

# **Is a More Democratic Europe Good News for Post-Soviet States?**

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The title of this memo—“Is a More Democratic Europe Good News for Post-Soviet States?”—may raise a few eyebrows. After all, how could the answer be anything but yes?! Such a quick and positive reply, however, misses a key fact. Democracy in Europe is no longer a purely domestic concern; increasingly, it operates at the regional level as well. If we focus on these regional dynamics, the “obvious” answer becomes less clear. Indeed, the democratization and constitutionalization of European institutions and especially of the European Union raise serious issues for the international community as it promotes the development of robust civil societies and law-governed administration in post-Soviet states.

This memo thus shifts the normal line of analysis. When thinking about the role of the EU and other European institutions in the former Soviet area, we typically ask how they can better promote democracy there. Instead, I explore how the democratization of the institutions themselves may affect their democracy promotion efforts in post-Soviet states. My bottom-line answer has two parts. For the Baltic states, such regional democratization dynamics will have little effect; for countries like Russia and Ukraine, however, the consequences are more serious, far-reaching, and quite likely negative.

## **A Democratic, Constitutionalized, and Legitimate European Polity**

Europeans view their regional institutions—above all, the EU—as entities quite distinct from traditional international organizations, where states cooperate on many issues but retain their distinct, separate, and sovereign status. Today, it is a given among many European policymakers and analysts that the EU has become something far more—a supranational polity-in-the-making, where states pool and cede their sovereignty. Indeed, during the past decade, the Union has increasingly come to acquire features—a citizenship and common currency, for example—that are normally the preserve of sovereign states.

These trends and facts have led to a heated debate among Europeans over the need to democratize the EU and increase its legitimacy. After all, if it is acting more and more like a state, why not hold it to similar standards of democratic legitimacy? During the past year, much of this debate was channeled through a Convention on the Future of Europe, a largely public forum with a broad and inclusive membership—policymakers,

academic specialists, representatives of civil society, and the like. Billed by many as a constitutional convention, its mandate was nothing less than to draft a constitution for Europe, which it has now done. This draft is currently being debated at an intergovernmental conference, with its final adoption likely early in 2004.

The draft constitution says many things, but, to understand its implications for post-Soviet states, two points are worth highlighting. First, it makes clearer than ever before that the Union is and aspires to be something far more than a common market. To this end, the draft establishes a robust Union citizenship, promulgates a bill of rights, and makes further moves to establish a common foreign and security policy (for example, by establishing a post of EU foreign minister to oversee a Union diplomatic service).

Second, the constitution makes explicit that the Union is a political community united around common values and norms. It does this most importantly by incorporating the “Charter of Fundamental Rights and Freedoms,” first promulgated as a declaratory statement at the EU’s Nice summit in December 2000, into the Union’s constitutional core. This charter, which bears similarities both to the U.S. Bill of Rights and the 1953 European Convention on Human Rights, will thus be legally enforceable, for example, through judgments by the EU’s European Court of Justice.

In sum, although surely overstating his case, Robert Kagan has a point. Europe, or Venus in his colorful language (as when he writes, “Americans are from Mars, Europe is from Venus”), is seeking to build a world governed by laws and rules. Power is still important, but only to the extent that its exercise is embedded in commonly agreed principles and institutions.

Why, though, should this constitutionalization of Europe matter for post-Soviet states?

## **Implications for Former Soviet States...or Too Much of a Good Thing?**

To start, one needs to divide the post-Soviet states into two groups—the “ins” and the “outs.” The ins are the three Baltic states—Estonia, Lithuania, and Latvia. As of mid-2004, they will be full members of the EU. Its coming democratization and constitutionalization will thus have little new effect on them. Indeed, since the mid-1990s, their governments have worked very hard to become members in good standing who *already have* fairly stable and democratic institutions.

The same cannot be said of the outs—the remaining 12 post-Soviet states. They are outs simply because they stand zero chance of gaining EU membership in the foreseeable future. Consider Russia and Ukraine. With far-from-robust civil societies and weakly institutionalized democratic practices, these states will feel the impact of the dynamics sketched above in at least four ways.

### **Raising the Bar**

As the EU moves from an economic community to a polity with state-like, federal features legitimated via a constitutionalized core of democratic values and respect for human rights, the barriers for eventual Russian or Ukrainian accession to the Union grow

ever higher. This matters—tremendously. For the Baltic states, their stepwise entry into the EU during the past decade, with the Union applying a policy of strict political conditionality, proved decisive in helping them strengthen democratic institutions and practices in several key cases. For example, strong pressure from the EU played a central role in pushing Estonia and Latvia to adopt policies on minorities and citizenship that were in keeping with European and international human rights standards.

Such pressure worked because Baltic elites knew they were on a clearly marked road to membership. As the EU moves to define itself in terms of respect for (and promotion of) core democratic and human rights, the day when Russia or Ukraine may even start along that road—where incentives and conditionality promote democratic development—grows ever more distant.

### **Turf Wars**

As any bureaucrat or policymaker could attest, it is rarely a good idea to create organizations with overlapping mandates as this can lead to competition, confusion, and waste. Yet, this might be the very result of beefing up the EU's rights competencies. Indeed, in too many instances, the Council of Europe (CE), the Organization for Security and Cooperation in Europe, and, increasingly, the EU are now duplicating each other's efforts in trying to promote basic rights. In Ukraine, one hears of cases where all three institutions have organized seminars promoting, to take one example, press freedom. Many of the same Ukrainians get invited to these meetings and report different—and confusing—emphases and messages depending upon the sponsoring organization.

Early in 2003, these concerns about overlap and waste reached European policy circles. In a contribution to the EU's convention, a group of 30 intellectuals and policymakers specifically called for the Union's new constitution to contain clear language aimed at avoiding a duplication of efforts as the EU and CE formulate and implement human rights policies. Sadly, this effort fell on deaf ears.

Perhaps these emerging areas of organizational overlap do not matter. That is, “the more, the better.” Multiple European regional institutions promoting human rights make it that much easier for civil society and NGO activists in Russia and Ukraine to pressure their respective governments; in seeking assistance, they can choose from one of three institutions. Unfortunately, such a rosy picture neglects two basic facts of life. For one, compared with its European institutional brethren, the EU is like a bull in a china shop. It is big, can build up a lot of momentum (in this case, on human rights), and may break pieces of china that are still of great value—for example, the existing pan-European rights system. Moreover, such overlap creates an unhealthy situation where local activists, whose agendas do not always coincide with those of the international community, can play different institutions off one another, thus subverting efforts at external monitoring and rights promotion.

### **Disbursing Aid: From Slow to Glacial**

By incorporating basic human rights into its (juridically enforceable) legal and constitutional core, the EU may unintentionally make it more difficult to disburse its own democracy-promotion aid, which has totaled more than € billion to Russia and Ukraine

alone over the past decade. This is a complex legal issue, one whose full impact will not become clear until the Union's Court of Justice begins to rule on human rights cases. However, when and if the draft constitution is adopted, it is likely that the distribution of aid designed to bolster respect for human rights and the rule of law in Russia and Ukraine will become a slower, even more complicated process. In particular, EU bureaucrats in the commission will need to make sure that such aid packages are legally compliant with any human rights clauses contained in the new constitution.

### **Weakening Supranational Rights Protections**

The EU's efforts to strengthen its own human rights core may very well end up weakening the existing pan-European system of rights protection centered on the CE and its Strasbourg-based European Court of Human Rights. This will have serious consequences for citizens of both Russia and Ukraine, as well as the more general evolution of rights protection in their countries.

The pan-European rights system anchored by the CE has experienced a renaissance in recent years. This is a good news/bad news situation. The good news is that both Russia and Ukraine have adopted and incorporated into their domestic law the European Convention on Human Rights, which means that citizens in the two countries now have a right of formal appeal to the Strasbourg court. Russians and Ukrainians have exploited this mechanism with a vengeance, with submissions to Strasbourg increasing by 130 percent between 1998 and 2001 alone.

The bad news is that the European Court of Human Rights lacks adequate resources to deal with this increased caseload and workload. Sadly, the CE's member states have been unwilling to appropriate additional funds for the court, with several countries explicitly justifying their refusal by referring to the EU's growing authority on rights issues. The logic seems to be as follows: Why bother investing further resources in the council when the real action—even on rights questions—is in Brussels? Individuals in Strasbourg even talk about worse-case scenarios where the CE and the human rights court collapse (for lack of money) or are somehow integrated into EU structures.

In sum, when it comes to democracy and international institutions in Europe, one can perhaps have too much of a good thing.

### **Policy Implications**

For European policymakers, analysts, and academics, one lesson is clear. Their efforts to craft an EU with a more legitimate base, one grounded in fundamental rights, to build a Venus-like world where power is embedded in and justified through laws and rules may well have unintended consequences. In particular, the Union's efforts to democratize itself may—in those parts of Europe that stand outside the EU and where domestic politics is still much more a game of Mars-like power politics—paradoxically retard or even undercut the development of democracy and respect for the rule of law.

For U.S. policymakers, my analysis suggests two modest initiatives—one in Strasbourg and one in Brussels. On the former, the United States would do well to make better use of the formal observer status it has at the Council of Europe. Little used in

recent years, this post would allow U.S. policymakers to add their voice (and funding?) to those calling for more resources for the Strasbourg court.

In Brussels, there is precious little that the United States can or probably should do to shape the future course of the EU's internal constitutional debates. However, it could usefully remind European policymakers and academics of a simple fact that all too many seem to ignore or forget: that states like Russia and Ukraine are also part of Europe. Actions thus taken to democratize further one part of Europe that is already democratic (the EU) may negatively affect those parts where democracy's roots are still shallow and weak.

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