

## **Braking the Backslide: Which International Mechanisms Can Best Assist Russian Civil Society?**

Abstract: With the immediate goal of suggesting approaches that might be fruitful in the case of Russia, this paper proposes a more general framework of national governments' normative orientations towards democracy in semi-democratic regimes and the various international mechanisms available to support domestic civil society actors who wish to strengthen democracy and human rights. The author argues that the best suited international mechanisms vary, depending on whether the government espouses democracy as a dominant norm, upholds other political norms (such as national self-determination or economic growth) as strongly, or rejects the norm of democracy relative to other political norms. Transnational actors interested in promoting democracy generally, and civil society specifically, should thus be prepared to shift their support strategies when the regime's normative context changes.

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## ***Introduction***

Something close to a consensus has now developed among political scientists and Western policy analysts that the Russian Federation is not a democracy. In addition to an official acknowledgment of this by Freedom House (Freedom House 2007), an organization that is not prone to erring on the side of calling regimes undemocratic in cases of doubt, the chorus of Russia scholars has grown in volume agreeing that too many pillars of democracy have been chopped or whittled down to classify the country any longer as meeting the minimum conditions of democracy. The regime does not even meet the standard of Joseph Schumpeter's definition of democracy, which has often been characterized as an extremely minimalist definition: "that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote" (Schumpeter 1950, 269). Schumpeter elaborated that his definition required the presence of considerable freedoms of speech, information, and political participation to insure effective competition (Fish 2005b, 16; Schumpeter 1950, 271-2). These conditions no longer exist in Russia.

Currently in Russia, pro-government political parties and candidates receive disproportionate access to use of state resources in conducting electoral campaigns, as reported most recently by Transparency International (Russia) and the NGO Golos (RFE/RL 2007, October 31, 2007). The government took strong steps to curtail the capacity of international electoral observers during the national Duma elections in December 2007 (Chivers 2007). M. Steven Fish has also provided compelling evidence of ongoing electoral fraud and abuse of "administrative resources" to coerce citizens into voting for candidates and parties aligned with the government in power (Fish 2005a, 30-61).

In aspects of democracy that relate directly to civil society, citizens face considerable limits on their freedom to form groups concerned with civil rights or political opposition; freedom to hold political demonstrations; and freedom of the press. Being an outspoken critic of the government with significant public attention is a near certain way for members of the media (like Anna Politkovskaia), nongovernmental organizations (like the Center for Promotion of International Defense), or political parties (like Other Russia) to find themselves harassed or even killed. In all of these cases, the government has argued that the demise or harm done to dissenting individuals or organizations has not been organized by the state or that it is simply appropriate state action to investigate significant breaches of law that the organizations have perpetrated. Moreover, the regime has been so effective in creating fear among dissenters through these exemplary cases of punishment that for every case of open repression of opponents, there are likely many other potential opponents who choose not to speak against the government in order to avoid punishment.

This is of course a sad state of affairs for scholars and international supporters of Russian activists who have been excited by the hopeful, if weak democratizing developments that were taking place in Russian civil society in the post-Soviet period. Yet if scholars are disappointed, Russian citizens who have participated in public life in attempts to increase

openness in society, accountability of those who govern, and the protection of basic human rights in their country face not only discouragement but the threat of harm to their livelihoods and sometimes their very lives. Many scholars and international allies who have worked with Russian activists are now wondering, “What can we do?”

Indeed, those who have been involved in executing foreign aid programs aimed at strengthening Russian civil society now find themselves wondering if their efforts are futile and were terribly misguided in the past. Many efforts were poorly designed and considered, but that certainly is not the main reason for the macro-level results in the Russian regime. If foreign aid programs as previously devised cannot be effective under the current circumstances, yet Russian activists who promote human rights and democratic principles need outside reinforcement more than ever, what would be the most effective way for the international community to support them in trying to retain some crucial sphere of independent sociopolitical activity?

This paper argues that different international mechanisms of civil society support perform different functions well, and that mechanisms that are likely be helpful to domestic civil societies thus vary depending on the nature of the political regime of the country at any time. The paper is limited to theorizing about semi-democratic regimes (elsewhere variously called “hybrid regimes” (Diamond 2002, 21), “competitive authoritarian regimes” (Levitsky and Way 2005, 20), “gray-zone countries” (Carothers 2002, 5-21), or other labels), which have not secured meaningful free and fair elections or necessary civic freedoms and opportunities to facilitate a level playing field for political competition. The reasons for considering such regimes in particular are twofold. First, the share of semi-democratic regimes compared to liberal democratic or entirely authoritarian regimes in the world is widely acknowledged to be increasing, and scholars are increasingly turning their attention to these halfway-house regimes. But equally importantly, I am personally concerned with the plight of critical and autonomous voices in civil society, which are often seriously threatened in semi-democratic regimes. While such voices are permitted in stably democratic regimes and largely prevented from emerging in authoritarian regimes, they exist in a precarious environment in semi-democratic regimes with often unclear status. Particularly in regimes that were once more liberal in nature and are becoming less so over time, the government’s treatment of activists in civil society who criticize the government is a key indicator of how much the regime values freedom of speech, which is necessary for meaningful democracy to exist.

In referring to “regimes”, I borrow Robert Fishman’s definition as “the formal and informal organization of the center of political power, and of its relations with the broader society” (Lawson 1993, 183-205; Fishman 1990, 428). As such, my examination of regimes’ normative orientations focuses on actors within government and how they manage demands or contention in society. It is true that this perspective greatly oversimplifies the overall context of political norms in a country, since it neglects how prevailing societal norms may be at odds with norms espoused by the government. Yet it is consistent with standard definitions of political regimes, and allows for clear analysis. Most importantly, government is a necessary realm in which actors must accept democratic values in order for any minimally democratic political regime to exist. Democracy may not be of high quality where societies do not embrace it as a norm; but

certainly, holders of power in government must accept democracy as a norm in order for democracy to exist at all.

I argue that the best suited international mechanisms vary, depending on whether semi-democratic regimes genuinely value democracy and wish to strengthen it, value democracy less than other competing political norms, or actively reject democracy. I characterize those that value democracy as “democratizing”, those that espouse a number of other political norms in strong competition with democracy as “ambivalent”, and those that actively reject democracy in favour of competing norms (following an initial democratization) as “backsliding”. Although it is true that these terms suggest a trajectory of a political regime’s overall democratic practices rather than normative orientations to democracy, I contend that a state’s orientation towards democracy plays a large role in determining the trajectory of practices.<sup>1</sup>

Transnational actors interested in promoting democracy generally, and autonomous civil society specifically, should thus be prepared to shift their support strategies when the regime and the consequent needs change. I proceed by first outlining the menu of major international mechanisms that domestic activists and their international allies have at their disposal to strengthen domestic civil society, then elaborating a typology of regime orientations towards democratic values and which international mechanisms can best assist domestic civil society under each of these orientations. The last section of the paper applies the framework to the Russian case, given that Russia is an example of a backsliding democratic regime.

A very brief ethical clarification is in order here. This paper is concerned with how transnational actors can support civil society in semi-democratic environments. This means providing support, whether material or moral, for activists who already exist on the ground, in order for them to continue to exist despite government efforts to suppress them or failure to provide conditions in which civil society can thrive. It does not mean stirring up opposition where opposition does not already exist domestically, or fomenting revolution. If activists’ agendas are not significantly supported by domestic society, they are likely to fail to mobilize despite transnational support in any case (Sundstrom 2005, 419-449).

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<sup>1</sup> It is true that in some cases (for example, the Philippines in 1986 or Romania in 1989, societies may be positively oriented towards democracy, while governments are not, and (less often) vice versa, and in such cases revolution from below may change the regime trajectory abruptly regardless of the normative beliefs of those who govern. Yet these cases are the minority, and the dominant terms used in the literature to describe semi-democratic regimes’ orientations today are “democratizing” and “backsliding” (interestingly, the earliest use I located of the term “backsliding” to denote reversion from multiparty democracy was (Cutright 1963, 256), with later popularization of the term, it seems, by Thomas Carothers (Carothers 1997; Carothers 1999). Rather than inventing new terms such as “positively oriented” and “negatively oriented” regimes, I prefer to contribute to the existing viable conceptual framework if possible.

## ***The Menu of International Mechanisms***

### **Programs to fund NGO development**

This is the area in which transnational actors have deployed the most resources in Russia to this point. It consists of material assistance to NGOs in the form of grants to support their work and institutional growth, as well as training and interactions with Western NGOs to learn organizational and strategic skills. Western donors such as governments, private foundations, and multilateral international organizations have dedicated hundreds of millions of dollars to these purposes in Russia in the post-Soviet period. It is difficult to determine a comprehensive tally of funding that Western donors have devoted to supporting Russian NGOs, both because each donor organizes its aid statistics somewhat differently and because they rarely explicitly calculate a category of aid to NGOs. However, a few available estimates give a sense of the scope of support. United States donors are the largest with regard to NGO assistance. Sarah Henderson has estimated that during the years 1992-1998 (the heyday years of Western democracy assistance to Russia), the United States Agency for International Development (USAID) alone spent approximately US\$92 million on support for NGOs and civic initiatives. Private foundations have also played a considerable role in funding Russian NGOs. Two of the largest have been with George Soros' Open Society Institute, which granted more than \$56 million in 2000 alone, and the Eurasia Foundation, which gave nearly \$38 million during the period 1993-2001 (Henderson 2003, 7).

While this kind of assistance has led to some lasting strengthening of NGOs in Russian civil society, other weaknesses remain prominent and leave Russian NGOs extremely vulnerable to erosion by state harassment. Relatively few Russian citizens take part in voluntary activities. Russian citizens' reluctance to become involved in political and social organizations has been documented by many scholars (Evans, Henry, and Sundstrom 2006, 340; Hemment 2004, 215; Howard 2003, 206; Mishler and Rose 1995, 6). Howard in particular has worked on this question in detail, and points out that post-Communist countries generally have much lower levels of membership in various formal organizations (with the exception of trade unions) than other post-authoritarian countries (Howard 2003, 67). Moreover, Russian NGOs themselves – especially those that are foreign-funded – tend not to expend energy on developing public support for their efforts or attracting new members or volunteers (Henderson 2003, 10; Henry 2002, 191-2; Sundstrom 2005).<sup>2</sup> This contributes to a further problem that few citizens know much about what NGOs do or how they are important (Donors' Forum 2005).

In any case, it is clear that funding for capacity-building and professionalization in Russian NGOs is not, on its own, sufficiently powerful to strengthen NGOs to a level at which they are capable of resisting state harassment or rallying public outcry by large numbers of citizens against de-democratization attempts by the government. Funding to

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<sup>2</sup> This point also cited by interviewees in author's interviews with Yuri Dzhibladze, President, Center for the Development of Democracy and Human Rights, Moscow, July 12, 2005; Veronika Marchenko, Chair, Pravo Materi Foundation, Moscow, July 20, 2005; and Maria Slobodskaja, Director, Institute for Civil Society Issues, Moscow, July 13, 2005.

Russian NGOs – in line with the “resource mobilization” school of social movement theory – has not been the panacea that early civil society enthusiasts had hoped. The lingering fragility of NGOs has left the door wide open for the state to sideline civil society participation in policy deliberations and, increasingly, to repress critical organizations in society as the Russian government has begun to turn away from democratization.

## **Transnational Partnerships**

This refers to the building of networks and alliances that tend to focus on supporting the causes of domestic NGOs by “shaming” national governments – bringing international criticism upon national governments for contravening international norms and principles that they purport to espouse. These kinds of networks have been theorized most famously by Keck and Sikkink in their work on transnational advocacy networks (TANs) and the “boomerang pattern” by which TANs act most effectively (Keck and Sikkink 1998, 12-13). According to this mechanism, when channels of influence between domestic groups in civil society and their government are blocked, domestic NGOs bypass the state and appeal to nongovernmental allies beyond their borders, who in turn try to persuade their own governments or intergovernmental organizations to place pressure on the state that is ignoring its domestic NGOs. As Keck and Sikkink describe the process, “network activists exert moral leverage on the assumption that governments value the good opinion of others”. Yet, as they and others point out, the degree of government vulnerability to this kind of tactic varies depending in part on how much the government aspires to identify with a particular community of states (Keck and Sikkink 1998, 29; Risse and Sikkink 1999).

In the Russian case, this has certainly occurred in recent years in a number of issue areas, whether it be democratization in particular, human rights, or environmental issues, to name a few. Sometimes this has taken place as a modified form of boomerang tactic, through which Russian NGOs appeal directly to Western governments or international organizations more than international NGO allies. In the realm of human rights, for example, in 2000, NGOs including the Union of Committees of Soldiers’ Mothers, Memorial Human Rights Center, Civic Action, and Moscow Helsinki Group turned to the Council of Europe (CE) to request that the CE take action to criticize Russia’s human rights conduct in Chechnya (Orlov et al. 2000). On environmental issues, when the Russian government was dragging its feet in deciding whether or not to ratify the Kyoto Protocol on climate change in the fall of 2003, World Wildlife Fund Russia turned to the members of their networks in Western states and asked them to push their heads of state to persuade President Putin to ratify the treaty. Meanwhile, Greenpeace Russia and its international counterparts launched a massive signature campaign to build petitions that were delivered to Russian embassies in more than thirty countries (Henry and Sundstrom 2007, 47-69).<sup>3</sup>

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<sup>3</sup> It is important to note, however, that in the Kyoto deliberations, there were powerful international incentives for Russia to ratify the treaty (such as the EU’s support of Russia’s bid to enter the WTO) and few material disincentives since Russia has considerable room for economic growth without being in danger of exceeding its Kyoto emissions quota.

## Legal Mechanisms or “Club Membership” to Encourage or Compel Compliance

This refers to legal decisions or conventions that are binding upon states. Of course, the complexity with principles related to democracy or human rights in international law is that states must be members of the relevant international organizations or parties to international conventions/ treaties in order to be subject to such legal mechanisms.

Examples of legal mechanisms related to democracy and human rights that have an unusually strong binding quality and carry some enforcement potential are the European Convention on Human Rights (ECHR) and the Optional Protocol to the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). The ECHR is by far the most binding international instrument in member states’ domestic law. It is widely acknowledged as an unusual example of an international court that both issues rulings that are binding upon member states and allows individual citizens to submit cases for consideration by the court. It is generally considered to be “the most effective and influential international human rights instrument in the world” (Blackburn and Polakiewicz 2001, ix; Neumayer 2005, 938). As such, the ECHR places potentially enormous power in the hands of grassroots citizens in demanding human rights observance by their government. The Optional Protocol to CEDAW allows individual women or groups of women to submit claims of rights violations to the CEDAW Committee in the UN, which also has the ability to initiate inquiries into alleged grave or systematic abuses of women’s rights (United Nations, Division for the Advancement of Women 2000). In a non-European context, the Inter-American Court of Human Rights issues binding judgments, and the Democracy Charter of the Organization of American States could also be seen as a binding legal mechanism in that states may be suspended or expelled from the organization if they fail to comply with the Charter (Cameron 2003, 101; Sundstrom 2003, 45--60).

Russia is a party to the ECHR and thus subject to its rulings, and has signed and ratified the Optional Protocol to CEDAW (as of July 2004). These mechanisms can prove useful to domestic NGOs that are trying to promote democratization and better protection for citizens’ rights when they provide specific tools that NGOs can use to pressure their governments to comply with standards to which they have previously committed. This varies somewhat from the mechanism described in the previous section with shaming and the boomerang pattern, in that in this case, there are specific binding international legal mechanisms with which the state is obligated to comply, rather than merely the attempt to embarrass the state into abiding by more informally existing norms that have no binding legal embodiment. In principle, NGOs can employ these legal mechanisms either to lobby the government to change its legislation to comply with clear international standards, or to litigate in the judicial system to force government compliance with the standards. Harold Koh has dubbed these two processes respectively “legislative internationalization” and “judicial internationalization” of international norms. He also refers to the latter mechanism as “transnational public law litigation” (Koh 1997, 2657).

In addition to formal legal mechanisms that “prosecute” antidemocratic behaviour, the international community can also attempt to restrain such behaviour by threat or execution of Russia’s suspension or exclusion from international “clubs” in which the government desires to be a member. An example is the Council of Europe, under which the ECHR is located. The ECHR’s only real available sanction for Russia failing to implement its rulings is suspension Russia from the organization as a whole or from its Parliamentary Assembly in particular. The Russian government would be highly embarrassed by such a suspension since it still values inclusion as part of the club of Europe, even if it does not wish to develop all of the democratic processes that European Union countries follow.

There is precedent for this embarrassment. In April 2000, on the basis of a critical field investigation conducted by CE parliamentary members in Chechnya, the Parliamentary Assembly voted to suspend the Russian delegation’s voting rights in the Assembly until it showed some improvement in its conduct in Chechnya. The Assembly’s field investigation involved discussions with many civil society organizations as well as Russian government representatives. In particular, the Assembly requested that Russia improve its human rights conduct with regard to the civilian population in Chechnya, and that Russia begin a peaceful dialogue with the elected Chechen authorities. The improvements that Russia carried out in this regard were mostly formal in nature, rather than a radical change in behaviour, and the Assembly delegation that investigated and reported on Russia’s behaviour was not entirely satisfied with the improvements (Peuch 2001). However, this case was important in that (a) the Russian government was clearly embarrassed about this punishment from the European community and was eager to satisfy the CE’s demands quickly to restore its status in the CE; and (b) it showed that the CE will give a serious hearing to nongovernmental organizations who voice complaints about government conduct.

Similar dynamics exist concerning Russia’s membership in the G8 and its desire to enter the World Trade Organization. Indeed, with regard to the G8, it has been argued that the Russian government toned down the restrictions on NGO activities included in the first version of its law on NGOs due to scrutiny from G8 governments as Russia held the presidency of the G8 and was about to host the G8 leaders’ summit in St. Petersburg in 2006 (Kuchins 2006).

### ***Regime Characteristics***

A number of scholars have suggested that different international mechanisms in general are likely to be more or less influential in encouraging greater democratization under different kinds of political regimes (Carothers 2002, 5; Levitsky 2005, 20). In general, theorists of international relations have postulated that there are at least three different but somewhat overlapping logics that might lead domestic actors to comply with certain principles promoted by the international community. The first of these is a desire for legitimacy in the eyes of international actors, involving a “logic of appropriateness” which may develop due to domestic actors developing a true belief in the principles promoted by the international community, or simple mimicry to do what is appropriate in



the eyes of those actors in order to be part of an “in-group” (March and Olsen 1996, 247-264; Splidsboel Hansen 2006, 66-84). This logic is generally associated with the constructivist paradigm in international relations, emphasizing norm learning and non-rational thought processes. The other two routes share a rationalist “logic of consequences”. The second is a rational response to attempts of the international community to persuade states through incentives, giving them the promise of rewards that they desire. This is generally associated with the liberal paradigm in international relations. The third logic involves response to more coercive measures employed by external actors. Thus, the difference between these two rationalist chains of thought is whether the incentives are positive “carrots” or negative “sticks”.

Equally importantly, though, logics of appropriateness and consequences apply not only to norms promoted by international actors, but also to norms espoused by domestic actors, whether elites or mass citizens. Domestic norms frequently compete with international norms (Cortell and W. 2000, 65-87; Sundstrom 2005, 419-449), so that contradictory logics of appropriateness battle one another in a regime, as well as contradictory logics of consequences in terms of material rewards or punishments. For example, TANs may be promoting democracy and human rights internationally, but a majority of domestic citizens – which do elect governments in many semi-democratic regimes – may value rapid economic growth more than they value public debate on economic policies, or may desire to live in a proudly independent state that does not accept advice from foreigners more than they value democracy.

What does this suggest about international mechanisms to support NGOs specifically under different regime circumstances? On the whole, when national governments embrace democracy as an appropriate political norm, the best ways in which international actors can encourage the strengthening of civil society is by providing material and training resources to organizations and movements in society to support processes that are already occurring with a local momentum. When the domestic government is actively trying to further democratization out of a sense that this is appropriate, civil society growth will be permitted and even encouraged by the government, but groups in civil society may be fairly recently formed, with few organizational and public relations skills, and with few local sources of material support for their initiatives.

In contrast, when the domestic government values other political norms above democracy, and is operating according to a logic of consequences with respect to democracy, this means that it has not internalized democratic norms but will only take democratizing measures when the international community offers incentives for it to do so. Under these circumstances, the government will be either indifferent or hostile to civil society without the presence of incentives that appeal to their embraced political values or material interests. International actors under these circumstances should devote significant effort to identifying positive or negative incentives that it can bring to bear upon the government to encourage further democratization.

Another way in which to examine this question, from the point of view of members of organized Russian civil society themselves, is through the lens of social movement theory. The two major types of factors that social movement theorists argue affect the

possibilities of social movements for action are resources and political opportunity structure. From a resource mobilization perspective, organizations require resources such as funding, skills, and sheer numbers of members or supporters (in varying degrees and configurations depending on their agenda) in order to mobilize effectively on the problems that concern them. From a political opportunity structure perspective, social movements mobilize more effectively when there are available routes to influence upon the state and during windows of time when state priorities allow social movements to frame their demands in ways that attract decisionmakers' attention and agreement. External actors trying to assist Russian civil society would be wise to consider the ways in which they can enhance Russian societal actors' resources and opportunities under these two categories.

I turn now to a categorization I have developed of regime characteristics that coincide with various constellations of logics of appropriateness and consequences, and the international mechanisms that such circumstances suggest would be most effective to assist civil society activists in maximizing the resources and/ or political opportunities at their disposal.

## **Democratizing**

In some cases, leaders in the national government are genuinely interested in furthering democratization of government and society, and thus domestic actors are actively driving democratic development from both societal and state levels. Often this is the case in the immediate "honeymoon period" after a transition to democracy from authoritarianism has taken place in a country. Many of the post-Communist countries in the immediate aftermath of the Soviet Union's collapse would fit this characteristic. In the "second wave" of democratic revival in countries where "Colour Revolutions" have taken place (such as Georgia and Ukraine) this has also been the case. Of course, it is sometimes difficult as an external actor to gauge the true interest of domestic political leaders in advancing democratization. For example, even post facto, debates rage as to whether Boris Yeltsin was ever a true democrat at heart: as Lilia Shevtsova put it in 1995, "for Yeltsin, as indeed for pretty much the entire Russian political class, the rhetoric of liberal democracy is little more than a useful cover for ambition" (Shevtsova 1995, 63). Yet actions do reflect political will, and the willingness of Russian political leaders in the early post-Soviet period, at least at the national level, to allow freedom of speech and organization in civil society, was quite clear.

In such a situation, where political leaders accept and even appreciate the importance of civic freedoms, the greatest help that the international community can give to domestic civil society actors is funding and training to assist them in building networks, developing the capacity of NGOs for action, and conducting public information campaigns to make the domestic general public aware of their activities and impact on issues of societal concern. This is because in a situation where the government is making serious efforts to democratize, the political opportunity structure for NGOs is likely to be fairly welcoming, while what they truly lack is resources and familiarity with autonomous mobilization in a post-authoritarian context.

## **Ambivalent**

In a regime ambivalent towards democratization, in some cases government leaders may be positively oriented towards democracy, but other political forces at elite and/ or mass levels within the regime are opposed to greater democratization and impede any reform efforts. In other cases, the government may be ambivalent about democratization and consider it a value competing for priority among other political values and practical policy challenges. In situations of economic crisis, for example, such as Russia in 1992-1999, short-term decisions to resolve urgent economic problems may effectively take all oxygen away from democratization as a part of the longer-term policy agenda. As some authors have argued, such situations are prone to exploitation by political and economic actors who are opposed to open decisionmaking procedures, who can engage in rent-seeking behaviour and keep institutional workings designed to their advantage while a fragile democratic government is otherwise preoccupied (Hellman 1998, 204).

In this situation, NGOs may still lack resources, and the national government is unlikely to be opposed to transnational actors providing resources to domestic groups, but groups in civil society would also benefit from improvements to the political opportunity structure they confront. As such, the most effective international mechanisms to employ should be those that bring the government's attention back to the democratization agenda.

This can be accomplished most effectively by either supporting public opinion mobilization within the country, shaming the government before the international community into fulfilling norms that it agrees with, or creating positive incentives for the government to shift its agenda, perhaps thereby bringing economic management or national security agendas and the democratization agenda into mutual reinforcement. In these cases, factors of material or moral leverage become important in determining whether the international community can affect government conduct (Keck and Sikkink 1998, 208; Levitsky 2005, 21-2). Material factors include the state's military and economic strength and its reliance on trade relations with the foreign governments that are pressuring it to change internal behaviour. Moral leverage exists when foreign governments or international organizations can appeal to competing logics of appropriateness by damaging or enhancing the state's valued reputation as an ally or member of an important diplomatic "club". In addition, though, transnational actors should also continue to provide material and training resources for NGOs.

Consequently, the mechanisms specifically appropriate to such efforts would be, respectively: (1) funding and training to strengthen domestic NGOs that support democratization; (2) building networks between them and transnational actors that could assist them in shaming their government; and (3) creating democracy requirements for membership within international economic and security institutions (as exist with international organizations such as the European Union and Council of Europe).

## **Backsliding**

In a backsliding democracy, the government has shifted from an approach of encouraging regime democratization (whether mildly or strongly, as a democratizing or ambivalent

regime) to abandoning democratization as an appropriate political value (Carothers 2002, 5; Fish 2005a, 313). Frequently other values such as national pride or economic growth are cited by the government as values that are harmed by democracy but must take precedence. In such circumstances, civil liberties begin to be restricted, limitations are placed on the ability of dissenting forces to participate in political life, and the democratic electoral process inevitably becomes less competitive.

In this situation, the most that international allies of domestic civil society activists can likely do is to support the maintenance of some level of pluralism and autonomous organization in the country (Carothers 1999, 308). Michael McFaul (2005, 5-19) and Levitsky and Way (2005, 20) have suggested that at a minimum, in order for democratization to take place, the regime must be a competitive authoritarian regime. For a democratic resurgence to take place in a second incarnation after a fragile democracy backslides to competitive authoritarianism, there must at least be some pockets of pluralism and independent organization within the regime to allow democratic breakthrough (McFaul 2005, 7).

At a regime-wide level, in the interest of maintaining some level of political competition in a backsliding context, the government will only be moved to comply with democratic norms if strong incentives are offered by international and/or domestic actors. Here again, because of the logic of consequences and competing logics of appropriateness at work, effectiveness of international pressure depends on the government's vulnerability to it. Effective international pressure on a backsliding democratic regime requires that international actors have some issues of moral or material leverage over the state (Levitsky 2005, 20). Leverage in a backsliding context often focuses on material vulnerabilities, such as dependence on trade flows or foreign aid. Although there is considerable controversy on the effectiveness of economic sanctions (Hufbauer, Schott, and Elliott 1990; Marinov 2005, 564-576; Nossal 1989, 301), economic sanctions may be effective in cases where the country's economy is vulnerable and international actors can coordinate. This kind of aggressive material leverage is not desirable when a regime is ambivalent towards democracy, since it may lead to hostile relations between external democracy-promoting states and networks and the regime in which they are trying to encourage democratic values.

Yet, as noted earlier, leverage is not always materially rooted; it can also take the form of moral leverage, in which governments' actions are held up to international scrutiny against their reputations (Keck and Sikkink 1999, 97). Sanctions can in fact have a *shaming* impact on governments by clearly identifying behaviours that "civilized" states consider unacceptable and legitimizing domestic civil society opposition to those behaviours (Klotz 1995, xi, 183).

There may also be some international law that is binding upon the state if the state has signed international agreements or joined international organizations that emphasize democracy during the term of an earlier government that was more positively oriented towards democracy. Threats of punishment in the forms of suspension or expulsion from international organizations can also be effective in some instances if the regime maintains vestiges of reputational concern and the desire to avoid being ostracized from privileged

diplomatic or trade clubs. That is, the government may not care about maintaining democracy, but cares about the international embarrassment or economic harm that would result from being expelled from an international organization.

As concerns international support to civil society specifically, a final important aspect of a backsliding context is that groups in civil society that receive or have received support from foreign donors and partners are invariably labeled as unpatriotic or, worse, traitors. As a result, foreign donors of assistance to NGOs must be extremely careful in this context about the type of funding or training they are offering, and the extent to which funding is aimed at specific donor-defined tasks. The more that local NGOs can demonstrate that they do have home-grown problems and concerns as the inspiration for their activities, the more accepted and less at risk they will be.

### ***How Does Today's Russia Fit?***

Russia is now undeniably in a backsliding state, in which the government is openly hostile to democracy, labeling it a Western-imposed concept and attempting to call the current regime a different, "sovereign" style of democracy. As concerns civil society specifically, this has meant a particular focus on controlling NGOs and harassing those who have close ties to Western organizations. Although there has been a formal enhancement of institutionalized channels for civil society dialogue with the state through the recent introduction of a Public Chamber at the national level, the majority of the Chamber's roster is weighted towards individuals who are loyal to the government, and the former Presidential Commission on Human Rights has had its status somewhat downgraded into a Council for Fostering the Development of Civil Society Institutions and Human Rights. Through these institutions, President Putin has demonstrated his tendency to try to control civil society rather than to seek open input from it, although the real role that they will develop over time remains unclear (Evans 2005; Lipman 2005).

The Public Chamber, which is speculated by some to be an eventual replacement for the Council (Petrov 2005a; Petrov 2005b), entered into existence on July 1, 2005 and includes 126 members. Of those, 42 were appointed by the president himself. In a second stage, those 42 appointed members appointed an additional 42 members from federal-level public organizations (*obshchestvennye organizatsii*). Finally, these 84 members selected the last 42 members from among regional public organizations. Thus, observers have pointed out, the Chamber is designed to be loyal to the president (Bransten 2005, April 28, 2005; Kononenko 2005). The chamber does not have the abilities to review existing laws or presidential decrees or propose new laws. Its resolutions also lack any force of law and its designated role is to monitor the implementation of government policy rather than participate in policy formulation (Abdullaev 2005).

This represents a serious degradation of autonomous NGOs' potential for influencing public policy at the national level. Prior to the Putin era, most autonomous NGOs readily admitted that gaining access to the ears of key government decisionmakers was difficult, yet they often found individual allies in government who would help to voice their policy proposals, whether they were Duma deputies, political appointees, or sympathetic senior

bureaucrats.<sup>4</sup> Now, with the formalization of NGO input into a special body, the president will have the ability to claim that he has created official channels of civil society input into politics, while controlling the nature of that input to his own liking.

The situation had been better in some of the regions and cities outside the capital, such as Novgorod and Izhevsk. Yet as Putin's centralizing administrative reforms have been implemented – restricting municipal governments' powers and revenue capacities as well as making regional governors appointed by the president rather than elected – it is possible that the nascent channels between NGOs and local governments will erode as well. Tomila Lankina, has argued that these recentralizing reforms are aimed at “fostering Soviet-style social mobilization of the grassroots for pro-regime political campaigns, and at ensuring that municipalities suppress opposition activism” (Lankina 2004a; Lankina 2004b, 1). In short, the future does not appear especially bright for increasing input from autonomous civil society into political decisionmaking.

Over the past five years, the Russian government has taken several decisions and made numerous statements, related in some way to civil society, which have begun to alarm Russian civil society participants and foreign donors alike. Many NGO activists, particularly in Russian human rights organizations, echo the sentiment of Ida Kuklina of the Union of Committees of Soldiers' Mothers, who stated already in 2005 that “brick by brick, Putin is closing off any possible route of opposition,” by making it extremely difficult for new political parties to form, eliminating popular election of regional governors, terrorizing business leaders into loyalty, and limiting NGO input to that of hand-picked organizations in official forums.<sup>5</sup>

Government officials and advisers have made frequent statements that directly accuse foreign-funded NGOs of being a “fifth column” or unhelpful to Russian society. In a statement that received wide publicity in July 2005, President Putin stated to his Council for Facilitating the Development of Civil Society Institutions and Human Rights that “We are against overseas funding for the political activities [of NGOs] in Russia” and that “we understand that he who pays the piper calls the tune” (Medetsky 2005). These statements followed over a year of other negative comments about foreign donors and foreign-supported Russian NGOs. The pattern was kicked off by President Putin's statement during his state of the nation address in May 2004 that “many citizens' associations in Russia are working constructively,” but that for some, the priority is “obtaining funding from influential foreign or domestic foundations,” and for others it is “servicing dubious group and commercial interests.” Commentators largely argued that these comments were aimed at foreign foundations, Russian business oligarchs, and the NGOs they

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<sup>4</sup> The existence of allies at the federal government level was stated by a number of NGO leaders during research in 1998-2001. These included interviews with Elena Ershova, NIS-US Women's Consortium, Moscow, 24 March 1999; Elizaveta Bozhkova, Information Center of the Independent Women's Forum, Moscow, 1 April 1999; Tatiana Kasatkina, Executive Director, Memorial Human Rights Center, Moscow, 5 April 1999; Zoia Khotkina, Senior Research Affiliate, Moscow Center for Gender Studies, Moscow, 26 March 1999; and Nikolai Khramov, Secretary, Anti-Military Radical Association (ARA), Moscow, 9 August 2000. See also Sperling 1999, 129-43.

<sup>5</sup> Author's interview with Ida Kuklina, Member of Coordinating Council, Union of Committees of Soldiers' Mothers, Moscow, July 8, 2005.

funded (Evans 2005). Shortly thereafter, close Kremlin advisor Gleb Pavlovskii made a number of comments that reinforced and expanded upon Putin's statement, including characterizing Russian human rights groups as "a dissident sect" and accusing civil society as being unrepresentative of Russians' concerns and unconstructive (Rossiiskaia gazeta 2004). In the fall, the deputy head of the presidential administration, Vladislav Surkov, stated that there is a "fifth column of left and right radicals united by a common hatred for 'Putin's Russia,' as they call it, and shared foreign backers," and went on to warn that "God will judge them; we will manage without them" (RFE/RL 2004).

A new "law" on NGOs (which is actually a set of amendments to four existing laws relevant to governing NGOs) came into effect in January 2006. It introduces a number of measures that make it easier for the state to deny registration to NGOs, increase the amount of reporting required of them (including the nature and sources of all foreign funding sources), and allows government officials to observe and interfere in NGO activities to a much greater extent than in the past (including the ability to attend *any* of an organization's gatherings) (International Center for Not-for-Profit Law 2006). These changes have brought considerable alarm from Russian NGOs, Western governments, and transnational NGO networks, although it should be noted that the final version of the law was much less restrictive of NGOs than the original draft.

Despite the democratic backsliding that is occurring, the Russian government has taken pains to maintain the formal institutions of an electoral democracy (Hassner 2008, 9). For example, President Putin has declined to simply change or violate the Constitution to allow him to maintain his position as president. Meanwhile, current discourse emanating both from the president and analysts suggests that he will make himself available to be nominated as prime minister after a new president is elected, thereby maintaining considerable power in the system.

This insistence on maintaining the appearance and formal institutions of democracy suggests that there may yet be some ground left for pro-democracy activists in Russia and their allies internationally to engage in shaming. The Russian government may still have reputational concerns and a desire to remain seen, when convenient, as a member of the Western democratic "club". As Masha Lipman has put it, "the formal decorum comes in handy when Putin needs to insist, usually to Western audiences, that Russia is a democracy. He appears anxious to fit in among the democratic leaders of the West..." (Lipman 2007, A21). Thus, there is still an element in Russia of the regime that cares about being perceived as a democracy among some audiences and remnants of a logic of appropriateness.

Given the remaining vestiges of concern for being a member of the democratic "club" of states, the perception of the Putin administration (and much of the Russian public) that they have been bullied by the liberal democratic West, as well as the fact that Russia is a major oil-producing state in a highly oil-dependent global economy, punitive economic measures such as sanctions would be over-reactive, counter-productive, and very likely ineffective in changing government behaviour. Instead, shaming tactics that capitalize on the reputational concerns of the government, making use of the support of transnational allies in TANs, foreign governments, and international organizations, could still be

effective. However, given the widespread view in Russia that it has been mistreated by the West and deserves international respect due to its recent economic and military resurgence,<sup>6</sup> attempts at shaming must be tailored to target specifically the values that the Russian government continues to claim to espouse.

In this sense, the best shaming tactics would be to expose inconsistencies between international conventions or organizations the Russian Federation has joined and actions or policy statements the government issues. In addition, shaming can be employed to uncover discrepancies between statements the government makes in one context, and contradictory actions it takes in another context. For example, in January 2007, President Putin stated to members of the Council for Development of Civil Society Institutions and Human Rights that the “insistent positions and constant attention” of human rights NGOs have “played a positive role” in encouraging reform of policing and the penitentiary system (President of Russia, Official Site 2007). Domestic NGO leaders and international allies can remind him of this statement when he criticizes human rights organizations for pursuing foreign agendas at a later point.

In addition, the use of legally binding mechanisms – most especially the ECHR – as a mechanism for defending various human rights, including civil society’s freedoms of organization and free speech is a highly useful tool for domestic NGOs to employ. The Russian government is obligated to implement ECHR rulings, and it generally has done so, although with important exceptions in the instances of cases related to Chechnya (Human Rights Watch 2008). The European Convention on Human Rights includes provisions on freedom of speech and organization (especially Articles 10 and 11) around which, potentially, NGOs could build cases. Already in ECHR case law, a considerable number of cases have been ruled in favor of plaintiff citizens and against the Russian state in areas such as fair trial and detention procedures, conscription, and freedom of residency (the *propiska* system) (Emerson and Noutcheva; Jordan 2003, 660-688). It is difficult for the Russian government to argue against these rulings without rejecting the human rights convention it has signed, as well as membership in the European Club. The rulings are issued on a regular basis, engendering incremental legal change over time in Russia to bring it more in line with democratic procedures, but doing so with a quieter, less confrontational quality than many of the diplomatic shaming tactics carry.

An interesting aspect of the Constitution of the Russian Federation is that it stipulates a “monist” legal system, in which the elements of international treaties to which the state is a party are directly applicable as domestic law, and are constitutionally superior to domestic law in case of any contradictions (Burkov 2007, 23-25; Polakiewicz 2001, 40-41). Yet Russia also operates according to a civil law tradition similar to other continental European states, in which the impact of international treaties may be less than they would

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<sup>6</sup> For example, the Levada Center, a respected Russian survey research agency, has found in repeated nationwide surveys between 2000 and 2007 that 45-54 percent of respondents view the United States as a threat to Russia, and in a 2004 survey that 45 percent of respondents believed that there was “probably” or “definitely” a “worldwide conspiracy against Russia” (Levada Center 2008). Similarly, a large Russia-wide survey conducted by the Carnegie Endowment during the 1999-2000 national election period found that 55.4 percent of respondents “agreed that US policy threatens Russia” ((Carnegie Endowment for International Peace , March 26, 2008).



be in a common law system, since civil law is based on judges' interpretation of abstract legal principles rather than development of principles from precedent cases. This situation is exacerbated by the fact that Russian judges are generally poorly educated in international law, particularly the ECHR, to which the state has only recently become a party (Burkov 2007, 43; Ferschtman 2001, 735).

There is considerable space for transnational actors to be involved in assisting NGOs in honing their skills, both for submission and argument of cases before the ECHR, and following through to monitor implementation of ECHR case rulings. The implementation side of the equation has two basic aspects: monitoring government implementation of specific judgments, and working within the legal system in Russia to encourage use of ECHR case law in domestic law (its use by Russian public defenders as well as proper consideration by domestic judges). In this respect, international human rights lawyers who are experienced in arguing before the ECHR could work in partnership with Russian organizations who have worked on ECHR cases (such as the Centre of International Protection (*Tsentr sodeistviia mezhdynarodnoi zashchite*) in Moscow, or Sutyazhnik in Ekaterinburg). In fact, these kinds of partnerships are already taking place to a growing extent in Russia. For example, this year, the Macarthur Foundation awarded the Centre of International Protection a grant specifically for training Russian lawyers in ECHR jurisprudence over a three-year period (Macarthur Foundation 2007). There is much more room for funding of Russian NGOs and partnerships between Russian and European organizations in this area.

However, a note of caution is in order. One potential drawback to encouraging NGOs to use judicial prosecution as a mechanism to pursue security of democratic processes is that the state could harass activists or citizen plaintiffs engaged in such cases in order to prevent them from successfully concluding trials or frighten them or others into foregoing such legal appeals in future altogether. This has already occurred in Russia to a certain extent. The Centre of International Protection, for example, has faced repeated harassment from authorities – both through “inspections” of their office space and personal interrogations of lawyers on staff – arguably mostly in connection with their defense case for jailed “oligarch” Mikhail Khodorkovsky, but also coinciding with key deadlines for the Centre to submit materials to Strasbourg in ECHR cases (Centre for International Protection 2008; Ekho Moskvu 2008).

Finally, as the previous example hints, there is still a role that exists for Western donors to provide funding and training to Russian NGOs, to try to keep some funding options alive for Russian civil society. If the political opportunity structure needs opening in the current context, Russian civil society also remains in need of significant material resources. The central Russian government has begun to hold grant competitions to fund NGOs, as many city and regional administrations in Russia have long done. But the realm of domestic nonstate funding sources for Russian NGOs remains extremely limited, so there is a danger of NGOs becoming either dependent upon Russian government funding (and therefore potentially co-opted in their agendas) or losing all capacity to act as a result of an absence of material resources. Western funders (both state and private) are still desperately needed to diversify NGOs' funding sources.

Donors must execute their funding programs carefully and sensitively, however. They must demonstrate clearly that they are open-minded and flexible, allowing Russian organizations to develop their own agendas rather than forcing them to tailor their activities to narrow strategies of Western donors. In addition, they should be closely attuned to supporting Russian organizations that have popular support and have sprung from local concerns. Examples might include pensioners' or veterans' organizations, or traditional charity-oriented groups like children's aid organizations or women's councils (*zhensovety*). In doing so, they would only improve their reputation in the country and counteract the Putin government's narrative of a fifth column of Western-funded NGO activity. This funding support will almost inevitably need to decrease in scale, given the hostility that the Russian government has exhibited towards NGOs and the danger in which this has placed many foreign-funded groups. But it should continue to a certain extent, in order to try to maintain some scope for activity in civil society that is independent of a state-dictated agenda.

In the end, though, the logic of a regime backsliding away from democratic norms, yet with some remaining concern for being a member of the "clubs" of the industrialized Western states, suggests that the most effective approaches that international allies of Russian civil society will be shaming the government on issues it cares about (failing to comply with the rules of the clubs to which it has officially committed) and helping NGOs to make use of international law to compel state compliance with democratic and human rights norms. Although the situation for Russian civil society appears bleak, some hopeful mechanisms remain in place.

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