

# The Russian Constitution and Foreign Policy: Regional Aspects

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Internationalization is in progress on a global scale as national governments respond to an expanding range of international linkages, economic interdependence, and the demands of policy issues that can no longer be managed within the framework of individual political systems. At the same time, there is increasing attention to those pressures on the part of subnational interests, both governmental and non-governmental. Russia, too, is impacted by these trends.

When subnational units establish cross-national links with their foreign counterparts, it represents a true departure from the traditional idea that the conduct of international relations is the exclusive domain of the central government. Foreign trade provides regions with arguments for more independence; the most important driving forces for economic regionalization come from markets, from private trade and investment flows, and from the policies of multinational companies. For Russian regions throughout the 1990s, the main post-Cold War priority for subnational foreign policy was trade and investment promotion. In pursuit of these, regions began to outbid each other in offering incentives to attract foreign investment.

Underpinning these trends are two developments that both reflect and help to explain them: the expanding agenda of foreign policy and the diminishing distinctions between domestic and foreign policy. Legal and constitutional aspects play an important, but not determining role in this question. The most controversial legal issues arise when we talk about trade and economic foreign policy. In these cases, the federal center faces real constitutional difficulties in resisting local initiatives. Often, the arguments that some republics of the Russian federation use are not legal or constitutional: they are generally made on the grounds of expediency. While Moscow's policymaking may be less efficient than that of regions, unchecked local foreign policy can lead in absurd and anarchic directions.

The Republic of Tatarstan provides a good example of the lawmaking struggle between the center and the regions. In response to President Putin's request that regional officials verify that local laws and regulations do not contradict the federal constitution, the deputy speaker of Tatarstan's State Council, Robert Minnulin, wrote an official letter to Sergei Kiriyenko suggesting that the republican prosecutor review *federal* laws and statutes to see if they intruded into areas of *Tatarstan's* competence.

## Background

Written law played an important role during the Soviet era. During the anarchical period of 1991-93, the old constitution became overgrown with amendments, many of which contradicted each other. This constitutional vacuum was gradually filled by local legislation. In August 1990, for example, Tatarstan proclaimed sovereignty without mention of its membership in the Russian Federation. This was clearly a political decision. As a Kazan political scientist, N. Mukharymov, concluded in 1994, local elites at that time did not understand what "sovereignty" meant. At that time, there was a romantic understanding of sovereignty, when new elite made ambivalent decisions and passed controversial laws rejecting federal constitution-making initiatives. Tatarstan held a republican referendum on sovereignty in 1992 and did not participate in the referendums organized by the federal center in 1993. Reduced to signing a federative treaty, Tatarstan did not vote for members of the Federation Council. 1994 was a turning point in the building of a new Russian federation. It was the year when the center and Tatarstan signed the first bilateral agreement--which saved the political regime, but gave birth to a contradictory federation.

The constitution-making process in Russia combines cooperative and conflictual elements. On the one hand, the actors participating in constitutional negotiation have all been looking to establish new political and legal "rules of the game" that would collectively bind them in future political activity. On the other, each actor has been trying to "build in" to the new constitution provisions that would tend to favor his or her parochial preferences (e.g., Tatarstan, Sakha-Yakutia, Chechnya, and Dagestan).

The constitution of December 1993 lays down the equality of all the "constituents of the Federation"--both to one another and in their relations with the center. In reality, the national republics (Tatarstan, Sakha-Yakutia, Tuva, and Bashkortostan) as well as some regions have proclaimed themselves as sovereign components of the federation. The interpretation of "sovereignty" varies from region to region. From the legal point of view, sovereignty has meant having one's own constitution and presidential system, including president, prime minister and cabinet of ministers. For example, Moscow, Saratov and some other regions have their own cabinet of ministers. Sovereignty also entails authority on issues such as regional citizenship (e.g., Bashkortostan, Komi, Tatarstan, and Sakha-Yakutia), and regional "state language." A particularly significant interpretation of sovereignty entails conducting independent relations with foreign states (e.g., Karelia tried to sign an international agreement with Finland, Sakha-Yakutia with South Korea; Tatarstan demanded the right to conduct its own relations with Turkey; and Kazan has taken an independent position on the conflict between Moscow and Chechnya).

Unfortunately, the national, ethnic, and religious peculiarities of different groups within the population of Russia have made for latent intra-state conflicts. Regional leaders talking about the infringement of local ethnic groups' interests during the Soviet era have carried on propaganda in favor of national and ethnic priorities. In this context, the conceptual elaboration of a "nation" as a multicultural entity has an important function to

play in the Russian constitution. It is not only wrong, but also extremely dangerous to identify a "nation" with a dominant ethnic group (as Tuva has done with "ethnic citizenship").

There have also been diplomatic embarrassments for Moscow. In 1997, representatives from the republics of Bashkortostan, Dagestan, Sakha-Yakutia, Tatarstan, Tuva, Khakassia, and Chuvash took part in the fifth "meeting of friendship, brotherhood and cooperation of the Turkish states and communities" in Istanbul. The Russian participants approved the final communiqué, which referred to the necessity of granting international recognition to the self-styled "Turkish Republic of Northern Cyprus." Needless to say, this was extremely embarrassing for the Russian Ministry of Foreign Affairs.

### **The Legal Framework**

There are a number of reasons why constitution-making has been difficult in post-Soviet Russia, including the fact that it took place within the framework of the old system and structure. Furthermore, the necessary process of institutional destruction and creation was made more difficult by the absence of a meaningful distinction between state and regime (or party) in the Soviet Union. That is why the regional nationalist elite (mostly former Communists and Soviet leaders) played a very destructive role in the political restructuring of Russia. That restructuring should have been more fundamental, the destruction and creation more complete. As a consequence, in 1990-91 the regions exploited the weakness of the center--both to test the limits and possibilities for extending their own spheres of influence, and to reconstruct the existing political order. Regional elites were ready to fill the vacuum created by the destruction of the state structure by augmenting their control, even over foreign policy issues (as proven by the adoption of national republican constitutions in Tatarstan, Tuva and Karelia).

Article 71 of the Russian constitution describes the competence of the federative center. This includes: foreign policy and international relations; citizenship; the legal regulations of a single market economy and financial system; legal procedures and regulations concerning the activity of the office of the public prosecutor; criminal, civic, and arbitration law; civil and human rights issues; federal property; foreign economic, defense, and security policy; and protection of state borders. Article 71 essentially defines all elements of "federal supremacy."

However, Article 72, which enumerates issues of joint competence, is interpreted freely by some regions. Further, there is no article that concretely lists the areas of jurisdiction of the constituent federal units. In contrast, the American constitution (Section 10) provides a list of restrictions put on the states (without Congressional permission states cannot maintain an army; issue money and credit bills; nor conclude a treaty).

In contrast, in Russia one finds: republics with their "own army" and "presidential guard" (e.g., Chechnya and previously, Ingushetia); republics and regions concluding treaties with other regions (members of the Urals Republic); and regions signing an international

treaty with foreign countries (such as Tatarstan, Sakha, and Karelia). In terms of legal contradictions, Privolzhsky federal okrug alone has given us 324 laws and statutes that contradict federal law. Almost all republican constitutions and some statutes (e.g., Kirovskaya, Samarskaya, Orenburgskaya and Ul'ynovskaya oblasts) have articles that are incompatible with federal legislation. Bashkortostan and Tatarstan have the most laws that conflict with federal legal documents (68); Nizhegorodskaya oblast has 27; Kirovskaya has 24, Orenburgskaya oblast and Mordovskaya republic have 23; and the Republic Mari El has 22.

Indeed, most regional laws violate Article 71. The most problematic realms are foreign and international policy, citizenship, and regulation of the activity of the federal institutions (e.g., Ministry of Internal Affairs, court, Office of the Public Prosecutor). These are consequences of "asymmetric federalism"--which was a salvation for Russia in 1991-96, but now constitutes a destructive force for the federation. The president of Tatarstan concluded that the federal constitution was prepared without regard for regions' interests; this constitution was imposed and did not take into consideration the existing constitutions of some republics, and the statutes of some oblasts.

### **The Role of the Regions**

Regional influence on Russia's foreign and security policy is twofold. On one hand, the federal center involves the regions in the decision-making process that deals with current foreign problems. The center is reluctant to sign any agreements with neighboring states, for example, without at least consulting the border regions involved. Governors are routinely included as delegation members in official diplomatic missions. Regional leaders have played a very important role in Moscow's implementation of international agreements on the elimination of weapons of mass destruction. Six regions--Bryansk, Kirov, Kurgan, Penza, Saratov and Udmurt republic--demanded financial compensation from Moscow to cover the cost of the ecological damage that would follow the destruction of chemical weapons on their territory.

At the same time, Moscow is very "disappointed" when regions create their own "paradiplomatic" contacts with foreign countries. For example, Tatarstan signed an agreement with Iran and Iraq on commercial and economic cooperation. The governor of Krasnodarsky krai and the president of Karachaevo-Cherkesskia have tried to act as a mediator in the conflict between Georgia and Abkhazia.

While Moscow is very reluctant to allow regions to conduct their own diplomatic relations with foreign countries, it is ready to look at transnational economic contacts in a positive light. But even in this case, there are two conditions: first, all texts must be cleared with the Ministry of Foreign Affairs before signing; and second, regions must be able to independently guarantee repayments of international credits.

The phenomenon of new federation-building--both in general terms and in the specific context of the post-Soviet Russian transition--is clearly complex. Foreign policy is an

extremely delicate realm, and for "young" federations contradictions and misunderstanding between the center and the constituent regions may exact a high cost in terms of national disintegration. The Russian constitution, with all its merits and flaws, provides an instrument for the revolutionary reconstruction of center-region relations. The question is, are local elites ready for this "revolution?" At least one player--the center--apparently is.

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