *Ibid.*

<sup>352</sup> *Ibid.*

documents – including the abolition of death penalty and the ratification of European Social Charter – in his annual reports since 1999.

In summary, the highlight of the period between May 1998 and April 2003 was the fact that finally, after years of trying, the norm of the ombudsman institution was implemented on a practical level too, and institutionalisation of the practices could finally start. The norm was fulfilled formally by adopting constitutional guarantees and Federal Constitutional Law on the practical implementation of the norm. It was also enforced by consistent official discourse which never cast doubt on the goal of implementing the norm. The norm was also implemented in practice after Mironov was elected to become the first ombudsman recognised by law in May 1998. His term demonstrated that there were significant hurdles for the effective implementation of the norm, but also that significant results could be achieved through cooperation.

### *Evaluation*

After the 1998 economic crises, Russia's economic performance started improving considerably and this was further boosted by rising oil prices from the year 2000. Russia's structural position vis-à-vis the west and general self-esteem thus improved, and the asymmetry between Russia and the European organisations consequently further diminished. Otherwise the scope conditions remained the same as before.

European active involvement, mostly technical cooperation, close scrutiny and occasional pressure, appeared to finally have borne fruit. Russian policies were consistent at all levels now: legislation, discourse and practical implementation of the norm all met the European standards. The institutionalisation was still modest, and the implementation and independence of the institution were occasionally contested by political actors in Russia. Nevertheless, there was considerable progress on the matter. The European organisations were effective in reaching the goals they had set for themselves on the question of the institution of the ombudsman. The development in Russia reflected positively back to the European level: its implementation strengthened the European consensus and coherence of the norm. The process seemed clear-cut and there were no unintended effects.

The election of the ombudsman was the final missing piece in the puzzle of socialisation to the norm of the human rights ombudsman institution. Russia seemed to be on its way towards internalisation of the norm. Due to the lack of institutionalisation and habitualisation processes, Russia could not be considered to be at the stage of rule-consistent behaviour. The European non-confrontational, inclusive strategy seemed, nevertheless, to be bearing fruit.

### **Finally institutionalisation? 2004-06**

Mironov's five-year term ended officially in May 2003. The hope that the ombudsman institution had finally overcome its teething problems and become a non-politicised institution proved to be too optimistic a view. Once again, the election of the ombudsman reached a deadlock which could not be solved for almost a year, and the decision was eventually postponed to another Duma.

Finally the new Duma received a recommendation from President Putin to elect Vladimir Lukin, a liberal from the Yabloko party, as the new ombudsman in January 2004. The President's intervention was in conformity with the law on the ombudsman in which it is stated that the president, any member of the Federation Council, Duma or a Duma coalition may introduce candidates for the post of the ombudsman.<sup>353</sup> After Putin's intervention, the Duma managed to pull together on the matter and secure the required 300 votes for the election of Lukin. He was elected in February 2004 as Russia's second official ombudsman. This result was hardly a surprise since the newly-elected Duma was composed overwhelmingly of deputies from the party of power United Russia (*Edinaia Rossiia*) and other president-minded groups.<sup>354</sup>

The public speculation inspired by the election reflected the common mistrust, but also nascent hope, that many liberals felt towards Putin's leadership. On the one hand it was interpreted as a gesture of good will towards the liberals, who had just suffered a bitter defeat in the Duma elections in late 2003. Their leaders, including Vladimir Lukin himself, had lost their seats and found themselves totally marginalised in Russian

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<sup>353</sup> He should have, however, made the proposal within a month following the expiration of the previous ombudsman's term. See law *Ob Upolnomochennom po pravam cheloveka v Rossiiskoi Federatsii*.

<sup>354</sup> See, for example, *Izvestiia* 14 February 2004 and *Rossiiskaia Gazeta* 14 February 2004.

political life. On the other hand, Putin's decision was interpreted as proof that the president dominated every single political issue in Russia, and that nothing really happened without his initiative or approval. Some observers also feared that Putin may have been aiming to tame the opposition by means of a "divide and rule" strategy.<sup>355</sup>

Lukin's aims and values were much closer to CoE norms than Mironov's had been at the beginning of his term. However, observers were now more concerned that the teacher would be Putin and not the human rights commissioner in Strasbourg.<sup>356</sup> The first annual report of the ombudsman in 2004 seemed to confirm some of these fears. The new ombudsman was careful not to touch upon sensitive, political issues in his reports that could irk the authorities. A well-known human rights activist, Lev Ponomarov, claimed that Lukin "failed to address several key human rights issues and had apparently avoided giving his own view because he wanted to avoid political controversy"<sup>357</sup> Alongside major human rights concerns, the report complained about high oil prices and the commercialisation of national television.<sup>358</sup> This was widely interpreted as a populist attempt to reflect public concerns on non-political issues. The greatest share of complaints lodged by citizens concerned social issues, while one-third of complaints concerned illegal behaviour on the part of law-enforcing agencies. Unlike Mironov before him, Lukin has managed to develop close ties with President Putin. Reflecting new times, he presented his annual report first to Putin and only later to the Duma.<sup>359</sup>

However, the worst of the fears have not materialised. In fact, Lukin's second annual report was much firmer in its claims against the authorities, and it did not avoid more sensitive political questions either.<sup>360</sup> Lukin highlighted police violence, the growth in xenophobia and racist attacks, and state control of television in his second report. He even firmly stated that he would oppose any unfair restraints on campaigning in

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<sup>355</sup> *The Moscow Times*, 25 June 2004.

<sup>356</sup> Robert Coalson, "Analysis: Russia's Ombudsman Speaks Out," *RFL/RL*, 20 July 2004.

<sup>357</sup> *The Moscow Times*, 1 April 2005.

<sup>358</sup> See 2004 annual ombudsman report: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2004 godu," (Moskva: 2004).

<<http://www.ombudsman.gov.ru/doc/ezdoc/04.shtml>>.

<sup>359</sup> *Itar-Tass*, 1 March 2005.

<sup>360</sup> See 2005 annual ombudsman report: *Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii*, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2005 godu.", <<http://www.ombudsman.gov.ru/doc/ezdoc/05.shtml>>. For commentary, see for example *The Moscow Times*, 25 April 2006.

advance of the 2007 parliamentary elections.<sup>361</sup> Once again, one-third of the complaints concerned abuse by the police.<sup>362</sup> Despite the firmer line, Lukin has managed to maintain good relations with President Putin and other authorities. Although he has actively participated in the European ombudsman cooperation, he has constantly downplayed the significance of the international dimension, and responded coldly to western accusations regarding Chechnya, claiming that he cannot concentrate exclusively on the question of human rights violations in Chechnya.<sup>363</sup>

To sum up the progress on the issue: the ombudsman institution has succeeded in securing greater resources and its working appears to have developed positively in the direction of genuine professionalism. The institution has functioned in a smoother manner than during the tenure of Mironov, but it is difficult to judge the degree of institutionalisation: many of the steps forward might be due to the personality of Vladimir Lukin and not necessarily signs of long-term, institutionalised progress. Nevertheless, more and more Russians know about the institution and use its services, which is indeed a positive development and indication of institutionalisation gaining strength. The ombudsman institution is making progress in terms of independence, accessibility, cooperation and operational efficiency and its reputation among the populace.

### *Evaluation*

As before, the scope conditions for the implementation remained stable. There were only minor changes in environmental and domestic conditions when compared with the earlier period (of 1998-April 2003). The asymmetry and bargaining power of the European institutions diminished as a result of Russia's stabilisation and improving economic performance due to record-high oil prices. Also the domestic environment became increasingly unpluralistic, and defending human rights in an independent manner an even more delicate balancing act. Nevertheless, these changes did not seem to have a major impact on the implementation of the norm. The most significant steps had been taken before and now the train of the ombudsman institution remained running on its tracks. This may have been because the ombudsman holding the office was

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<sup>361</sup> Coalson, "Analysis: Russia's Ombudsman Speaks Out."

<sup>362</sup> Upolnomochennyi po pravam cheloveka v Rossiiskoi Federatsii, "Doklad o deiatel'nosti Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii v 2005 godu."

<sup>363</sup> Coalson, "Analysis: Russia's Ombudsman Speaks Out."

extraordinarily capable of carrying out the tasks even in an increasingly difficult atmosphere.

Once the norm was implemented in all respects, European pressure eased. The ombudsman network and technical assistance was kept in place, but political statements and pressure grew weaker. There did not seem to be any major threats to the norm, and European organisations could congratulate themselves for effective action. The continuous Russian implementation of the norm kept the Europe-wide consensus unbroken and further enhanced the coherence of the norm.

The development of the ombudsman institution in Russia continued to comply with the socialisation models' description. Russia had successfully adopted the norm both rhetorically, formally and practically. Russia was at the prescriptive status phase with institutionalisation and habitualisation already under way. It would be premature to claim that Russia had internalised the norm completely – only if the next round of ombudsman elections go smoothly can one begin contemplating the possibility of gradual internalisation of the European norm of the ombudsman institution.

## **5 Conclusion**

The development of the national human rights ombudsman institution has been an exasperatingly slow process with occasional lulls and standstills, yet it has been developing in the right direction. At the beginning the scope conditions for socialisation looked promising. The norm-specific conditions were relatively positive with high determinacy and adherence to this clearly specified norm. The norm enjoyed a low political profile which also pointed towards relatively easy implementation.

There was a growing asymmetry between the struggling Russia and the strong European institutions with high moral authority and superior bargaining power. Russia was actively looking for European examples and guidance on how to reform its domestic system. The European organisations, on the other hand, were eager to show the way and provide information and assistance for Russia. The international structure thus favoured the quick implementation of the norm of the ombudsman institution.

There have been some changes in the initial scope conditions for socialisation and – according to the literature – all of them have been mildly discouraging for socialisation. Domestically, the human rights issue has shown signs of severe politicisation, and the ombudsmen have needed extraordinary diplomatic skills to survive in the post. The atmosphere of growing statism and shrinking pluralism are unfavourable for the independence of the institution. In general, Russia has stopped looking exclusively towards Europe for inspiration, and started to emphasise its uniqueness as an international actor.

Despite these negative changes in scope conditions, the development in question has been slow but positive. European action seems to have been effective with very few unwanted consequences. The Russian ombudsman institution fulfils the European criteria and has been socialised to the European cooperation on the question. This has without a doubt contributed to the professionalism of the current ombudsman.

The development adheres to the socialisation model described in Chapter 1. The norm has been implemented in Russia with the encouragement and pressure from the European institutions. The discourse on the issue has developed in a manner that has been consistently supportive of such an institution. This discourse has led to major legislative reforms and, slowly but surely, to the practical implementation of the norm. Gradually, Russia moved from the phase of tactical concessions to the phase of prescriptive status. The process of tactical concessions and the processes of arguing and persuasion have been present in the norm adoption process with the latter taking over. Even when the scope conditions became unfavourable for norm implementation, progress on the implementation continued. This would imply successful socialisation to the norm and a gradual progression towards the internalisation of the norm through institutionalisation and habitualisation.

The potential problems outlined in Chapter 1 do not emerge with regard to the norm of the human right ombudsman in Russia. The norm's socialisation has been, despite its slow pace, straightforward: Russia has adopted the European norm as defined by the European institutions. Despite some problems, such as the politicisation of the human rights question, the norm has taken root in Russia. All sides of the development fulfil the criteria of prescriptive status of the norm: the legislation and constitutional

guarantees are there; the official discourse has never doubted the commitment to the norm, and even the practical implementation has overcome the hurdles in its way and fulfilled the European requirements for independence and effectiveness. The whole process has been about a one-way process of adaptation; the norm has been transferred from the international level to the Russian domestic level. The interpretation of the norm has been consistent and followed the European parameters. The process has progressed systematically through clearly defined stages of tactical concessions and prescriptive status. The internalisation of the norm and the stage of norm-consistent behaviour is likely to loom somewhere in the relatively near future. Hence the developments on the question of human rights ombudsman fit the socialisation model rather well.

The development in the case of the institution of an ombudsman presents a fairly uncontroversial picture of Russia as a member of the solidarist society in Europe. The norm of the ombudsman is a constitutive one; there is an extensive scheme of cooperation on the issue and the actors involved in the interaction comprise many non-state actors. The ombudsman meetings on a European level, country visits of CoE officials and public seminars promoting the norm are all examples of solidarism between Russia and European actors. There is a notion of the common good, and shared values are the very basis for European cooperation on the issue. There is naturally some tension between power and interests and the common European norm of the ombudsman institution, yet for the time being, solidarist consensus over the norm seems to prevail.



## CHAPTER 5

### NORM OF ABOLITION OF THE DEATH PENALTY

*This chapter looks at the ways in which the European organisations have promoted the European norm of abolition of the death penalty in Russia, and what kind of impact the cooperation has had since the late 1980s. The development is analysed against the theoretical discussion on scope conditions, impact and effectiveness of international cooperation, and the socialisation model outlined in Chapter 1.*

#### 1 Background to the Norm of Abolition

The death penalty, or capital punishment, is commonly defined as the legally authorised killing of someone as punishment for a crime.<sup>364</sup> States are divided into four groups according to their approach to the issue of the death penalty. The first group of states consists of abolitionist states whose law does not provide for the death penalty for any crime. There is considerable consensus on the norm: all European Union member states have abolished the death penalty for all crimes apart from Latvia. The second category consists of states, which are abolitionist for ordinary crimes. Their laws provide for the death penalty only for exceptional crimes such as military crimes or crimes committed during wartime.<sup>365</sup> The third group consists of de facto abolitionist states: their law retains the death penalty but in practice they have not applied capital punishment during the past ten years or more, or they have made an international commitment not to carry out executions. The Russian Federation is currently the only CoE member state which belongs to this group of states. The fourth group of states is retentionist with regard to the death penalty. These states retain and use the death penalty for ordinary crimes. However, there is great variation within this group as regards the frequency of the application of the death penalty. It may be part of the common judicial practice or it may be a highly rare measure reserved for truly exceptional crimes.<sup>366</sup>

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<sup>364</sup> This is the definition of capital punishment in the Concise Oxford English Dictionary at Oxford Reference Online, Oxford University Press <<http://www.oxfordreference.com/>>.

<sup>365</sup> Latvia belongs to this group of states. The categorisation outlined here is a standard one in the literature on the death penalty and used, for example, by Amnesty International. See up to date lists of abolitionist states and states in categories at <<http://web.amnesty.org/pages/deathpenalty-countries-eng>>.

<sup>366</sup> Carsten Ankar, *Determinants of the Death Penalty: A Comparative Study of the World* (London: Routledge, 2004), pp. 4-5.

The movement to abolish the death penalty has its roots in the humanistic ideas of the Enlightenment in the second half of the 18th century. The abolitionist ideas of Montesquieu and Cesare Beccaria were highly influential in Russia. Beccaria's essay *On Crimes and Punishment* (1764), in which he advocated the replacement of criminal systems based on vengeance with a fairer, graded system of penalties based on proportionality and greater certainty, led to the abolition of the death penalty for ordinary crimes in Tuscany and Austria. The Russian empress Elizabeth, who suspended the application of the death penalty during her rule, was also known for her great admiration of Montesquieu's *Spirit of Laws* (1748).<sup>367</sup>

Nevertheless, it was not until the late 19th century that the abolitionist movement gathered ground on a larger scale. Latin America and Europe became the two centres of the abolitionist movement which saw the use of the death penalty as uncivilised and cruel practice. Venezuela was the first state to abolish the death penalty for all crimes in 1863. In the following years Costa Rica, Ecuador, Uruguay and Columbia also all abolished the death penalty. In Europe, San Marino became the first completely abolitionist state in 1865. Romania soon followed its example.<sup>368</sup> For decades these two states were the only completely abolitionist states in Europe. A few countries – the Netherlands, Portugal, Norway, Sweden and Iceland – abolished the death penalty for ordinary crimes before the Second World War.<sup>369</sup> Outside Latin America and Europe the abolitionist movement has gained strength only from the 1980s.<sup>370</sup>

In general, there are clear regional patterns in the attitude towards, and the use of, capital punishment. It is widely in use in Asia and Africa, whereas Europe is by and large abolitionist. Most Latin American states have abolished the death penalty for all crimes, but many small states in the Caribbean are still retentionist. Oceania has traditionally had a restrictive attitude towards the application of the death penalty; some of the smaller states still retain death penalty in law but none of them do so in practice. North America has been split on the issue: Canada is proud to be an abolitionist state,

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<sup>367</sup> See, for example, Roger Hood, "Capital Punishment: A Global Perspective," *Punishment and Society* 3, no. 3 (2001): p. 332.

<sup>368</sup> Capital punishment was reinstated in Romania in 1939.

<sup>369</sup> The Netherlands abolished the death penalty in 1870, Portugal in 1867, Norway in 1905, and Sweden in 1921. Iceland became an abolitionist state for all crimes in 1928.

<sup>370</sup> Anckar, *Determinants of the Death Penalty: A Comparative Study of the World*, pp. 17-20.

but in the United States the death penalty is even more widely in use today than it was twenty years ago.<sup>371</sup>

Despite regional differences, there is a fairly global long-term trend towards more restrictive use of the death penalty and its abolition. The number of abolitionist states has significantly increased since the mid-1980s. During the period from 1991 to 2003, 35 states abolished the death penalty. In 2006, there were altogether 88 abolitionist states for all crimes and 11 for ordinary crimes in the world.<sup>372</sup>

## 2 Abolition of the Death Penalty as a European Norm

Since the mid-1980s, Europe has acted as a global pioneer in the development of the norm of abolition of the death penalty. The current European abolitionist norm includes abolition of the death penalty both in practice and in law.<sup>373</sup> There is a strong trend towards complete abolition of the death penalty, without any exceptions. However, the formal, regional judicial norms lag slightly behind. In 1983, the CoE accepted the Protocol No. 6 to the ECHR concerning the abolition of the death penalty for ordinary crimes.<sup>374</sup> The protocol did not rule out the possibility of using death penalty during war for military crimes. Ratification of the Protocol No. 6 is required by all CoE member states.<sup>375</sup> However, in 2002 the CoE accepted Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances.<sup>376</sup> This means that the law does not provide for the death penalty for any crime, not even for military crimes or crimes

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<sup>371</sup> Ibid.

<sup>372</sup> In addition there are 30 states which have been abolitionist in practice for 10 years or more and/or have signed international agreements banning the death penalty. See <http://web.amnesty.org/pages/deathpenalty-countries-eng>.

<sup>373</sup> See Renate Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," in *The Death Penalty: Abolition in Europe* (Strasbourg: Council of Europe, 1999), p. 56.

<sup>374</sup> The protocol was opened for signatures on 28 April 1983. Twelve of the then 21 members signed the protocol on that day. It entered into force with five ratifications on 1 March 1985.

<sup>375</sup> Hans Christian Kruger, "Protocol No. 6 to the European Convention on Human Rights," in *The Death Penalty: Abolition in Europe* (Strasbourg: Council of Europe, 1999), pp. 70-71.

<sup>376</sup> Council of Europe, *Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in All Circumstances*, 3 May 2002, CETS No. 187.

committed during wartime. 36 of CoE's 46 member states have already ratified it and 8 member states are expected to ratify it soon.<sup>377</sup>

The European norm is thus tied to the formal abolition; de facto abolitionism is not considered enough. The norm is based on the idea that the death penalty is not an issue of the criminal justice system of every sovereign state, but an international issue of human rights. It is often also compared with torture, and seen as an inhuman and degrading punishment within the meaning of the Article 3 of the ECHR.<sup>378</sup>

However, this norm has only emerged in earnest since the end of the Cold War. The Universal Declaration of Human Rights (1948), ECHR (1950) and the International Covenant on Civil and Political Rights (1960) all recognised the right to life, but before the 1980s, the death penalty was still considered to be an internal matter of sovereign states. The original text of the ECHR explicitly states that the death penalty may be applied by states under certain conditions.<sup>379</sup>

NGOs and parliamentarians played an important role in the emergence of the European norm of abolition of the death penalty. The traditional sovereignty-based interpretation began to be questioned by international non-governmental human rights organisations such as the Amnesty International and the Parliamentary Assembly of the Council of Europe (PACE) during the 1970s and 1980s. In 1973, the PACE presented a motion for a resolution on the abolition of capital punishment. It was followed by the establishment of the post of Special Rapporteur on the issue but the work was later suspended. Only in 1979 the Legal Affairs Committee took the question into consideration and appointed a new rapporteur. Based on this report, the PACE passed a resolution and recommendation on the issue on 22 April 1980. The decision led to the drafting of the Protocol No. 6 to the ECHR concerning the abolition of the death penalty for ordinary crimes. The protocol was opened for signatures on 28 April 1983. Twelve of the then 21

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<sup>377</sup> The current situation can be checked on the web pages of Amnesty International, <<http://web.amnesty.org/library/index/engACT500032006>>.

<sup>378</sup> See, for example, Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," p. 55. Wohlwend is a member of the Liechtenstein delegation to the Parliamentary Assembly of the Council of Europe.

<sup>379</sup> See Article 2 (1), *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

members signed the protocol on that day. It entered into force with five ratifications on 1 March 1985.<sup>380</sup>

Protocol No. 6 to the ECHR is the first agreement under international law containing a legal obligation to abolish the death penalty during peacetime. It does not oblige states to introduce national legislation, but instead directly prohibits capital punishment. States are not allowed to make reservations when ratifying the Protocol. Furthermore, the protection against capital punishment is unconditional and cannot be suspended by Article 15, which allows measures derogating from its obligations under the ECHR on the basis of war or public emergency that threatens the life of the nation. Protocol 6 is also subject to the formal conditions of denunciation: the denunciation is possible only after the expiry of five years from the date on which it became a party to it, and after six months' notice to the Secretary General of the CoE.<sup>381</sup>

This early discussion on the abolition of the death penalty within the CoE involved only its western European member states. However, with the new thinking and the easing of the Cold War, the socialist states also began to engage in the debate on capital punishment that took place within the CSCE framework. The topic was included on the agenda of the 1989 Vienna Follow-up Meeting, and the concluding document mentioned that the participating states should use capital punishment only for the most serious crimes and in accordance with the law and not contrary to their international commitments. The issue was further considered in the 1990 Copenhagen Meeting of the Conference on the Human Dimension in which the states promised to publish and exchange information on the application of the death penalty. The following 1991 Moscow Meeting on the Human Dimension and the Helsinki and Budapest CSCE Summits mentioned the topic of the death penalty. Reflecting the C/OSCE's heterogeneous nature, the OSCE is even today more lenient on the issue of the death penalty than the CoE and the EU. The OSCE encourages discussion on the topic, requires more a transparent and humane application of it and promotes the goal of abolition. Since 1999, the OSCE's Office for Democratic Institutions and Human Rights has published an annual review on the use of the death penalty in which the international standards and the use of the death penalty by OSCE states are studied. The

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<sup>380</sup> Kruger, "Protocol No. 6 to the European Convention on Human Rights," p. 70.

<sup>381</sup> *Ibid.*, pp. 70-71.

data in the report comes from the participating states themselves.<sup>382</sup> Nine of the OSCE's 55 member states continue to retain the death penalty in some form.<sup>383</sup>

After the collapse of communism, the CoE has played a significant role in promoting the international norm of the abolition of the death penalty in Central and eastern Europe. The abolition – or at least immediate moratorium and a commitment for its legal abolition by ratifying the Protocol No. 6 – of capital punishment became a precondition for joining the CoE in June 1994. At that time, the CoE also called for all its de facto abolitionist member states to abolish the death penalty in law.<sup>384</sup> Legal guarantees – and in particular the ratification of the Protocol No. 6 and Protocol No. 13 – naturally makes the change in national policies less likely. In addition to this practical justification, the formal, legal abolition of the death penalty holds significant symbolic value. It is not only a practical question of a state not applying the death penalty, but essentially a question of identifying oneself with the European abolitionist states and the values and norms that they uphold.<sup>385</sup>

The development of the norm within the EU structures also reflects these general trends. When Protocol No. 6 to the ECHR entered into force on 1 March 1985 only nine of the then fifteen EU member states had abolished the death penalty for all crimes. However, with the end of the Cold War, human rights became one of the cornerstones of European policy, both internally and externally.<sup>386</sup> After the Cold War, the European Parliament also started to push for greater respect for human rights and campaigned for the abolition of the death penalty by member states. The new commitment to human rights was reflected in the Treaty of Amsterdam in 1997. Its final act included a declaration on the EU commitment to the abolition of death penalty.<sup>387</sup> Today, all the EU member states apart from Latvia have abolished the death penalty for all crimes, and most of

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<sup>382</sup> See information at <[http://www.osce.org/odihr/item\\_2\\_224.html?print=1](http://www.osce.org/odihr/item_2_224.html?print=1)>.

<sup>383</sup> Only Belarus, the US and Uzbekistan are completely retentionist. The figure includes de facto abolitionist (such as Russia) as well as partly abolitionist states (such as Latvia and Albania, which have adopted protocol no. 6 to the ECHR). More information available at <<http://www.osce.org/odihr/13754.html>>.

<sup>384</sup> Council of Europe, Parliamentary Assembly, *Recommendation on the Abolition of Capital Punishment*, 1246 (1994).

<sup>385</sup> Rick Fawn, "Death Penalty as Democratization: Is the Council of Europe Hanging Itself?," *Democratization* 8, no. 2 (2001): p. 69.

<sup>386</sup> Manners, "Normative Power Europe: A Contradiction in Terms?," p. 247.

<sup>387</sup> *Ibid.* See also Smith, *European Union Foreign Policy in a Changing World*, p. 106.

them have done so through ratification of Protocol No. 13. The EU adopted Guidelines for EU Policy toward Third Countries on the Death Penalty in June 1998 and has also actively campaigned for the ratification of CoE protocols on the abolition of the death penalty in the EU member states and outside the EU.<sup>388</sup> The EU's statement in 2003 is an illustrative example of the common efforts of the European organisations in the question of abolition of the death penalty. The Union urges:

"Member States of the Council of Europe, who have not yet done so, to sign Protocol 13 and to ratify Protocol 6 which abolishes the death penalty in times of peace. [...] The European Union reiterates its longstanding and firm position against the use of the death penalty in all circumstances – a punishment, which we believe impairs the human dignity, increases the level of brutality and provides no added value in terms of deterrence."<sup>389</sup>

The current European norm – as defined by the CoE and the EU – is thus the complete practical and legal abolition of the death penalty. However, for Russia the formal requirement remains the ratification of Protocol No. 6, although most European states are experiencing growing pressure to abolish the death penalty for all crimes by ratifying Protocol No. 13.

Evaluating the scope conditions around the case of abolition of the death penalty, one may note that the norm-specific conditions are generally favourable for norm adaptation. The norm has been defined in a clear manner in various legal documents. There are two legally binding documents (Protocol No. 6 and No. 13) which both the EU and the Council of Europe actively promote in CoE states. Hence the determinacy of the norm is very strong. Clearly-worded, legally binding documents also imply that the requirement for symbolic validation is high. Likewise, the coherence and consensus on the norm are high in today's Europe. The requirement for abolition is the same for all CoE members. Also, the practical implementation of the norm is coherent: all other CoE states have ratified protocol No. 6 to the ECHR at the very least; most of them have also abolished the death penalty completely from their national law, and have in many cases

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<sup>388</sup> European Union, Council of the EU, *Guidelines to EU Policy Towards Third Countries on the Death Penalty*, 3 June 1998.

<sup>389</sup> European Union, Council of the EU, *Declaration by the Presidency on Behalf of the European Union to Mark the Entry into Force of Protocol No. 13 to the European Convention on Human Rights, Concerning the Abolition of the Death Penalty in All Circumstances*, 14 July 2003, Doc. 11249/03, P 83/03. *Declaration by the Presidency on Behalf of the European Union to Mark the Entry into Force of Protocol No. 13 to the European Convention on Human Rights, Concerning the Abolition of the Death Penalty in All Circumstances*.

ratified Protocol No. 13. Finally, adherence to the norm is strong; a clear norm hierarchy has been established. Practical abolition of the norm is considered insufficient - it must be done following certain, formalised procedures, that is, the ratification of the Protocols No. 6 and 13. Hence, according to Franck's criteria, there should be a strong pull to adopt and implement the norm in practice by the CoE member states.<sup>390</sup> Even though executions are cheaper than long prison sentences, the implementation of the norm would not require extensive resources from a country like Russia where the death penalty was applied restrictively in any case.<sup>391</sup> The only condition that implies potential difficulties in the socialisation process is the high political profile of the norm.

### **3 European Promotion of Abolition of the Death Penalty in Russia**

As described earlier, the early post-Cold War east-west discussion on abolition of the death penalty took place almost exclusively within the CSCE. However, the CoE and the EU later took the lead on the abolition of the death penalty campaigning and the C/OSCE has moved into the background. The abolition issue is not a high priority one for the OSCE and its modest strategy attempts to invoke primarily argumentative rationality. Russia is vaguely expected to socialise the norm through regular discussion on the topic and gradually becoming socialised to the normal practices of the majority of the OSCE states. The methods are very delicate and soft, persuasion being the strongest of the methods used. Pressure and coercion are not used and, in general, the engagement level on the issue is low. The low level of engagement is justifiable on the basis of low leverage on the issue. Action against the death penalty is difficult in an organisation whose members include strongly retentionist states such as the US.

By applying for CoE membership in 1992, Russia committed itself to the requirements that came with it. The abolition of the death penalty was on the membership agenda from 1994 onwards, but in 1995 the CoE announced that it would request Albania, Moldova, Ukraine and Russia to enter the same commitment regarding the death penalty: namely, "to sign within one year and ratify within three years from the time of

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<sup>390</sup> Franck, *The Power of Legitimacy among Nations*, pp. 91-134.

<sup>391</sup> According to the CoE, in 1993 Russia executed 3 persons and in 1994 10 people. See Council of Europe, Parliamentary Assembly, *Opinion: Russia's Application for Membership of the Council of Europe*. The last year of executions was, however, exceptional. According to Anatolii Pristavkin, Russia executed 139 prisoners from 1995 to 1996. Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," p. 133.



accession Protocol No. 6" to the ECHR.<sup>392</sup> Russia's progress towards the implementation of the membership conditions was scrutinised closely by the CoE. Russia was accepted to become a CoE member state in February 1996 although it still applied the death penalty. It was nevertheless fundamentally clear to all parties that no executions were to be carried out after the accession. On the day of the accession, the Russian leadership promised to comply with the CoE requirements: to suspend executions from that date onwards and to ratify Protocol No. 6 in three years time.<sup>393</sup>

Thus, in the early 1990s, the CoE was in a very good position to influence Russian policies on the death penalty (and on human rights in general). Russia wanted to become a member and was willing to be judged by the same standards as everyone else in the CoE. There was a strong asymmetrical relationship between the actors. The organisation was an authoritative institution, and Russia wanted its recognition and to become a member in the organisation of European democracies. The CoE had strong bargaining power on human rights, and its engagement level was high on the issue. Its policy on the death penalty aimed at invoking all three mechanisms of change: bargaining and instrumental rationality, persuasion and argumentative rationality, as well as the institutionalisation of norms in Russia. The CoE lost its most efficient material bargaining tool, namely pre-membership conditionality, with Russia's accession. After 1996, the organisation employed instruments such as monitoring, discussion and debate, moral shaming and in practice limited post-membership conditionality. In principle, it can still adopt coercive methods but they are always difficult to employ in practice.

The CoE's more specific policy instruments target many levels. Through its assistance and education programmes, the CoE has aimed at convincing Russian authorities that abolition is in Russia's own interests and that it is possible also in financial and practical terms. The CoE's educational and informational work has revolved around the provision of information to Russian officials about research on the death penalty and engaging in dialogue with them. It has organised conferences and seminars in which it has tried to convince Russian officials and public opinion over the fact that capital punishment has

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<sup>392</sup> *Opinion: Russia's Application for Membership of the Council of Europe*; Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," p. 57.

<sup>393</sup> Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership of the Council of Europe*.

statistically insignificant deterrence value and that no abolitionist state has experienced a sudden and serious change in the curve of crime following its abolition.<sup>394</sup>

The CoE and the EU launched a joint public awareness campaign on the issue of the death penalty at a cost of EUR 670 000 over two years to provide information for the general public, legal experts and parliamentarians in Albania, Turkey, Russia and the Ukraine in 1999. Assistance for initiatives aimed at abolition of the death penalty is one of eight key priorities of the EIHRD in Russia.<sup>395</sup> The Common Strategy of 1999-2004 mentioned the death penalty as one of the main areas of EU assistance. The EU sought to:

"[...support] Russian efforts to meet its international human rights commitments including those to the Council of Europe, the UN and the OSCE, and by promoting joint EU-Council of Europe activities regarding Russia in the fields of the rule of law and human rights; by giving assistance in safeguarding human rights, including those of women, children and minorities, and by enhancing programmes to promote the abolition of the death penalty."<sup>396</sup>

The PCA does not mention the death penalty, nor does it contain any references to CoE obligations for the simple reason that Russia was not a member of the CoE when the treaty was negotiated. Nevertheless, the EU has called Russia to abolish the death penalty by ratifying Protocol No. 6 to the ECHR many times.<sup>397</sup> The EU has established confidential human rights consultations with Russia, and has tried to convince Russia on the fundamental importance of ratifying Protocol No. 6 in these confidential semi-annual meetings.<sup>398</sup> The first such meeting took place in March 2005.

The EU thus attempts to invoke the logic of arguing through moral shaming, discussion and political pressure. It has few instruments at its disposal, and has therefore opted to collaborate with the CoE on the issue. Although the EU is clear on the issue and is

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<sup>394</sup> Wohlwend, "The Efforts of the Parliamentary Assembly of the Council of Europe," pp. 58-60.

<sup>395</sup> European Union, "Supporting the Development of Civil Society in Russia: European Union Support for Strengthening Democracy and Human Rights in Russia at Grass-Roots Level," p. 7.

<sup>396</sup> European Union, Council of the EU, *Common Strategy of the European Union on Russia*, 4 June 1999, 1999/414/CFSP.

<sup>397</sup> See for example European Union, *Declaration by the Presidency on President Putin's Statement Supporting the Abolition of the Death Penalty in the Russian Federation*, 17 July 2001, PESC/01/127.

<sup>398</sup> This was confirmed by a Finnish foreign ministry official who had taken part in the human rights consultations three times (as a representative of the EU troika). Private correspondence with a Finnish foreign ministry official, 8 December 2006.

active, its position on the question of abolition vis-à-vis Russia is weak. There is an asymmetrical relationship between the actors, but the EU still has very little bargaining power as Russia is not a member, nor does it want to be a member of the EU. Russians often view the EU as an external actor who should not have any say in Russian matters. Its attempts to influence internal developments in Russia are often met with suspicion.

In summary, the European institutions have required (CoE), actively promoted (the EU and the CoE), and encouraged (OSCE) Russia to abolish the death penalty in practice and in law through various means since the early 1990s. According to the EU and CoE, this should be done by ratifying Protocol No. 6 or No. 13 to the ECHR. The EU and CoE have made their stance on the issue well known: Russia should adopt the European norm of abolition in order to show its commitment to common European values. Russia is to be treated as any other European state that is an applicant or member of the CoE and a close strategic partner with the EU.

The scope conditions at the international level were initially very promising for norm adaptation. There was a strong asymmetry between Russia and the organisations, and the moral authority of the Council of Europe in particular was high on the issue. The material bargaining power of the CoE was similarly superior after the Russian Federation's application for its membership in 1992.

## **4 Developments in the Soviet Union and Russia**

### **Historical roots**

The death penalty has long historical roots in Russia. It has been included in all written law collections ever since the 14th century. Traditionally, the death penalty was used against thieves, while homicides were customarily dealt with through blood vengeance by the relatives of the victims. The function of the death penalty was to maintain order in society and respect for property, and to warn other subjects of the consequences of misbehaving. The system of punishment and the process of execution became increasingly harsh with the consolidation of the centralised Russian state and the introduction of written laws.<sup>399</sup>

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<sup>399</sup> Alexander S. Mikhlin, *The Death Penalty in Russia* (London: Simmonds & Hill Publishing and Kluwer Law International, 1999), pp. 10-13.

The legal norms were further developed in the Military Articles of 1715. This was the first attempt to systematise criminal law norms in Russia, and Peter I supervised the work himself. The collection developed the ideas of vengeance further, and expanded the application of the death penalty: more than one hundred types of crimes could be punished by the death penalty.<sup>400</sup>

However, the time of the enlightenment reversed the harshening trend in the application of the death penalty. Its application was suspended during the reign of Empress Elizabeth (Empress 1741-62), marking Russia as the first country in Europe to do so. The courts continued to apply it, but no executions were – at least officially – carried out during her rule.<sup>401</sup>

Catherine II (Empress 1762-96) was similarly drawn towards the liberal ideas of the enlightenment. She was a great admirer of Montesquieu and, while she was not ready to abolish death penalty altogether, she did call for limitation in the application of the death penalty. She published a book laying out her vision of the ideal state, and set up a legislative commission to work on the basis of the book. The commission was, however, disbanded in 1768 without any concrete results, and Catherine's progressive ideas had no impact on prevailing practices.<sup>402</sup>

The 19th century witnessed a downward trend in the application of the death penalty, a development which corresponded with general European developments at the time. The 1832 Digest of Laws allowed death penalty as a punishment for grave crimes against the state and certain other types of crime. Its application was relatively restricted, but at the same time harsh corporal punishments continued to be used widely and in practice these punishments often led to the death of the convicted person. Nevertheless, by the mid-19th century, a lively debate on the death penalty existed among Russian intellectuals and scholars. This discussion closely followed wider European philosophical trends of

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<sup>400</sup> Ibid., p. 13.

<sup>401</sup> Corporal punishment was used in overcrowded prisons and a big proportion of the convicts did not survive the punishment and hence non-execution was more formal than practical.

<sup>402</sup> It did not stop the crimes against the state being harshly punished and more than twenty thousand participants of the Pugachev Uprising (1773-74) being sentenced to death. See Mikhlin, *The Death Penalty in Russia*, pp. 13-14.

the day. The advocates of abolition referred to general principles of humanity and the idea of Russia as a civilised state that needed a criminal system based on the correctional nature of the punishments.<sup>403</sup> There were increasing restrictions in the application of the death penalty. The Statute on Criminal Procedure (1864) laid out specific procedure for the appeal of death sentences, the pardoning of convicted persons and the execution of judgements. Reflecting ideas of humanity and "civilised behaviour", the death penalty was carried out as a rule by non-public hanging. The figures decreased significantly over the years: in the late 19th century only 10-50 people were sentenced to death annually.<sup>404</sup>

The trend towards greater regulation and limitation of the application of the death penalty continued in the 20th century. The Criminal Code of 1903 retained capital punishment for a limited number of political crimes. It also introduced "humanistic" limitations to its execution – pregnant women and adolescents were excluded from its application.

However, the downwards trend was soon interrupted by turbulent political events. The use of the death penalty increased during the revolution of 1905-06: the figures are likely to have risen up to thousands annually.<sup>405</sup> Despite this, the progressive ideas and abolitionist spirit was strong in Russian society. Both the first and the second State Duma adopted laws on the abolition of death penalty (in 1906 and in 1907 respectively) but on both occasions the more conservative Senate Council refused to confirm the abolition.

New momentum for the abolition arrived with the bourgeois revolution in February 1917.<sup>406</sup> In March 1917, the Provisional Government abolished the death penalty for the very first time in Russian history. However, the government decided to restore the death penalty as early as July of the same year in order to retain some order in a state on the

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<sup>403</sup> See *Ibid.*

<sup>404</sup> *Ibid.*, p. 15.

<sup>405</sup> See *Ibid.*

<sup>406</sup> February comes from the Julian calendar (O.S.) that was used in Russia at the time. The revolution took place in March by the Gregorian calendar (N.S.) in use today.

verge of collapse. This did not prevent the October Revolution from taking place later that year.<sup>407</sup>

### **The Soviet rule**

The death penalty was always a controversial issue for the Soviet state. It was considered to be incompatible with socialist ideals but remained widely in use in everyday practice. Due to this contradiction, its provisional character was constantly stressed in law. During the Soviet rule, capital punishment was abolished altogether three times but was quickly reinstated each time.<sup>408</sup>

The first attempt to abolish the death penalty came as early as 26 October 1917 (O.S.) by the Decree of the All-Russian Congress of the Soviets. However, the abolition was reversed very soon: in February 1918 (N.S.) the Council of People's Commissars issued a decree entitled "The Socialist Fatherland in Danger" which authorised the Cheka<sup>409</sup> to carry out shootings even without a court for a wide range of crimes: for the commission of crimes by enemy agents, speculators, pogrom organisers, hooligans, counter-revolutionary agitators, and German spies, to name just a few. In practice, the vague formulations gave the Cheka unlimited powers to carry out arbitrary killings. The application of the death penalty was further specified in a decree of the People's Commissariat of Justice of the RSFSR on 16 June 1918. It stated that death sentences could be passed by troikas or five-person boards of the Cheka on the basis of "revolutionary consciousness". These sentences were not subject to appeal.<sup>410</sup>

The second attempt to renounce the death penalty came in January 1920 in the Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR.<sup>411</sup> Once again, only seven months later the abolition was cancelled and dangerously open-ended rights were given to revolutionary tribunals.

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<sup>407</sup> October (O.S.) and November (N.S.).

<sup>408</sup> Mikhlin, *The Death Penalty in Russia*, pp. 17-18.

<sup>409</sup> Cheka stands for the Soviet secret police called All-Russian Extraordinary Commission for Combating Counter-revolution and Sabotage (Vserossiiskaia chrezvychnaia komissia po bor'be s kontrevoliutsiei i sabotazhem, VChK) that existed from 1917 to 1922.

<sup>410</sup> Mikhlin, *The Death Penalty in Russia*, pp. 17-18.

<sup>411</sup> In Ukraine the death penalty was retained.

In the first RSFSR Criminal Code of 1922, the death penalty was declared to be a provisional measure that would operate "until its repeal by the All-Russian Central Executive Committee" (Article 33). The provisional nature of the death penalty was also stressed in the 1924 Fundamental Principles of Criminal Legislation of the USSR and the Union Republics (Article 13[2]) and the 1926 RSFSR Criminal Code (Article 21).<sup>412</sup> The 1926 Criminal Code narrowed the scope for the application of the death penalty and can be seen as sign of gradually increasing stability in society.

Despite growing stability, extrajudicial shootings were applied extensively in the 1930s. The People's Commissariat for Internal Affairs (NKVD)<sup>413</sup> is infamous for executing hundreds of thousands people during the repression of the 1930s. Alongside extrajudicial killings, the judicial application of the death penalty was expanded. This mass repression was based on the theory of intensification of the resistance of the overthrown classes, which did not reflect the Soviet reality.

On 29 May 1947, the Presidium of the USSR Supreme Soviet passed an edict "On the Abolition of the Death Penalty". In the letter, it abolished capital punishment during peacetime and replaced the death penalty by the deprivation of freedom for 25 years. The sincerity of this proposal is doubtful: even during the period of formal abolition, a secret directive secured the behind the scenes application of executions by a special court of the Ministry of State Security.<sup>414</sup> The abolition is perhaps best interpreted as a classic case of Soviet propaganda; it served the goal of attracting positive international publicity for the "progressive" nature of Stalin's Russia. In a most peculiar episode, the Soviet delegation submitted a proposal to abolish the death penalty in all states at the UN General Assembly in 1949. Nevertheless, even the façade of the abolition crumble soon: in 1950 the formal prohibition of the death penalty was repealed.<sup>415</sup>

The 1960 Criminal Code retained the death penalty but stressed its provisional character. It claimed that the death penalty was "a temporary and exceptional measure of punishment which is temporarily applied pending its complete abolition and only for specific and extremely dangerous offences, which threaten the foundations of the

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<sup>412</sup> Mikhlin, *The Death Penalty in Russia*, p. 17.

<sup>413</sup> *Narodnyi komissariat vnutrennih del.*

<sup>414</sup> *Ministerstvo gosudarstvennoi bezopasnosti.*

<sup>415</sup> Mikhlin, *The Death Penalty in Russia*, p. 21.

structure of the state and society and which are committed under especially aggravated circumstances".<sup>416</sup>

Since the October Revolution, the Soviet legislation reflected the ideological and propagandist desire to abolish the death penalty, but the repressive state system clearly needed such an extreme measure in order to survive in power. Therefore, the numerous bans were always short-lived and their practical application was always weak.

Some debate on the death penalty existed in the margins of society from the 1960s onwards. Liberal dissidents such as Andrei Saharov and Sergei Kovalev spoke out against capital punishment in the 1960s, but their views were little known outside the dissident circles. Even the statistics on its application were classified at the time.<sup>417</sup> This state of affairs began to change gradually during the perestroika years of the late 1980s. Glasnost made public debate possible on the issue, and there were also attempts to limit the application of capital punishment. The Soviet Union excluded economic and other non-violent crimes from the list of crimes, which could be punished by the death penalty. However, the list still remained rather long with 24 different crimes. In practice, nonetheless, it was already the norm that capital punishment was considered only for homicides and some especially grave infringements on the life of a person.<sup>418</sup>

In the public domain, many members of the so-called intelligentsia started to actively promote the idea of a more civilised criminal system and the abolition of the death penalty. References were regularly made to the European abolitionist example.<sup>419</sup> The liberal discourse highlighting humanistic ideals was dominant for a while, but as the debate heated up, the general public's distaste for abolition became increasingly apparent. In 1987, the Soviet State granted a general amnesty for nearly all convicts on death row in the name of the 70th anniversary of the October Revolution. The event

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<sup>416</sup> Criminal Code, Article 23. Cited in Roger Hood, *The Death Penalty: A Worldwide Perspective*, 3rd ed. (Oxford: Oxford University Press, 2002), p. 28.

<sup>417</sup> According to the records published at the beginning of the 1990s, about 21000 people were executed in the Soviet Union from 1962 to 1990. See Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," p. 131.

<sup>418</sup> Mikhlin, *The Death Penalty in Russia*, pp. 21-22.

<sup>419</sup> See for example *Nedelia*, 19-25 October 1987, *Moskovskaia pravda*, 17 May 1987, *Ogonok*, no. 33, August 1987.



stirred up emotions and ordinary people wrote passionately to papers in defence of harsh punishments and against the measure taken by the government.<sup>420</sup>

At the turn of the decade, the views expressed in newspapers started to reflect increasingly the concerns of the public, rather than the ideals of the liberal elite. The fight against organised crime was often given as the reason for the retention of the practice of capital punishment. New information appeared in the form of opinion polls on the issue, as well as statistics on the application of the death penalty in the Soviet Union.<sup>421</sup> In the concluding document of the 1990 Copenhagen Human Rights Meeting, the participating states promised to "exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty".<sup>422</sup> In April 1991, the statistics on the application of the death penalty in the Soviet Union were finally published in their entirety. The statistics indicated a clear decrease in the number of executions in the late 1980s.<sup>423</sup> To summarise, there was a clear trend towards the restriction of, and openness on, the use of the death penalty during the final years of the Soviet Union. The Soviet Union also showed willingness to cooperate with the European organisations on the issue.

### *Evaluation*

During the Soviet rule, the international scope conditions were not particularly favourable for socialisation to European norms by the Soviet Union. The international system was based on the competition of the east and the west, and even though the Soviet-led eastern bloc was arguably weaker than the US-led western bloc, there was insufficient asymmetry to encourage socialisation. The Soviet Union had a distinctive identity based on socialist ideology and an acknowledged status as one of the two superpowers. The prospects for cooperation were weak. In addition to the UN, the CSCE process was the first institution to encourage dialogue on norms such as abolition of the death penalty. Nevertheless, the CSCE had very limited leverage on such sensitive issues as the death penalty, in particular because it lacked a common view on the issue. Within the CSCE, the US position on the death penalty was in stark contradiction with the European abolitionist aspirations.

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<sup>420</sup> *Ogonok*, no. 33, August 1987 and *Ogonok*, no. 49, December 1987.

<sup>421</sup> Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," p. 131.

<sup>422</sup> See *Izvestiia*, 1 October 1990, 17 January 1991 and 5 April 1991.

<sup>423</sup> Mikhlín, *The Death Penalty in Russia*, p. 65.

The international structure started to change in the late 1980s when a new asymmetry started to emerge as the Soviet Union sought to join the "common European home". There was a growing sense of urgency to find new solutions to the chronic problems of the state systems in the eastern bloc. Since socialism itself seemed to be unable to meet the modern challenges, it was only natural to look to western Europe for guidance. The European organisations were quick to adapt themselves to the new situation and were soon both willing and capable to assist the Soviet Union/Russia in its reforms.

However, the cooperation on the question of the death penalty remained modest during these early years. This was due to fact that the European norm was still weak in many respects. The determinacy, symbolic validation, coherence, consensus and even the adherence were all modest. Neither the CoE nor the EU had started their campaign for the abolition norm before the 1980s. The CoE's Protocol No. 6 had only been opened for signatures in 1983, and it entered into force in 1985. At the time, this norm was considered to be an emerging western European norm with no direct impact on the Soviet Union. There existed a European abolitionist tradition, but the formal, explicit norm was still weak. There were no international, legal documents on the issue and the European practices were still incoherent. Whilst there may have existed some vague notion of a European norm of abolitionism, there were no specific requirements on the form of abolition. Thus, both coherence and the norm hierarchy were weak at the time.

The domestic scope conditions in the Soviet Union pulled in different directions. The topic as such was not new. Russia has a strong abolitionist tradition, but abolitionism had never really become a firmly established, stable practice. The Russian leadership adopted a stance of gradual abolition in the late 1980s, which the general public strongly disagreed with. The domestic structure within the SU was nevertheless strongly state-dominated, which gave the ruling elite an upper hand in the debate. This structural balance did not change even with the introduction of modest democratic reforms.

Despite the gloomy prospects, the European institutions proved to be fairly effective in introducing the topic to the Russian discourse. Contrary to the expectations found in the literature on the scope conditions, the effectiveness seemed to stem from the high political and symbolic significance of the question. The Soviet Union wanted to frame

itself as a "normal" European state, and this "normalness" was taken to include some abolitionist tendencies. The discussion within the European institutions thus influenced the Russian discourse, even though the CoE and EU had no stated goals with regard to Russia on the issue. Only the CSCE had some modest stated goals on the issue vis-à-vis Russia. The Soviet Union succeeded in complying with the conditions of publishing information on the use of the death penalty and engaging in dialogue within the CSCE framework. The CSCE policy was thus effective in achieving its goals.

The socialisation model described in Chapter 1 would argue that the Soviet Union was in the phase of tactical concessions during its last years of existence. The tactical concessions were beginning to turn into true commitments as a result of arguing and persuasion. The change in the policy on the death penalty did not emerge as a result of civic activism in the Soviet Union or elsewhere. The socialisation pathway was to be found on the elite level, rather than "from below". The concessions on the issue of the death penalty were elite-initiated, and therefore the term "tactical concessions" seems far-fetched. In addition to the material considerations, the Soviet reform programme had an ideational, normative dimension from the very beginning.<sup>424</sup> There was no major pressure from the European side either, yet the Soviet Union agreed to exchange and publish information on its use of the death penalty and to restrict its application. The Soviet leadership independently chose to use the abolitionist language. The source of Russia's rapprochement with the European values was identity- and culture based, rather than the norm-led process that the socialisation model would suggest. Without Gorbachev, the development might have gone differently. The Soviet leadership made a decision to change its policies before it was driven to do so. Even with all the systemic, structural reasons, a clear political choice was made.

#### **Early commitments after the Cold War 1991-94**

In the late 1980s and early 1990s, two mutually contradictory trends strengthened in the Soviet/Russian scene, which were both reflected in the debate on the death penalty. The first one was the general growth of both perceived and real insecurity in a society undergoing dramatic transition. The rise of economic uncertainty, corruption and social problems hardened public opinion, and there was increasing pressure to make the

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<sup>424</sup> English, *Russia and the Idea of the West: Gorbachev, Intellectuals, and the End of the Cold War*, pp. 3-4.

punishments harsher in the name of restoring order and respect for rules. The general public had never supported the abolition of the death penalty, and these developments made their opposition for the abolition even stronger.

The second trend was that Russia became a target of growing international pressure to limit and eventually to abolish capital punishment. In 1994, the Council of Europe decided to make abolition of the death penalty one of the key conditions for membership of the organisation.<sup>425</sup> The CoE's status as a club of civilised European states was authoritative. Its normative criteria were the same for all applicant states, and there was an internal consensus on the norms. Many of them had been codified into Europe-wide binding agreements. The CoE thus enjoyed a high moral standing vis-à-vis Russia. The CoE was also in a position to offer membership of the organisation to Russia, which gave it superior bargaining power. As an applicant state, Russia was sensitive to coercive action by the CoE, and was likely to react in the desired way.

The new constitution of 1993 confirmed the limited use of the death penalty. Nevertheless, it also stated that it was only a temporary measure, and that it would be abolished in the future. Article 20, Paragraph 2 allows the establishment of the death penalty "until its abolition thereof".<sup>426</sup> The constitution also confirmed that capital punishment could only be used in the case of especially grave crimes against life.<sup>427</sup> Article 20 Paragraph 2 continues "[...] the accused shall be granted the right to have his case examined by trial with jurors".<sup>428</sup> However, at that time only a fraction of the Russian regions had created such a court.<sup>429</sup> Article 6 of the Constitution states that the

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<sup>425</sup> See Council of Europe, Parliamentary Assembly, *On the Abolition of Capital Punishment*, 4 October 1994, Resolution 1044.

<<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA94/ERES1044.HTM>>. The more specific criteria in Russia's case were decided in 1995. See Council of Europe, Parliamentary Assembly, *Opinion: Russia's Application for Membership of the Council of Europe*.

<sup>426</sup> See *Constitution of the Russian Federation (1993)*. Text is available at <<http://www.constitution.ru/en/10003000-01.htm>>.

<sup>427</sup> The then prevailing criminal code allowed for much wider application of death penalty but the practice followed the constitution. The new criminal code was passed in 1996.

<sup>428</sup> See Article 20 of *Constitution of the Russian Federation (1993)*.

<sup>429</sup> Jury courts existed in 9 out of 89 regions of the Russian Federation. Gradually the situation has changed: since April 2003 only one region did not have a jury court (Chechnya).

previous procedure should be retained until a new federal law, which ensures a new procedure for the consideration of cases by the juror courts is established.<sup>430</sup>

Meanwhile, the trend towards limitation of the application of the death penalty continued in Russia. The strategy of the Russian authorities seemed to be a gradual change towards complete abolition. The European organisations welcomed the development and politically supported the action. The President of the Russian Federation and the Presidential Pardons Commission under him were seen as the most important advocates of abolition of the death penalty. The Pardons Commission was created in 1992 in an attempt to expand the use of clemency, particularly in the case of the death penalty. Both the character and the composition of the Pardons Commission were unique: it was headed by a well-known novelist, Anatolii Pristavkin, and its members included other well-known figures – poets, academics, priests – and experts such as jurists and psychologists. It met weekly on a voluntary basis and considered thousands of sentences annually – among them over a hundred death sentences. The chairman of the Pardons Commission spoke actively in public, criticising the judicial system and the application of the death penalty.<sup>431</sup>

The early steps towards abolition were thus taken by the liberal elite and not supported by the public. This is not surprising for two reasons. First of all, in most abolitionist states abolition had not been supported by a majority of people at the time the decision was made (and often later too). The decision is a principled, identity-related decision with which the state communicates to other states its dedication to humanistic values. Secondly, Russia's liberalisation overall was not a result of growing demands and activism from the public. It, too, was an elite-led project. Russian state-society relations were – and are – such that public opinion matters relatively little; the state, in particular the president, sets the agenda and implements the policy with little public interference.<sup>432</sup> Despite the fact that the norm of abolition did not resonate with the public at large, it did resonate with the liberal-minded intelligentsia and the ruling elite. The ruling elite may have supported abolition based more on instrumental calculations,

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<sup>430</sup> See Article 6 of *Constitution of the Russian Federation (1993)*.

<sup>431</sup> Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," pp. 132-33.

<sup>432</sup> See, for example, William V. Smirnov, "Democratization in Russia: Achievements and Problems," in *Contemporary Russian Politics: A Reader*, ed., Archie Brown (Oxford: Oxford University Press, 2001), p. 524.

but for the intelligentsia it was an important, identity-based value. There was a long tradition of abolitionist thought in Russia, starting with the times of Empress Elizabeth. Given the state-society relationship of Russia described earlier, the prospects of successful socialisation were hardly grim.<sup>433</sup>

Thus, the greatest achievement in the question of abolition of the death penalty during the period of 1991-94 was that the Russian republic unquestionably committed itself to the goal of abolition. The strategy to achieve the goal was gradualist: first the limitation of its use, and ultimately the total abolition through ratification of Protocol No. 6, as was required by CoE membership. This strategy was confirmed in the constitution approved in December 1993, as well as by agreeing to the membership criteria set by the CoE. The European organisations – first in particular the OSCE and then the CoE and the EU – played a significant role in the process that led to the placement of abolition on the practical, political reform agenda in Russia. The issue developed into a clearly pronounced political goal with an implementation plan with the start of the CoE application process.

### *Evaluation*

The norm-specific scope conditions changed significantly during the time under scrutiny. The European norm strengthened considerably during these years as Protocol No. 6 was adopted and more states ratified it. The culmination of the development was when the CoE made ratification of the protocol an explicit prerequisite for membership in 1994, and called for its ratification by all its existing members. After this, the European norm could be explicitly defined in terms of the ratification of Protocol No. 6. Thus the norm coherence and its symbolic validation as well as the norm hierarchy (adherence) and textual clarity (determinacy) all strengthened during this period. The norm was now applied consistently and backed by a well-institutionalised framework. The fact that the norm had a high political profile does not seem to have played a negative role at this point. On the contrary, the norm soon gained symbolic value as a sign of "Europeanness" of states, which seemed to encourage states to adopt the norm. The Russian discourse suggested that this was also the reason why Russia should

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<sup>433</sup> On state-society relations and its impact on socialisation, see Schimmelfennig, "Introduction: The Impact of International Organisations on the Central and Eastern European States - Conceptual and Theoretical Issues," pp. 14-15.

implement the norm as soon as it was possible. The lack of implementation was, on the other hand, often explained by the budgetary constraints in the country. In reality, however, it is doubtful whether the resources needed for the implementation were so great that the lack of implementation could be explained by budgetary constraints. The prison system was in bad shape but the number of executions was, all in all, relatively small.<sup>434</sup>

The scope conditions at the international level were positive for norm implementation. After the collapse of the Soviet Union, the likelihood of European organisations really affecting Russia grew significantly. First of all, a clear asymmetrical relationship emerged in Europe, which helped the diffusion of international norms to Russia. During these early years, the European organisations actively influenced the Russian policy agenda by setting the norms and standards that Russia was expected to meet. Russia seemed to be willing to accept the norms and their applicability to Russia without much hesitation. The desire to see Russia as a "normal", "civilised" state was so great that the issue of being patronised by the organisations did not yet raise high emotions among the elite.<sup>435</sup> The issue of the abolition of the death penalty was removed from the OSCE agenda to the CoE membership agenda, which was backed by the EU. The CoE became the institution with high moral standing on the issue. The CoE also had superior bargaining power after Russia had applied for its membership in 1992.

The environmental conditions were also positive for socialisation to the norm of abolition of the death penalty. The Russian state was in a new situation and open to the new ideas and values offered by the European organisations. Russia was searching for a new identity following the miserable end of the Soviet Union and socialism in Europe. The European society of states seemed to be willing and able to engage with, and assist, Russia in its search. Russia was faced with major challenges without precedent, and new solutions were desperately needed.

The domestic conditions were also partly supportive for the adoption of the norm of abolition of the death penalty. Firstly, the state-dominated state structure would suggest that the ruling elite's abolitionist goals would override the general public's more

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<sup>434</sup> See footnote 391.

<sup>435</sup> Sakwa, *Russian Politics and Society*, p. 351.

conservative views. The question of domestic salience of the norm was fairly controversial. There existed a long abolitionist tradition in Russia, and already since the last years of the Soviet rule, the official goal had been gradual abolition of the death penalty. However, the abolitionist experiments had always ended with the reintroduction of the death penalty. Also, the abolitionist aspirations had commonly been linked to the notion of "Europeaness" and not seen as an absolute "Russian" value. At first this feature seemed to be an asset, but later when the political atmosphere changed, it became more of a burden.

The European organisations appeared to be effective in framing the issue and setting the goals for Russia. The socialisation to the norm of abolition of the death penalty seemed fairly straightforward: Russia was to adopt the European norm, just like the rest of the eastern European states transforming themselves. The issue was framed in the context of European identity and Russia's membership in the Council of Europe. After the Soviet Union's collapse, Russia moved from the phase of tactical concessions to the phase of prescriptive status (or from the liberalisation phase to the transition phase, as democratisation models would have it). The development in the case of abolition of the death penalty confirmed this general trend. The official Russian discourse was consistently supportive of the goal of abolition but in practice, executions continued to be conducted. However, some positive legislative steps were taken: the constitution confirmed the goal of abolition and attempted to restrict its use. The abolitionist project continued to be an elite-initiated project. This feature does not fit the socialisation model particularly well but, all in all, the explanation provided by the socialisation model is fairly descriptive.

### **Emerging irregularities in the phase of prescriptive status 1995-98**

As was described in Chapter 2, the war in Chechnya which started in late 1994 put a great strain on relations between Russia and the CoE. Nevertheless, Russia was still at the time sensitive to the CoE's coercive action, and made concessions when faced with coercive pressure.<sup>436</sup>

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<sup>436</sup> See Council of Europe, Parliamentary Assembly, *On Procedure for an Opinion on Russia's Request for Membership of the Council of Europe*, Resolution 1065.



In November 1995, the CoE and the EU initiated a comprehensive two-year assistance programme aimed at helping with constitutional arrangements, institution building and legal reform, and a month later the PACE's Political Affairs Committee adopted a draft opinion in favour of Russia's membership. The report mentioned the death penalty as one of the most pressing issues. At the time, Russia had not yet ratified the new criminal code, and the prevailing legislation allowed the death penalty for 20 crimes. On the other hand, the constitution did rule that it should be considered only for the gravest crimes against life. The report included a detailed advisory and control programme that was aimed at guaranteeing Russia's swift compliance with the CoE norms.<sup>437</sup> These measures were a sign that Russia was already at the doorstep of the organisation and would soon be invited in. By the end of the year, Russians seem to grow tired of waiting in the line and being constantly scrutinised and pressured by the CoE. The fact that Ukraine was accepted to become a member before Russia was seen as a slap in the face and a sign of double standards by the organisation.<sup>438</sup> It seemed that pressure and pre-membership conditionality had its limits and could not be used indefinitely.

Finally, on 28 February 1996, the Russian Federation became the 39th member of the CoE – despite the fact that it still failed to meet a number of the official membership conditions.<sup>439</sup> At the time of the accession, President Yeltsin declared that Russia would cease executions, and that a moratorium on the executions would be passed. As noted above, there was an understanding that Russia was to abolish the death penalty within three years of the accession by ratifying Protocol No. 6 to the ECHR.

The CoE gave up a degree of its material bargaining power by granting Russia membership, but it was hoped that persuasion aimed at triggering the logic of arguing would now be more efficient vis-à-vis Russia with regular, institutionalised engagement. Now that Russia was part of the in-group, the ideational, cultural side of socialisation was also expected to gain strength. Membership – the legally binding commitments, regular meetings and reporting that came with it – was expected to invoke the mechanisms of norm institutionalisation and habitualisation. It is probable

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<sup>437</sup> Council of Europe, Parliamentary Assembly, *Report: Developments in the Russian Federation in Relation to the Situation in Chechnya*, 23 April 1996, Doc. 7531.

<sup>438</sup> See, for example, Vladimir Lukin's comments in *Segodnia*, 7 September 1995.

<sup>439</sup> Council of Europe, Committee of Ministers, *Invitation to the Russian Federation to Become a Member of the Council of Europe*.

that the CoE wanted to show its support for the liberal forces in Russia who were preparing for the first presidential elections since the collapse of the Soviet Union. The liberal camp, which President Yeltsin was taken to represent, was strengthened by the CoE's recognition of Russia as a liberal and democratic European state. The granted membership was a sign of political will on both sides to integrate Russia with the European structures. The visions of how this should be done may naturally have differed already at this point.

However, the members of the ruling elite were mistaken if they thought that CoE membership was just about positive, unconditional support. As early as April 1996, the PACE reprimanded Russia publicly on the basis of human rights violations in Chechnya. The criticism was not welcomed by Russia, and tensions started to emerge. Nevertheless, a few positive steps were taken on the question of the death penalty. The new criminal code of 1996 confirmed the principles laid out in the constitution, and allowed the death penalty only in three cases: homicide under aggravating circumstances, genocide and terrorist attack. In May, the president issued a decree, "On Stage-by-Stage Reduction of Execution of Death Penalty in Connection with the Russian Federation Joining the Council of Europe". After the presidential elections, Yeltsin issued a decree on the official moratorium on the execution of death penalties in August 1996.<sup>440</sup>

A considerable blow to Russia's credibility as a CoE member occurred in December 1996 when it was revealed that Russian authorities had been carrying out executions during the first half of 1996 despite its CoE membership. In January 1997, the CoE published a report 'Honouring of the Commitment Entered into by Russia upon Accession to the Council of Europe' which concentrated exclusively on the question of the violation of the declared moratorium on the death penalty. It confirmed that at least 53 executions had taken place in Russia since Russia's accession. The report argued that the Committee on Legal Affairs and Human Rights "feels that the Assembly needs to take action in accordance with its monitoring procedure to sanction this particular violation of an important human rights commitment by Russia, lest the credibility of the

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<sup>440</sup> *The Moscow Times*, 17 May 1996.

Council of Europe be damaged".<sup>441</sup> The PACE held an urgent debate on the issue during its part-session in January 1997. However, this was first and foremost a warning for future reference as Russia had already ceased to carry out executions by the time the information became public.

In March 1997, the State Duma considered a bill on the moratorium on executions but rejected the proposal by a clear majority: 177 votes against and 75 in favour with 6 abstentions. At the time of the vote, 688 prisoners were on death row in Russia. Despite the Duma's decision, President Yeltsin signed Protocol No. 6 to the ECHR in April 1997.<sup>442</sup>

In Europe, the action against the death penalty strengthened. In October 1997, the Council of Europe held a Summit where the heads of government called for universal abolition of the death penalty and outlined the main elements of its anti-death penalty policy. It was to consist of a combination of several elements: general demarches, action on individual cases, human rights reporting and other initiatives including assistance programmes. That same year, the European Union signed the Amsterdam Treaty, which confirmed its devotion to abolition of the death penalty. The strengthening of European action to abolish the death penalty continued the following year. In June 1998, the EU issued practical guidelines for its anti-death penalty policy towards third states.<sup>443</sup>

The Duma considered the question of legislation on a moratorium once again with the ratification of the ECHR in February 1998. The session was preceded by a heated debate in the newspapers. In the end, the Duma ratified the European Convention on Human Rights but refused to ratify Protocol No. 6 to the treaty.<sup>444</sup> At the same time, it also ratified the Anti-Torture Convention and the European Charter of Local Self-Government. Despite the fact that Protocol No. 6 did not pass, this was an indication

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<sup>441</sup> Council of Europe, Parliamentary Assembly, *On the Honouring of the Commitment Entered into by Russia Upon Accession to the Council of Europe to Put into Place a Moratorium on Executions*, Resolution 1111. The source of the information on executions was the head of the presidential clemency committee Anatoly Pristavkin. See Pristavkin, "A Vast Place of Execution - the Death Penalty in Russia," pp. 129-30.

<sup>442</sup> *Rossiiskaia gazeta*, 6 May 1997.

<sup>443</sup> *Guidelines to EU Policy Towards Third Countries on the Death Penalty*.

<[http://europa.eu.int/comm/external\\_relations/human\\_rights/adp/guide\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm)>.

<sup>444</sup> *Novye Izvestiia*, 21 February 1998.

that the CoE's integrationist policies had in general succeeded. More concessions – including ratification of the protocol – were expected to follow soon.

In June 1998, the CoE published its first comprehensive Honouring of Obligations and Commitments Report on the Russian Federation. The tone was fairly optimistic: it stated that the ratification of the ECHR, the Anti-Torture Convention and the European Charter of Local Self-Government, and the respect of the presidential moratorium represented historical steps in the enshrinement of Russia in the 'system of values' fostered by the Council of Europe. It was, however, clear on the issue that Russia should make further efforts to fulfil the obligations and commitments, including the complete abolition of the death penalty.<sup>445</sup>

However, negative trends strengthened in Russia where the debate grew increasingly critical of abolition of the death penalty and the policy of international organisations on the question.<sup>446</sup> In June 1998, Minister of Justice Pavel Krasheninnikov made a public case for maintaining the death penalty on the basis of a growth in crime and strong public support for maintaining it.<sup>447</sup> The recently elected human rights ombudsman, Oleg Mironov, responded to Krasheninnikov's comments positively by suggesting that Russia should explain to the CoE that "the crime situation in our country is very bad and that having the death penalty for especially heinous crimes against human life serves as a deterrent".<sup>448</sup> Krasheninnikov was far from the only representative of the executive who defended the death penalty. In fact, in November 1998 even the prime minister, Evgeny Primakov, criticised the official goal of abolition by claiming in a populist fashion that the Russian government should be talking about "physically eliminating those who kill women and children and that is what we will do".<sup>449</sup> A few days later, Vladimir Kartashkin, who had recently become the chairman of the Presidential Human Rights Commission, eagerly interpreted Primakov's comments as evidence that the

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<sup>445</sup> Council of Europe, Parliamentary Assembly, *Information Report: Honouring of Obligations and Commitments by the Russian Federation*, 2 June 1998, Doc. 8127.

<sup>446</sup> *Izvestiia*, 15 March 1996 and 31 January 1997.

<sup>447</sup> *Segodnia*, 4 June 1998.

<sup>448</sup> Mironov's interview in *Novye Izvestiia*, 2 December 1998.

<sup>449</sup> See *Segodnia*, 7 December 1998.

moratorium on the death penalty would be lifted and punishments would be made tougher.<sup>450</sup>

These pro-death penalty comments by major political figures and high state officials created confusion and raised serious doubts about Russia's intentions in the European human rights institutions. Given the wide-spread practice of behind-the-scenes manoeuvring so typical of Russian political life then and today, one cannot help but wondering if – in addition to being populist advance campaigning in the approaching Duma elections – these high-level comments were a clever strategy to ease the international pressure to abolish the death penalty. The "standard" reason given by Russia why the west should not criticise Russia over human rights violations, was the claim that irresponsible critique of the government would strengthen illiberal opposition in Russia. This was used rather effectively for example when the CoE membership and its conditions were discussed. Once again, the mixture of domestic pressure and some positive steps – though more modest than the CoE expected – that were taken by the president made it almost impossible for the CoE to challenge the president's policy on the question of the death penalty. Still, in June 1998 the CoE warned Russia, Latvia and the Ukraine that they would be expelled from the organisations if they failed to ratify Protocol No. 6.<sup>451</sup>

The biggest achievements in the development on the norm of abolition of the death penalty in Russia during 1995-98 were, first, the suspension of executions following the news on the CoE membership and, second, the president-imposed moratorium the following August. Nevertheless, there was no proper law on a moratorium of executions which made the institutionalisation of abolitionist practice weak. Also, the official discourse partially deviated from the norm, and the consensus among the Russian leadership on the issue grew weaker.

### *Evaluation*

The norm-specific scope conditions for state socialisation to the norm of abolition of the death penalty grew increasingly positive. The coherence of, and consensus on, the norm

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<sup>450</sup> Ibid.

<sup>451</sup> See Fawn, "Death Penalty as Democratization: Is the Council of Europe Hanging Itself?," p. 86.

strengthened considerably. First of all, as more and more states and, in particular, new member states became abolitionist and ratified Protocol No. 6 to the ECHR, the European norm and practical implementation of the norm grew stronger and more consistent. The norm also became one of the corner stones of the EU's external policy, which contributed towards consensus on the issue. The practices in European states became transparent and closely scrutinised, which further increased the determinacy of the norm. The symbolic validation and adherence of the norm were similarly strong, as the primary European norm of abolition had been attached to the secondary norm of ratifying Protocol No. 6.

The biggest change in the international conditions was that Russia became a member of the Council of Europe. The CoE hoped that membership would encourage norm socialisation by Russia to the European norms by strengthening the moral authority of the organisation and evoking processes of persuasion and institutionalisation.<sup>452</sup> After Russia's accession the CoE, the organisation lost its biggest bargaining tool. Material bargaining power and asymmetry between the organisation and Russia thus diminished during this period. There were some changes in the environmental conditions during these years that were likely to influence the outcome. First of all, the relations between Russia and Europe became more strained as NATO air strikes bombarded Serbia and as former socialist states sought to join NATO with European support. There was also a growing feeling of disappointment with the western-minded reforms and their results in Russia. Russia became less open to the European norms and values during these years. The engagement with the European institutions began to be seen in merely instrumental terms based on gaining concrete material benefits.

The general atmosphere was reflected in domestic scope conditions. The norm of abolition became increasingly politicised in Russia. It had always been a certain symbol of "Europeanness" and in the new domestic atmosphere this quality became increasingly unpopular. Yeltsin's grip on power was not particularly strong during this period, which

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<sup>452</sup> The report by the PACE Committee on Legal Affairs and Human Rights, for example, contemplated in its report "Russian Federation does not yet fulfil the conditions of membership [...h]owever, the question could be asked whether the accession of the Russian Federation might in itself help to create conditions of conformity with the Council of Europe standards[...]. Council of Europe, Parliamentary Assembly, *Opinion: Russia's Application for Membership of the Council of Europe*.

diminished the structural advantage he had enjoyed during his early years. It was difficult for him to carry out unpopular reforms, such as the abolition of the death penalty. The parliament consistently voted down the proposal on a moratorium. The norm salience between the international and the domestic norms appeared to be decreasing during this period.

Despite many discouraging shifts in scope conditions, there seemed to be considerable progress on the issue. The initial goal of the CoE had been the abolition of the death penalty prior to accession. This goal was later reassessed and degraded to the ratification of Protocol No. 6 in three years time and the suspension of executions from the day of accession. The organisation was fairly successful in meeting the latter goal: President Yeltsin declared a moratorium on the day of accession and later confirmed it in a decree. Despite the fact that some executions were carried out in 1996, this practice soon ceased altogether and the practical implementation of the norm has been consistent since. However, the protocol was not adopted within the deadline given by the CoE. Another issue that diminished the degree of European effectiveness was the fact that the official discourse showed increasing signs of inconsistency. The goal of the abolition was occasionally challenged by the ones in or close to power. Nevertheless, after 1996 the European institutions were successful in ensuring that the practical implementation of the norm was consistent in Russia.

Russia's modest hesitation over the issue did not stand out during this period in Europe. Russia was far from the only state struggling with the implementation of formal requirements of the norm. Russian discourse clearly did not contribute towards strengthening the consensus on the issue, but otherwise its impact on the European level or on the interpretation of the norm was modest during these years.

The socialisation model outlined in Chapter 1 still describes the development during this period reasonably accurately. Russia's progress in the practical implementation of, and official commitment to, the norm confirmed its status as a state in the phase of prescriptive status. The progress was still relatively weak with regard to the legislative reforms and institutionalisation of the norm, but there nevertheless seemed to be advancement on this issue. One indicator of development gone wrong was the direction in which general discourse on the issue progressed. The problem seemed to be that

following Russia's accession, the effectiveness of the CoE gradually shrank. The processes of arguing and persuasion, and the processes of institutionalisation and habitualisation did not take over as the model would expect. Instead, the loss of superior bargaining power and the lack of material incentives reflected negatively in the achievements.

### **Russia's request for an exception 1999-2006**

The fragile moratorium on the death penalty was, however, soon unexpectedly strengthened. In February 1999, the Constitutional Court ruled that Russian courts should cease to impose death sentences until a law on jury trials had been passed in all federal subjects. At the time, jury courts existed in nine (out of 89) regions. Even regions where jury courts existed had to cease passing new death sentences, in order to guarantee the principle of equality of all Russian citizens before the law. This was an important step because there is a qualitative difference between a moratorium on executions and a moratorium on passing death sentences by courts. After the ruling, Russia could be classified as a de facto abolitionist state – at least temporarily.<sup>453</sup> The problem lay in the fact that the Russian courts could recommence the issuing of death sentences once the jury court system had been established in all the regions.

The court decision was followed by a sudden rush of anti-death penalty measures. The Pardon Committee had decided to seize the moment and divest itself of death row altogether. During the first five months of 1999, the Pardons Commission considered a record-breaking 700 cases. A good point of comparison is that in the previous seven years it had reviewed altogether 555 death sentences.<sup>454</sup> In June, Russian authorities and the CoE organised a major conference on the abolition of the death penalty in Moscow. Interestingly enough, justice minister, Pavel Krashennnikov – who had criticised the goal of abolishing the death penalty just some months earlier – made a statement supporting the ban on capital punishment: "The President and the government have already determined their position on the death penalty: it should be completely abolished".<sup>455</sup> On the opening day, the president announced that he had signed a decree

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<sup>453</sup> *Kommersant*, 3 February 1999. See also Hood, *The Death Penalty: A Worldwide Perspective*, p. 31.

<sup>454</sup> *Kommersant*, 5 June 1999.

<sup>455</sup> *Ibid.*



commuting all remaining death sentences into prison terms ranging from 25 years to life imprisonment. These developments were a positive sign that despite earlier hesitation, there still might be enough political will to abolish the death penalty in the near future.

Nevertheless, the positive wave of abolitionist spirit soon came to an end. With the start of the second Chechen war in 1999, terrorism became more predominant on the Russian political agenda. The official immediate reason for the reopening of hostilities was the explosion of apartment buildings near Moscow, in Dagestan and Volgograd. Terrorist attacks against civilians considerably strengthened the support for the death penalty in Russia. The Russian media launched a populist pro-death penalty campaign and many public figures and politicians gave their support for the campaign. This pro-death penalty camp included figures such as the chess world champion Anatoli Karpov and Nobel Prize winner Zhores Alferov.<sup>456</sup> Many also feared that new Russian president, Vladimir Putin, might foster pro-death penalty sympathies.<sup>457</sup> This fear has not materialised, and the goal of abolition has continued to be supported officially by the Russian president.

The resumption of hostilities also created an extremely volatile situation in the CoE and Russia–CoE relations rapidly deteriorated. In December 1999, the Secretary General of the CoE sent a letter to the foreign minister, Igor Ivanov, requesting information on the situation in the Chechen Republic. The second exchange of letters took place in March 2000 with as few results as the first one.<sup>458</sup> The replies received from the Russian authorities were deemed unsatisfactory by the Secretary General and PACE alike, and tensions started to build up between the parties. The Political Affairs Committee under the PACE submitted a report on the situation in Chechnya and recommended suspension of the Russian delegation's voting rights in the PACE if no progress in solving the crisis was made by Russia.<sup>459</sup>

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<sup>456</sup> *Rossiiskaia Gazeta*, 20 March 2002.

<sup>457</sup> President Yeltsin resigned on 1 January 2000 and Prime Minister Vladimir Putin became the acting president. The presidential elections were held in March 2000.

<sup>458</sup> See Council of Europe, Secretary General, *Conflict in Chechnya: Reply from the Russian Federation to the Council of Europe's Request for Further Explanations*, 22 March 2000, Doc. 8671.

<sup>459</sup> Council of Europe, Parliamentary Assembly, *Report: Credentials of the Delegation of the Russian Federation*, 4 April 2000, Doc. 8698.

The tension led to coercive action by the PACE. In April 2000, the PACE decided to suspend Russia's voting rights in the Assembly.<sup>460</sup> This time around, the Russian reaction to the coercive action was not the desired one. The Russian State Duma responded to the suspension decision by adopting a declaration "On the Position of the Parliamentary Assembly Concerning the Situation in the Chechen Republic". The Duma stood firmly behind the Chechen war. It "deeply regretted" the position adopted by the Assembly. It considered the PACE's decision both unjust and unfounded, and claimed that a full-scale cooperation could only resume if the Assembly reversed its "discriminatory" decision.<sup>461</sup> Russia decided to keep away from the PACE altogether until it changed its line. The Russian side offered no concessions on the issue but challenged the decision directly. The reaction by Russia left the CoE in an awkward position: it seemed that the Russian side was not going to give in on the issue, but the CoE could not suspend Russia's voting rights forever. The CoE had little choice but to yield.

On 23 January 2001, the Political Affairs Committee commented again the situation in Chechnya. The Committee regretted that the Russian delegation had decided not to participate in the work of the Assembly and its committees.<sup>462</sup> It seems that the tables had unexpectedly turned: what had started as CoE pressure on Russia had become Russian pressure on the CoE.<sup>463</sup> The PACE had to admit that if Russia was actually expelled from the CoE, the organisation would have to invent a completely new role for itself in the new Europe. It thus became apparent that the CoE needed Russia just as Russia needed the CoE. The rapporteur suggested to the Assembly that "we must not give up our critical evaluation of the situation in the Chechen Republic, but I believe that the State Duma has increasingly become a partner in our efforts for change. Therefore the rapporteur proposes that the assembly should ratify the credentials of the

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<sup>460</sup> See Council of Europe, Parliamentary Assembly, *Conflict in the Chechen Republic - Implementation by the Russian Federation of Recommendation 1444 (2000)*, 6 April 2000, Recommendation 1456 (2000).

<sup>461</sup> State Duma of the Federal Assembly of the Russian Federation, *Statement on the Position of the Council of Europe Parliamentary Assembly on the Situation in the Chechen Republic*. 12 April 2000.

<sup>462</sup> This would have been possible as the decision only concerned the voting rights. Council of Europe, Parliamentary Assembly, *Report: Credentials of the Delegation of the Russian Federation*, 23 January 2001, Doc. 8949.

<sup>463</sup> Interview with a PACE member, 24 March 2005.

new Russian delegation".<sup>464</sup> The PACE decided to grant full voting rights for Russia without any major concessions having been made by the Russian side. This was how it was interpreted from the Russian side. A foreign ministry official commented on the events in the media: "The delegates [of PACE] realistically looked at the situation and understood that Russia is not a pupil who can be sent out from the classroom".<sup>465</sup>

The status of the death penalty also caused debate within the CoE. In May 2001, the PACE President Lord Russell-Johnston saw it necessary to make a declaration on the death penalty debate in Russia. In it he stated that

"recent statements made by high-level Russian officials in favour of suspending the moratorium on the executions are therefore highly regrettable. These statements come against the background of serious concerns with regard to Russia's human rights record in Chechnya and its commitment to the freedom of media. They are worrying signs of either ignorance of, or blatant disregard for Russia's commitments and obligations as a member state of the Council of Europe."<sup>466</sup>

Further, he claimed that a decision to end a moratorium would be challenging "the credibility of Russia's commitment to our organisation's values and principles [...] this would inevitably lead to the questioning of whether Russia is to continue as a member of the organisation".<sup>467</sup> These harsh words nevertheless had little impact on Russian policy.

In December 2001, Putin signed a package of bills including a new Russian Criminal Code. It confirmed the use of the death penalty, but the president-imposed moratorium was left untouched. A few months earlier, Putin backed the goal of the abolition of the death penalty by claiming that no one – not even the state – had a right to "grant itself a divine right".<sup>468</sup> The statement was received enthusiastically by the EU, who attempted to positively influence Russia's socialisation to the abolitionist norm:

"The European Union welcomes the comments made on 9 July 2001 by President Putin opposing the reestablishment of the death penalty in the Russian Federation. The European Union calls on the Russian Federation to abolish the death penalty both de

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<sup>464</sup> Council of Europe, Parliamentary Assembly, *Report: Credentials of the Delegation of the Russian Federation*.

<sup>465</sup> *Interfax*, 25 January 2001.

<sup>466</sup> See Lord Russell-Johnson's declaration on Russia and the death penalty, 31 May 2001 PACE Document 387a (2001) at <[http://press.coe.int/cp/2001/387a\(2001\).htm](http://press.coe.int/cp/2001/387a(2001).htm)>.

<sup>467</sup> *Ibid.*

<sup>468</sup> *Interfax*, 9 July 2001.

facto and de jure, and to ratify [...] Protocol No. 6 to the European Convention on Human Rights as soon as possible."<sup>469</sup>

However, the president's approach to punishment can hardly be described as soft. He dissolved the Pardons Commission by a presidential decree in December 2001 and the Commission was set to be replaced by regional commissions. After the restructuring, the pardons figures plummeted. The measure had only indirect relevance to the death penalty. For the time being, at least, there are no convicts on death row and no court is issuing death sentences. Nevertheless, many observers were alarmed by the measure, especially since the judges could start issuing capital punishment after jury courts had been established in all Russian regions.<sup>470</sup>

In February 2002, the State Duma once again rejected the ratification of Protocol No. 6 by a large majority, with some members of the parliament even going so far as to introduce an appeal to the president to reintroduce capital punishment.<sup>471</sup> This was shocking news to the PACE. In March, it commented on these developments in a monitoring session: "The assembly is shocked by the vote in the State Duma on 15 February 2002, asking President Putin to reintroduce the death penalty [...] the assembly nevertheless urges the Russian authorities to abolish the death penalty de jure and to conclude the ratification of the Protocol No. 6 to the European Convention on Human Rights". In 2002 the CoE Council of Ministers decided to discuss the question of the abolition of the death penalty at six-month intervals until de jure abolition was effected in all member states.<sup>472</sup> Also, the General Secretary of the CoE wrote an article in

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<sup>469</sup> See European Union, *Declaration by the Presidency on President Putin's Statement Supporting the Abolition of the Death Penalty in the Russian Federation*.

<sup>470</sup> The PACE did, however, voice some concerns after the disbandment of the commission but there was very little it could do about the situation. The Council of Ministers approved the measure but allocated more resources on cooperation, technical assistance and education of the inexperienced staff of the regional commissions. The CoE organised a three-day workshop in March 2002 and contributed to the first all-Russian conference on clemency issues in December 2002. By 2003 there were 89 regional commissions with some 1200 staff. The clemency numbers nevertheless fell significantly: during the eleven months following the reorganisation only 182 decisions led to clemency by the president (out of total 6628 requests and 1117 recommendations for pardon). Council of Europe, Parliamentary Assembly, *Presidential Pardon Commission of the Federation of Russia*, 2 February 2002, Written Question No. 407, Doc. 9354. <<http://assembly.coe.int/Documents/WorkingDocs/doc02/EDOC9364.htm>>

<sup>471</sup> *Rossiiskaia gazeta*, 20 March 2002.

<sup>472</sup> See Council of Europe, Parliamentary Assembly, *Honouring of Obligations and Commitments by the Russian Federation*, 23 April 2002, Resolution 1277 (2002). <<http://assembly.coe.int/Documents/AdoptedText/TA02/EREC1553.htm>>

defence of abolition in the *Rossiiskaia Gazeta* in March 2002.<sup>473</sup> Thus, the CoE's response was to increase monitoring and attempts to convince the Russian representatives of the importance of the measure.

All this did little to prevent pro-death penalty comments from Russian officials. The most serious of these attacks was Deputy Prosecutor Vladimir Koleshnikov's advocacy of the cancellation of the moratorium in February 2005. His comments were sent to the Federation Council which was considering anti-terrorist legislation. These comments were even more worrisome as the Constitutional Court ruling on the application of the death penalty was about to become void. The only region without a jury court was now Chechnya. The episode was renewed in February 2006 when the deputy prosecutor general of the Russia Federation, Nikolai Shepel, publicly expressed his wish that the only terrorist behind the Beslan school attack still alive, Nurpashi Kulaev, should be executed. Pavel Krasheninnikov – this time as a chairman of the legislative committee of the Duma – spoke against exceptions to the moratorium, and President Putin has also now and again expressed his conviction that death penalty should not be re-introduced.<sup>474</sup> In keeping with the CoE commitments, Nurpashi Kulayev was sentenced to life imprisonment with a reference to the moratorium on the death penalty in force in May 2006. On the other hand, nothing has been done to abolish the death penalty in law.

In May and June 2005, the Council of Europe published a report by the human rights commissioner and PACE rapporteurs. Both reports listed some positive developments, such as the adoption of a new criminal code and a reduction of the number of prisoners on death row. However, they remained firm in their criticism on the failure to abolish the death penalty in law, and to bring to justice those found responsible for human rights

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<sup>473</sup> Article by Walter Schwimmer in *Rossiiskaia Gazeta*, 20 March 2002.

<sup>474</sup> *Moscow News*, 10 February 2006.

<<http://www.mosnews.com/news/2006/02/10/penalty.shtml>>

violations in Chechnya.<sup>475</sup> The issue did not, however, succeed in making it onto the action agenda, and no-one questioned Russia's position as a member on the basis of these shortcomings.<sup>476</sup>

The EU has also increasingly paid attention to human rights and the issue of the death penalty in EU-Russia relations. In 2001, the Commission confirmed in its communication that human rights are a priority area in its relations with third countries.<sup>477</sup> The EU and Russia held their first human rights consultation round in March 2005. The issue of capital punishment has been discussed in the meetings, and although there was some initial enthusiasm surrounding this new, more confidential policy instrument, very little has been achieved and a gradually more sceptical and frustrated attitude has gained ground among the EU and its member states' officials.<sup>478</sup>

To sum up the main developments on the question of abolition of the death penalty: despite the fact that the practical adherence to the norm of abolition was strengthened by the Constitutional Court decision in 1999, the Russian Federation seemed increasingly resistant to the socialisation efforts of the European organisations. Russia showed blatant disregard of its initial promises to ratify the Protocol in three years time after Russia's accession to the CoE. The official discourse did not apologise and make new promises, but instead challenged the authority of the European organisations in setting technical standards and deadlines. By its action, Russia is requesting that the European society make an exception in its case.

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<sup>475</sup> Council of Europe, Parliamentary Assembly, *Report: Honouring of Obligations and Commitments by the Russian Federation*, 3 June 2005, Doc.10568. <<http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10568.htm>>, and Council of Europe, Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on His Visit to the Russian Federation (15-30 July 2004 and 19-29 September 2004)*, 20 April 2005, CommDH(2005)2. <[http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/Documents/pdf.CommDH\(2005\)2\\_E.pdf](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/pdf.CommDH(2005)2_E.pdf)>.

<sup>476</sup> Discussion on draft documents in an interview with a PACE member 24 March 2005.

<sup>477</sup> European Union, European Commission, *Communication from the Commission to the Council and the European Parliament: The European Union's Role in Promoting Human Rights and Democratisation in Third Countries*, 8 May 2001, COM(2001)252 final. <[http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/com01\\_252\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf)>.

<sup>478</sup> Interview with a European Commission official, 26 October 2005 and comments by Under-Secretary of State at the Finnish Ministry of Foreign Affairs Markus Lyra at a roundtable organised by EU-Russia Centre (Brussels) in Helsinki, 22 August 2006.

## *Evaluation*

The coherence of, and the consensus on, the European norm on abolition of the death penalty became increasingly strong during the period between 1999 and 2006. The secondary norms backing the *grundnorm* of abolition were developed further with the adoption of Protocol No. 13 on the complete abolition of the death penalty. Hence, the adherence of the norm was strengthened considerably during these years. The coherence was enhanced as country after country ratified the protocols. Today, Russia is the only CoE member state that has not ratified Protocol No. 6. Almost all CoE member states have also abolished the death penalty completely from their national laws, which means that the eventual ratification of Protocol No. 13 will not substantially change their commitments.

The changes in the international and environmental conditions implied that Russia would be less open to socialisation efforts by the European organisations. The asymmetry between the European structures and Russia was diminishing after the turn of the millennium, attributable to the fact that the Russian state and economy grew stronger. Russia was also seen as an important international player in world politics and in the "war against terrorism" by many central international players. Russia became increasingly self-confident as an international actor, which was reflected in its new unwillingness to comply with the European norms. Instead of desiring to be a normal European state, Russia claimed more room for manoeuvre, and challenged the authority of the European organisations in interpreting the norms and setting deadlines for Russia. Europe was requested to apply different norms and standards to Russia in comparison to those used with other European states. European material bargaining power was on the decrease during this period. Russian development stabilised during the period under scrutiny, and there was less sense of immediate crises and urgency to find solutions. The high oil prices contributed to the general growth of the Russian economy, and general satisfaction with Russian policies by the public. Russia was increasingly closed to outside influences and wanted to redefine the rules of the game itself.

The domestic scope conditions remained controversial. The rise of terrorism naturally impacted unfavourably on the general discussion on the death penalty, but the dramatic decrease in pluralism and the unprecedented dominance of the president in Russian

political life would have enabled the abolitionist reforms, had he decided to pursue them actively. He did not, however, choose this path even if he supported the idea of abolition in principle. The non-compliance to the European norm of abolition was not due to a lack of political or material resources. After all, Russia already practiced abolitionism and only refused to comply with the European legislative requirements on the issue. The discourse in the Russian press implies that non-compliance with the European norm became a symbolic, principled issue to Russia.<sup>479</sup> The non-compliance over the matter seemed to contribute to Russian identity formation.

Despite the abolitionist decision by the Constitutional Court in 1999, the European organisations have been by and large ineffective in reaching the goals they have set for themselves. Russia has disregarded official conditions and timetables set by the organisations, and it has failed to so much as pass a proper law on the moratorium. Thus, the abolitionist practice is weakly institutionalised in Russia.

Russian policy on the issue, on the other hand, had implications for the wider abolitionist development in Europe. First of all, Russia's challenge to the European norms led to some rethinking over European strategies. There was pressure to develop instruments which would raise less publicity and create less unnecessary confrontation with Russia. The aim was to trigger the logic of constructive arguing and persuasion in a more confidential setting.

However, Russia's stubbornness may indirectly influence the European normative structures: Russian non-compliance weakens the European consensus on the norms and the general call for compliance with the membership criteria within the CoE. Russia has set a bad example for other states which can make a reference to a precedent in non-compliance. Thus, Russia has weakened the determinacy and coherence of the abolition of the death penalty.

The descriptive and explanatory power of the socialisation model described in Chapter 1 is weak when analysing the developments on the question of the norm of abolition of

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<sup>479</sup> President Vladimir Putin has, for example, many times spoken in favour of abolition but he has consistently refused to take orders from the European organisations and claimed that the society at large is not yet ready for these radical changes. See, for example, *Interfax*, 9 July 2001 and 7 February 2006.



the death penalty during this period. Russia has challenged the organisations' authority indirectly without questioning the norms directly as the model would expect. It has never officially declared its denial of the norm, but it does not apologise for its non-compliance either.<sup>480</sup> Instead of open challenge and a backlash, one can detect an indirect challenge to the international organisations and their right to interpret the norms. The socialisation model seems unable to detect these dynamics at play on the issue of the abolition of the death penalty.

## 5 Conclusion

Today, the situation regarding the implementation of the European norm of abolition of the death penalty in Russia is far from ideal. Despite the fact that Russia has not executed any convicts since August 1996, and that there are no convicts on death row, Russia has not adopted the European norm on the abolition of the death penalty. It has failed to live up to its earlier promises to ratify Protocol No. 6 to the ECHR. Its behaviour on the issue is exceptional: all other CoE member states have ratified this protocol concerning abolition of the death penalty for ordinary crimes. The institutionalisation of even the moratorium on passing death sentences is extremely weak: the Constitutional Court ruling could soon become void, and the Duma has turned down the bill on the moratorium again and again.

The early development on the question of abolition of the death penalty looked indeed promising. Russia unambiguously expressed its will to undertake the commitment to abolish the death penalty in law and in practice. After 1994, this requirement was explicitly the ratification of Protocol No. 6 to the ECHR. Russia was unable to meet the requirement by the time of its accession to the organisation in 1996, but promised to do so within three years. There was also progress in terms of practical policies: Russia has suspended the application of the death penalty, which was later in 1996 confirmed by a presidential decree on a moratorium on executions.

However, after Russia's accession to the CoE progress on the issue came to a halt. Even though the practice has remained consistent and even improved, the European norm has

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<sup>480</sup> See, for example, comments by Russian foreign minister Sergei Lavrov, *RIA Novosti*, 29 May 2006.

not been adopted. The formal requirements on the legislation have not been met, and even the goal of implementing the norm has been doubted in the official discourse. European pressure weighs very little; Russia has even suggested that there are no grounds for close scrutiny of the membership conditions anymore as it has by and large met the conditions.<sup>481</sup> This view is contrary to the view of the Council of Europe and casts serious doubts on Russia's commitment to implement the norm. The Council of Europe has recently renewed its activism on the matter vis-à-vis Russia.<sup>482</sup> As Russia prepared to assume the rotating chairmanship of the CoE in 2006, the PACE president pleaded:

"My main plea to you today within the context of values is to take the crucial and historic step to abolish the death penalty. In 2006, Russia is the only member of the Council of Europe not to have ratified Protocol No. 6. Would it not be the most fitting tribute to our common values, to the basis of our cooperation, to abolish the death penalty in this centenary year of the Duma and especially a hundred years after it was first proposed by the Duma?"<sup>483</sup>

However, so far the Council of Europe has not succeeded in convincing Russia on the fundamental nature of the implementation of the norm. The organisation can only use moral shaming and persuasion but Russia has shown resistance to these efforts. In the current situation, the moral authority of the CoE is relatively weak in Russia and thus coercive instruments are not likely to be efficient. Besides, at this point it is hard to imagine that the CoE would expel Russia as a result of its failure to ratify Protocol No. 6 on the death penalty.<sup>484</sup> Yet, this is exactly what it suggested in 1998.

The issue seems to have gained symbolic significance for Russia over the years. By not adopting the protocol, Russia demonstrates to European states and to the Russian public that it will engage with the European organisations on its own terms. These terms are based on its interests. Russia claims to be an exceptional actor and thus deserves exceptional treatment by other actors. Russia has indirectly challenged the European norm and whether the norm fully applies to its case. This is a clear regression: at the beginning, Russia agreed to the terms of the European organisations. Through the use of

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<sup>481</sup> Ibid.

<sup>482</sup> See, for example, commentary in *Kommersant*, 27 June 2006.

<sup>483</sup> Council of Europe, Parliamentary Assembly, *Rene van der Linden: "Russia Must Strengthen Its Role on the European Scene"*, 27 April 2006, Press release 246(2006).

<sup>484</sup> This was confirmed by Rene van der Linden in a press conference on 3 October 2005. See *Interfax*, 4 October 2005.

uncompromising, interest-based politics, Russia has gained more room to manoeuvre. The organisations seemed to count on the efficiency of softer measures of persuasion and institutionalisation of the norm.

The changes in the scope conditions do not explain the shifts in the development completely. It is true that the asymmetry between the actors has diminished over the years, and the sense of crisis and urgency to find new solutions has given way to more stable and self-confident behaviour. Nevertheless, there is still a considerable amount of asymmetry left, and the norm itself has grown increasingly strong, characterised by European-wide consensus and coherence, adherence and symbolic validation. The pull toward its implementation is assumed to have grown stronger. Furthermore, the development of the domestic structure should give the abolitionist state leadership the upper hand in the debate. This has not, however, been the case. Thus the development on the subject is better explained by political decisions, than by the changes in structural conditions.

European policies played a significant role in framing the issue and putting the issue on the Russian reform agenda in the early 1990s. Since then, effectiveness of the European policies in reaching the stated goals has faded. The goals have been met in the field of practical implementation of the norm, but the legislative requirements have not been met and the official discourse has grown increasingly inconsistent and there are serious doubts whether the goal of abolition is even on the cards anymore. It seems that European engagement is in fact one of the reasons why the discourse is so defiant on the issue. The norm of non-compliance has become a symbolic, principled issue for Russia and a sign of its independence.

Unfortunately for the organisations, Russian non-compliance has had a negative impact on the development of the European norm on abolition. Russian behaviour stands out – it is the only CoE member state still refusing to ratify Protocol No. 6. Thus the norm coherence of the European abolitionist norm has been weakened, and this could have an impact on the eagerness of other states to ratify the Protocol No. 13. Why should states hurry with the ratification of Protocol No. 13 if Russia has not even managed to ratify Protocol No. 6? This logic may lead to the weakening of European consensus on the importance and urgency of the norm. The organisations seem to be between a rock and a

hard place with Russia. They fear to pressure the Russian leadership too hard on the issue, as it might endanger the current abolitionist practice. Putin – just like Yeltsin before him – has effectively demonstrated that he, and only he, is the one who in principle supports abolition. Russia has responded coldly to cases of direct pressure from these institutions.

The early years of cooperation seemed to fit the socialisation model relatively well but, as Russia's reluctance to adopt the norm has become more apparent, the model seems to have lost its explanatory and descriptive power. Russia did not progress in the stage of prescriptive status, nor did turn back to tactical concessions and/or challenge the norms upfront. Rather, it has continued working with the European organisations but ignored the claims for complying with the European norm consistently. It seems to have been fairly successful in negotiating an exception for itself despite the organisations' declarations and appeals on the issue.

The development points out several shortcomings in the socialisation model outlined in Chapter 1. First of all, the development clearly does not support the assumption that once the state starts to liberalise and to "talk the talk", the socialisation process would take over and the progress towards implementation of a norm would be somehow automatic. After the initial agreement, the political struggle over the issue started again and has remained constant ever since. The authorities constantly change discourse according to the audience and the norm remains weakly institutionalised. Because of the lack of legal guarantees, the uncertainty about future developments is apparent. During the first few years, it seemed that Russia was making progress on the road towards the implementation of the norm according to the socialisation plan. However, after approximately 1997, the development has been more controversial and the norm's applicability to the Russian case has been indirectly challenged by Russia.

Secondly, Russia has been relatively successful in its attempt to push for an exception in its case. The European organisations naturally do not declare this publicly, but the reorientation of their policies would indicate that they are not as adamant on the issue as they were some years ago. Despite the fact that Russia once agreed to the norm of abolition by signing Protocol No. 6, it does not seem to do so any longer. If the CoE allows for an exception in Russia's case, the European norm will weaken. This chapter

thus argues that norms – even human rights norms – are not fixed but may change in the process of international cooperation. It is here that the danger lies for the European organisations: Russia's resistance may, in the long run, also affect the European interpretation of the norms. If exceptions are made, the norms grow weaker and the requirement for implementation less absolute. It thus seems that asymmetrical relationship and a clearly formulated, high-priority norm has not been enough to trigger socialisation. Crucially, the identity-related, cultural side of socialisation has not taken off, and therefore the normative change has also remained inconsistent and shallow.

Finally, the assumption that socialisation is about a one-way adoption of a norm is not supported by the development on the issue of abolition. There has not been a simple diffusion of the European norm to the Russian domestic field in this case. Instead, we can see an on-going process of mutual adaptation and re-negotiation of the methods and instruments of cooperation, and perhaps eventually even the norm itself. The challenging of the human rights norms by Russia has not been direct or absolute, but gradual and indirect. Despite tensions and problems, cooperation has continued and it has become an institutionalised, everyday practice. What we have here is neither a great failure nor a success case of socialisation. This would indicate that greater attention should be paid to the study of the cooperation process and the interaction between the actors than has so far taken place in the literature. The case demonstrates that norms do not operate in vacuum, but the interaction and changes in the relationship often reflect back on norms.

On the basis of this case, it thus seems that Russia has been socialised to the practice of cooperation with the European organisations, but it clearly has not been socialised to the norms and values of the organisations (at least in the way they have been interpreted by the organisations and their member states so far). Russia is willing to cooperate with the European organisations and has many times called for even closer ties with them. However, it is only willing to do so on its own terms which are based on its interests, not on shared values and identities.

Russian behaviour over the question of abolition of the death penalty has kindled the tensions between solidarism and pluralism. The cooperative framework surrounding the norm is clearly solidarist, but Russia has partially challenged the applicability of the

common standards to its case. Although some shared notion of common good and moral purpose still applies, Russia has claimed more room to manoeuvre in the name of its unique role and its own interests. Coercive intervention in the name of common good has not been – and will not be – applied on this issue. Only time will show, whether other methods are sufficient to push Russia eventually to change its policy or whether the norm itself will be modified.

## CHAPTER 6

### NORM OF FREE AND FAIR DEMOCRATIC ELECTIONS

*This chapter explores how European organisations have tried to promote their norms and standards of free and fair elections in Russia. This chapter directs its attention exclusively to federal – presidential and parliamentary – elections. The chapter analyses the electoral developments in Russia since the first democratic multi-party elections in 1993. The chapter evaluates the effectiveness of European action on the question, and links it to the theoretical discussion on scope conditions and the socialisation model outlined in Chapter 1.*

#### 1 Overview of International Election Standards

After the end of the Cold War in the late 1980s, the norm of periodic and genuinely democratic elections has spread around the world. Governments may fail to live up to the norm, but their behaviour is still judged against the norm. Increasingly, governments are not considered internationally fully legitimate if they have not been elected through democratic elections. International actors often actively promote the principle of free and fair elections because it is seen as an important step in democratisation and socialisation to human rights norms. The general acceptance of the international norm of free elections is demonstrated by the widespread practice of election observation: international and domestic observers on the ground monitor how the elections are conducted and whether they meet international standards.<sup>485</sup>

The UN has played a significant role in defining international standards for democratic elections. The principles of democracy and genuine elections were among the central values of the UN after the end of the Second World War, despite the fact that the UN Charter does not mention the requirement for democracy. Article 21(3) of the Universal Declaration of Human Rights (1948) states that "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".<sup>486</sup> The International Covenant on

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<sup>485</sup> Eric C. Bjornlund, *Beyond Free and Fair: Monitoring Elections and Building Democracy* (Washington DC: Woodrow Wilson Centre Press and John Hopkins University Press, 2004), pp. 32-35.

<sup>486</sup> Article 21(3), United Nations, General Assembly, *Universal Declaration on Human Rights*, 10 December 1948, UN General Assembly Resolution 217 A (III).

Civil and Political Rights (1966) further strengthened the norm.<sup>487</sup> Despite these documents, free elections were not actively promoted globally by the UN during the Cold War years.

As has been the case with human rights and democratic norms in general, the change in the promotion of free and fair elections came with the end of the Cold War. The General Assembly adopted Resolution 46/137 in 1991, which reinstated the view that the "authority to govern shall be based on the will of the people, as expressed in genuine and periodic elections".<sup>488</sup> The resolution gave the task of establishing an Electoral Assistance Unit<sup>489</sup> under the Department of Political Affairs to the Secretary General. In 1996, the UN Committee on Human Rights confirmed the change by adopting a general comment on the Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service. The comment included a detailed interpretation of Article 25 of the International Covenant on Civil and Political Rights. It lays out the standards by which all elections should be evaluated. It also requests states to report on the "measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors".<sup>490</sup>

The practice of international election observation has effectively spread the standards for the technical conduct of elections, and strengthens the principle that holding genuinely competitive elections on a regular basis is the only way to confirm international legitimacy of the government.<sup>491</sup> Within the UN system, the coordinating body for international electoral assistance is the Electoral Assistance Division (former EAU) in the Department of Political Affairs. The EAD undertakes missions to assess the needs for electoral assistance and maintains a roster of international experts. It coordinates the UN efforts in the field of technical electoral assistance and international

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<sup>487</sup> Article 25, United Nations, General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, UN General Assembly Resolution 2200A (XXI).

<sup>488</sup> United Nations, General Assembly, *Resolution on Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections*, 17 December 1991, A/RES/46/137.

<sup>489</sup> EAU was established in 1991. In 1994 the name was changed to Electoral Assistance Division (EAD).

<sup>490</sup> United Nations, Committee on Human Rights, *The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service*, 12 July 1996, General Comment 25.

<sup>491</sup> Thomas Carothers, "The Observers Observed," *Journal of Democracy* 8, no. 3 (1997): p. 20.



observation. It also cooperates with regional and international organisations providing electoral assistance.

The practical experience of international election observation has led to a growing understanding that elections are much more than formal legislation and election-day performance. International bodies and actors increasingly emphasise that elections are part of a wider political process that unfolds gradually during weeks and months before the actual election day.<sup>492</sup> International actors engaged in election observation start from the presumption that there is "no single political system or electoral method equally suited to all nations".<sup>493</sup> This approach means that international standards do not deal with questions of the fairest representational system or other system-related questions. International standards concern the goal of making sure that the elections and election campaigns are conducted freely and fairly, and minimum standards of representation are ensured.

## **2 Free and Fair Elections as a European Norm**

European regional intergovernmental organisations have been major election standard setters alongside the UN. The Council of Europe, OSCE and the EU have all played a part in the development.

The standards were first developed by the liberal western European states within the Council of Europe. The statute of the Council of Europe declares its devotion to genuine democracy. This belief is reinstated in the preamble of the ECHR, which mentions "effective political democracy" as the best guarantee for the respect for human rights. In Protocol 1 (1952) to the ECHR, the signatory states undertook "to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure that free expression of the opinion of the people in choice of the legislature".<sup>494</sup> All members of the Council of Europe were liberal democracies. This is a defining feature of the organisation: its members were ready to expel Greece from the organisation in 1969

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<sup>492</sup> Bjornlund, *Beyond Free and Fair: Monitoring Elections and Building Democracy*, p. 13.

<sup>493</sup> This quote is from the EAD website at [http://www.un.org/Depts/dpa/ead/ea\\_content/ea\\_context.htm](http://www.un.org/Depts/dpa/ead/ea_content/ea_context.htm).

<sup>494</sup> Council of Europe, Council of Europe, *Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms*, 20 March 1952.

after a military junta had taken control of the country (Greece decided to resign before the decision was adopted).

Since the end of the Cold War, the norm has been further enhanced within the CoE. The Vienna Declaration of 1993 made the requirement of democratic government and elections even more explicit. It states that a precondition for membership is that the country in question has brought its institutions and legal system into line with the basic principles of democracy which include "free and fair elections based on universal suffrage".<sup>495</sup>

The CoE published a Code of Good Practice in Electoral Matters in 2002. The document was a product of cooperation between a working group of the Venice Commission (that is, the European Commission for Democracy through Law),<sup>496</sup> PACE and the Congress of Local and Regional Authorities in Europe.<sup>497</sup> This document sets out the underlying principles of European electoral systems and lays out conditions for their application. The document summarised Europe's electoral heritage as universal, equal, free, secret and direct suffrage in elections which must be held at regular intervals of no more than 5 years. According to the document, equal suffrage entails equal voting rights, equal voting power, equality of opportunity for parties and candidates alike – in particular with regard to the elections campaign, coverage in the media and public funding of parties and campaigns – and equality with regard to national minorities as well as sexes.<sup>498</sup> The declaration was further endorsed by a PACE resolution and

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<sup>495</sup> Council of Europe, *Final Declaration of Heads of State, Vienna Summit*, 9 October 1993.

<sup>496</sup> The Venice Commission is an advisory body of the Council of Europe that meets four times a year. It is composed of independent experts in democratic institutions and persons known for their contribution in law or political science. The Commission focuses mainly on constitutional law and related fields such as electoral law. The Venice Commission was established in 1990 to assist the European transition states. For more information, see <<http://www.venice.coe.int>>.

<sup>497</sup> The cooperative body was called the Council for Democratic Elections. Representatives of ODIHR and Parliamentary Assembly of the OSCE, the European Parliament and the European Commission as well as ACEEEO (Association of Central and East-European Elections Officials) were granted observer status in the Council.

<sup>498</sup> European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Adopted Guidelines and Draft Explanatory Report*, 9 October 2002, Opinion no. 190/2002.

Committee of Ministers declaration.<sup>499</sup> The CoE and its Venice Commission are currently working on the transformation of the Code of Good Practice into a European Convention on Election Standards, Electoral Rights and Freedoms. The work is ongoing but the document is hoped to eventually further harmonise electoral legislation and codify the standards in Europe.

The OSCE has actively participated in the development of European election standards. Its participating states committed themselves to the idea of free and fair democratic elections in the Copenhagen Document of 1990. The commitments were extensive.

Paragraph 6 of the document states:

"The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State."<sup>500</sup>

With this goal in mind, the participating states promised to invite international and domestic observers to all elections and to:<sup>501</sup>

- 7.1 - hold free elections at reasonable intervals, as established by law;
- 7.2 - permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
- 7.3 - guarantee universal and equal suffrage to adult citizens;
- 7.4 - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
- 7.5 - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

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<sup>499</sup> Council of Europe, Committee of Ministers, *Declaration by the Committee of Ministers on the Code of Good Practice in Electoral Matters*, 13 May 2004, Doc. 10220; Council of Europe, Parliamentary Assembly, *Resolution on Code of Good Practice in Electoral Matters*, 30 January 2003, Resolution 1320.

<sup>500</sup> Paragraph 7 and 8, Conference for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension*, 29 June 1990.

<sup>501</sup> Paragraph 7, *Ibid.*

7.6 - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

7.7 - ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

7.8 - provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

7.9 - ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

An important step in the development of common European standards and practices was the establishment of the Office for Free Elections by the Paris Charter in 1990. The office was later in 1992 turned into the Office of Democratic Institutions and Human Rights.<sup>502</sup> Through these offices, the OSCE has facilitated dialogue, assisted states and provided practical information on elections in its participating states. The ODIHR promotes free elections through election observation and assistance projects.<sup>503</sup>

The EU shares the European norms that CoE and the OSCE have outlined. A good example of the intertwined nature of these organisations' efforts in the field of elections is the fact that both the ODIHR and Parliamentary Assembly of the OSCE, as well as the European Parliament and the European Commission took part in the Council for Democratic Elections under the CoE which drafted the Code of Good Practice in Election Matters in 2002. In recent years the organisations have attempted to form common international election missions and carefully coordinate their action and

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<sup>502</sup> Conference for Security and Cooperation in Europe, Summit of Heads of State of Participating States, *Charter of Paris for a New Europe*, Paris, 19-21 November 1990.

<sup>503</sup> See information at ODIHR website <<http://www.osce.org/odihhr/13421.html>>.

statements on observed elections in order not to send mixed messages on elections.<sup>504</sup> The EU's activity in the field of the promotion of free and fair elections is informed by the central documents of the Union. The Treaty on EU (1992) confirmed the EU's support for democratic values and human rights. Article 6 (originally Article K) reaffirms the commitment to develop and consolidate democracy and the rule of law, respect for human rights and fundamental freedom and Article 11 (originally Article J.1) reaffirms their centrality in the conduct of CFSP, too. The EU Charter of Fundamental Rights also highlights the idea that the EU is based upon the principles of human rights, democracy and the rule of law. The Commission Communication on EU Election Assistance and Observation states that while elections do not equate to democracy, they are an essential step in the democratisation process and an important element in the full enjoyment of a wide range of human rights.<sup>505</sup> Democracy is thus the core value of the Union, and consolidation of democratic institutions, such as genuine elections, is one of the tools in the promotion of that European value.

To sum up, the most important documents defining the European norm of genuine elections are the Vienna Declaration and the Code of Good Practice in Electoral Matters by the CoE, and the Copenhagen Document and Charter of Paris by the OSCE. The documents provide a detailed description of how the organisations define European election standards, and they will be used as a reference point when looking at Russian developments. These principles are shared by all three organisations. The norm of free and fair elections is clearly defined and institutionalised in the OSCE and CoE structures. The ODIHR is especially designed to promote and monitor developments in the OSCE member states. The norm is clearly of fundamental importance and one of the defining features of the so-called society of European states, as discussed in Chapter 3.

The norm-specific scope conditions are apt for norm socialisation. First of all, as a result of the development of European documents, the textual clarity was strong. Systemic validation of the norm is currently evolving through the drafting of a legally binding CoE convention on the issue. Despite the lack of systemic validation for the time being, the coherence and consensus in the implementation and interpretation within Europe is

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<sup>504</sup> Interview with an OSCE PA member, 12 December 2006.

<sup>505</sup> European Union, European Commission, *Communication on the EU Election Assistance and Observation*, 11 April 2000, COM(2000)191 final.

high. This is due to the high degree of institutionalisation of election observation and assistance in Europe. A considerable hierarchy of norms has also already developed on the issue. The primary norm of free and fair elections has been backed by dozens of more exact secondary norms on the specific interpretation of the primary norm. The final characteristic of the norm is its very strong political, identity-based profile that, according to the literature on the scope conditions, may render the socialisation to the norm a more difficult and time-consuming process.

### **3 European Promotion of Free and Fair Elections in Russia**

The OSCE has actively promoted the idea of free and fair elections and assisted the organisation of genuine elections in its member states in many ways. The OSCE monitors the implementation of these commitments through its election observation missions, which operate in the member states during elections. In addition to monitoring the implementation of election-related commitments, the OSCE observer missions offer recommendations and advice on electoral matters. The ODIHR also provides assistance for the organisation of elections and conducts legislative reviews.

As a participating state of the OSCE, Russia is politically – but not legally – bound to OSCE commitments. The legally binding character of the OSCE commitments is, however, strengthened by the fact that the EU-Russia PCA mentions OSCE commitments as the "standard" of common values.<sup>506</sup> In the Copenhagen Document, states agreed to abide by democratic principles in elections and the practice of election observation was institutionalised. The OSCE has sent observation missions to all of Russia's federal elections since 1993. The first observation mission consisted solely of the members of the Parliamentary Assembly. Since 1994, OSCE election observation has become a more long-term, in-depth exercise. This means that the missions consist of well-trained observers, and the missions also observe the campaigning period prior to the election day. The comprehensive OSCE strategy was developed within the ODIHR, and the first handbook for OSCE election observation was published in 1996. The

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<sup>506</sup> European Union and the Russian Federation, *Agreement on Partnership and Cooperation between the European Union and the Russian Federation*. See, in particular, the joint declaration in relation to Articles 2 and 107.

ODIHR has been in charge of election observation missions to Russia since the parliamentary elections of 1995.

The CoE also works actively with Russia in the field of election assistance and observation. All its member states are committed to democracy as a fundamental principle. The practice of holding genuine, democratic elections is one of the most important of its membership conditions. The Russian Federation has internationally committed itself to the European norm of democratic elections not only through OSCE documents, but also by applying for CoE membership in 1992 and ratifying the ECHR and its first protocol in 1998.

The CoE started working with Russia on democracy promotion in the early 1990s, before Russia had even applied for a CoE membership. The CoE reacted to the dramatic changes in eastern Europe by launching the Demosthenes Programme, which offered transition states in eastern and central Europe expertise in building democratic institutions, guaranteeing the rule of law and protecting human rights. The Demosthenes assistance projects concentrated mainly on constitutional and legislative reforms, as well as the training of key officials and experts. The Venice Commission was established in 1990 in order to assist transition states in Europe in the field of constitutional law and related issues, such as electoral law.<sup>507</sup> One of the thematic goals of the joint programmes between the CoE and the EU is democracy through free and fair elections and to improve the quality of electoral legislation and practice in transition countries. The institutions have organised education, seminars and round tables on election related matters for NGOs and state officials alike. The CoE has also sent observer missions for all Russian federal elections since the first parliamentary elections in 1993. Observation is not just passive observation of whether the standards are met, but also includes post-election reporting and making recommendations for improvements.

The EU actively promotes free and fair elections in Russia through its assistance programmes and foreign policy instruments. The EU played an active role in cooperation on electoral matters with Russia in the early 1990s. It gathered a large

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<sup>507</sup> See footnote 496.

election observation mission for the first multi-party elections in 1993, and monitored the media coverage of these elections through the European Institute for the Media (EIM). The Media Monitoring Unit assessed the legal framework within which the media were reporting the election process, and evaluated the independence and fairness of the actual election coverage. It has also provided technical assistance to the Russian Central Electoral Commission (*Tsentrálnaia izbiratelnaia komissiiia*, TsIK). The EU was actively involved in election monitoring in Russia until the election in Chechnya in 1997.<sup>508</sup> However, since 1997 it has focused on observing elections held in non-CoE member states. It does, however, provide technical assistance on election-related issues through its joint programmes with the CoE.

## 4 Developments in the Soviet Union and Russia

### Soviet elections

Traditionally, popular elections in the Soviet Union were merely a silly play that was performed at regular intervals. Hardly anyone took official election results seriously in or outside of the Soviet Union. The system did not allow any challenges to the party monopoly. The Communist Party nominated candidates for the elections and there was only one candidate for one seat. However, even if voting constituted nothing more than an act of political theatre, people were nonetheless harassed to hand in blank papers as a sign of "support" for the system.<sup>509</sup>

The Soviet election culture started to change with the introduction of perestroika in the latter half of the 1980s. As was explained in Chapter 2, democratisation was one of the slogans of the reform programme, but Gorbachev's understanding of democratic government was still far from the western norm of democracy.<sup>510</sup> Gorbachev believed that democracy was somehow possible in the one-party system and with limited

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<sup>508</sup> The EU sent an observer unit to Russian elections in 1993 (EUR 346 000) where it also monitored media coverage through the European Institute for the Media (Grant of EUR 200 000). The EU was also present at election observation in 1995 and technically assisted TsIK. In the 1996 presidential elections the EU created an Election Unit and allocated EUR 294 000 for this purpose. See European Union, European Commission, *Communication on the EU Election Assistance and Observation*.

<sup>509</sup> Stephen White, "Russia, Elections and Democracy," *Government and Opposition* 35, no. 3 (2000): pp. 302-3.

<sup>510</sup> Linz and Stepan, *Problems of Democratic Transition and Consolidation*, p. 378.



competition. Essentially this meant that the Communist Party was still the only legal party, but the electorate could now choose between several candidates.

A new election law established a new system of limited competition in December 1988. In March 1989, the Congress of Peoples Deputies of the Soviet Union was elected by this method: there were both communist and independent candidates and more than two candidates for every seat. The Congress consisted of 2250 deputies who were elected in three different ways in order to guarantee the representation of regions, the communist party and public organisations. Even if the elections were only partly free, the new Congress consisted of members from different backgrounds and of many, even conflicting, opinions. A new political culture that was more open to debate started to take shape. The Congress convened twice a year and elected the Supreme Soviet, which consisted of fewer deputies. The Supreme Soviet was the day-to-day legislature, whilst the Congress only considered amendments to the constitution. The RSFSR created an almost identical regional structure with biannual meetings of the Congress and a more permanent Supreme Soviet. The Russian Congress elections, which were held in March 1990, were also competitive but only partly free.

The Soviet approach to democracy gradually crawled closer to the western comprehensive understanding of democracy. This happened within the European framework. The Soviet government committed itself internationally to the goal of democratic elections in the CSCE Human Dimension meeting in Copenhagen in 1990. The local elections held in 1991 throughout Russia reflected this democratisation trend. The RSFSR held the first-ever presidential elections in June 1991. These were the first free and democratic elections in Russia. Boris Yeltsin, an independent candidate running against the Communist Party candidate, won the elections with a clear margin. In December 1991, the Soviet Union officially ceased to exist as Gorbachev stepped down from his office.

The democratic election of Yeltsin and the collapse of the Soviet Union were interpreted widely as a breakthrough of western liberal values and democratic ideals in Russia. There was talk about the end of competing ideologies – the "end of history" – as democratic liberal ideas became the only internationally legitimate source of power for

any political system.<sup>511</sup> The situation appeared similar to the suggestions of the democratisation theory. Both the general framing and the democratisation theories reflected the general atmosphere of the post-Cold War era. This general framing was also reflected in the attitude of the European organisations towards Russia. International cooperation and pressure was widely believed to have played a crucial role in the rise of liberal and democratic ideas in Russia.<sup>512</sup>

### *Evaluation*

The European norm of free and fair elections changed its character with the end of the Cold War. The initially western European norm started to be applied also to former socialist states as the notions of "socialist democracy" were gradually relinquished. There was a common European desire to develop the norms further, to make the requirement for democracy more explicit and binding for all European states. The norm quickly gained determinacy and transparency with the adoption of the Copenhagen Document in 1990 and as more states in eastern Europe applied for CoE membership. The symbolic validation of the norm was – as it is today – relatively weak. Nevertheless, the adherence and coherence of the norm started to improve quickly with the wave of democratisation in eastern Europe, and the adoption of new common documents on the issue. The fact that the norm was resource-consuming and had a high political profile did not seem to influence the norm adoption negatively. In fact, it seemed that these two features cancelled each other out. The political significance of the norm encouraged states to overcome the practical hurdles of a lack of material resources. Besides, due to the political and symbolic significance of the first democratic elections in former socialist states, the European organisations were eager to show support by providing technical assistance and education for the eastern European states.

The international conditions became more favourable to the norm socialisation during these years. First of all, the asymmetry between the organisations grew deeper. The Soviet Union/Russia became the norm-taker, instead of being an independent norm-maker and a challenger of western values and norms, as was the case during socialism. The European organisations became more authoritative as the socialist system proved to

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<sup>511</sup> Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992).

<sup>512</sup> MacFarlane, "Russian Perspectives on Order and Justice," p. 197.

be incapable of accommodating radical transformation. As the downward economic spiral deepened in the Soviet Union, the material bargaining power of the western institutions also grew immensely. Many western assistance programmes were conditional to the introduction of liberal democratic reforms.

The environmental conditions should have made the Soviet Union/Russia particularly prone to norm socialisation. As the story of the Soviet Union came to an end, Russia was in a completely new situation without many domestic normative traditions to draw from. Hence it was open to European norms and assistance. Russia was also faced with major challenges under severe time pressure.

The domestic conditions were first highly controversial. Even though the word "democracy" was often used in the Soviet speeches, the country had no experience of true democracy. There was a contradiction between the domestic norm of party dominance and the European norm on democratic elections. Later, the domestic norm gave way to the European norm, and the domestic salience of the European norm grew positively. The introduction of the goal of free and fair democratic elections was elite-led, who were, in turn, significantly influenced by international pressure and debate. The Soviet state was dominated by the ruling elite, and the public had very little impact on the political processes – even after the introduction of a degree of democracy. The Soviet Union had to overcome the old traditions and mind-sets in order to fully implement the norm of democratic elections. The re-education of election officers and voters alike was not a small task.

However, the European institutions – apart from the CSCE – had only few stated, specified goals vis-à-vis Soviet democratisation at the time. The European organisations were quick to reformulate their policies in order to engage with the former socialist states more fully on the issue. The CSCE was highly successful in introducing the standards for Russian reforms and framing the debate in Russia.

The socialisation model outlined in Chapter 1 would suggest that the Soviet Union was in the stage of tactical concessions with regard to the question of free and fair democratic elections. The pressure from the outside and the public shaming of the oppressive Soviet government contributed towards the introduction of democratic

reforms including democratic elections. The reforms were gradual, and it was thus important for the western NGOs, governments and international organisations to maintain the pressure. This strategy proved to be very successful. However, contrary to the predictions of the socialisation model, the activation of the transnational network and the empowerment of wide dissident forces were not crucial in the initial decision to introduce democracy. The western-minded liberals were a small minority who gained influence only because the ruling elite were willing to listen and voluntarily gave them positions of responsibility.

All in all, the socialisation model's explanation seems, however, to provide a fairly descriptive picture of the development.<sup>513</sup> Once some liberal reforms had been introduced, the "events took over" and the situation escaped from the leadership's control. This general trend was also evident in the case of democratic elections: Gorbachev had to give up his notions of limited democracy in a one-party system fairly soon after the initial limited reforms. The democratically elected Yeltsin soon replaced him as the man in charge and the whole Soviet Union ceased to exist.

### **First post-Soviet elections: moving towards prescriptive status?**

Russia has held altogether seven federal – presidential or parliamentary – elections since 1993. While technical and administrative capacities have improved significantly over the years, an undemocratic, anti-pluralistic election environment has nevertheless gained ground. The political system and popular elections are characterised by undemocratic, non-transparent political processes, as well as the wide and openly acknowledged misuse of both hard and soft administrative resources around elections. Both of these claims require further elaboration. Firstly, the Russian political environment is characterised by a culture of virtual manipulation. This means that on the surface the name of the game is democracy, but in fact the real rules are antidemocratic. The aim of the system is "to manage, manipulate and contain democracy" by the elite and the experts of political manipulation employed by them (known in Russia as the "political technologists", *politicheskie tehnologi*).<sup>514</sup> Examples

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<sup>513</sup> Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, p. 267. See, however, also his concluding comments on p. 287.

<sup>514</sup> Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, p. xvi.

of this unhealthy political process is, for example, the creation of "opposition" groups by the ruling elite, buying of parties, deployment of popular TV figures to "assassinate" candidates by crude slander attacks,<sup>515</sup> paying for negative, false stories about unwanted candidates and publishing false opinion polls. The old Soviet tactics of *kompromat* (mudslinging; the use of compromising material that is real, manipulated or faked) have been revived in the new Russian context.<sup>516</sup> The overall aim of the system of this so-called managed or sovereign democracy is to "establish monopoly of power and monopolise the competition of it".<sup>517</sup>

The second important characteristic of this system of managed democracy is the wide misuse of administrative resources in elections and election campaigns. The term refers to a blatant and widely accepted form of severe corruption in the public domain, and it can vary from hard, coercive methods to softer tactics. The misuse of administrative resources has been identified as one of the most important means by which incumbent political parties and politicians maintain and consolidate power in the countries of the former Soviet Union. Administrative resources can be misused at all stages of the electoral process, from the formation of electoral constituencies through the election campaign to the counting of votes.<sup>518</sup> The overall tendency is to take the misuse beyond the simple stuffing of ballot boxes; the outright fraud is often limited and carefully targeted.<sup>519</sup>

A report by the Centre for Anti-corruption Research and Initiative, and Transparency International Russia (2004) divides administrative resources and their misuse into six categories: coercive, regulatory, legislative, institutional, financial and media resources.

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<sup>515</sup> Russians commonly use the anglicism "media-killers" when referring to this practice.

<sup>516</sup> An excellent study of the virtual nature of the Russian political life is Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*. See, in particular, pp. 1-72

<sup>517</sup> *Financial Times*, 5 November 2003. On the nature of "managed democracy", see, for example, Steven M. Fish, *Democracy Derailed in Russia: The Failure of Open Politics* (Cambridge: Cambridge University Press, 2005); Michael McFaul, Nikolai Petrov, and Andrei Ryabov, eds., *Between Dictatorship and Democracy: Russian Post Communist Political Reform* (Washington DC: Carnegie Endowment for International Peace, 2004); Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*.

<sup>518</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," (Moscow: 2004), p. 48.

<sup>519</sup> Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, pp. 73-74.

Coercive resources refer to law enforcement agencies, customs service, intelligence agencies and so on. Coercive resources are used to intimidate, obstruct or even liquidate political opponents.<sup>520</sup> Misuse of regulatory resources means in practice, for instance, that election commissions decline registration attempts from a candidate, or impose sudden tax inspections on a political party in the middle of elections campaign. These methods have been widely deployed in Russian elections. Misuse of legislative resources, on the other hand, means that the legislature passes laws that serve the political interests of the ruling elite. In practice this may manifest itself in the setting of barriers to limit the participation of independent candidates in elections, for example, or changing the system of appointing the election commissions so that the appointment facilitates one-party control over the commissions. Institutional resources refer to material resources pertaining to public office. Examples of their misuse include the use of public premises to hold campaign events, the use of offices and technical equipment in campaigning and so on. Financial resources may be abused by transferring public money to a party, or used directly to finance election campaigns or to buy votes. Media resources include the use of state-owned media to promote incumbent political parties and candidates.<sup>521</sup>

In summary, Russia does indeed hold elections at regular intervals but severe institutionalised irregularities make talk about functioning electoral democracy impossible. How is it possible that these irregularities have been able to become institutionalised in Russia, despite the fundamental value that the European organisations attach to free and fair elections, and despite the close monitoring, reporting, assistance and political cooperation that they have exercised in the case of Russia? The following sections explore how the system developed election by election.

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<sup>520</sup> The cases are naturally difficult to prove but candidates have gone missing during election campaigns and the FSB has been accused later over the disappearances. This was, for example, the case in 2004 presidential elections when Ivan Rybkin who, as a result of the kidnapping, withdrew his candidacy and fled to London. Before the kidnapping Rybkin had accused Putin of having links with businessmen who were at the time taking over Yukos. See *Ibid.*, p. 111.

<sup>521</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," pp. 19-20.

### *Parliamentary elections of 1993*

As explained earlier, Russian political life suffered from severe dysfunctionality and unhealthy rivalry between the legislative and the executive in the early 1990s. The president disbanded the Congress of People's Deputies by decree in September 1993. Yeltsin's act was unconstitutional, but he justified it by promising parliamentary elections and a referendum on the new constitution. He pleaded respect for Russians' wishes – whatever those wishes would turn out to be. The legitimacy of the many-times amended Soviet constitution was unquestionably weak and hence many major western powers backed Yeltsin's high-handed action. As detailed in Chapter 3, the situation developed into a violent confrontation between certain of the deputies and the president.<sup>522</sup> In the end, President Yeltsin stayed in power and ordered the first democratic parliamentary elections to be held on 12 December 1993.

The elections were carried out simultaneously with the referendum on the new Constitution. The stakes were high for Yeltsin and his allies. If the constitution failed to pass, the reforms would be in ruins and instability in the country would continue. According to the law, a 50 per cent turnout was required, of which 50 per cent needed to be in favour of the constitution in order to enable the new constitution to be passed.

The Russian representational system of the State Duma mixes an absolute and a relative voting system.<sup>523</sup> There are 450 seats in the Duma: 225 deputies are elected from party lists and the other 225 deputies are individual candidates elected by single mandate vote. Only parties that pass a five per cent threshold (seven per cent since 2004) qualify for seats in the party-list ballot. Candidates from single mandate districts do not necessarily have party attachments.

These first democratic parliamentary elections were carried out on the basis of the presidential decree. The rules and regulations on elections and election campaigning were few and insubstantial. The system was later confirmed by the approved Constitution (1993, amended in 2001) and the Federal Law on the Basic Guarantees of

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<sup>522</sup> Timothy J. Colton, "Introduction: The 1993 Election and the New Russian Politics," in *Growing Pains: Russian Democracy and the Election of 1993*, eds. Timothy J. Colton and Jerry F. Hough (Washington DC: Brookings Institution, 1998), p. 8.

<sup>523</sup> State Duma is the lower house of the parliament (*Federal'noe Sobranie*; the Federal Assembly). The upper chamber is called the Federation Council.

Electoral Rights and Right of Citizens of the Russian Federation to Participate in Referendum (Basic Guarantees Law, 2002). In addition, a significant number of more specific laws have been passed, such as the Law on the Election of the President of the Russian Federation (2003) and Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation (2002).<sup>524</sup> Electoral laws have been modified and updated continuously since the first elections.

### *Results*

The official results of the election of 1993 declared that 54.8 per cent of the electorate turned out to vote in the referendum and 58.43 per cent of the vote was in favour of the constitution.<sup>525</sup> This was clearly a close call but, given the October events, no one expected a rolling victory for the extra-presidential constitution.

The results of the parliamentary election<sup>526</sup> were somewhat surprising: the ultra-nationalist LDPR led by Vladimir Zhirinovskii emerged as the biggest party with 22.92 per cent of the vote.<sup>527</sup> The 'party of the power', Russia's Choice (*Vybor Rossii*), secured only a 15.51 per cent share in the elections, and the Communist Party of Russian Federation came third with 12.40 per cent of the vote. Liberal Yabloko got 7.86 per cent and the Democratic Party of Russia 5.52 per cent. Also, the Women of Russia (8.13 per cent) and the Agrarian party (7.99 per cent) passed the (then) 5 per cent threshold.

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<sup>524</sup> All these laws are available in English at <http://www.legislationline.org/?tid=57&jid=42&less=false>.

<sup>525</sup> These are the official results by TsIK which have been published in many books, articles and web sources.

<sup>526</sup> The figures here are party list figures.

<sup>527</sup> It is most likely that Zhirinovskii's party (established in the final years of the Soviet Union) was the very first example of a "virtual" opposition party. Then his Liberal Democratic Party of the Soviet Union was a fake liberal party with connections to the KGB; it only adopted ultra-nationalist slogans later. Even after the Soviet Union's demise, the LDPR's success is widely regarded to have been encouraged by presidential policies. Its "function" in the Russian political game is to take away votes from the Communists. Its oppositional character can thus be legitimately questioned. Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," p. 71; Jerry F. Hough, "Institutional Rules and Party Formation," in *Growing Pains: Russian Democracy and the Election of 1993*, eds. Timothy J. Colton and Jerry F. Hough (Washington DC: Brookings Institution Press, 1998), pp. 52-53; Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, pp. 23-25.



### *European involvement*

The CoE, the European Parliament and the Parliamentary Assembly of the OSCE all sent missions to observe the elections. The European practice of election observation was still evolving and at this point the missions were rather small and short-term in their nature. The European Commission did, however, ask the European Institute for the Media<sup>528</sup> to monitor the coverage of the media in Russia during the election campaign. The Commission also provided equipment to the Russian authorities to help in the smooth running of the elections.<sup>529</sup> The international observers reported some shortcomings with regard to freedom of the press during the electoral campaign, the information of voters, the membership in some electoral commissions and the secrecy of the vote. Some features departed from "standard European practices" but they were expected to be corrected in future. In general, the elections were considered "free and democratic". However, a member of the CoE observation team submitted a lengthy dissenting opinion to the report, claiming that the elections were not free and certainly not fair.<sup>530</sup> The dissenting opinion had no official standing, but reveals the politics behind every election observation team. The conclusions drawn are always considered against the political context in question, as well as the prospects of democratic development in the country. Countries are treated differently: those states that are more democratic will be judged in a harsher manner than those that are taking their very first steps in the transition to democracy.<sup>531</sup>

However, some months after the elections, serious allegations of fraud emerged on a bigger scale. The western-minded liberals accused local authorities of direct election fraud, which was claimed to explain the surprisingly good performance of small,

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<sup>528</sup> EIM is a TACIS-funded institute in Düsseldorf, Germany.

<sup>529</sup> See European Union, European Commission, *Press Release: European Commission Aid for Russian Elections*, 30 November 1993, IP/93/1061.

<sup>530</sup> According to a member of the CoE observation team, far-left representative of Greece Efstratios Korakas, issues related to deficient legislation and unconstitutional foundations of the elections, biased campaigning and media environment, disinformation and obscurities in the number of the total electorate, wide use of administrative resources and pressure made it impossible to call the elections free and fair. The submission of this dissenting opinion was a unique incidence and nothing like this has happened – at least with regard to Russia – since then. Council of Europe, Parliamentary Assembly, *Information Report on the Parliamentary Elections in Russia 12 December 1993 (Addendum to the Progress Report)*, 4 March 1994, Doc. 7038 Addendum.

<sup>531</sup> Interview with an OSCE PA member who has taken part in several election observation missions, 12 December 2006.

marginal parties such as the LDPR, the Agrarian Party and the Women of Russia. The argument went that in order to secure the acceptance of the new constitution, the local governors stuffed ballot boxes with pro-constitution votes. As the parliamentary elections were held at the same time, they had to add extra votes to the other ballot box too. These extra votes were donated to parties that were perceived as rather harmless middle parties such as the LDPR, Russia's Women and the Agrarian Party.<sup>532</sup>

Quite surprisingly, Yeltsin responded to the allegations by naming a special commission to investigate the claims. The commission concluded that it was likely that some 9.2 million votes had been falsified in order to inflate the turnout figures above the 50 per cent barrier. In practical terms, this would have meant that the constitution was not legitimately approved by the Russian people. Further, the commission estimated that the LDPR might have gained up to 6 million extra votes (that is, 23 extra seats at the State Duma). The Agrarians, the Communists and Russia's Women were other relative winners in the fraud carried out mainly by the local administrations.<sup>533</sup> No action was taken based on the conclusions, and the European organisations kept quiet on the issue. No one seemed willing to raise the issue again and risk the fragile stability that seemed to be forming in Russia.

Despite the European endorsement, the elections were rigged. The European observers are likely to have given their blessing to the elections for two reasons. First of all, politically they wanted to see the volatile situation in Russia stabilising and the constitution, which was seen as the key to peaceful, long-term solution of the crisis, gain approval. Therefore, it was not in their interests to challenge this development by calling the election results fraudulent, which the Russians themselves seemed to accept in the end. Even the western-minded Russian liberals did not make official complaints on the issue. These were seen by many observers informed by democratisation theory as the "founding elections" after which the institutionalisation of democratic institutions would follow. Political considerations always play a significant part in the conclusions

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<sup>532</sup> Richard Sakwa, "The Russian Elections of December 1993," *Europe-Asia Studies* 47, no. 2 (1995).

<sup>533</sup> These figures also supported the rumour that, absurdly enough, Yeltsin's supporters had taken 2 million votes away from the supposedly establishment party Russia's Choice. Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, p. 76.

of election reports.<sup>534</sup> Secondly, European election observation was still fairly limited in Russia and it is plausible that observers did not possess the evidence to challenge the results. By and large, Russia was seen as striving towards democracy and these elections – even with all their shortcomings – were seen as taking Russia one step closer to the phase of prescriptive status of democratic norms.

### *Parliamentary elections of 1995*

The 1995 parliamentary elections<sup>535</sup> were conducted under conditions of relative stability following the political storm of 1993 and the newly-found multi-polarity in political life.<sup>536</sup> After the 1993 elections, the political scene had been characterised by participation of a number of parties and electoral blocs instead of the traditional "communist versus liberals" divide. Once again, the ruling elite tried to form a party of power: this time it was called Our Home is Russia (*Nash Dom Rossiia*). It was headed by the prime minister, Viktor Chernomyrdin.<sup>537</sup>

By this time, President Yeltsin had already moved away from the liberal camp of the so-called democrats. Just before the elections, the Yeltsin camp further encouraged party fragmentation in order to create a "liberal versus the communists" setting for the presidential elections, and to keep the Duma weak. The behind the scenes plan was to portray him as the only person capable of defeating the communists in the presidential elections in 1996.<sup>538</sup>

### *Results*

The Communist Party emerged as the biggest party from the elections: it got almost a quarter of the vote. It also won the majority of the single-mandate seats. Zhirinovskii's

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<sup>534</sup> Interview with an OSCE PA member, 12 December 2006.

<sup>535</sup> The Duma elected in 1993 was a so-called interim Duma which sat only half a term, that is, 2 years. This had been decided before the elections had been carried out.

<sup>536</sup> Michael McFaul, "Russian Electoral Trends," in *Russian Politics: Challenges of Democratization*, eds. Zoltan Barany and Robert G. Moser (Cambridge: Cambridge University Press, 2001), pp. 49-53.

<sup>537</sup> Although Ivan Rybkin's bloc was also a Kremlin-led project. Michael McFaul and Nikolai Petrov, "Elections," in *Between Dictatorship and Democracy: Russian Post-Communist Political Reform*, eds. Michael McFaul, Nikolai Petrov, and Andrei Ryabov (Washington DC: Carnegie Endowment for International Peace, 2004), p. 41. This two-party strategy did not, however, go too well partly because the plan was too widely known among the public.

<sup>538</sup> McFaul, "Russian Electoral Trends," p. 51.

LDPR came second with 11 per cent of the vote. Despite being the 'party of power' Chernomyrdin's Our Home Is Russia got only 10.13 per cent of the popular vote. Liberal parties performed modestly: Iavliskii's Yabloko received 7 per cent and Gaidar's Democratic Russia 4.9 per cent.<sup>539</sup>

Although the party of power did poorly, the results were no great shock to the Yeltsin camp, as the behind the scenes plan had consistently been to polarise the scene in order to ensure a victory for him in the presidential elections that were due to take place soon after the Duma elections.<sup>540</sup>

### *European involvement*

Once again the CoE, the EU and the OSCE, all sent missions to observe the Russian elections. They coordinated their action carefully and both the OSCE and the European Union made arrangements for sustained long-term observation of the campaign and of the preparations for the elections.<sup>541</sup> The international observers endorsed the elections. The organisations painted a picture of considerable improvements and, technically speaking, this was indeed the case. Legislation was firmer, regulations clearer, and the electoral officials and domestic observers were better trained and prepared than they had been in 1993.<sup>542</sup> The European Parliament's delegation felt confident enough to declare the results almost immediately "100 per cent free and democratic"<sup>543</sup> and the presidency claimed that the elections "represent a step forward by Russia in the process of consolidating shared democratic values, respect for human rights and compliance with the rule of law".<sup>544</sup> The CoE found that voting had been conducted everywhere in a calm and orderly manner and that local electoral commissions were well-organised and the election as a whole was up to international standards.<sup>545</sup>

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<sup>539</sup> These are, again, official results by the TsIK.

<sup>540</sup> McFaul, "Russian Electoral Trends," p. 51.

<sup>541</sup> Council of Europe, Parliamentary Assembly, *Information Report on the Parliamentary Elections in Russia 17 December 1995 (Addendum V to the Progress Report)*, 22 January 1996, Doc. 7430 Addendum V.

<sup>542</sup> Organization for Security and Cooperation in Europe, Parliamentary Assembly, *Press Release: Parliamentary Election in the Russian Federation*, 18 December 1995.

<sup>543</sup> Stephen White, Matthew Wyman, and Sarah Oates, "Parties and Voters in the 1995 Russian Duma Elections," *Europe-Asia Studies* 49, no. 5 (1997): p. 791.

<sup>544</sup> European Union, *Statement by the Presidency Concerning the Russian Legislative Elections on 17 December 1995*, 20 December 1995, PESC/95/105.

<sup>545</sup> Council of Europe, Parliamentary Assembly, *Information Report on the Parliamentary Elections in Russia 17 December 1995 (Addendum V to the Progress Report)*.

There were reports of election fraud after the elections, but the scale of it was likely to have been more modest than in 1993. According to Andrew Wilson, this was not because the ruling elite had suddenly internalised the norms of democracy, but simply because they had no specific targets to meet this time.<sup>546</sup> However, the international observers could take comfort from the downward trend in rigging. Russian democracy seemed to be strengthening and the development seemed to fit the socialisation models to a satisfactory extent.

Hence, the European organisations downplayed considerable deviations from the positive socialisation model that took place during Russian elections. First and foremost, a considerable amount of fraud was committed in the first parliamentary elections in 1993. This was mainly attributable to the fact that there was an urgent need to get the constitution approved, which probably would have not passed without the falsification of votes. Furthermore, the ruling elite's attitude towards democratic institutions such as parties was negative. Instead of striving towards the establishment of institutionalised, well-functioning parties, the ruling elite encouraged party fragmentation in order to secure its own power.<sup>547</sup>

Nevertheless, at the time many outside Russia believed that it was time to show support for Russian liberal reforms and make Russia one of the insiders of the European state society. In 1996, Russia became a member of the CoE, despite the fact that it had failed to meet a number of the membership commitments. It was believed that an integrationist, encouraging approach would be more fruitful with Russia. Because of the membership process, the CoE was inclined to interpret the development more positively than might perhaps have been the case otherwise.<sup>548</sup>

### *Evaluation*

By the end of 1995, Russia had developed its legislation and electoral rules to a point which complied with the European election standards. It had officially agreed to

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<sup>546</sup> Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, p. 77.

<sup>547</sup> McFaul and Petrov, "Elections," p. 53.

<sup>548</sup> See in particular the explanatory note on the "political significance of the election" in *Information Report on the Parliamentary Elections in Russia 17 December 1995 (Addendum V to the Progress Report)*.

implement the norm both in law and in practice. It had also approved a new constitution which guaranteed democratic principles and human rights in Russia. There were officially approved channels for lodging complaints concerning fraudulent practices in elections. The discursive practices of the government acknowledged the validity of the European norm of free and fair elections, and seemed to take the claims for fraud seriously by setting up a special commission to investigate the matter. All these points suggested that Russia was indeed very close to entering the "prescriptive status" of the Risse-Sikkink model. Indeed, the European tone was very positive, and the analysis was framed on the basis of Russian linear progress towards the consolidation of democratic norms.

The norm-specific scope conditions were positive for norm adaptation by the Russian Federation in 1993-1995. First of all, the requirements were clearly defined in the Copenhagen Document of the OSCE in 1990, and the CoE requirements of free and fair democratic elections were explicit for Russia after its membership application in 1992. Hence, the determinacy of the European norm of free and fair democratic elections was strong. The coherence of, and consensus on, the norm further strengthened with the general democratisation process taking place in Europe after the Cold War. There was a considerable norm hierarchy and institutionalisation backing the interpretation and implementation of the norm. The CSCE's Office of Free Elections was transformed into the Office for Democratic Institutions and Human Rights in 1994 as its mandate was widened. This all contributed towards the likelihood of socialisation to the norm of free and fair elections by Russia. The symbolic validation of the norm was weaker than it was regarding the question of the abolition of the death penalty, for example, but the high political profile made the implementation obligatory for all CoE and C/OSCE states. The resources needed for the implementation of the norm were massive, yet none of the organisations expected a "perfect" performance in the first elections; rather they were pressuring for true commitment, an honest attempt at improving the conditions for free and fair elections and general good will in pursuing the reforms.

The international conditions were also propitious for socialisation to occur. The international asymmetry was evident at the time, and the moral authority of the European organisations was strong in the case of election standards. Russia did not have

a problem with international observers or asking for election assistance from the institutions at the time. It thus acknowledged the moral authority of the organisations on the matter. Instrumental bargaining also played a role during the early years: Russia was aware that its international loans were dependent on its rating in introducing reforms at home, including the successful conduct of democratic elections.

The environmental conditions were also positive for norm adaptation. Russia had gone through a constitutional crisis, and the only way to solve the situation was to apply new standards of democracy. Free and fair democratic elections were the source of international legitimacy for the government, and the Russian government was naturally fully aware of this. Thus there was a strong desirability to adopt the European norm of free and fair elections. There was also a degree of time pressure, new information and assistance that was readily available from the European sources.

The domestic conditions, on the other hand, indicated that the implementation of the norm could prove to be difficult regardless of the level of commitment of the ruling elite. First of all, there was extremely limited experience of democracy in Russia. No one in Russia had experience of true democracy with open, pluralistic debate. Gorbachev had taken some steps towards democratisation and this was the only experience the reformers could draw from. The need for new methods and education was immense, but the domestic material resources were limited at the time.

The European organisations seemed to be very effective in introducing the requirement and standards of free and fair elections in Russia. The Russian legislation on the issue was improved to meet the European norms and requirements. The official discourse never doubted the goal of free and fair elections. Thus, the organisations were effective in the realm of discourse and formal, legal reforms. However, Russian practice was still lagging behind the European standards and, even more worryingly, there were signs of considerable election fraud in the 1993 elections. However, due to the downward trend in election fraud, the irregularities were explained away as teething troubles of the new system. The Russian irregularities and policies in general did not challenge the organisations or their norms.

The socialisation model seems to describe the development in Russia in general and in the question of free and fair elections fairly well. The new democratic constitution, new elections laws, and the conduct of the elections were all signs of the prescriptive status of the norm. Russia had accepted the obligatory nature of the norm and cooperated actively towards its full implementation. There were still a number of irregularities, but these would fade away with the mechanisms of institutionalisation and habitualisation taking over eventually.

### **Presidential elections of 1996: moving away from the European norms?**

The setting for the presidential election in 1996 was polarised. The centrist and liberal forces had been fragmented and the political scene was dominated by the Communist Party. Just as Yeltsin's team had envisaged, Yeltsin and the leader of the Communist Party, Gennadii Ziuganov, were the only serious candidates in the race. At the time, Yeltsin was very unpopular in Russia, but his campaign aimed at convincing the Russians – and international actors alike – that he was the lesser of two evils.

The presidential election of 1996 has been seen as a key turning point in the establishment of a virtual, manipulative political system, as well as the mastering of the art of misuse of administrative resources.<sup>549</sup> The elections showed the power of manipulation, particularly the manipulation of the media. The state-owned and private allied media were extremely biased in favour of the incumbent, and administrative resources were used to support him without scruples. Other candidates were arbitrarily disqualified and harassed. Yeltsin's massive and unlawfully large campaign spending also accelerated the consolidation of a new class of the oligarchs. Yeltsin's strategy used the questionable tools of Russian political technologists: false information, pressuring of local leaders, slanderous campaigning and behind the scenes manoeuvring which was close to ordinary bribery and corruption.<sup>550</sup> The undemocratic campaign was nevertheless highly successful. Just six months before the election, Yeltsin's popularity

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<sup>549</sup> Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, pp. 38-39.

<sup>550</sup> *Ibid.*, pp. 76-7. See also McFaul, "Russian Electoral Trends," p. 72.



rating was as low as six per cent. In the end, Yeltsin won the second round of elections with 54 per cent of the vote.<sup>551</sup>

### *Results*

According to the official information on the first round of voting, Yeltsin came first with 35.28 per cent and Ziuganov received 32.03 per cent of the vote. General Lebed came third with 14.52 per cent and Yavlinsky fourth with 7.34 per cent of the popular vote.<sup>552</sup> The results meant that a second round of voting was to be organised with only two candidates on 3 July 1996. The TsIK declared that Yeltsin won the second round of elections with 53.82 per cent and Ziuganov received 40.31 per cent of the ballots cast.

### *European involvement*

Despite the fact that there were increasing violations of the norm of free and fair elections during the election campaign and in the conduct of the elections, the European organisations once again whole-heartedly endorsed them. They dutifully reported the irregularities – such as media bias, politicisation of local election commissions, coercion, harassment, election fraud and so on – but simply noted that "they are not in the position to judge whether or not they had any significant electoral effect." These doubts did not, however, prevent them from claiming that the elections were a "sign of Russia's deepening commitment to democracy".<sup>553</sup>

The OSCE "congratulated the voters of the Russian Federation for participating in a further consolidation of the democratic process in the Russian Federation" and believed that violations of the norm of free and fair elections that may have taken place "did not materially affect the outcome" and that the results "accurately reflected the electors wishes on election day".<sup>554</sup> Bizarrely enough, the CoE congratulated Russia for "steady progress in the holding of democratic elections" and complemented Russia further by

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<sup>551</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," p. 65.

<sup>552</sup> Others: Zhirinovskii 5.70%; Fodorov 0.92%; Gorbachev 0.51%; Shakkum 0.37%; Vlasov 0.20%; Bryntsarov 0.16%. Again, these are the official results by the TsIK.

<sup>553</sup> Council of Europe, Parliamentary Assembly, *Information Report on the Russian Presidential Election, First Round (Addendum I to the Progress Report)*, 24 June 1996, Doc. 7560.

<sup>554</sup> Organization for Security and Cooperation in Europe/ODIHR International Observer Mission, *Election for the President of the Russian Federation First Round of Voting: Final Statement*, 18 June 1996.

claiming "there is no longer any reason whatsoever to doubt Russia's ability to hold free and fair elections".<sup>555</sup> According to the EU, the elections marked "a historic milestone in the consolidation of democracy in Russia".<sup>556</sup>

Despite the European comments, the vote was heavily rigged, particularly in the second round of voting.<sup>557</sup> Indeed, the whole electoral process was less democratic than before. Nevertheless, the organisations endorsed the elections on the basis of political calculations: Yeltsin's victory over communist Ziuganov was a relief for many westerners.<sup>558</sup> It is also true that Yeltsin did, in all likelihood, receive more votes than Ziuganov and would thus have been elected in any case. This, nevertheless, hardly constitutes satisfactory grounds for closing one's eyes to the fraud and undemocratic developments taking place in Russia. The European policy of endorsement of fraudulent Russian practices semi-legitimised the practice and encouraged the development of an electoral culture based on manipulation and fraud in Russia.<sup>559</sup>

After the 1996 presidential elections, it was evident that Russian development in the case of free and fair elections had deviated significantly from the European norm. It was not due to any lack of experience or resources that Russia failed to meet the norm. Instead, it was already building up its own undemocratic version of electoral democracy. The system's aim was not to facilitate fair competition, but to elect the "right" candidate.

The European policy of endorsing the elections can be backed by four arguments. First of all, Reddaway and Glinski have claimed that "while the West could tolerate the creeping unspoken victory of market bolshevism over democracy, it would probably not

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<sup>555</sup> Council of Europe, Parliamentary Assembly, *Information Report on the Russian Presidential Elections, Second Round (Addendum I to the Progress Report of the Bureau of the Assembly and the Standing Committee)*, 6 September 1996, Doc. 7633.

<sup>556</sup> European Union, *Declaration by the Presidency on the Elections in Russia*, 5 July 1996, PESC/96/55.

<sup>557</sup> In some national republics the vote swings between the rounds were eye-catching. Ziuganov managed to receive less votes in the second round than he had received in the first round in national republics such as Tatarstan, Dagestan and Kalmykia. Almost all serious experts agree that this is highly implausible. See Fish, *Democracy Derailed in Russia: The Failure of Open Politics*, p. 33; McFaul and Petrov, "Elections," p. 45.

<sup>558</sup> Interview with an OSCE PA member, 12 December 2006.

<sup>559</sup> Sarah E. Mendelson, "Democracy Assistance and Political Transition in Russia," *International Security* 25, no. 4 (2001): pp. 72-73.

go along with a clear-cut, *explicit* victory by the anti-democratic forces"<sup>560</sup> These political calculations drove the organisations to endorse the results which guaranteed the relative stability of the development that was liberal at the surface, yet increasingly illiberal in its contents.

Secondly, it may have been that the organisations simply failed to synthesise what was going on. The organisations have been accused of analysing the development through the prism of the popular democratisation paradigm, and thus failing to recognise deviations from it.<sup>561</sup> Since the challenge was not a direct one, the organisations could explain the irregularities away by seeing it as part of the transition process. Yeltsin's liberal discourse made it easy to define him as a liberal force aiming at the consolidation of democracy – which he may have been once but certainly was not at this point. Yeltsin naturally exploited this image internationally as much as he could.

Thirdly, it has been claimed that the policy of endorsement has been built into the practice of election observation, and the missions are only now finding ways to be more critical and constructive in their reports. The problem revolved around the question of "how many specific shortcomings must be observed, and how serious they must be, before an election can be called '*not* free and fair'".<sup>562</sup> For a long time, the biggest contribution of international observers was seen to be their mere presence in the target state during the elections.

Fourthly, fraud and abuse of administrative resources was only part of the bigger picture. The unhealthy political process, such as the invention of "opposition" parties and candidates, was by and large outside the scope of the reports. In order to understand the significance of the "irregularities" which were dutifully reported, one had to place them in this wider context. This wider context was, however, missing from the international observer reports.

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<sup>560</sup> Peter Reddaway and Dmitri Glinski, *The Tragedy of Russia's Reforms: Market Bolshevism against Democracy* (Washington DC: United States Institute of Peace Press, 2001), p. 492.

Emphasis in the original.

<sup>561</sup> Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism*, pp. 12-14.

<sup>562</sup> Carothers, "The Observers Observed," pp. 24-25. Emphasis in the original.

## *Evaluation*

The scope conditions changed only marginally around the year 1996. Russia became a member of the CoE which changed the international structure towards a less asymmetrical direction. The material bargaining power of the CoE also weakened. Nevertheless, Russia was still weak and sought European acceptance. The European organisations were morally authoritative. The norm-specific condition remained internationally strong. The European norm on free and fair elections was considered to be absolutely obligatory in character. The determinacy, coherence and consensus on the norm were strong in Europe. People in Russia supported the idea of democratic elections and wanted to vote freely. There was plenty of guidance and assistance available on elections internationally. Nevertheless, despite the favourable scope conditions, the Russian Federation managed to deviate from socialisation to the European norm of free and fair elections. This turn may not be explained through structural conditions, but only through conscious, political decisions made by the elite. The Russian Federation did not challenge the norm directly but remained rhetorically committed to the European norm. It used the norms as empty shells and filled them with a different practical meaning.<sup>563</sup> However, at this point one cannot see that Russia's policy would have influenced the European norms and standards or cooperation. The real nature of the Russian policies on the issue was not clear from outside.

In a superficial way, Russia still seemed to meet the criteria of the prescriptive status of socialisation: it was actively involved in the international cooperation on the norm of free and fair elections, its legislation was in conformity with the European standards, its democratic nature was backed by constitutional guarantees, and even its public statements were thoroughly consistent with the norm of free and fair democratic election. All this suggested that there was commitment to the norm and that there was constant progress towards its realisation in Russia. However, the practical deviations of the norm in fact grew while legislation and the official discourse were strengthened. Thus, the model seems unable to grasp the nature of the changes taking place in Russia.

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<sup>563</sup> In a way, this is reminiscent of the discussion on empty signifiers and their contestation. This contestation was, however, hidden from the public at home and abroad and it did not concern itself with definitions but only with the practice. See Laclau, "Discourse."

## **Elections of 1999 and 2000: institutionalisation of irregularities**

In August 1999, Yeltsin appointed a former FSB head, Vladimir Putin, as his prime minister. In early September, the violence in Chechnya and Dagestan escalated and the Russian leadership quickly sent tanks and troops to crush the Chechen resistance.<sup>564</sup>

Putin was commonly perceived as being the person behind the decisions and he gained a reputation as an efficient and tough leader. The decision to crush the terrorist resistance and Putin's leadership became increasingly popular.

### *Parliamentary Elections of 1999*

Elections to the State Duma took place in December 1999. Prior to the elections, two competing parties/electoral blocs emerged in the Russian political scene. The first, the Fatherland – All Russia (*Otechestvo – Vsiia Rossiia*) electoral bloc was a popular challenger to the Yeltsin camp. This bloc consisted of two parties: one formed by former prime minister, Evgenii Primakov, and the other one by powerful regional head, Mitimer Shaimev. However, just some months before the elections, a new party of power was formed. This time around it was called Unity (*Edinstvo*) and it was chaired by the minister for emergency situations, Sergei Shoigu. The party's main ideology was unquestioned loyalty to the president.

The systemic problems which were clearly present in the 1996 presidential elections grew bigger and more widespread. The elections were characterised by slandering tactics in the media; in particular the infamous "media-killers" activities.<sup>565</sup> The principal candidates of Fatherland – All Russia were practically "assassinated" by popular TV journalists. Both of the state-owned TV channels actively supported the Unity party. There was also evidence of systematic management of election campaigns by the presidential administration. The presidential administration favoured and actively supported Unity, and let Yabloko and the Union of Right Forces (*Soiuz Pravyh Sil*,

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<sup>564</sup> Timothy J. Colton and Michael McFaul, *Popular Choice and Managed Democracy: The Russian Elections of 1999 and 2000* (Washington DC: Brookings Institution Press, 2003), p. 5.

<sup>565</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," p. 65.

SPS) campaign without interference. Other parties and their campaigning were harassed and campaigned against in the state-owned media.<sup>566</sup>

### *Results*

According to the official statistics, the Communist Party of the Russian Federation sustained its position as the biggest party with 24.29 per cent share of the votes. The biggest surprise was that the hastily set up pro-government Unity party managed to gather 23.32 per cent of the votes and that the Fatherland – All Russia bloc received only 13.33 per cent. A new liberal party called the Union of Right Forces – towards which Putin had signalled mild sympathy during the campaign – did well and secured altogether 8.52 per cent of the vote. Vladimir Zhirinovskii's bloc ensured representation in the Duma with 5.98. Another close call was liberal Yabloko with 5.93 per cent share of votes.

### *European involvement*

The OSCE and the CoE observed the elections in Russia and their reports continued the policy of endorsement. The reports started by citing positive legal reforms passed before the elections. The organisations were particularly pleased since some of the reforms followed their recommendations after the 1995 parliamentary elections.<sup>567</sup>

With regard to the campaign, the CoE admitted that the campaign in the media was not fair, not clean and not honest.<sup>568</sup> Also the OSCE reported that "by the end of the campaign, legitimate questions had arisen as to whether the administration had stepped beyond legal boundaries that dictate a separation of public offices and resources from political campaign activities".<sup>569</sup> It even acknowledged that a number of questionable actions taken by the administration were well-documented.

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<sup>566</sup> Ibid.

<sup>567</sup> These changes concerned the official procedure for the registration of candidates for single mandate districts. See report Council of Europe, Parliamentary Assembly, *Report: Ad Hoc Committee to Observe the Parliamentary Elections in Russia (19 December 1999)*, 24 January 2000, Doc. 8623.

<sup>568</sup> Ibid.

<sup>569</sup> Organization for Security and Cooperation in Europe/ODIHR Election Observation Mission, *Russian Federation Elections to the State Duma 19 December 1999: Final Report*, 13 February 2000.

Nevertheless, once again the European organisations were on the whole satisfied with the parliamentary elections to the State Duma. The CoE even asserted that the polling was "conducted in a satisfactory manner and that high turnout indicates that there is a wide spread confidence in the election process". Whatever shortcomings there might have been were considered insignificant.<sup>570</sup> Again, a progressive picture of a state making its journey towards the consolidation of democracy was painted: the OSCE saw the elections as having "marked significant progress in consolidating representative democracy in the Russian Federation".<sup>571</sup>

Despite the European endorsement, these elections confirmed that Russia's development had deviated from the European norm. A considerable amount of institutionalisation took place around the elections. However, this did not include the institutionalisation of the European norm of free and fair elections, but instead the institutionalisation of negative, undemocratic practices. Russia was not moving up on the ladder of socialisation: the prescriptive status of the norm was challenged indirectly, not openly. The organisations seemed to be giving Russia the benefit of the doubt and tried to convince themselves and others that everything was going according to plan, but just progressing slower than had been expected.

### *Presidential elections of 2000*

President Yeltsin resigned in his New Year's speech 1 January 2000. His prime minister acted as the president until new elections took place in March 2000. The presidential elections of 2000 marked the start of a new era: namely the period of consolidation of the centre's power and the so-called managed or sovereign democracy.<sup>572</sup> Traits of the system had been there during the Yeltsin years, but it was only now that the anti-pluralistic system started to function more smoothly, and as had been intended.

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<sup>570</sup> Organization for Security and Cooperation in Europe/ODIHR, OSCE Parliamentary Assembly, PACE and European Parliament International Election Observation Mission, *Russian Federation Election of Deputies to the State Duma (Parliament) 19 December 1999*, 20 December 1999.

<sup>571</sup> Organization for Security and Cooperation in Europe/ODIHR Election Observation Mission, *Russian Federation Elections to the State Duma 19 December 1999: Final Report*.

<sup>572</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections."

Putin decided to campaign by non-campaigning. This meant that he published no political programme, did not turn up to television debates between the candidates, had no television spots, and organised no election events.<sup>573</sup> Instead, he chose to take advantage of the manipulative tactics of political technologists. In practice this meant media favouritism and misuse of institutional and regulative resources, as well as outright fraud and ballot box stuffing. Although Putin was a clear favourite and bound to win, the undemocratic manipulative strategy was deployed. This demonstrates that undemocratic practices in elections are not just a tool to get the "right" candidate. It is also an institutionalised practice which is over-determined in today's Russia.<sup>574</sup>

### *Results*

According to official figures, Vladimir Putin received 52.94 per cent of the vote. This result meant that no second round was needed. Gennadii Ziuganov came second with 29.21 per cent of the vote.<sup>575</sup>

After the elections, plenty of reports of vote fraud emerged. According to many estimates, a truer figure in favour of Putin would have been somewhere in the high 40s, rather than the low 50s.<sup>576</sup> Ziuganov, Yavlinsky, and even Zhirinovskii all spoke of fraud.<sup>577</sup> It is likely that without the fraud, a second round of voting would have been needed.

The claims of fraud are naturally difficult to prove, but there are several issues that indicate that widespread fraud was likely to have taken place. For example, a report published by the *Moscow Times* noted that there had been an increase of 1.3 million in the number of eligible voters between December 1999 (when the parliamentary elections were held) and March 2000 (when the presidential vote took place). This sudden jump could not be explained by demographical facts (as the Russian population

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<sup>573</sup> Colton and McFaul, *Popular Choice and Managed Democracy: The Russian Elections of 1999 and 2000*, p. 175.

<sup>574</sup> Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, p. 75.

<sup>575</sup> Others: Yavlinsky, 5.80, Tuleev 2.95, Zhirinovskii 2.70, Titov 1.47 and Pamfilova 1.01.

Official results by the TsIK.

<sup>576</sup> Fish, *Democracy Derailed in Russia: The Failure of Open Politics*, p. 34.

<sup>577</sup> Although Zhirinovskii claimed that he had nothing against this practice. Kagarlitsky, *Russia under Yeltsin and Putin*, p. 260.



is in fact shrinking at an alarming rate) or any other sensible factors.<sup>578</sup> Several reports indicated that nonexistent persons had been added to the voter rolls.

There were also various eyewitness reports on the fraudulent, illegal behaviour of the local election commissions. In order to understand these claims better, a brief explanation of the basic electoral administration is required. There are electoral commissions on four different levels: at the lowest level are the Precinct Commissions (94 864) and at the next level up are the Territorial Commissions (several hundred). Above these, there are Regional Commissions (89) and finally, at the highest level, the Central Electoral Commission (TsIK). The local Precinct Commissions count the votes, fill in an official document called a protocol, which records the results and send the protocols to the Territorial Electoral Commissions. The Territorial Commissions send them further to the Regional Commissions, which report the results to the TsIK in Moscow. The protocols should be made public at each precinct immediately after the votes have been tallied by law. In practice, this does not, however, happen.<sup>579</sup> For example, the Moscow Times requested all 1550 protocols in Dagestan, but were only able to obtain only 245 protocols. The TsIK did nothing to help the reporters to obtain the information that should be open to anyone according to the law. The Moscow Times compared the received protocols with the Territorial Commission's reports and found that there were 87 139 fewer votes for Putin in the original documents.<sup>580</sup> The Precinct Commissions may also "correct" the numbers after the count, or leave some columns unmarked so that the numbers can be added later by higher commissions.

After the elections, there were more than 2 000 complaints and 200 hundred lawsuits filed in connection with the presidential election. Both the TsIK (whose task is to deal with the complaints) and courts proved unhelpful. Very few complaints received a response and the TsIK ruled out the possibility of checking the results in advance. The

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<sup>578</sup> Also other estimates suspect that the increase in eligible voters indicates that officials inflated the electoral rolls by adding non-existent apartments and floors to buildings. See *United Press International*, 11 September 2000.

<sup>579</sup> Fish, *Democracy Derailed in Russia: The Failure of Open Politics*, p. 34.

<sup>580</sup> Special report in the *The Moscow Times*, 9 September 2000. Available at <<http://www.themoscowtimes.com/stories/2000/09/09/119-full.html>>.

courts also overruled most of the cases and only one of them was taken up by the public prosecutor.<sup>581</sup>

### *European involvement*

Again, the organisations reported the witnessed irregularities dutifully, but still endorsed the elections and claimed that the elections were a contribution towards the consolidation of democracy in Russia. The CoE admitted that "although the campaign cannot be considered to have been as fair as we would have liked to see it happen" the results embodied the "the free will of the Russian people"<sup>582</sup> The OSCE went further still by claiming that the 2000 Presidential Election "represented a benchmark in the ongoing evolution of the Russian Federation's emergence as a representative democracy".<sup>583</sup> The organisation stated that the election demonstrated Russia's "continuing commitment to strengthen its democratic electoral institutions".<sup>584</sup>

Many people in Russia felt that the international election observation had become a political exercise without any practical meaning. The misuse of administrative resources and fraud was widely acknowledged by the public. Vladimir Andreenkov, director of the Centre of Comparative Social Research in Moscow, commented illustratively in the *Christian Science Monitor* on 18 September 2000:

"I have no doubt that there was fraud. We're all well acquainted with the scale and methods of pressure employed by the president's team during the elections, both direct and indirect [...] But, so what? In Russia, fraud is seen as a natural part of the process"<sup>585</sup>

The *Moscow Times* – that had cited eyewitness statements and other documents in order to prove wide vote-buying, ballot stuffing and falsification of election protocols and election rolls in its special report on elections – wrote in its editorial in September 2000:

"[T]here is ample evidence that the Russian presidential elections do not deserve the legitimacy that an OSCE nod delivers. If this is the best a well-intentioned Western mission can do, then perhaps next time they should just stay home [...]"<sup>586</sup>

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<sup>581</sup> Fish, *Democracy Derailed in Russia: The Failure of Open Politics*, pp. 45-46.

<sup>582</sup> Council of Europe, Parliamentary Assembly, *Report: Ad Hoc Committee to Observe the Russian Presidential Election (26 March 2000)*, 3 April 2000, Doc. 8693.

<sup>583</sup> Organization for Security and Cooperation in Europe/ODIHR Election Observation Mission, *Russian Federation Presidential Elections 26 March 2000: Final Report*, 19 May 2000.

<sup>584</sup> *Ibid.*

<sup>585</sup> *Christian Science Monitor*, 18 September 2000.

<sup>586</sup> *The Moscow Times*, 26 September 2000.

The head of the Election Section at ODIHR Hrair Balian replied to the editorial and the report on election fraud by Yevgenia Borisova the newspaper had published earlier. The reply did not add much to the debate, but can be seen as a sign of increasing concern over the reputation of the organisation.<sup>587</sup>

The organisations' claim that rigged, non-pluralistic elections contributed towards democracy seems odd. The institutionalised undemocratic practices could not take Russia further on the road of rule-consistent behaviour towards democracy. The Russian elite were not even trying to consolidate democracy – their aim was merely to consolidate their own power. The biggest problem was that the European organisations seemed to be failing to understand the source of the problem. They took the leadership to be striving towards democracy, as the official Russian rhetoric claimed it was. However, under such circumstances, it would be judicious too look beyond what was said, to the actual politics. In Russia, the challenge for democracy has been a creeping, indirect one. In principle, the norm was approved and its legitimacy was never officially in doubt. This normative, formal acceptance did not prevent the elite from abusing the process openly and institutionalising questionable practices. The organisations resorted to the hope that – despite growing evidence – it was just a case of delayed democratisation.

To sum up, the development of popular elections in Russia continued on the undemocratic course that had been taken in 1996. The illiberal, undemocratic features became firmly established and institutionalised during this period. The developments in Russia, and the European policy of endorsement impacted negatively on the legitimacy of the European norms and practices. The dynamics of this impact are discussed below.

### *Evaluation*

The norm-specific scope conditions do not explain the deviation from the European norm during the period under scrutiny. The coherence and consensus on the norm remained as strong as before. The normative hierarchy and institutionalisation of the

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<sup>587</sup> See Letters to the Editor, *The Moscow Times*, 28 October 2000. The debate between the OSCE and the Moscow Times was reported widely in the international media. See, for example, *United Press International*, 11 September 2000, *Associated Press* 12 September 2000, *Los Angeles Times* 13 September 2000, *Christian Science Monitor*, 18 September 2000.

norm were also considerable. The norm was considered to be of fundamental importance, and one of the defining features of the European society of states.

The international conditions had not changed dramatically either. Even though the organisations had lost a degree of their structural advantage and much of their material bargaining power vis-à-vis Russia over the years, they were generally considered authoritative in the question of free elections. Russia still invited European observers to its elections, and thus acknowledged that their standards and norms obliged Russia too.

The environmental and domestic conditions had, however, changed considerably since the early 1990s. The first presidential transfer of power in the history of the Russian Federation was a new type of situation without precedent. This should have made the ruling elite more open to new information and norms. However, the situation had been carefully orchestrated in order to secure President Putin a clear victory in seemingly democratic elections. Domestically, the values of stability, predictability and a strong state seemed to have overridden the norm of free and fair democratic elections. The domestic structure became increasingly president-dominated after 1999 as the new leader Vladimir Putin took over. The Russian goal was not to implement the European norm, but to use the norm superficially to legitimise elections without true competition.

European effectiveness turned into a negative mode. The practice of election observation seemed to backfire as it indirectly legitimised illiberal and fraudulent practices by the Russian authorities. The irregularities became a well-established habit in Russia despite – or indeed because of – the European efforts. The organisations seemed to be implying that the form of institutions, such as elections, is more important to them than how they function in reality.<sup>588</sup> Through the policy of endorsement, they discredited the voices calling for true democracy and indirectly helped to legitimise the fraudulent practices.

Even more dangerously, Russian policies started to have wider implications for European norms and structures. The positive reports by the organisations ate into their credibility and authority on the matter. The organisation received a considerable amount

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<sup>588</sup> Mendelson, "Democracy Assistance and Political Transition in Russia," pp. 72-73.

of negative publicity in the international press.<sup>589</sup> Russian deviation from the norm, and the European policy of endorsement seemed to imply that manoeuvring on the question was allowed. The practice thus weakened the coherence and consensus on the norm in Europe.

The socialisation model outlined in Chapter 1 fails to grasp the essence of the developments in Russia on the question of free and fair elections. Russia's challenge to the norm was indirect, and took place while engaging actively in cooperation with the European organisations. Russia continued to introduce minor legislative improvements, thus pleasing the organisations while simultaneously ensuring that minor things such as law did not restrict its manipulation of elections. The European norm of free and fair elections was not challenged rhetorically but through actual practices. The socialisation model would (just like the organisations did) miss the fundamental nature of the changes in the implementation. If anyone was "trapped in their own words", it was the structurally strong European organisations and not Russia. Both the phases of tactical concessions and the prescriptive status would be framing the developments in a non-descriptive and non-analytical manner.

### **Elections of 2003 and 2004: European authority challenged**

#### *Parliamentary elections of 2003*

The parliamentary elections of 2003 took place against the background of a rapidly growing economy, high oil prices and huge popularity of President Putin. Since the 1999 parliamentary elections, the political scene had changed significantly. Soon after these elections, the three main centrist parties (and the biggest competitors in the 1999 Duma elections) Unity, Fatherland and All Russia (the latter two had previously formed a common electoral bloc) merged. The new coalition party was called United Russia (*Edinaia Rossiia*). The common wisdom is that the merger was overseen by the presidential administration. Senior officials were open about the administration's close ties with the party.

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<sup>589</sup> See, for example, *United Press International*, 11 September 2000, *Associated Press* 12 September 2000, *Los Angeles Times* 13 September 2000, *Christian Science Monitor*, 18 September 2000.

Other significant developments preceding the elections were President Putin's reassertion of federal authority in the regions and state control over the national broadcasting media. National TV channels that had been independent or allied with opposition forces were closed down or taken over by the state.<sup>590</sup> These three developments made it possible to consolidate the management of political processes and the wider and more efficient use of administrative resources. Once again, unexpected tax or fire inspections in opposition parties' premises, disqualification of candidates on obscure grounds<sup>591</sup>, spreading of kompromat through the national media, harassment of candidates, politicisation of the electoral commissions and out-right vote rigging were present in Russian elections. The complaints on abuse filed later once again fell on deaf ears.

### *Results*

The elections consolidated the dominance of the party of power, United Russia, which received 38.0 per cent. When its single-mandate district seats are added to this number, it won altogether 222 seats in the Duma.<sup>592</sup> The popularity of the Communist Party was in dramatic decline. It received 12.8 per cent of the total vote. Zhirinovskii's LDPR received 11.7 per cent. A new populist and patriotic bloc called Motherland – National Patriotic Union (*Rodina – Narodno-Patriotichskii Soiuz*)<sup>593</sup> did very well with 9.2 per cent of the vote and a total of 37 seats. According to the official results, the liberal parties (Yabloko and SPS) did not manage to pass the 5 per cent threshold and received no party list seats at all.<sup>594</sup> In effect, the elections gave Putin almost total control of the Duma.

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<sup>590</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," pp. 66-69.

<sup>591</sup> For example, former prosecutor general Iurii Skuratov was a target of kompromat attack and was twice refused registration. His "offence" was that he had "concealed" his qualifications as a professor. Andrew Wilson cites many more similar instances, see: Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, p. 82.

<sup>592</sup> The figure is, however, bigger in reality as many of the independent members favoured Putin and many of them joined United Russia later.

<sup>593</sup> It is commonly believed that the populist Motherland bloc was a creation of the presidential administration. The idea was to take away votes from the Communists as well as from Zhirinovskii's party. See Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, pp. 260-65.

<sup>594</sup> Official results by TsIK.

However, after the elections the liberal parties (Yabloko and SPS) and the Communist Party insisted loudly – together and separately – that there had been stuffing of ballot boxes and major occurrences of vote rigging. According to various sources Yabloko's share of votes should have been closer to 6 than 4.3 per cent and the SPS's share closer to 5.1 than 4 per cent.<sup>595</sup> According to Steven Fish and other experts, the liberals' decreased share of votes is almost certainly the result of late padding of the turnout. The Communist Party's parallel count carried out after the elections suggested that its own performance was about the same as the official figures stated, but that United Russia's rate was 33.1 and that Yabloko received 6 per cent.<sup>596</sup>

### *European involvement*

The OSCE and the CoE cooperated actively in these elections and published a joint initial report. The tone and message of the European observation reports changed after the 2003-2004 election cycle. Most importantly, the organisations finally refused to endorse the elections and confessed that they were far from free and fair. The elections and their results demonstrated that the ruling elite had succeeded in marginalising all its competitors and managed to firmly consolidate its power. The western observers were particularly disappointed to see the liberal parties practically wither away.

The ominous results were a final wake up call to the organisations: even though Russia still did not officially challenge the democratic norms, its practices were increasingly far from the norm and instead of progress there had been a clear regression in election standards. The organisations did not, however, completely abandon the democratisation paradigm despite their sobering analysis of the situation. For instance, the CoE claimed that Russia's progress towards democracy had "slowed down"<sup>597</sup>, not deviated from the model. It has also been suggested that the critical report had more to do with the personal characteristics of the chairman of the International Observation Mission rather than a thoroughly considered change of policy.<sup>598</sup>

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<sup>595</sup> Fish, *Democracy Derailed in Russia: The Failure of Open Politics*, pp. 78-79.

<sup>596</sup> *Ibid.*, p. 78.

<sup>597</sup> Council of Europe, Parliamentary Assembly, Council of Europe, Parliamentary Assembly, *Report: Ad Hoc Committee to Observe the Parliamentary Elections in the Russian Federation (7 December 2003)*, 22 January 2004, Doc. 10032.

<sup>598</sup> Interview with an OSCE PA member, 12 December 2006. The Mission was headed by president of the OSCE PA, Bruce George.

Nevertheless, for once the observers were clear about the fact that Russia had intentionally broken several European commitments for democratic elections. In particular, the OSCE report mentioned the provisions on unimpeded access to the media on a non-discriminatory basis, a clear separation between the state and the political parties and guarantees to enable political parties to compete on the basis of equal treatment as well as secrecy of the ballot, on the right to seek political office without discrimination, on a free and fair atmosphere for campaigning without obstacles and the obligation to allow domestic observers from any appropriate organisation to observe elections.<sup>599</sup> The OSCE and CoE jointly called "into question Russia's willingness to move towards European standards for democratic elections".<sup>600</sup> The EU was, however, still hesitating: contrary to established practice, the EU presidency did issue a statement on Russian elections. This was due to the fact that Italy was holding the presidency at the time, and its prime minister, Silvio Berlusconi, was more sympathetic to Russia's policies than many other EU states. The EU suffered from lack of unity in its Russia policy.<sup>601</sup>

#### *Presidential elections of 2004*

Despite the fact that it was evident that President Putin was about to win the presidential elections with a significant margin, the system relied on increasing misuse of administrative resources. The increased state control meant that the misuse of media resources was more visible and more efficient. Once again, President Putin officially refused to take part in normal campaigning (but, nevertheless, appeared on almost every news broadcast aired). Other candidates, Sergei Glazev (from Motherland but running independent) in particular, were harassed at every turn of their campaign. This time

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<sup>599</sup> Organization for Security and Cooperation in Europe/ODIHR Election Observation Mission, *Russian Federation Elections to the State Duma 7 December 2003: Final Report*, 27 January 2004.

<sup>600</sup> Organization for Security and Cooperation in Europe/ODIHR, OSCE Parliamentary Assembly and PACE International Election Observation Mission, *Russian Federation State Duma Elections 7 December 2003: Statement of Preliminary Findings and Conclusions*, 8 December 2003.

<sup>601</sup> Frustration with this incoherence later resulted in a Communication from the Commission of EU-Russia relations. See European Union, European Commission, *Communication from the Commission on Relations with Russia*, 9 February 2004, CO(2004)106.



Communists were favoured by the administration's manipulative tactics in order to push Glazev into third place.<sup>602</sup>

### *Results*

According to the official results, Vladimir Putin won the elections with 71.31 of the votes. The communist candidate Nikolai Haritonov came second with 13.69 per cent of the votes. Sergei Glazev received 4.10 and Irina Khakamada 3.84 per cent of the votes.<sup>603</sup> Some regional results read like a fairytale for Putin: in Kabardino-Balkaria the turnout was 95.9 per cent and 96.5 per cent of the votes went to Putin, in Ingushetia the turnout was 91.1 per cent with 98.2 per cent for Putin, and in Chechnya the turnout was claimed to have been 89.7 per cent turnout, with 92.3 per cent for Putin.<sup>604</sup>

### *European involvement*

The European organisations viewed the presidential election of 2004 in a negative light, as with the parliamentary elections a few months earlier. The conclusion of the European election observation mission was that despite technical professionalism, the election "process overall did not adequately reflect principles necessary for a healthy democratic election." It was also noted that "essential elements of the OSCE commitments for democratic elections [...] were lacking". Even direct falsification of election results had been observed, and thus elections could not be called free and fair.<sup>605</sup> The EU also gave a statement supporting this conclusion:

"[...]the European Union is concerned by the finding that "the state-controlled media displayed clear bias in favour of the incumbent and that the authorities failed to attempt to rectify this situation". [...]the European Union calls on Russia to take steps to ensure that future elections meet more fully Council of Europe and OSCE standards, including free media".<sup>606</sup>

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<sup>602</sup> Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*, pp. 42-43.

<sup>603</sup> Official results by the TsIK.

<sup>604</sup> These are official results by the TsIK, quoted in Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World*. The OSCE/ODIHR report also included a Sample of Implausible Turnout and Result Figures from 188 territorial election commissions (Appendix 1). See Organization for Security and Cooperation in Europe/ODIHR Election Observation Mission, *Russian Federation Presidential Election 14 March 2004: Final Report*, 2 June 2004.

<sup>605</sup> Organisation for Security and Cooperation in Europe/ODIHR, *Russian Federation Presidential Election 14 March 2004: Final Report*.

<sup>606</sup> European Union, *Declaration by the Presidency on Behalf of the European Union on the Presidential Elections in Russia*, 17 March 2004, PESC/04/36.

This time, the reason for fraud was clearly not the result: Putin would have been elected in any case and quite likely in the first round of voting. This once again confirms that that vote rigging is an over-determined, firmly-rooted and institutionalised practice. The organisations offered their help in introducing reforms in order to guarantee fairer elections in the future. Unfortunately for the European organisations, the political game had already been lost. At this point, it was already extremely hard to reverse the development in Russia.

Russia received the European criticism coldly. In 2002, the CIS summit had adopted a Convention on the Standards of Democratic Elections, Electoral Rights, and Freedoms in the Member States of the Commonwealth of Independent States which established a CIS Election Observation Organisation. The organisation observed both the parliamentary and the presidential elections in Russia, and declared them both free and fair. Russia appealed to its judgement on the issue. No apologies or promises to improve the situation in the future were given by the Russian side. On this question, the elections proved to be a turning point in relations between the Russian Federation and the organisations. It marked the beginning of Russia's fight against the European "double standards" against Russia and other Soviet republics.

On 8 July 2004 Russia and eight other CIS member states issued a public statement in which they accused the OSCE of failing to respect their sovereignty and applying double standards in its treatment of its member states. They claimed that the organisation focuses too much on promoting human rights and democracy in certain countries and too little on other issues.<sup>607</sup> The EU mission to the OSCE replied to the statement by asserting that human rights and rule-of-law issues cannot be considered internal affairs. The presidency claimed that the EU has "serious concerns about certain elements of the declaration".<sup>608</sup> Foreign minister, Sergei Lavrov, renewed Russia's criticism by writing an article to the *Financial Times* in November.<sup>609</sup>

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<sup>607</sup> The statement was signed by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine, and Uzbekistan. See Eugen Tomiuc, "OSCE: Several CIS States Rebuke Democracy Watchdog," *RFL/RL*, 9 July 2004.

<sup>608</sup> *Ibid.*

<sup>609</sup> Sergei Lavrov, "Reform Will Enhance the OSCE's Relevance," *Financial Times*, 29 November 2004.

The CIS observers and the European organisations disagreed again over the democratic standards during the election crisis in Ukraine in November–December 2004. Before the elections, Russia openly backed pro-Kuchma, pro-Russia candidate Viktor Yanukovich. The initial elections which were held in November 2004 were, according to European and American observers, heavily rigged and many voters were brutally pressured to vote for Yanukovich. There were demonstrations and pressure from abroad to hold a re-run to the elections. Russia and President Kuchma opposed a re-run of elections, but after a Supreme Court ruling a re-run was organised. The opposition candidate, former prime minister, Viktor Yushchenko, won the re-run elections held on 26 December 2004. This episode led to a cooling of relations between Russia and western democracy promoters – meaning first and foremost the OSCE.

Russia has refined its critique into an action plan: within the CIS system, it is building a similar election observation framework to that of the OSCE. This framework is one of the tools that Russia uses to back its strategy in the former Soviet republics. While the OSCE increasingly condemns fraudulent elections in CIS semi-authoritarian states in the international press, the CIS observers' reports declaring elections free and fair are cited in the domestic media. This kind of "forum-shopping" is becoming an established practice in the semi-authoritarian states in the former Soviet region.<sup>610</sup>

The situation was tense when the OSCE foreign ministers met in Sofia in December 2004. Russian foreign minister, Sergei Lavrov, criticised the OSCE for double standards and claimed the OSCE could not be trusted to monitor elections in good faith. "In the absence of any objective criteria, monitoring of election processes becomes an instrument of political manipulation and a factor for destabilisation."<sup>611</sup> Lavrov accused western states of using the OSCE election missions as a political tool to influence internal political events in former Soviet states. Even though he did not mention Ukraine by name, the reference was clear. Russia proposed a reform of the whole organisation, and threatened to withdraw its budgetary contributions if its suggestions

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<sup>610</sup> Interview with an OSCE PA member who has headed several observer missions in CIS states, 12 December 2006. See also Mark Baker, "East: Why Do OSCE, CIS Observers Rarely Agree on Elections?," *RFE/RL*, 12 April 2005; Roman Kupchinsky, "CIS: Monitoring the Election Monitors," *RFE/RL*, 2 April 2005.

<sup>611</sup> Lavrov at OSCE meeting in Sofia, *Associated Press*, 7 December 2004.

were not seriously considered.<sup>612</sup> The meeting decided to establish a high-level panel to consider the future and reforms of the OSCE.<sup>613</sup> In February 2005, Lavrov raised the issue once more, and suggested that the OSCE, Council of Europe, CIS Election Observation Organisation and NATO Parliamentary Assembly should organise a joint seminar on election assessment. The OSCE election observer specialists met in Vienna in April 2005 in order to discuss the criticism Russia had raised.<sup>614</sup> The Chairman of the TsIK, Aleksandr Veshniakov, claimed in the meeting that OSCE observers were helping certain countries to interfere in the internal political affairs of other states. Veshniakov claimed that Russia wants both the CIS and the OSCE standards to be used in assessing elections.<sup>615</sup> Thus Russia is now outspokenly aiming at changing the OSCE standards which were accepted in Copenhagen in 1990.

The OSCE has been puzzled by the magnitude of Russia's attack. The ODIHR's director, Christian Strohal, has tried to convince Russia that the methods it uses are clearly defined and the same in the west as in the former Soviet republics.<sup>616</sup> The relations heated up once again with the Belarusian elections in March 2006. Once more, the CIS observers endorsed the elections while the European organisations criticised them harshly, claiming that they were neither free nor fair.<sup>617</sup>

To sum up, the Russian challenge has potentially dangerous consequences as it has not only challenged the authority of the organisations, but recently also the norm of free and fair elections directly. In the case of the death penalty, the Russian challenge relates to the authority of the organisations in setting up exact standards and timetable for the implementation of the norm, but in this case the attack is directed straight at the European norm of free and fair elections which Russia wants to redefine. Russia's action aims to impact the working of the OSCE in the field of election assistance. Its criticism has led to the plans to restructure the organisation. It also threatened to withdraw its

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<sup>612</sup> The reform proposal had been outlined in a CIS meeting in October 2004. See *Vremia Novostei*, 6 December 2004. On disagreements see also *Vremia Novostei*, 8 December 2004.

<sup>613</sup> Breffni O'Rourke, "OSCE: Blunt Russian Criticism Raises Specter of Crises," *RFE/RL*, 8 December 2004.

<sup>614</sup> Roland Eggleston, "OSCE: Election Experts Debate Russian Criticism," *RFE/RL*, 22 April 2005.

<sup>615</sup> *Ibid.*

<sup>616</sup> *Ibid.*

<sup>617</sup> *United Press International*, 21 March 2000.

share of the budget if nothing was done about the predominance of the human dimension.

The Russian criticism against perceived western double standards has since spread to its relations with the Council of Europe. The Russian Federation took up the rotating chairmanship of the Committee of the Ministers in May 2006. On the eve of its six-month term as the chairman, the spokesperson of the Ministry of Foreign Affairs, Mihail Kamynin, argued that Russia will devote its term to fighting the western double standards regarding Russia and other former Soviet republics.<sup>618</sup> In a similar vein, at a PACE standing committee meeting in May 2006, Foreign Minister Lavrov claimed that he sees a "political subtext in the commitments required of Russia" by the CoE.<sup>619</sup>

### *Evaluation*

The norm-specific scope conditions do not explain Russia's deviation from the European norm. Without Russia's challenge, the norm of free and fair elections would have been extremely strong. The overall consensus on the norm, normative hierarchy and institutionalisation were all on a high level. There seemed to be new progress even in the case of symbolic validation as the Venice Commission finalised its report on the Code of Good Practice in Electoral matters in 2002 and the drafting of a new continent-wide convention begun.

There had been some changes in the international and environmental conditions, which implied that Russia might be readier to question the European norms than before. First of all, the structural asymmetry had been diminishing as Russian economy took an upward course with the record-breaking increase in oil prices. Since the "war on terror", Russia had become a more independent and self-confident international actor in world politics. It seemed that Russia was not satisfied anymore with its "novice" status vis-à-vis the European organisations. There was also no sense of crisis at the top level in Russia anymore. President Putin was more popular than ever and he seemed to have the general support for his statist reforms from the people.

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<sup>618</sup> The comment was published on the Foreign Ministry web pages <[www.mid.ru](http://www.mid.ru)>. *RIA Novosti*, 29 May 2006.

Domestically, the norm salience of the European norm of free and fair democratic elections had diminished considerably. By now, the firmly established practices were contrary to European norms. As long as the European organisations allowed that to happen, the Russian leadership maintained that its practices complied with the European norms. When the organisations finally refused to endorse the elections, the Russian leadership was faced with only one option: an open challenge to the authority of the organisations and the norms they promoted. The gap between European norms and the Russian practices had grown wider with every election since 1996. Now there was even deviation from the rhetorical commitment and the discourse became more defiant.

The authority of the European organisations and the European norm of free and fair elections are now openly challenged. Russia has even gathered a group of CIS states around it in order to strengthen its challenge to the norm.<sup>620</sup> Hence, only the formal requirements and legislation conform to European standards on elections. The practice and the official discourse in Russia were contrary to the European norm on free and fair democratic elections.

The Russian action had major implications for the coherence of and consensus on the norm of free and fair elections in Europe. For the first time since the end of the Cold War, the norm has been challenged by a European state. The action challenged the determinacy of the norm by claiming that there were other interpretations which should be accepted. The Russian opposition may make the increase in symbolic validation of the European norm more difficult in the future.

The socialisation model fails to explain the development. Even though there was an open challenge, the Russian Federation did not revert back to the stage of denial. This was because Russia challenged the norm within, and not outside, the organisations. It continued cooperation closely with the organisations, yet at the same time it was implementing policies, which were in contradiction with the agreed principles. There was a clear regression, but this regression did not take place within the terms of the model and escapes the expectations built into the model.

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<sup>620</sup> See footnote 607.

## 5 Conclusion

The development of the norm of free and fair democratic elections in Russia has jumped out of the frying pan and into the fire since the "founding elections" of 1993. From the very beginning there was evidence of irregularities and rigging, but gradually these features have become institutionalised practices. There is no attempt to comply with the European norms, and illiberal and undemocratic practices are not apologised for by the government. In fact, Russia has challenged the applicability of the European standards, which it once agreed with. It expects that the European organisations will continue cooperating with it on the question, but strictly on Russia's terms.

The changes in the Russian policies vis-à-vis elections do not seem to flow naturally from the changes in scope conditions. The norm-specific conditions are extremely supportive for socialisation and have only grown in strength during the period under scrutiny. The norm is considered to be a high priority issue by the organisations and is high in determinacy, adherence, coherence and overall consensus concerning its interpretation and implementation. Although Russia has strengthened considerably over the years there have not been any fundamental changes in the international conditions either. The initial sense of crisis has gradually passed in Russia, but there are major problems still to be solved. All in all, it seems that conscious political decisions by the ruling elite explain the development on the issue of the European norm of free and fair democratic elections in Russia better than the changes in structural scope conditions. The elite have given preference to the consolidation of their own power over the goal of consolidation of competitive democracy.

The European intergovernmental organisations seem to have based their policies on the presumption that Russia was already a pro-democracy state striving towards the institutionalisation of democratic norms. Because of the above assumption, the organisations have placed too much emphasis on the declared rhetorical goals of the Russian leadership, and too little on the actual electoral practice. This led to the policy of endorsement of elections despite growing irregularities taking place in the Russian elections. The organisations did not pay attention to the worrisome undemocratic developments taking place in Russia in time.

European policy has not only been ineffective but it has, in fact, been counter-productive in promoting the goal of free and fair elections in Russia. As Sarah Mendelson has pointed out in the case of the US, the policy of endorsement has a) indirectly legitimised the fraudulent practices of the Russian authorities and thus possibly accelerated the negative developments (if evaluated against its own goals) in Russia, b) isolated and discredited the calls for fairness and true democracy, and c) discredited the practice of election observation and its objectivity.<sup>621</sup> Recently, the European organisations have shown greater realism in their analysis of Russian elections but in many ways this too little, too late.

The Russian practical and ideological challenge to the norm may have had an impact on the European norm and cooperation in general. First of all, by challenging the authority of the European organisations in interpreting the norm, Russia challenged the determinacy of the norm. According to Thomas Franck, the transparency and textual-clarity of any international norm is linked to the fact that there is an international body that has undisputed authority to interpret the norm.<sup>622</sup> Russian behaviour also challenged the coherence in the application and unbroken consensus on the norm. By gathering a group of states and challenging the European norms, Russia made it clear that the European criteria were not the only criteria around. Despite all the talk about double standards of the European organisations, what Russia really objected to was the equal application of the European norms. It remains to be seen whether the Russian behaviour will affect further codification of the European norm of free and fair elections that is taking place within the Venice Commission.

During the early years, the development on the question of free and fair elections seemed to comply with the socialisation modes. Russia was willing to adopt the European norms and start working towards their implementation, both formally in law and in practice. Russia scored highly in meeting the criteria of prescriptive status of norms. First of all, it had declared its commitment to European elections standards within the frameworks of the CoE and the OSCE, it had institutionalised the norms in the constitution and the election laws, and established all necessary institutions and complaint mechanisms. Furthermore, the discursive practices of the government

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<sup>621</sup> Mendelson, "Democracy Assistance and Political Transition in Russia," pp. 71-73.

<sup>622</sup> Franck, *The Power of Legitimacy among Nations*, p. 61.



acknowledged the validity of the norms irrespective of the audience and no longer denounced criticism of elections as "interference in international affairs" and engaged in a dialogue with their critics. Whenever Russia was criticised and fault was found, it apologised and promised to improve the practices in the future. There were sustained efforts to implement the norms, in particular with regard to legislation and the improvement of electoral rules.

Gradually, however, irregularities during election time grew and became established practices. The discourse and the legislative reforms remained consistent with norm implementation. The model does not account for such an indirect challenge to the norms. The case highlights all the potential problems inherent in the model outlined in Chapter 1. The phases of the model do not grasp the essence of the change because the model gives preference to structures over active agency after the initial kick-off phase. Contrary to the model's expectations, the Russian authorities managed to challenge the structural preconditions and went their own way on the question. The process did not proceed automatically, but was directed by active political decisions by the ruling elite.

The question of the norm of free and fair democratic elections in Europe became contested through an indirect challenge of Russian practices and their gradual institutionalisation. The European organisations initially gave their blessing to the development, and this proved to be dangerous. Finally, the development culminated in an open challenge to the interpretation of the norm by the European organisations and their authority. The cooperation on the issue of promoting the norm of free and fair elections in Russia ended up having a negative impact on the organisations and their norms. The norm grew weaker and the authority of the organisations became challenged. Thus, the change clearly was not about a one-way transference of norms from the international to the domestic field. Norms can be challenged and norms can be changed through the cooperative process; they really *are* mutually constitutive. The organisations made the mistake of taking the interpretation of the norm for granted, and failed to see that the decisions they make, and that Russia makes, may influence the interpretation of the norm.

The development in Russia on the issue of democratic elections has challenged the very basis of the European solidarist society. So far, democratic elections have been

considered to be a fundamental, defining feature of the European solidarist international society. Russia challenged the norm first indirectly through practice and recently more directly by both words and deeds. The relationship between the actors is – and is likely to remain – solidarist due to the degree and depth of the cooperative schemes between them. However, Russia has now begun to question the substance of this solidarism. How the European organisations will respond to this challenge, is of crucial importance for the future of the solidarist society in Europe. These questions are studied in more detail in the concluding Chapter 7.

## CHAPTER 7

### CONCLUSION

*This thesis has studied the interaction between the European intergovernmental organisations and Russia on the European norms of human rights and democracy. It has done so by applying theoretical ideas on socialisation to three empirical case studies on different sets of norms: the institution of a human rights ombudsman, the abolition of the death penalty and free and fair elections. In this final concluding chapter, the cases are compared with each other, after which the explanatory power of specific scope conditions and of the socialisation model will be evaluated against them. Finally, the chapter draws several theoretical and practical lessons on European democracy and human rights promotion in Russia, and contemplates on the nature and future prospects of the relationship between Russia and the European society of states.*

#### **1 Comparison of the Cases: Scope Conditions**

The three empirical chapters highlighted the complexities in the implementation of European norms in Russia. The progress towards implementation has not been quick or easy in any of the cases, but the norm of a human rights ombudsman has been the most successful case of the three. Despite earlier difficulties, the norm of a human rights ombudsman has been fully implemented in Russia: there is an ombudsman institution working in Russia today, the institution is backed by legal and constitutional guarantees, the office has been relatively effective in dealing with citizens' complaints and other duties, and occasionally the ombudsman institution has demonstrated surprising independence from the state authorities. All in all, the official discourse on the institution, its practical functioning and the formal legislative conditions all comply with the European standards and expectations on the issue. The European organisations have proved effective in supporting and encouraging the implementation of the norm in Russia.

However, in the other two cases the European efforts have been far less successful. The full implementation of the European norm of abolition of the death penalty and the norm of free and fair elections by Russia is still lacking. The shortcomings in implementation are different in each of the cases. In the case of abolition of the death penalty, there has been considerable progress in practical implementation of the norm but the shortcomings concern the low level of rhetorical commitment by the authorities, and the failure to meet the formal, legislative commitments set by the European organisations. On the other hand, in the case of the European norm of free and fair

elections, the formal, legislative requirements have been met by Russia. With regard to this norm, the defects concern the actual implementation of the norm in practice and, again, the low level of discursive commitment. Recently, the norm of free and fair elections as defined by the European organisations has even been openly challenged by the official discourse. The table below sums up the progress in implementation of the three European norms by Russia.

**Table 7:** Current implementation of the European norms by Russia

	Formal, legislative reforms	Consistency of discourse	Practical implementation of the norm, institutionalisation
Ombudsman institution	+	+	+
Abolition of the death penalty	-	-	+
Free and fair elections	+	-	-

Why have the organisations succeeded in the case of an ombudsman, but failed in different ways in the cases of abolition of the death penalty and free and fair elections? In an attempt to answer the question, this chapter starts by looking into the scope conditions for socialisation as suggested in the literature. The scope conditions relating to the norms themselves, to domestic structures, and to international as well as to environmental factors, were outlined in detail in Chapter 1.

The norm-specific scope conditions were positive overall for socialisation in the case of the ombudsman institution. According to Thomas Franck's criteria of determinacy (transparency and textual clarity of the norm), coherence (norm applied and implemented equally among members) and adherence (normative hierarchy), one may claim that the pull towards implementation has been high in this case. The pull was further strengthened by the general consensus over the norm in Europe, and by the fact that the resources required to establish such an institution were manageable for Russia. The literature suggests that its technical nature and relatively low political profile should be an asset in the implementation. It is true that Franck's "symbolic validation" could have been higher (after all, there is no binding international agreement on the issue).

Nevertheless, the question was listed in the formal CoE membership conditions for Russia, which made the requirement a formal one.<sup>623</sup>

The domestic scope conditions were also relatively favourable for implementation to occur. Russia had no prior experience on the question, but the form of the institution fitted the Russian traditions rather well. Only one person represented the institution in public and took care of its relations with state and other bodies. The establishment and proper functioning of such an institution can be interpreted as being in the interests of the state and the society alike. Taking care of citizens' complaints through the ombudsman institution is economical, potentially efficient and lower-key than resorting to the judicial channels available to Russian citizens in Russia and in Europe.<sup>624</sup> Russian authorities must have come to the conclusion that these benefits overrode the soft "risks" that the ombudsman institution posed for them. These risks included first and foremost public criticism, which is in fact low in today's Russia: the state has a strong grip on the media, and past experience shows that the authorities can easily marginalise the ombudsman if they so wish.

The international and environmental scope conditions have changed from positive to neutral over the years. These general structural conditions apply not only to the norm of the ombudsman institution, but also to the other two norms alike. During the early years of European engagement with Russia, the European organisations enjoyed great structural advantages. Russia was economically and politically weak, and it was looking for the help of the European organisations in settling its problems. The structural asymmetry between Russia and the organisations was thus strong. In the eyes of the Russians, these organisations also enjoyed high moral standing. They represented the values that the new Russian state wanted to identify with. Additionally, the organisations had outstanding material bargaining power vis-à-vis Russia. This was particularly markedly the case with the CoE, for whose membership Russia applied in 1992. Later, these international conditions have levelled down considerably. With Russia's accession to the CoE, the organisation lost much of its material bargaining power, and post-membership experimentation with coercive methods has not brought

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<sup>623</sup> Council of Europe, Parliamentary Assembly, *Opinion on Russia's Request for Membership of the Council of Europe*.

<sup>624</sup> Russia ratified the ECHR and its Protocol No. 11 in 1998. Russian citizens are thus able to appeal to the European Court of Human Rights.

the desired results with Russia. The structural asymmetry has also diminished with the improving economic performance and growing political significance of Russia globally. The environmental scope conditions were also initially extremely encouraging for implementation of the European norms: the European organisations were willing to provide new information and assistance at a moment when Russia was faced with a completely new situation, which required the reforming and building of new state institutions from the ruins of the Soviet Union under severe time pressure. This sense of urgency and openness has since passed.

To sum up the discussion on the scope conditions in the case of the ombudsman institution: the conditions have been mainly positive for the implementation of the norm, and the norm has been implemented fully – that is, in practice, in law and in official discourse – by Russia. This seems to suggest that the scope conditions do indeed explain the progress in the implementation of the norm.

However, the other two empirical cases challenge this premature conclusion. The norm-specific conditions were also high in the cases of abolition of the death penalty and free and fair elections. Similarly to the case of the ombudsman institution, these European norms were also high in determinacy, coherence, adherence, and there was a European-wide consensus on the issues. Moreover, in the case of the death penalty the symbolic validation is on an even higher level than with the other two norms: a formal, legally binding international agreement exists on the issue, and its ratification is required by the CoE vis-à-vis all its members. One cannot explain the differences by reference to international and environmental scope conditions either, as they are exactly the same in all of the three cases.

The only scope conditions that could explain the differences in the degree of implementation by Russia are the norm-specific conditions on the technical character of the norm, and the domestic salience of the norms combined with changes in domestic and international structures. Unlike the ombudsman question, the norms of abolition of the death penalty and democratic elections have very high political- and identity-related profiles. As long as the pro-western attitude reigned in Russia, and the environmental and international scope conditions were in favour of socialisation, the high political profile seemed to be an asset in the process of implementation. Only later, when the

pro-western attitude faded and asymmetry between the parties weakened did this feature turn against socialisation. It seems also, that prior experience was not an asset when it came to implementation of the European norms by Russia. There had been some experimentation with the norm of abolition of the death penalty as well as with "democratic" elections. This earlier experimentation only contributed towards confusion over the norms: for example in the case of elections, the Soviet abuse of elections and democratic rhetoric only created a dangerous precedent for elections in Russia.

It should also be noted that despite the fact that state-society structures were naturally the same in all of the cases, these structures have influenced the developments rather differently in each of the cases. They have had a positive, or at least neutral, impact in the cases of the abolition of the death penalty and the ombudsman institution. However, in the case of democratic elections, state dominance has had a negative impact on development: the state representatives have openly misused the formal system in order to consolidate their power and eliminate all meaningful competition.

In summary, it seems that the scope conditions which have generally made a difference – at least when combined with other conditions – have been general changes in international structures and environmental conditions. In particular, scope conditions which relate to the distribution of material power seem to reflect fairly directly onto the degree of norm socialisation. Norms with a high political profile have suffered from the fact that Russia's structural position vis-à-vis the European organisations has strengthened. This indicates that the European organisations have not been successful in evoking softer mechanisms of persuasion, argumentation and institutionalisation, and that their success in Russia is still very much dependent on material bargaining and instrumental calculations on Russia's side. These instrumental calculations are first and foremost based upon political considerations: for example, why is it that the independent ombudsman institution is not considered to pose a threat to the ruling elite but free and fair elections are? All in all, the scope conditions seem to add to the outcome but, as the case studies demonstrated, they do not determine the outcomes.

The scope conditions and their applicability to all of the cases are summarised in the tables below. In each of the cells a short description is followed by two symbols which indicate whether the conditions are considered to be positive (+ +) or negative (- -) for

implementation in the literature. Sometimes the conditions have changed, or the conditions have been consistently controversial (+ - and - +). The order of the symbols refers to the sequence of events (+ - first positive, then negative, or, - + first negative, then positive). The evaluation is based on subjective evaluation on the basis of the review of theoretical literature in Chapter 1 and the empirical case studies in Chapters 4, 5 and 6.

**Table 8:** Norm-specific scope conditions

	Ombudsman	Abolition	Free Elections
'Determinacy'	high ++	high ++	high ++
'Symb. validation'	lower - +	high ++	lower - +
'Coherence'	high ++	high ++	high ++
'Adherence'	high ++	high ++	high ++
Technical character	relatively technical + -	high political profile - -	high political profile - -
General consensus	high ++	high ++	high ++
Resources needed for implementation	politically no extra effort needed, little material resources ++	politically a lot, materially not so much + -	a lot of material resources, politically not much + -

**Table 9:** Domestic scope conditions

	Ombudsman	Abolition	Elections
Norm salience domestically	No prior experience, society supports ++	Long roots, some prior experience, society objects, state officially supports + -	Confusing prior experience, society supports, state officially supports + -
State-society structure	State dominates ++	State dominates ++	State dominates ++
Capacity to carry out the needed changes	Strong, election procedure has been difficult in the past ++	Ability lower during Yeltsin's regime, now stronger - +	Technical ability weaker during first elections, now strong - +

**Table 10:** International scope conditions

	Council of Europe	OSCE	EU
Asymmetry vis-à-vis Russia	First high, after accession less so + -	Low - -	First high, still relatively high + -
Moral authority vis-à-vis Russia	First high, still relatively high ++	First relatively high, fading fast + -	Low - -
Material bargaining power vis-à-vis Russia	First high, after accession less so + -	Low - -	When EU consensus, relatively high + -

**Table 11:** Environmental scope conditions

Sense of crisis, urgency	High at the beginning, has passed since then + -
A new situation, a new problem	At the beginning, has passed since then + -
New information	European information actively available, since the early years more alternative sources (e.g. the rise of BRIC states etc.) ++



## **2 Comparison of the Cases: the Socialisation Model**

This section analyses how well the socialisation model outlined by Risse and Sikkink describes and explains the development in each of the cases, and what this comparison tells us about the model. The section also considers how the model should be further developed to better fit the Russian case.

The model claims that in order to engender enduring human rights change, certain types of causal mechanisms must be present in the process of socialisation. These causal mechanisms for enduring change are: 1) instrumental adaptation and strategic bargaining, 2) argumentation and persuasion, and 3) institutionalisation and habituation.

These mechanisms have all been present in the successful case of the ombudsman institution. When Russia sought international recognition and financial assistance in the early 1990s, the ombudsman institution constantly came up. The institution was put on the domestic reform agenda at least partly as a result of strategic cost-benefit calculations. The causal mechanisms of argumentation and persuasion are also likely to have played a part. The European organisations have been successful in convincing the Russian leadership that the establishment and proper functioning of such an institution is in the interests of the Russian people and authorities. Also at an individual level, ombudsman Mironov changed his views on many issues following active European engagement. Finally, institutionalisation and habituation are also gradually taking place. Institutionalisation is still relatively weak and the situation cannot yet be claimed to have stabilised. Nevertheless, this mechanism has been present in the implementation process. All in all, Russia has made considerable progress in socialisation to the norm of the human rights ombudsman institution.

With regard to the second case study on abolition of the death penalty, these causal mechanisms have not been present to the same extent as with the first norm. Based most likely on strategic calculations, Russia agreed to be bound by the European norm. This was done in order to gain access to the CoE. There have been considerable efforts to convince the Russian authorities and public alike that abolition is in their interests and the proper thing to do as a human rights-respecting state and CoE member. These

efforts seem to have been in vain. The Russian authorities and public have not been convinced by the arguments and they have disregarded the European efforts. On the practical level, there has been some modest institutionalisation. As a result of this institutionalisation, it does not seem likely that Russia would revert back to issuing death penalties and carrying out executions. Neither, however, does this mean that there will be further progress in implementing the norm. The causal mechanism of persuasion seems to be low in the case of abolition of the death penalty in Russia today.

In the case of free and fair elections, the causal mechanism of instrumental calculations has clearly been the dominant one. First, democratic elections were used as a means to gain legitimacy both internally and externally. The question was of extreme importance to international actors and the benefits of democratic elections were politically enormous. The authorities have, however, been resistant to the persuasive efforts of the European organisations. More important than the consolidation of democracy through free and fair elections have been the consolidation of elite power and the elimination of any meaningful political competition. This desire has led to the institutionalisation of a different set of norms concerning the elections to those promoted by the European organisations. Thus, in the case of free and fair elections, both the processes of persuasion and institutionalisation of the norm have been lacking.

The categorisation of causal mechanisms is useful and it seems to explain the lack of progress convincingly. For Risse and Sikink the categorisation is, however, only the starting point for the development of the more ambitious "spiral model" of state socialisation. The spiral model claims that there should be a certain sequence in the emergence and dominance of these causal mechanisms. It asserts that states internalise human rights according to a certain model, which has been drawn up from studies of human rights internalisation by Latin American states.<sup>625</sup> The phases of repression, denial, tactical concessions, prescriptive status, and rule consistent behaviour have all been explained in detail in Chapter 1. At this point, it suffices to recall that the model highlighted the significance of international factors in norm socialisation by states, and that non-state actors were a crucial moving force in the initial stages of the development.

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<sup>625</sup> Risse and Sikink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," p. 18.

At face value, the progress in the case of an ombudsman institution seems to fit the socialisation model outlined by Risse and Sikink rather well. When the goal of establishing such an institution was unveiled in the Soviet Union, some may have suspected that it was a question of tactical concessions: the leadership may have mentioned such an institution in the draft constitutions in order to appeal to the western audience. Nevertheless, when the regime changed and Boris Yeltsin became the leader of the Russian Federation, few doubted the sincerity of the attempt to establish the institution. Russia can be seen to have entered the prescriptive status of this norm and human rights norms in general. During the early years, the official rhetoric on European values, the measures to implement them in practice and in law seemed to be following the path of norm socialisation.

Despite the fact that the changes did not come about as a result of societal action by the Russians themselves, there had been considerable activation of international NGOs and western governments on the issue of human rights violations in the Soviet Union. The developments could be interpreted in the light of the socialisation model: the change was, to some extent, the product of international pressure and lack of domestic legitimacy.

After the change in power, there was no contestation of the European norm of the ombudsman institution by the authorities, and the mechanism of persuasion seemed to be easy to trigger. There were plenty of practical hurdles to overcome, but the commitment by the Russian authorities as such was never doubted. According to the socialisation model, gaps between the implementation and commitment level are typical for the phase of prescriptive status if the international pressure does not remain on a high level.<sup>626</sup> The fact that Russia finally managed to push the legislation through and elect the first ombudsman in 1998 could be interpreted as a sign of active involvement of the European organisations. Today, Russia has implemented the European norm in words, in law and in practice. The model expects that in the current situation, the mechanisms of institutionalisation and habitualisation will finally take over and Russia will move towards rule-consistent behaviour.

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<sup>626</sup> Ibid.

Despite the fact that there have been some adjustments to the norm of the ombudsman institution (for example, the importance of good bilateral relations between the president and the ombudsman), the process has been essentially about adaptation by Russia to the European norm as defined by the European organisations. The norm has simply been transferred from the international level to the Russian domestic level. The model's phases and the sequence of causal mechanisms seem to fit the developments on the issue rather well, regardless of the fact that civil society in Russia remains weak and marginalised.

Progress in the case of the death penalty also seemed to follow the expectations of the socialisation model during the early years of cooperation on the issue between Russia and the organisations. The Russian leadership seemed to be committed to the implementation of the norm, there was considerable progress in the limitation of the death penalty, and the discourse was consistent. The hurdles were believed to be chiefly practical in nature, and it was believed to be only a matter of time before Russia ratified Protocol No. 6.<sup>627</sup> However, while other new CoE members went ahead and ratified Protocol No. 6, progress stalled in Russia. Today, Russia is the only CoE member that has not ratified the protocol. In recent years it has even cast doubt over the whole goal of ratifying the protocol.

Contrary to the expectations of the model, Russia has proved to be resistant to active international pressure and to more positive encouragement alike. Risse and Sikkink argue that non-compliance is possible during the early stages of the model if the state is independent enough, and does not care about being excluded from international cooperation, or, later in the phase of prescriptive status if there is not enough international attention to the actual implementation of the norm. This was not the case with Russia and the abolition of the death penalty: it was already in the phase of prescriptive status and there was plenty of international attention to the state of implementation in Russia. Whilst failing to comply with this fundamental European norm, Russia was simultaneously engaging and cooperating actively with all of these

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<sup>627</sup> Interview with an advisor at the CoE Commissioner for Human Rights Office, 24 October 2005.

European organisations. Thus, the model fails to explain the developments in the case of abolition of the death penalty.

Instead of complying with the model's expectations and being persuaded by the international actors, Russia has sought to demonstrate that it will engage with the European organisations on its own terms only. Through its use of uncompromising, interest-based politics, Russia has gained more room to manoeuvre vis-à-vis the organisations. Instead of direct denial of the norm (which could be interpreted as a regression to the phase of denial), Russia has challenged the norm and the European organisations' authority on the matter indirectly through its ignorance of the European calls for implementation.

The failure to explain the developments in this case derives from the potential problems that were outlined in Chapter 1. Firstly, the Russian development has not followed the general presumption that international factors and structures would suffice to trigger development along the lines of the spiral model. In particular, the presumption that there would be some semi-automatic process of verbal self-entrapment seems ill-fitted to the Russian case. On the contrary, the ruling elite have been skilled in using the discursive structures and arguing in order to escape the firm European criteria for implementation. Because politics and active political choices are by and large excluded from the model, the criteria for each of the stages fail to grasp the essence of the change.

Secondly, the socialisation model assumes that the norms are fixed, given entities. It seems that Russia has rather successfully negotiated a partial exception for itself on the question of the abolition of the death penalty. An exception to a general norm may weaken the coherence and consensus on the norm in Europe and this could have an impact on the working of the European organisations (this point will be discussed later).

Thirdly, and related to the previous point, this case study demonstrated that the process of socialisation is not necessarily a one-way street. The cooperation process surrounding the norms has not simply been about the effective transference of norms from one party to another. Russia has indirectly challenged the authority of the organisations. The European consensus on the norm has been weakened by Russia's non-compliance. How

profoundly Russian policies will affect the development of the European norm of abolition nevertheless remains to be seen.

Likewise, the developments in the case of free and fair elections in Russia depart from the socialisation model. In fact, Russia's behaviour on this issue departs from the model's expectations even more dramatically than was the case with the abolition of the death penalty. During the early years, the development seemed fairly clear-cut and it could be described according to the terms of the socialisation model. However, it soon became apparent that instead of implementing and internalising the European norms, Russia had been institutionalising very different practices under the misleading label of free and fair elections. Today, the Russian leadership does not try to hide its departure from the European norm: the illiberal, undemocratic practices are not apologised for anymore. On the contrary, Russia has openly challenged the applicability of the European standards (with which it once agreed) to its case.

The case confirms the defects of the socialisation model discussed above in the case of abolition of the death penalty – only this time they are more evident still. Firstly, contrary to the model, only active political choices, even if well hidden in the midst of pro-democracy rhetoric, explain the deviation from the democratic norms. The process did not 'entrap' Russia's political elite in its own words. Again, Russia has managed to hide its deviation from the norm behind the mask of democratic rhetoric and avoid sanctions from the European organisations. Secondly, the model takes the norm's unchanged nature for granted, and does not seem capable of detecting the challenge to the norm and the authority of the organisations "from within". For years, the Russian challenge was an indirect one. Only when faced with explicit condemnation of its practices by the European organisations did the challenge become direct. Thirdly, the challenge revolving around a group of CIS states may be changing the nature of the norm of free and fair elections in Europe (for example, is it equally applicable to all European states in future?) and the practical work done by the European norms (for example, outlining new standards for election observation combining CIS and OSCE/CoE standards). Again, only the future will tell if these issues are to develop along the lines that Russia promotes. What is clear, though, is that the norm socialisation in the case of free and fair elections has not ended up being a mere one-way transference of the norm from the international to the domestic field.

Thus, this thesis has found that the socialisation model outlined by Risse and Sikkink does not explain or describe the dynamics at play in the case of Russia's socialisation to European norms. It is not helpful when trying to establish what went wrong with the European attempt to socialise Russia. The failure of the model may partly derive from the fact that it has been designed on the basis of Latin American cases of normative change.<sup>628</sup> The presumptions that it makes about the societal structures and dynamics of change seem to be unfit to describe the post-Soviet reality in Russia.<sup>629</sup>

This study goes further and suggests that the model should be changed in a way that takes account of how political decisions are attached to the prevailing structural conditions domestically and internationally. Without taking account of active political decisions, the socialisation model gives too simplistic and structural a picture of the development. These political decisions by states actively shape reality, and they do not automatically arrive from the prevailing international structures and transnational activism as the model seems to suggest. This also means that the model should be changed in order to define the cooperation process underpinning human rights norms as a truly interactive process (as the basic tenets of Constructivism would also suggest). International society, methods of cooperation and norms may change as a consequence of the interactive process surrounding the norms. Norms are constantly contested and confirmed by practices and discourse; norms form social reality, but at the same time are the very objects of interpretation and reinterpretation. While causal mechanisms outlined in the model were indeed helpful, it is more doubtful whether all fundamental changes can be fitted to a neat five-phase model. Such a pre-fixed model easily excludes certain aspects of development, while overemphasising other, possibly more irrelevant, features.

### **3 Assessing the Policies of the European Organisations**

The European organisations are increasingly open about their disappointment with Russia's current policies on human rights and democracy. Despite the fact that Russia initially agreed with the European norms on human rights and democracy, and the idea

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<sup>628</sup> Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," p. 18.

<sup>629</sup> See also Checkel, "International Institutions and Socialization," p. 1.

that these common norms would form the very basis of its relationship with these organisations, the norms have not been implemented by Russia. Russia has even started to question the applicability of European norms to its case. Its resistance is growing stronger and more principled. Illustrative of this principled Russian attitude is a statement by President Putin on the eve of the recent EU-Russia summit in Helsinki: "It would be useless and *wrong* to try to force artificial 'standards' [of common values] on each other".<sup>630</sup>

With regard to the specific norms discussed in this thesis, Russia still officially claims to be committed to the vague goals of abolition of the death penalty and democratic elections, yet it openly questions the requirements – the secondary sets of norms on interpretation and implementation of the primary norm – of implementation, which the organisations have set, and thus the authority of the European organisations in interpreting the norms.

What makes the situation unique is the fact that while Russia is downgrading its normative commitments, it is simultaneously seeking to deepen cooperation with the European organisations. It is promoting the idea that these European organisations should make an exception in its case. Confusingly, this notion is wrapped in the claim that the organisations should renounce their double standards. In reality, Russia is insisting that the organisations give up equal application of the norms by giving Russia more leeway than other states. Russia seems to have adapted its strategies – but not its political goals – to the multilateral European normative environment. Russia has become involved in extensive international schemes of cooperation in the fields of human rights and democracy internationally, yet its practices have been resistant to the socialisation efforts of these organisations. The leadership has pursued its material interests by "talking the human rights talk" and using this language to escape European pressure and potential sanctions. As the title of this thesis suggests, Russia has agreed to the form of European multilateral normative cooperation, but not to its function.

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<sup>630</sup> Vladimir Putin, "Europe Has Nothing to Fear from Russia," *Financial Times*, 22 November 2006. Emphasis added.



How is it then possible, that despite all the European encouragement, assistance and pressure, developments in Russia have turned against the European norms? What went wrong with the European socialisation strategies?

As this thesis has argued, Russia's creeping challenge has proved to be much harder to deal with as it has developed gradually under the surface of "sustained efforts" to implement the norm. As the case studies demonstrate, the organisations have placed too much emphasis on the declared rhetorical goals of the Russian leadership. Even in cases where legislation has been passed and official rhetoric seems to be consistent, the change in practices will not necessarily follow – particularly in a country like Russia with a strong tradition of Soviet doublespeak. The European organisations have thus been unable to understand the significance of the developments in Russia in time. This thesis confirms conclusions by earlier research on the EU's external democracy promotion, which suggested that "pseudo-democracies" have confused EU policy by pointing to "process", and thus escaped sanctions and secured benefits.<sup>631</sup>

The reasons behind the European organisations' inability to pay attention to the negative developments in Russia in time are three-fold. Firstly, the decisions were frequently based upon political calculations and the fear that (even more) illiberal forces would come to power if the Russian government was criticised.<sup>632</sup> This card was also eagerly played by the Russian government. Secondly, and understandably, it is never easy for an institution to admit that it is failing in one of its primary tasks. There is an underlying fear that that the public may find the organisations useless and start to question their legitimacy. Thirdly, and perhaps most importantly, the European human rights and democratisation strategies were based on the over-optimistic expectations of a liberal democratic "new world order" and the "worldwide democratic revolution" emerging, which was typical of the zeitgeist of the immediate post-Cold War years.<sup>633</sup> The belief in linear progress towards democracy shines through in the European documents. The European expectations of Russian development on issues connected to human rights and

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<sup>631</sup> Paul J. Kubicek, "Conclusion: The European Union and Democracy Promotion," in *The European Union and Democratization*, ed., Paul J. Kubicek (London: Routledge, 2003), p. 202.

<sup>632</sup> See also Mendelson, "Democracy Assistance and Political Transition in Russia," p. 98.

<sup>633</sup> These expectations were manifested in the writings of Francis Fukuyama in the early 1990s. See, for example, Fukuyama, *The End of History and the Last Man*. For critique, see Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington DC: Carnegie Endowment for International Peace, 1999), p. 40.

democratisation resemble the democratisation model described in the transition literature. In particular, the idea of a set sequence of democratisation from liberalisation to transition and consolidation is commonly employed by practitioners, too. However, according to Thomas Carothers, the tendency to cast the development in terms of a three-phase democratisation model should be seen in terms of the influence of the historical context, that is, the political atmosphere of the early 1990s, rather than direct spill-over from research. In the 1980s and early 1990s, one transition after another emerged following an easily identifiable pattern: first dramatic collapse of dictatorship, then national elections, and gradual democratic consolidation. Societies everywhere seemed to be creating similar western-type democratic institutions. These developments led democracy promoters and academics alike to think in terms of "natural", almost automatic phases of development.<sup>634</sup>

However, Russia represents a hybrid regime that escapes the typical categories of liberalisation, transition and consolidation. When measured against the general democratisation criteria outlined in Chapter 1, one can observe several conditions that are missing even from the liberalisation phase: there are severe shortcomings in the realisation of the freedom of the press and the government's ability to tolerate dissenting opinions, there are hardly any free, non-state trade unions and the state's control over non-governmental associations has strengthened.<sup>635</sup> There are some opposition groupings in the parliament, but many of them are oppositional only on the surface.<sup>636</sup> At the same time, Russia meets many of the conditions of the next, transition phase. Legal reforms, which are intended to limit arbitrary use of power by the regime, have been introduced. There have been extensive constitutional and legal changes, which have been aimed at eliminating the role of non-accountable powers of veto groups. A new constitution, which guarantees equal political rights and civil liberties to all citizens, has been ratified. Also, the so-called founding elections have been held, and regardless of the fact that they were not as free and fair as was claimed at the time, the results were widely accepted and no party challenged the results in the end. However, many of these reforms and legal changes have not been reflected in Russian practices.

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<sup>634</sup> Carothers, *Aiding Democracy Abroad: The Learning Curve*, pp. 92-93.

<sup>635</sup> Kagarlitsky, *Russia under Yeltsin and Putin*, pp. 170-72.

<sup>636</sup> Centre for Anti-corruption Research and Initiative and Transparency International Russia, "Final Report: Monitoring the Misuse of Administrative Resources during the Campaign for December 2003 Russian Federal State Duma Elections," pp. 71-72.

These contradictory tendencies and gaps between words and deeds have confused the theorists and practitioners alike. Paradoxically, the European policies seem to be simultaneously too "realistic" (calculating their benefits and impact on their international reputation), and too idealistic (hoping that the developments would follow the general phases of democratisation, despite growing contrary evidence) to see what the development was really about.

The potential decision to go Russia's way and make an exception could have significant consequences for the organisations. For example, allowing Russia to interpret the norms in its own way may diminish the legitimacy of the organisations in the eyes of the other members. Furthermore, if Russia is granted an exception, other members might be tempted to ask for exceptions too, either on the same issue, or some other that is dealt with by the organisation. However, many researchers have claimed that violation of an international norm does not necessarily mean that the norm as such has lost its significance. If the violator of a norm is excluded by the society, the efficacy of the norm will be confirmed.<sup>637</sup> Deviation from the norm may also be considered permissible by the community on the basis of good justification "together with pleas for understanding or admissions of guilt".<sup>638</sup> Russia's policies and the European policies towards Russia do not meet these two conditions. Therefore, it is likely that Russia's deviation has weakened (and, if nothing is done, will weaken further) the European consensus over the common norms.

Big boats always turn slowly, but it seems that the organisations are gradually taking Russia's challenge to European norms seriously. Realistic overall assessment of the developments in Russia is a key factor in making European policies towards Russia more effective. The study does not advocate Russia's exclusion from the cooperation, but it does warn against making an exception to the rules and norms that these organisations promote in Europe. Membership conditions of the CoE should be respected by all member states, including Russia. The OSCE and the EU should also strive to maintain the standards that they have set for themselves earlier. Downgrading the commitments would be sending the wrong message not only to Russia, but also to

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<sup>637</sup> Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention and International Society* (Oxford: Oxford University Press, 2000), p. 5.

<sup>638</sup> Friedrich Kratochwil and John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State," *International Organization* 40, no. 4 (1986): p. 768.

other member states. The OSCE and the CoE's whole *raison d'être* would be jeopardized, as would the EU's legitimacy.<sup>639</sup> In order to compensate for the loss of the asymmetrical relationship and material bargaining power vis-à-vis Russia, the organisations could establish a wider coordination of strategies towards Russia.<sup>640</sup> This would not only improve their structural position, but would also increase the coherence and reduce overlaps in their policies. This could have a positive impact on the effectiveness of their policies.

#### **4 Future Prospects: Continent of Community or Islands of Order?**

Early in his career, John Vincent noted that in a world where there are only islands of order, rather than a continent of community, state sovereignty and non-intervention reigns in international relations.<sup>641</sup> His teacher and friend, Hedley Bull, was also worried about the dangers of overstressing the solidarist society of states. According to him, solidarism "fits a world where there is solidarity. But in one in which there is not, the attempt to introduce these rules only exacerbates conflict."<sup>642</sup>

Although Bull and Vincent were talking about the global society of states, their scepticism (although, it must be noted, Vincent later changed his mind on the issue) over the possibility of solidarism in international relations is reflected in contemporary accounts of Russia's relationship with European organisations. The supporters of a pluralistic relationship claim that narrowing down the normative agenda would bring benefits to both parties and advance deeper cooperation in other fields. Pami Aalto, for example, claims that paradoxically the narrowing down of the normative agenda may even bring progress in relations with Russia in all respects, including from the

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<sup>639</sup> Among other researchers, Ian Manners has claimed that in order to legitimate itself as more than the sum of its parts, the EU "needs" to be a more moral actor than normal nation states. See Manners, "Normative Power Europe: A Contradiction in Terms?," p. 244.

<sup>640</sup> Something similar but on a more general level and partly for different reasons has been suggested by Elena Jurado. See Elena Jurado, "Assigning Duties in the Global System of Human Rights: The Role of the European Union," in *A Responsible Europe? Ethical Foundations of EU External Affairs*, eds. Hartmut Mayer and Henri Vogt (Houndmills, Basingstoke: Palgrave Macmillan, 2006), pp. 130-33.

<sup>641</sup> Tim Dunne, *Inventing International Society: A History of the English School* (Basingstoke: Palgrave Macmillan, 1998), p. 165.

<sup>642</sup> Hedley Bull in 1962 cited in Alderson and Hurrell, "Bull's Conception of International Society," p. 10.

normative point of view.<sup>643</sup> Another pluralist, Sergei Prozorov, defends the traditional sovereignty-based pluralistic order in EU-Russia relations by claiming that the current "logic of integration" is inherently flawed, and even morally doubtful.<sup>644</sup> He advocates interaction without integration, and claims that the EU should stop defining Russia's difference in terms of "deficiency, underdevelopment or irrationality" and appreciate Russia's difference and accept it as a permanent feature of Russia.<sup>645</sup>

Several objections can be raised against Aalto's and Prozorov's lines of thinking. Firstly, Pami Aalto's optimism does not seem to be backed by empirical facts. In the absence of shared values and norms, progress easily languishes in other fields too.<sup>646</sup> Meaningful cooperation is based on mutual trust and trust, for its part, is based on shared values and norms. In reality, it is difficult to treat different fields of cooperation as completely independent entities. Secondly, Prozorov's approach is extremely statist and sees states' policies as moral just by virtue of the fact that they stem from states. This kind of claim is more theoretical than existent: in real life, the legitimacy of state action needs to be earned.<sup>647</sup> Moreover, the pluralist order based on absolute state sovereignty as envisaged by Prozorov has never existed; it is at least as utopian as the post-modern integrationists he seems to despise.<sup>648</sup> As Reus-Smit convincingly argues, state sovereignty has never been an independent self-referential value, but it has always been justified by some reference to the moral purpose of the state.<sup>649</sup> Societies of states are bound together by "intersubjective meanings that define what constitutes a legitimate state and what counts as appropriate state conduct."<sup>650</sup> In reality, state sovereignty as total independence to decide "how it will cope with its internal and external problems"<sup>651</sup> is usually more of an argument employed by those in power than a genuine existing state of affairs. Thirdly,

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<sup>643</sup> Pami Aalto, "The EU, Russia and the Problem of Community," in *A Responsible Europe? Ethical Foundations of EU External Affairs*, eds. Hartmut Mayer and Henri Vogt (Basingstoke: Palgrave Macmillan, 2006), p. 113.

<sup>644</sup> Sergei Prozorov, *Understanding Conflict between Russia and the EU: The Limits of Integration* (Basingstoke: Palgrave Macmillan, 2006), pp. 174-75.

<sup>645</sup> *Ibid.*, pp. 180-81.

<sup>646</sup> Foreign Minister of Finland, Erkki Tuomioja, comments at an event on the EU's global role and responsibility at the Finnish Institute of International Affairs, 7 November 2006.

<sup>647</sup> On this point see Dunne on Vincent in Dunne, *Inventing International Society: A History of the English School*, p. 170.

<sup>648</sup> Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations*, pp. 157-59.

<sup>649</sup> *Ibid.*, pp. 6-7.

<sup>650</sup> *Ibid.*, p. 156.

<sup>651</sup> Waltz, *Theory of International Politics*, p. 96.

both Aalto and Prozorov ignore the very nature of the European organisations (in their case the EU, but this argument can be generalised here to include the CoE and OSCE) and the expectations people have about the policies. The member states and their citizens expect the organisations to take up normative questions – that is considered to be the very basis of their legitimacy. In this light, it is not advisable to grant exceptions in Russia's case: the organisations might get praise from Russia, but they would be biting their own leg by doing so. This is particularly the case with CoE and OSCE, but also with the EU. In a recent survey of European Russia experts (including MEPs, academics, NGO representatives, diplomats etc.) 81% per cent of over 100 respondents felt that the EU should seek greater leverage in a renewed PCA (or its replacement)<sup>652</sup> to address democracy, civil liberties, judicial independence and the state of the rule of law in Russia.<sup>653</sup> European people are generally concerned about the state of human rights and democracy in Russia, and they expect their governments to raise these issues with Russia.

These human expectations are a key to the discussion on the nature and future prospects of the relationship between the European organisations and Russia. Russian cooperation with the European states and organisations comprises many levels and cannot be reduced merely to exchanges of state-level acts. It is because of this comprehensive multi-level nature of the relationship that the question of common values comes in. Despite the fact that states and intergovernmental organisations are the core institutions and decision-makers, the notion of a solidarist European international society cannot be approached on an exclusively state-centric basis.<sup>654</sup> As was outlined in Chapter 3 and elaborated further in other chapters, growing solidarism brings transnational, non-state actors into the picture as interaction takes place on various levels. A pluralistic order based on the traditional interpretation of state sovereignty as envisaged by Prozorov is incapable of providing this level of interaction. Such an order would inevitably mean

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<sup>652</sup> The PCA expires in 2007 but can be prolonged one year at a time, as long as the parties so wish. Negotiations on a new agreement should be starting soon (and in any case the parties have agreed that if no consensus on a new agreement is reached the PCA will be prolonged in order to avoid legal vacuum in the relations).

<sup>653</sup> EU-Russia Centre, "The EU and Russia: Perspectives on a Strategic Partnership. Expert Opinion Survey," (Brussels: 2006), p. 3. Also, all of the EU, OSCE and the CoE representatives interviewed for this thesis unanimously agreed on the importance of this normative task towards Russia.

<sup>654</sup> See Buzan, *From International to World Society? The English School Theory and the Social Structure of Globalisation*, p. 61.

more restricted collaboration: instead of common institutions and sustained efforts to solve common problems, one sees more ad hoc arrangements between the organisations and Russia. However, the European organisations and Russia are both unwilling to downgrade the relationship: despite the disagreements on the common norms between them, there is a mutual recognition of the importance of institutionalised, long-term cooperation in various fields.<sup>655</sup> This basic point makes Prozorov's nostalgia for pluralistic order futile.

If deepening cooperation is what the parties want from each other, then they have little choice but to try to agree on common norms and values that enable deeper interaction. The norms and values that were once agreed are currently contested by Russia. Whether these norms change and how they change is something that only the future will tell. Nevertheless, what is evident is that there is no turning back to the pluralist society of the Cold War years. The wider European society will remain solidarist for the years to come. Along the lines of Barry Buzan, this thesis argues that a solidarist international society does not equate with some ethical cosmopolitan world society. Although most works on solidarist state societies – including this one – have revolved around human rights norms and norms of democracy, solidarism as such does not need to be based on some ethical, "progressive" ideas. The norms on which a solidarist society is based may be good or bad ones. Solidarism refers first and foremost to the degree and depth – the "thickness" – of cooperation between states and their societies.<sup>656</sup> The main feature of solidarism is that the international society pursues substantive goals of its own, and its action is based on mutually shared, constitutive (ethical or unethical) norms and rules. Thus, although Russia and the European organisations will continue forming a solidarist society in future, what kind of values that solidarist society will be based on, is for them to decide. The norms and values are shaped by their own actions; not only through high politics and declarations, but also through everyday practices and interaction. The promise – and danger – of future relations lies in this. Norms are not cast in stone, and by consciously acknowledging this fact – and the risks and promises that come with it – the European organisations are one step closer to realistic and better-balanced policies.

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<sup>655</sup> See, for example, Putin, "Europe Has Nothing to Fear from Russia."

<sup>656</sup> Buzan, *From International to World Society? The English School Theory and the Social Structure of Globalisation*, pp. 48, 59.

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