

Institutionally blind?

International organisations and human rights abuses in the former Soviet Union



Edited by Adam Hug

The Foreign Policy Centre



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***Institutionally blind?* Executive Summary**

Institutionally blind? examines whether some of the major international institutions covering the former Soviet Union (FSU) are currently meeting their human rights commitments. The publication shows how the independence and integrity of institutions defending human rights in the region are under attack from outside and within, sometimes buckling under the pressure.

The publication highlights the need to improve transparency and public understanding around how delegations to the Parliamentary Assembly of the Council of Europe (PACE) and the OSCE Parliamentary Assembly (OSCE PA) operate, looking at the reasons why politicians overlook human rights concerns, from ideology to personal gain. It looks at ways make the delegations more attractive to ambitious politicians and better integrate their work into policy-making. It also notes how the CIS Parliamentary Assembly imitates the practices of PACE and the OSCE PA, while acting as rubber stamp for their regimes and giving credence to flawed elections.

The independence and effectiveness of outspoken human rights bodies such as the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Representative on Freedom of Media are under threat by budget freezes and attempts to put their work under the political supervision of the OSCE's consensus driven intergovernmental bodies. ODIHR's long-term detailed work in election observations is sometimes undermined by short-term delegations from other bodies such as PACE or the OSCE PA who are less critical of electoral impropriety. Across the region, in both democracies and authoritarian states, the European Court of Human Rights (ECtHR) is under political attack for its intrusion into domestic law, while its continuing case backlog means significant delays for those desperately seeking justice.

Institutionally blind? assesses the shift in EU policy away from 'values promotion' towards a more traditional focus on economic opportunities and regional security. However, it shows that for the most part the European Parliament (EP) has pushed to keep human rights on the agenda and it has a key role to play in the ratification of EU Agreements that must not be ignored.

The publication shows how other institutions such as INTERPOL and EITI have taken positive steps responding to human rights concerns in the FSU. It discusses the challenges development banks face in the FSU and how their tools, such as the *Doing Business* report can be misused.

Institutionally blind? examines these problems in the context of the economic and strategic pressures facing the countries and institutions of Europe and the FSU. While the situation may be tough, the current economic problems in the FSU may provide new opportunities. Challenging times are no excuse for being institutionally blind.

The publication makes a number of key recommendations:

To the EU and European Political Groups

- The EU must ensure that revisions to the operation of the Eastern Partnership policy and Central Asia strategy do not significantly downgrade the importance of human rights;
- The EEAS and Commission should ensure that the revised progress report structure does not stop the EU reporting on human rights and governance issues;
- Other EU institutions, the European Parliament's own delegations and member states should reflect the positions passed by the EP in their interactions with states in the FSU. The EP should be encouraged to stand by its objections to ratifying agreements with countries that have failed to meet agreed human rights objectives, such as in the case of Uzbekistan and Kazakhstan;
- International political groups must pay more attention to human rights abuses amongst their memberships and show consistency in their approach to such abuses.

To national parliaments and NGOs

- National Parliaments should raise the profile and standing of the delegations they send to international Parliamentary Assemblies and improve the transparency around the work that they do there, such as recording votes on national websites;

- NGOs, and parliamentary ethics bodies, must continue to increase scrutiny of financial relationships between Parliamentarians and groups aligned to FSU governments;
- European nations, most notably the UK, need to show a greater understanding of the political impact that their domestic criticisms of international institutions, such as the ECtHR, can have on the debate in FSU countries.

To the Council of Europe and its members

- The ECtHR needs to increase its capacity in order to further reduce its case backlog and must be properly resourced by member states to do so;
- PACE needs to improve its organisational transparency, particularly when it comes to difficult human rights debates, and address its role in election observation so that it does not undermine the work of longer-term observers such as the OSCE/ODIHR.

To the OSCE and its participating States

- The OSCE must defend the role of ODIHR in providing long-term election observation, ensuring it remains an assessment mechanism judging countries election practices;
- OSCE participating States should strongly consider ending the OSCE budget freeze to enable it to respond to the increasing demands on its resources;
- Human rights sympathetic participating States must help ensure the independence of ODIHR and the Representative on Freedom of Media from the consensus mechanisms that operate elsewhere in the OSCE. They should explore opportunities to introduce majority voting in the Permanent Council and other bodies to reduce political gridlock and work to improve the transparency of decision-making in such meetings;
- Participating states should more strongly oppose the downgrading of field offices.

To the economic institutions

- Regional and global development banks need to provide clearer incentives for lending that reward democratic development and governance reform; this is particularly true for the EBRD which formally retains such a mandate;
- The EITI should look at ways to ensure and maintain the independence of the NGO's participating in its structures and improve central oversight of governance problems.

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Introduction: Institutionally blind? International organisations and human rights abuses in the former Soviet Union

Adam Hug¹

Are institutions up to the task? This is perhaps the defining question of modern politics and government. At the time of writing, in early 2016, the existing international institutional architecture covering Europe and the former Soviet Union finds itself under political attack as national governments increasingly challenge the right of international institutions to influence or challenge domestic policy, particularly when it comes to the area of human rights and rule of law. This mirrors but amplifies the declining trust citizens feel towards institutions, both public and private, at all levels including national politics. Although sometimes national politicians may use international bodies as convenient distractions from their own challenges, the distance between such organisations and their often technocratic remit can create challenges in building public understanding about their activities. Such a distance can reduce the level of importance people and politicians feel towards such institutions. While international human rights bodies and other institutions can be portrayed, often inaccurately, as an unnecessary annoyance by the Western media, in areas where governance and rule of law are weak and human rights abuses regularly occur these institutions can play a vital role in providing protection and redress when governments fail to act or are themselves the cause of the problem. The purpose of this publication is to assess whether the international political and economic institutions that cover or influence the states of the former Soviet Union (FSU) are currently up to the task of meeting their responsibilities in responding to human rights and governance abuses in the region. If they are not, it then asks what steps can be taken to address this.

Specific institutional challenges

The EU

At the time of writing the European Union is beset by challenges from stuttering economies and a still fragile euro, the strategic impact of Russia's invasion of Ukraine, and the security challenges fuelled by the continuing conflict in Syria - the latter a major contributor to the stresses and strains of the migrant crisis which has stretched European solidarity and the principles of free movement to breaking point. The British are questioning their continued participation in this institution, with a referendum on UK membership due potentially as early as June 2016. Its previously vaunted success in encouraging and underpinning democracy and human rights amongst its member states is itself coming under renewed scrutiny due to the deteriorating political conditions in countries such as Hungary and Poland. These stresses and strains, combined with limited human rights success in recent years, is contributing to steady downgrading of the importance of promoting its 'values agenda' - the focus on promoting democracy, good governance and human rights - in its diplomatic and institutional engagement with the countries of the former Soviet Union.

Unlike some of the other institutions examined in this publication most of the countries of the former Soviet Union are not full members of the EU (with the notable exceptions of the Baltic states); however it operates a number of projects that seek to influence behaviour and deepen ties between it and the states of the region. The most high profile of these is the EU's Eastern Partnership (EaP) project, part of its wider European Neighbourhood Policy (ENP) which focuses on deepening relations with Ukraine, Moldova, Georgia, Armenia, Azerbaijan and Belarus. However the limitations of the Eastern Partnership were already becoming apparent by the time then-President Yanukovych withdrew from negotiations on the creation of an Association and a Deep and Comprehensive Free Trade Area to join the Russian-led Eurasian Economic Union, lighting the sparks that would set off the crisis in Ukraine.² The Eastern Partnership's troubled development leaves real challenges about how to deal with the countries who have rejected the EU's offers of an Association Agreement (AA) and a Deep and Comprehensive Free Trade Area (DCFTA). Those rejecting this offer just so happen to have the three most challenging human rights environments in the Eastern Partnership region: Armenia, Azerbaijan and Belarus. This is not Europe's only challenge in the wider region, as events in Ukraine understandably continue to overshadow EU-Russia relations and the EU has increasingly been squeezed down the pecking order of influence in Central Asia, particularly since the

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² For a more detailed analysis of the future of EU Eastern Partnership Adam Hug (ed.) *Trouble in the Neighbourhood? The future of the EU's Eastern Partnership*, FPC, February 2015, <http://fpc.org.uk/publications/trouble-in-the-neighbourhood>

withdrawal from Afghanistan and the rise of China as the main emerging economic and political counterweight to Russia in the region.

As Dr. Hrant Kostanyan's essay in this collection shows, following the recent review of the European Neighbourhood Policy, the newly revised Eastern Partnership process takes a noticeably more 'realist' approach to the region, prioritising stability and economic ties over political reform and human rights.³ He quotes the EU High Representative for Foreign Affairs and Security Policy Federica Mogherini as describing the priorities for neighbourhood policy as now being "First, focus on economic development and job creation; second, cooperation on energy; third, security; fourth, migration; fifth, neighbours of the neighbours."⁴ This move mirrors a similar stability-first shift in the EU's approach to Central Asia.⁵ The recognition of the problems faced by the EU's traditional 'more for more' approach in countries that have been less interested in the incentives on offer, such as Azerbaijan, seems to be matched with a resignation that it would struggle to achieve support for a 'less for less' approach from EU member states and that it might undermine other priorities.

A seemingly minor proposed procedural change means that the EU will no longer provide its traditional annual progress reports for countries not proceeding towards an AA & DCFTA. If this translates in practice to the EU no longer commenting on areas where the partner country is not complying with the bilateral agreement made between the EU and that country, this may potentially remove an important tool for monitoring of governance reform and progress on human rights issues.⁶ Greater differentiation - that is, a more individual shaping of agreements to focus on what partners want - along with a prioritisation of economic and security issues adds to the risk that human rights and governance standards will be put to one side. Unsurprisingly, formal EU statements on political developments remain hamstrung by the need for unanimity in the Foreign Affairs Council; something that continues to restrict the EU's ability to respond to emerging human rights challenges in the FSU in its official statements, actions, and its sometimes lowest common denominator press releases about human rights abuses increasingly treated with disdain by beleaguered human rights defenders.

This partial retreat from the values-agenda on behalf of the EU's External Action Service (EEAS) and European Commission is not necessarily reflected in the attitudes of its other major decision-making body, the European Parliament (EP). Perhaps more so than its sister assemblies discussed below, the EP can be more consistently vocal on some human rights issues in the region; however as Tika Tsertsvadze sets out in her contribution in this publication, the EP's declarative motions on these issues sometimes have relatively little impact on decision-making by the EEAS, Commission and member states. The Parliament itself needs to do more to ensure that its own delegations do not undermine the content of these resolutions by their actions in-country, with the tendency for regime-sympathetic politicians to play leading roles in these groupings. Compliance with these resolutions needs to be more firmly factored into the Parliament's decisions around delegation composition and leadership, rather than be used as a pawn in wider political games. An egregious example of which was shown when longstanding critic of human rights promotion Iveta Grigule⁷ was allowed to take the chair of the Central Asia delegation on the basis that she was willing to leave the UKIP-led Europe of Freedom and Direct Democracy Group, thereby removing its status as an official Parliamentary Group.⁸

However, the EP can play a decisive role over the future of agreements where its ratification is required in order for implementation to occur. In 2015 the EP successfully delayed the approval of the EU-Uzbekistan textile protocol that would reduce European tariffs on Uzbek cotton products, until the International Labour Organisation sees further progress in tackling the issue of forced labour; while the EU-Turkmenistan Partnership and Cooperation Agreement has languished unimplemented for 15 years due to parliamentary concerns over human rights. 2016 is

³ European Commission, Review of the European Neighbourhood Policy, November 2015, http://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf

⁴ EEAS, ENP Review: stronger partnerships for a stronger neighbourhood, press release, 17 November 2015, http://eeas.europa.eu/top_stories/2015/181115_enp_review_en.htm

⁵ Ann-Sophie Gast, A Shift in the EU Strategy for Central Asia, Carnegie Moscow Centre, April 2014, <http://carnegie.ru/publications/?fa=55483>

⁶ European Commission, Review of the European Neighbourhood Policy, 18 November 2015, http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/151118_joint-communication_review-of-the-enp_en.pdf

⁷ Iveta Grigule, The Case for Central Asia as the European Partner, EP Today, January 2016, <http://eptoday.com/the-case-for-central-asia-as-the-european-partner/>

⁸ EFDD, Political blackmail by federalists leads to MEP resignation and collapse of Eurosceptic group in European Parliament, October 2014, <http://www.efddgroup.eu/newsroom/press-releases/item/political-blackmail-by-federalists-leads-to-mep-resignation-and-collapse-of-eurosceptic-group-in-european-parliament>

likely to see an even bigger and more fraught battle over the future of the EU-Kazakhstan Enhanced Partnership and Cooperation Agreement. The agreement, signed in December 2015, will require ratification by the European Parliament, whose existing concerns around human rights standards previously set out in resolutions have not been met.⁹ However, particularly when compared to discussions around Uzbekistan, the EP will come under considerable pressure to ratify given the economic interests involved.¹⁰ The EP's recent strong focus on human rights abuses in Azerbaijan also should be appropriately factored into EEAS decision-making around whether to agree a 'Strategic Partnership' agreement with Azerbaijan outside the traditional format of the Eastern Partnership process, given the risk that the Parliament might refuse to ratify such a deal.

The Council of Europe and the OSCE

The Council of Europe (CoE) and the OSCE are bodies dedicated to bringing the states of Europe and the former Soviet Union together to promote human rights and security. Traditionally, in Western Europe the CoE and OSCE have a relatively low profile, with limited public understanding of their role and function. The former is routinely confused and conflated with the European Union.¹¹ However, in the UK at least, there has been increasing scrutiny of the Council of Europe's more controversial decision-making, and in particular, the role of the European Court of Human Rights (ECtHR) - the CoE's most prominent institution. While Britain continues to flirt with downgrading the influence of ECtHR rulings in its legal system, in part taking advantage of the political cover the UK has provided, Russia has followed through on similar threats by allowing the Supreme Court of the Russian Federation to overturn ECtHR judgments it deems unconstitutional.¹² Russia's voting rights at the Parliamentary Assembly of the Council of Europe (PACE) had already been suspended over the Ukraine crisis; taken together this raises further questions over its long-term future in the CoE. Azerbaijan's future in the CoE is difficult to predict as its behaviour at PACE has been the source of much contestation between its supporters and critics, as outlined below and in Rebecca Vincent's contribution. Belarus, it should be noted, never successfully concluded its membership application, whilst the states of Central Asia fall beyond the CoE's remit. Following a number of rounds of organisational reform, the ECtHR is reducing its backlog of cases, but longstanding delays, such as over cases relating to the 2005 election in Azerbaijan, are acting to undermine support for the ECtHR amongst some human rights defenders from the region.

Beyond the ECtHR and PACE, the CoE does play host to two particularly important institutions for the promotion of human rights in the region. Firstly, the Venice Commission (the European Commission for Democracy through Law) provides an unparalleled range of independent legal expertise to assist CoE member states in the development of legislation. However the details of its recommendations are often overlooked by states which are sometimes more keen to announce that they have discussed proposed laws with the Venice Commission than they are to listen to what the Commission has to say and implement its recommendations. The Council of Europe's Commissioner for Human Rights, currently Nils Muižnieks, is also a position that often challenges human rights abuses in member countries and calls for the protection of local human rights defenders.

The OSCE, which includes the countries of both Central Asia and North America, has an even lower profile in Western political debate. While predominantly a regional security organisation, its definition of security has a 'human dimension' relating to human rights and functioning democratic institutions that are deemed essential for its concept of lasting security. As a result, the OSCE provides a home for some of the region's most effective institutions for monitoring human rights performance: the Office for Democratic Institutions and Human Rights (ODIHR) perhaps best known for providing the most detailed and reliable official election observations in the region through the posting of experienced long-term observers, and the OSCE Representative on Freedom of the Media, currently Dunja Mijatović, who plays an active role in championing media freedom and the protection of journalists in the region.¹³ Given the budgetary pressures on the OSCE outlined by Dr. Beata Martin-Rozumilowicz and Anna Chernova, the election section work is being squeezed, particularly relating to countries where governments see

⁹ EEAS Press Release, EU and Kazakhstan sign Enhanced Partnership and Cooperation Agreement, December 2015, http://eeas.europa.eu/statements-eeas/2015/151221_02_en.htm

¹⁰ Mihra Rittmann, Will the EU Be Called to Task on Kazakhstan?, Human Rights Watch, January 2016, <https://www.hrw.org/news/2016/01/04/will-eu-be-called-task-kazakhstan>

¹¹ A situation not helped by the EU's decision to call its head of state and ministerial bodies the European Council and the Council of the European Union.

¹² DW, Russia crafts loophole around European Court of Human Rights, December 2015, <http://www.dw.com/en/russia-crafts-loop-hole-around-european-court-of-human-rights/a-18918407> The ECtHR's judgement requiring Russia to pay Yukos shareholders €1.9 billion may also have helped it come to this decision.

¹³ A further important institution, the OSCE High Commissioner on National Minorities remit spans both security and human dimension but in part due to space restrictions its work is not addressed in this publication.

this work as problematic, while ODIHR in general remains under pressure with the Russians particularly keen to defund its work.

Governments in a number of former Soviet countries have sought to downgrade the size and remit of country offices of the OSCE, and in some cases suspend its operations entirely. This has seen Azerbaijan first downgrading the OSCE office in Baku to a 'project coordinator' in January 2014, before ordering it to close entirely in the summer of 2015.¹⁴ Belarus similarly terminated the mandate of the OSCE office in late 2010, leading to its closure in March 2011.¹⁵ Georgia too closed its OSCE office in 2008 due to Russian involvement in the organisation; however this also meant that the organisation lacked a presence on the ground as the human rights situation in the country deteriorated in the later years of the Saakashvili Presidency. The Georgia office has yet to be reopened. Across the rest of the region a patchwork of different office formats includes centres, offices, missions and project coordinators of varying size and resource levels.¹⁶

Both the Parliamentarians involved in the respective OSCE and CoE assemblies and the national governments working with these institutions should pay greater heed to the findings of these important expert bodies when developing their policies within the CoE and OSCE, at a bilateral level with countries of the former Soviet Union, and in the development of EU policies. However, rather than being supported, this expert work is sadly often undermined by politicians operating to different agendas.

Too much Caviar?

In 2012 the German think tank the European Stability Initiative (ESI) produced an influential report entitled *Caviar Diplomacy: How Azerbaijan Silenced the Council of Europe*. The issues it raised are not unique to Azerbaijan or indeed PACE, although both the country and the institution provide some of the best examples human rights concerns being overlooked by Parliamentarians. The ESI report drew particular attention to the issues around lavish gift giving, and subsequent supportive behaviour amongst politicians active at PACE. This may very well be part of the story, but as ESI also note there are other factors at play here. So why do some Parliamentarians seemingly overlook human rights abuses and election violations in their work?

- **Lack of knowledge:** Parliamentarians, for the most part, are not initially experts on the countries whose issues they may be asked to engage with as part of their duties with PACE, the OSCE PA or other institutions. Many European Parliamentary systems tend to promote generalist knowledge rather than the development of specialisms. The ability of Parliamentarians to spend time on the ground in a particular country will often be dependent on an external group taking them there, and for the most part the organisations offering to provide free travel to a country are usually in some way affiliated with the current governments or ruling elites within those countries. Given the relative lack of information about these countries being provided directly to Parliamentarians or in the Western media, proactive engagement by regime-aligned pressure groups and specifically created think tanks¹⁷ can have a significant impact on shaping Parliamentarians' understanding of the region. Furthermore this lack of prior knowledge may lead to an increased willingness to see allegations of human rights abuse as literally that - allegations yet to be proven - giving the benefit of the doubt more freely to governments in the former Soviet Union than maybe merited.
- **Belief in constructive engagement and their powers of persuasion:** This approach fits closely to the idea of the states of the FSU being in the process of transition, that they are 'emerging democracies' looking for guidance. The belief, or at least hope, that FSU parliamentary delegations share a willingness to reform and learn from dialogue processes, inter-parliamentary work ultimately leading to changes in behaviour through the process of socialisation.¹⁸ This approach has fundamental limits where the parliamentarians

¹⁴ OSCE, OSCE Project Co-ordinator in Baku discontinues its operations in Azerbaijan, July 2015,

<http://www.osce.org/secretariat/170146>

¹⁵ OSCE, As OSCE Office in Minsk closes, OSCE Chairperson expresses regrets, says efforts to enable OSCE work in Belarus continue, March 2011,

<http://www.osce.org/cio/76282>

¹⁶ OSCE, Where were are, <http://www.osce.org/where>

¹⁷ Kazakhstan has proved adept at such work, with for example the creation of the Eurasian Council on Foreign Affairs. <http://www.eurasiancouncilforeignaffairs.eu/>

¹⁸ The process of socialisation is believed to begin with 'strategic calculation' - the response to specific incentives and penalties, followed by 'role playing' where behaviour is influenced by group norms but underlying positions do not change, followed finally by 'normative suasion' where such dialogue can fundamentally shift behaviour amongst

from the FSU rely on fundamentally undemocratic means of obtaining and maintaining political office, thereby creating a potentially insurmountable structural barrier to significant behaviour change.

- **Solidarity between Parliamentarians:** For parliamentarians there can be a tendency to over-identify with the political challenges, such as for example press intrusion, facing fellow lawmakers in very different political environments, particularly when the interlocutor comes from the ruling party in an authoritarian or semi-authoritarian state.¹⁹ A simple desire to be polite and diplomatic in the dialogue process can sometimes inhibit the ability to ask probing questions, or enter difficult areas of debate.
- **Solidarity between parties:** The role of international political alliances can play an important part in the internal horse-trading around the allocation of offices within different Parliamentary Assemblies. However these ties can run deeper as part of longer-term partnerships between parties of East and West. The role played by the European People's Party (EPP)²⁰ in the Eastern Partnership region has become an increasing cause for concern amongst human rights activists. Such concerns include the EPP's inconsistent approach to human rights in Georgia, where it was inclined to overlook the excesses of its member party the United National Movement (UNM) when it was in power. However the EPP has become increasingly vocal about human rights concerns now that the UNM is in opposition and a number of its leaders are facing criminal charges, ostensibly for crimes committed whilst it was in government. Armenia's ruling Republican Party has similarly benefited from a sympathetic political ear provided by its EPP political family, while the Liberal Democratic Party of Moldova (PLDM) led by Vlad Filat, the former Moldovan Prime Minister currently facing trial for corruption, had previously received strong support from the EPP.²¹ The EPP is not alone however, with the political groupings in the Council of Europe bringing together strange bedfellows in other political families. For example the European Democrats group brings together Britain's Conservative Party, Turkey's ruling Justice and Development Party (AKP), Azerbaijan's ruling New Azerbaijan Party (YAP) and some of the Armenian ruling elite parties; while the Socialist Group contains both the UK Labour Party and many continental social democrats but also Armenia's nationalist Dashnak party, and previously included parts of the extreme nationalist Liberal Democratic Party of Russia and Ukraine's Party of the Regions (the party of ex-President Yanukovich).
- **Political 'Realism'**²²: As touched on with the shift in current EU policy, the desire to obtain the greatest advantage for a Western member state or Europe in general, can play an important role in muting potential criticism of human rights abuse. Whether it is a desire to prioritise access to economic opportunities in authoritarian countries, or a worldview that sees a link between political stability and firm but not always fair governance, both can lead to uncritical political engagement. Proponents of such a position would be particularly mindful of the limited scope for European and Eurasian institutions to bring about radical change in the behaviour of post-Soviet partners, at least in the short term, and therefore would be more critical of efforts to exert political pressure over issues of human rights; lest it undermine progress towards other economic, energy and security goals.
- **Anti-imperialism:** Particularly common on both the radical left and radical right is a view that it is morally wrong and often hypocritical to challenge human rights abuses in the less developed political cultures of the former Soviet Union. While this view may overlook or down play the importance or appropriateness of political agreements containing human rights commitments that these countries have entered into, or indeed the entire role of the Council of Europe, it rightly draws attention to the need to ensure that Western Parliamentarians and institutions meet their own commitments and do not seek to undermine the influence of such scrutiny bodies in their own countries.

partner politicians. For more see Hrant Kostanyan & Bruno Vandecasteele, The Euronest Parliamentary Assembly: The European Parliament as a Socializer of its Counterparts in the EU's Eastern Neighbourhood? May 2013, https://www.coleurope.eu/sites/default/files/research-paper/edp_5_2013_-_kostanyan_vandecasteele.pdf

¹⁹ Most Parliamentarians are of course cognisant of the types of politician they are dealing with.

²⁰ The leading centre-right and Christian Democratic political family containing many of the parties of government in continental Europe, currently also the largest political group in the European Parliament.

²¹ In December 2014 after Moldovan Parliamentary elections the EPP called for the PLDM to be the pivotal actor in the governing coalition with EPP President Joseph Daul declaring "I also thank Vlad Filat for his loyalty to the EPP and its values. The EPP will always remain strong beside PLDM". See EPP, Moldova: EPP President congratulates PLDM and says it should be the pivotal actor in the pro-European coalition following the parliamentary elections, December 2014, <http://news.epp.eu/zroxt>

²² The use of the term realism in this essay is something of a simplification for the purposes of illustration, given that realist foreign policy comes in many forms and nuances.

- **Constituency interest or the lack thereof:** The higher the number of members of a particular diaspora in a particular politician's constituency, the more likely the politician is to engage in international political activity related to that diaspora's country of origin. Perceptions of such influence have traditionally included that of the Armenian diaspora over French engagement in both the Council of Europe and OSCE for example, and US engagement in the OSCE. Constituency interest can also be economic in nature, with representatives of constituencies containing energy industry firms often taking a keener interest in the energy-producing states of the former Soviet Union. Both of these characteristics also apply to All Party Groups and similar 'friendship groups' in national parliaments, where administrative and agenda-shaping functions are often fulfilled by Embassies or pro-government groups, further increasing the likelihood of participation by regime-sympathetic western parliamentarians in such activities. As touched on below, in Parliamentary systems without direct constituency representation or where seats are considered to be 'safe', there may be a potentially lower level of scrutiny of a parliamentarian's activities in these international forums by domestic political observers.
- **'Caviar flavoured' diplomacy:** There needs to perhaps be another category - 'caviar flavoured' - to describe behaviour that may be seen as inappropriate or unethical but is not immediately transactional in nature. Most notably this would include politicians choosing to limit their criticism of particular countries' human rights performance with the hope of building contact networks that could be used as part of future business activity once the politician has left public life, or where rules allow Parliamentarians to earn external sources of income. This is of particular relevance in relation to energy-producing states.
- **Gift giving and direct financial support:** The 'Caviar diplomacy'. The ESI report specifically noted claims of gifts of caviar being given to supporters of Azerbaijan within PACE, alongside other inducements such as carpets and holidays. Related techniques include payments made for the Parliamentarian providing advisory services to pro-government groups, and such groups providing assistance with the running of parliamentary offices, including secondment of staff. None of this behaviour is necessarily illegal, provided gifts and business arrangements are appropriately declared; however there is a strong whiff of ethically inappropriate activity when recipients of such largess subsequently stick very close to the official talking points of the government in question. The perception amongst human rights activists that this mechanism is used particularly by petro-states, notably in the context of the Council of Europe by Azerbaijan as documented by ESI and touched on in this publication by Rebecca Vincent.²³ However it is not alone; for example Russia stands accused of providing financial assistance to nationalist parties across the EU, including €9 million in loans from a Kremlin-aligned bank to France's Front National.²⁴

In the UK Parliament, and those of some other member states, there is a fundamental structural problem in that participation in the work of the Council of Europe and OSCE is not seen as conducive to political advancement, and being seen to spend time abroad not directly servicing the needs of constituents can carry a degree of political risk.²⁵ A significant proportion of the delegations can therefore be filled both by politicians whose political careers are drawing to a close (for example former ministers) and those unlikely to be asked to take on the demands of high office during their time in public life. In the case of the UK delegations there is also a significant presence from the House of Lords, who can often provide greater expertise but lack a degree of democratic accountability. One senior political advisor described the UK parliamentary perception of the work of the delegations as being about "jollies" and "junkets" an opportunity for international travel and fine dining but with little meaningful output.²⁶ While this may well be unfair given the diligent work of many parliamentarians within these institutions, it is also true that despite the expertise gained, delegation members are unlikely to be the first port of call for advice for their political parties or the Government on issues relating to the post-Soviet space unless their reputation for regional knowledge is obtained from another source. National parliaments need to do more to improve the

²³ While Azerbaijani influence over PACE discussions on its human rights record is well documented it is worth noting that it has been less successful in encouraging the Assembly to share its approach on its most important international issue, a resolution to the Nagorno Karabakh conflict. Motions seen as being sympathetic to the Azerbaijani position on the conflict were debated at PACE on 26 January 2016 and were narrowly rejected by a vote of 66 for to 70 against with 45 abstentions (see Council of Europe, PACE rejects resolution on the escalation of violence in Nagorno-Karabakh, January 2016, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5993&lang=2&cat=8>). Failure to make headway on issues relating to the conflict may ultimately do more to weaken the relationship between Azerbaijan and the Council of Europe than any criticism of the way it has managed (quite successfully) to limit PACE's scrutiny of its human rights record.

²⁴ EU Observer, Farage and Le Pen unite on Russia report, June 2015, <https://euobserver.com/political/129071>.

²⁵ Politicians from marginal seats, at least those who hope to hold onto them, find it particularly difficult to be able to justify and find time for participation in such activities.

²⁶ In private conversation with this author.

attractiveness of the delegations as a form of parliamentary activity and increase transparency around what the delegations do. More needs to be done to inform their fellow parliamentarians about the work of the delegations and what can be achieved through participation, particularly as increased competition for places could potentially help improve the quality of the delegation's performance and act as a disincentive to 'try the caviar'. In the UK for example, this could be done with a view to encouraging delegation membership to be seen as a positive factor when voting for membership of the Foreign Affairs Select Committee and encouraging greater formal dialogue between the delegations, Select Committees and Ministers. National Parliaments can do more to facilitate public transparency by recording the plenary votes of delegation members on their own parliamentary websites.

Money is blind?

The post-Soviet region contains a wide array of economic conditions, from struggling economies with a heavy reliance on remittances (mostly from Russia) such as Armenia, Tajikistan, Kyrgyzstan, to the petro-states with significant opportunities for clientelism such as Kazakhstan, Azerbaijan, Turkmenistan and Russia. Both have been impacted significantly by the current regional economic contraction driven by the collapse in the oil price and the impact of economic sanctions on Russia. Over the coming months this may lead to greater opportunities for the international community to exert some leverage to encourage greater transparency and tackle corruption. For example, that the IMF would be in talks with Azerbaijan about the provision of a \$4 billion short-term loan would not have been in many analysts' predictions for that country a few years back. However prior to this recent crisis, the rising influence of both private lending and competition from Asian regional banks such as the Asian Development Bank (and perceptions of future influence of the upcoming Asian Infrastructure Investment Bank) led to a sense of the declining influence of the European-based official lenders, such as the European Bank for Reconstruction and Development (EBRD) and the EIB, along with the Bretton Woods Institutions. In this publication, Charles Hecker argues that the World Bank is mindful of the governance concerns in the region but considers that the longer such institutions remain engaged, the greater they believe their ability to influence decision-making will be. When financing both public and private sector projects, lending to countries economically dominated by oligarchic elites always carries the risk that such funding will help entrench existing power structures - a challenge that is far from easy for financial institutions to avoid if they seek to do business in such environments.

The World Bank's Doing Business Report is a tool that has been of increasing interest to the governments of the FSU. It has been used by regimes in the region to counter accusations of poor governance standards, by being able to use the report findings as a proxy indicator of institutional reform. The report has some initially surprising results. For example, the oligarch-dominated economy of Armenia (35th) is ranked above Belgium (43rd), as is Kazakhstan (41st) - a country where the ruling family's economic interests penetrate key industries. Russia (51st) with its Kafkaesque official bureaucracy and predatory regime ranks 10 places above Luxembourg (61st).²⁷ As touched on by Hecker, the reasonably narrow framing of the report gives a strong bias towards certain areas of technical compliance²⁸ and perhaps underplays the differences between regulations on paper and in practice, particularly where a business may come up against political constraints, such as the presence of competition from regime-connected firms in a particular market or industry or the need to pay bribes to facilitate ostensibly simple bureaucratic procedures. As ESI point out, the rankings also exclude potentially key indicators for investment decision-making such as: 'security; market size; macroeconomic stability; state of the financial system; and level of training and skills of the labour force'.²⁹

The EBRD, founded in 1990 to help underpin the economic and political transition of Eastern Europe and the former Soviet Union, faces some particular challenges operating in the region today. Article 1 of the EBRD's basic documents states that 'In contributing to economic progress and reconstruction, the purpose of the Bank shall be to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative *in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics*' (emphasis added).³⁰

²⁷ World Bank Group, Doing Business: Economy Rankings, June 2015, <http://www.doingbusiness.org/rankings>

²⁸ Starting a business, dealing with construction permits, getting electricity, registering a property, getting credit, protecting minority investors, paying taxes, trading across borders and enforcing contracts.

²⁹ Gerald Knaus, Pumpkins, outliers and the Doing Business illusion, ESI, November 2014, http://www.esiweb.org/index.php?lang=en&id=67&newsletter_ID=85

³⁰ EBRD, Basic documents of the EBRD, May 1990, <http://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html>

EBRD officials openly admit that they have had to stretch their mandate to respond to the fact that many of the countries in their area of operation are not electoral democracies and show no real signs of moving in that direction. The EBRD no longer provides new lending to Uzbekistan, has very limited exposure in Turkmenistan and has frozen lending to Russia in the wake of its actions in Ukraine. However its third- and fourth-largest investment countries in the region are Kazakhstan and Azerbaijan, both countries where energy reserves can help create potentially attractive economic opportunities but where it requires a willing suspension of disbelief to describe them as 'committed to and applying the principles of multiparty democracy and pluralism'.³¹ In practice, to limit lending to countries committed to and applying the principles of multiparty democracy and pluralism would limit lending to only Ukraine, Georgia, Moldova and Kyrgyzstan (all with caveats). At the very least the EBRD needs to examine how it can further give preferential treatment in its lending to those countries attempting to comply with its official mandate and look at rebalancing its investments towards those countries.

Gubad Ibadoghlu's piece highlights some of the challenges facing the Extractive Industries Transparency Initiative (EITI). As with the Doing Business report, EITI is a scheme used as a maker of reform by governments seeking to promote themselves as an investment destination. It shows how, after a government crackdown on NGOs that were part of the formal EITI civil society coalition, EITI suspended Azerbaijan's compliant status and downgraded it again to that of a candidate country. This was not a small thing for either side: Azerbaijan was the first country to achieve EITI compliant status³², a fact used extensively by the government of Azerbaijan in its promotional materials and something that created a significant reputational risk for EITI. It is worth noting a key structural difference in the development process of the EITI in Azerbaijan and Kazakhstan that helps explain why the latter remains a compliant country despite a similarly poor human rights record. In the 2000s when Azerbaijan was working with the EITI to become compliant, despite significant restrictions on fundamental freedoms the country was home to a quite resilient and vibrant independent NGO sector, a number of whom were able to play an active role Azerbaijan's EITI civil society coalition. The subsequent crackdown on independent NGOs meant that formal participants in the EITI process were being targeted, creating a particular institutional pressure for the EITI board to react. The composition of the Kazakhstani NGO coalition was formed at the outset with a greater preponderance of government-sympathetic NGOs and small groups with limited capacity, making it less likely that NGOs would seek to challenge its EITI-compliant status. Both Kazakhstan and Kyrgyzstan, EITI's two compliant countries in the region, are currently considering further restrictions on NGO freedoms.³³ How both their constituent NGO coalitions and EITI respond to these developments may give a clear indication of the former's independence, and the latter's willingness to assess the wider political environment in which activities in the extractive sector take place in order to achieve real transparency and accountability. While not just a problem for the FSU, there would seem to be a need for the EITI to review the processes by which it monitors the independence of its participant NGOs, particularly in the formation of the initial coalition.

The other institutions

Although increasingly obscured behind the political momentum pushing the development of the Eurasian Economic Union, an organisation whose formal structures are still in their infancy³⁴, the CIS still provides some of the institutional architecture for interstate relations between some former Soviet states such as the Minsk Convention.³⁵ Rilka Dragneva's contribution shows how the CIS Parliamentary Assembly (in St Petersburg) echoes the form of the CoE and OSCE but does not really fulfil their function. Its structural challenges reflect the problems in its constituent legislatures, the either entirely or predominantly regime-dominated 'Potemkin Parliaments' of Central Asia, Russia, Belarus, Armenia and Azerbaijan. The CIS Parliamentary Assembly creates model legislation, sends election observers and provides Parliamentarians with something to do and an opportunity for travel, much as the CoE and OSCE parliamentary institutions do, but without the aspiration of being a meaningful force for

³¹ The size of EBRD current investments in the region are as follows (in Euros): Russia 5.7 billion; Ukraine 5.02 billion, Kazakhstan 2.29 billion, Azerbaijan 1.098 billion, Georgia 601.9 million. Belarus 557 million, Moldova 448 million, Tajikistan 335 million, Armenia 292 million, Kyrgyzstan 208.7 million, Turkmenistan 51 million, Uzbekistan 16.6 million.

³² While corruption remained a significant problem when funds finally reached the state budget, EITI compliance was a sign that Azerbaijan was administering its oil and gas industry along with its oil fund SOFAZ in a reasonably effective manner.

³³ Catherin Putz, Kazakhstan Considering a New NGO Law, *The Diplomat*, October 2015, <http://thediplomat.com/2015/10/kazakhstan-considering-a-new-ngo-law/> and Cholpon Orozobekova, Will Kyrgyzstan Go Russian on NGOs? *The Diplomat*, October 2015, <http://thediplomat.com/2015/10/will-kyrgyzstan-go-russian-on-ngos/>

³⁴ For more on this see Dr Rilka Dragneva and Dr Kataryna Wolczuk, The Eurasian Economic Union –What kind of alternative to the Eastern Partnership? In Adam Hug (ed.) *Trouble in the Neighbourhood? The future of the EU's Eastern Partnership*, February 2015, <http://fpc.org.uk/publications/trouble-in-the-neighbourhood>

³⁵ The Minsk Convention shapes extradition procedures, an area open to human rights abuse as shown in Adam Hug (ed.), *Shelter from the storm?* April 2014, <http://fpc.org.uk/publications/shelter-from-the-storm>

change. The CIS Parliamentary Assembly often acts as an external validation source for flawed governance, such as in its uncritical role in election observation.

Florian Irminger's contribution looks at the way the UN's global human rights institutions operate in Europe and draws attention to how the UN's role in the European and Eurasian space is not seen as a priority either by EU member states or by other regions of the world, who see Europe and the FSU as having other institutions that can help it look after these issues. Access for Special Rapporteurs, as with the CoE and other institutions, remains a major problem in the region, with, for example, Belarus and Uzbekistan rejecting the mandates of Special Rapporteurs about their countries or wishing to visit them; and Azerbaijan claiming to be open to a visit by the Special Rapporteur on Human Rights Defenders but never being able to agree a date, while Armenia and Georgia have allowed visits and implemented their findings variably. As with the CoE, both the failure to allow Special Rapporteurs access and to implement their findings needs to be taken up by other institutions in the region. Similarly Universal Period Review recommendations made by member states need to be tracked and applied as criteria for engagement by the EU and its member states in diplomacy with countries in the region. Florian Irminger draws attention to the bizarre oversight that the Special Mechanisms (including the Special Rapporteurs) fail to publish their findings on particular countries in local languages, not even in Russian (an official UN language), something that needs to be addressed if their work is to have local impact.

On a more positive note, as Libby McVeigh sets out in her contribution, INTERPOL has shown that when institutions fully understand the need to reform, steps can be taken to address bureaucratic failings. Challenges requiring significant political input will always be a bigger task.

What our authors say

Dr. Hrant Kostanyan writes that six years after the introduction of the Eastern Partnership, the EU's drive for promotion of democracy and human rights has slowed down. Three variables account for this 'normative emptying' of EU policies vis-à-vis the post-Soviet space: 1) the resistance of neighbours to EU promoted reforms; 2) the EU's inconsistent reaction to human rights violations; and 3) contestation by Russia. The November 2015 ENP review analysed the complex realities in the EU neighbourhood and moved policy in a more pragmatic direction. It is more realistic, differentiated and focused. Yet, the EU's experiment with pragmatic '*semi-realpolitik*' should in no way come at the expense of its normative agenda. Promotion of democracy and support for human rights ought to be truly streamlined in the EU's policies rather than abandoned.

Tinatin Tsertsvadze says that although the European Parliament is one of the most outspoken EU institutions when it comes to voicing human rights concerns, its positions and statements do not always have a meaningful impact across Eastern Partnership and Central Asian countries. The EP should put in place a comprehensive follow-up system guaranteeing that all resolutions adopted by the EP are included in every policy and interaction MEPs have with respective countries; in addition, EP positions should be upheld by other EU institutions and taken into account in bilateral negotiations, delivering the concerns voiced by the EP to FSU governments. Despite the challenges in the region, consistency in the EU's positions can make a difference and bring about step-by-step changes, given the economic and strategic importance of the EU to these countries.

Dr. Beata Martin- Rozumilowicz analyses the emerging challenges to ODIHR election observation and charts the issues that need to be dealt with if international election observation is to maintain its current standard of impartiality, independence and professionalism. It looks at the difficulties posed by individual participating States within the OSCE, issues regarding other international institutions, and also the financial problems within the OSCE that have emerged, especially since the advent of the global financial crisis. It puts forward the changes needed if impartial election observation is to serve as a vehicle for election integrity in this important region for the future.

Anna Chernova's article looks at some of the trends affecting the relevance of the OSCE and its human security commitments in today's European context. It aims to explore the challenges and opportunities faced by OSCE institutions, with a particular focus on the Parliamentary Assembly, and recommends possible solutions, including more substantive engagement with civil society, more emphasis on political pluralism and a greater commitment to a shift in decision-making processes.

Kate Levine's essay focuses on some of the challenges facing the European Court of Human Rights in Russia, Ukraine, and the South Caucasus, including: the unprecedented wave of politically motivated arrests, detentions and convictions of human rights defenders and civil society activists in Azerbaijan; legislative and judicial efforts to restrict independent NGOs in Russia; rising attacks on LGBTI persons in Russia, Georgia and Armenia; and gross human rights abuses arising from the conflict in eastern Ukraine. Levine's essay explores the ECtHR's response to the challenge of ensuring effective implementation of its judgements, identifying where progress has been made, and considers where further concerns lie.

Rebecca Vincent examines the rocky relationship between the CoE and Azerbaijan. In particular it addresses the unresolved issue of political prisoners that culminated with the defeat of a key resolution in January 2013 in the Parliamentary Assembly of the Council of Europe (PACE) that marked a victory for Azerbaijan's lobbyists and a significant blow to the human rights community. Vincent argues that the Azerbaijani authorities saw the move as *carte blanche* to continue politically motivated arrests, which sharply increased immediately afterwards. PACE continues to allow Azerbaijan's noncompliance to undermine the very point and purpose of the CoE, damaging its credibility. Vincent argues that the CoE must solve its PACE problem, before this damage becomes irreversible and jeopardises the future of the entire body.

Dr. Rilka Dragneva explores the development of the Inter-Parliamentary Assembly (IPA) of the Commonwealth of Independent States (CIS) from the collapse of the Soviet Union until the present day. She shows how its role developing model laws has had little impact on issues relating to human rights. The IPA struggles with the weak nature of its constituent legislature and the dominance of Russia within the CIS.

Libby McVeigh describes the steps which INTERPOL has taken to address the challenges it faces in ensuring that individual rights are adequately protected. Drawing on cases from Azerbaijan, Russia, Uzbekistan and Belarus involving politically-motivated INTERPOL alerts, she explains that reform has become necessary due to the inadequate implementation of INTERPOL's constitutional human rights obligations and the lack of an effective avenue of redress for individuals wishing to challenge misuse of INTERPOL's systems. Her essay provides an analysis of the internal and external drivers of recent reforms and shows INTERPOL's desire for change.

Florian Irminger examines the effectiveness and universality of the UN in addressing the increasingly worrying situation of human rights defenders in Eastern Europe. The essay draws on first-hand experience addressing human rights within the UN system, and combines this with on-the-ground reporting by NGOs in Armenia, Azerbaijan, Belarus, the Russian Federation, and Ukraine. Together, this informs an analysis of the UN's effectiveness in promoting and protecting civil and political rights in Europe, considering the UN's inconsistent approach in addressing human rights degradations and how independent voices and UN rapporteurs have struggled to engage with governments in the region.

Charles Hecker writes that multilateral development banks face a series of pressures in lending to countries that are opaque, subject to weak corporate governance or run by authoritarian regimes. While trying to promote a reform, they face due diligence challenges, competition from private sector banks and a lack of clarity in international human rights law. Across the CIS, weak corporate governance and elite networks with vested interests create further hurdles.

Gubad Ibadoglu describes the implementation of EITI in Azerbaijan and Kazakhstan, focusing on the role played by civil society in its progress. He examines the problems facing civil society, the response of the EITI Board to these issues and challenges implementing the new standards.

**The European Neighbourhood Policy reviewed:
Shifting from value-driven to classical foreign policy**
Dr. Hrant Kostanyan³⁶

After the Cold War the EU's policies towards the countries of the former Communist bloc were predominantly values driven. However, 11 years after introduction of the European Neighbourhood Policy (ENP) and six years after the Eastern Partnership, the EU's drive for promotion of democracy and human right has slowed down. Three variables account for this 'normative emptying' of EU policies vis-à-vis the post-Soviet space: 1) the resistance of neighbours to EU promoted reforms, 2) the EU's inconsistent reaction to human rights violations and 3) contestation of its objectives by Russia.

1) The conditionality and incentives applied by the EU to induce democratisation in the countries of the Eastern Partnership did not result in the desired outcomes especially in states governed by authoritarian regimes. They rejected appeals to democratise their political systems and oppressed internal dissent - be that political opposition or ensuring conditions for a genuinely independent civil society. The EU's reform agenda has also faced obstacles in the non-authoritarian countries of its Eastern neighbourhood where the political and economic elites resorted to a more nuanced resistance by engaging in 'cosmetic' rather than serious reforms.

2) The EU reaction has been inconsistent vis-à-vis the neighbouring countries' violations of human rights. Whereas the EU imposed sanctions on Belarus, it has done little to address human rights violations in Azerbaijan. Moreover, the EU does not react or reacts with watered down statements about serious human rights violations. Structural constraints inherent in the EU decision-making process provide some explanations for these inconsistencies. In the EU system, foreign policy decisions are made in the Council of the EU (consisting by EU member states' foreign ministers) by unanimity. As some EU member states have prioritised economic, security or energy relations with particular neighbours, the EU's reaction has been incoherent and weak, thus harming its credibility and effectiveness. Moreover, the EU member states' bilateral relations with their Eastern neighbours have not always been in line with the EU's human rights and democratisation agenda.

Institutionally, the human rights agenda takes a back seat in the EU 'executives'. Since the enactment of the Lisbon treaty, political relations with the Eastern Partners are dealt with by the European External Action Service's (EEAS) geographical desks. The EEAS' Human Rights divisions and the EU Special Representative for Human Rights are detached from these geographical desks. This arrangement puts the human rights agenda in a disadvantageous position since although the Human Rights divisions in the EEAS cooperate with the geographic desks; the latter lead the EU's policies toward Eastern neighbours. The European Commission's recently established Director-General of the Neighbourhood and Enlargement Negotiations (DG NEAR) works mainly on programming and allocations of EU aid to the neighbours.

3) Not only is what the EU has to offer to Eastern Partners less 'attractive' than a membership prospective and the greater financial and technical support offered to the countries of the enlargement sphere, it is also not the only game in town. The Eurasian Economic Union aims at becoming the Russian-led alternative to the Eastern Partnership. The prime offer presented by the Eastern Partnership, the Deep and Comprehensive Free Trade Agreement (DCFTA) and the Eurasian Economic Union are technically incompatible, with different regulations and tariffs. The countries of the overlapping European and Russian neighbourhoods are therefore faced with a choice. However, unlike the Eastern Partnership, the Eurasian Economic Union does not entail human rights and democratisation requirements.

In the context of the limited impact on the reform process of the Eastern Partners, the EU's inability to formulate effective policy towards its Eastern neighbourhood and Russia's renewed challenge, the EU is moving away from

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value-driven policies to a more interests based approach. The review of the ENP is the latest example of where the EU's policies are undergoing 'normative emptying'.

Reviewing the ENP

On 4 March 2015 the EU launched the Joint Consultation Paper on the new European Neighbourhood Policy (ENP) pledging 'a thorough re-examination' of its neighbourhood policy.³⁷ During a more than four month long consultation period, the European Commission and the EEAS received 250 contributions from different stakeholders including EU institutions and bodies, governments, parliaments, academics, social partners and civil society, both in the EU and beyond.

The EEAS' ENP division and the DG NEAR led the review, while cooperating with the human rights managing directorate of the EEAS. The consultation resulted in a Joint Communication - the Review of the European Neighbourhood Policy, which was presented by the High Representative Federica Mogherini and Commissioner Johannes Hahn on 18 November 2015.³⁸ The Review analyses the complex realities in the EU's neighbourhood and pushes the policy forward in a more pragmatic direction. It is more realistic, differentiated and focused but less value-driven than its predecessors.

Russia's aggression towards common neighbours; (protracted) conflicts; and the refugee/migration crisis are just some of outstanding challenges in the EU's neighbourhood.

The EU's neighbourhood is far from being an 'area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation' (Article 8 TEU).

In truth, the EU has only had a modest influence on the affairs of its neighbours. The Review candidly admits that the EU will not be able to resolve these challenges alone and that the ENP is merely a part of the solution. Indeed, the norm transfer from the EU to the Eastern Partners was less successful than it was the case in the 1990s with the countries of Central and Eastern Europe. Although the transfer of the EU *acquis* to a handful of neighbours that have committed to implementing the DCFTA is expected, it is yet to materialise.

In the face of new challenges, the long-term goals of the ENP, such as building a peaceful and prosperous neighbourhood with sustainable democracy and a functioning market economy, have been complemented by a short- to mid-term objective: the stabilisation of the neighbourhood in security and economic terms through incorporation of differentiation is key to the 'new' ENP.

Introducing differentiation

Although the EU's neighbours have more differences than commonalities, the ENP (with its geographic components of the Eastern Partnership and the Union for Mediterranean) will continue to be the single framework for defining the EU's relations with the whole neighbourhood. Keeping the ENP whole is a necessary condition for maintaining solidarity among EU member states, some of which prioritise the East over the South and vice versa. Incorporating strong differentiation in the policy addresses the diverse needs and desires of the neighbours.

Indeed, doing away with a one-size-fits-all approach and stressing differentiation is a pragmatic acceptance of the realities on the ground. In particular, it is a welcome move for the neighbours that are unable or unwilling to accept the EU's prime offers of the Association Agreement and the DCFTA, or indeed the values on which the EU was founded.

The Review promotes sub-regional cooperation, which might include countries from the neighbourhood and enlargement candidates as well as EU member states. The cooperation is to be advanced through macro-regional strategies backed by territorial cooperation programmes. Moreover, thematic frameworks will be developed which go beyond the neighbourhood that could include countries such as Kazakhstan, Turkey, Iraq and Iran. The Review pledges to introduce more trans-regional initiatives such as the EU- Black Sea and Caspian energy initiative

³⁷ Joint Consultation Paper: Towards a new European Neighbourhood Policy, Brussels, 2015 JOIN (2015) 6 final, page 3.

³⁸ European Commission and EEAS, Review of the European Neighbourhood Policy, November 2015, http://ec.europa.eu/enlargement/neighbourhood/consultation/index_en.htm

INOGATE and induce cooperation in concrete areas, e.g. in civil aviation. It is however, unclear in what ways this approach will be different from previous formats.

The reviewed ENP abandons regular 'progress' reports. Instead, differentiation will be applied to reporting on the neighbours. The country reports will be more flexible and political, except perhaps for the DCFTA countries. Abandoning 'progress' reports for the other ENP countries is a significant shift from the enlargement methodology of the 'old' ENP to a more foreign policy oriented approach proposed by the Review. It is therefore uncertain whether human rights and democracy will be central in this new style of reporting.

Yet differentiation has its limitations and should be applied with care. Excessive differentiation might undermine what is common in the ENP and risk breaking up the single framework. Introducing a 'thematic framework' might be of help in maintaining the unity of the ENP. Moreover, the differentiation logic in the Review offers little extra to the 'leaders' of the Eastern Partnership. And unless there is a profound change in the domestic politics of Moldova, Ukraine and Georgia, their relationship with the EU will continue to be governed by the Association Agreement and the DCFTA for many years to come. As expected, the review remains silent on the possibility of granting prospective membership sought by the Eastern Partners that are committed to implementing the Association Agreements and the DCFTAs.

Focus on economy, migration and security

The Review identifies a short list of priorities based not on democratic and human rights values but on the common interest of the EU and the neighbourhood countries; namely, economic development, migration and security.

Elaborating on the issue of economic cooperation, the Review presents a list of items such as micro-financial assistance, modernisation, youth, transport, energy security and climate, reaffirming the EU's existing support to and cooperation with its neighbours. However, earmarking 15 billion EUR in the European Neighbourhood Instrument for the 2014-2020 period is not nearly enough to support neighbours in overcoming the serious challenges they face. Differentiation in the trade policy vis-à-vis the neighbours is an innovative element. For the countries that are not interested in far-reaching and comprehensive DCFTAs, the EU will offer 'lighter' and more flexible alternatives. For example, the Commission suggests the conclusion of the Agreements on Conformity Assessment and Acceptance (ACAAs), without incorporating these agreements in comprehensive DCFTAs (as in the case of Ukraine, Moldova and Georgia). On the one hand, the EU pledges to accept the choice of partner countries to define the sectors of industrial products, which are to be covered by the ACAA., On the other hand, the conclusion of the ACAA can hardly be seen as 'flexible' as the EU makes these agreements strictly conditional upon approximation to EU technical regulations, standards and conformity regarding assessment procedures.

In the areas of migration and mobility the Review remains general; it reaffirms already existing initiatives that are inspired first and foremost by the EU's security and welfare concerns. The EU has committed to increasing support for those countries that provide shelter to refugees and IDPs, to intensify cooperation on return, readmission and reintegration policies, as well as to encourage legal migration.

Although the security dimension is prioritised by the Review, it only scratches the surface of this issue. The 'new' ENP will be a crucial testing ground for the EU's relatively new 'comprehensive approach', which aims to bring together all available tools and policies – security, diplomacy, technical support and financial instruments. The comprehensive approach assumes effective cooperation at the inter-institutional level as well as between the member states and the EU institutions. No review can make the ENP a success particularly in the area of security, unless EU member states align their bilateral policies with the EU towards the neighbourhood countries. Without such alignment the ENP will remain predominately a technocratic project.

The Review was a missed opportunity in relation to Russia. The ENP should address the challenge posed by Russia in more detail than the woolly commitment to 'offer ways to strengthen the resilience of the EU's partners in the face of external pressures and their ability to make their own sovereign choices'.³⁹ The new ENP should counter Russia's assertive policy by factoring in the links between Russia and the common neighbours including security ties

³⁹ Review of the European Neighbourhood Policy, Brussels, 18.11.2015 JOIN (2015) 50 final, page 4.

(such as membership of the Collective Security Treaty Organization). After all, Russia has used these links to undermine the EU's policies vis-à-vis its neighbourhood.

From value-driven foreign policy to classical foreign policy

Although the Review addresses democracy, good governance, rule of law and human rights, the normative agenda is not a central element in the Joint Communication. When presenting the Review, Commissioner Johannes Hahn did not emphasise promotion of democracy and human rights in the neighbourhood:

Our most pressing challenge is the stabilisation of our neighbourhood. Conflicts, terrorism and radicalisation threaten us all. But poverty, corruption and poor governance are also sources of insecurity. That is why we will refocus relations with our partners where necessary on our genuinely shared common interests. In particular economic development, with a major focus on youth employment and skills will be key.⁴⁰

While outlining five main pillars of the new ENP, High Representative Mogherini did not stress the promotion of democracy either. In line with Commissioner Hahn, her focus was on *interest* rather than *values*:

First, focus on economic development and job creation; second, cooperation on energy; third, security; fourth, migration; fifth, neighbours of the neighbours.⁴¹

The new ENP eases the application of its 'more for more' principle and completely ignores the principle of 'less for less', stating that the effects of 'more for more' to promote fundamental values and principles are limited, especially in countries resistant to change. This outcome is not surprising, given that the principle was upheld only at the EU level and member states did not align their bilateral policies with those of the EU. The Review therefore pledges to explore a more effective approach to achieving fundamental reforms than the previous 'more for more' approach. But it remains rather vague on the detail of how this could be achieved.

The differentiated approach of the new neighbourhood policy might complicate the EU's democracy promotion even more. Some neighbouring governments might misuse the differentiation by resisting the human rights agenda. Instead, they are likely to insist on focusing on areas such as security, energy and trade, thus getting away with serious human rights abuses.

As the EU's Eastern neighbourhood has been profoundly transformed, so should the EU's policy. Yet, despite the expectations raised through a lengthy consultation process, the new ENP did not manage to break through its limitations. Moreover, the Review lacks detail on the implementation of the new ENP. However, the Review does represent an important step forward to a differentiated approach to the neighbourhood. But the EU's experiment with pragmatic '*semi-realpolitik*' should in no way come at the expense of its normative agenda. Promotion of democracy and support for human rights ought to be streamlined in the ENP rather than abandoned.

⁴⁰ Review of the European Neighbourhood Policy (ENP): Stronger partnerships for a stronger neighbourhood, Press Release, 17 November 2015, http://europa.eu/rapid/press-release_IP-15-6121_en.htm

⁴¹ ENP Review: stronger partnerships for a stronger neighbourhood, press release, 17 November 2015, http://eeas.europa.eu/top_stories/2015/181115_enp_review_en.htm.

The role of the European Parliament in impacting the human rights situation in Eastern Partnership and Central Asian countries

Tinatin (Tika) Tsertsvadze⁴²

Introduction⁴³

The European Parliament (EP) has always been the most outspoken of the EU institutions, condemning human rights violations across the globe using a range of different instruments discussed in this contribution. In 2009 after the Lisbon Treaty's entry into force the EP acquired equal powers to the Council of the European Union, extending its role to a set of new areas including cooperation with countries outside of the EU, and obtaining the right to approve or reject international agreements.

This paper looks at the various EP bodies and instruments - delegations, committees, political groups, individual MEPs, resolutions and reports - and examines how they are streamlining the EP's positions during dialogues with the interlocutors of the respective countries.

The EP is one of the EU's primary institutions and for its positions to have an impact and be taken up seriously by the partner countries, it is imperative that resolutions and statements are not treated as standalone and are streamlined into broader EU policies.

This has not always been the case, and has, at times resulted in asymmetric policies and mixed messages to partner countries. This does not facilitate the EU's role in addressing pressing human rights shortcomings that we have been witnessing in the last decade in the Eastern Partnership region and Central Asia.

A study commissioned by the EP's subcommittee on human rights (DROI) and conducted by the FRIDE think tank in 2012 provides quite a detailed overview and analysis of the impact of EP resolutions in third countries. The study focuses on five different regions of the world and draws a comprehensive set of recommendations and conclusions. Some aspects of it are relevant for this current study and are used with relevant quotations below.⁴⁴

European Parliament Delegation(s)

Countries in the Eastern Partnership region (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine) and Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) started bilateral relations with the EU in the mid-1990s. All but two countries, Belarus and Turkmenistan, signed and ratified the Partnership and Cooperation Agreements (PCA) with the EU. A PCA is a basic bilateral framework agreement between the EU and the post-Soviet countries, regulating bilateral trade and investment relations as well as establishing the Cooperation Council and Cooperation Committee⁴⁵ - facilitating political dialogue and relevant institutions for this dialogue.⁴⁶

The EU-Belarus PCA was signed in 1995 but its ratification by the EP has been frozen since 1997 due to the deteriorating human rights situation in the country. The EU-Turkmenistan PCA was signed in 1999 and ratification by the EP has been pending ever since due to the abysmal human rights situation in Turkmenistan.

Within the framework of the PCAs, Parliamentary Cooperation Committees (PCCs) were established with each country. Respective Members of the European Parliament (MEPs) within the EP's Delegations are representing the institution at the PCC meetings.⁴⁷ Each EP Delegation has a chair and two vice-chairs. The PCCs are one of the institutions overseeing the implementation of the PCA and more specifically the work of the Cooperation Council.

⁴² Tinatin Tsertsvadze joined IPHR's Brussels team in January 2015 as International Advocacy Manager. She maintains regular contacts with EU institutions, monitors EU policies towards Eastern Partnership and Central Asian countries and coordinates advocacy targeting EU and other international institutions. Before joining IPHR, she worked for four years at FRIDE, a European think-tank based in Brussels and Madrid, as Central Asia programme manager and conducted research and advocacy on EU policies towards Central Asia and the South Caucasus. She authored several publications on the EU's human rights and democracy policies in these regions. Prior to that, Tinatin briefly worked at the Open Society Institute in Brussels, and for the European Socialist Party, assisting in the 2009 European Parliament Election campaign. She was involved in the pan-European youth network AEGEE, and served one year as its Brussels director for European Institutions.

⁴³ This study focuses on the period from 2011 to 2015.

⁴⁴ The Impact of the Resolutions and Other Activities of the European Parliament in the Field of Human Rights, December 2012. Richard Youngs and others, FRIDE, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457061/EXPO-DROI_ET\(2012\)457061_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457061/EXPO-DROI_ET(2012)457061_EN.pdf)

⁴⁵ The Cooperation Council supervises the implementation of the PCA. It is highest level meeting between the EU and respective countries. Meetings are held the ministerial level. The council meets once a year. The Cooperation Committee assists the cooperation council and is attended by senior level officials.

⁴⁶ A Cooperation Council has been established with each country within the framework of Partnership and Cooperation Agreements to ensure the implementation of agreements (Cooperation Committee and Relevant Sub-Committees are also established) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:r17002>

⁴⁷ European Parliament Delegations <http://www.europarl.europa.eu/delegations/en/home.html>

Three countries in the Eastern Partnership - Georgia, Moldova and Ukraine - have replaced the PCCs with the Parliamentary Association Committees (PACs) following the signature and ratification of the Association Agreements/Deep and Comprehensive Free Trade Area Agreements (AA/DCFTA) in 2014.

PCCs and PACs are composed of MEPs from the respective EP Delegations, and by members of the parliament from those countries⁴⁸. The composition of the EP Delegations is crucial because those MEPs are the key interlocutors with the legislators from the partner countries. The agenda of the PCC/PACs is quite broad, overseeing the implementation of the agreement, as well as covering the issues of trade, investments as well as democracy, human rights and anti-corruption reforms.

With the exception of a PACs which only recently started to take place, PCCs have always conducted 'closed-door' meetings making it difficult to obtain details of discussions, beyond the official joint statement which is issued in the event of the agreement between the parliamentarians on both sides, with these statements often limited to listing discussion points rather than substantive detail. Ideally, the EP Delegation(s) should systematically and comprehensively follow-up on resolutions and statements adopted by the EP on a given country. How streamlined this is depends on MEPs, and more crucially chairs and vice-chairs of the EP delegations.

In January 2015 the European Parliament adopted a resolution on Kyrgyzstan: the Homosexual Propaganda Bill⁴⁹. The resolution stressed that 'eventual adoption of this bill could affect relations with the EU.' In April 2015, the Central Asia Delegation of the EP visited Bishkek, Kyrgyzstan to participate in the PCC meeting. At the press conference⁵⁰ held after the PCC, Iveta Grigule, the chair of the Central Asia Delegation said, in response to a question, that the resolution was "more of a recommendation by nature" and that the main issue raised by the EP was to call on the Kyrgyzstan authorities to make the process of the discussion on anti-gay propaganda bill inclusive. With regards to the claim that adoption of this into law would 'affect relations with the EU', MEP Grigule said "I think it is some sort of misunderstanding" and that the "EU establishes the contacts with partner countries on a very pragmatic grounds."⁵¹

This is an illustrative example of how MEPs should not undermine the EP's positions if the latter is to maintain its relevance and make a difference in a given country.

European Parliament Committees

The European Parliament's Foreign Affairs Committee (AFET) and Human Rights Sub-Committee (DROI) are the most relevant committees for this study. At the same time, the International Trade (INTA) Committee plays a crucial formal role when it comes to the trade agreements, which often are part of political agreements.⁵² The AFET committee plays a crucial role in the consideration of the international agreements, discussing the Parliamentary report on the proposed agreement and voting on it, before passing it to the plenary for voting if approved in committee.

In 2012 the AFET Committee led on the resolution of the EP's recommendations to the Council, Commission and European External Action Service on the negotiations for an EU-Kazakhstan Enhanced Partnership and Cooperation Agreement.⁵³ The latter is to replace the current PCA. In the resolution, the EP stated 'that progress in the negotiation of the new PCA must be linked to the progress of political reform.' In the period of negotiations and thereafter the Kazakhstani authorities adopted several restrictive laws and amendments to the current Criminal and Administrative codes, criminalizing activities of media, NGOs and HR defenders⁵⁴. Despite this, the EU

⁴⁸ What role for European Parliament in Central Asia, Tika Tsertsvadze, EUCAM commentary No. 25, September 2014

http://www.eucentralasia.eu/uploads/tx_ictcontent/EUCAM-Commentary-25.pdf

⁴⁹ European Parliament Resolution Kyrgyzstan: Homosexual propaganda bill, 15 January 2015 www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0008&language=EN&ring=P8-RC-2015-0054

⁵⁰ Ulug Bekakishev, European Parliament: The Anti-LGBT Law will not affect relations between the EU and Kyrgyzstan, Kloop Media, April 2015, <http://kloop.kg/blog/2015/04/09/evroparlament-antigejskij-zakon-ne-povliyaet-na-otnosheniya-es-i-kyrgyzstana/>

⁵¹ Grigule has argued strongly against attempts to include a human rights dimension in Europe's relations with Central Asia including in this recent article: New Europe, The Case for Central Asia as a European Partner, 4 January 2016, <http://neurope.eu/article/the-case-for-central-asia-as-a-european-partner/>

⁵² About the European Parliament http://europa.eu/about-eu/institutions-bodies/european-parliament/index_en.htm#goto_3

⁵³ European Parliament, Negotiations for an EU-Kazakhstan enhanced partnership and cooperation agreement, 22 November 2012 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-459>

⁵⁴ International Partnership for Human Rights, Briefings for EU-Kazakhstan Human Rights Dialogue, November 2015 <http://iphronline.org/briefings-for-eu-kazakhstan-human-rights-dialogue-20151126.html>

concluded negotiations in September 2014. The agreement was signed on 21 December 2015 and is due to be ratified by the parliaments of the 28 member states as well as by the EP. In the most logical continuation of events the EP should stand by its previous position and continue to call for concrete political reforms in Kazakhstan as a condition for the ratification.

Turkmenistan, which is one of the most oppressive and closed countries in the world, is one of the two countries in the region where the PCA has not yet been ratified by the EP. In 2009 the EP set four conditions for it to ratify the PCA: 1) the unconditional release of all political prisoners; 2) the removal of obstacles to freedom of movement; 3) allow access for the International Red Cross and other independent monitors to the country; 4) improvements in civil liberties, including for NGOs.

At the time of writing, the Turkmen authorities have met none of these conditions. Despite this, the AFET committee planned the consideration for the ratification of the PCA in June 2015, which was postponed, partly due to concerns raised by civil society, and will most likely come back on the AFET agenda in early 2016.⁵⁵

These two cases are classic examples of how EP positions are undermined by political pressure. Other EU institutions maintain that this agreement would eventually give more potential to develop the relations between EU and Turkmenistan⁵⁶ and to raise the pressing human rights issues. Similar agreements with neighbouring countries did not bring much of this kind of breakthrough, except in the cases where there was a strong political will from the respective countries to bring their relations with the EU to a new level by initiating democratic reforms.

The EP's conditionality to ratify certain agreements have sometimes been questioned by other institutions, however it would be naive to assume that the EP can play a credible and persuasive role in impacting the HR situation in the partner countries when its positions and conditionality are not streamlined and comprehensibly taken up by other institutions.

In another case in 2011 the Committee of International Trade (INTA) played a crucial role in voicing human rights concerns about forced and child labour in Uzbekistan's cotton fields. The EU-Uzbekistan PCA from 1999 does not include Most Favoured Nation (MFN) treatment for the trade in textiles. In 2010 the Council concluded negotiations with the Uzbek authorities to amend the PCA and include trade in textiles under the MFN conditions. For this to enter into force, the consent of the European Parliament is needed⁵⁷. In 2011 INTA's interim report tabled for debate at the plenary of the Parliament condemned the use for forced and child labour in the cotton harvest in Uzbekistan and set the following conditions for ratification of the protocol:

- 1) the eradication of forced labour and forced child labour,
- 2) allowing the International Labour Organization's (ILO) high level tripartite observer mission in during the harvest and granting them 'full freedom of movement and timely access to all locations and relevant parties, including in the cotton fields', and
- 3) reforming Uzbekistan's agricultural sector.⁵⁸

The INTA postponed further consideration of the inclusion of the textile protocol in the PCA again in May 2015 due to insufficient implementation of conditions by Uzbek authorities⁵⁹. Since 2013 the ILO has been allowed in the country to monitor the cotton harvest. The independent report from 2014 confirms a drastic decrease of forced child labour in the cotton fields, however it points to the increase of forced adult labour practices, as a substitute for young children⁶⁰. The principled position of the EP has played a decisive role in the international campaign around this issue. Despite these gains there remain a number of conditions that need to be met and the EP's continued engagement on this issue will remain important.

⁵⁵ The process requires approval by the AFET committee prior to deliberation at the full plenary. AFET can postpone deliberation until conditions are met.

⁵⁶ Foreign Affairs Council Conclusions on EU strategy for Central Asia, 22 June 2015 <http://www.consilium.europa.eu/en/press/press-releases/2015/06/22-fac-central-asia-conclusions/>

⁵⁷ Harvesting the White Gold, Check your sweater, EUCAM Watch Issue 9, September 2011, http://www.eucentralasia.eu/uploads/tx_ictcontent/EUCAMWatch-9_01.pdf

⁵⁸ 2010/0323(NLE) – 30/11/2011 Committee Interim Report tabled for plenary, <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1178941&t=e&l=en>

⁵⁹ Partial summary of the meeting of the European Parliament Committee on International Trade (INTA) held in Brussels on 6 & 7 May – Items 4 to 9 and 11 to 21 on the agenda <http://data.consilium.europa.eu/doc/document/ST-9268-2015-INIT/en/pdf>

⁶⁰ Government's Riches, People's Burden, Human Rights Violations in Uzbekistan's 2014 Cotton Harvest, report by Uzbek-German forum for Human Rights http://uzbekgermanforum.org/wp-content/uploads/2015/04/cotton_harvest_Online.pdf

Political Groups in the European Parliament

In the current legislature (2014-2019) there are eight political groups, from left to right⁶¹. The role of the political groups is less evident and at times more informal. The political groups scrutinize the reports and table amendments drawn by various committees to the reports before they go for the vote at the plenary. However, it is not necessary that all MEPs in a political group vote the same way⁶². Political groups also table their own versions of resolutions (urgency resolutions) which are voted on at the plenary; the final version of these resolutions is often a compromise between those groups.

At the same time, the political groups can play a more informal role in shaping debates or resolutions. A number of political parties in Eastern Partnership countries are members of some of the European political parties.⁶³ This informal role has probably been most prominently used in the case of Georgia and Ukraine. Former Georgian President, Michael Saakashvili's United National Movement (UNM) is a member of the European People's Party (EPP), the biggest party in the EP. Since the change of the government in Georgia in 2012 the EPP has issued a number of statements criticizing the Georgian government and pointing to worrying signs of backsliding of democracy, which could endanger Georgia's European integration ambitions.⁶⁴ The EPP was not so vocal on democratic backsliding or human rights violations during the UNM's time in power in Georgia. In the case of Ukraine, in the run up to the 2013 Vilnius Eastern Partnership summit, the European Parliament set out conditions for Ukraine for the ratification of the proposed Association Agreement and Deep and Comprehensive Free Trade Area. This included both the release of Yulia Tymoshenko as well as 'rule of law and internal reform, including a credible fight against corruption.' Yulia Tymoshenko's Batkivshchyna - Motherland Party, is also a member of the EPP.⁶⁵

It is worth noting that 'party politics' is not the most efficient way to address shortcomings in democracy and violations of human rights. Domestically it is used for political bargaining and on substance it does not address deeper problems in the country. It is always more useful to have a common EP positions, statements and resolutions.

Given the current state of affairs in Ukraine - pressing internal reforms and war in the East - Ukraine clearly takes central place for the EU in its interactions with the EaP countries. A Memorandum of Understanding was signed in July 2015 between Martin Schulz and Volodymyr Groysman (chairman of Verkhovna Rada) on a comprehensive parliamentary support programme for Ukraine. The country was nominated as a priority for parliamentary capacity building and dialogue-facilitation activities by the decision of the EP's Democracy Support and Election Coordination Group. A Needs Assessment Mission conducted by former EP president Pat Cox was carried out between September and December 2015, on the basis of which a programme of capacity building activities will be defined and implemented, gathering not only the EP but also other international cooperation actors.⁶⁶

This is a very important step to help the Ukrainian parliament strengthen its capacity and law-making powers. However this should not be an impediment for the EP to remain critical of reforms and developments in the country.

European Parliament resolutions

The European Parliament adopts several types of resolutions depending on the rules of procedure. Most relevant for this study are resolutions on the breach of human rights (rule 98) and resolutions following the debates on human rights cases, democracy and rule of law (rule 122), the latter are also known as 'urgency resolutions.' The

⁶¹ Political groups in the European Parliament <http://www.europarl.europa.eu/meps/en/hemicycle.html>

⁶² The Impact of the Resolutions and Other Activities of the European Parliament in the Field of Human Rights, December 2012. Richard Youngs and others, FRIDE, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457061/EXPO-DROI_ET\(2012\)457061_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457061/EXPO-DROI_ET(2012)457061_EN.pdf)

⁶³ Observer Member Parties of European People's Party (EPP): Belarusian Popular Front – BPF, United Civic Party of Belarus – UCP, Batkivshchyna - Motherland Party – BATK (Ukraine), Ukrainian Democratic Alliance for Reforms – UDAR, Partidul Liberal Democrat Din Moldova – PLDM, United National Movement – UNM, Republican Party of Armenia - REP P, Country of Law Armenia - R.O.L, Heritage Party Armenia – HER <http://www.epp.eu/member-parties/> Member Parties of ALDE: Free Democrats Georgia, Republican Party of Georgia, Armenian National Congress, Musavat Party Azerbaijan, Party of Freedom and Progress Belarus, European Party of Ukraine, <http://www.aldeparty.eu/en/members/political-parties>

⁶⁴ Supporting Reform in Georgia, Tika Tsertsvadze, 4 April, 2013 <http://fride.org/blog/supporting-reform-in-georgia/>

⁶⁵ European Parliament Resolution of October 27, 2011 on the Current Developments in Ukraine <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0472+0+DOC+XML+V0//EN>

⁶⁶ Memorandum of Understanding between the European Parliament and the Verkhovna Rada of Ukraine on a joint framework for the parliamentary support and capacity building http://www.europarl.europa.eu/the-president/resource/static/files/mou_ep-vru_030715.pdf

'urgency resolutions' are prepared by the political groups with the coordination of Sub-Committee on Human Rights (DROI)⁶⁷, unlike all other types of resolutions, which are prepared by committee secretariats.

During each plenary session, the EP discusses and adopts three urgency resolutions, usually on Thursday afternoons when MEPs are often returning to their home countries. This timing frequently results in low attendance of MEPs at the debates and votes, thus putting into question the legitimacy and representation of these urgency resolutions. On the other hand the political groups prepare these resolutions, thus the resolutions carry full weight of political groups.

The European Parliament adopted two very critical resolutions on Azerbaijan's human rights in 2014⁶⁸ and 2015⁶⁹. Both of these resolutions criticized Azerbaijan's fast deteriorating human rights situation and called the council 'to consider the possibility of targeted sanctions against those responsible for human rights violations, should these persist'.

Following the 2015 EP resolution, the Azerbaijani Milli Majlis (Parliament) convened an emergency session to discuss the resolution, which resulted in a 'counter-resolution' declaring Azerbaijan's intention to formally withdraw from the Euronest PA. As such a development requires a year's advance notice to the EP, the Milli Majlis further declared it would suspend its participation in the Euronest Parliamentary Assembly during the year in question⁷⁰. At the same time, the Milli Majlis 'terminated participation in the existing format of the EU Azerbaijan Parliamentary Cooperation Committee.' In addition, the Azerbaijani authorities cancelled talks with the EEAS scheduled to take place in late September to discuss the Strategic Partnership and Modernization Agreement.

The bilateral cooperation between the Milli Majlis and the European Parliament has not borne concrete results over the last 7 years. The last PCC between the EP and the Milli Majlis took place in 2012, and the last time the PCC was able to adopt joint recommendations dates back to 2008. Even though, in a multilateral context, Azerbaijan did welcome the first Euronest Parliamentary Assembly to take place outside the EU and the second ordinary session of Euronest Parliamentary Assembly took place in Baku in 2012⁷¹. The Milli Majlis Delegation to the Euronest PA subsequently often gave the impression that it wished to use this forum primarily to raise issues pertaining to Nagorno Karabakh- with little effect.

Whether the EP's critical resolution on the human rights record of Azerbaijan will have any meaningful impact to improve the situation in this area remains to be seen, and as mentioned above, it will require consistent follow-up by the EP as well as by other institutions, notably by the EEAS. The latter should use the EP's resolution in its negotiations with the Azerbaijani government and push for some concrete deliverables.

EU-Azerbaijani relations have always been complex. The PCA has been in force since 1999. Azerbaijan is part of the European Neighbourhood Policy (2004) and Eastern Partnership (2009). Despite this, Azerbaijani authorities have never shown much interest in the Eastern Partnership initiative or in deepening political relations with the EU on the similar conditions as Georgia, Moldova and Ukraine have done recently.

Reasons for this are probably multifaceted. On the one hand the EU considers Azerbaijan as one of a number of post-soviet countries in its neighbourhood, attempting to build relations with a traditional integration mechanism focussing on political and economic reforms. On the other hand, the EU also regards Azerbaijan as 'a strategic partner' in the energy field, a status not accorded to the other Eastern Partners.⁷² This mismatch of EU rhetoric and actions is probably one of the many reasons why the EU has been facing difficulties in finding a political solution to the current state of affairs in Azerbaijan - a country on the verge of becoming a 'closed country.' While the EU does

⁶⁷ The Impact of the Resolutions and Other Activities of the European Parliament in the Field of Human Rights, December 2012. Richard Youngs and other, FRIDE, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457061/EXPO-DROI_ET\(2012\)457061_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457061/EXPO-DROI_ET(2012)457061_EN.pdf)

⁶⁸ European Parliament Resolution on Human Rights Defenders in Azerbaijan, 18 September, 2014, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2014-0022&language=EN&ring=P8-RC-2014-0090

⁶⁹ European Parliament Resolution on 10 September 2015 on Azerbaijan www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0316&language=EN&ring=B8-2015-0864

⁷⁰ Interview of the author with the European Parliament, 21 October 2015, Brussels

⁷¹ Euronest Plenary Sessions <http://www.euronest.europarl.europa.eu/euronest/cms/cache/offonce/home/pid/19;jsessionid=DF271EA611057D0A83FF90D41100681>

⁷² The latest of such statement was issued by the President of the European Council, Donald Tusk on 22 July, 2015 after his visit to Azerbaijan and meeting with the President Aliyev <http://www.consilium.europa.eu/en/press/press-releases/2015/07/22-tusk-meeting-azarbaidijan/>

not seem have a strategy on how to address the steadily deteriorating human rights situation and how to balance its energy diversification interests. Any agreement the EU will eventually negotiate with Azerbaijan will come to the EP for approval. Thus the EEAS/EC voicing the EP's positions during the interactions and negotiations with Azerbaijani authorities will make the process in the EP at a later stage more comprehensive and policy oriented.

Conclusions

What the impact of the EP's positions and actions in the Eastern Neighbourhood and Central Asian countries in relation to the human rights situation or how local political elites react to the EP's statements depends on several internal and external factors to the EP.

Firstly, it remains questionable whether a statement, resolution or an action of a single institution can have an impact on any country. It is more likely that impact can be made by streamlining and fine-tuning policies of various EU institutions, while at the same time complementing the work of other relevant international organisations such as UN, CoE and others.

Secondly, internally it is crucial that any EP resolution or statement is comprehensibly followed-up by all its relevant members, bodies and hierarchy (committees and delegations during the inter-parliamentary meetings to ask follow-up questions to partner countries as well as to the other EU institutions). Policies will have weight when they are not stand-alone actions or papers, but are taken up by MEPs at every opportunity with the interlocutors of the respective country.

Lastly, other EU initiations, but more crucially the European Commission (EC) and European External Action Service (EEAS) should utilize the EP's resolutions and positions in the process of negotiations with respective countries. At times, the EP's positions have been perceived to hamper institutional relations rather than be used as a part of the process, and more importantly to obtain progress in political reforms. For example, disregarding the EP's positions in the process of negotiations of international agreements can potentially lead to more work. The EP's approval is needed on any international agreement. On the other hand this can potentially lead to prolonged inter-institutional negotiations centred on technicalities rather than the reforms.

ODIHR, Election observation and the path ahead

Dr. Beata Martin-Rozumiłowicz⁷³

Modern election observation has been on-going for some three decades, since a human rights framework was first applied to an electoral process in the Philippines in 1986. Since that time, many advances have been made, both in terms of election observations' professionalism and methodology. During this period, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE /ODIHR) has stood at the forefront of this endeavour, especially in the European and former Soviet Union (FSU) space and has developed a capacity and an expertise for observing elections in this region. For example during the recent Ukrainian snap elections in 2014, ODIHR was able to deploy nearly 2,000 international observers across the country. ODIHR currently stands as one of the key institutions in the world and is widely respected for the integrity, impartiality, and professionalism of its election observation exercises.

Yet the path ahead for ODIHR election observation holds many obstacles. Of particular importance are a number of challenges that must be faced if the credibility of this activity is to be maintained. Key among them are political challenges from some participating States to limit the scope and depth of its evaluations, challenges from within the organization where various elements vie for attention in this high-profile activity, and financial challenges that stand to erode the foundations of election observation from its core. These various themes will be explored and analysed in this article as a path forward is charted.

The first challenge is one that has been on-going for more than a decade; in fact, from the early 2000s. Since then, an initiative to politically limit the scope and depth of ODIHR election observation has been underway by a group of like-minded 'participating States' (pS) that consider this part of the OSCE's work to be too sensitive and controversial.⁷⁴ In their efforts, they have sought to limit: 1) the number of observers to be deployed, generally recommending some 50 in every country, 2) the choice of mission members, arguing that especially the head of an election observation mission should be appointed by the OSCE Permanent Council (PC) thereby requiring unanimous consent,⁷⁵ and 3) that all reports should be first passed by the PC in a consensus process before being made public.⁷⁶

On each count, the argument has been put forward by certain pS that despite ODIHR's needs-based approach, which seeks to tailor the format of an election observation exercise to the particular needs of a country at a particular time,⁷⁷ all ODIHR election observation exercises should be of the same duration, format and scope. This derives from an understanding among this subset of pS that election observation should be more along the lines of an information exchange than the in-depth formal assessment mechanism that it has come to embody, and that the evaluation of electoral processes and the making of recommendations on their improvement touches upon fundamental national sovereignty questions. While it is no doubt true that electoral issues are matters of national sovereignty, it is also true that they are about fundamental human rights, and as such, are appropriately of interest to the international community. In short, the erosion of such elements would severely impact upon the independence and professionalism of the exercise, something that is readily acknowledged by many, including by some of the states proposing this.

⁷³ Dr. Beata Martin-Rozumiłowicz served as Head of OSCE/ODIHR Election Department in Warsaw until January 2016, a role she had held since 2011. From 2009 to 2011, she served as Deputy Head of the OSCE/ODIHR Election Department and from 2005 to 2009 Beata worked on dozens of ODIHR election observation missions across the OSCE participating States as Deputy Head of Mission or as Political Analyst. In 2005, she served as Election Adviser at the OSCE Centre in Bishkek, and from 2003 to 2005 was Political/Media Officer at the OSCE Centre in Almaty. From 2000 to 2001, Beata acted as Human Dimension Officer at the OSCE's Advisory and Monitoring Group in Minsk. She has also consulted for IFES in Armenia and Kyrgyzstan on various aspects of electoral reform. Dr. Beata Martin-Rozumiłowicz holds a D.Phil. (Ph.D.) and M.Phil. (Masters) in Politics from the University of Oxford and a B.A. in Political Science from Rutgers College (Phi Beta Kappa).

⁷⁴ In OSCE jargon, 'participating States' (pS) are the now 57 countries that make up the organizations' composition. The like-minded pS are a group of states from the FSU, whose composition changes from time to time, but which has, at points, included many, if not most, of these post-Soviet countries.

⁷⁵ Mission or 'core team' members, including the head of an election observation mission, are currently selected through a advertised, public recruitment process on the basis of merit.

⁷⁶ Currently, as an independent institution within the OSCE, publication of reports is subject to the review and approval of the ODIHR Director. As a variation on this suggestion, statements by the head of the Russian Central Election Commission have opined that reports should first be vetted by such state bodies before being made public.

⁷⁷ For instance, in countries where election day processes do not enjoy trust and have a high likelihood in leading to tension or unrest, ODIHR would tend to deploy short-term observers to visit a large sample of polling stations on election day. In places where this is no longer an issue, but longer-term, systematic issues remain controversial, ODIHR may recommend to deploy observers for a longer duration, without this short-term component. This is also a question of appropriate resource management.

At the same time, election observation is widely acknowledged to be one of the 'flagship' activities of the OSCE. The mid-1990's saw a profusion of organizations and institutions engaged in this area, with a concomitant confusion and redundancy. Thus, a number of efforts were made in the late 1990s / early 2000s, especially after some high-profile debacles in the Balkans, especially with OSCE both administering while at the same time and observing the elections in Bosnia and Herzegovina. Following this, it was made clear that ODIHR was the institution within the organization responsible for elections, that there should be efforts to limit cross-over within the organization for implementation and observation, and that OSCE's field operations should engage in election-related work carefully and in avoidance of conflict of interest. Nevertheless, since that time, many key personnel involved in these early periods have cycled out and there is increasing proliferation of election-related activity both at the secretariat and field operation level, which is sometimes not adequately coordinated.

There are also a plethora of other international organizations engaged in election-related work at some level. This includes the Council of Europe, the European Union, the CIS, the International Institute for Democracy and Electoral Assistance (IDEA), and the United Nations Development Program (UNDP), as well as international non-governmental organizations such as the Carter Center, Democracy Reporting International (DRI), International Foundation for Election Systems (IFES), the International Republican Institute (IRI), and the National Democratic Institute (NDI), among others. Although there have been some problems with cross-over in the past, this has been largely ameliorated through closer consultation within the Declaration of Principles framework, which ensure much better consultation and co-ordination of efforts.⁷⁸ Nevertheless, although there is good intention and regular consultation at the headquarters level, this does not always filter down to the field where some cross-over and misunderstanding continues; this is a problem that is recognised and being worked upon explicitly by the international community. It does, however, need to be opened up to the wider international community dealing with elections, including donors and technical assistance providers, if a true synergy of efforts is to be achieved. A reduction of 'donor-shopping' is also necessary; this does occur from time to time, leading to an uncoordinated approach at best and organizations working at cross-purposes, at worst.

Since the 1990s, there has also been an essential conflict between the ODIHR, as technical experts on the one side, and the OSCE Parliamentary Assembly, as political pronouncers on electoral processes. While not necessarily in fundamental conflict, a tension arose over which institution was in the 'leading' role, with ODIHR promoting the idea of an equal and shared role between two independent institutions and the OSCE Parliamentary Assembly advocating that all election observation activity should be subsumed under its political leadership. Recently, this tension seems to have been ameliorated, with both institutions recognizing that the other has an independently and mutually important role to play, although it remains to be seen whether this new detente will hold. Nevertheless, this is an important challenge to the integrity and impartiality of election observation since although most will agree that these are political processes into which parliamentarians as politicians have important insight, an evidence-based assessment grounded in first-hand data collection is crucial if the activity is not to become overly politicized and ultimately denuded of substance.⁷⁹

Finally, there is the issue of financial viability, which challenges the institution and the organization. For nearly a decade, the budgetary approach from pS has been one of 'zero nominal growth' (ZNG) - for all intents and purposes for the entire budget of the OSCE, this has meant that fixed staff costs have gone up, while overall budgets have not, leading to an effective diminishing of programmatic funds to implement activities. While the budget allocated to elections in the mid-2000s meant that ODIHR could observe a minimum of 16 and sometimes up to 20 plus elections per calendar year, increasing fixed costs and inflation in many OSCE pS has meant that the range by 2016 is more of the order of 12-16 and declining. Election observation is an activity that has been built up over decades and although it is recognized that most OSCE pS have been experiencing prolonged and systematic economic crises

⁷⁸ The Declaration of Principles (DoP) for International Election Observation and Code of Conduct for International Election Observers was originally endorsed in 2005 under United Nations auspices in New York. The community now includes more than 50 international organizations that consult regularly, meeting annually to discuss topics of relevance and concern to the international election observation community.

⁷⁹ This is especially crucial in that ODIHR deploys long-term missions, including dozens of long-term observers and lasting many months, that take account of all aspects of the electoral process from its very beginning (including aspects like voter registration, candidate registration, the media, the campaign, electoral dispute resolution, etc.) and at the regional as well as the central level. ODIHR also deploys hundreds of short-term observers to monitor election day proceedings from start of finish (including potential early voting, opening of polling stations, voting, counting, the transfer and tabulation of votes and the resolution of election and post-election day complaints), which provide important qualitative and quantitative data upon which to base assessments and conclusions. This stands in contrast to the short-term approach of parliamentarians, who often arrive a few days before polling, have a day and a half of briefings with key interlocutors and then observe a few polling stations on election day, rarely staying for the crucial counting or tabulations phases; this often leads to disagreements with the ODIHR mission over the key findings and conclusions in a given elections.

preventing them from contributing internationally at the levels that they once did, the overall ODIHR election budget of some EUR 6.5 million is very modest, especially in comparison to the costs incurred by organizations engaged in similar election observations work, such as the EU that spends similar amounts for only one mission or the UN, where election missions run into the hundreds of millions.

Unless this problem is confronted directly and with foresight, there is a strong risk that due to carelessness and a lack of foresight, the institution and its vital election operations will fall into a state of disrepair that will later be regretted by many states, including key European nations such as the UK who have long considered human rights work to be integral to their international policy initiatives. And, in fact, the UK has been amongst those that have advocated the ZNG regime at the overall organizational level for reasons that are well-founded,⁸⁰ but which may end up being ultimately destructive to those principles that they hold dear.

This financial situation, coupled with the continued political attacks from countries that would prefer not to have any independent oversight over their electoral process threatens to spell the demise of impartial, independent, and professional election observation in the OSCE region in the medium to long term. This is especially concerning as important elections in countries such as Belarus, Kazakhstan, and the Russian Federation are on the cards for 2016. In laying out these tensions and challenges for the future, it is hoped that a path can be found to ensure credible, evidence-based, and impartial election observation as a vehicle for elections with integrity in this critically important region for the future.

⁸⁰ The UK has argued that while they would like to see the overall OSCE budget not being increased, they would be supportive of internal budgetary shifts within the organization to ensure adequate financing for key activities, including election observation.

OSCE on human rights and democracy: Risks and opportunities

Anna Chernova⁸¹

Upholding international human rights commitments in today's wider European security context remains a challenge. A regression in democratic commitments, evidenced by poor election track records, recorded by the OSCE, is further complicating democracy and human rights in the former Soviet space.

As elected officials in free societies, parliamentarians in the wider region are well placed to address these trends and should work to prioritize fostering party-to-party and peer-to-peer contacts, as well as challenging increasingly repressive systems in several OSCE participating States. Stronger engagement among political parties – in and out of parliament, would strengthen political pluralism and contribute to broadening rights-based engagement – beyond national interest. European, American and Canadian parliamentarians have the flexibility to operate independently of their Foreign Ministries, and to engage in debates and policy discussions beyond the priorities – often economic – outlined by their respective governments. Many parliamentarians from the former Soviet space cannot avail themselves of such options.

A free media environment and established traditions of civic freedoms allow European politicians to constructively engage civil society, rights defenders and socio-political movements across wider Europe in ways that many others cannot. The OSCE Parliamentary Assembly can serve as a key European platform in ensuring that human security on the continent is truly comprehensive.

Today's context – trends and causes

With global priorities constantly shifting, organizations and institutions tasked with holding governments to account on human rights and democracy play an essential role. There is a general regression in this regard evident in several of the 57-participating States of the OSCE. Whole regions and countries, including but not limited to, Central Asia, Eastern Europe and now Central Europe⁸² are backsliding in their democratic commitments (as defined by the Copenhagen Document).⁸³ Human rights defenders and OSCE institutions have been raising the issue of political prisoners in Azerbaijan,⁸⁴ Belarus (where they are regularly held hostage to European negotiations)⁸⁵ and other states for years. There is increased repression through policy and practice, and serious challenges to media freedom in several countries, and arguably whole regions of the OSCE.

Some 25 years have passed since the collapse of the Soviet Union, and it is clear that because so many social issues remained unaddressed, a full economic and political transformation has not taken place, and some countries are 'lost in transition'.⁸⁶

At the same time – there is a worrying trend in Europe and the United States in the electoral rise of the far-right, often pitting human rights frameworks and commitments against populist calls for tough counter-terrorism and anti-immigration measures. This is evidenced *inter alia* by legislative changes in the US post 9/11, policies on extraordinary rendition, the debate around the impact of a potential UK withdrawal from the European Court of Human Rights frameworks⁸⁷ and the erosion of the historic Schengen agreement over the migration issue. The success of (what were previously considered 'fringe') right-wing parties in an increasing number of European states is worrying many human rights defenders at home and abroad. There has been a worrying trend of investment

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⁸² Anton Shekhovtsov, Is Transition Reversible? The Case of Central Europe, Legatum Institute, January 2016, <https://iif.blob.core.windows.net/iif/docs/default-source/publications/is-transiting-reversible-the-case-of-central-europe-january-2016.pdf?sfvrsn=4>

⁸³ Full text of the 1990 CSCE (now OSCE) of the Copenhagen Document: <http://www.osce.org/odihr/elections/14304>

⁸⁴ OSCE Parliamentary Assembly Press Release, Ahead of elections in Azerbaijan, silencing of independent and critical voices particularly regretful, says OSCE PA's Santos, 27 October 2015, <http://www.oscepa.org/news-a-media/press-releases/186-news-a-media/press-releases/2015/2386-santos-azerb-pre-election-statement>

⁸⁵ Vadzim Smok, Political Prisoners – No Longer A Sticking Point In Belarus-EU Relations?, Belarus Digest, 19 June 2015 <http://belarusdigest.com/story/political-prisoners-%E2%80%93-no-longer-sticking-point-belarus-eu-relations-22830>

⁸⁶ Lilia Shevtsova, Russia—Lost in Transition: The Yeltsin and Putin Legacies, September 2007

⁸⁷ Liberty's briefing on the Human Rights Act and the Conservative Leadership's 2014 Proposals for its repeal, May 2015 https://www.liberty-human-rights.org.uk/sites/default/files/Liberty%27s%20Briefing%20on%20the%20Conservative%20Leadership%27s%20Proposals%20to%20Repeal%20the%20HRA%2028May%202015%29_0.pdf

from East-to-West in these movements,⁸⁸ including conferences organized along particular political platforms and values⁸⁹ that run counter to the OSCE's human dimension commitments.

A number of rights groups in the West have called attention to civic rights being compromised. From the Occupy protests, to activism in Europe against war, austerity and the rise of the far right we see a trend of civil society resisting what they see as an increasingly restrictive environment for fundamental freedoms, democracy and civil society space more broadly.⁹⁰ Increasingly, the connection to the root causes of these social movements and trends of both right and left point to increasing global inequalities and poorly designed austerity measures.⁹¹

European societies are the lucky ones; at least for now – they live in countries where citizens and even non-citizens are able to freely express their views, challenge the system and engage with the media to shape public opinion. Most former Soviet states have increasingly struggled to meet their OSCE commitments, and some openly disregard and violate them in the field of human rights and democracy. Since the collapse of the Soviet Union, for the first time, we see an increasing number states question their democratic commitments and associated OSCE values.

Human rights forms a part of the OSCE's (herein referred to as the Organisation) Human Dimension, and a core aspect of comprehensive human security which lies at the core of the Organization. Prioritising human rights, good governance and democracy, however, in a consensus-based organization focused on dialogue – remains a delicate balancing act. The European relationship with Belarus vis-a-vis Ukraine is the most recent example. Human rights defenders and political opposition in Belarus, where leading opposition figures are regularly held hostage in international relations, felt overlooked⁹² by the thaw between the West and Minsk in favour of a 'grand bargain on Ukraine.' The Organization, including its Parliamentary Assembly is also careful on which human rights issues it chooses to address - often in favour of quiet diplomacy and maintaining a dialogue.⁹³ Democratic deficits in Turkey, for example, including challenges around counter-terrorism and law enforcement are rarely publicly addressed.

Institutional influence of the OSCE and key issues of concern

The OSCE has a number of instruments and institutions that deal with human rights issues. Some are more constrained by the consensus mechanism than others. The OSCE Representative on Freedom of the Media, for example, is one of the most efficient and consistently outspoken in the Organization, and often comes under criticism by the less-democratic of OSCE members for advocating for the safety of journalists and media freedoms.⁹⁴

The pitfalls of consensus

As an organization that generally works through consensus, wider regional democratic trends are evident through debates around 'double standards' and wider commitments in the Permanent Council which largely operates by consensus across the 57 participating States. The same applies to the Ministerial Council and Summits (on the rare occasion the Organization is able to gather one). The annual OSCE Ministerial Council has not been able to adopt any substantive text on the human dimension for many years, and the last Council meeting in Belgrade in December 2015 was no exception. The OSCE's parliamentary human rights' Committee Chair noted this missed opportunity to take key human dimension decisions.⁹⁵ The Serbian OSCE Chairmanship expressed some of their frustrations to the press, but as Germany takes over the Chairmanship in 2016 (with a heavy focus on regional security issues) – these systems will continue to hamstring the Organization.⁹⁶ This is largely due to the restrictive

⁸⁸ Luke Harding, We should beware Russia's links with Europe's right, The Guardian, 8 December 2014, <http://www.theguardian.com/commentisfree/2014/dec/08/russia-europe-right-putin-front-national-eu>

⁸⁹ Gabrielle Tétrault-Farber, Russian, European Far-Right Parties Converge in St. Petersburg, The Moscow Times, 22 March 2015, <http://www.themoscowtimes.com/news/article/russian-european-far-right-parties-converge-in-st-petersburg/517839.html>

⁹⁰ Sarah E. Mendelson, Why Governments Target Civil Society and What Can Be Done in Response CSIS/Mendelson, April 2015, http://csis.org/files/publication/150422_Mendelson_GovTargetCivilSociety_Web.pdf

⁹¹ Chicago Tribune, Get a grip on inequality, leaders urged in run-up to World Economic Forum, 16 January 2016, <http://www.chicagotribune.com/business/ct-world-economic-forum-davos-inequality-20160118-story.html>

⁹² The Guardian, Belarus poll: EU lifts sanctions on Lukashenko – 'Europe's last dictator', 13 October 2015 <http://www.theguardian.com/world/2015/oct/13/belarus-poll-eu-lifts-sanctions-on-lukashenko-europes-last-dictator>

⁹³ Aynur Karimova, OSCE PA hopes for revitalizing ties with Azerbaijan, AzerNews, 26 January 2016, <http://www.azernews.az/azerbaijan/92101.html>

⁹⁴ Dunja Mijatovic, Russia blasts OSCE media freedom representative over double standards, TASS Russian News Agency, 2 December 2015, <http://tass.ru/en/politics/840850>

⁹⁵ OSCE Press Release, Absence of human rights decisions at OSCE Ministerial Council has troubling implications, says PA's Santos, 9 December 2015, <http://oscepa.org/news-a-media/press-releases/2421-santos-osce-ministerial-statement#sthash.Qu6taFKt.dpuf>

⁹⁶ OSCE conference ends work without consensus on all issues" 5 December 2015 http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=12&dd=05&nav_id=96273

consensus rule, but also a visible erosion of commitments to comprehensive human security by key OSCE participating States and the relative regression in human rights in democracy in whole regions covered by the Organization.

If Permanent Council meetings were open to the press or civil society, the public could judge for themselves. At a minimum, the Council's transcripts could be made publicly available. OSCE decision-making has been hamstrung by consensus rules for some time – at times undermining the recruitment of individuals with strong, public records of being outspoken on human rights issues for key posts.

One key OSCE participating State, particularly fond of the consensus mechanism (otherwise known and/or applied as a 'veto' in other inter-governmental bodies) notes that 'it is unacceptable to prioritise issues on which the Organisation has no consensus: the 'special rights' of journalists and bloggers, making a fetish of freedoms on- and off-line, the freedom of assembly and associations, the role of women, non-traditional faiths and LGBT.'⁹⁷ Coupled with the success of socially conservative and right-wing parties in recent Western European elections – there is a clear and present danger that the OSCE's values around comprehensive human security are under threat.

The Organization's challenges are primarily political in nature – and while structural and organizational reforms can help – deeper political dialogue (and will) is needed to make the OSCE more effective in today's comprehensive human security context.

OSCE's permanent field monitoring and reporting capacities

Erosion of OSCE field missions is a key issue. In the last 15 years, the Organisation has been forced to shut down several key missions – from Chechnya/Russia, to Georgia, Belarus and Azerbaijan.⁹⁸ Many missions have been downgraded to project coordinator offices, like in Kazakhstan (without a monitoring and reporting mandate, including on key human rights developments). The mandate and operational modalities, as well as the diplomatic leadership of these missions are largely decided by the Permanent Council.

The debate around the Organisation's latest in the Ukraine monitoring effort⁹⁹ is a good indication of some the challenges the Organization, and its institutions, face in today's context. Where issues of territorial integrity are concerned, the OSCE often struggles to balance its security and conflict resolution priorities, with its human dimension commitments. The German OSCE Chairmanship this year will face these challenges, as it focuses on conflict and security issues.¹⁰⁰

The role of the OSCE Parliamentary Assembly and OSCE human rights mechanisms

The OSCE Parliamentary Assembly fights for genuine parliamentary oversight of the executive – to reflect the position of some of its European counterparts. However, as the OSCE continues to move toward achieving its legal identity at a glacial pace – the Assembly's resolutions continue to be non-binding. *Bona fide* two-way relations between the OSCE's parliamentary and executive dimension remains to be fully developed. This leaves many of the Assembly's human rights initiatives outside the executive structures of the OSCE and its participating States.

The budget of Assembly does not go through the Permanent Council, making the Assembly's Secretariat independent of the consensus-rule hamstringing of the executive branch. However, when it comes to general voting - like in many institutions there are challenges around larger and more powerful, including resource-rich, participating States in maintaining a proportional influence and balance. As the quality of elections in many OSCE participating States in the region deteriorate, the parliamentary delegations to inter-parliamentary institutions run the risk of becoming less representative of political elements in a given society.

The OSCE Parliamentary Assembly – including members of national parliaments from 57 OSCE participating States is a key institution in upholding the human dimension. The OSCE's executive often acknowledges the role the Assembly plays in raising key security issues around territorial integrity, and keeping comprehensive human

⁹⁷ Comment by the Information and Press Department on Foreign Minister Sergey Lavrov's participation in the OSCE Ministerial Council Meeting, 2 December 2015, http://en.mid.ru/en/web/guest/foreign_policy/news/_asset_publisher/cKNonkJE02Bw/content/id/1956982

⁹⁸ OSCE, Closed field operations, <http://www.osce.org/where/43692>

⁹⁹ OSCE, Permanent Council, <http://www.osce.org/pc/121532>

¹⁰⁰ Hugh Williamson, Germany's OSCE Challenge, Human Rights Watch, 26 January 2016, <https://www.hrw.org/news/2016/01/26/germanys-osce-challenge>

security concerns (like Guantanamo Bay) on the OSCE agenda.¹⁰¹ The Assembly has called for greater transparency of the OSCE executive - including the Permanent Council - full mandates for field missions and greater resourcing of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).

The Assembly works to contribute to conflict mediation and prevention through parliamentary dialogue – with past efforts including its Working Groups on Belarus, Moldova and support to the Kyrgyzstan Inquiry Commission.¹⁰² While this work is hard to measure – its activities around public advocacy are more visible. As an independent institution, the Assembly is well placed to raise awareness of key human rights issues – directly and indirectly - with participating States. As such, the Assembly was able to bring forth debates and resolutions on issues controversial for the consensus-driven executive, such as the 'Magnitsky Act' (Russia)¹⁰³ and political prisoners (Belarus), and lend support to struggling human rights instruments like the OSCE's Moscow Mechanism – which was designed to allow the Organization to deploy investigative efforts in cases of grave human rights concerns¹⁰⁴ – but like in other institutions, access to the country in question has remained an issue.¹⁰⁵ More widely, the Assembly's Committee for Democracy, Human Rights and Humanitarian Questions regularly advocates for key OSCE human dimension issues through its resolutions,¹⁰⁶ but also the active press presence of its Chair.

The Assembly can (and has) challenged credentials of its Members and whole Delegations,¹⁰⁷ but overall its status remains consultative and its decisions non-binding. It fights hard to defend this position – and not be treated as a subordinate institution of the executive. As the OSCE continues to build its legal identity, these issues will continue to be debated among its professional staff and legal counsel in the wider OSCE family. What is important for policy makers to note is the added value an independent parliamentary institution of 57 parliaments can make at a time of great challenges to European security, democracy and human rights, and to the OSCE specifically - as one of several inter-governmental institutions dealing with these challenges.

The same legal status issue applies to much of the OSCE as a whole, as evidenced by the loss of field missions in countries like Azerbaijan, where missions can be unilaterally closed by the host government at times of great shortcomings in the human dimension, with no repercussions for Baku. There are sadly too many examples of these cases.

Parliamentary trends and civil society space

Political pluralism, a key OSCE democratic commitment, has reduced in a number of former Soviet states and several parliaments (and therefore their delegations to international institutions) no longer include genuine opposition representatives. There are a number of countries, where cycle-after-cycle of elections falling below OSCE standards have resulted in national parliaments with no genuine debate or plurality. Other countries have banned political parties altogether – also in violation of their OSCE democratic commitments.

Political groups do not play as formal a role in the OSCE Parliamentary Assembly (PA) as they do in Council of Europe's Parliamentary Assembly. They tend to gather (independently of the Secretariat or the Assembly Committees) around issues or key elections to Assembly bodies. While these groups have tangential influence on the resolutions the Assembly adopts, political groups do influence elections to the Assembly's Bureau (that oversees the work of the parliament's committees) to arrange informal political and geographical rotations of posts

¹⁰¹ Ilkka Kanerva, Response to the President of the OSCE Parliamentary Assembly, 19 November 2015

http://osce.usmission.gov/nov_19_15_oscepa.html

¹⁰² OSCE Parliamentary Assembly, Kyrgyzstan Inquiry Commission releases final report, 3 May 2011, <http://www.oscepa.org/parliamentary-diplomacy/special-representative-visits/94-news-a-media/press-releases/2011/614-kyrgyzstan-inquiry-commission-releases-final-report>

¹⁰³ OSCE Parliamentary Assembly, Resolution on Rule of Law in Russia, the Case of Sergei Magnitsky, 2012, <https://www.oscepa.org/meetings/annual-sessions/2012-monaco-annual-session/2012-monaco-final-declaration/1676-07>

¹⁰⁴ OSCE's Moscow Mechanism (adopted in 1991) - The Mechanism, agreed by consensus by all 56 OSCE States, allows for an investigation to be launched without consensus and independently of the OSCE Chairmanship, institutions and decision-making bodies if one State, supported by at least nine others, "considers that a particularly serious threat to the fulfilment of the provisions of the [OSCE] human dimension has arisen in another participating State". The Mechanism also stipulates that the rapporteur(s) report to the Permanent Council, <http://www.osce.org/odihr/20066>

¹⁰⁵ OSCE, Moscow Mechanism rapporteur reports to OSCE Permanent Council on situation in Belarus, 16 June 2011, <http://www.osce.org/pc/78701>

¹⁰⁶ OSCE Parliamentary Assembly, Chapter III - Democracy, human rights and humanitarian questions, 2015, <http://www.oscepa.org/meetings/annual-sessions/2015-helsinki-annual-session/2015-helsinki-final-declaration/2280-05>

¹⁰⁷ News from Copenhagen, Credentials Committee on Belarus Meets in Vienna, 19 February 2001, <http://www.oscepa.org/news-a-media/news-from-copenhagen/2001/20-news-from-copenhagen-21/file> and OSCE Parliamentary Assembly Press Release, Statement on the rejection of Russia's designation of Olga Kovitidi as a Member of the OSCE Parliamentary Assembly, 18 February 2015

<http://www.oscepa.org/news-a-media/press-releases/186-news-a-media/press-releases/2015/2105-statement-on-the-rejection-of-russia-s-designation-of-olga-kovitidi-as-a-member-of-the-osce-parliamentary-assembly>

(something encouraged, but not required by the Assembly's Rules of Procedure). Generally, the internal election results of the PA's Presidents and Vice-Presidents, as well as Committee leaders tend to reflect the geographical and the political diversity of the overall Assembly. However, there are always exceptions – especially when it comes to gender, age and representatives of opposition parties in respective parliaments, especially in the former Soviet space. Although it is not mandated by the rules,¹⁰⁸ the Assembly – for better or worse – tends to reflect the political and demographic make-up of many its participating parliaments.

An organization is the sum of its parts. As conservative and reactionary politics take hold of many countries in the region, the human rights voices within the OSCE struggle to be heard. The same applies to the OSCE PA which brings together members of national parliaments from across the 57 states through a largely proportional system. Therefore, when political parties of the right-wing persuasion gain power in Western Europe, the membership of the inter-parliamentary assemblies¹⁰⁹ reflect these changes.

The space for political freedoms is shrinking, together with the space for civil society. Several countries in the region no longer field any *bona fide* opposition parliamentarians, often because true opposition is no longer represented in the national parliament.

Civil society and human rights defenders, as well as independent media, often at great risk – work to fill the void. A more systematic engagement with civil society, including through permanent advisory boards, as well as more transparent observation and participation mechanisms, would enhance debate and serve the PA and other OSCE institutions well. The PA's debates on the future strategic focus of the OSCE in the human dimension have already shown promise in this regard.¹¹⁰

OSCE and elections in the region

There has been a long debate about election standards – with a wide mix of agendas, from East to West to organizational reform issues, to resources and capacities. Despite all the disagreements over the years on modalities, and approaches in the highly diverse region – one thing all OSCE institutions support is that existing democratic commitments made in 1990 should in no way be undermined. The OSCE has increasingly worked to observe elections East and West of Vienna.

The PA's role, in close cooperation with the OSCE ODIHR, enhances the political element of election observation. When measuring elections against the 1990 OSCE Copenhagen Commitments – the credibility of these institutions is enhanced when they are able to work together. Like the legislation and democratic environment, each election observation mission is unique in its own way. There have been challenges in Azerbaijan,¹¹¹ Kazakhstan¹¹² and other OSCE participating States when the international election observation could not agree on a joint statement – and regrettably very different public assessments were made. Some states seem to regularly attract a divergence of opinion on democratic commitments.¹¹³ Accountability mechanisms need to be further strengthened as the election observation field continues to develop to avoid situations where leading observers deviate from the statement – as on Azerbaijan in 2013,¹¹⁴ and Kazakhstan in 2011.¹¹⁵ Thankfully, these incidents remain exceptions to the rule.

It is worth noting that there are few repercussions for states not inviting observers, or limiting OSCE observer access and freedom of movement. Here we do see a trend –decreasing OSCE field presences. Several OSCE states

¹⁰⁸ OSCE Parliamentary Assembly – Rules of Procedure, <https://www.oscepa.org/documents/rules-of-procedure>

¹⁰⁹ EU Today, How Much Influence Does The Kremlin Have Over MEPs? Part 2, 10 January 2016, <http://eutoday.net/news/outburst-2>

¹¹⁰ OSCE Parliamentary Assembly, Stronger OSCE field presence, civil society co-operation and human rights focus recommended at PA seminar, 28 May 2015 <http://www.oscepa.org/news-a-media/press-releases/2015/2217-helsinki-40-belgrade-release>

¹¹¹ Ben Smith, Election Monitoring Troubles in Azerbaijan, House of Commons, 27 November 2013, <http://commonslibraryblog.com/2013/11/27/election-monitoring-troubles-in-azerbaijan/>

¹¹² Council of Europe Parliamentary Assembly, Observation of the early presidential election in Kazakhstan, 3 April 2011, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12784&lang=en>

¹¹³ AzerNews, OSCE official hails Azeri economic growth, democracy, 11 February 2011, <http://www.azernews.az/azerbaijan/29719.html>

¹¹⁴ OSCE Press Release, Montenegro hosts 2013 OSCE PA Autumn Meeting, 17 October 2013, <http://www.osce.org/pa/111152> and OSCE Parliamentary Assembly 12th Autumn Meeting Budva, Montenegro 13-15 October 2013 (page 18) <http://www.oscepa.org/documents/all-documents/autumn-meetings/2013-budva/report-4/2179-2013-budva-autumn-meetings-report/file>

¹¹⁵ OSCE election observation, Kazakhstan: statement by the observer delegation of the PACE, 4 April 2011, <http://assembly.coe.int/nw/xml/News/News-View-FN.asp?newsid=3373&lang=2> as compared to OSCE Press release, Reforms necessary for holding democratic elections in Kazakhstan have yet to materialize, observers say, 4 April 2011, <http://www.osce.org/odihr/76349>

with clear democratic deficits have not hosted full election observation missions – hosting only small or limited observation efforts. The trend is not universally negative – some states, like Turkmenistan and the UK¹¹⁶ have increased multi-lateral co-operation and have hosted OSCE election observation efforts for the first time in the last decade, while others – like Azerbaijan, have increasingly placed restrictions on observers. In Azerbaijan’s case, the OSCE cancelled its last election observation effort because of such restrictions by Baku.¹¹⁷ There are key elections in the former Soviet space this year and these will continue to shape multi-lateral policy in this regard.

Strengthening OSCE institutions in the human dimension

The challenges and trends outlined above notwithstanding, there are some steps that can be taken by OSCE institutions to improve their impact with regard to human rights and democracy in the region:

- Only key decisions should be undertaken by consensus to reduce political deadlock and increase relevance of key OSCE institutions. If the organization wants to continue to set itself apart in terms of relevance and efficiency, it must recognize that the current framework will eventually lead to a stalemate;
- Permanent Council meetings should be more open to the public, and there should be a permanent mechanism to engage civil society with the Council and the executive (in addition to, not instead of, the ODIHR’s Annual Human Dimension Implementation Meeting in Warsaw);
- The Parliamentary Assembly should establish a mechanism to engage civil society systematically, including through permanent advisory boards and a more transparent registration mechanism;
- In order to be more relevant, the OSCE must address negative trends with regard to the 1990 Copenhagen commitments, including re-open or re-invigorate fully-mandated missions (including monitoring and reporting functions) field missions in Georgia, Azerbaijan, Uzbekistan,¹¹⁸ Belarus, Ukraine¹¹⁹ and Russia.
- The Organization can benefit from more consistent cooperation (i.e. joint sessions/meetings) with other relevant intergovernmental Organizations, like the Council of Europe;
- The Parliamentary Assembly of the OSCE must have greater oversight of the executive;
- Foreign Ministries and Parliaments must ensure the OSCE moves much more quickly toward achieving a full legal identity – with full legal, including diplomatic, recognition in all OSCE participating states.

Some of these issues are well documented and analysed, but political will and true investment – including from European Foreign Ministries and Parliaments – is often lacking. Considering the trends in human rights and democracy in the former Soviet Union, the OSCE, including its Parliamentary Assembly, should reform and adjust much more quickly than the current pace – if the Organization wants to remain relevant and effectively contribute to comprehensive human security in the wider European region.

¹¹⁶ Full list of OSCE ODIHR’s election observation mission documents, <http://www.osce.org/odihr/elections>

¹¹⁷ OSCE Press release, Restrictions imposed by Azerbaijan compel cancellation of parliamentary election observation mission, says ODIHR Director Link, 11 September 2015, <http://www.osce.org/odihr/elections/azerbaijan/181611>

¹¹⁸ OSCE Project Co-ordinator in Uzbekistan, <http://www.osce.org/uzbekistan>

¹¹⁹ OSCE Project Co-ordinator in Ukraine Mandate, <http://www.osce.org/ukraine/106005>

The European Court of Human Rights: A beacon of hope

Kate Levine¹²⁰

‘Our strength is our unity of purpose’¹²¹

Introduction

With jurisdiction over 800 million inhabitants of the member states of the Council of Europe, the European Court of Human Rights (ECtHR) based in Strasbourg, has been referred to as the ‘linchpin’ of human rights protection in Europe.¹²² The European Convention on Human Rights (herein referred to as the European Convention), which the ECtHR seeks to enforce, binds States parties to a common set of standards designed to secure fundamental rights. Together, the ECtHR and the European Convention provide a ‘unity of purpose’ for member States of the Council of Europe. Now in its 57th year, the ECtHR’s ability to withstand challenges to this common purpose from some of the Council of Europe’s newest (and oldest) members is being sorely tested. This essay considers aspects of the ECtHR’s relationship with Russia, Ukraine, and the South Caucasus: the lack of political will to properly implement judgments, the shrinking space for human rights defenders, and increasing State support for so-called ‘traditional values’ are identified as three of the most pressing concerns for the ECtHR in this region. Notwithstanding the difficulties inherent in addressing these issues, the ECtHR remains a beacon of hope for continued and improved ‘unity of purpose’ (that is, the effective protection of human rights) in the States of the former Soviet Union, and throughout the Council of Europe.

Expanding the reach of the ECtHR

Originally conceived in 1949 as a project for post-war cooperation among 10 Western European States, the Council of Europe has since grown to encompass 47 member states.¹²³ Pursuant to Article 1(a) of the Statute of the Council of Europe, member states agree to strive for greater unity for the purpose of ‘safeguarding and realising the ideals and principles which are their common heritage’.¹²⁴ The European Convention, which entered into force in 1953, sought to define these ideals and give concrete expression to the principles set out in the non-binding Universal Declaration on Human Rights of 1948.¹²⁵ Established in 1959, the ECtHR was tasked with monitoring respect for Convention rights by member states. On the eve of the collapse of the Soviet Union in 1991, the ECtHR’s jurisdiction extended to 23 states. Over the next nine years, its jurisdiction expanded to include a further 18 newly independent states, the majority of which had been a part of the Soviet Union or Eastern Bloc (including Russia, Ukraine and Georgia).¹²⁶ In the first decade of the 21st century, an additional six states ratified the European Convention (including Azerbaijan and Armenia).¹²⁷ Expansion of the geographic scope of the ECtHR’s jurisdiction has facilitated access to justice for individual victims of human rights violations, but has also (unsurprisingly) increased the burden on the ECtHR’s capacity to respond effectively to a significantly larger caseload.

Enabling access to justice

Affording recourse to the ECtHR as a forum for international justice been particularly significant for victims of human rights violations arising in the context of armed conflict in the former Soviet Union. The past two and a half decades have tragically seen a number of violent conflicts in this region. For example: in Russia (the first and second Chechen wars, and the on-going security operations in the North Caucasus); between Azerbaijan and Armenia in relation to the disputed Nagorno-Karabakh territory; in Georgia (the August 2008 war with Russia over

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¹²¹ Franklin D Roosevelt’s Annual Address to Congress, The “Four Freedoms”, 6 January 1941, <http://www.fdlibrary.marist.edu/pdfs/fftext.pdf>

¹²² Eric Metcalfe, quoted in ‘The Conscience of Europe: 50 Years of the European Court of Human Rights’, p.16,

http://www.echr.coe.int/Documents/Anni_Book_Chapter01_ENG.pdf

¹²³ On 5 May 1949 the Statute of the Council of Europe was signed by Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom, and entered into force on 3 August 1949, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/001>. Belarus, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, and Kyrgyzstan are not members of the Council of Europe.

¹²⁴ The full text of the Statute is available on the website of the Council of Europe: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/001>

¹²⁵ The full text of the European Convention is available on the website of the ECtHR: http://www.echr.coe.int/Documents/Convention_ENG.pdf

¹²⁶ The full list of ratifications of the Statute and the Convention are available on the website of the Council of Europe (http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/001/signatures?p_auth=VEKtJkr5 and http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=VEKtJkr5)

¹²⁷ Ibid

South Ossetia and Abkhazia); and most recently, in Ukraine, following the annexation of Crimea and the outbreak of fighting in Eastern Ukraine.¹²⁸

In Russia, the actions of security forces in the second Chechen war (which commenced in September 1999) and subsequent security operations in other parts of the North Caucasus, gave rise to hundreds of applications to the ECtHR on behalf of victims and their families.¹²⁹ In February 2005, the ECtHR issued its first judgments (and the first of any international judicial body) in cases concerning the second Chechen war.¹³⁰ The ECtHR found Russia responsible for extra-judicial killings, torture, enforced disappearances, and failing to properly investigate these crimes; it also confirmed the systemic nature of human rights abuses by Russian security forces in Chechnya. To date there are over 250 judgments from the ECtHR in which Russia has been found responsible for serious and systemic human rights violations in the context of the second Chechen war and security operations in the North Caucasus.¹³¹ Even in the absence of changes to Russian law and policy resulting from these judgments (discussed further below), the body of Chechen cases represents the measure of justice, accountability and redress (including through the payment of moral damages) for individuals whose appeals to the domestic authorities were largely met with disbelief and denial. As emphasised by one of the applicants in the ECtHR case concerning Russian responsibility for the massive loss of civilian life during the Beslan school siege in 2004: 'we were told that we would find justice in Strasbourg. This is our only hope. It comforts us that there is a place where everything is done by the rule of law, and where our evidence will be considered when the decision is made'.¹³²

The ECtHR very recently issued judgments in two cases relating to the rights of families from Azerbaijan and Armenia who were forced to flee their homes as a result of the 27 year conflict in and around the disputed Nagorno-Karabakh region.¹³³ The ECtHR underlined that the glacial pace of peace negotiations (under the auspices of the OSCE Minsk Group) did not absolve the two States from taking other measures to ensure the property rights of individuals directly impacted by the conflict. The ECtHR recommended that each State establish a property claims mechanism through which the applicants (and hundreds of thousands of others in the same situation) could seek restoration of their property rights and compensation for their loss of enjoyment.¹³⁴ Although the judgments have yet to be implemented, their potential to add much needed political (and legal) impetus for a swift resolution of the conflict and access to redress for victims, should not be underestimated.¹³⁵

Challenges facing the ECtHR

Failure to implement ECtHR judgments

The ECtHR has faced countless challenges to its mission since its creation. Political resistance to ensuring effective implementation of its judgments (particularly those raising systemic violations) is arguably among the most grievous, and is of serious concern for the ECtHR, the Committee of Ministers (the Council of Europe's political body tasked with supervising execution of the ECtHR's judgments), and the individuals for whom Strasbourg is the only avenue of redress when structural violations at the domestic level prevail. In two recent reports on the execution of the ECtHR's judgments, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe identified Russia and Ukraine as two of the nine States with the greatest number of 'leading judgments' that have yet to be enforced.¹³⁶ Among the structural problems identified in these unexecuted judgments are: lack

¹²⁸ There are at least 2,000 individual applications pending before the ECtHR concerning grave human rights abuses arising from the 2008 Georgia-Russia war, in addition to an inter-state case brought by Georgia against Russia alleging responsibility for Convention violations as a result of the war. Further, over 1,400 individual applications have been lodged with the ECtHR (the majority have been brought against Russia and Ukraine) relating to the annexation of Crimea and the war in eastern Ukraine.

¹²⁹ Human Rights Watch, Justice for Chechnya, July 2007, https://www.hrw.org/sites/default/files/related_material/justice_for_chechnya_2.pdf

¹³⁰ Isayeva v. Russia (Application No. 57950/00) Judgment of 24 February 2005; Isayeva, Yusupova and Bazayeva v. Russia (Application No.s 57947/00, 57948/00 and 57949/00) Judgment of 24 February 2005; and Khasiyev and Akayeva v. Russia (Application No.s. 57942/00 and 57945/00) Judgment of 24 February 2005. For a detailed consideration of the ECtHR's judgments in the Chechen cases, see Philip Leach, The Chechen conflict: analysing the oversight of the European Court of Human Rights, 2008. European Human Rights Law Review. 6. 772-761.

¹³¹ See for example the database of ECtHR database on the website of the Russian Justice Initiative: <http://www.srji.org/en/legal/cases/>

¹³² Ella Kesayeva, Voice of Beslan, Beth Saffer and Marina van Riel, EHRAC, The voice of Beslan, EHRAC Bulletin, Summer 2015, <http://www.ehrac.org.uk/wp-content/uploads/2015/07/EHRAC-Summer-Bulletin-2015-WEB.pdf#page=10>

¹³³ *Chiragov and Others v. Armenia* (Application No. 13216/05) Judgment of 16 June 2015, and *Sargsyan v. Azerbaijan* (Application No. 40167/06) Judgment of 16 June 2015.

¹³⁴ *Chiragov and Others v. Armenia*, para 199; and *Sargsyan v. Azerbaijan*, para 238.

¹³⁵ For further discussion of the legal and political significance of the judgments, see Marko Milanovic, The Nagorno-Karabakh Cases, EJIL: Talk!, 23 June 2015, <http://www.ejiltalk.org/the-nagorno-karabakh-cases/> and Philip Leach, Thawing the Frozen Conflict? The European Court's Nagorno-Karabakh Judgments, EJIL: Talk! 6 July 2015, <http://www.ejiltalk.org/thawing-the-frozen-conflict-the-european-courts-nagorno-karabakh-judgments/>

¹³⁶ The Committee of Minister's 8th Annual Report is available on its website:

http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2014_en.pdf. The Committee on Legal Affairs and Human Rights 8th Report on the implementation of judgments of the European Court of Human Rights is available on the Committee's website: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2014_en.pdf

of accountability for the actions of the security forces in the North Caucasus; prohibition of LGBT assemblies in Russia; and torture and ill-treatment in police custody and failure to investigate these crimes in Russia and Ukraine.¹³⁷

In an ominous development at the end of 2015, President Putin signed into law a new piece of legislation that allows the Russian Constitutional Court to declare rulings of international bodies 'impossible to implement'.¹³⁸ Although not the first legislative attempt to curb the efficacy of the ECtHR in Russia, the new law is unprecedented in the history of the Convention in that it seeks to deny the enforceability of the ECtHR's judgments (as opposed to merely challenging the relationship between the ECtHR and the domestic courts, which previous Russian laws have done, and which other Council of Europe members continue to do, including the UK). According to one of its sponsors in the Russian Duma, the main aim of the new law is to 'safeguard Russian legal sovereignty'; an objective which strongly echoes the efforts of Prime Minister Cameron and others in the United Kingdom to redraw the relationship with Strasbourg so as to 'protect' the supreme voice of Parliament and the Supreme Court.¹³⁹ One of the driving forces behind political opposition to Strasbourg in the United Kingdom is the Prime Minister's reputed distaste for the ECtHR's finding that the blanket ban on prisoner voting contravenes the European Convention (as manifested in the persistent failure of the UK to implement the ECtHR's judgments on this issue).¹⁴⁰ Disturbingly, there is evidence that the new law in Russia is not only inspired by the United Kingdom's pushback against the ECtHR's judgments, but is also motivated by Strasbourg's ruling against Russia in relation to prisoner voting.¹⁴¹

In Ukraine, the political reforms driven by the events of Euromaidan in 2014 have led to some positive developments in the implementation of ECtHR judgments. One such example is the reinstatement of former Supreme Court Judge, Oleksandr Volkov in February 2015. Mr Volkov's politically motivated dismissal in 2010 led the ECtHR to find violations of his right to a fair trial and respect for private life, order his re-instatement and call on Ukraine to reform its system of judicial discipline.¹⁴² Further, in cooperation with the Council of Europe, the new Government is implementing a project of widespread reform of the judiciary, in light of the ECtHR's judgment in *Volkov v. Ukraine* and another similar case (*Salov v. Ukraine*).¹⁴³

Notwithstanding these positive developments, the failure to resolve the conflict in Eastern Ukraine poses a challenge for the ECtHR. As noted above, there are already more than 1,400 individual applications lodged before the ECtHR relating to the hostilities in Eastern Ukraine and the events in Crimea.¹⁴⁴ That these situations have generated such a significant volume of cases in under two years is not surprising, given the deeply political nature of the conflict, the ongoing 'anti-terrorist operation' in Donbas, and the refusal of Russia to acknowledge its role in these events. The resulting applications add to an existing backlog of cases, the efficient and speedy processing of which has been (and remains) a key focus of intergovernmental efforts to reform the Strasbourg machinery. Change has come through, for example, Protocol No. 14 to the Convention (which entered into force in 2010, and introduced new judicial formations for the simplest cases and a new admissibility criterion), the introduction of a

pace.net/documents/19838/1085720/20150623-ImplementationJudgements8-EN.pdf/67c5cb2a-3032-4183-9f3e-45c668257ede. A 'leading judgment' is defined as the first case which reveals a new structural problem (8th Annual Report of the Committee of Ministers 2014, p 28).

¹³⁷ The Committee on Legal Affairs and Human Rights 8th Report, p 8.

¹³⁸ The law was signed by President Putin on 14 December 2015. For more information on the law, see Alexandra Sims, Vladimir Putin signs law allowing Russia to ignore international human rights rulings, *The Independent* (online), 15 December 2015, <http://www.independent.co.uk/news/world/europe/vladimir-putin-signs-law-allowing-russian-court-to-overthrow-international-human-rights-rulings-a6773581.html>. For further commentary on the law, see Veniamin Geynbikhner, Russian court hopes to thwart international law rulings, *Human Rights Watch* (online), 10 December 2015, <https://www.hrw.org/news/2015/12/10/dispatches-russian-court-hopes-thwart-international-law-rulings> and Philip Leach and Alice Donald, Russia defies Strasbourg: is contagion spreading? *EJIL: Talk!* 19 December 2015, <http://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/>.

¹³⁹ The *Moscow Times*, Putin enables Russia to overturn European Court of Human Rights decisions, 15 December 2015, <http://www.themoscowtimes.com/news/article/putin-enables-russia-to-overturn-european-court-of-human-rights-decisions/552855.html>; Owen Boycott, European court is not superior to UK Supreme Court, says Lord Judge, *The Guardian*, 4 December 2013, <http://www.theguardian.com/law/2013/dec/04/european-court-uk-supreme-lord-judge>; David Cameron's speech on Europe at Chatham House, 10 November 2015, <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>.

¹⁴⁰ See for example: *Hirst v. United Kingdom* (no 2), (Application No. 74025/01), Judgment of 6 October 2005; *Greens and M.T. v. United Kingdom* (Application Nos. 60041/08 and 60054/08), Judgment of 23 November 2010; Jon Henley, Why is the European Court of Human Rights hated by the UK right? *The Guardian*, 22 December 2013, <http://www.theguardian.com/law/2013/dec/22/britain-european-court-human-rights>;

Alan Travis, Voting ban on prisoners convicted of serious crimes is lawful, EU court rules, *The Guardian*, 6 October 2015, <http://www.theguardian.com/politics/2015/oct/06/uk-ban-on-prisoner-voting-is-lawful-eus-highest-court-rules>.

¹⁴¹ For example, Andrei Klishas, the chairman of the Committee of the Federation Council on Constitutional Legislation and State Construction (and a strong advocate of the bill in the Duma), reportedly cited the ECtHR judgment on prisoner voting in Russia (*Anchugov and Gladkov v. Russia*, (Application No. 11157/04), Judgment of 4 July 2013) as one of the motivating factors behind the new law: <http://www.rg.ru/2015/12/02/sud.html>.

¹⁴² *Volkov v. Ukraine*, (Application No. 21722/11), Judgment of 9 January 2013.

¹⁴³ European Committee on Legal Cooperation, Strengthening the system of judicial accountability in Ukraine, Council of Europe, http://www.coe.int/t/dghl/standardsetting/cdcj/co-operation_projects/Judicial_accountability_ukraine/judicial_accountability_ukraine.asp

¹⁴⁴ Press release of the ECtHR, European Court of Human Rights communicates to Russia new inter-State case concerning events in Crimea and Eastern Ukraine, 1 October 2015.

‘priority policy’ in 2009 (pursuant to which applications are dealt with based on the importance and urgency of the issues raised, as opposed to the date on which they were received by the ECtHR), and the Interlaken, Izmir and Brighton Declarations of 2010, 2011 and 2012 respectively (one of the results of which was the adoption of the rather contentious Protocol No. 15).¹⁴⁵ Significant progress has been made so far; for example, the backlog of manifestly inadmissible applications has been cleared, and the total number of applications pending before a judicial formation has more than halved, from around 152,000 in 2012 to 64,850.¹⁴⁶ Among the remaining challenges are the rising number of ‘priority’ applications (and many from eastern Ukraine may fall into this category if they deal with, for example, risks to the life and health of applicants), and the backlog of non-priority non-repetitive applications.¹⁴⁷ While the allocation of additional resources may help to increase capacity within the ECtHR, the effective implementation of judgments at the national level is also clearly fundamental to reducing the overall number of applications submitted to Strasbourg.

Shrinking space for human rights defenders

Alongside political resistance to implementation of the ECtHR’s judgments, the shrinking space for human rights defenders is also cause for concern for the ECtHR. Following President Putin’s return to the Kremlin in 2012, there have been renewed efforts by the state to stigmatise human rights activists (labelling them as stooges of ‘Western’ interests) and constrict the space within which civil society can operate. These efforts are concentrated on a raft of laws designed to severely limit cooperation between Russian NGOs and the West, and clamp down on the legitimate exercise of the rights to freedom of association, assembly, and expression in Russia. Two such laws, the 2014 ‘Foreign Agents’ law and the law on ‘undesirable organisations’, have been heavily criticised as falling foul of international standards on the rights to freedom of association, expression, and the derivative right of the access to foreign funding.¹⁴⁸ In response to the ‘Foreign Agents’ law, 14 Russian NGOs submitted a joint application to the ECtHR in 2013 alleging violations of their rights to freedom of association and expression as a result of the law. The ECtHR has yet to communicate the application to the Government. Although this delay is regrettable, it is hoped that the application may ultimately lead to an objective, irrefutable finding of the law’s contravention of the European Convention, adding to existing (non-binding) statements from the international community.

Numerous applications have also been submitted to the ECtHR concerning alleged unlawful violations of the rights to freedom of expression and peaceful protest; many in relation to demonstrations against alleged fraud during the 2011 legislative elections and the 2012 Presidential election in Russia, the adoption and implementation of the Federal ‘Anti-LGTBI’ law, and the war in eastern Ukraine. In a recent judgment in one of these cases, *Frumkin v. Russia*, the ECtHR found violations of the applicant’s right to freedom of assembly and association, resulting from his unlawful arrest, detention, and ensuing conviction after his participation in one of the ‘Bolotnaya Square’ protests in May 2012.¹⁴⁹ The ECtHR emphasized the chilling effect of the applicant’s treatment on participation in peaceful demonstrations and engagement with opposition politics in Russia, signalling a robust and timely statement in defence of the right to peaceful protest which is under severe pressure.¹⁵⁰

In Azerbaijan, the Government has overseen a wave of politically motivated arrests and prosecutions starting in mid-2014, preceded by a tightening of NGOs laws.¹⁵¹ In less than two years, the state has succeeded in all but crippling the country’s independent civil society. It is widely believed that the persecution of particularly high profile human rights defenders, including Intigam Aliyev, Rasul Jafarov and Leyla and Arif Yunus, was motivated by

¹⁴⁵ For information on the ECtHR’s priority policy, see http://www.echr.coe.int/Documents/Priority_policy_ENG.pdf. For information on Protocol 15, see http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n13739061715477258442752_pointer. Although Protocol 15 has yet to enter into force, there is fierce criticism of the reforms that it will herald (for example, reducing the time limit for submitting applications from six to four months). A group of leading NGOs who represent applicants before the ECtHR voiced their concerns in a joint statement when the Protocol was opened for signature: Joint NGO Statement, 24 June 2013, www.mdx.ac.uk/_data/assets/pdf_file/0008/59552/Protocol-15-to-the-ECHR-Joint-NGO-Statement-24-June-2013.pdf.

¹⁴⁶ ECtHR Analysis of Statistics, 2015, http://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf; 2014 Report of the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe, the Effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond, <http://website-pace.net/documents/19838/1041670/20141210-BeyondBrighton-EN.pdf/9b39d1d4-e9b2-44ea-baaa-901ced892426>.

¹⁴⁷ Steering Committee for Human Rights, Report on the longer-term future of the European Convention on Human Rights, 11 December 2015, [http://www.coe.int/t/DGHL/STANDARDSETTING/CDDH/REFORMECHR/CDDH\(2015\)R84_Addendum%20I_EN-Final.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/CDDH/REFORMECHR/CDDH(2015)R84_Addendum%20I_EN-Final.pdf).

¹⁴⁸ See for example: The opinion of the Council of Europe Commissioner for Human Rights, 9 July 2015, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2855911&SecMode=1&DocId=2338240&Usage=2>; the opinion of the Venice Commission 13-14 June 2014, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)025-e); and the Observatory for the Protection of Human Rights Defenders, Violations of the right of NGOs to funding, Annual Report 2013.

¹⁴⁹ *Frumkin v. Russia*, (Application No. 74568/12), Judgment of 5 January 2016.

¹⁵⁰ *Frumkin v. Russia*, para 141.

¹⁵¹ See for example, Human Rights Watch, Azerbaijan: Crackdown on civil society, 2 September 2013, <https://www.hrw.org/news/2013/09/02/azerbaijan-crackdown-civil-society>.

their engagement with the ECtHR and other Council of Europe mechanisms. For example, the Council of Europe Commissioner for Human Rights has publically stated that the unlawful arrest, detention and conviction of these activists (among others) was retribution for their tireless work promoting human rights through the ECtHR, the Committee of Ministers and the Parliamentary Assembly.¹⁵² The ECtHR has prioritised the applications dealing with their arrest, detention and conditions of detention, and communicated them to the Government within a few months from when they were lodged. These cases are now awaiting judgment. Several of these applications raise the claim that their arrest and detention was politically motivated (contrary to Article 18 of the Convention). Unfortunately not all cases concerning the repression of critical voices have been communicated as quickly (for example, several applications relating to the arrest and prosecution of youth activists belonging to the NIDA Civic Movement were recently communicated, two years after being lodged).¹⁵³ That said, the recent decision of the Secretary General of the Council of Europe to launch an inquiry (under Article 52 of the Convention) into Azerbaijan's compliance with its rights and obligations will continue to focus international attention on the Government's repression of civil society.¹⁵⁴ Although there have been at least eight inquiries under Article 52, this is the first launched by the current Secretary General (who took office in 2009) and will (uniquely) involve the dispatch of a delegation from Strasbourg to Azerbaijan. Whatever the outcome of the inquiry, it is hoped that the findings may provide further impetus for calls to release critics of the Government who are unlawfully detained.¹⁵⁵

Attacks on LGBTI rights

Alongside the crackdown on human rights defenders, attacks against supporters of LGBTI rights and the LGBTI community are especially prevalent in Russia and the South Caucasus. Low levels of respect for LGBTI rights mirrors the resurgence in popular support for so-called 'traditional values' (referring to, for example, stereotyped definitions of 'family' and 'morals', often informed by the policies and preferences of the Orthodox Church, and encouraged by supportive statements from the political elite).¹⁵⁶ In June 2013 Russia passed a federal law effectively legalising discrimination based on sexual orientation.¹⁵⁷ Armenia threatened to do the same.¹⁵⁸ Common to all governments in the region is a lack of political will to take anti-LGBTI violence seriously, whether perpetrated by state actors or private individuals. Those targeted by state and non-state entities are increasingly invoking the assistance of the ECtHR.¹⁵⁹ In response, the ECtHR has vigorously defended the right to freedom of assembly for LGBTI persons; for example, in the landmark judgment of *Alekseyev v. Russia*, the ECtHR found violations of the applicant's right to peaceful assembly resulting from the state's repeated ban on 'gay pride' marches that he had organised.¹⁶⁰ When it was published in 2010, the judgment was the most significant statement from the ECtHR yet on the need to protect the right to freedom of assembly for LGBTI people.¹⁶¹ In a subsequent judgment, *Identoba v. Georgia*,¹⁶² the ECtHR has further developed its support for LGBTI rights through its finding that homophobic attacks against peaceful protestors violated the prohibition against ill-treatment and constituted discrimination on the grounds of sexual orientation.¹⁶³

¹⁵² See for example, the third party intervention by the Council of Europe Commissioner for Human Rights Council of Europe, Application No. 68762/14 *Intigam ALIYEV v. Azerbaijan*, 16 June 2015, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2838430&SecMode=1&DocId=2251738&Usage=2>

¹⁵³ *Akhundov v Azerbaijan*, Application No. 70019/13; *Mammadli v Azerbaijan*, Application No. 65597/13; *Hasanov v Azerbaijan*, Application No. 48653/13. (Search via communicated cases, see also <http://www.coe.int/en/web/commissioner/third-party-interventions>)

¹⁵⁴ Secretary General launches inquiry into respect for human rights in Azerbaijan, 16 December 2015, http://www.coe.int/en/web/secretary-general/news/-/asset_publisher/EYBJNjXtASU/content/secretary-general-launches-inquiry-into-respect-for-human-rights-in-azerbaijan/16695?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fsecretary-general%2Fnews%3Fp_id%3D101_INSTANCE_EYBJNjXtASU%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1

¹⁵⁵ For example, *Ilgar Mammadov*, whose detention was found to be unlawful by the ECtHR but who remains in prison despite consistent calls for his release (see for example, the statement by the President of the Parliamentary Assembly of the Council of Europe, calling for his release: <http://www.assembly.coe.int/nw/xml/News/News-View-FN.asp?newsid=5947&lang=2&cat=15>)

¹⁵⁶ See for example, Graeme Reid, *Dispatches: Putin's Twisted Take on Tradition*, 13 December 2013, <https://www.hrw.org/news/2013/12/13/dispatches-putins-twisted-take-tradition>.

¹⁵⁷ The Guardian, *Russia passes anti-gay law*, 30 June 2015, <http://www.theguardian.com/world/2013/jun/30/russia-passes-anti-gay-law>.

¹⁵⁸ See for example, Human Rights Watch, *Letter to Armenian President Regarding Proposal for Anti-LGBT Legislation*, 13 August 2013, <https://www.hrw.org/news/2013/10/18/letter-armenian-president-regarding-proposal-anti-lgbt-legislation>

¹⁵⁹ See for example, Human Rights Watch, *License to harm: violence and harassment against LGBT people and activists in Russia*, 15 December 2014, <https://www.hrw.org/report/2014/12/15/license-harm/violence-and-harassment-against-lgbt-people-and-activists-russia>, and Silvia Stöber, *LGBTI rights in the South Caucasus*, Heinrich Böll Foundation, 18 July 2013, <https://www.boell.de/en/2013/07/18/lgbti-rights-south-caucasus>

¹⁶⁰ Application No.s 4916/07, 25924/08 and 14599/09, Judgment of 21 October 2010, paras 68-88. The ECtHR also found violations of the applicant's rights under Article 13 (right to a remedy) and 14 (prohibition of discrimination)

¹⁶¹ Application No.s 4916/07, 25924/08 and 14599/09, Judgment of 21 October 2010, paras 68-88. The ECtHR also found violations of the applicant's rights under Article 13 (right to a remedy) and 14 (prohibition of discrimination)

¹⁶² Application No. 73235/12, Judgment of 12 May 2015, paras 68-81.

¹⁶³ Among the cases relating to LGTB rights which are currently pending before the ECtHR, there are two against Georgia: one concerning the violent and discriminatory treatment of LGBT activists during a raid of their offices by the police (*Aghdgomelashvili and Japaridze v. Georgia*, Application No. 7224/11) and the other relating to the failure to investigate violence by counter-demonstrators against people holding a peaceful protest in support of the International Day Against Homophobia (Women's

Unfortunately, the ECtHR's judgments have not resulted in measurable improvements in respect for LGBTI rights in Russia. The majority of peaceful demonstrations continue to be banned, and in January 2016 the Duma considered yet another homophobic law which proposes jail terms for public displays of 'non-heterosexual orientation or gender identity'.¹⁶⁴ In contrast, while public support for LGBTI rights remains low in Georgia, there have been positive developments in the judicial and legislative arenas as part of political negotiations with the EU.¹⁶⁵ For example, the recent introduction of a law prohibiting discrimination on all grounds (including sexual orientation and gender identity) was, in part, the result of EU requests made in the context of negotiations on visa liberalisation.¹⁶⁶

Conclusion

Efforts by Russia and some of its neighbours to repress human rights defenders, and promote an agenda of 'traditional values' at the expense of the rights and obligations enshrined in the European Convention, have been met with fierce resistance by the ECtHR. Similarly, opposition from Russia and other parts of the former Soviet Union (and beyond) to execute especially strategic ECtHR judgments has in part fuelled efforts to strengthen the ECtHR framework (most recently evidenced by the Brussels Declaration which was adopted by all Council of Europe member states in March 2015). The Declaration focuses on improving implementation of ECtHR judgments, and sets out, for example, a range of proposals on how states could better engage judicial and legislative bodies in this process.¹⁶⁷ Ultimately, the practical realisation of the Declaration's proposals, as with implementation of judgments, remains a question of political will. This suggests that reciprocity (for example, from one member state to another, and between them and international institutions) is a necessary component of the process of using the ECtHR and other international mechanisms to achieve positive change at the national level.

In Georgia, for example, we have seen that tying adherence to Convention standards with mutually beneficial political goals can yield positive results for human rights. Given the current state of diplomatic relations between Russia and the West, it may be a while before there will be meaningful opportunities to use the ECtHR's judgments as leverage in the context of political dialogue with Moscow. Whatever the future holds for Russia and the wider former Soviet Union region, it is crucial that the individuals whose rights are protected by the Convention are able to access the ECtHR. For them and for us all in the Council of Europe the ECtHR remains a beacon of hope for the effective protection of our human rights whatever politics prevail.

Initiative Supporting Group v Georgia, Application No. 73204/13). (search for both in Communicated Cases) There are also at least five cases against Russia relating to unlawful restrictions of the rights to freedom of expression, assembly and association of proponents of LGBT rights (for further details, see the ECtHR's fact sheet on sexual orientation issues: http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf).

¹⁶⁴ Committee of Ministers Decision from the 1208th meeting – 25 September 2014,

<https://wcd.coe.int/ViewDoc.jsp?id=2237861&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>; Tanya Cooper, Human Rights Watch, Dispatches: Jail time for being gay in Russia, 14 January 2016, <https://www.hrw.org/news/2016/01/14/dispatches-jail-time-being-gay-russia>.

¹⁶⁵ ILGA Europe, Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, 2015, http://www.ilga-europe.org/sites/default/files/01_full_annual_review_updated.pdf.

¹⁶⁶ European Commission press release, Georgia: one step closer to EU visa liberalisation, 29 October 2014, http://europa.eu/rapid/press-release_IP-14-1206_en.htm; ILGA Europe, Annual Review of the Human Rights Situation of

Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, 2015, http://www.ilga-europe.org/sites/default/files/01_full_annual_review_updated.pdf

¹⁶⁷ High-level Conference on the 'Implementation of the European Convention on Human Rights, our shared responsibility', Brussels Declaration, 27 March 2015, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2792587&SecMode=1&DocId=2254432&Usage=2>.

The Council of Europe and Azerbaijan: A cautionary tale

Rebecca Vincent¹⁶⁸

Azerbaijan's history with the Council of Europe since becoming a member in 2001 is complex. The issue of political prisoners has always been something of a thorn in the side of Azerbaijan-Council of Europe relations. It was one of the main points discussed in the accession process, and Azerbaijan committed to resolving the issue on becoming a Council of Europe member.¹⁶⁹ In the early years of its Council of Europe membership, under then-President Heydar Aliyev, the Azerbaijani government worked with special rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) to examine cases and draw up lists of political prisoners. As a result, the Azerbaijani government released hundreds of political prisoners – though notably did not quite fully comply, as three prisoners from the initial list remain jailed to this day.

Heydar Aliyev's son Ilham went on to succeed him as president shortly before Heydar's death in 2003. Ilham Aliyev soon proved less willing to negotiate on the issue of political prisoners than his father. The Azerbaijani government began actively lobbying on the matter, convincing PACE not to appoint a rapporteur in 2005, and then deflecting attention when a new special rapporteur, German MP Christoph Strässer, was eventually appointed in 2009, successfully drawing focus for several years on the need for a definition of political prisoners rather than examination of the situation within Azerbaijan itself.

A definition was adopted in a PACE resolution in October 2012, and yet the Azerbaijani government continued to refuse to cooperate with Strässer, preventing him from travelling to the country for a fact-finding visit in accordance with his mandate. Strässer proceeded anyway, conducting research from abroad, producing a list of possible cases of political prisoners and an accompanying draft resolution.¹⁷⁰

The issue came to a head in January 2013 when PACE voted on the draft resolution on 'The follow up to the issue of political prisoners in Azerbaijan'.¹⁷¹ The resolution, which would have been crucial in the Council of Europe's efforts to hold Azerbaijan accountable for its obligations as a member state, was defeated in a vote of 125 to 79. The move was a major victory for Azerbaijan's lobbyists, and a blow to the human rights community. The Aliyev regime seemed to interpret this result as carte blanche to carry on with politically motivated arrests - which accelerated in the run-up to the October 2013 presidential election that saw Ilham Aliyev elected to a controversial third term in office, following the removal of the presidential term limitation in a 2009 referendum. On the eve of the election, Azerbaijani rights groups reported a shocking total of 142 cases of political prisoners; a sharp increase from the 70 detailed in Strässer's report.¹⁷²

Fast-forward to May 2014. In the midst of an even worse human rights crackdown on the ground, Azerbaijan took over the Chairmanship of the Committee of Ministers. At the very time when implementation of its Council of Europe obligations was lowest, Azerbaijan assumed political leadership of the body. President Aliyev travelled to Strasbourg that June where he insisted in an address to the assembly that "all fundamental freedoms are respected in Azerbaijan".¹⁷³ Aliyev denied the existence of political prisoners in the country, and became visibly angered when pressed on the matter by UK MP Paul Flynn.¹⁷⁴ He also must have found it difficult to ignore a protest staged by Azerbaijani activists in the session whilst he spoke.¹⁷⁵

Aliyev returned home from Strasbourg to oversee an even more intense wave of the crackdown. Between 30 July and 8 August 2014, four of Azerbaijan's most outspoken human rights defenders – Leyla and Arif Yunus, Rasul

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¹⁶⁹ Parliamentary Assembly of the Council of Europe, Azerbaijan's application for membership of the Council of Europe, June 2000, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16816&lang=en>

¹⁷⁰ Radio Free Europe/Radio Liberty, Explainer: What Defines A Political Prisoner?, January 2013, <http://www.rferl.org/content/explainer-political-prisoners/24881810.html>

¹⁷¹ Parliamentary Assembly of the Council of Europe, The follow-up to the issue of political prisoners in Azerbaijan, December 2012, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19217&lang=en>

¹⁷² Civic Solidarity Platform, Azerbaijan: an updated list of political prisoners, October 2013, <http://www.civicsolidarity.org/article/800/azerbaijan-updated-list-political-prisoners>

¹⁷³ Parliamentary Assembly of the Council of Europe, Report of the 21st Sitting, June 2014, <http://assembly.coe.int/Documents/Records/2014/E/1406241000E.htm>

¹⁷⁴ Rebecca Vincent, British MP Who Challenged Aliyev Says 'The Reputation Of The Council Of Europe Is At Stake', July 2014,

<http://www.azadliq.org/content/article/25447437.html>

¹⁷⁵ RFE/RL, Activists Protest Azerbaijani President's PACE Speech, June 2014, <http://www.rferl.org/content/activists-protest-aliyevs-pace-speech/25433612.html>

Jafarov, and Intigam Aliyev – were arrested on a cocktail of fabricated charges; and another, Emin Huseynov, was forced into hiding¹⁷⁶ also fearing arrest after authorities raided and closed the office of his NGO, the Institute for Reporters' Freedom and Safety.¹⁷⁷ Prominent investigative journalist Khadija Ismayilova would join them behind bars that December.¹⁷⁸ Dozens of other political prisoners also remained jailed, including critical journalists, bloggers, human rights defenders, youth activists, and politicians.

As Council of Europe Human Rights Commissioner Nils Muižnieks put it at the end of the country's six-month rotation in office, 'Azerbaijan will go down in history as the country that carried out an unprecedented crackdown on human rights defenders during its chairmanship'. He added 'The Council of Europe's primary friends and partners in the country have almost all been targeted. While this pains me deeply, it also makes practical cooperation between Azerbaijan and the Council of Europe extremely difficult. The reprisals must stop. Now'.¹⁷⁹

But the reprisals did not stop. Now, over a year after the end of Azerbaijan's chairmanship, the human rights situation in the country is worse than ever, and yet PACE remains largely willing to allow Azerbaijan to flout its obligations. Although outgoing PACE President Anne Brasseur has spoken out regularly on Azerbaijan's failure to uphold its Council of Europe obligations,¹⁸⁰ the same cannot be expected from incoming PACE President Pedro Agramunt, who will take over during the January 2016 session. Agramunt, a Spanish MP who previously served as a co-rapporteur dealing with the monitoring of Azerbaijan, has been criticised as an apologist for the Azerbaijani regime and was featured in a report by the European Stability Initiative detailing potentially corrupt lobbying practices in PACE, 'Caviar Diplomacy: How Azerbaijan silenced the Council of Europe'.¹⁸¹

The bias within PACE is hardly limited to Agramunt; the statement of findings of the PACE monitoring delegation to Azerbaijan's November 2015 parliamentary elections is a good example of how pervasive it is. Although the OSCE and the European Parliament had taken the unprecedented step of cancelling their monitoring missions, PACE ignored calls by human rights groups to do the same and proceeded with its mission.¹⁸² Despite ample evidence to the contrary,¹⁸³ the PACE delegation claimed that 'the voting process was observed to be adequate and generally in line with international standards'.¹⁸⁴ (It should be noted that, for the first time, three members of the PACE monitoring delegation signed a dissenting statement noting that the situation in the country did "not provide conditions for holding free and democratic elections".)¹⁸⁵

The situation is not helped by the fact that the head of Azerbaijan's PACE delegation, Samad Seyidov,¹⁸⁶ is currently the Acting Chairperson of his political group, the European Conservatives Group,¹⁸⁷ giving him a seat at the table in the PACE Presidential Committee. This is in addition to his longer-standing role as Vice-Chairperson of the PACE Monitoring Committee – the very committee responsible for monitoring Azerbaijan's implementation of its Council of Europe commitments. The conflict of interests seems clear.

Outside of PACE, however, the Council of Europe's leadership finally appears to be stepping up, and has recently enacted several strong measures aimed at holding Azerbaijan accountable. In October 2015, Secretary General Thorbjørn Jagland announced that the Council of Europe was withdrawing from the joint civil society-government working group on human rights issues in Azerbaijan, a step human rights groups had been requesting for some

¹⁷⁶ Human Rights Watch, Dispatches: Azerbaijan Jails Yet Another Rights Defender, August 2014, <https://www.hrw.org/news/2014/08/08/dispatches-azerbaijan-jails-yet-another-rights-defender>

¹⁷⁷ Foreign Policy, Trapped in Baku, February 2015, <http://foreignpolicy.com/2015/02/11/trapped-in-baku-azerbaijan-emil-huseynov-swiss-embassy/>

¹⁷⁸ Human Rights Watch, Azerbaijan: Investigative Journalist Arrested, December 2014 <https://www.hrw.org/news/2014/12/05/azerbaijan-investigative-journalist-arrested>

¹⁷⁹ Index on Censorship, Nils Muižnieks: Azerbaijan's reprisals against brave activists and journalists must stop now, November 2014, <https://www.indexoncensorship.org/2014/11/nils-muiznieks-azerbaijans-reprisals-brave-activists-journalists-must-stop-now/>

¹⁸⁰ Council of Europe, Azerbaijan: Anne Brasseur reveals "deepest concerns" in letter to President Ilham Aliyev, October 2015, <http://www.humanrightseurope.org/2015/10/azerbaijan-anne-brasseur-reveals-deepest-concerns-in-letter-to-president-ilham-aliyev/>

¹⁸¹ European Stability Initiative, Caviar Diplomacy: How Azerbaijan silenced the Council of Europe, May 2012, http://www.esiweb.org/pdf/esi_document_id_131.pdf

¹⁸² Institute for War and Peace Reporting, Euro-Observers Shun Azerbaijan Election, October 2015, <https://iwpr.net/global-voices/euro-observers-shun-azerbaijan-election>

¹⁸³ European Platform for Democratic Elections, Azerbaijan: Parliamentary Elections Marred by Political Imprisonment, Violations of Freedoms to Assembly, Association, and Expression, November 2015, <http://www.epde.org/en/newsreader/items/azerbaijan-parliamentary-elections-marred-by-political-imprisonmentviolations-of-freedoms-to-assembly-association-and-expression.html>

¹⁸⁴ Parliamentary Assembly of the Council of Europe, Statement by PACE Election Observation Mission on the parliamentary elections in Azerbaijan on 1 November 2015, November 2015, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5856&lang=2&cat=31>

¹⁸⁵ Frank Schwabe, Statement of Preliminary Findings and Conclusions by Members of the PACE Observatory Mission of Elections to Parliamentary Elections of Azerbaijan, 1 November, 2015, November 2015, <https://t.co/YE4nIASjFz>

¹⁸⁶ Parliamentary Assembly of the Council of Europe, Members: Samad Seyidov, accessed January 2016, <http://www.assembly.coe.int/nw/xml/AssemblyList/MP-Details-EN.asp?MemberID=4501>

¹⁸⁷ A group whose leading members include the Conservative Party from the UK, Turkey's AKP and the Polish Law and Justice Party, as well as the leading Armenian parties.

time due to the lack of independence of participants.¹⁸⁸ In December 2015, Jagland announced that he was launching an investigation into Azerbaijan's compliance with its obligations under the European Convention on Human Rights.¹⁸⁹ For its part, the Committee of Ministers has also been increasingly vocal, so far calling on three separate occasions for the immediate release of jailed opposition leader Ilgar Mammadov, per the judgment of the European Court of Human Rights in his case.¹⁹⁰

These measures, while significant, are not enough. Some human rights organisations are now calling for the suspension of credentials of the Azerbaijani PACE delegation¹⁹¹ which would prevent the delegation from taking part in PACE proceedings and send a strong signal to the Azerbaijani government that PACE will not stand idly by while the country flouts its human rights obligations. Other groups have already gone a step further, calling for the full suspension of Azerbaijan's Council of Europe membership.¹⁹² One thing is certain: the behaviour of Azerbaijan's ruling Aliyev regime is not compatible with the very principles upon which the Council of Europe was founded. The regime is deliberately violating the same human rights and fundamental freedoms the Council of Europe has undertaken to protect and respect, in a widespread and systematic manner – and it is doing so with the implicit endorsement of some members of PACE.

As European Stability Initiative Chairman Gerald Knaus has commented many times, rather than the Council of Europe influencing Azerbaijan, it is Azerbaijan that has influenced the Council of Europe, and negatively so. As he put it in a piece for the Journal of Democracy titled *Europe and Azerbaijan: The End of Shame*, the Council of Europe has 'crossed over to the dark side', 'it sold its soul', later adding 'it was no great challenge for the autocratic regime of President Ilham Aliyev in Azerbaijan to paralyze this system. By capturing the Council of Europe, the Azerbaijani government managed to neutralize the core strategy of the international human-rights movement: 'naming and shaming'.'¹⁹³ The attitude of the Azerbaijani government towards the Council of Europe was perhaps best summed up in January 2013, in the debate just before the vote that would defeat Strässer's key resolution on political prisoners in Azerbaijan. Head of the Azerbaijani PACE delegation Samad Seyidov stated: "I am completely against the approach it takes to Azerbaijan, but I will still be a member of the Assembly because this is not Mr Strässer's Council of Europe; it is my Council of Europe, just as it is my Azerbaijan, as it will be forever".¹⁹⁴ Indeed, three years later Seyidov's words still ring true.

In failing to take serious action to hold the Azerbaijani government accountable for its obligations as a member state, the Council of Europe is risking more than just permanent damage to its reputation. It is also bringing into question the very point and purpose of the Council of Europe at a time when a founding member, the UK, is already considering withdrawing from the European Convention on Human Rights. Secretary-General Jagland himself has even attempted to use the critical human rights situation in Azerbaijan to appeal to the UK to stay in,¹⁹⁵ when in truth, the fact that Azerbaijan has been able to successfully subvert the body for its own political aims would be all the more reason to leave.

The Council of Europe continues to serve many important purposes in the region, not least of all through the European Court of Human Rights – which represents the only hope of justice for citizens in countries like Azerbaijan. But if the Council of Europe's existence is to continue to be justified, the body must solve not only the problem of Azerbaijan's non-compliance, but the broader problems within PACE, rooting out corruption and taking action to hold both member states and individual PACE delegates accountable for their behaviour. Otherwise the arguments in defence of the institution's usefulness in other ways will soon start to wear irreversibly thin.

¹⁸⁸ Council of Europe, Council of Europe leaves Azerbaijan human rights working group, October 2015, <http://www.coe.int/en/web/portal/-/council-of-europe-leaves-azerbaijan-human-rights-working-group>

¹⁸⁹ Council of Europe, Council of Europe launches investigation into Azerbaijan's human rights compliance, December 2015, <http://www.humanrightseurope.org/2015/12/council-of-europe-launches-investigation-into-azerbaijans-human-rights-compliance/>

¹⁹⁰ Council of Europe, Committee of Ministers adopts interim resolution on Azerbaijan, September 2015, <http://www.coe.int/en/web/portal/-/committee-of-ministers-adopts-interim-resolution-on-azerbaijan?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fportal%2Fnews>

¹⁹¹ International Partnership for Human Rights, Sport for Rights refutes PACE statement, highlights unprecedented repression during Azerbaijan's parliamentary elections, November 2015, <http://iphronline.org/sport-for-rights-refutes-pace-statement-on-azerbaijan-elections-20151102.html>

¹⁹² ARTICLE 19, Azerbaijan: Repression in Azerbaijan must stop, December 2014, <https://www.article19.org/resources.php/resource/37792/en/azerbaijan-repression-in-azerbaijan-must-stop>

¹⁹³ Gerald Knaus, Journal of Democracy, 'Europe and Azerbaijan: The End of Shame', July 2015, <http://www.journalofdemocracy.org/sites/default/files/Knaus-26-3.pdf>

¹⁹⁴ Parliamentary Assembly of the Council of Europe, 2013 Ordinary Session Report, Sixth Sitting, Wednesday 23 January 2013, <http://assembly.coe.int/Documents/Records/2013/E/1301231530E.htm>

¹⁹⁵ Thorbjørn Jagland, The Guardian, 'Azerbaijan's human rights are on a knife edge. The UK must not walk away', November 2014, <http://www.theguardian.com/commentisfree/2014/nov/03/azerbaijan-human-rights-uk-tory-echr>

The Inter-Parliamentary Assembly of the CIS: Does it have an impact on human rights in the post-Soviet space?

Dr. Rilka Dragneva¹⁹⁶

The Inter-Parliamentary Assembly (IPA) of the Commonwealth of Independent States (CIS) is the main home-grown multilateral body in the post-Soviet region with a mandate related to human rights and humanitarian issues. Since its creation, the IPA has been an active body, claiming high political visibility and international standing. Occupying the grand Tavricheskiy Palace in St. Petersburg, it has been a forum for parliamentary cooperation, resulting in a plethora of acts, including on human rights related matters, adopted by its nine member states' delegations.¹⁹⁷ Its profile has been upgraded by member states tasking it with election monitoring in the CIS region, peace-building and conflict-resolution activities as well as anti-terrorism cooperation. The IPA cooperated with international and European organisations, including the Parliamentary Assembly of the Council of Europe. This cooperation opens the potential to disseminate and promote international norms and standards,¹⁹⁸ as well as promote awareness of and international cooperation in dealing with complex transnational issues.¹⁹⁹

Yet, not unlike the CIS itself, the IPA's role can be described as tangential, trivial and largely symbolic. In relation to human rights and democratic standards, more than other areas of governance, the IPA has been largely inconsequential. Like the parliaments of its member states, the IPA has tended to follow and legitimise the predominantly authoritarian political regimes of its participants. Regionally, the IPA has reflected the existing geopolitical asymmetries in either abstaining from engaging with politically sensitive issues, or serving the objectives of the regional hegemon, Russia.

The IPA's genesis

The IPA's limited ability to make a difference in relation to human rights was largely the product of its institutional origin. Many of its weaknesses reflect the political bargaining following the domestic political and regional tensions at the time. The IPA was originally set up in 1992 as an initiative of the national parliaments which were then still the unreformed bodies elected as Supreme Soviets in 1990. Overseen by the powerful chairperson of the Russian Supreme Soviet, Ruslan Khasbulatov, the establishment of a parliamentary assembly was part of a distinct unionist agenda. Many, including the Russian President Boris Yeltsin were embroiled at the time in a battle with the *Duma*, saw it as 'bringing back from the dead' the USSR Supreme Soviet. It was only in 1995 that the IPA was explicitly included amongst the CIS bodies. This step paralleled Russia's rhetorical re-commitment to the post-Soviet space, whereby it saw regional leadership as the hallmark of its claim to a 'Great Power' status. In this sense, participating in the IPA began to be seen as an expression of the commitment to far-reaching, ambitious, Russia-led integration within the post-Soviet region. It is not accidental, for example, that membership in the IPA, achieved only in 1999, became a milestone in Ukraine's reluctant, yet prized by Russia, engagement within the CIS. This was even more the case after President Putin's arrival to power. For the Kremlin, the very existence of a regional parliamentary body has been viewed as vital in giving legitimacy to its integration projects.²⁰⁰

Institutional mandate

This genesis of the IPA had important implications. Firstly, the IPA was set up as a consultative body, that is, one with no formal power to influence domestic developments. Its core mandate was defined as the approximation of member states' legislation, seen as a necessary precondition for effective cooperation. To this effect, the IPA was empowered to be a vehicle for voluntary harmonization and its main outputs are model laws and recommendations, which member states decide whether and how to use.²⁰¹ In theory, such acts can be important for domestic legal reform and the promotion of international standards. For example, they create templates that can be referred to in domestic drafting which might not always be available, particularly to smaller and poorer member states. Yet, in practice, the IPA's recommendations have tended to remain within the august walls of the

¹⁹⁶ Dr. Rilka Dragneva is a Senior Lecturer in Law at the University of Birmingham. She has worked and published extensively in the area of legal reform, regional integration and EU's external policy with special reference to Eastern Europe and Eurasia. Their latest publication is: R. Dragneva & K. Wolczuk (eds) (2013) *Eurasian Economic Integration: Law, Policy, and Politics* (Cheltenham: Edward Elgar)

¹⁹⁷ At the moment, these are Russia, Belarus, Kazakhstan, Kyrgyzstan, Azerbaijan, Armenia, Tajikistan, Moldova, and Ukraine (which has declared its withdrawal from the CIS altogether, but not formally from the IPA). Georgia was a member of the IPA, but withdrew from it when it left the CIS in 2008.

¹⁹⁸ The European Bank of Reconstruction and Development, for example, has funded projects with the IPA for nearly two decades now.

¹⁹⁹ For example, there has been good cooperation with the OSCE and the Council of Europe in relation to human trafficking.

²⁰⁰ Indeed, Russia has sought the setting up of parliamentary bodies in its integration projects following the CIS – successfully, in the case of the Eurasian Economic Community of 2000, and unsuccessfully, in the case of the Eurasian Economic Union of 2015.

²⁰¹ The IPA has adopted about 350 model laws since 1992.

Tavrisheskiy Palace with little consequence for actual domestic policy- and law-making, typically dominated by the priorities and preferences of the often uncontested ruling elites and the interest groups backing them.

Secondly, human rights have been neither clearly nor explicitly defined, nor a core focus of the IPA. The IPA's mandate relates to the areas of cooperation that may be of member states' concern and common interest.²⁰² Yet, the definition of 'common interest' was left vague. In practice, the IPA has dealt with a wide range of matters: from investor protection to packaging waste, the status of teachers, and foreign intelligence. The selection of issues has tended to be haphazard, reflecting the priorities of its member states' parliamentary delegations or individual MPs at that time.

In effect, only a small number of model laws adopted relate directly to human rights. In the mid-1990s, attentions focussed on social and economic rights, deemed under threat by the onslaught of the market economy. In 1994, for example, the IPA adopted a Charter of Social Rights and Guarantees. Indeed, the IPA set up a permanent committee to work on issues relating to 'social policy and human rights'. This concern has been supplemented by attention to anti-corruption measures,²⁰³ and issues of counter-terrorism and transnational crime. Other than that, the IPA has maintained a low profile vis-à-vis core political rights and related rule of law matters. Its most important function in this field has related to election monitoring. According to its own data, the IPA has monitored more than 100 electoral missions and set up a dedicated International Institute for Monitoring the Development of Democracy in 2006.²⁰⁴

Ultimately, given the loosely-defined mandate of the IPA and its weak institutional setting, as with other areas of cooperation within the CIS, Russia has been able to exploit its position as a regional hegemon in steering the workings of the IPA.

Russia's prominence

Formally, all member states are equally represented in the IPA, acts are adopted by consensus and every member state's delegation has one vote. Similarly, a wide range of member states' and regional bodies can propose the adoption of an act. Equal national representation also defines the allocation of the chairmanship of the permanent committees of the IPA.²⁰⁵ In practice, however, Russia's role within the organisation has been crucial. It is notable, for example, that Russia has chaired the Council of the IPA, it has supplied its nationals as the General Secretaries of the Secretariat of the IPA Council, as well as the senior staff (Secretaries) of its permanent committees. Similarly, Russia was at the forefront of pursuing Ukraine's participation in the IPA, securing it after a complex bilateral deal.

Russia's leadership is notable when reviewing what was done by the IPA, but also by what was not done by it. It is striking, for example, that in 2014 there is no evidence suggesting any formal engagement of the IPA with the question of the Crimea or the Ukraine crisis.²⁰⁶ Despite the scale of the crisis, including the humanitarian disaster following it, the IPA maintained an obedient silence while dedicating vocal attention to causes like the promotion of the Sochi Olympics or the economic fate of Cuba.

Domestic political regime

The effectiveness of the IPA is also circumscribed by the nature of the prevalent political regimes in the post-Soviet world. These are regimes where the Executive - the Presidency in particular - is the locus of political power, with parliaments' support ensured by compliant pro-Presidential majorities. Unsurprisingly, the CIS regional institutions have replicated a decision-making system centred on the Council of Heads of State, consisting of the Presidents. Importantly, the IPA consists of member states delegations, composed of members of national parliaments nominated to be part of it. Thus, the composition of the IPA reflects that of domestic parliaments with a heavy

²⁰² Like with other bodies of the CIS, given its incremental development, the legal basis of the IPA is to be found in several founding agreements, such as the Agreement on the Parliamentary Assembly of 27 March 1992, the Charter of the CIS of 23 January 1993, and the Convention on the Parliamentary Assembly of 26 May 1995. There are some important differences in the provisions of these agreements; for example the CIS Charter refers to a long list of general areas of cooperation, whereas other documents refer more vaguely to 'areas of common interest and cooperation'.

²⁰³ For example see, the Model Laws 'On countering corruption' of 25 November 2008 and 'On anti-corruption monitoring', 28 November 2013.

²⁰⁴ See http://www.iacis.ru/international_institute/

²⁰⁵ For more on the composition and rules of procedure of the IPA, R. Dragneva, 'CIS Model Legislation', in R. Dragneva, ed., *Investor Protection in the CIS: Legal Reform and Voluntary Harmonization* (Martinus Nijhoff, Leiden/Boston, 2007).

²⁰⁶ With the exception of a general expression of concern for the victims of 20 February 2014 in Kiev,

preponderance of representatives of the ruling 'party of power'.²⁰⁷ The result has been a regional assembly that has preferred to focus on a wide range of general, yet politically uncontroversial issues.

It is notable, for example, that despite the large number of electoral monitoring missions the IPA has engaged in across the CIS region, it has tended to find elections free and transparent, often contrary to international consensus. To name just one example, while the report of the PACE observers on the October 2012 Parliamentary elections in Ukraine documented 'grave concerns' on irregularities 'liable to vitiate the whole electoral process',²⁰⁸ the IPA concluded that the elections were on the whole free, transparent and fair.²⁰⁹ Thus, at a time when the EU moved to impose democratic conditionality in the face of blatant authoritarian consolidation, the IPA served to legitimise the prevalent *status quo*.

Future Prospects

While the CIS as an organisation has become little more than a symbolic label relative to its role in the early 1990s, the IPA has remained active and visible, including in potentially fruitful international cooperation opportunities.²¹⁰ Its longevity is critically determined by the political importance Russia has attributed to the existence of a regional parliamentary body for the legitimacy of its own integration agenda. Its effectiveness as a regional hub able to promote standards and provide independent checks and balances in matters of human rights, however, is critically restricted by a weak institutional set up, whereby regional asymmetries and authoritarian tendencies prevail. This is particularly the case in a political context where key universal norms and values, including the rule of law, are easily manipulated and compromised.

²⁰⁷ For example, since 2011 the Council of the IPA is has been chaired by Valentina Matvienko, President Putin's loyal Chairperson of the Federation Council.

²⁰⁸ Council of Europe Press Release, Observers' final report: Ukraine's parliamentary elections 'marred by a tilted playing field', 30 November 2012, <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4225&lang=2&cat=31>

²⁰⁹ Statement by the Observer Mission of the Commonwealth of Independent States on the results of monitoring the preparation and conduct of elections of people's deputies of Ukraine, October 2012, <http://www.e-cis.info/page.php?id=23178>

²¹⁰ This is in marked contrast, for example, with the Economic Court of the CIS, which has become paralysed.

Vision restored? Reform of INTERPOL to strengthen protection of human rights

Libby McVeigh²¹¹

Introduction

As the world's largest international police organisation with a mandate to facilitate global police cooperation in fighting crime,²¹² INTERPOL does not exist to promote the protection of human rights. Its focus is on reducing the risks presented by serious cross-border crime and terrorism, one of its key functions being to assist in the location and arrest of criminal suspects across borders through the circulation of 'wanted person' alerts, including Red Notices and Diffusions.

While not central to its mandate, the question of how to ensure that individual rights are adequately protected in the context of INTERPOL's work cannot be avoided. The arrest, detention and extradition facilitated by the circulation of INTERPOL alerts each have clear implications for individual rights, while people sitting on INTERPOL's wanted list face restrictions on their freedom of movement, their right to employment and their ability to enjoy a family and private life, even if they are not arrested. Further, criminal justice systems are all too often employed as a means of oppression. Fair Trials has assisted peaceful activists from Azerbaijan, Russia, Tajikistan, Uzbekistan and Belarus who have sought refuge in exile from criminal charges issued to intimidate them and disrupt their work, only to become subject to INTERPOL alerts through which politically-motivated prosecutions can too easily be given extra-territorial reach.²¹³

But how does an international organisation like INTERPOL prevent itself from becoming a tool of oppression? Can it simply close its eyes to the risks, placing responsibility for human rights violations in the hands of its members, or should it keep the challenges in plain sight and put in place safeguards, however unappealing these may be to some member countries? Since the publication of Fair Trials' 2013 report, *Strengthening respect for human rights, strengthening INTERPOL*,²¹⁴ INTERPOL has recognised the need for improvements in order to enhance its ability to protect individual rights and embarked on a process of reform. This contribution provides an overview of the challenges which INTERPOL faces in relation to the protection of individual rights and the steps taken to address them, before examining the key drivers of the reform process which is currently underway.

The human rights challenge

INTERPOL has been mindful of its human rights responsibilities since the outset, with its Constitution creating relevant obligations when drafted in 1956. Article 2 affirms INTERPOL's commitment to acting 'in the spirit of the Universal Declaration of Human Rights', while Article 3 provides that 'it is strictly prohibited for the Organization (INTERPOL) to undertake any intervention or activities of a political, religious, racial or military character'. This neutrality principle keeps INTERPOL focussed on its aim 'to contribute effectively to the prevention and suppression of *ordinary law crimes*'²¹⁵ (emphasis added) while steering clear of political matters which would compromise INTERPOL's independence and in which national criminal justice systems have too frequently been employed in ways which violate international standards.

INTERPOL's Rules on the Processing of Data (the 'RPD')²¹⁶ establish further requirements which should serve to protect individual rights, through the minimum requirements set out in Article 83 of the Constitution. The *de minimis* requirements, for example, seek to ensure the proportionate use of INTERPOL's systems and any corresponding interferences with individual rights.

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²¹² Constitution of the ICPO-INTERPOL adopted by the General Assembly at its 25th session in 1956 (referred to hereafter as the Constitution), Article 2.

²¹³ For a more detailed assessment of the politically-motivated abuse of INTERPOL, see Alex Tinsley, 'Clawing back the dissident? Political abuse of INTERPOL Red Notices and Diffusions', in Foreign Policy Centre, Adam Hug (ed.), *Shelter from the Storm*, 2014, <http://fpc.org.uk/fsblob/1630.pdf>.

²¹⁴ Fair Trials International, *Strengthening respect for human rights, strengthening INTERPOL*, November 2013, <https://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL5.pdf> (referred to hereafter as *Strengthening INTERPOL*).

²¹⁵ Constitution, Article 2.

²¹⁶ INTERPOL's Rules on the Processing of Data, originally adopted at the 80th ICPO-INTERPOL General Assembly in Hanoi, Vietnam (AG/2011/RES/7), referred to hereafter as the RPD.

Despite INTERPOL's Constitution and rules appearing to address the human rights challenge adequately on paper, there are three main ways in which INTERPOL's response has not been sufficiently robust, making it vulnerable to misuse by its members. Firstly, INTERPOL's interpretation of Articles 2 and 3 of its Constitution is unclear and, in some circumstances, appears to be out of line with international standards and practice. There is no guidance on the interpretation of Article 2, with the most extensive public articulation of the approach confirming only that INTERPOL 'tries to identify those human rights standards that are relevant to its work and that are well recognized on the international level'.²¹⁷ The case of activist Nadejda Ataeva, the President of the Association of Human Rights in Central Asia who was subject to an Uzbek Red Notice from 2000 until 2015 in relation to a politically-motivated embezzlement charge supported by evidence extracted under torture, highlights the problems arising from this lack of clarity.²¹⁸

The test which INTERPOL employs to determine whether or not a case is 'political' and caught by Article 3 is similarly unclear. While international law requires an assessment of whether a criminal prosecution is politically motivated,²¹⁹ there is no published statement that INTERPOL is required to follow the same approach and there are numerous cases which demonstrate that its interpretation is out of line with that of national courts. The response to the application for deletion of an alert by Petr Silaev, a Russian anti-fascist activist, living in exile in Finland while facing prosecution by Russia for his involvement in the Khimki forest demonstrations, is illustrative.²²⁰ The request, made on the grounds of political motivation, was denied by the Commission for the Control of INTERPOL's Files (the 'CCF') despite the fact that Petr had been granted asylum by Finland and his extradition had been refused by a Spanish court for that precise reason.

Secondly, the timing and nature of INTERPOL's *ex ante* review of alerts has been subject to criticism. Despite the requirement that each alert is reviewed before publication to ensure compliance with INTERPOL's Constitution and Rules,²²¹ since 2009 the introduction of a new system aimed at increasing the speed at which data could be circulated enabled member countries to post information directly onto INTERPOL's database in draft form without prior review.²²² If the subsequent review found the alert to be non-compliant, it would be deleted, but the pitfalls of this approach were highlighted in the case of Ales Michalevic, who faced criminal charges after standing against President Lukashenko in the December 2010 elections in Belarus. INTERPOL's refusal of Belarus' request for a Red Notice did not prevent his arrest in both Poland and the United States due to his name remaining on local databases after the alert was circulated in draft form.²²³ While INTERPOL was able to identify political motivation in the case of Ales Michalevic, the information provided by member countries when requesting an alert will often be inadequate to facilitate a determination of compliance with Articles 2 and 3 of the Constitution. The nature of the inquiry conducted by INTERPOL, and particularly the evidential aspects of the review, remains unclear and therefore open to criticism.

Thirdly, INTERPOL remains outside the jurisdiction of ordinary courts.²²⁴ As such, the main avenue of recourse for individuals who wish to challenge the compatibility of a wanted alert with INTERPOL's Constitution and Rules is an application to the CCF – the internal body intended to offer an effective alternative remedy which serves to justify INTERPOL's legal immunity.²²⁵ In its current form, however, the CCF fails to offer an avenue of redress which complies with international standards of due process. Its proceedings do not ensure equality of arms (not providing the defence with access to all information to facilitate a fair hearing) and are characterised by significant delays. Azer Samadov, an Azerbaijani political activist granted refugee status by UNHCR having fled his home country after supporting the anti-Aliyev opposition movement in the run up to the 2003 presidential elections, waited five years

²¹⁷ Chatham House, Policing INTERPOL, December 2012, www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/051212summary.pdf, p. 6.

²¹⁸ For further detail, see <https://www.fairtrials.org/cases/nadejda-ataeva/>.

²¹⁹ For a fuller analysis, see *Strengthening INTERPOL*, pp. 29-33.

²²⁰ For further detail, see *Strengthening INTERPOL*, pp. 60-61, and <https://www.fairtrials.org/cases/petr-silaev/>.

²²¹ Article 86, RPD.

²²² A more detailed description of the 'i-link' system is available in *Strengthening INTERPOL*, p.14.

²²³ For further detail, see *Strengthening INTERPOL*, p. 40-41.

²²⁴ See Rutsel Martha, Challenging Acts of INTERPOL in Domestic Courts, in Reinisch, August (Ed.). 2010. Challenging Acts of International Organizations before National Courts. Oxford: Oxford University Press.

²²⁵ As more fully elaborated in paragraph 182-185 of *Strengthening INTERPOL*, the principle that an individual must have access to a remedy for rights violations has led to acceptance that national courts can only decline to adjudicate claims against international organisations if the affected individual has access to a remedy within the organisation. The *Kadi* judgments of the Court of Justice of the European Union provide a well-known elaboration of this principle: Joined Cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakat International Foundation v Council and Commission [2008] ECR I-6351 and Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Commission v Kadi [2013] ECR I-0000.

for the CCF to determine that the Red Notice which Azerbaijan had published against him was politically motivated.²²⁶ Further, CCF decisions when reached are neither reasoned nor published, and there is no right of appeal for individuals or member countries who wish to raise challenges.

INTERPOL in reform mode

In response to the challenges outlined above, INTERPOL has entered into a 'reform mode', with its Secretary General Jürgen Stock recently urging the General Assembly to 'be ambitious' and 'work together to shape a powerful reform agenda'.²²⁷ Stock's rally cry was certainly not limited to plans to improve the protection of human rights, but four positive steps taken recently demonstrate INTERPOL's commitment in this regard.

Firstly, INTERPOL has reasserted control over the data which is published on its databases. In March 2015, Jürgen Stock confirmed that changes to the review process have now been instituted to ensure that alerts are not visible to other National Central Bureaus (NCBs)²²⁸ until they have been reviewed by INTERPOL.²²⁹ This represents a significant procedural improvement, providing the opportunity for INTERPOL to identify human rights concerns before information is circulated to all member countries.

Secondly, in February 2015, guidance was issued confirming that Red Notices and Diffusions will not be published in relation to individuals with refugee status granted to protect them from persecution in the country which has requested publication of the alert.²³⁰ This reform was implemented quickly, with a number of people who had languished for some time on INTERPOL's databases – including Nadejda Ataeva and Azer Samadov – finally being released from the chains of INTERPOL alerts. A straightforward policy to apply this reform provided the relevant documentation and verification can be obtained, it has been accompanied by reform to CCF practice so that decisions have been made uncharacteristically fast in response to fresh applications.

A third significant development was the decision by the General Assembly in November 2014 to amend the RPD to require the preparation of a repository of practice on Article 2 of its Constitution.²³¹ No updates have been published to date, but it is encouraging that representatives of INTERPOL agreed to meet with members of the UN Committee against Torture (UNCAT) in December 2015 to discuss issues relating to the risk of *refoulement* and reliance on torture evidence.²³²

Finally, INTERPOL has tasked an internal working group (the GTI) with a comprehensive review of INTERPOL's data processing at all levels, including an assessment of the role and procedures of the CCF.²³³ With over 60 participants from 30 member countries participating, the GTI met for the first time in July 2015. Preliminary findings reported to the General Assembly in November 2015 which subsequently passed a resolution²³⁴ urging member countries to provide information promptly to the CCF to enable it to reach decisions in a timely manner and requiring the development of 'specific proposals for possible procedural improvements'. The development of these proposals is now underway and it is anticipated that these will be presented to the General Assembly for adoption at the end of 2016.

In her speech to the General Assembly in November 2015, CCF member Drudeisha Madhub suggested that 'there is no reason why INTERPOL (...) cannot be at the forefront of addressing issues of basic human rights (...), while maintaining its fight against international crime',²³⁵ and the progress which INTERPOL has made in addressing concerns relating to the protection of individual rights in the context of its work has certainly been promising. But a number of challenges do still remain, not least in ensuring that the proposed reforms of the CCF bring its

²²⁶ For further detail, see <https://www.fairtrials.org/cases/azer-samadov/>

²²⁷ Jürgen Stock, INTERPOL Secretary General, Directional Statement at 84th INTERPOL General Assembly Session, 2 November 2015.

²²⁸ The division of the police, or other investigative service that acts as the national contact point for all INTERPOL related activities.

²²⁹ Fair Trials, INTERPOL confirms reforms at meeting with Fair Trials, 16 March 2015, <https://www.fairtrials.org/press/interpol-continues-constructive-dialogue-with-fair-trials-international/>.

²³⁰ The policy (IPCQ dated 18/02/2015 (LA/ 51489-4/5.1)) has not been formally published by INTERPOL, but has been shared with Fair Trials and is available at <https://www.fairtrials.org/wp-content/uploads/INTERPOL-TEXT-ON-REFUGEE-POLICY.pdf>.

²³¹ Resolution No. 18, AG-2014-RES-18, Amendments to INTERPOL's Rules on the Processing of Data.

²³² Fair Trials, Fair Trials and REDRESS organise expert meeting of the UN Committee against Torture and INTERPOL, 18 December 2015, <https://www.fairtrials.org/press/fair-trials-and-redress-organise-expert-meeting-of-the-un-committee-against-torture-and-interpol/>.

²³³ Resolution No. 19, AG-2014-RES-19, INTERPOL's supervisory mechanisms concerning the processing of data in the INTERPOL Information System.

²³⁴ Resolution No. 9, AG-2015-RES-09, Supplementary measures associated with the processing of notices and diffusions.

²³⁵ 2015 General Assembly, Speech by Mrs Drudeisha Madhub (CCF member), 4 November 2015.

procedures in line with international standards. A further challenge arises from INTERPOL's status as an organisation without a human rights mandate which must, nonetheless, engage in human rights assessments. With a limited ability to develop institutional knowledge of the human rights situations in different member countries, there is a question which has yet to be adequately addressed on what information INTERPOL could and should obtain and rely upon when making such decisions. This was one of the issues which INTERPOL representatives discussed with the UNCAT, with the development of information-sharing practices with UN human rights bodies being one potential solution.

Drivers of reform

Given the promising progress which INTERPOL has made in addressing human rights-related criticisms of its work, an analysis of the drivers – both internal and external - of the reform initiatives outlined above may prove instructive for organisations facing similar challenges. In terms of internal drivers, the protection of the legal immunity which INTERPOL enjoys is a key factor. In order to remain outside the jurisdiction of national courts, INTERPOL must offer an effective remedy which meets essential guarantees of procedural fairness. It follows that while the CCF fails adequately to fulfil this role, INTERPOL's immunity will remain under threat. In recognition of this Jürgen Stock recently informed the General Assembly that the GTI 'will help build a more robust system that will ensure compliance with international standards and consequently provide increased protection to the Organization from litigation'.²³⁶ In a year when its Secretary General also reminded members about the financial deficit faced by INTERPOL when he assumed office and a forthcoming increase to statutory contributions by member countries of 3 per cent,²³⁷ it is perhaps unsurprising that a desire to avoid financial liability has proven to be a strong motivation for reform.

But the internal drivers are not purely financial. The success of INTERPOL depends on member countries placing trust in its systems; criticisms made, both implicit and explicit, by international organisations,²³⁸ representatives of national governments,²³⁹ and domestic courts²⁴⁰ in recent years demonstrate that reputational risk is certainly one which INTERPOL is right to take seriously. Stock's decision to conclude INTERPOL's relationship with FIFA (from which his predecessor had accepted a €20million donation for a campaign to tackle match-fixing in 2011,²⁴¹ only four years before news of FIFA's own corruption scandal broke²⁴²) was explained by the need to protect INTERPOL from 'taking decisions that pose a high reputational risk', emphasising that the trust of member countries is key to INTERPOL's ability 'to face every single challenge on the way to strengthening police cooperation'.²⁴³

International pressure has almost certainly played a role in encouraging INTERPOL to take action. Media coverage of the misuse of INTERPOL's systems has increased since 2013, with individual cases demonstrating compelling examples of the deficiencies in INTERPOL's systems proving a powerful ingredient in the narrative.²⁴⁴ In addition to media scrutiny, INTERPOL has also been examined by international and regional bodies, particularly within Europe.

²³⁶ Jürgen Stock, INTERPOL Secretary General, Directional Statement at 84th INTERPOL General Assembly Session, 2 November 2015.

²³⁷ *Ibid.*

²³⁸ Vincent Cochetel, Deputy Director of the division of International Protection Services, UNHCR stated in 2008, while discussing issues which undermined international protection, that "UNHCR is also confronted [with] situations whereby refugees ... when travelling outside their country of asylum ... are apprehended or detained, due to politically-motivated requests made by their countries of origin which are abusing of Interpol's 'red notice system'. Such persons are often left without access to due process of law, and may be at risk of refoulement or find themselves in 'limbo' if they are unable to return to their country of asylum", <http://www.refworld.org/pdfid/4794c7ff2.pdf>.

²³⁹ In June 2013, following an embarrassing situation in which the Australian authorities relied upon information in an INTERPOL Red Notice which was later found to be incorrect, the Australian Immigration Minister, Brendan O'Connor, commented that the Australian police must examine the veracity of Red Notices because quite often the claims within them "are found to be wrong". See The Age, Interpol notices 'often wrong': Minister contradicts AFP, 17 June 2013, <http://www.theage.com.au/federal-politics/political-news/interpol-notices-often-wrong-minister-contradicts-afp-20130617-2oe86.html>.

²⁴⁰ For example, in 2010, a Canadian Federal Court judge warned against treating a Red Notice as conclusive for the purpose of excluding a person from refugee status pursuant to Article 1F(b) of the 1951 Convention relating to the Status of Refugees due to doubts casted on its content. See *Rihan v. Minister of Citizenship and Immigration* [2010] FC 123.

²⁴¹ See <http://www.fifa.com/governance/news/y=2011/m=5/news=fifa-historic-contribution-interpol-fight-against-match-fixing-1431884.html>.

²⁴² See, for example, Josh Halliday, Fifa corruption arrests: key questions answered, The Guardian, 27 May 2015, <http://www.theguardian.com/world/2015/may/27/fifa-corruption-arrests-key-questions-answered>.

²⁴³ Jürgen Stock, INTERPOL Secretary General, Directional Statement at 84th INTERPOL General Assembly Session, 2 November 2015.

²⁴⁴ See, for example, The Editorial Board, The Misuse of Interpol's Database, New York Times, 11 November 2015, <http://www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html>; Jake Wallis Simons, Inside INTERPOL, BBC Radio 4, 15 June 2015, <http://www.bbc.co.uk/programmes/b05xx8hy>; Ida Karlsson, Interpol accused of undermining justice, Al Jazeera, 20 March 2014, <http://www.aljazeera.com/humanrights/2014/03/interpol-accused-undermining-justice-201432010467639126.html>. Kathy Lally, Fair Trials International group urges reforms for Interpol arrests, The Washington Post, 29 November 2013, https://www.washingtonpost.com/world/europe/fair-trials-group-urges-interpol-arrest-reforms/2013/11/29/46892a20-590c-11e3-bdbf-097ab2a3dc2b_story.html.

The Organisation for Security and Cooperation in Europe (OSCE) Parliamentary Assembly has issued calls for reforms to INTERPOL in recent annual declarations²⁴⁵ and the UN Special Rapporteur on Human Rights Defenders has contributed to the work of the GTI. In response to questions from the European Parliament, the European Commission has agreed to engage in a dialogue with INTERPOL on these issues and to contribute to its work in the field of data protection through a survey of all EU Member States which was circulated at the end of 2015.

Finally, in October 2014, the Committee on Legal Affairs and Human Rights (the Committee) of the Parliamentary Assembly of the Council of Europe resolved to produce a report – *Abusive use of the Interpol system: The need for more stringent legal safeguards* – under the rapporteurship of German MP Bernd Fabritius.²⁴⁶ The process by which the Committee agreed to produce a report on this matter was far from smooth, with certain delegations lobbying (albeit unsuccessfully) against the motion and arguably demonstrating self-interest in maintaining the status quo with INTERPOL poorly placed to identify political misuse. Having met with representatives of INTERPOL in October 2015, the rapporteur plans to finalise the report for adoption within the first half of 2016, which should serve to maximise the pressure particularly on the GTI to propose effective reforms of the CCF and plug the justice gap which exists due to current procedural flaws.

Conclusions

As an organisation focussed on facilitating international police cooperation, INTERPOL has arguably never been blind to the human rights obligations which accompany its work, with constitutional commitments providing a guiding light. It is certainly fair to say, however, that its vision in this regard has been impaired by institutional ambition in a context of increasing global insecurity, making it vulnerable to manipulation by member countries using the ‘wanted person’ alert system as yet another tool of oppression against opponents. Despite not existing to promote human rights protection, INTERPOL is notable for adopting a pragmatic approach, recognising that both its credibility and immunity will be threatened by a failure to take concrete steps to address concerns which have been raised by individuals, civil society and the international community. While challenges remain, INTERPOL has implemented much-needed reforms and the impact for individuals whose rights had previously been undermined by the existence of Red Notices is already providing significant. 2016 remains a key year, however, during which we will witness the reform agenda being finalised and the extent to which INTERPOL’s vision has been fully restored will become clear.

²⁴⁵ See, for example, the Istanbul Declaration and Resolutions adopted by the OSCE Parliamentary Assembly at the 22nd Annual Session, 29 June to 3 July 2013, <http://www.parlament.ch/e/organe-mitglieder/delegationen/parl-versammlung-osze/Documents/osce-istanbul-declaration-2013-e.pdf>, paragraphs 146-157.

²⁴⁶ See Motion for a Resolution, Abusive use of the Interpol system: the need for more stringent legal safeguards, 2 July 2014, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21096&lang=en>.

To ensure its universality, the UN must address the worrying situation of human rights defenders in Eastern Europe

Florian Irminger²⁴⁷

The United Nations (UN) has just marked 70 years since its inception, and this landmark year has brought much reflection on the functioning of its institutions. In 2016, a new UN global development agenda will enter into force and a new Secretary General will be appointed. But what about human rights – one of the three core pillars of the UN?²⁴⁸ The UN Human Rights Council, now in its 10th year, is entrusted to universally promote and protect human rights, but events in European countries in recent years have called into question the universal nature and effectiveness of the HRC, specifically its motivation and ability to address human rights in Europe. For example, the UN has been inaudible in its reaction to Russia's clampdown on civil society, the media and opposition, and it failed to react effectively to Euromaidan in Ukraine and other rapid developments in Eastern Europe.

This essay will examine the UN's effectiveness in promoting and protecting civil and political rights in Europe. It will also consider the UN's inconsistent approach in addressing human rights concerns and how independent voices and UN rapporteurs have struggled to engage with governments in the region.

The Human Rights Council's inability to address human rights abuses in Europe

The Human Rights Council (herein referred to as the Council) was established to act as the UN's political tool to address human rights violations, next to the treaty bodies. The UN was founded on the principle of universality, but it has failed in 10 years to credibly assess situations developing in Europe – which is directly related to the lack of balance of the composition of the Council, politically directed actions that have motives other than to hold parties to their human rights obligations, and a lack of willingness from many stakeholders to put human rights violations in a European country on the UN agenda.

The effectiveness of the Council is undermined by the uncompetitive, political process to elect states to the Council, and the subsequent composition of the Council to include states with dubious-to-dire human rights records. The late Václav Havel addressed the situation in 2009, at the time questioning the candidacies of Azerbaijan, China, Cuba, Russia, and Saudi Arabia.²⁴⁹ Excluding Azerbaijan, these states hold seats on the Council today.

The Eastern European Group (EEG)²⁵⁰ has notably avoided presenting a candidate to run against the Russian Federation. Inevitably, on 12 November 2013, Russia was among the 14 States elected. Why have none of the European Union member States from the EEG dared stand in the election against Russia? The EU will have a chance to challenge Russia's re-election at the end of this year, as its three-year term ends.

In November 2013, Ukrainian police responded violently to protests in Kyiv's Maidan Nezalezhnosti (Independence Square), resulting in wider mass protests in December 2013. Soon after, more than a hundred people were shot in the streets and mass violence erupted in Kyiv, leading to President Viktor Yanukovich leaving Ukraine and ultimately the presidency. The UN was slow to respond, with its first reaction to Euromaidan coming in a statement on 21 January 2014, in which the High Commissioner for Human Rights called on 'all parties to exercise restraint',²⁵¹ but made no mention of the excessive use of violence and provocation by police – even as information was available on the now infamously brutal Berkut units.²⁵² This statement followed Ukraine's adoption of repressive legislation aimed at a 'complete restriction of fundamental rights' on 17 January 2014.²⁵³

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²⁴⁸ UN, The Three Pillars of the United Nations, <http://www.un.org/un70/en/content/videos/three-pillars>

²⁴⁹ Václav Havel, A Table for Tyrants, The New York Times, 11 May 2009, nytimes.com/2009/05/11/opinion/11havel.html

²⁵⁰ The Eastern European Group is one of the five unofficial regional groups in the United Nations, as established in 1966. The group is today composed of 23 members, the Russian Federation, Eastern European States, former soviet republics, and countries in the Balkans. EU members are divided between the EEG and the Western European Group.

²⁵¹ UN High Commissioner for Human Rights Navi Pillay press release, New laws could seriously curtail fundamental human rights in Ukraine, 21 January 2014, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14187&LangID=E#sthash.oM6AUh4H.dpuf%20%20

²⁵² HRHN, The Berkut riot police used excessive force against peaceful protesters, 9 January 2014, <http://humanrightshouse.org/Articles/19903.html>

²⁵³ HRHN, Complete restriction to fundamental rights in Ukraine, 17 January 2014, <http://www.humanrightshouse.org/Articles/19918.html>

The second UN reaction came on 19 February 2014 following the death of 22 protestors in Kyiv.²⁵⁴ While condemning the killings, the High Commissioner urged 'the Government and protestors to act to defuse tensions and to take swift action to find a peaceful solution to the on-going crisis.'²⁵⁵

These statements do not encourage UN action, and in this they case failed to have any impact on the unfolding situation. Clear and timely UN condemnation of police violence should have come; this could have helped to stem the violence.²⁵⁶ The UN said even less in its response to Russia's invasion of Crimea and the human rights violations that came straight after.

HRHN's intervention at the Human Rights Council on 7 March 2014 asked the High Commissioner to document the work relating to Euromaidan undertaken by the UN's team in Ukraine, a team which was already quite strong at the time and included a human rights presence. HRHN expressed regret that 'the High Commissioner's Office has not been more proactive in Ukraine,' and called on the Office to 'establish a rapid response in the context of protests.'

The Council itself adopted a resolution on cooperation between the UN and Ukraine. This did not reference the obligations of Ukraine to investigate the Euromaidan violence and hold those guilty accountable, and it made little reference to the structural reforms needed. Significantly, the resolution was led by Ukraine and simply signed off by its international partners in the West; other resolutions and statements have since been made by the Council in the same manner. This process reflects a complete misuse of the Council, which should base its resolutions on UN reporting and other sources. This resolution was not adopted to hold Ukraine and non-State actors in Ukraine to their human rights obligations in the aftermath of the Euromaidan crisis, but rather as a tool by European countries to show political support to Ukraine.

In Belarus, in contrast to the approach taken in Ukraine, the EU attempted to use the Human Rights Council for its designed purpose: to uphold human rights. This attempt followed election-night violence in December 2010, which saw mass arrests – including seven presidential candidates – and subsequent repression of civil society, media, and political activists. In June 2011, the EU requested that the High Commissioner report on the situation. In June 2012, following the conclusions of the report, the EU pushed for the UN to mandate an independent expert to monitor the human rights situation in Belarus, to cooperate with Belarusian civil society and to prevent further human rights abuses.

This mandate was established but saw resistance from the Office of the High Commissioner, which argued that Belarus would in any case not cooperate on civil and political rights – the main focus of the rapporteur. The local UN presence in Belarus under the leadership of the Resident Coordinator²⁵⁷ has been unwilling to support the mandate, showing the same disregard and ignorance as the Belarusian government. Worse still, the UN accompanied Sanaka Samarasingha's nomination as the new UN Resident Coordinator to Belarus with a statement expressing 'hope that the cooperation between the UN and Belarus will continue to develop successfully.'²⁵⁸

In Geneva, the EU raised the situation of Belarus at the Council, hoping for more involvement from countries from other regions. Such support never came, just as it never came for the resolutions and statements on Ukraine. Every resolution on Belarus and Ukraine has been adopted with a high level of abstentions from states outside the European groups, suggesting issues arising in Europe are not a matter of preoccupation for non-European States. Diplomats in Geneva representing some African States, as well as smaller Latin American States, who do not necessarily have diplomatic representations in concerned European countries, often invoke that they lack

²⁵⁴ HRHN, Ukraine government must stop use of violence, 31 January 2014, <http://humanrightshouse.org/Articles/19937.html>

²⁵⁵ UN High Commissioner for Human Rights Navi Pillay press release, Ukraine crisis: Pillay sends urgent call for restraint after deadly clashes in Kiev, 19 January 2014, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14261&LangID=E#sthash.K4fz9Kc0.dpuf>

²⁵⁶ HRHN issued a joint letter to President Viktor Yanukovich, on 3 December 2013 calling on him to immediately revoke measures aimed at using force against protestors, to release all detained protestors and journalists, and to ensure that relatives of injured and arrested protestors and journalists are informed of their situation. A copy was sent to the Office of the High Commissioner. Letter available at humanrightshouse.org/Articles/19816.html

²⁵⁷ The Resident Coordinator System encompasses all organisations of the United Nations system, regardless of their formal presence in the country. The positions of Resident Coordinator are funded and managed by the United Nations Development Programme. The Resident Coordinator is hence the UN's representative in the country.

²⁵⁸ United Nations Development Programme press release, New UN Resident Coordinator/UNDP Resident Representative presented his credentials to the Prime Minister of Belarus, 13 May 2013, www.by.undp.org/content/belarus/en/home/presscenter/pressreleases/2013/05/13/new-un-resident-coordinator-undp-resident-representative-sanaka-samarasingha-presented-his-credentials-to-the-prime-minister-of-belarus-mikhail-myasnikovich.html

information on the situation to be able to offer a position to their capitals. The truth, however, is that they are unwilling to stand up to Russia in particular.

These examples illustrate the difficulty of raising human rights violations at the political level within the UN when they concern a European country, and demonstrate the lack of willingness from many sides – the UN itself, European States, and States from other regions – to put human rights violations occurring in Europe on the agenda of the UN.

The Council is, in general, reluctant to examine country situations. As observed by the Universal Rights Group, 'the Council has consistently prioritised discussion of general thematic issues over addressing country-specific human rights situations.'²⁵⁹ The Group documents that 55 per cent of the resolutions adopted since the Council's creation have been on general thematic issues, while country-specific resolutions account for just 7 per cent.

This phenomenon is even more prominent when it comes to European countries, and advocacy of human rights groups on European countries is often countered by the argument that these States are members of the Council of Europe and that Strasbourg must take care of the problems – often ignoring that Belarus is not a member of the Council of Europe.

These issues shatter the belief that, as Yvonne Terlingen put it, the Council is an opportunity for a 'new era' in human rights marked by less double-standards and politics.²⁶⁰

The reluctance of the Council to focus on country-specific issues is also reflected in UN Special Procedures, in which mandates are largely established on thematic issues rather than country situations. The vast majority of non-EU states refuse on principle to support country mandates, declaring them intrinsically politicised. European states tend to take one of three approaches to Special Procedures: they reject, pretend to collaborate, or truly collaborate.

Rejectionists simply do not cooperate with the mandates they dislike, as is the case with Belarus, or they feign cooperation with all mandates but manoeuvre to ensure this never materialises - the approach taken by Azerbaijan. Azerbaijan has been officially thanked for extending an invitation to Maina Kiai, UN Special Rapporteur on the rights to peaceful assembly and association in his statement on 30 May 2013 at the Human Rights Council. However, it appears the mandate holder has never visited Azerbaijan and indeed could not agree on a date with the Azerbaijani government.

Ceremonial collaborationists pretend to collaborate with Special Procedures, and may even invite mandate holders for official country visits. They ignore the recommendations of Special Procedures and ensure they have no effect on the ground or on policy. In Armenia, for example, the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, visited the country in 2010 and reported that 'human rights defenders operate in a difficult environment in Armenia,'²⁶¹ and offered a set of recommendations to improve the situation. However, years later, NGOs are still harassed and human rights defenders are verbally and physically attacked when raising issues considered delicate, such as gender equality²⁶² or LGBTI rights.²⁶³

True collaborationist states use Special Procedures as tools to improve their policies. States' engagement with special procedures illustrates their willingness – or lack thereof – to truly implement UN human rights recommendations at home.

Our experience is also that the United Nations itself, in various countries, does not push for human rights issues to be raised. It can even be a force against the promotion of human rights on the ground, as is the case in Belarus. For

²⁵⁹ Marc Limon and Subhas Gujadhur, The Human Rights Council at 10: Too much talk, too little action?, 27 March 2015, www.opendemocracy.net/openglobalrights/marc-limon-subhas-gujadhur/human-rights-council-at-10-too-much-talk-too-little-acti.

²⁶⁰ Yvonne Terlingen, The Human Rights Council: A New Era in UN Human Rights Work?, *Ethics & International Affairs*, 2007, Volume 21.2, pages 167-178

²⁶¹ United Nations Special Rapporteur on the situation of human rights defenders Margaret Sekaggya, Report to the Human Rights Council, Mission to Armenia, 23 December 2010 (UN Doc: A/HRC/16/44/Add.2), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add2.pdf>

²⁶² The smear campaign and attacks against the Women Resource Centre in 2013 serve as another example, <http://humanrightshouse.org/Articles/19558.html>

²⁶³ PINK Armenia, US Ambassador, UN, and Frontline Defenders condemned the harassment of Armenian LGBTI community, <http://www.pinkarmenia.org/en/2015/11/us-un-frontline>

example, for Belarus's second review at the Universal Periodic Review (UPR), the Office of the UN Resident Coordinator in Belarus organised training for civil society, but invited only NGOs legally registered in Belarus.²⁶⁴

The largest domestic human rights organisation, Viasna, could not participate, and the organisation's chairperson, Ales Bialiatski, was until recently detained. In its decision of 24 July 2007,²⁶⁵ the United Nations Human Rights Committee considered the dissolution of Viasna as a violation of the right to freedom of association, and supported Viasna's right to be re-registered.²⁶⁶ This is a ludicrous situation in which a UN legal body, acting under an instrument ratified by the concerned State,²⁶⁷ is not even respected by the UN's own representation in the country. This *de facto* excluded international actors working on Belarus – whereas, in such a closed country international engagement is essential – as well as domestic NGOs who are banned from public life by Belarusian legislation.

The UPR places a country at the centre of the Council agenda and extends UN participation to local NGOs. Whether the UPR can over time become a tool to scrutinise human rights records of European countries will depend on the political will of all states to raise those human rights concerns. Low engagement from non-European countries, use of the UPR as a praising process rather than as a critical platform and a lack of ability and willingness to implement recommendations at home are some of the elements one would need to look into in more detail.

In the countries mentioned, space for civil society is indeed shrinking and the environment is increasingly dangerous for human rights defenders. This is further not helped by the poisonous combination of the UN not expecting enough when it comes to civil and political rights from European countries, European countries not receiving enough attention from Special Procedures, and European countries not doing enough to raise developments in other European countries at the UN.

²⁶⁴ Source on file with the authors.

²⁶⁵ See Belyatsky et al. vs. Belarus on the communication No. 1296/2004 of 24 July 2007, UN Human Rights Committee, August 2007.

²⁶⁶ More information in HRHN submission on the implementation of the Human Rights Committee's view of 24 July 2007, <http://humanrightshouse.org/Articles/11201.html>

²⁶⁷ The Republic of Belarus ratified the Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966 on 30 September 1992.

Lending, governance and emerging markets: Challenges and responses

Charles Hecker²⁶⁸

Multilateral financial institutions face important challenges when lending to countries that are opaque, deficient in corporate governance or subject to authoritarian rule. These challenges make it difficult to promote and sustain the goals of most multilateral banks – the promotion of democracy, market economics, human rights and transparency.

Some of the primary difficulties include the level of commitment to integrity and social/human rights due diligence, competition between public and private lenders, and debtors' ability to bring about change. Finally, when recipient jurisdictions emphasise form over substance in global business surveys, it is difficult to measure progress on reforms.

These issues are particularly acute in Russia and the CIS. Since the collapse of the Soviet Union and the introduction of market economies (however distorted), this part of the world has seen the proliferation of deceptive mechanisms – broadly called 'grey practices' – designed to skirt the law and mask fraudulent or corrupt transactions.

The former Soviet space is also known, though not exclusively, for the role that family groupings play in controlling key sectors and assets. Cast your mind back: The Yeltsin administration in Russia was openly called 'The Family'. More recently, the circle of relatives and close associates around deposed Ukrainian President Viktor Yanukovich carried the same moniker. The Central Asian Republics are no exception, with presidential family members playing particularly prominent roles in the economic lives of Uzbekistan and Kazakhstan. The ties in Russia and the CIS are not all familial. Business clans based on regional alliances, industry sector or ethnic affinity also play a role in how economies are governed.

While these practices are most prominent on the national level, they are repeated on regional and local levels. The blurring of public and private in the post-Soviet space, and the financial and administrative mechanisms used to disguise it, are a significant source of risk in development lending.

Integrity and social/human rights due diligence

Where the due diligence process is taken seriously, lending supports development goals more closely. Where due diligence is treated as a formality, development goals are harder to sustain. Internal and external pressures on the lending institution will determine how well the process works.

Renewed global regulatory pressure means that the attention to due diligence – who are we lending to and what risks do they pose? – is higher than ever. The US Foreign Corrupt Practices Act is newly invigorated and aimed at key sectors in Russia and the CIS. The newer, but stricter, UK Bribery Act not only seeks to root out corruption at home and abroad, but also punishes organisations that fail to prevent corruption.

Still, in the face of this regulatory dynamism, the application of due diligence remains inconsistent. Many public and private institutions see due diligence at best as a chore. At worst, they see it as a revenue-destroyer. In the public sector, due diligence tends to receive a higher degree of consideration, as it helps safeguard against the abuse of public funds.

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This attitude towards due diligence points to one of the primary tensions accompanying almost all lending decisions: incentive to de-emphasise potential integrity obstacles to earning a return on a loan portfolio. To a degree, this is counter-intuitive – there should be an incentive to expose risks prior to deciding to lend. The problem is that corruption, human rights violations and other social risks – if or when they are exposed – are not always seen as potential barriers to loan performance.

In proactive private institutions, due diligence is deployed as an effective risk management tool that helps safeguard against the abuse of funds. Institutions with best-practice due diligence programmes are better proponents of economic and social reforms, even when lending into complex environments, including authoritarian regimes. Thorough due diligence helps lenders sidestep organisations that are corrupt, represent hidden interests of the political elite or violate human rights. As part of this process, development banks will avoid politically sensitive sectors or activities, thus minimising their exposure to ruling elites and reducing the likelihood they will engage with the activities of one or another elite clan.

There are additional internal pitfalls. Multilateral lending agencies – or camps within them – can use personal and informal influence to override controls on preferred transactions, moving difficult deals through the approvals process without full due diligence. Compensation schemes may incentivise bankers to promote transactions without regard for social risks.

In the private sector, individual transactions can also be politicised, either by pressure from the potential client and its related parties or by internal pressure to achieve commercial targets. In other words, where the business development and regulatory function are not aligned (and where business development takes the lead), proper due diligence is often the victim.

There are external challenges to effective due diligence as well. Countries with poor corporate governance have little incentive to improve. Vested interests, including those in the political elite, benefit from weaknesses in corporate governance and disclosure laws. Without a clear public record of beneficial company ownership, for example, even a rigorous due diligence programme will encounter difficulty. Additionally, if lending and enhancement in governance by the debtor are not rigorously linked, incentive to change fails.

Moreover, authoritarian regimes are fertile breeding grounds for corrupt practices, in at least two respects. First, the regime itself will use corrupt practices to mask the commingling of private and public funds or the diversion of public funds in the conduct of business. The use of “administrative resources,” a euphemism to describe the power of incumbency, will also be used to direct economic development to favoured circles.

Second, even honest private sector players may use legally questionable business practices to sidestep the punitive and arbitrary regulatory regimes typical of authoritarian countries. In doing so, they of course expose themselves to regulatory or law enforcement action, thus raising the overall risk profile in the economy. Among these practices include the use of ‘one-day companies’ created and liquidated specifically to conduct a specific corrupt transaction, the use of various schemes to extract cash from businesses and the widespread use of companies registered in low-disclosure jurisdictions to hide beneficial ownership.

The lack of clear international law – particularly in the area of human rights – further complicates due diligence. In the absence of legislation, multilateral lenders must create their own rules, adhere to international principles or rely on a countries’ human rights legislation, where it exists (generally speaking, the UN Guiding Principles for Business and Human Rights are considered the gold standard).²⁶⁹ Each of these options is fraught with challenges. International lenders come in for criticism, some of it harsh, for shortcomings in human rights standards in their lending activities.²⁷⁰ Most development banks will espouse a policy of ‘engagement’ when dealing with countries with controversial human rights records. They will argue that this approach encourages integration with the international community. Isolation, they will say, offers no promise for change.

²⁶⁹ United Nations, Guiding Principles on Business and Human Rights, 2011 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²⁷⁰ Human Rights Watch, World Bank Ducking Human Rights Issues: Billions for Development, but Lack of Safeguards Undermines Benefits, July 2013, <https://www.hrw.org/news/2013/07/22/world-bank-ducking-human-rights-issues>

Make no mistake: many institutions conduct thorough due diligence and adhere both to the letter and the spirit of anti-corruption, anti-money laundering and other regulatory requirements. After all, almost everyone now knows that doing business with authoritarian regimes and their cronies carries an elevated level of risk. Not taking even basic precautions under these circumstances is no longer acceptable.

The prominence of multilateral organisations; Competition between public and private lenders

The multilateral banks' ability to bear higher levels of risk once made them organisations of first resort for lending into complex or transition economies. That said, not all of them immediately embraced some of the more difficult aspects of lending into difficult jurisdictions. Tackling corruption was initially seen as too politically sensitive for some development banks. Addressing human rights issues, for example, is a recent addition to the World Bank's agenda.²⁷¹

Working to social and economic – as well as a commercial – agendas is not easy for the partners of multilateral banks. The conditions attached to multilateral loans are an additional cost of doing business²⁷², albeit one which debtors sometimes accept. Admission to the ranks of approved banking partners is broadly seen as a seal of approval for debtors and their projects.

Multilateral banks are no longer the only option on the market. Recent trends in development lending include increased competition among development banks and nation-state entrants into development lending, including China and India.

The private sector, too, has entered the market for loans to transitional economies, supported by the availability of political risk insurance. According to one survey, foreign direct investment has been the greatest source of replacement funds in the face of declining public sector development assistance.²⁷³

Private lending policies, however, lack specific social or political development goals or requirements. Private lenders will undertake to comply with, including anti-corruption, anti-money laundering and anti-slavery legislation. But their lending practices will not mirror the specific development goals of the public sector.

The growth of private lending into emerging markets has the potential to undermine the goals of development banks. While integrity concerns rank high – perhaps higher than ever – in the private sector, they do not receive the same emphasis as in multilateral organisations. Borrowers are more inclined to seek money with fewer social strings attached, even if that implies paying a private sector premium. Observers at the World Bank note that 'where financial resources are provided by sources other than the World Bank Group, strict adherence to environmental and social safeguard measures may not be a precondition for disbursement'.²⁷⁴

All is not lost. Austerity and related cutbacks to overseas development has placed additional emphasis on the 'results, transparency and value for money' of lending into low- and middle-income countries and transition economies.²⁷⁵ This comment comes in connection with traditional aid donors (the UK Department for International Development and the US Agency for International Development, for example) but also applies to multilateral banks.

Multilateral lenders may not be able to save the world. But they are not the only parties responsible for keeping deals clean in opaque countries. That said, debtors – the companies that accept development funding, be it from a private bank or a public lender – can't and won't change the world, either. Lending money to an enterprise – even a large one – on its own is not going to transform the economy of the recipient country. In fact, the narrative within the multilateral lending community points toward an urgent requirement for constant monitoring and oversight to

²⁷¹ World Bank, Human Rights FAQs, June 2012,

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:95474,00.html>

²⁷² Stephanie Chu et al, The Changing Role of the World Bank Inspection Panel: Responding to Contemporary Challenges at the World Bank, September 2014,

http://chrgi.org/wp-content/uploads/2014/10/ChangingRoleoftheWorldBankIP_IOClinic.pdf

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Annalisa Prizzon, Old puzzles, new pieces: Implications of the new development finance landscape for post-2015 scenarios and for partner countries, March 2013, <http://www.iili.org/newsandevents/Prizzon.pdf.pdf>

ensure that development funding is spent as intended. The implication is that without persistent scrutiny, compliance is difficult to ensure.

The tendency of the banking community, however, is to move from detailed, rules-based oversight to broader, principle-based (and, presumably, lighter-touch) supervision. Moreover, scrutiny of debtor activity is being devolved from the creditors either to the regulatory environment of the local jurisdiction or to the debtor itself.

Indices and the success of reform

If development lending is meant to produce a more transparent, pro-market and democratic world, then there must be a way to measure progress against these goals. The World Bank's annual Ease of Doing Business Report²⁷⁶ is a prominent benchmark of the business environment in transition economies.

Organisations use the Doing Business report in several ways. A country's rank for ease of doing business often serves as a 'first cut' in an investment decision. It is easier to convince a company's audit or risk committee that an emerging market investment is prudent when that country is high or rising in the ratings.

The Doing Business report, however, is relatively open about its shortcomings. It will not tell the reader much about what is happening on the enterprise level. It will also not tell the reader much about how a country's commercial and regulatory infrastructure performs, beyond the fact that it exists to one degree or another.

Moreover, much as universities have learned how to rise through now ubiquitous college rating systems, countries, too, have learned how to game the World Bank survey. Putting decent laws on the books moves a country up the rating system, but it doesn't always mean the laws are obeyed. Russia, in particular, has come in for criticism in connection with its allegedly inflated score on the World Bank index.²⁷⁷ While a change in methodology propelled several countries closer to the top, Russia's ascent up the rankings was notable as it took place amid an economic descent. Countries that move up the Doing Business rankings are meant to see increased economic growth as their economies become less bureaucratic. Beyond that, Russia's climb up the rankings – and the ratings writ large – is the subject of debate. Russia is seen as a country where regulations that exist on paper are not necessarily enforced in practice.²⁷⁸ More broadly, the survey itself is the subject of comment on the apparent difference between the efficacy of regulations *de jure* and *de facto*.²⁷⁹

There is no question that countries use high scores in the World Bank's Doing Business Report to boast about their favourable investment climate. The annual list is hated by those at the bottom, beloved among those at the top, and the subject of fickle affections from those who move up and down its ranks.

Development banks are in an admittedly difficult position when working in emerging markets, including Russia and the CIS. The countries in this region are widely acknowledged for presenting difficult governance environments. In fact, all lenders face a variety of integrity-based challenges to their activities in the region. At the same time, banks have to work in the real world, and development banks have to accept as their points of departure that they are working in flawed environments. The most rigorous approaches to these challenges would include a robust, open and transparent assessment of risks prior to making a lending decision, an equally strong system of monitoring adherence to mandatory governance standards throughout the duration of the loan and a frank appraisal of progress achieved when the loan is extinguished.

²⁷⁶ World Bank, Doing Business 2016, Measuring Regulatory Quality and Efficiency, 27 October 2015, <http://www.doingbusiness.org/reports/global-reports/doing-business-2016>

²⁷⁷ Financial Times, Russia rises in World Bank's 'Doing Business' rankings, 27 October 2015 <http://www.ft.com/cms/s/0/dcfba6ca-7cb1-11e5-98fb-5a6d4728f74e.html#axzz3wMSRChSX>

²⁷⁸ Leonid Bershidsky, Bloomberg View, The World Bank's Distorted Rankings, <http://www.bloombergvew.com/articles/2015-10-29/the-world-bank-s-distorted-rankings>

²⁷⁹ Mary Hallward-Driemeier and Lant Pritchett, How Business is Done in the Developing World: Deals versus Rules. <http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.29.3.121>

Examining the implementation of the Extractive Industries Transparency Initiative in Azerbaijan and Kazakhstan

Gubad Ibadoglu²⁸⁰

The paper looks at the key challenges facing the implementation of the Extractive Industries Transparency Initiative (EITI) in two former Soviet countries, Azerbaijan and Kazakhstan. Generally the EITI is playing a very significant role in attracting investment to national economies and improving revenue management, leading to poverty reduction in natural resource rich countries. EITI implementation in a country sends a message to international investors and companies about government commitment to enhanced transparency and accountability; thus, the country could be perceived as a more attractive investment opportunity, which in turn may contribute to rapid economic growth in other sectors. In the long term, an improvement in the country's risk ratings may ensure access to low-cost funds becomes easier.

An additional effect of the initiative is the opportunity for open discussions involving the general public and extractive companies around issues including environment protection, local community development, investment climate improvement, corruption reduction among others.

Recently the global initiative has been expanding its mandate to open new possibilities for ensuring transparency in the granting of licenses, contracts and beneficiary rights by providing conditions for the disclosure of incomes and transfers not only at the national level but also locally. The new EITI standards have set new challenges for members implementing the initiative, as is the case with former soviet countries, like Azerbaijan and Kazakhstan that are participating.²⁸¹ In these countries there is still a weak understanding within society what the process requires given the poorly coordinated actions of all structures involved in the EITI and low public awareness of the goals of the EITI.

Azerbaijan

Azerbaijan joined the EITI 13 years ago as a pilot country. The first six years marked an important period for Azerbaijan's EITI implementation and this period was characterized by the institutionalization of EITI in Azerbaijan. Before 2009 Azerbaijan was renowned as one of the leading EITI countries for its achievements in the implementation of the initiative. Although Azerbaijan successfully passed the EITI validation process in 2009, it lost its lead in the EITI because it did not keep up with the initiative's improved transparency standards.²⁸²

EITI Implementation in Azerbaijan can be divided into 3 phases:

Phase One: The period 2003 to 2005 can best be described as the pilot phase of EITI implementation in Azerbaijan. Azerbaijan joined the initiative as a pilot country, published the first ever EITI report of all member countries, and established and institutionalized the EITI in Azerbaijan. During this period, the Cabinet of Ministers of Azerbaijan established the Committee on EITI by its Ordinance No.224 dated 13 November 2003²⁸³; the State Oil Fund of Azerbaijan was selected to host the national EITI Secretariat; the NGO Coalition of Public Associations for Increasing Transparency in Extractive Industries was established; most of extractive companies active in Azerbaijan joined the initiative; and in November 2004 a Memorandum of Mutual Cooperation was signed by government, companies and civil society. Although the three stakeholders did not fully warm to each other at the start of this period, a psychological barrier was eliminated as a result of effective trilateral cooperation. Due to such cooperation, Azerbaijan emerged as an exemplary country for establishing the basis for EITI implementation at the international level.

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²⁸¹ At present, 49 countries are implementing the EITI standard, and are recognized as either EITI compliant or EITI candidates. Azerbaijan was one of the five pilot countries while Kazakhstan joined the EITI process in 2005.

²⁸² 'Validation is EITI's quality assurance mechanism and an essential feature of the EITI process. It serves to assess performance and promotes dialogue and learning at the country level. It also safeguards the integrity of the EITI by holding all EITI implementing countries to the same global standard.' See <https://eiti.org/validation>

²⁸³ EITI, Joining the EITI, <http://www.eiti.az/index.php/en/mhsht-ve-azerbaycan-2/joining-the-eiti>

Phase Two: Between 2005 and 2009 Azerbaijan started out as an EITI candidate country and finally achieved compliant status. This period can be characterized as the development phase of EITI implementation in Azerbaijan. More than any other EITI country, Azerbaijan published the largest number of reports and gained a reputation as a model EITI country at the international level. On 11 September 2008 Azerbaijan tabled a resolution on the EITI at the United Nations General Assembly. The resolution, which was adopted unanimously, called for increased transparency and accountability in the extractive sector and encouraged international cooperation in sharing experiences and best practice.

Phase Three: The third and current phase began on 16 February 2009 when Azerbaijan became the first compliant country and full member of the EITI. Although its EITI process did not undergo significant changes, Azerbaijan's EITI implementation came under international scrutiny. Although the format for implementing the EITI changed with the creation of the Multi-stakeholder Group (MSG) and the adoption of an action plan, a period of 'stagnation' began after 2009.

Once Azerbaijan had become a full EITI member, all stakeholders lost their enthusiasm to implement the EITI ideas. It is possible to see this period of the EITI implementation as being one of routine technical work without significant outcomes. Therefore one can characterize 2010 until mid-2014 as a period of stagnation.

Over the last few years, the climate for civil society in Azerbaijan has deteriorated wherein the ability of civil society organizations (CSOs) to engage effectively in the EITI process is being seriously threatened. The crackdown on independent civil society has had a profoundly negative effect on the ability of CSOs and citizen activists to promote the EITI and open government. A number of member organizations in the CSOs Coalition on EITI were subjected to state sanction for a various reasons, and the bank accounts of organizations and even the personal accounts of senior staff were seized by court decisions adopted without the ability of NGO leaders to defend themselves. Furthermore, dozens of Coalition members were interrogated by the Prosecutor's Office after criminal cases were opened against several local NGOs.²⁸⁴ As a result of such pressure, sizable numbers of independent NGOs working EITI issues have had to suspend their activities. Therefore, active discussion about Azerbaijani CSOs participation in EITI was started at the 27th EITI International Board meeting held on the 1st-2nd July 2014 in Mexico.

The international civil society representatives on the EITI board stated that the country no longer abides by one of EITI's key principles - ensuring free and effective participation by civil society in the process. In addition, local CSOs face severe restrictions on their right to exercise freedom of speech and assembly. The Azerbaijani government is also making it almost impossible for local civil society to access foreign funding or fulfil its basic functions with regards to the EITI. As a result the Board decided to send a fact finding mission to Azerbaijan. The environment for CSOs in Azerbaijan was assessed during a September 2014 EITI mission to Baku which gathered views on the ability of civil society to participate in the EITI, as well as the broader environment affecting civil society. During the 28th Board meeting on 14-15 October 2014 in Naypyidaw, Myanmar, the situation for civil society in Azerbaijan was discussed. The Board based its discussion on the report of the fact-finding mission, which found that Requirement 1.3 (a-e)²⁸⁵ was not being adhered to. The EITI Board called on the government of Azerbaijan to reaffirm its commitment to work with civil society and ensure an enabling environment for CSO participation in the EITI. The EITI Board further requested that the government and the EITI multi-stakeholder group in Azerbaijan take steps to ensure that civil society could resume its role in the EITI process and carry out the tasks foreseen in the EITI work plan, including by ensuring that civil society representatives substantively involved in the EITI process are able to:

²⁸⁴ Statement of Coalition for "Increasing Transparency in Extractive Industries of the Republic of Azerbaijan" on challenges encountered in the field of EITI implementation in Azerbaijan For more information please visit to: <http://eiti-ngo-azerbaijan.org/?p=627> and <http://eiti-ngo-azerbaijan.org/?p=780>

²⁸⁵ 1.3 The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI. a) The government, companies and civil society must be fully, actively and effectively engaged in the EITI process. b) The government must ensure that there is an enabling environment for company and civil society participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI. The fundamental rights of civil society and company representatives substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, must be respected.

c) The government must ensure that there are no obstacles to civil society or company participation in the EITI process.

d) The government must refrain from actions which result in narrowing.

e) Stakeholders, including but not limited to members of the multi-stakeholder group: i. must be able to speak freely on transparency and natural resource governance issues; ii. must be substantially engaged in the design, implementation, monitoring and evaluation of the EITI process, and ensure that it contributes to public debate; iii. must have the right to communicate and cooperate with each other; and iv. must be able to operate freely and express opinions about the EITI without restraint, coercion or reprisal.

(i) Freely access and use funding to carry out their activities, including those of the EITI Coalition. Specifically, the government should ensure that the EITI Coalition and its members and employees are able to access their bank accounts and register new grants for the purpose of activities related to the EITI process and natural resource governance, and any further restrictions on NGO operations in natural resource governance should be avoided.

(ii) Speak freely about the EITI process and express views on natural resource governance without fear or threat of reprisal or harassment of civil society members substantively involved in the EITI process. Specifically, the government should ensure that the Coalition is able to freely access space for public events related to the EITI and facilitate public awareness campaigns and debates related to the EITI process and natural resource governance.

(iii) Organize training, meetings and events related to the EITI process and natural resource governance.

During its 28th meeting, the Board agreed to make progress on these points, and called for early validation following deep concern for the ability of civil society to engage critically in the EITI process in Azerbaijan.²⁸⁶ The Board decided to assess whether Azerbaijan was in conformity with the EITI Standard, with early validation to commence on 1 January 2015 and be completed no later than early February 2015 for discussion by the Board at its next meeting²⁸⁷. The Board proposed a high-level mission to Baku.

On 15 April 2015, Azerbaijan was downgraded to candidate country status following the reports of interference with and intimidation of NGOs and their staff at the EITI meeting in Brazzaville. According to the ruling, Azerbaijan can regain its compliant status by implementing the corrective actions requested by the EITI Board by 15 April 2016, or face suspension or delisting from the EITI.²⁸⁸

On 13 May 2015, the employees of the Investigation Department on Grave Crimes within the Prosecutor General's Office conducted a search of the Economic Research Center (ERC)²⁸⁹ following a decision of the Narimanov district Court on 17 April 2015. As a result, all computer equipment (9 desktop computers and 1 laptop) and financial accounting documents (106 accounting folders) and in general up to 200 folders of documentation that pertains to the work of the ERC, including the EITI and the National Budget Group were confiscated. The bank account of ERC has been frozen since 27 June 2014.

The ERC is one of the founders and most active members of the EITI Coalition. The EITI NGO Coalition considers that the suspension of the ERC's bank account and seizure of the computer equipment and documentation restricts its activities. Thus, this action against a leading EITI Coalition member is likely to make the EITI International Board more critical of Azerbaijan's current actions and more sceptical about the possible reinstatement of its complaint status.²⁹⁰ On 28 August 2015 the Prosecutor's Office decided, without further tax inspection and investigation to fine the ERC.

On 8 October 2015 Clare Short, Chair of EITI Board, visited Baku and met with President Ilham Aliyev, the multi-stakeholder group and members of the Coalition of Public Unions for improving transparency in the extractive industries in Azerbaijan.²⁹¹ The purpose of the meeting was to discuss Azerbaijan's EITI implementation. After meeting the President²⁹² Claire Short stated that "The President undertook to resolve the issues raised by the EITI Board on civil society participation. Azerbaijan's progress on implementing this commitment will be assessed in

²⁸⁶ EITI, 28th EITI Board Meeting Minutes, October 2014, https://eiti.org/files/BP/Minutes-from-the-28th-EITI-Board-meeting-Myanmar_Final_0.pdf and EITI, Statement by EITI Chair Clare Short on Azerbaijan, October 2014, <https://eiti.org/news/statement-eiti-chair-clare-short-azerbaijan>

²⁸⁷ The Board decided that should validation conclude that Azerbaijan has met all EITI Requirements, Azerbaijan will maintain its status as compliant with the EITI Requirements in accordance with Requirement 1.6.b. Should validation conclude that Azerbaijan has made meaningful progress towards achieving EITI Compliant status but has not met all of the requirements, Azerbaijan will have its status downgraded from compliant to candidate in accordance with Requirement 1.6.b. Should validation conclude that Azerbaijan has made no meaningful progress with EITI implementation, Azerbaijan will be delisted in accordance with Requirement 1.6.b. Should validation conclude that it is manifestly clear that a significant aspect of the EITI Principles and Requirements is not being adhered to, the EITI Board will suspend or delist Azerbaijan in accordance with Requirement 1.7.

²⁸⁸ EITI, 29th EITI Board Meeting Minutes, April 2015, <https://eiti.org/files/BP/Minutes-from-the-29th-EITI-Board-meeting-Congo.pdf> and see also the EITI Glossary, <https://eiti.org/glossary#Delisting>

²⁸⁹ The author worked for this organisation

²⁹⁰ Statement of Coalition of Public Unions for improving transparency in extractive industries in Azerbaijan, <http://eiti-ngo-azerbaijan.org/?p=980>

²⁹¹ Coalition of Public Unions for improving transparency in the extractive industries in Azerbaijan <http://eiti-ngo-azerbaijan.org/>

²⁹² EITI, 'EITI Chair meets Azerbaijan's President Ilham Aliyev', October 2015, <https://eiti.org/news/eiti-chair-meets-azerbaijan-president-ilham-aliyev>

April 2016 after the publication of Azerbaijan's next EITI Report. We look forward to continue to work together with the government on these issues".

After the Chair's visit to Azerbaijan, the government made efforts to improve issues that adversely affected pro-governmental members of the NGO Coalition. Independent civil society groups still suffered from frozen organizational and personal bank accounts; some coalition members are enduring additional screenings at the borders when leaving and returning the country; some had to leave Azerbaijan and are now in exile; and some Coalition members are facing heavy fines for their activities.

At present, access to foreign aid will have been almost impossible for over a year. The only funding source for local CSOs is now offered by the State Council, however this body does not have sufficient budget to support the NGO Coalition in its entirety. At the beginning of last month the State Council allocated \$16,500 to the Coalition. This amount is less than half of the amount requested by the Coalition to enable it to undertake its work. It will be the first time since its establishment 12 years ago that the Coalition will use state funds. This has created an even more challenging dynamic between the state and the coalition, particularly in terms of the increasingly adversarial public debate.

Azerbaijan still shows an interest in continuing as a member of EITI, however there are significant obstacles. Currently, the government's approach – limiting the capacity of CSOs and wider civic space - is illustrating minimal effort towards implementation. The next EITI Board meeting will take place in April 2016. The chances of receiving a positive decision at this meeting will mostly depend on the changes in the position and actions of the Government of Azerbaijan.

Kazakhstan

On April 14 2005 the Government of the Republic of Kazakhstan (RoK) formed an Interagency Working Group on the EITI whose task was to make recommendations for EITI implementation in Kazakhstan. Kazakhstan officially announced it was joining the EITI process at an international conference held in Almaty 14-16 June 2005 and on 5 October 2005, the memorandum of understanding (MoU) was signed between the Interagency Working Group, representing the Government, and the other three parties: the RoK Parliament, foreign and domestic enterprises of the extractive sector and civil society representatives. The CSOs participating in the 'Oil Revenues -Under Public Control' coalition signed the Memorandum on 9 December 2005 after conducting a series of negotiations and developing the guidelines for the operation of the National Council of Parties Concerned (NCPC) that brings together government, private sector and CSO representatives.

The implementation process of the EITI in Kazakhstan was the subject of validation performed by consultants Hart Group in 2009, after its approval by the NCPC this validation report was submitted to the EITI Board on August 11, 2010. On the basis of this report, on 13 December 2010, the EITI Board awarded Kazakhstan with the status 'Candidate Country close to the status of the country conforming to the Initiative'. The Board set 12 June 2011 as the deadline for four corrective actions to be implemented by Kazakhstan required to achieve the compliance.²⁹³

Two of these four actions were successfully completed, however there was not sufficient evidence of adequate compliance for the remaining two actions. On 15 February 2012 the EITI Board decided to extend the deadline for validation by 18 months, allowing Kazakhstan to remain a candidate country until 15 August 2013. In 2013, following the validation performed by Hart, the EITI International Board concluded its assessment of Kazakhstan's compliance and assigned it the status of 'EITI Compliant Country'.

²⁹³ The four corrective actions were that:

- 1) The National Stakeholder Council should agree a clearer definition of materiality, and demonstrate that "all material oil, gas and mining payments to government" and "all material revenues received by governments from oil, gas and mining companies" have been covered in the 2009 report. In agreeing a definition of materiality, the National Stakeholder Council was encouraged to consider a specific figure that defines a material payment.
- 2) The National Stakeholder Council should also clarify its agreed approach for the coverage of dividend payments and payments to local and regional authorities in the 2009 and subsequent reports.
- 3) Increasing company participation through targeted outreach to the largest oil, gas and mining companies that are not yet participating in the process. An entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. The National Stakeholder Council may wish to consider requesting that the government unilaterally discloses the combined benefit stream from such small operators.
- 4) The National Stakeholder Council should agree a more detailed and time-bound strategy for ensuring that company and government reports are based on audited accounts to international standards.

Civil society in Kazakhstan is under-developed, with high levels of government control or co-option and a limited number of truly independent organisations. The official civil society representative on the National Stakeholder Council is 'Dialogue Platform' - a coalition of NGOs - which has suffered from internal splits and a lack of cohesion, which has subsequently weakened its influence. Moreover, due to the sensitive nature of some of the EITI issues, only organisations considered to be 'non-radical' have tended to be invited to the table to ensure government buy-in to the process, while donors have focused on supporting high-capacity NGOs (largely based in Almaty and Astana) in their efforts to build civil society capacities to deal with highly technical matters such as public finance analysis, resource contracts and tax management. Civil society groups from the more outlying regions (located closer to the extraction projects themselves) have generally been neglected.²⁹⁴

While initially focusing on companies' social investments, the NGO coalition has expanded its scope to the whole revenue management process. Since 2007, public awareness has grown along with the depth of NGO engagement in the EITI process. Observers have noted that although it is usually civil society groups who develop the normative documents for the work of the NSC, they tend to lack the required resources, experience and expertise.²⁹⁵

At present, low cohesion among CSO alliances and a deteriorating enabling environment for independent civil society groups are leading to the monopolization of decision making by pro-governmental stakeholders in the implementation EITI in Kazakhstan.

Conclusion

An observation of recent years shows that some implementing countries no longer abide by one of the EITI key principles - ensuring free and effective equal participation by society in the process. Local CSOs face severe restrictions on their freedom of speech and the right to free assembly not only in Azerbaijan and Kazakhstan. Member states across the world including Ethiopia, Myanmar and Guatemala are also facing a deteriorating enabling environment for CSOs. Therefore, the issue of human rights and fundamental freedoms assurance remains on the agenda of the EITI. However, the EITI does not have effective mechanisms to ensure these values are respected in member countries given that the standards were not intended for this purpose. This question remains open for the EITI board.

²⁹⁴ Saule Ospanova, Ingilab Ahmadov, Emma Wilson, EITI and Sustainable Development: Lessons and new challenges for the Caspian Region, IIED, 2013, <https://eiti.org/files/EITI%20IIED%20paper.pdf>

²⁹⁵ Ibid

Conclusion: Challenging times are not an excuse for being institutionally blind

Adam Hug

International institutions that saw their role following the collapse of the Soviet Union as assisting in the process of transition from authoritarian to open democratic societies have struggled to come to terms with the fact that, rather than moving forwards, in a number of states the democratic and governance environment is stagnant or deteriorating (Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, Russia and Tajikistan)²⁹⁶ and others (Belarus, Uzbekistan, Turkmenistan) never really attempted to change in the first place. For all but a handful of countries (Georgia, Ukraine and Moldova, each with notable caveats) the very language of transition is inaccurate and risks obscuring the consolidation of power by existing political and economic elites. Institutions that span Europe and Eurasia struggle with gaps in political culture. Dialogue structures designed for good faith show their limitations when not all parties share that goal, and sometimes try to influence the behaviour of others to undermine human rights commitments. While recognising the scale of the challenge ahead, with few quick wins or hope for dramatic short-term progress, European institutions and their participants in Eurasian bodies must hold to the long-term perspective that, ultimately, the Eurasian economic and security environment is enhanced by increased democracy and improved governance - the human dimension as set out by the Organization for Security and Cooperation in Europe (OSCE). These institutions must not turn a blind eye to their human rights commitments.

European member and participating States need to consider how domestic narratives about the operation of international institutions influence the response of the non-democracies of the region. Participation has to be for all if, where authoritarian regimes (and the UK) are already attempting to create a la carte memberships by rejection of or non-compliance with key elements of some institution. The situation is most acute for the Council of Europe (CoE) which acts primarily as a human rights monitoring body. CoE membership loses meaning if states are able to reject any activity related to the promotion of human rights or the enforcement of European Court of Human Rights (ECtHR) rulings as in the case of Azerbaijan and Russia respectively.

Do all the institutions noted here have the capacity or the political will to effectively meet their human rights obligations? At the moment the answer in a number of cases outlined by authors here is no. The outlook is fairly bleak as the West lacks the stomach to push hard on human rights, currently seeing its own levers of influence as being limited and facing many other strategic, political and economic challenges on which to spend both political and actual capital. Member states being more realist in their foreign policy and more national (and nationalist) in their political approach to international institutions will limit the scope for improving human rights in the wider region.

There are vital pockets of expertise and independence within the international institutions of the region that need to be defended. This is the important work being under taken by the Office for Democratic Institutions and Human Rights (ODIHR), the OSCE Representative on Freedom of Media, the CoE's Commissioner for Human Rights, the Venice Commission and in many cases the ECtHR, the lynchpins of the defence of human rights in Europe and the former Soviet Union (FSU). They are under political attack not only from the governments of countries in the FSU who they criticise but from western politicians willing to support those regimes' narratives or who have priorities that do not include human rights. Those who wish to defend human rights in the region must work to push back against those who would silence such important critical voices. The relative success of INTERPOL and Extractive Industries Transparency Initiative (EITI) reforms outlined here give hope for the bureaucratic change at other institutions if the right mix of political pressure and technical amendments are applied.

The work of the Parliamentarians, in particular at the Parliamentary Assembly of the CoE (PACE) and the OSCE Parliamentary Assembly would benefit from greater public scrutiny. The de-prioritising of human rights by the EU External Action Service (EEAS) and the European Commission do not necessarily have to be mirrored by the European Parliament, who should be encouraged to use their role in agreement ratification to ensure new deals are not passed with countries that have failed to meet their human rights commitments.

²⁹⁶ One can debate whether Tajikistan and Kyrgyzstan should be classified in the second and third categories respectively. The Baltic states of course have transformed themselves so far that, as EU member states, they are categorised differently from their former Soviet neighbours.

The current picture may look bleak for meaningful human rights reform in much of the FSU. However the current economic crisis in a number of countries (facilitated by the impact of low oil prices, sanctions, the crisis in Ukraine), along with the aging of leaderships in Uzbekistan and Kazakhstan and the stagnation of longstanding elites in Armenia, Tajikistan, Turkmenistan and Azerbaijan for good or ill raises the prospect for sudden systemic change now more than perhaps at any time since the late 1990s. The renewed surge in Russian influence in the wider region may yet be checked by its current economic contraction. If such a radical shift was to occur in these countries, the institutions to which they belong could yet provide the framework to support genuine reforms. Also if the low oil price and economic crunch is sustained into the medium term, there is a chance that some governments may re-evaluate their approach to some governance reforms, as well as their desire for external support from donors and international bodies that condition their support on human rights and governance reform.

In order to maintain their integrity going forwards, international institutions must not become blind to abuses taking place in the FSU or to efforts by those states and their Western sympathisers to close the eyes of these vital human rights watchdogs.

Recommendations

To the EU and European political groups

- The EU must ensure that revisions to operation of the Eastern Partnership policy and Central Asia strategy do not significantly downgrade the importance of human rights and good governance as currently implied by officials;
- The EEAS and Commission should ensure that the revised progress report structure does not ignore human rights and governance challenges in states without an Association Agreement and DCFTA;
- Other EU institutions, the European Parliament's own delegations and to some extent member states, should fully reflect positions passed by the EP in their interactions with states in the FSU. The EP should be encouraged to stand by its objections to ratifying agreements with countries that have failed to meet their agreed human rights objectives, such as in the case of Uzbekistan and Kazakhstan;
- International political groups must pay more attention to human rights abuses amongst their memberships and show consistency in their approach to such abuses.

To national parliaments and NGOs

- National parliaments should raise the profile and standing of the delegations they send to international Parliamentary Assemblies and improve the transparency around the work that they do there, such as recording votes they cast on the domestic parliamentary and NGO websites;
- NGOs and parliamentary ethics bodies must continue to increase scrutiny of financial relationships between Parliamentarians and groups aligned to FSU governments;
- European nations, most notably the UK, need to show greater understanding of the political impact their domestic criticisms of international institutions, such as the ECtHR can have on the wider region.

To the Council of Europe and its members

- The ECtHR needs to explore further opportunities to increase its capacity to further reduce its backlog of cases and must be resourced by member states to do so;
- PACE needs to improve its organisational transparency, particularly when it comes to its work around human rights challenges, and work to improve its role in election observation so that its findings are not used to undermine the work of longer-term observers such as the OSCE/ODIHR.

To the OSCE and its participating states

- The OSCE must defend the role of ODIHR in providing long-term election observation, ensuring that it remains an assessment mechanism judging countries election practices, rather than simply becoming a method for information exchange;
- OSCE participating States should strongly consider ending the OSCE budget freeze to enable it to respond to the increasing demands on its resources;
- Human rights sympathetic participating States must help ensure the independence of ODIHR and the Representative on Freedom of Media from the consensus mechanisms that operate elsewhere in the OSCE; They should explore opportunities to introduce majority voting in the Permanent Council and other bodies to reduce political gridlock and work to improve the transparency of decision making such meetings;
- They should work to oppose the downgrading of field offices and factor this into their bilateral and EU diplomacy.

To the economic institutions

- Regional and global development banks need to provide clearer incentives for lending that reward democratic development and governance reform; this is particularly true for the EBRD which retains such a mandate;
- The EITI should look at ways to ensure and maintain the independence of the NGOs participating in its structures and improve central oversight of emerging governance problems.

Institutionally blind? International organisations and human rights abuses in the former Soviet Union examines the work of a range of international institutions active in the former Soviet Union including the OSCE, EU, Council of Europe, CIS, UN, INTERPOL, EITI and the international financial institutions, looking at how they respond to the major human rights challenges in the region. It looks at the ways in which governments from the former Soviet Union seek to influence how these institutions scrutinise human rights performance and how parliamentarians from Europe and international officials respond to these challenges. It explores the challenges and opportunities facing both the bureaucracies and parliamentary structures of many of these institutions and suggests possible areas for reform.

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