

Processes of International and Constitutional Socialization in Russia: Misconceptions and Overestimations

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Throughout the 1990s and well into the 21st century the politics of international socialization have dominated the international community's strategy towards states in transition or engaging in state building processes. The theoretical framework explaining this policy and its effects is broad and diverse.¹ One of the most productive researchers in this field, focusing on international socialization processes in Europe, is Frank Schimmelfennig. Schimmelfennig's theory on processes of international socialization constitutes the starting point of this chapter. The recent Russian aggression towards Ukraine, a sovereign state in Europe, should lead us to question this policy and hence the theories underpinning it. This chapter will provide a historical perspective on the rise, and as I will argue, the fall of the policy of international socialization, or at least some very serious challenges to it in relation to Russia. One important aspect of processes of international socialization is the constitutional framework; changes to the constitution are an essential part of processes of international socialization, as will be further explained below. The main point to be made here is that processes of constitutional socialization, i.e. to change formal constitutional rules in order to foster a liberal society, is an important part of processes of international socialization, and that the misconceptions and overestimations regarding processes of constitutional socialization can contribute to explaining the failing policy of international socialization. If one of the underlying assumptions of the theory of international socialization is that processes of constitutional socialization will contribute to a successful international socialization, what can we learn from the case of Russia?

International socialization processes in Europe have been thoroughly studied and theorized by Frank Schimmelfennig and his colleagues.² In his work Schimmelfennig focuses on European regional organizations as socializing agencies that disseminate values such as democracy and human rights to the Central and East European states. He explains how and when such processes have taken place and under what conditions. He also identifies the mechanisms that are vital to this process. One of the main explaining conclusions as to the success of the socialization process is the political party constellations in target countries and the domestic power cost of compliance. The main argument is that the outcome of the socializing process is the result of a "rationalist bargaining process", whose success depends on the size and credibility of the incentives offered by the

1 See e.g. R. Goodman, D. Jinks, *Socializing States: Promoting Human Rights through International Law*, Oxford University Press, 2014, P. Jordan, 2003 *Does Membership Have its Privileges?: Entrance into the Council of Europe and Compliance with Human Rights Norms*, *Human Rights Quarterly*, 25 (660-688), J. T. Checkel, *Why Comply Social Learning and European Identity Change*, *International Organization*, 2001, vol. 55, No. 3 (553-588). For a summary of relevant theories on this matter see K. Sithole, (2013) *The Council of Europe, Rights and Political Authority*, *European Review*, vol. 21, no. 1 (118-134).

2 See for example, F. Schimmelfennig et. al. (2006) *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Basingstoke: Palgrave Macmillan.

socializing agencies, on the one hand, and the domestic power cost, on the other. One of the novelties with this particular theory of international socialization is that it understands the socialization process as intentional, as opposed to spontaneous and a bi-product. One of the assumptions is that processes of international socialization are based on a strategy adopted by the socializing agencies, and that they are striving towards an expressed goal, i.e. for the states to be socialized to internalize the norms and values at hand.

International socialization is defined as a process in which individual states are encouraged to adopt the constitutive rules and values of international society, creating a situation of rule adoption in the states to be socialized. Rules are in this context carriers of for example values, identity and norms. The socialization process is deemed successful when domestic sanction mechanisms secure rule compliance.³ Criticism has been forwarded regarding the difficulties of measuring completed socialization.⁴ Indeed, there is an important distinction to be made between rule adoption and rule implementation. Continuing domestic and international implementation and sanctioning of the values and norms diffused in international socialization processes depend on a functioning constitutional framework with for example an enforceable constitution, courts and other institutions with the power and legitimacy to ensure that the constitution is respected and adhered to, in combination with a social and political context respecting the constitution and the values expressed therein. Taken together, this is, I would argue, the very core of processes of constitutional socialization. And processes of constitutional socialization are necessary in order for international socialization to be successful.

As will be further elaborated below, Schimmelfennig takes his starting point in Europe as a community whose values are expressed and protected by institutions and norms. In this chapter focus will be on formal norms, i.e. legal rules, constitutional rules to be more precise. One of the main arguments in support of international socialization was that in order to establish peace and security we need to integrate. Integration can be achieved through international and regional organizations, such as for example the European Union, Council of Europe and NATO, and once membership has been obtained it will change behavior and values in the states going through legal reform. Thus, by integrating Russia into organizations that carry and manifest liberal values, the Russian state would become liberal. With the benefit of hindsight, we now know that this policy has suffered a severe setback. Russia plays a crucial role in destabilizing Ukraine and preventing its closer cooperation with the EU. One of the main purposes of this chapter is to analyze the recent developments in Russia applying Schimmelfennig's theoretical framework of international

3 Ibid., p. 2 ff.

4 B. C. Eryilmaz, Book Review of *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Review of International Affairs, 2008, vol. 16, no. 2, (129-132).

socialization processes. It will explain why the process of international socialization of Russia through the Council of Europe has not been successful and draw conclusions as to Russia's process of constitutional socialization in order to explain limits, misconceptions and overestimations regarding the prospect for international socialization through constitutional changes.

I will start off this chapter by explaining Schimmelfennig's theory on international socialization. For the purpose of this study the Council of Europe will be analyzed as a socializing agency and its strategy towards Central and Eastern Europe in general and Russia in particular will be our focus of attention. Thereafter follows an analysis of Russia as the target for the socializing strategy. In this part of the chapter focus will be on important constitutional and political challenges to the socialization of Russia.

1 Schimmelfennig's Theory on Processes of International Socialization

Frank Schimmelfennig has defined international socialization as "a process of rational action in a normatively institutionalized environment".⁵ The starting point for the developing of this theory of international socialization was the expanding of the European Union, Council of Europe and NATO. Schimmelfennig explains this process as the expansion of the Western international community to the East, spreading domestic and international liberal values and norms, and hence having an effect on the conduct of states. His argument is that Europe is an institutionalized environment and that it is rational for outside actors to adapt to this environment and its demands when a cost-benefit analysis favors such behavior, which it does under certain conditions, such as high material incentives and low domestic power costs.

Schimmelfennig's first proposition is that "in an institutionalized interstate environment, rational state behavior is constrained by value-based international norms of legitimate statehood and proper state conduct".⁶ He also argues that selfish state actors adhere to these norms in order to gain in terms of international legitimacy, based on a cost-benefit calculation. Thus, in order for the process of socialization to be successful the gain must be higher than the cost, and the gain in this context can be for example international legitimacy and membership in an international organization. The second of Schimmelfennig's propositions is that international socialization policies will have best effect in states in which societal and governmental orientations diverge; if the current regime has its power base exclusively in a western liberal agenda international support is not as

5 F. Schimmelfennig, *International Socialization in the New Europe: Rational Action in an Institutional Environment*, EJIR, 2000, vol 6(1), (109-139), p. 109.

6 Ibid., p. 110.

important, and if the regime is utterly nationalistic and anti-liberal, the effect of western socialization policies are severely limited.⁷

According to the theoretical framework developed by Schimmelfennig, the EU opted for a strategy based on conditionality applying mechanisms such as technical assistance, institutional ties and membership, while the Council of Europe has opted for social incentives, i.e. persuasion, argumentation and influence. To that I would like to add legal sanctions by the European Court of Human Rights, and the oversight by the Venice Commission, which of course are highly relevant in relation to processes of constitutional socialization. One of the main findings in Schimmelfennig's early work is that material incentives, in terms of membership in the EU and NATO combined with low domestic power costs are individually necessary and jointly sufficient conditions for a successful socialization.⁸

According to Schimmelfennig, socialization is a process and it does not have to be successful. It is successful when it has an impact on an actor's values and actions, i.e. these values and beliefs have been internalized. International socialization in general refers to the socialization of states. In the theoretical framework developed by Schimmelfennig this means that socialization of individual decision makers is not necessary, and not even the object of analysis, if the values to be socialized are sufficiently institutionalized in domestic decision making processes and effectively protected by domestic sanctioning mechanisms.⁹ If viewed from a rationalist perspective, as Schimmelfennig does, internalization will take place primarily at the corporate level and is indicated by inter alia the adoption of international norms in national constitutions and them thereafter being translated into domestic laws.¹⁰ Regarding the substantive content of the socialization process, Schimmelfennig refers to beliefs and practices that are institutionalized and constitutive for a social order.¹¹ This to me is rather vague and needs to be more precise. Therefore I have chosen to focus on constitutional systems, constitutional law, and constitutional jurisprudence, which from a legal scholar's point of view are indeed the most relevant beliefs and practices institutionalized and constitutive for a social order. For the purpose of this study social order is understood as the state and the values it expresses through its constitutional order.¹²

The whole process of international socialization builds on the legitimacy of the socializing agency combined with a structural asymmetry meaning that the actor to be socialized is structurally depending on the socializing agency and wants to be part of it so bad that this creates incentives for change. Schimmelfennig sees this as strictly rational behavior, and

7 Ibid., p. 111.

8 Ibid.

9 Ibid., p. 112.

10 Ibid., p. 119.

11 Ibid.

12 Compare Ibid., p. 119.

potentially even instrumentalist.¹³ Thus, when domestic actors consider adapting norms of the international community and domesticating them they make a cost-benefit analysis, where legitimacy, both domestic and international, is the benefit. However, as Schimmelfennig notes “states with high domestic legitimacy, abundant economic resources and a strong power position in the international system are to a much lower degree in need of international legitimacy than the pressurized elite of a poor and weak state”.¹⁴ Thus, states will follow the standards of legitimacy only so long as it can be justified from a cost-benefit analysis. This, by the way, applies to both socializing actors and individual states.¹⁵ Schimmelfennig concludes that both the socializing agencies and states to be socialized manipulate the norms in order to cut the costs, which he describes in terms of manipulation of the legitimacy factor.¹⁶

The structural asymmetry - the driving force for processes of international socialization – rested in the 1990s on the ideological divide between East and West during the Cold War and the assumption that West won that war. The question is whether that notion is still valid today? Of course, in a short-term perspective it is clear that the West won the ideological battle. It is however more questionable whether the position of the West as the primary source of legitimacy and norm superiority remains unchallenged.

Schimmelfennig categorizes the prospects for internalization of values and norms in relation to domestic situations. For example, Schimmelfennig puts Hungary in group number one with the best conditions for internalization due to liberal values and attitudes being rooted in political culture combined with a strong societal orientation towards the West and a government (at that time) using westernization to increase its legitimacy.¹⁷ Of course, recent constitutional and political developments in Hungary should make us think about the lock-in effects of the international socialization process, which in the case of Hungary clearly is an issue of constitutional design. The Hungarian constitution was designed so that it would become comparatively easy to change it. Once a state has been made a full member in relevant socializing organizations, leverage is affected and incentive structures as well as sanctioning mechanisms altered. Neither the Council of Europe nor the EU has had any real impact on the negative constitutional developments in Hungary.

However, as Schimmelfennig puts it “the most interesting cases, from an academic viewpoint, are those with mixed conditions”.¹⁸ Russia, during the 1990s was such a case. Boris Yeltsin and his entourage came to power with a liberal-democracy agenda in a society with weak Western orientation. The

13 Ibid., p. 117.

14 Ibid., p.118.

15 Ibid.

16 Ibid., p. 119, 123.

17 Ibid., p. 133.

18 Ibid., p. 134.

impact of Western socialization policies on such societies is potentially high. Yet its outcome will depend on a cost-benefit analysis and the perceived legitimacy of the international community and the values it stands for. The worst conditions for internalization exists in countries without a liberal political culture, a society that lacks Western orientation, and political leaders with their power base in ethno-nationalist and/or communist ideologies. International socialization would not be successful in such states, as a result of a cost-benefit analysis.¹⁹ Schimmelfennig identifies a fourth category, also a mixed one. However, in this category society has a strong Western orientation and the political power has authoritarian and nationalist tendencies, which means that political leaders do not have society's support for their actions. International socialization could, according to Schimmelfennig, in this context be successful by denying international legitimacy to state actors and mobilizing domestic opposition forces against the authoritarian regime.²⁰ Ukraine during the Majdan Protest would probably fit into this category. In conclusion, Schimmelfennig states that if the socializing agency controls the allocation of both legitimacy and material resources it can reinforce socialization. Such a situation, in combination with the state to be socialized finding that such an adaptation is rational and the structural conditions for socialization remaining stable, leads to a situation when norm-conforming behavior is likely.²¹

In his later research, Schimmelfennig further elaborates how membership incentives and party constellations are two deciding conditions for effective socialization. The promise of membership functions as a status marker and confers international legitimacy. Schimmelfennig concludes that only the EU and NATO have had a real impact on the international socialization process in Central and Eastern Europe, including Russia, due to its tangible rewards and punishments at hand.²² Party constellations can be divided into three types: liberal, antiliberal and mixed. Socialization processes are likely to be smooth in the first type, very difficult or non-successful in the second, and in mixed types the process has potential to be successful but it will take longer and the process is expected to be more complicated.²³ In this particular study Schimmelfennig characterized Russia's party constellation between 1992 and 2002 as antiliberal and hence predicted "no socialization; low and stable or deteriorating conformance". The observed pattern of conformance was reported as "stabilization of low conformance after small initial improvements".²⁴ Taking this as a starting point we proceed to

19 Ibid.

20 Ibid.

21 Ibid., p. 136.

22 F. Schimmelfennig, *Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe*, *International Organization*, vol. 59, no. 4, 2005, (827-860) pp. 832, 833.

23 Ibid., p. 835-838.

24 Ibid., p. 840.

analyze the strategy of the Council of Europe as a socializing agent, towards Central and Eastern Europe in general, and Russia in particular.

2 The Council of Europe and Russia

The Council of Europe was established in 1949 with the purpose to achieve greater unity between its members in order to guarantee peace and stability in a Europe with common values such as democracy and rule of law. In the 1980s the Council of Europe embarked upon a journey that would take it from its founding members to the 47 members that the Council has today. Since then we have witnessed an astonishing development of the Council, not only in terms of its number of members, but also considering its mandate and activities. Russia became member of the Council of Europe in 1996. By Russia's accession, the Council of Europe had finally become a pan-European organization.

The political goal of the Council, i.e. to unite Europe, was thereby achieved. However, the journey does not end here. The Council of Europe is an organization with both political and legal impact on its member states and states with the declared ambition to join the Council. The Council is one of the most important organizations for developing and upholding a human rights regime in Europe at the same time as it has set up for itself the goal to establish an area of democratic security. The Council of Europe as an organization is a bearer and promoter of norms and values such as democracy, rule of law and human rights. It is a socializing agency to use Schimmelfennig's terminology. It has both political and legal means at hand to diffuse and implement these norms to its member states. But in the end, lacking all hard enforcement mechanisms, except for suspending a State's membership, the Council relies on "naming and shaming", inter alia through the decisions rendered by the European Court of Human Rights, in combination with engagement through political dialogue.

The basic vision of the Council of Europe is that the cooperation between liberal and democratic states will secure the peace and unity of Europe, implicitly adjoining to the theory of democratic peace. The question rarely posed is what happens when one or several of the member states clearly are neither liberal nor democratic. This question has not been dealt with extensively neither from a theoretical nor from an empirical perspective, neither by scholars nor by politicians or experts within the Council. This section of the chapter sets out to explain why this question never really has been an issue for the Council, focusing on the Council's role as a "school of democracy"²⁵ as a result of the enlargement of the Council and the effects of the transition paradigm on the Council.

The vision of the Council of Europe could be drawn from the preamble to the statute of the Council of Europe. According to the preamble the Council

25 H. Klebes, *The Quest for Democratic Security. The Role of the Council of Europe and U.S. Foreign Policy*, Washington D.C.; United States Institute of Peace, 1999, p. 15.

was set up as a result of its funding members’²⁶ conviction that “peace based upon justice and international co-operation is vital for the preservation of human society and civilization”²⁷, that genuine democracy rests on the principles of individual freedom, political liberty and the rule of law, and that “for the maintenance and further realization of these ideals and in the interests of economic and social progress, there is a need of a closer unity between all like-minded countries of Europe”.²⁸ In summary, the vision of the Council is a free and secure Europe based on cooperation between likeminded liberal and democratic states.

This vision can be broken down to several goals. One of the primary goals of the Council has been to unify Europe. The Committee of Ministers has continuously rejected the division of Europe between the West and East and stated already in 1955, “the creation of a united Europe remains indispensable”.²⁹ In 1985, the Committee took a decision to make European cultural cooperation the main key to East-West rapprochement, using the European Cultural Convention as an instrument.³⁰ The legal aspects of the Council of Europe’s activities, inter alia creating common legal standards by drafting conventions, has for a long time been an important means to achieve the political objective of a united Europe, as has involving new partners in the activities of the Parliamentary Assembly, as well as assisting institutional and legal reforms.

When Mikhail Gorbachev held his famous speech at the Parliamentary Assembly on July 8, 1989 – just months before the fall of the Berlin Wall - in which he elaborated the idea of a common European home, the Council of Europe had reached a crucial stepping stone in the journey towards a united and whole Europe. Among other things Gorbachev called for the respect of human rights and the establishment of rule of law throughout Europe with the aim to create one European legal space. A key quote to be remembered in the light of the Russia-Georgia war in August 2008 and the ongoing crisis in Ukraine reads as follows:

“The philosophy of the concept of a common European home rules out the probability of an armed clash and the very possibility of the use or threat of force, above all military force, by an alliance against another alliance, inside alliances, or wherever it might be. It suggests a doctrine of restraint to replace the doctrine of deterrence.”³¹

26 The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Irish Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

27 Statute of the Council of Europe, European Treaty Series - Nos 1/6/7/8/11

28 Ibid.

29 Committee of Ministers Resolution (55) 35 of 13 December 1955.

30 Committee of Ministers Resolution (85) 6E of 25 April 1985.

31 Cited in D. Huber, *A Decade that Made History: The Council of Europe (1989-1999)*, Strasbourg; Council of Europe Publishing, 1999, p. 17.

It is difficult to underestimate the symbolic value of Gorbachev's speech, as well as its impact on the coming developments. In the end of the 1980s, the Council of Europe, due to a goal oriented and value driven leadership by the general secretary at the time Catherine Lalumière, came to play an important role as one of the more important fora for political dialogue with the countries in the Soviet bloc. By providing for conventions to be ratified and by inviting these states to become members of the Council of Europe the Council played a crucial role in the transition away from one party rule, planned economy and rule by law instead of rule of law. Thus, the Council continuously applied a strategy of dialogue, engagement and inclusion. The very means used in order to implement this strategy has been to provide a forum for meetings and dialogue. In the end of the 1980s a number of leaders from the Soviet sphere of interest in Europe made appearances before the Council. In addition, the legal aspects of the work of the Council have been used as means to reach the goal. In line with the inclusive strategy, allowing non-members to ratify the European Cultural Convention was one way to include the Eastern parts of Europe.³²

In summary, the Council of Europe provided a forum for conveying the message that did set off the uniting of Europe. The Council's influence came from it being a meeting place and a speaking platform where common values and ideas were articulated and a common future defined. Thus, the inclusive approach and the objective to unite Europe have put the Council of Europe on a path difficult to divert from. Any attempt to change this path must be seriously considered and motivated on the values and objectives of the Council. Nevertheless, should serious considerations guided by the founding statutes of the Council including the European Convention on Human Rights lead to the conclusion that a member state could no longer be said to share these common goals and objectives the Council will need to act in accordance with its mandate or lose its status as a community of values and hence its *raison d'être*.

2.1 *The Enlargement Agenda of the Council of Europe*

The Council of Europe's goal can be divided into two; the geopolitical goal of uniting Europe, and the value driven goal of creating a community of values including developing and protecting a human rights regime in Europe. The geopolitical goal - a united and whole Europe - has been one of the primary objectives of the Council of Europe since the 1950s and an important force in the European integration process. Gorbachev's landmark speech before the Parliamentary Assembly signaled that the Council was closer to reaching its goal than it had ever been before. The saga was however not straightforward from there. The developments in the USSR in the end of the 1980s and the beginning of the 1990s in combination with

32 *Ibid.*, p. 8.

Gorbachev's weak standing domestically did call for concern, as did the violent responses to the independence movement in the Baltic States leaving several individuals dead. As expressed by the former Assembly President Anders Björck:

“The proud European tower is still only a dream. It must be built on the most solid foundation of all, democracy embracing all of Europe. If one country, one region fails to meet democratic standards, it will be enough to make the whole building unstable”.³³

In the very beginning of the 1990s the leaders in the USSR and subsequently the Russian Federation did recognize that they needed the Council as support in times of complicated and turbulent domestic reforms. And even before the dissolution of the Soviet Union the Council of Europe did recognize its role as supporter of reforms in USSR, which was manifested by the Council inviting the USSR to ratify the European Convention on Culture.³⁴ Russia's membership of the Council of Europe should be seen as a continuation of inclusive and supportive approach to the USSR under Gorbachev and necessary for the Council being able to reach its geopolitical goal.

With the dissolution of the Soviet Union and the breakup of Yugoslavia the Council of a united Europe was no longer a utopia. Important and rapid changes took place in the former Soviet states and in Central and Eastern Europe. The Council of Europe continued to function as an important forum for the new leaders to confess to democracy, rule of law and human rights. Joining the Council of Europe became an important foreign policy goal of almost all the new states and due to its newly won freedom there was nothing or little to hinder a transition to democracy, rule of law and human rights. Slogans such as “the return to Europe” became important driving forces not only in national reforms and identity shaping processes but also when forming a new and independent foreign policy. Clearly these political processes had an enormous effect on the Council of Europe. The Council was at this time a very important driving force for reform. The organization turned to becoming an activist for, rather than guarantor of, the values upon which it rests.

The geopolitical changes that occurred inter alia with the dissolution of the Soviet Union however changed the preconditions for the including strategy drastically. Now there was a political will, desire and support for a full membership amongst all of the newly free states in the former Soviet bloc. Clearly, most of these states were not fully democratic rule of law states able to uphold human rights protection to all its states. But, more importantly they were engaged in a transition towards democracy, rule of law and human rights. A majority within the Council wanted to support this development and by doing that, they hoped to contribute to avoiding a

33 Cited in D. Huber, *The Council of Europe (1989-1999)*..., p. 46.

34 *Ibid.*, p. 51.

backlash. The fact that the strategy of the Council towards the new states come to be generously inclusive was due to the strong conviction of the leadership, especially on behalf of the Secretary Generals during this time, Catherine Lamulière (1989-1994) and Daniel Tarschys (1994-1999), that it was better to include than exclude.

However, the internal debate as to the consequences of such a strategy was vibrant. Basically, there were two camps; those focusing on the legal aspects of membership and those focusing on the political aspects of membership. Those focusing on the political aspects of membership argued that a united and whole Europe was the primary goal and that democracy, rule of law and human rights protection was more likely to be achieved if the state in question became a member. Those arguing against this underlined the values upon which the Council of Europe rests. They meant that the only way to secure the Council's role as a guarantor for these values was to allow only those states that had actually obtained democracy, rule of law and human rights to become members of the Council. This camp was afraid that allowing for example Russia to become a member before these commitments were fulfilled would politicize the Council of Europe and hence weaken it.³⁵

2.2 *Europe Becoming an Area of Democratic Security: The Vienna Summit and its Aftermath*

Between the fall of the Berlin Wall and the Vienna Summit in 1993 nine new member states had been invited to join the Council of Europe besides from DDR joining Germany as member of the Council.³⁶ The Vienna Summit was the first meeting between the heads of state and government of the member states of the Council of Europe, held in October 1993. This meeting was considered a vital part of the European project, which was now the common name for the enlargement process.³⁷ One of the main purposes of the summit was to discuss the enlargement question. The summit underlined the Council's role in guaranteeing security and stability in Europe. Thus, the Council's geopolitical goal, a united Europe was set on path and to some extent already achieved. It was then underlined that the surest way to secure a peaceful and whole Europe was through the values of the Council. The concept of democratic security now entered the formal agenda. It was stated in the Vienna Declaration that:

“The end of the division of Europe offers an historic opportunity to consolidate peace and stability on the continent. All our countries are committed to pluralist and parliamentary democracy, the indivisibility and universality of human rights, the rule of law and a common cultural heritage

35 *Council of Europe*, ed. T. Kleinsorge, Kluwer, 2010, p. 84.

36 Hungary (1990), Poland (1991), Bulgaria (1992), Estonia, Czech Republic, Lithuania, Romania, Slovakia, and Slovenia (1993).

37 D. Huber, *The Council of Europe (1989-1999)*..., p. 87.

enriched by its diversity. *Europe can thus become a vast area of democratic security* [my italics].”³⁸

The Council of Europe was by adopting the concept of democratic security adding yet another goal besides the geopolitical and the value based. Europe was to become a vast area of democratic security. Taken together this meant that the Council would have to open up to its Eastern neighbors while at the same time stay true to its constituting values democracy, rule of law and human rights, since these were now the principles around which Europe must unite in order to become an area of democratic security.³⁹ Important signals were sent to Russia that the Council would intensify its co-operation programs with Russia should it continue the reform of political institutions and legal system. The Heads of State and Government of the Council of Europe member States explicitly stressed their support of the reforms under Boris Yeltsin, at the same time as they condemned the loss of life that resulted from the violent acts provoked by the opponents of reform.⁴⁰ During the Summit Helmut Kohl expressed in relation to Russia:

“When Russia knocks on the door here and says: ‘we want to join’, the answer should be ‘Yes’, but on one condition, namely that the high standards set by the Council of Europe are adhered to, so that a show of special goodwill does not lead to a lower standard. That would be quite the wrong policy.”⁴¹

The Vienna Declaration pointed out the requirements that had to be met by new member states before entering the Council, for example that an applicant country must have brought its institutions and legal system into line with principles of democracy, rule of law and human rights. Free and fair elections based on universal suffrage need to have been held. In addition, freedom of expression for media, protection of national minorities and observance of the principles of international law were also decisive criteria when assessing the application. Moreover an undertaking to ratify the European Convention of Human Rights and to accept the Conventions supervisory mechanism in its entirety was also obligatory. Later, after the Summit, the abolition of the death penalty was to be included as a criterion. The Summit resolved to ensure the full compliance with the commitments made by the new member state. As a result of the open door policy and the

38 Vienna Declaration, Vienna, 9 October 1993.

39 D. Huber, *The Council of Europe (1989-1999)*..., p. 87.

40 The Vienna Summit Declaration on Russia, Vienna October 8 1993. At the time of the Vienna Summit Russia was experiencing serious domestic turbulence. Boris Yeltsin disbanded the legislative assembly in September 1993 as a result of the power struggle between the Assembly and the president. Violent protests arose and hundreds of people were killed. A. Jonsson and C. Vendil Pallin *Rysk politisk utveckling*, in A. Jonsson and C. Vendil Pallin (eds.) *Ryssland. Politik, samhälle och ekonomi*, Stockholm, SNS Förlag 2009, p. 79.

41 Quoted in D. Huber, *The Council of Europe (1989-1999)*..., p. 88.

enlargement agenda these general requirements were complemented by a number of commitments specific for each new member state.

The spirit of the Vienna Declaration was inclusive although not unconditional. As a response to the Vienna Declaration on enlargement the Parliamentary Assembly adopted an order on the honoring of the commitments entered into by the new member states. The order received its initiator's name and is referred to as the "Halonen-order" after Tarja Halonen.⁴² The Parliamentary Assembly instructed its *Political Affairs Committee* and *Committee on Legal Affairs and Human Rights* to monitor the honoring of the new member states' commitments and to report back with six-month intervals until all obligations were fulfilled. According to the order the honoring of these commitments was a condition for the parliamentary delegations of the new member states to take part in the work of the Assembly. The "Halonen-order" has been referred to as the order that would guarantee that the pursuing the political ambition to unite Europe would not destroy the Council and undermine the values upon which it rests.⁴³

The Committee of Ministers followed suit and adopted in November 10, 1994 a Declaration on Compliance with Commitments Accepted by Member States of the Council of Europe. Hence a permanent procedure for monitoring on an intergovernmental level was established. According to the Declaration, the primary way to address any failure to fulfill commitments by a member state is through political dialogue. The "Halonen-order" was later superseded by an order adopted by the Parliamentary Assembly April 25, 1996. According to the new order the committees were to report directly to the Assembly, hence making the debate on a member state's failure to honor its commitment public. In addition, the Assembly was granted the mandate to sanction persistent failure to honor commitments, and lack of cooperation in its monitoring process, by the non-ratification of the credentials of a national parliamentary delegation at the beginning of its next ordinary session, in accordance with Rule 6 of the Rules of Procedure, and ultimately by expulsion from the Council in accordance with Article 8 of the Statute of the Council of Europe.⁴⁴

As a result of the processes described above, the character of the Council of Europe changed from an exclusive club of democratic states to a school of democracy, rule of law and human rights for newly free states. Hereafter the Council of Europe was one of the more important organizations in the international socialization process aiming to spread democracy, rule of law and human rights. However, there would be no masters and no students as all

42 Order No. 488 of 29 June 1993.

43 D. Huber, *The Council of Europe (1989-1999)*..., p. 92.

44 Order No. 508 25 April 1996, Parliamentary Assembly. The Rules of the Procedure of the Assembly was laid down in Resolution 1202 (1999) and has thereafter continuously updated.

members were to be “all different and all equal united by common democratic principles”.⁴⁵

As expressed by General Secretary Catherine Lalumière herself, the Vienna Summit confirmed the Council of Europe’s political role by adopting a new goal, which merged the geopolitical and the value based goals, namely to establish an area of democratic security. It also expressed the support for a continued open door policy.⁴⁶ The concept of democratic security rested at this time on the presumption that all European states would be committed to pluralist and parliamentary democracy, the indivisibility and universality of human rights and the rule of law.

As a result of the Vienna Summit the Council of Europe has taken upon itself a more dynamic role with the aim to help its member states to become democratic states in the deep sense. Subsequent to the Vienna Summit there have been two summits of Heads of State and Government of the Council of Europe member states, one in Strasbourg in November 1997 and one in Warszawa in May 2005. Clearly many activities have taken place between these summits; nevertheless an overview of the declarations from the summit in 1997 and 2005 will provide us with insights as to how the Council set out to follow up on its enlargement agenda.

From the final declaration from the summit in Strasbourg it is clear that the Heads of State and Government set out to realize the goal of establishing democratic security by focusing on stability within Europe. Migration issues, racism and intolerance as well as anti-terrorism measures were high on the agenda. In addition, the standard setting role of the Council of Europe within the field of human rights and its contribution to the development of international law through the European Convention of Human Rights was underlined. The summit declaration referred to democratic stability as the end goal when outlining the action plan that was annexed to the final declaration of the summit. The purpose of the action plan was to define the main task of the Council of Europe the coming years. In the action plan four areas were defined as there being room for immediate advances and practical measures, namely democracy and human rights; social cohesion; security of citizens; democratic values and cultural diversity.⁴⁷ Of particular interest to this chapter is the third point under the area of democracy and human rights that is referring to the compliance with member states’ commitments. It reads as follows:

“The Heads of State and Government resolve to ensure that the commitments accepted by the member States are effectively honoured, on the basis of confidential, constructive, non-discriminatory dialogue carried out within the Committee of Ministers and taking into account the monitoring procedures of

45 D. Huber, *The Council of Europe (1989-1999)*..., p. 159.

46 The Council of Europe in the New Europe, discussion paper by the Secretary General, CM(94)78, Strasbourg, 27 April 1994.

47 Second Summit of Heads of State and Government (Strasbourg, 10-11 October 1997), Final Declaration and Action Plan, CM(97)169.

the Parliamentary Assembly; they reiterate their determination to work together to solve the problems faced by member States and consider that this monitoring process must be supported, where necessary, by practical assistance from the Council of Europe.”⁴⁸

Taken together this clearly underlines the political and diplomatic procedure for creating beneficial conditions for democracy, rule of law and human rights.

The Warsaw Declaration from the third summit, held in Warsaw May 16-17 2005, started off by commemorating “the unprecedented pan-European unity”.⁴⁹ It then continued by stating, “Europe is guided by a political philosophy of inclusion and complementarity and by common commitment to multilateralism based on international law”.⁵⁰ Concern was voiced concerning the unresolved conflicts still existing in Europe and it was stated that the Council’s members “[...] shall work together for reconciliation and political solutions in conformity with the norms and principles of international law”.⁵¹ It was also stated that the Council of Europe shall pursue its core objective of preserving and promoting human rights, democracy and rule of law and that all its activities must contribute to this fundamental objective. The issue of compliance with membership commitments was once again raised - again with political dialogue, assistance, sharing of best practices and monitoring being identified as tools to achieve this goal.

The action plan which was annexed to the Warsaw Declaration - once again for the purpose of this chapter the focus will be on the fulfilling of membership commitments - under the heading *Promoting Common Fundamental Values: Human Rights, Rule of Law and Democracy*, states that “The Council of Europe is a political forum which brings together member states committed to promoting democratic debate and the rule of law”. Standard setting and non-discriminatory monitoring processes were suggested as tools to help member states to live up to their commitments.

In sum, the two latter declarations underline the principle of equality between member states of the Council of Europe⁵² and the Council as a political forum. The concepts used to capture the vision of the Council of Europe remain democratic security and democratic stability. The inclusive

48 Ibid.

49 Third Summit of Heads of State and Government (Warsaw 16-17 May 2005), Warsaw Declaration and Action Plan, CM(2005)80.

50 Ibid.

51 Ibid.

52 Equality between the member states is one of the basic principles of the Council of Europe’s statute, especially evident from Article 14 of the Statute of the Council of Europe. All member states are to be represented by one person in the Committee of Ministers and each member shall have one voice. The number of representatives in the Parliamentary Assembly is also regulated by the Statute, Article 26. The highest number of representatives is 18. Only five members have 18 members of the Assembly; France, Germany, Italy, Russia and United Kingdom and Northern Ireland.

strategy has been implemented almost to the fullest. The most important means to reach the goals of democracy, rule of law and human rights according to the Heads of State and Government are political dialogue, monitoring, assistance and exchange of best practices with the aim to trigger political, legislative and constitutional reforms. The Council's soft power in this regard lingers from inter alia its expert opinions on constitutional developments through the Venice Commission and election observation missions. In terms of "hard power" the Council has not so many means, the most important being the European Convention on Human Rights and Freedoms and the European Court of Human Rights. The convention stipulates legal obligations on states and the court provides legal scrutiny and a sanction mechanism.

The assumption that all states are committed to democracy, human rights, and rule of law has in the beginning of the 21st Century proved to be false. All European states are not committed to the constituent values of the Council of Europe. The main difference between the political climate in 1993 and 2014 is the rhetoric and political ambitions of leaders; in the beginning of the 1990s these values were part of everyday political debate as was the policy to join Europe on these grounds. In the case of Russia, the question is whether the actions, politics and rhetoric of the 2014 are passing and hence should just be considered a detour on the way to democracy, rule of law and human rights or whether it is a testimony to the end of Russia's liberalization and democratization?

Following this account for the strategy of the Council of Europe towards Russia and its neighboring states, the rest of the chapter will be devoted to the situation in contemporary Russia focusing on the strategy of actors to be socialized, domestic challenges to international socialization and the prospect for constitutional socialization as defined above.

3 From Willing to un-Willing: Russia's Changing Strategy

The size of domestic power costs, a state's economic power and tangible rewards, in combination with an asymmetry as to the legitimacy gains, are all important factors for a process of international socialization, according to Schimmelfennig. In the following I will discuss each of these taking into consideration recent developments within Russia and its impact on Russia's relations to the international community. I will elaborate on the process of constitutional socialization within Russia and identify a number of circumstances that directly or indirectly has made Russia's process of constitutional socialization difficult.

At the time Russia became a member of the Council of Europe there was indeed a political will and a Russian leadership eager to adhere to the founding principles of the Council. However, due to the declining strength of the Yeltsin administration and changes in Russian foreign and domestic policies this was soon to be altered. In the beginning of the 21st Century Russia's domestic and foreign policy changed dramatically from aiming to

integrate Russia with the international community in the beginning of the 1990s to explicitly trying to alter the role and principles of international law. One of the current primary goals of Russia's foreign policy is to bring about respect for Russia on the global arena. Around 2005 the idea and concept of sovereign democracy became an important building block of the new ideology of the leading political party in Russia, United Russia. This shift in the Russian approach to the international community and international law is likely to have consequences for the international community and the Council of Europe both as a community of values and a "school of democracy". Has Russia ended its journey towards democracy, rule of law and human rights in the short-medium term? If so, what effect might that have on the Council of Europe as an organization based on values and the Council's role as a school of democracy, rule of law and human rights?

During Vladimir Putin's first two mandate periods as president the democratic development did slow down and even backtrack. Initially, Putin did have a mandate and the support both domestically and by foreign viewers for conducting reforms contributing to the centralization of power. Moreover, these reforms took place at a time when Russia's foreign policy was still West oriented. Such measures were deemed necessary to save the Russian state's ability to uphold its main functions. However, subsequent to 9/11, Dubrovka and Beslan and in preparing for the 2007 Duma election and the 2008 presidential election, Putin's reform agenda started to increasingly encroach on fundamental rights and freedoms. In 2005 the elite around Putin started to conceptualize changes to Russia's domestic and foreign policy. The concept of sovereignty started to be used more frequently in parallel with criticism towards Russia's faulting democratic development becoming louder and more frequent.⁵³ It is noteworthy that changes to Russia's geopolitical strategy and the rhetoric connected to the very same changed gradually, or at least became more vocal, subsequent to Russia trying to fend off criticism to its domestic backtracking in terms of democracy and rule of law. While becoming more and more defensive when criticized for its domestic policy changes, the foreign policy of Russia was more and more on the offensive. Russia's war with Georgia in 2008 chocked international observers, and Western policy makers convinced that war in Europe belonged to the history, were proven wrong. In the Spring of 2014 everyone who believed that Russia's aggression towards Georgia was a one-time event and mainly the result of Georgia's opening fire in South Ossetia was proven wrong. Russia's annexation of the Crimea and its continuing destabilizing of Eastern Ukraine pose the greatest threat to peace in Europe since WWII. So, how do we explain these developments; are they a result of Russia reacting to what is perceived as Europe interfering with Russia's geopolitical sphere of interest, a reflection of changing values in Russian society, or an attempt from the Russian side to strengthen its position internationally - probably all of the above.

53 A. Evans, (2008) *Putin's Legacy and Russia's Identity*, Europe-Asia Studies, vol. 60, No. 6 (899-912), p. 903.

3.1 *Changes in Domestic Policies*

Gorbachev and Yeltsin both represented the Westernizing school of thought in Russian politics in that they tried to modernize Russia through Westernization. Putin on the other hand cannot be said to belong to the Westernizers nor to the Slavophiles. Rather, he has been trying to find a middle way. By claiming Russia's place in the international community taking its starting point in Russia's preconditions while at the same time stating that Russia is a European democratic state Russia was, at least up till 2008, on its way towards integration on its own terms. Until recently we did not know what those terms were and what implications they might have for the values that the cooperation between western states rests upon. Subsequent to Russia's annexation of the Crimea and its continuing role in destabilizing Ukraine, it is becoming increasingly clear that thinkers such as Aleksandr Dugin are influential in the Kremlin, thus adding eurasianism to sovereign democracy. What we do know however is that Russia is not willing to retreat into isolation in order to protect its genetic features; rather it seeks to develop its own power base internationally based on its own view of international law. During his first period as president Putin indicated that he wanted closer institutional links between Russia and the West; not primarily out of shared values, but rather because it was seen as essential for Russia's national interest, i.e. Russia's economic growth. While the liberal values of the West do not stand high on Putin's list, Putin according to Evans did view international economic integration as a powerful source, which Russia should not isolate itself from.⁵⁴

So, what does it mean – Russia entering the international community on its own terms and not on the basis of conditions set up by Western states? What are Russia's own terms? In order to answer this question the concept of sovereign democracy is a useful starting point. This perspective is important because it can be considered to determine Russia's strategy towards socializing agencies. And, the shift in domestic policy has been paralleled with changes in foreign policies in relation to values such as democracy, human rights and rule of law. While Putin has clearly stated that international economic integration is necessary for Russia to become an economic power, the need to protect Russia's sovereignty and autonomy concerning domestic issues has increased.⁵⁵ It is clear that Russia wants the good parts of international integration while at the same time not being ready or willing to allow full interdependence. The fear of foreign influences on domestic affairs and its potentially destabilizing effects then forces Russia to act more assertively on the international arena. In order to do that it is however, as expressed by many writers, forced to develop a concept for such actions. That concept is sovereign democracy. In conclusion, and as stated by Dimitrii Trenin, Russia no longer recognizes the 'moral authority' of the

54 Ibid., p. 901.

55 Ibid., p. 909.

West.⁵⁶ It started criticizing Europe and the U.S. and how they conducted their internal affairs, questioning their democratic credentials and undermining these states interpretation of international law. Russia's policy was to declare itself as a European state devoted to democracy, but at the same time to proclaim that Russia's integration into the international community should take place on its own terms and hence not be guided or controlled by Western governments. Protecting the Russian state's sovereignty has been and is likely to continue to be the primary focus of the ruling Russian elite. Sovereignty was by Putin defined partly as Russia being able to choose independently its own form of development.⁵⁷

3.2 *Russia's Foreign and Domestic Turn Away from the West*

Thus, during the first several years of Vladimir Putin's tenure, Russia appeared to entertain a form of partnership with the West, based on acceptance of the need for modernization of Russia's state and economy. Yet around 2005, both Russian foreign and domestic policy began to drift away from the West, and especially from adherence to the principles and norms enshrined in Western institutions. The evolution of foreign and domestic policy was tightly interlinked; and several factors combined to hasten the turn.

To begin with, Russian attitudes toward the West can almost directly be linked to the price of oil. Russia is in many ways a petro-state. Thus, only a few months before Putin rose to power, oil bottomed out at \$15 per barrel. By mid-2005, it had reached \$70, levels not seen since 1982, and peaked in mid-2008, right before Russia's invasion of Georgia, at \$140. Russia's brief rapprochement with the West – and Medvedev's brief talk of modernization – took place after oil prices crashed, bottoming out in February 2009 at \$40. By the Crimea crisis of 2014, the price of oil had stabilized at a respectable \$100. Thus, the correlation is clear: when oil is cheap, Russia feels the need to modernize its economy, and that leads to an interest in cooperation with the West. When oil is expensive, Russia's economy is effectively intoxicated, with petro-dollars obfuscating any need of reform – and any need of the West. By the same token, low oil prices make Russia more careful in the international arena; high oil prices are linked to adventurism and imperial aspirations in relation to its neighborhood. These facts together confirm Schimmelfennig's proposition that states with a strong economy are less open for socializing influences.

Of course, while powerful, oil is not an explanation for everything. Russia's turn away from the West also flowed from deep changes in the politics of the post-Soviet space. The key moment was the colored

56 D. Trenin, (2007) *Russia Redefines Itself and Its Relations with the West*, Washington Quarterly, 30, 2, Spring.

57 A. Evans, (2008) *Putin's Legacy and Russia's Identity*, Europe-Asia Studies, vol. 60, No. 6 (899-912), p. 903.

revolutions of Georgia and Ukraine, and the adoption by the George W. Bush administration of the “Freedom Agenda”, an ambitious though short-lived program to support democracy abroad. To this should also be added the EU Eastern Partnership. The Georgian Rose Revolution in late 2003 did not immediately change Russian policy: during the crisis itself, Russian Foreign Minister Igor Ivanov even helped broker a deal leading to the peaceful retirement of Eduard Shevardnadze. However, President Putin came to believe that the event had been a CIA operation; and the Ukrainian Orange Revolution a year later was a watershed. This time, the revolution ousted not an ageing and much-reviled figure in Russia, as Shevardnadze had been; it prevented the election of a Russian protégé, Viktor Yanukovich, to the Presidency. Moreover, it did not occur in a small Caucasian country, but in large, Slavic Ukraine, whose separate nationhood Russia never entirely accepted. From this moment, an element of ideology was injected into the geopolitics of the region. Until then, Russian-Western competition had lacked a link to domestic politics, being seen in Moscow more like pawns on a chessboard. But the color revolutions not only proposed to counter Moscow’s ambitions of geopolitical hegemony; they also threatened its own regime security. If a revolution could happen in Ukraine, and if Ukraine developed into a modern, successful European nation, the Putinist system would be doomed; seeing Ukrainians live in a country with accountable leaders and the rule of law, Russians would surely ask whether they were not entitled to the same. Therefore, the color revolutions had to be overturned at any cost, and the European integration of Orthodox and Slavic states, in particular, had to be averted. This logic, down the road, led both to the invasion of Georgia in 2008 and the attack on Ukraine in 2014 – since a DCFTA with the EU would, if implemented, achieve exactly that result.

As political scientist Thomas Ambrosio has observed, Moscow formulated a five-pronged strategy to counteract the spread of democracy in its neighborhood. This involved a plan to “insulate, redefine, bolster, subvert and coordinate” its efforts.⁵⁸ The term ‘insulate’ refers to the domestic dimension, and to the Kremlin’s attempt to prevent a democratic upheaval at home through a variety of mainly repressive measures. ‘Redefine’ refers to its rhetorical attempts to defend its own system by inventing terminology such as ‘sovereign democracy’, and by questioning the West’s democratic credentials and its interpretation of international law. The next two terms, ‘bolster’ and ‘subvert’, refer to Russian policy in the New Eastern Europe: ‘Bolster,’ according to Ambrosio, refers to the Kremlin’s attempts to support authoritarian governments in countries such as Belarus, while ‘subvert’ refers to the Kremlin’s systematic attempts to undermine democracy and security in Ukraine and Georgia, in order to discredit the democratic experiment of these countries to their own citizens and their neighbors. Finally, the term ‘coordinate’ refers to the Kremlin’s efforts to synchronize

58 T. Ambrosio, *Authoritarian Backlash: Russian Resistance to Democratization in the Former Soviet Union*, Burlington, VT: Ashgate, 2009.

policies with other non-democratic regimes, in order to counterbalance the West's support for democracy.

3.3 *Russia's Process of Constitutional Socialization*

As has been shown above, Russia's policy towards international organizations and individual states involved in processes of international socialization has changed over time. Ideology and values have once more become part of the geopolitical framework within which international policy is being designed. This should not however be confused with the ideological divide of the Cold War. For many reasons, the playing field is different. Subsequent to the mass protests following the presidential election in 2012 the Russian regime started to employ societal and religious values and traditions for mobilizing the masses. Thus cultural, societal and, some would argue, even religious⁵⁹ aspects have been added to the importance and impact of concepts such as sovereignty for Russia's strategy in relation to socializing organizations. We now turn to the constitutional framework and the political, social and cultural context in which it finds itself.

In his theory on processes of international socialization Schimmelfennig describes how different norms can be subjected to change as a result of the socialization process. These can be conceptualized as formal, behavioral, and communicative norms.⁶⁰ Let us start with the formal rules and focus on what I above have described as a process of constitutional socialization. Without a doubt, Russia's becoming a member of the Council of Europe, ratifying the European Convention on Human Rights and Freedoms, and subjecting itself to the jurisdiction of the European Court of Human Rights in Strasbourg have had a great impact on the constitutional developments in Russia.⁶¹ Russia has a formal framework for a liberal rule of law state. This constitutional framework has had an impact on the communicative and behavioral norms in society, to some extent. However, these changes have not been allowed to transfer into a well functioning and consolidated constitutional system; the formal constitutional norms have not contributed to a process of constitutional socialization towards a liberal rule of law state. How is this? Schimmelfennig proposes that the result of an international socialization process be measured according to "the extent to which an institutional norm has been transposed into a state's domestic political

59 See e.g. P. Goble, *Moscow Draws a Religious Line in the Sand in Ukraine*, Eurasia Daily Monitor, vol. 11, issue 104.

60 F. Schimmelfennig, *Introduction: The Impact of International Organizations on the Central and Eastern European States – Conceptual and Theoretical Issues*, Norms and Nannies. The Impact of International Organizations on The Central and East European States, ed. R. H. Linden, Lanham, Rowman & Littlefields Publishers, 2002, (1-29), p. 9-10.

61 See e.g. A. Jonsson, *Judicial Review and Individual Legal Activism: The Case of Russia in a Theoretical Perspective*, Uppsala, 2005.

institutions and culture”.⁶² Different levels of sanctioning measure the degree of internalization of the norms in question. Intrapersonal sanctioning testifies to a high degree of internalization. Intrasocietal sanctioning means that domestic actors challenge norms but effective domestic sanctioning mechanisms such as courts prevent further abuse. If international sanctioning is required, i.e. if international actors alone or in cooperation with domestic actors, need to intervene the socialization process has not come very far.⁶³

Concerning formal rules, it is clear that the changes that have taken place concerning federal law in Russia have taken an illiberal turn. The laws on what have been called foreign agents and the so-called propaganda laws clearly testify to the illiberal values of the current regime. The law on foreign agents puts severe restrictions on NGOs working with issues of democracy, rule of law and human rights protection since such organizations rarely will get any domestic funding and hence they are depending on external funding. The very essence of the law is that all organizations that receive funding from non-Russian sources and that engage in any political activity will need to register as foreign agents.⁶⁴ Russia’s ombudsman did together with a group of directly affected NGO-directors file a complaint to the Constitutional Court arguing that the law violated the Russian constitution. The Constitutional Court did uphold the law. It found *inter alia* that the law and the branding of organizations receiving non-Russian funding as foreign agents served the public interest and the interest of state sovereignty.⁶⁵ The propaganda laws not only put severe restrictions on freedom of expression and the right to information since they make it illegal to distribute gay rights material; they also violate the right not to be discriminated against since they make it illegal to compare straight and gay relationships. This brief overview exemplifies how the legislative framework is being changed, making its content illiberal. To this should be added the very weak impact that the constitution has had on the activities of the courts and their rights protection. As well illustrated by the Markin case⁶⁶ a traditional view of gender and different roles to be played by women and men in society still dominates in the Russian society and has an impact on the interpretation of the right not to be discriminated against. This particular case also demonstrates how the Russian state perceives and strives to ensure national security. The ECtHR found Russia to be in violation of article 8 and 14 of the ECHR. The court stated very clearly that Russia’s references to

62 Schimmelfennig, 2002, p. 10.

63 *Ibid.*, p. 10-11.

64 For an overview of the implementation of the law and the judicial proceedings following it see Human Rights Watch, *Russia: Foreign Agents’ Law Hit Hundreds of NGOs*, available at www.hrw.org/news/2014/06/11/russia-foreign-agents-law-hits-hundreds-ngos-updated-june-11-2014, last visited 2014-06-11.

65 Judgement of April 8, 2014 No. 10-P/2014, available in English at www.ksrf.ru/en/Decision/Judgments/Documents/2014%20April%208%2010-P.pdf, last visited 2014-06-11.

66 Decision on admissibility, No. 187-O-O

national traditions, invoked by the state as a justification for discrimination on the bases of gender, are not valid and that it is a violation of the ECHR to invoke gender stereotypes to justify discrimination on the basis of sex.⁶⁷

As I have argued elsewhere, the absence of a theory of constitutional interpretation allowing for European human rights law, as expressed by for example the ECHR, to be taken into consideration by Russian courts, especially the federal constitutional court, hinders the interpretation and development of Russian constitutional law in a liberal direction.⁶⁸ Theories on constitutional law are still dominated by the tradition of State and Law (*Gosudarstva i prava*), which means, simplified, that the state's interest will precede any other interest and that a positivistic view of the law and methods of interpretation still dominates. Secondly, natural law is, according to some Russian constitutionalists a source of law in the Russian legal system. It is however, highly unclear how this plays out in methods of legal interpretation, which is illustrated by inter alia the Gladkov case.⁶⁹ In this particular case the Russian constitutional court concluded that it cannot review one article of the constitution against another article in the constitution. The result of this strictly formalistic approach was that Russia was found by the ECtHR to be in violation of protocol no. 1, article 3, stipulating the right to vote. The ECtHR expressed that "In the present case, it is open to the respondent Government to explore all possible ways in that respect and to decide whether their compliance with Article 3 of Protocol No. 1 can be achieved through some form of political process or by interpreting the Russian Constitution by the competent authorities – the Russian Constitutional Court in the first place – in harmony with the Convention in such a way as to coordinate their effects and avoid any conflict between them."⁷⁰ Thirdly, as is well shown by the Markin and the Gladkov cases, traditional values and how differences between the sexes and issues of national security are viewed and balanced in the Russian legal system has by the ECtHR been deemed to be in violation of the ECHR and the case law of the ECtHR. Add to this the propaganda laws and the law on foreign agents and we shall see that the values expressed by Russian laws and how they are interpreted by Russian courts, especially the Constitutional Court of the Russian Federation, clearly show that there are many obstacles that need to be overcome in order for processes of constitutional socialization in particular, and processes of international socialization in general, to be remotely successful.

The Russian courts in general (although there are exceptions) still employ methods of constitutional interpretation that directly restrict the impact of European human rights on Russian law and hence individuals' rights protection. Law, although natural law is considered a source of law, is still

67 Konstantin Markin v. Russia, *appl. No 30078/06*.

68 A Jonsson Cornell, *In Search for a Theory of Constitutional Interpretation in Congruence with Human Rights Law*, Uppsala Faculty of Law Working Paper 2014:2.

69 Decision of admissibility, No 177-O

70 Anchugov and Gladkov v. Russia, *appl. nos. 11157/04 and 15162/05*, § 111.

mainly considered a tool for the ruling elite and the state and this combined with a strong positivist legal tradition poses a great challenge to the implementation of liberal rights. As the three cases mentioned above illustrate, and as has been shown by Petr Preclik⁷¹ there is a securitization of the Russian discourse on the understanding of European human rights law, meaning basically, that large parts of the Russian legal community and the political elite do consider the ECHR and the activities of the ECtHR to be a violation of Russia's state sovereignty and social identity, besides from them being illegitimate due to what is perceived as double standards. Taken together, this does impose great challenges to the process of constitutional socialization. And I would argue that aspects like these are not sufficiently taken into consideration when planning for processes of international socialization.

4 Conclusions

This case study of Russia's socialization confirms Schimmelfenning's proposition that states will follow the standards of legitimacy only so long as it can be justified from a cost-benefit analysis. The domestic power cost for the current Russian regime to adhere to the international values and norms propagated for by inter alia the Council of Europe are too high in relation to the rewards. To start with, the Council cannot offer any tangible rewards as it is and as argued above, Russia has set out to challenge the legitimacy of the values and norms socialized by various international organizations. Add to this, the antiliberal political party constellation in Russia and the increasingly traditional and non-liberal values in society, resulting in liberal fractions being too weak to function as socializing actors along side with international organizations such as the Council of Europe. Moreover, the structural asymmetry that Schimmelfennig identified as the driving force for processes of international socialization is seriously challenged by the changes to Russia's foreign policy and its interpretation and perception of international law. Moreover, due to a number of recent developments in international politics and successful Russian diplomacy Russia has strengthened its position within the international community. The position of the West as the primary source of legitimacy and norm superiority is and will remain for a long time to come challenged. Clearly, this will have a serious impact on processes of international socialization.

What if anything could have countered the backlash described above? Certainly, changes to the constitutional framework have not produced the desired effects in terms of stability and lock-in effects. I would argue that this is due to our misconception and overestimation of processes of constitutional socialization. Processes of international socialization will only be successful and sustainable when a certain lock-in effect has been

71 P. Preclik, *Culture Re-Introduced: Contestation of Human Rights in Contemporary Russia*, *Review of Central and East European Law*, 2012, vol. 37, (173-230).

achieved. Such a lock-in effect could be that the values in a liberal constitutional framework have legitimacy in society in parallel with being at least occasionally enforced by courts. Another lock-in effect could be that the constitution is difficult to change and amend, hence functioning as a threshold that needs to be passed for illiberal attempts, in combination with courts employing methods of interpretation that allow them to uphold the liberal values of the constitutional framework, without necessarily challenging the regime, i.e. allowing for gradual changes. This is what Schimmelfennig would term intrasocietal sanctioning.

In the case of Russia, all levels of sanctioning are non-functioning. The level of international sanctioning remains the last straw, but for various reasons (for example diplomatic difficulties and high economic costs) this level has not been used to its fullest yet. And what concerns the Council of Europe and its sanctioning possibilities; this type of international sanctioning is not costly enough to create incentives for the Russian regime to adjust. True, Russia's credentials were reconsidered on substantive grounds and a motion was filed to suspend Russia's voting rights in the Parliamentary Assembly in the beginning of 2014. The Assembly decided not to suspend Russia's credentials stating that "...political dialogue should remain the most privileged way to find compromise and there should be no return to the pattern of the Cold War. Suspension of the credentials of the Russian Delegation would make such a dialogue impossible, while the Assembly constitutes a good platform for keeping the Russian delegation accountable on the basis of the Council of Europe's values and principles."⁷² Instead the Russian delegation's voting rights were suspended until the end of the 2014 session among other things.

What are the policy implications of these findings? Will the Council of Europe be able to handle the serious political and legitimacy challenges that the development in Russia poses? It is clear that the inclusive strategy has suffered a severe setback as a result of the war in Georgia in 2008 and the occupation of Ukrainian territory in 2014. The two primary goals, i.e. democratic stability and democratic security have not been upheld in this part of Europe to the extreme suffering of the individuals living there. Moreover, if Russia is not willing or apt to be socialized, which clearly is the case, what measures are we left with? Isolation is certainly not an option in a globalized and economically interdependent world. Is containment a viable option? This particular case study does not take us that far and it is not the purpose of this chapter to suggest such policy recommendations. The purpose has been to pin point challenges to policies of international socialization given the circumstances at hand. As this case study shows, Schimmelfennig's theory on the preconditions for processes of international socialization is clearly a strong theory.

If one of the underlying assumptions of the theory of international socialization is that processes of constitutional socialization will contribute to a successful international socialization, what can we learn from the case of

⁷² Resolution 1990 (2014).

Russia? First, there is an important distinction to be made between rule adoption and rule implementation. A continuing domestic and international implementation and sanctioning of the values and norms diffused in international socialization processes depends on a functioning constitutional framework with for example an enforceable constitution, courts and other institutions with the power and legitimacy to ensure that the constitution is respected and adhered to, in combination with a social and political context respecting the constitution and the values expressed therein. Taken together, this is, I argue, the very core of processes of constitutional socialization. And processes of constitutional socialization are necessary in order for international socialization to be successful. The actor to be socialized, in this case Russia, has changed its strategy and preferences. The socializing organization, in this case the Council of Europe, has not adjusted its strategy and actions according to the changes in Russia. Should it, would it, could it? These questions, I am sure, we will have reasons to return to.

