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Recommended Citation
Clemans, Kasey (2007) "Rushin' to Join: The Case of Russia's Accession to the Council of Europe and the European Court of Human Rights," Sigma: Journal of Political and International Studies: Vol. 25 , Article 5. Available at: https://scholarsarchive.byu.edu/sigma/vol25/iss1/5
Rushin’ to Join: The Case Of Russia’s Accession to the Council of Europe and the European Court of Human Rights

Kasey Clemans

On 25 December 1991, the Soviet Union was dissolved. This event left fifteen republics, once united in a powerful superpower structure, independent. Upon independence, Russia quickly moved towards membership in the Council of Europe (CE) and, therefore, became subject to the judgments of the European Court of Human Rights (ECHR). In light of the court’s history, and internal ethnic tensions in the Caucasus region, one might wonder why Russia was so quick to voluntarily yield some of its sovereignty to an international human rights institution. This paper will show that Russia’s move to join the ECHR was primarily motivated by Boris Yeltsin’s efforts to legitimize his own rule.

Significance

Besides my personal interest in Russia and human rights, why should anyone else care about Russia’s reasons for joining the ECHR? First, given Russia’s past as a communist country and its rough-and-tumble transition to democracy, one might be curious as to why Russia was so eager to join a strong international institution like the ECHR. What did Russia have to gain by locking itself into an international institution and surrendering some of its sovereignty? Second, most of the literature on Russia’s relationship with the CE and the ECHR focuses on what has transpired since Russia joined the CE and ratified the ECHR. This paper will fill a gap in the literature by shedding some light on the factors which pushed Russia to join the CE and ratify the ECHR. Furthermore, understanding why Russia joined the ECHR may provide insights into whether or not Russia is likely to comply with CE decisions and ECHR rulings, and how Russia might best be influenced on human rights and democracy issues. Finally, this paper may also broaden our understanding as to how newly democratic states function and what the best approach may be to incorporate them into the international human rights regime.

Theories

The formation and willingness of states to participate in strong international institutions typically starts with the perspective that states are rational unitary actors. They view human rights enforcement as a desirable outcome within other states (at least) as well as in their own polity (at best), but each state faces incentives to defect on its own human rights protection when it wants to achieve another of its state goals. In order to overcome the tendency to defect, states set up an international institution to handle human rights enforcement for them. In this way, they all benefit from centralization, monitoring, and reduced transaction costs. Caroline Fehl points out that sovereignty costs are the major concern of states functioning as rational actors. States do not want to give up control over domestic policy, particularly if it affects how they interact with their citizens. This theory as applied to new democracies might suggest that new democracies do not have the institutions to protect human rights or the means to develop them. In order to fill this gap, they may sign on to an international institution to benefit from the existing mechanism. Andrew Moravcsik’s theory of “republican liberalism” postulates that new, unstable democracies will yield sovereignty to an international institution because they want to “lock-in” democratic practices. This occurs because policymakers in a new, unstable democracy have no guarantees about how long their government will retain power; therefore, they seek to prevent a change in policy in the future by yielding sovereignty over human rights policy to an international institution. Moravcsik
points out that states faced with the idea of yielding sovereignty will most likely oppose it because they want to maintain short-term control over policy. States are only likely to yield sovereignty if they value greater political certainty in the future more than short-term control over policy. Thus, new, unstable democracies should be far more eager to join binding international institutions than established democracies.6

Edward Mansfield, Jon Pevehouse, and Emilie Hafner-Burton, building on Moravcsik, also suggest that new democracies will be more likely to join international organizations (IOs) protecting human rights than established democracies. Where Mansfield, et al. differ from Moravcsik is that they expect new democracies to join IOs because these states also want to signal to their own citizens, as well as the international community, about their intentions of being a democracy in the future.7 This signaling helps the state consolidate its position as a democracy, showing that its democratic actions go beyond words. Mansfield, et al. also propose that new democracies join IOs because they are responding to positive incentives from established democracies.8

An alternate theory, put forth by Jay Goodliffe and Darren Hawkins, proposes that states join human rights regimes because they want to keep good relations with states on whom they are dependent for various resources. This dependence varies in intensity based on how much value the given state places on the particular resource, and how many alternatives they have for procuring that resource. The underlying logic is that if state A supports an international human rights institution, and state B depends on A for a critical resource, then B will be inclined to accept the human rights institution so as to preclude any possible sanctions from A.9 Goodliffe and Hawkins go beyond looking at bilateral relations between states to viewing states as members of networks with other states. A clear explanation of why this may be important follows. Given two states C and D are both new democracies, suppose that C is almost entirely dependent on A for a crucial resource. In this situation, C will care strongly about A's views on a particular human rights enforcement mechanism. Now, suppose D is dependent on a variety of states including A. States C and D are both dependent on A, but the degree of that dependence is different. Because of that difference in dependence, C and D may have different attitudes towards the particular human rights institution favored by A. For newly established democracies to yield sovereignty to an international human rights institution, the proportion of their ties to states favoring the institution must be greater than the proportion of their ties to those states that do not favor the institution.

In his article, Moravcsik cites a realist perspective that changes the dependence relationship above from one based on anticipation by the dependent state, to one of coercion by a stronger state or group of stronger states.10 Hans Morgenthau, E.H. Carr, and others claim that powerful states force weaker states to make decisions in line with the powerful states' interests. Applied to new democracies becoming members of an international human rights institution, this theory would expect them to be intimidated by their more powerful cousins and submit to the powerful states' demands that they join the particular institution.

In contrast to the realist perspective, there are a number of idealist approaches to explaining states yielding sovereignty to international human rights institutions. These approaches would have us believe that some governments are altruistic and recognize the value of human rights and make the decision to join an IO because it will further advance the cause of human rights. Less altruistic states may be influenced by domestic groups and nongovernmental organizations (NGOs) to the point where they believe in the norms and move to enforce them through an IO.11

Thomas Risse and Kathryn Sikkink propose that states are socialized into enforcing human rights through interactions with the domestic and international community. These groups confront the particular state and publicize its human rights abuses. The state, intent on preserving its current policy, may deny the claims of international actors as interference in its sovereignty.12 If faced by domestic actors, the state may choose to repress them. Domestic groups may be able to draw international attention to the human rights abuses of the given government. With time, the state will begin to make instrumental changes designed to appease observers without really changing the status quo.13 The fact that the state makes any changes whatsoever lends support to the human rights movement and increases its legitimacy. Gradually, the state will begin to engage human rights activists and international actors in a dialogue over what it should do about human rights. Finally, the state will sign on to various international conventions that protect human rights and work to ensure that the rule of law consistently applies to human rights violations.

Risse and Sikkink's point about states making instrumental changes is further extended by Darren Hawkins.14 Hawkins suggests that governments may make instrumental changes to their human rights policies because they are seeking legitimacy. Furthermore, governments are not solely concerned with their domestic legitimacy but also with their international legitimacy. They have three reasons for their concern: First, support from other states strengthens the government's right to rule a given state. New governments do not want to be seen as vulnerable or insecure by their rivals. Second, governments are social entities. As an international community, governments have accepted standards of behavior to which all legitimate governments must adhere. As Martha Finnemore and Sikkink put it, "a state which wants to define itself as a member of the commu-
nity must act in accordance with the standard of appropriate behavior in the community."15 Third, governments perceived as illegitimate may be subjected to international sanction. Furthermore, a lack of support from the international community might engender greater opposition domestically. Hawkins continues with a list of behaviors that legitimacy-seeking governments are likely to exhibit. They may change government practices with respect to human rights by eliminating murders or disappearances, ending exile, pardoning political prisoners, and removing government officials who have clearly violated human rights norms. Additionally, governments may institute a number of surface level changes to "show" that they are doing more to protect human rights. Among these are creating a new government office to protect human rights, drafting a new constitution that includes human rights as a basic tenet, increasing the independence of judicial institutions, and improving security and/or intelligence agencies. The important feature about all of these changes is that they are meant to look good to international observers while maintaining the government’s control.

Another related explanation for Russia joining the ECHR is that the CE signaled Russia that membership in the CE and ratification of the ECHR were not costly. Pamela Jordan16 claims that the CE is the “European organization with the fewest demands on its new entrants.” Perhaps Yeltsin recognized this and moved to become a member assuming that membership would entail few costs. One example of a signal would be current CE members not living up to their human rights commitments.17 This would show that the CE does little more than talk about human rights and is not dedicated to ensuring human rights’ provision in member states.18

Finally, there is the possibility that bounded rationality may offer insights into why a state may join a strong human rights institution. Bounded rationality begins with the premise that the rational faculties of human beings are limited in terms of how much information they can sort through in a given period of time. When decision makers are confronted with more information than they have time to evaluate, they are inclined to employ “inferential shortcuts” or “cognitive heuristics” to arrive at a decision more quickly.19 In his article, Kurt Weyland evaluates the use of cognitive heuristics to explain policy diffusion. He states:

A bold innovation attracts disproportionate attention from neighboring countries; it is then widely adopted on the basis of its apparent promise, not its demonstrated success. Large numbers of countries also import the basic policy framework without thoroughly assessing its fit with their specific requirements and needs.20

In the current context, the policy in question is membership in the CE and the ECHR. Bounded rationality suggests that one state made a bold move by joining the CE and ECHR and that others followed without really considering the long-term effects of such an action. In connection with the initial policy decision, there are both temporal and geographic patterns of diffusion. The temporal pattern indicates that a policy will be slowly adopted at first, followed by a rapid increase in the number of states adopting it, and finally conclude with a plateau as most states have either joined or decided not to based on updated information about the consequences of the policy. The geographic pattern demonstrates that the policy originates in one state and spreads outward through neighboring states.

In addition to these patterns, bounded rationality also suggests that states make the decision to pursue the policy in question based on limited information about the consequences of such a policy. They tend to look more at the potentially positive effects of a given policy rather than waiting to see how it functions in practice. Furthermore, in adopting the given policy, states tend to apply the policy quite similarly to the initial state’s method despite varying political structures and social conditions. Even if the policy is changed by the state adopting it, it will look more or less like the original. This is true because the original form of the policy biasing the other states’ perceptions of that policy in such a way that they do not realize that there may be other methods for solving the particular problem. Although states adopting the policy may change certain parts of it to meet their needs, the policy adopted by successive states tends to strongly resemble the original policy adopted by the first state.

Hypotheses

I expect that Russia’s move to join the ECHR was motivated not by Moravcsik’s theory of republican liberalism, but by Yeltsin’s efforts to secure his own position. Yeltsin wanted to bolster the legitimacy of his regime through democratic reforms. At the time of independence, Russia had seen the collapse of an ideology that had reigned supreme for more than seventy years. This collapse spurred Russia’s quest for a new identity as a democratic republic. As the democratically elected President of Russia, Yeltsin was in the perfect position to lead the charge to democracy. He knew that by pursuing democratic reforms he could show the world that Russia wanted to become a democracy. He also knew that by pursuing such a course he could count on the support of the world’s most powerful states. In attempts to make Russia a more democratic state, he made a number of policy decisions in line with patterns of behavior of existing democracies. One of these decisions was to pursue membership in the CE.

I also expect that Yeltsin and his advisors did not anticipate the costs associated with joining the ECHR. This would be explained by political leaders following what other democratic states had done without sufficient time to understand what would be required of Russia. Another
possibility is that Russia understood the costs and was led by CE signals to believe that they were insignificant. Russia became an observer of the CE in January 1992 and applied for membership in May of that year. With less than five months between the end of the Soviet Union and the submission of Russia’s application in the CE, circumstances seem indicative of Russia making a quick decision based on other states behavior as opposed to signals from the CE.

Finally, I reject a number of alternative theories for why Russia would join the CE and ECHR. First, Russia was not forced to join the ECHR by other more powerful states. Perhaps other states did offer positive incentives as Mansfield et al. suggest, however, the drive for Russia’s membership in the ECHR was not initiated by other states, but by Russia itself. Moreover, I reject Moravcsik’s idea that Russia’s leaders sought to “lock-in” human rights enforcement out of political uncertainty in the future. While they were indeed in an uncertain position, they did not seek to tie the hands of some future governing collective. Instead, Yeltsin was taking advantage of a Western desire to see a democratic Russia.

Methods/Approach

In determining whether my hypotheses were correct, I evaluated Russia’s actions starting with its efforts to join the CE. I followed Russia’s membership application from the beginning of 1992 up until 1996 and then continued onward to its ratification of the ECHR in 1998. Then, I followed Yeltsin’s behavior until he stepped down in 1999. Direct evidence from Yeltsin’s cabinet meetings and records of State Duma discussions were unavailable, so I relied heavily on the newspaper articles and reported interviews with Russian politicians. I also reviewed relevant scholarship on Russia’s relationship with the CE. Particularly, the work of Emma Gilligan was invaluable in following the development of human rights protections in Russia.

Evidence

1. Lock-in

Moravcsik’s theory of “republican liberalism” postulates that new, unstable democracies will yield sovereignty to an international institution because they want to “lock-in” democratic practices. This occurs because policymakers in a new, unstable democracy have no guarantees about how long their government will retain power; therefore, they seek to prevent a change in policy in the future by yielding some sovereignty over human rights policy to an international institution. Moravcsik points out that states faced with the idea of yielding sovereignty will most likely oppose it because they want to maintain short-term control over policy. States are only likely to yield sovereignty if they value greater political certainty in the future more than short-term control over policy. Thus, new, unstable democracies should be far more eager to join binding international institutions than established democracies.

First, the events which took place in Russia from 1992 to 1993 demonstrate that Russia is clearly a new, unstable democracy. With the August 1991 coup attempt against Mikhail Gorbachev and the collapse of the Soviet Union in December, Yeltsin began 1992 as the President of a newly independent Russia. Yeltsin enjoyed a great deal of popular support for standing in front of the tanks in opposition to the August coup and for being elected by the people as the President of Russia. However, his administration was not only the major force in Russian politics. His regime faced daunting opposition from Vladimir Zhirinovsky, head of the nationalist Liberal Democratic Party, as well as opposition from a congress where Communist deputies filled 85 percent of the seats. Yeltsin’s main rival for control of Russian politics was Speaker Ruslan Khasbulatov of the Congress of People’s Deputies. These leaders competed for primacy in an uncertain arena. As a result, the battle between the president and the parliament pushed the country into a constitutional crisis. As Richard Sakwa states, because of a 1990 amendment to the 1978 Russian constitution, “both the executive and the parliament were given supreme state power. Russia was de jure a parliamentary republic but de facto became a presidential republic.” As a result, both parliament and the president sought to strip the other institution of its authority. At the Eighth Congress in March, Khasbulatov and the parliament stripped Yeltsin of most of his powers and made it possible for his administration to bypass him in introducing legislation. Yeltsin responded by proceeding with a national referendum asking Russians about their support for his reform policies and when they felt elections should be called for the president and for the parliament. This referendum renewed Yeltsin’s popular support. He used his new mandate to convene a constitutional assembly. Unfortunately, once the draft was completed, parliament still did not pass it. Finally, on 21 September 1993, Yeltsin issued decree No. 1400 “On Gradual Constitutional Reform in the Russian Federation.” This decree dissolved the Supreme Soviet and Congress of People’s Deputies and transferred the responsibilities of parliament to the newly created Federal Assembly with the Federation Council becoming the upper house and the State Duma the lower house. Elections for the State Duma were scheduled for 12 December 1993. The legislature’s response to Yeltsin’s actions was armed revolt and refusal to leave the White House. Amid protests and demonstrations, Yeltsin succeeded in convincing the military to intervene and stop armed supporters of parliament from seizing various assets across the city. Khasbulatov and other rebel leaders surrendered and were imprisoned. According to Sakwa, these actions “complet[ed] the revolution of August 1991. Neither the
banning of the Communist Party, nor the dissolution of parliament were strictly speaking constitutional acts, but while deficient in legality, they clearly commanded a high degree of public legitimacy.” The people turned out for the 12 December 1993 elections and voted in favor of adopting the new constitution. This new constitution resolved the constitutional crisis by increasing the powers of the presidency and clarifying the roles of the executive and the new Federal Assembly.

The purpose of the historical account above is to demonstrate that Russia fits Moravcsik’s definition of a new, unstable democracy. Its institutions were weak and clearly contradictory. Furthermore, Yeltsin and other reformers faced bitter opposition from within the parliament. Having established that Russia is a new, unstable democracy, let us see if there is evidence to support Moravcsik’s idea of republican liberalism.

Moravcsik’s argument implies a greater concern for policy implementation than for the current regime to maintain control over human rights. Given that premise, we should see Yeltsin and his administration pursuing policies that entrenched human rights protection in the Russian system. They would be looking for ways to force their potential successors to support human rights. We should also see Russia pursuing additional avenues for locking in human rights protection such as joining other human rights institutions beyond the ECHR. Furthermore, if Moravcsik’s argument about new, unstable democracies is correct and Yeltsin’s regime was seeking for long-term certainty in human rights enforcement, then we should expect Russia to have joined the ECHR and other human rights institutions rapidly.

Declaration on the Rights and Liberties of Man and the Citizen

My research has shown that Yeltsin did pursue other methods of incorporating human rights into domestic policy. Part of his 1993 draft of the constitution was Section Two, “On the Rights and Liberties of Man and the Citizen.” This document had been under development since 1990 under the auspices of the Human Rights Committee of the Congress of People’s Deputies. Despite the efforts of Yeltsin and members of the Human Rights Committee, the CPD refused to accept the document as a binding declaration within the ramifications of the constitution. With the dissolution of parliament, the full version of “The Declaration of the Rights and Liberties of Man and the Citizen” was included in the 1993 constitution and later ratified. This document laid the foundations for human rights in Russia. Its main provisions included the right to life and protection against torture; the right to a fair trial, presumption of innocence of defendants, prohibition of forced labor; freedom of association, peaceful assembly, thought, conscience, and religion; and the right to participate in state politics by electing and being elected.

Human Rights Commissioner

In addition to including a Bill of Rights for the Russian people, the new constitution created a human rights commissioner. The commissioner was given three responsibilities: 1) investigate human rights abuses, 2) pressure state organs to improve legislation on human rights, and 3) educate citizens about their human rights and how to defend them. The commissioner was to be appointed by the State Duma and was to act according to a forthcoming federal constitutional law. Yeltsin signed the “Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation” into law on 26 February 1997. It clarifies the role of the commissioner and grants him a number of protections from other government institutions. Among these, Article 12.1 states:

The Commissioner possesses inviolability for the course of the entire term of his powers. Without the consent of the State Duma, he cannot be prosecuted under criminal or administrative charges, be subject to court procedures, be detained, be arrested, be subject to searches, excluding cases of detention at the scene of a crime, or be subject to personal interrogation, excluding cases when this is stipulated by federal law for the defence of the security of other persons. The inviolability of the Commissioner applies to his residential and work premises, baggage, personal and work means of transport, correspondence, means of communication used by him, and documents belonging to him.

Unless prosecuting authorities receive permission of the State Duma within twenty-four hours, the commissioner must be released even if the commissioner is located at the scene of a crime. The creation of the office of human rights commissioner and the successive passing of further legislation to strengthen the position shows that Yeltsin’s regime sought to increase the degree to which human rights were protected in domestic legislation.

Presidential Human Rights Commissioner

As a result of the dissolution of the CPD, the Human Rights Committee, which was part of that body, was dissolved as well. Five days after dissolving parliament, Yeltsin created a new Presidential Human Rights Commission. This commission’s purpose was to establish the core upon which the human rights commissioner’s office would function once the necessary constitutional law was passed. Upon installment of the human rights commissioner, the Presidential Human Rights Commission would remain as an advisory body to the president. Because the Presidential Human Rights Commission was a temporary structure from the beginning, few politicians took it seriously. Its position in Russian politics was further damaged by the failure to adequately handle the first real case it investigated. It was also heavily criticized for its leaders’ lack of organization.
Ratification of the ECHR

Another point of evidence in support of Moravcsik's argument is the relative speed with which Russia ratified the ECHR once it became a member of the CE. Russia was admitted to the CE on 28 February 1996. Deliberation over the Convention for the Protection of Human Rights and Fundamental Freedoms lasted just over two years. Primary concerns of delegates in the State Duma were over existing legislation which would need to be amended. They also expressed doubt over the Russian legal system's ability to meet international standards. In general, however, the representatives favored adoption of the convention. Their concerns are best viewed as a desire to fulfill commitments entered into, rather than reservations about the convention. The reservations entered upon ratification of the convention state that they are only in effect until such time as domestic legislation can be brought into agreement with the convention.

Death Penalty

One significant example of Yeltsin's personal efforts to enhance human rights protection is his repeated attempts to eliminate the death penalty. Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms are also expected to ratify Protocol 6 which abolishes the death penalty. When the State Duma ratified the convention in April 1997, it discussed Protocol 6, but ultimately did not ratify it for fear that public sentiment in Russia was against abolishing the death penalty. In July of that year, Yeltsin submitted an amendment to allow death sentences to be carried out only if they are approved by the prosecutor general and the supreme court chairman. In January of 1998, Yeltsin signed an amendment to the penal code which would force him to review the cases of all those sentenced to death, even if they had not requested clemency. A few weeks later, the Supreme Court ruled that the death penalty could no longer be exacted except by jury. However, the jury system was only implemented in nine of the eighty-nine regions, so the court put a moratorium on the regions with the jury system as well until such time as it could be introduced in all regions. This effectively placed a moratorium on the use of the death penalty. However, that was not enough for President Yeltsin. In June 1999, he signed a decree which commuted existing death sentences to prison terms. Finally, in August 1999, just three months before he stepped down, Yeltsin renewed efforts to push ratification of Protocol 6 through the State Duma. However, the State Duma did not follow through on the proposed legislation, and Protocol 6 remains unratified by Russia to the present day. Yeltsin's efforts to abolish the death penalty in Russia were numerous and frequent. He used every means available to act in accordance with the ideals of the CE to keep people from being executed.

Lingering questions remain about Yeltsin's true intentions. Did he genuinely care about human rights? Was his obedience to CE requirements based on a desire to protect human rights or was it based on his own desire for international legitimacy? Was the war in Chechnya an exception to the rule or the exposure of his true character? Were concerns over maintaining his position as president in the 1996 elections a driving force behind his actions in Chechnya? The next section will examine available information in an effort to resolve these questions.

II. Legitimacy

An alternative explanation to Moravcsik's idea of "lock-in" is that Yeltsin pursued human rights reforms as a method for boosting his own popularity and legitimacy. By joining the CE, Yeltsin could, as Jordan states, "legitimize [his] new regime." Yeltsin was most concerned with his own political career and, therefore, sought ways to influence how he was viewed abroad. The purpose of joining the CE was to garner support from the international community that would strengthen him against domestic political opponents. Yeltsin was a political opportunist who boldly gambled by opposing the coup in 1991, and later capitalized on the dissolution of the Soviet Union. January 1992 found him in the perfect position to take advantage of international naiveté. To all Western observers, the evil empire had finally fallen. They could only hope that from the remnants of the superpower would be born a new democracy.

During his two terms in office, Yeltsin made use of his image as a democratic reformer on the world stage. He knew that by acting the part of a democratic leader, he would garner tremendous support from the most powerful and wealthy states in the world. In terms of Russian domestic political structures, Yeltsin faced tremendous opposition from Communist and Nationalist factions within the parliament. Preeminent among parliamentarians was Speaker Ruslan Khasbulatov. As previously mentioned, Khasbulatov spent 1992 and 1993 vying for political supremacy in Russia. In the end, Yeltsin went around the existing constitution to disband the Supreme Soviet and the Congress of People's Deputies. Furthermore, he called out the military and urged them to attack the holed-up parliamentarians in the Russian White House. This debacle resulted in the deaths of 146 people in a single day. Although many Russian citizens strongly disliked their parliamentary leaders, they still criticized Yeltsin for the violent manner in which he handled the situation. Despite the negative impact on Yeltsin's domestic legitimacy, he went on almost unscathed in the international scene. The Council of Ministers' statement is particularly striking:

We, Heads of State and Government of CE member States . . . express our deep concern over recent events in the Russian Federation. We deplore the heavy loss
of life which resulted from the resort to violence, provoked by opponents of reform.

We declare our solidarity with the supporters of the reforms under the leadership of President Boris Yeltsin and express hope that the process of democratization will be continued with determination.\(^\text{38}\)

In spite of the fact that his methods in resolving the conflict were both violent and unconstitutional, the CE supported Yeltsin and believed that by so doing they were supporting democratic reforms. The rest of this section will demonstrate how Yeltsin used human rights to foster his own political security.

**Elections**

One of the stipulations for membership in the CE was that Russia held free and fair elections. Yeltsin did this in accordance with the stipulation of the council. Initially, the agreement Yeltsin made was that both presidential and parliamentary elections would take place. But after the parliamentary elections of December 1993, Yeltsin managed to forget to hold presidential elections six months later as he had promised.\(^\text{39}\) This shows that Yeltsin complied entirely with the council’s requirement, but was able to renege on a related promise he had made in domestic circles to hold presidential elections. Thus, he was able to reduce his chances of being removed from power and he gained additional international legitimacy.

**1993 Constitution**

In conjunction with the elections, there is the issue of the 1993 constitution itself. When Yeltsin disbanded parliament, he was able to put forward his own draft of the constitution for the December 1993 referendum. This version of the constitution included the previously mentioned “Declaration of the Rights and Liberties of Man and the Citizen.” Besides including protection of human rights in the document, Yeltsin added a number of key features to bolster the power of the president relative to the parliament. Among these were the power of the president to issue legally binding decrees not subject to State Duma approval and the power to dissolve parliament if they rejected his nomination for prime minister three successive times. The strength of the president was a major concern for parliament during the 1993 battle over constitutional reform. They feared that such a powerful presidency in the wrong hands would leave Russia under the control of an autocrat. While the 1993 constitution did not force Yeltsin to choose between including human rights protections and his own political gain, it is illustrative that he was adept at pursuing human rights while at the same time improving his political prospects.

**Presidential Human Rights Commission Revisited**

Besides looking at the Presidential Human Rights Commission as a positive step towards entrenching human rights in Russia, it may also be viewed from the standpoint of Yeltsin’s own political interests. When Yeltsin disbanded the parliament, its Human Rights Committee also ceased to exist. This void left Yeltsin with the opportunity to create a new institution that was both within his administration and entirely dependent upon him for support. A noteworthy case that demonstrates the failure of the Presidential Human Rights Commission to improve the application of human rights practices surfaced when Yeltsin issued the “Decree on Banditry.” Contrary to the constitution, the decree allowed searches without warrants, detention without appearing before a judge or even being charged for up to thirty days, wire taps, and access for law enforcement personnel to banking and commercial documents of suspected criminals without a warrant.\(^\text{40}\) In response to this decree, Sergei Kovalyov, head of the Presidential Human Rights Commision, made impassioned pleas to Yeltsin via letters, a television interview, and a vigorous press campaign against the decree. Yeltsin’s only response was to allow Kovalyov to form a monitoring group. This episode marks a turning point in Yeltsin and Kovalyov’s relationship from two men united by principles, to two men divided by politics.

Why would Yeltsin, a champion of human rights, not intervene once he understood the ramifications of his decree? The answer is simple: crime. At this time, politicians across the spectrum were concerned about the rampant increase in criminal activity. From 1988 to 1994 the number of registered crimes rose from 1,220,362 to 2,632,708, an increase of more that 200 percent in six years time.\(^\text{41}\) Large segments of the population were concerned over crime and wanted to see public officials take decisive action against it. Yeltsin knew this and decided to issue the aforementioned decree. His act shows once again that political expediency is more important to him than bolstering human rights. He refused to even entertain the idea that law enforcement could be improved without resorting to violating the citizen’s human rights.

**Chechnya**

Up until 1994, Yeltsin’s administration had a decent record on human rights. There were still rampant human rights abuses across the country, but Yeltsin was actively working with Kovalyov and other human rights advocates to address these issues. With the beginning of the first Chechen War in November 1994, Yeltsin and Kovalyov began moving in different directions. Yeltsin was deeply concerned over public opinion and could not afford to appear soft on crime or separatism. Kovalyov was determined to see that human rights were protected. When Russian troops began attacking Chechnya, Kovalyov decided to go to Chechnya to see what was going on. His efforts to get to Chechnya were repeatedly blocked. First, he was unable to book seats on a flight to the Chechen
capital Grozny. Then, the First Vice-Premier called to inform him that he could get Kovalyov and his working group seats on a plane the following day. However, there were only five seats available. In choosing who would go, Kovalyov made certain that he had representatives from across the political spectrum in his party so that the majority of Duma legislators would be willing to listen to the working group’s conclusions. On their way to Chechnya, the plane was told that they would not be able to land in Mozduk, because of ice on the runway and were instead diverted to Chkalovskaya. When they arrived, they saw a mail carrier plane that was headed to Mozduk, but were refused permission to take the flight. The next day the group was turned back yet again. Finally, they went to a civilian airport and took a flight landing them within driving distance of Chechnya and then made the rest of the trip by car. The lengths that Kovalyov and his team were forced to go to in order to get to Chechnya indicate that some leaders in Moscow did not want them to see what was actually happening in Chechnya.

Upon arrival in Chechnya, Kovalyov and his working group were stunned by the lack of effort made for constructive dialogue. Even more troubling was the lack of provisions made by Russian forces to allow civilians to flee Grozny. Before any attempt at dialogue was made, Russian aircraft began bombing the city. Kovalyov pointed to numerous bombs and rockets that hit civilian areas of the city where there were no military installations. His impassioned pleas to Yeltsin to stop the bombing and to attempt to resolve the issues without resorting to force went unheeded. At this point Yeltsin was actively supporting positive propaganda about the war effort in Chechnya. In contrast, Kovalyov and his working group were doing all they could to disseminate information on the human rights abuses—particularly the high levels of civilian casualties in Chechnya. Besides ignoring Kovalyov’s pleas, leaders back in Moscow began an intensive campaign vilifying Kovalyov as a dissident. Upon his return to Moscow, Kovalyov asked for a meeting with Yeltsin and was rejected. Upon threatening to reveal to the press that the president had refused to meet with him, Yeltsin’s aide called back a short time later and set the meeting for the following day.

The meeting between Yeltsin and Kovalyov provided the final break between the two actors who had worked together on human rights issues many times previously. Kovalyov stressed the impact the bombings were having on the civilian population and Yeltsin responded that Kovalyov had poor information and that the bombings had stopped. Yeltsin made it clear that he would not be working with Kovalyov to resolve the Chechen conflict or its attendant human rights abuses. For the first time, Kovalyov had to go outside of the presidency to find support for his efforts to end human rights abuses. He decided to work through Prime Minister Viktor Chernomyrdin. He sent Chernomyrdin a proposal for a cease-fire in Chechnya. A few days letter, Chernomyrdin presented the proposal to the Chechen side via a television broadcast. On the 17th of January, Chernomyrdin met with Chechen representatives in Moscow. They decided that the cease-fire would begin the following day at 5 P.M. Despite these efforts, Russian military leaders did not show up for scheduled meetings with Chechen officials on the 18th of January. Furthermore, Yeltsin issued a statement saying the he was not willing to negotiate with Dzhokhar Dudayev, leader of the Chechen forces, because Dudayev was committing genocide against his own people. Fighting commenced again the following day.

In a last-ditch effort to stop the violence in Chechnya, Kovalyov brought the case before the Constitutional Court. The key issue was a secret decree which Yeltsin had issued on 30 November 1994 to institute a state of emergency in Chechnya. The entire military campaign in Chechnya was based on this decree. Because Yeltsin issued the decree in secret, he had violated constitutional provisions which required that the State Duma approve any declaration of a state of emergency. The situation was further complicated by Yeltsin’s secret rescindment of the decree, on 5 December, after he signed the Organization of Security and Co-operation in Europe’s (OSCE) Code of Military-Political Aspects of Security. By signing this document, Yeltsin agreed that “any decision about the direction of its armed forces for the execution of internal security will be taken in accordance with constitutional proceedings.” Yeltsin then made another decree without any mention of a state of emergency on 9 December. In its ruling, the Constitutional Court rejected references to the 30 November decree because it had now been abolished. Furthermore, the court supported Yeltsin’s right to “ensure state security.”

The court also said that the 9th of December decree did not violate the constitution and recommended that the State Duma pass a more comprehensive set of laws for governing the use of Russian military within Russia. In summary, Kovalyov’s last hope for correcting human rights abuses by the Russian military failed to produce any change.

In response to his defeat before the Constitutional Court and Yeltsin’s unyielding devotion to continued military action in Chechnya, Kovalyov tendered his resignation on 23 January 1995. The text of his resignation letter to President Yeltsin follows:

You began your democratic career as a forceful and energetic crusader against official deceit and Party despotism, but you are ending it as the obedient executor of the will of the power-seekers in your entourage . . . . I considered myself obliged to remain in your administration as long as my status enabled me on occasion, even if only in isolated instances, to counteract government policies that had violated human
rights and humanitarian values. Perhaps even now such opportunities have not been totally exhausted. But I can’t go on working with a president whom I believe to be neither a supporter of democracy nor a guarantee of the rights and liberties of my fellow citizens. I hereby inform you that, as of today, I resign as Chairman of the President’s Human Rights Commission, as a member of the Presidential Council, and as a member of all other presidential bodies. 47

Kovalyov’s resignation is a stunning indictment of Yeltsin and his policies. Until the conflict in Chechnya began, Yeltsin appeared to be a stalwart supporter of human rights initiatives, often pushing them forward in the face of tremendous opposition from the State Duma. He worked together with Kovalyov on a wide variety of issues. They succeeded in including a Bill of Rights in the December 1993 constitution. I cannot help but agree with Kovalyov’s assessment of Yeltsin’s character. Yeltsin was good at supporting human rights when they furthered his political agenda. Unfortunately, when Yeltsin’s political future came into conflict with human rights protection he consistently ran roughshod over his previously professed principles.

The evidence listed in this section clearly points in favor of legitimacy-seeking. As predicted by Hawkins, Yeltsin implemented a number of instrumental changes which he could use to show that he was forwarding human rights. Foremost among these are his drafting of a new constitution which includes human rights and his creation of a weak Presidential Human Rights Commission. Additionally, he also made sure it was publicized when he closed the last gulag and freed Russia’s “last” political prisoner. 48 Overall, the period from 1992 to 1999 is replete with Yeltsin’s efforts to legitimize his own rule.

III. Signals from the CE

An explanation for Russia joining the ECHR related to that of legitimacy is that the CE signaled Russia that membership in the council and ratification of the ECHR were not costly. The following sections evaluate potential signals from Russia in terms of how costly membership in the CE and later the ECHR would be.

Signals of Wish

The primary evidence for the CE signaling Russia that it would not be held accountable for its actions comes from observing current member states. From the time that Russia joined the CE, it was under pressure to ratify Protocol 6 and abolish the death penalty. This is particularly important given that long-time members such as Great Britain, Turkey, and Cyprus had not abolished the death penalty yet and were not being sanctioned by the council. 49 Russia could look at those cases and decide that it might be able to ignore the council’s statements with impunity. Even the Secretary General of the CE recognized that “none of the thirty-nine members are fully implementing to the letter the obligations they undertake.” 50

Another important factor is that the council was willing to overlook numerous human rights violations continuing in Russia even as it admitted Russia to the council. The official opinion of the council was that Russia did not meet the criteria for membership, but perhaps member states would be able to have more of an impact on Russia if it were a member state, than if it were an outsider. As a result, numerous flagrant human rights violations were overlooked. Furthermore, it is worth bearing in mind that many of the states felt that approving Russia’s accession to the CE was a direct reflection on their approval for President Boris Yeltsin’s democratic reforms.

Signals of Will

The CE repeatedly increased the requirements which Russia would have to meet in order to become a member of the CE. In July 1993, the CE specified that Russia would need to hold free and fair parliamentary elections and adopt a new constitution before it could accede to the ECHR. 51 Russia accomplished both of these feats in December 1993. Then in January 1994, the CE made Russia’s withdrawal of troops from Latvia, Estonia, and Moldova a precondition for membership in the council. 52 After completing this requirement, Russia was certain that it would be readily admitted to the CE. However, the unfolding of war in Chechnya forced the CE to rethink its position. In February 1995, the council decided to “freeze” Russia’s application for membership until such a time as Russia could show that hostilities in Chechnya had ceased. 53 Only with the announcement of a cease-fire was Russia granted membership in the CE on 28 February 1996. These incidents clearly show that the CE made demands of Russia in order for Russia to become a member. Each of these signals presented a tangible cost to the Russian government. In order to become a member of the CE it had to change its constitution, pull troops out of three foreign countries, and negotiate a cease-fire in a domestic war. What is particularly remarkable is not only that Russia yielded to each of the council’s requirements, but the relative speed with which Russia implemented them. In each case, Russia complied within six to twelve months of notification of the requirements. Clearly, both the demands of the council and the concessions made by Russia officials were extremely significant.

IV. Bounded Rationality

In his article on policy diffusion, Weyland describes the spread of policy from one country to another as a wave. He says that the wave begins slowly, then quickly increases, and then levels off. This cumulative frequency curve of countries adopting a given policy is roughly S-shaped. 54 The absolute frequencies for countries adopting a particular policy in a given time frame should look like a bell curve.
He further postulates that these waves of policy distribution tend to be localized to a given region. The policy may start in one country and then spread to neighboring countries. In the case of Russia joining the CE, both the temporal and geographic relationships that he discusses are replicated. The chart below shows that the cumulative frequency of states joining the CE approximates an S-curve. The process begins slowly from 1989 to 1992, but rapidly increases between 1992 and 1997, at which point it slows down again significantly. The absolute frequencies of states joining the CE in a given year also match the bell curve that he discusses. The chart shows that an approximate bell shape could be drawn with its peak around 1994.

Weyland also discusses how waves spread geographically. In the case of eastern European states joining the CE, this expectation also holds true. The wave starts in Finland in 1989, moves through a number of eastern European states, then the Baltic states, then southeastern European states, eventually covering Ukraine and Russia and ending up in the Caucasus. I found that the temporal and geographic relationships were the only parts of his theory which readily applied to Russia joining the CE and the ECHR.

Next, there is the idea that states follow other states in implementing a particular policy while at the same time being ignorant of the potentially negative consequences of the new policy. In Russia's case, it is clear that politicians knew going into the process what membership in the council would entail. This is demonstrated by numerous public statements from Russian politicians. The most prominent of these was given by Foreign Minister Andrei Kozyrev in 1992 when he delivered Russia's application for accession to the council. He said, "Russia will recognize the obligatory jurisdiction of the European Court and the right of citizens to submit individual petitions, and develop cooperation within the framework of the European Charter on Fundamental Social Rights." Thus, the obligations to which Russia would be held should have come as no surprise. Furthermore, the sheer length of time that it took Russia to actually be accepted as a member casts heavy doubt on politicians' ability to be ignorant of the consequences of membership. While it is possible that they initially did not expect membership in the CE or ECHR to cost a great deal, the previously listed evidence, about strong signals from the CE, shows that Russia had a four-year period of interaction with the CE in which it did exact heavy costs from Russia.

Given the policy decision of whether or not a state joins the ECHR, there is no variance in how a state decides to join. It may decide to apply for membership or not. Since there is no variance in this policy question, it seems clear that this particular component does not apply to Russia's membership in the CE or ECHR.

### Conclusions

This paper shows that although Yeltsin participated in a number of human rights measures, his overall intent points more to political expediency and efforts to legitimize his rule rather than efforts to lock-in human rights practices. He sought democratic reforms and improvements in human rights that would be noticed by international actors and bolster their support for him, thus securing his own position. Further evidence for this idea was demonstrated by Yeltsin's lack of attention to human rights in particular as they concerned crime prosecution procedures and

<table>
<thead>
<tr>
<th>Member State</th>
<th>Date Joined</th>
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<tbody>
<tr>
<td>Finland</td>
<td>5/5/1989</td>
</tr>
<tr>
<td>Hungary</td>
<td>11/6/1990</td>
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<tr>
<td>Poland</td>
<td>11/26/1991</td>
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<tr>
<td>Bulgaria</td>
<td>5/7/1992</td>
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<tr>
<td>Estonia</td>
<td>5/14/1993</td>
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<td>Lithuania</td>
<td>5/14/1993</td>
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<td>5/14/1993</td>
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<td>Czech Republic</td>
<td>6/30/1993</td>
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<tr>
<td>Slovakia</td>
<td>6/30/1993</td>
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<tr>
<td>Romania</td>
<td>10/7/1993</td>
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<td>Andorra</td>
<td>11/10/1994</td>
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<td>Albania</td>
<td>7/13/1995</td>
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<td>Moldova</td>
<td>7/13/1995</td>
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<td>The FYR of Macedonia</td>
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<td>Croatia</td>
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<tr>
<td>Georgia</td>
<td>4/27/1999</td>
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<td>Armenia</td>
<td>1/25/2001</td>
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<td>Azerbaijan</td>
<td>1/25/2001</td>
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<tr>
<td>Bosnia and Herzegovina</td>
<td>4/24/2002</td>
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<tr>
<td>Serbia [*]</td>
<td>4/3/2003</td>
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<tr>
<td>Monaco</td>
<td>10/5/2004</td>
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efforts to protect civilians in Chechnya. Thus, I find that
my first hypothesis is strongly supported.

Additionally, while arguments can be made for both
strong signals and weak signals from the CE, the pre condi tions Russia had to meet in order to become a member
provide convincing evidence that the council sent signals
that it was not going to provide international legitimacy
for Russia. Russia had to pay the costs of membership and
resolve substantial issues with respect to current implemen tation of human rights practices. Bounded rationality
provides a good explanation for how Russia learned
about the data provide evidence that states in eastern Europe joined
the CE as a part of a wave of policy diffusion. The data
from the section on CE signals contradict the idea that
Russia was ignorant of the potential costs of membership
in the CE and ECHR. Russia was put through a four-year
probation during which the CE successfully demanded
changes in Russian policy. Thus, my second hypothesis
was strongly rejected.

A final caveat to these findings is in order. The data
used in supporting and rejecting the research hypotheses
was based heavily on newspaper reports of events as they
occurred in Russia. While the articles are numerous and
agree on almost every account, they only represent the
public side of Russia’s move to join the CE and ECHR.
Information from Yeltsin’s personal conversations and
State Duma sessions would provide valuable insight to the
validity of this research.

Despite my findings that Yeltsin pursued membership
in the CE and the ECHR to secure his own legitimacy, the
fact that the CE was able to exert changes out of Russia
is still significant. As Hawkins states, these changes may
very well create the room for groups genuinely interested
in furthering human rights to push their agenda forward.30
My hope is that future research will explore further
development of domestic and international human rights
pressures on Russia to evaluate whether the CE made the
right decision in allowing Russia to become a member in
1996 or if it should have continued demanding reforms
until Russia met a higher standard.

NOTES
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42. Ibid., p. 185.
43. Ibid., p. 187.
44. Ibid., p. 201.
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