

Russia's Accession to the Council of Europe and Compliance with European Human Rights Norms

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Since 1990, the Council of Europe has admitted twenty-one former Soviet bloc countries, bringing the total number of member states to forty-five.¹ The Council's territory now spans nearly fifteen time zones, from Iceland to the Russian Far East. Member states have agreed that drawing former communist countries into dialogue is better than isolating them. According to the organization's official Web site, its "main job" is to act "as a political anchor and human rights watchdog for Europe's post-communist democracies."²

The Council's member states collectively decided that accession would persuade new entrants to observe certain human rights standards out of a mutual interest in fostering the growth of liberal democracies, and out of an agreed notion of what an expanded European identity is. New entrants were motivated to join by a combination of shared values and cold calculation—an inclination to use the organization to legitimate their own regimes and, for many, to further their goal of joining more prestigious groups, such as the North Atlantic Treaty Organization (NATO) or the European Union (EU).

In this article I will examine the reasons that member states allowed the Russian Federation to enter the Council of Europe in 1996, the extent to which Russia has fulfilled its entrance criteria, and Russia's overall approach to relations with the organization. Specifically, I will examine the controversy around human rights violations inflicted on civilians by Russian forces in Chechnya. Russia has been accused of violating norms embodied in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Human Rights Convention), the Council's key human rights instrument.

The Council of Europe and European Identity

Formed in 1949, the Council of Europe is an intergovernmental organization with a mandate to promote parliamentary democracy, rule of law, and human rights.

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Member states cooperate on a voluntary basis for reasons of mutual benefit. Over fifty years after its founding, the Council continues to perform useful functions in the sphere of human rights and acts as a forum for the discussion of common interests. However, the Council's critics point out that its aims are somewhat vague and its decision-making structure weak. In addition, its powers are largely advisory, and all decisions are made by consensus, an approach that sometimes works to undermine the organization's ability to make innovative policy and punish derelict members. Critics also argue that the Council has a limited capacity to enforce the human rights norms of the Human Rights Convention, as well as the convention's thirteen protocols.

One source of particular controversy is that the Council defines Europe beyond the traditional geography to include areas that it considers culturally part of the continent, such as the Caucasus. The current secretary-general of the Council of Europe, Walter Schwimmer, has emphasized a European community of values that would extend beyond political and economic interests to foster cultural diversity, including tolerance and mutual respect.³ But neither the human rights community nor even some members of the Council's administration, the Secretariat, agreed on the issue of early entrance. Critics of Schwimmer's approach say that expansion has undermined the organization's "moral authority" and the Human Rights Convention's legitimacy.⁴

General Compliance with Entrance Requirements and Human Rights Norms

The Council of Europe has close to two hundred legally binding treaties or conventions, including the Human Rights Convention, the European Convention for the Prevention of Torture, and the Framework Convention for the Protection of National Minorities. At the same time, it is the European organization with the fewest demands on its new entrants. To meet the basic entrance requirements, new member states must ratify the Human Rights Convention, as well as Protocol 6 on abolishing the death penalty (except during wartime). Member states were not required to ratify Protocol 6 until 1983, but as of April 2003, only Armenia, Russia, and Turkey (a member since 1950) have not yet ratified it. The Committee of Ministers, a group of foreign ministers from member states tasked with ensuring compliance with Council norms and with rulings of the European Court of Human Rights (ECHR), may request that a member withdraw if it believes that the country is not in conformity, or it may suspend representation from that country on the committee or in the Parliamentary Assembly (PACE).⁵ Withdrawal jeopardizes future membership in the EU, as only countries that belong to the Council of Europe may join.

Compliance with the norms outlined in the Human Rights Convention is the primary obligation of Council members. Based on the UN's Universal Declaration of Human Rights, the convention establishes a minimum standard for the safeguarding of civil and political rights in member states. Its various rights and freedoms include the right to life; prohibition of torture, slavery, and forced labor; right to a fair trial; freedom of expression, thought, assembly, conscience, and

religion; and right to privacy. In addition to abolishing the death penalty, its thirteen protocols promote property ownership, education, free elections, freedom of movement, and the general outlawing of discrimination. Members found in breach of the Human Rights Convention are expected to change their domestic laws or practices to harmonize them with the document. A majority of member states—including Russia—have incorporated the convention into their own domestic statutes, as a way to strengthen their domestic human rights regime and reinforce the convention.

Apart from ratifying the Human Rights Convention and Protocol 6, the Council of Europe requires new entrants to meet certain obligations addressing their domestic circumstances (as outlined in accession agreements). As of April 2003, the PACE's Monitoring Committee is overseeing the process by which eight of the twenty-one new entrants (Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Georgia, Moldova, Russia, and Ukraine), plus longtime member Turkey, are fulfilling these requirements.

The PACE and the Committee of Ministers have determined that the other members from the former Soviet bloc have sufficiently fulfilled most, if not all, of their obligations and commitments for entrance.

To encourage new members to complete their contractual obligations, the Council asserts particular monitoring powers in the area of human rights. For example, it dispatches teams of investigators and meets with government officials. It also has organized training programs jointly with new entrants. These have included workshops and conferences on press freedom, democratic development, education, and legal reform.

Council of Europe members are obligated to implement judgments of the European Court of Human Rights, which adjudicates cases concerning alleged violations of the Human Rights Convention. The court has forty-five judges, one for each member state, and judges are empowered to rule on the basis of their conscience alone. Citizens of every member state (or individuals who were in a member state at the time of an alleged violation) may bring complaints of human rights violations to the ECHR, but they must concern a right or freedom outlined in the Human Rights Convention, and complainants must have exhausted all legal remedies in their own country's justice system. The ECHR also hears cases brought by member states against other member states, although these are less frequently filed. Certain court judgments have resulted in changes in national laws, including prohibition of corporal punishment in British state schools and decriminalization of homosexuality in Ireland. However, the ECHR lacks injunctive power in ensuring compliance, meaning that states are given a certain mea-

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sure of deference in fulfilling their legal obligations (the so-called margin of appreciation doctrine).

In 2001, the ECHR opened 1,987 provisional files and registered 1,325 applications in which Russia was a party. According to Jeffrey Kahn, up until that year, most of the complaints that Russians had submitted to the court “were routinely rejected as inadmissible on technical grounds,” because few of their lawyers understood the ECHR process.⁶ In June 2001, the court decided to hear the case of *Burdov v. Russia*, the first case accepted involving Russia.⁷ Anatoly Burdov is a Russian pensioner who had been awarded compensation by Soviet authorities for suffering illness from his involvement in emergency clean-up at Chernobyl. As of 2001, he had not yet received it. In May 2002, however, the ECHR found that Russia had violated Article 6 of the Human Rights Convention (right to a fair trial), as well as Article 1 of Protocol 1 (protection of property), and awarded him 3,000 euros (about U.S.\$3,000) in damages.

In July 2002, in *Kalashnikov v. Russia*, the ECHR again found Russia in violation of the Human Rights Convention. While awaiting trial on embezzlement charges, Russian banker Valery Kalashnikov was detained for four years and kept under conditions he found to be inhuman. He was acquitted in 2000. In July 2002, the court found that Russia had violated Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to stand trial within a reasonable time), and Article 6 (right to a fair hearing within a reasonable time). Kalashnikov was awarded 5,000 euros for damages and 3,000 euros for costs and expenses. The Russian representative to the ECHR, Pavel Laptev, said that Russia did not agree with the Kalashnikov ruling but would honor it. Ella Pamfilova, who heads the Presidential Commission on Human Rights, said that the decision should act as a wake-up call for law-enforcement officials and courts.⁸ These two cases show that Russian human rights lawyers are now learning how to work the system and that the Russian government has violated specific measures in the ECHR for which it is being held publicly and financially accountable.

One key obstacle to achieving universal compliance and setting a good example for new entrants is that not all long-standing members have themselves consistently observed European human rights norms. Rather, compliance appears as more of a nonlinear process than a goal that is achieved once and henceforth maintained. For example, the Council suspended the membership of both Turkey and Greece when their governments fell under military rule. Recently, Germany was cited for mistreatment of minorities. Britain itself did not ratify Protocol 6 until 1999. Lord Russell-Johnston, former president of the PACE, publicly scolded longtime Council members for not fully implementing ECHR decisions.⁹ In turn, this negligent behavior undermines public confidence in the Council of Europe itself and sends a message to new members that it is little more than a talk shop.

Russia's Entrance Criteria

Russian political leaders applied to enter the Council of Europe in May 1992. They did so for a number of reasons, including to strengthen Russia's trade ties

with Europe, ensure an institutional connection with its former Soviet bloc partners, and gain acceptance as a nascent democracy. Furthermore, Council membership would facilitate closer ties with the European Union, whose commission works jointly with the Council on training programs.

Concern over Russia's slower reform pace, particularly the lingering problems tied to rule of law and human rights abuses in Chechnya, kept it from entering the Council in the early 1990s. The Council ultimately allowed Russia to join in 1996, in keeping with its general policy of welcoming former communist countries into its fold. In a report filed by a rapporteur a month before Russia's accession, the author concluded that "Russia does not yet meet all Council of Europe standards. But integration is better than isolation; cooperation is better than confrontation."¹⁰ Some observers say that the Council of Europe voted for Russia's entrance in 1996 expressly to bolster Boris Yeltsin's chances of winning the presidential election later that year.¹¹

Russia's membership criteria were outlined in a 1996 opinion issued by the PACE.¹² The opinion lists twelve assurances made by Russia as a basis for membership:

1. Participation in various cooperation and assistance programs
2. Participation in a "political dialogue" with the Committee of Ministers
3. Accession to a number of Council conventions, including the European Culture Convention
4. Agreement to adopt the following federal legislation on the basis of Council principles and standards, and with international consultation: new criminal and criminal procedure codes, new civil and civil procedure codes, and a law on the functioning and administration of the prison system
5. Agreement to harmonize the following new laws with Council standards: law on the Procurator's Office, law on the Office of the Commissioner of Human Rights, law for the protection of national minorities, law on the freedom of assembly, and law on the freedom of religion
6. Agreement to protect the status of the legal profession (*advokatura*) through federal law
7. Agreement to bring to justice human rights violators in Chechnya
8. Agreement to allow for effective freedom of movement inside Russia
9. Agreement to improve conditions of criminal detention
10. Agreement to transfer prison administration to the Ministry of Justice
11. Agreement to ratify several European conventions and protocols
12. Agreement to properly repatriate ethnic Russians from the Baltics

In addition, the opinion outlines twenty-five commitments that Russian officials agreed to fulfill as requirements for membership. These commitments can be arranged into several categories. They include the following:

- Ratifying specific Council of Europe conventions and protocols within set time frames (the Human Rights Convention and Protocols 1, 2, 4, 6, 7, and 11 in particular), as well as issuing a moratorium on all death sentences

- Resolving internal and external disputes peacefully
- Denouncing “as wrong” the distinction between Russia’s “near abroad” (its immediate sphere of influence in the fourteen other former Soviet republics) and all other countries
 - Returning all foreign properties that the Soviets had once illegally confiscated
 - Stopping the restriction of foreign travel of people possessing so-called state secrets
 - Revising the law on Federal Security Services to harmonize it with Council of Europe standards and principles
 - Adopting an enabling law on alternative military service in accordance with Article 59 of the Russian Constitution
 - Reducing the mistreatment of military conscripts
 - Pursuing legal reforms
 - Respecting humanitarian law
 - Cooperating with international humanitarian organizations

Russia’s General Compliance with its Entrance Criteria

Since Russia’s accession, the PACE Monitoring Committee on the Honouring of Obligations and Commitments has issued two reports, and the PACE has adopted several resolutions on Russia’s compliance record. In the PACE Monitoring Committee’s 1998 report, its rapporteurs found that

[t]he lawmaking process in general, though sometimes sluggish, seems to be progressing relatively well. . . . On the negative side, the Russian authorities have made few attempts to reform the prosecutor’s office and the secret service in compliance with commitments entered into. Conditions in pre-trial detention centres and prisons have deteriorated since Russia’s accession to the Council of Europe, due mainly to lack of funds, but also to mentalities yet unchanged, such as the over-free recourse to pre-trial detention and custodial sentences. Few of the many grave human rights violations committed by the armed forces during the Chechen conflict have been investigated, let alone the guilty brought to justice. This is not only the fault of the Russian authorities, however; the current situation in Chechnya is hindering an effective investigation of abuses committed by both sides in the conflict.¹³

That same year, A. I. Vladychenko, secretary of the Interdepartmental Russian Commission on Council of Europe Affairs and deputy director of the Department of General European Cooperation in the Russian Ministry of Foreign Affairs, published a paper on Russia’s two-year cooperation with the Council. In it, he described how Russia has become an influential member of the Council, having already filled leadership positions in the PACE, and said that Russia considers the organization as “the linchpin of Greater Europe.” In a remark most likely aimed at the Council’s criticism of Russian military operations in Chechnya, Vladychenko urged the organization to improve its monitoring procedures, in light of how Russia and the other new entrants were still “young democracies.”¹⁴

Most of the formal interaction that Russia has had with the Council of Europe has been controlled largely by the Presidential Administration and the Ministry

of Foreign Affairs. According to Jeffrey T. Checkel, who conducted research on Council of Europe–Russian relations in the areas of citizenship and minority rights, such control has prevented nongovernmental organizations from playing a more active role in human rights monitoring, and “Russia is undertaking efforts specifically designed to minimize the Council’s ability to promote normative socialization within the country.”¹⁵

In March 2002, the PACE Monitoring Committee released a second report on Russia’s honoring of obligations and commitments.¹⁶ As in the first report, this more recent evaluation is mixed. On the one hand, it commends Russia for fulfilling a number of commitments since 1998. These include ratifying key Council conventions (including the Human Rights Convention, the Framework Convention for the Protection of National Minorities, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment) and ten of the thirteen protocols of the Human Rights Convention; reforming aspects of the judicial system (including adopting a new criminal procedure code, which entered into force in 2002); adopting the third and final part of the civil code in 2002; adopting a law on the *advokatura* in 2002; transferring responsibility for the prison system from the Ministry of Interior to the Ministry of Justice in 1998; adopting a law on the Office of the Commissioner of Human Rights; and beginning to prosecute human rights violators in Chechnya in 2001.

On the other hand, the report singles out Russia’s missteps, including its failure to resolve the war in Chechnya through political means and to abolish the death penalty, as well as ratify Protocol 6. In April 2002, based on the report’s findings, the PACE adopted a resolution requiring Russian authorities to take further action.¹⁷ Much as did the PACE’s 1996 report, it calls on Russia to

- settle the conflict in Chechnya by peaceful means, conduct a thorough investigation of human rights violations there, and prosecute violators;
- abolish the death penalty and ratify Protocol 6 (the PACE noted that it was “shocked” to find that the Duma had asked Putin to reinstitute the death penalty in February 2002);
- ratify the European Charter for Regional or Minority Languages;
- properly enforce domestic legislation;
- adopt reforms of the Procuracy in accordance with Russia’s commitments;
- eliminate the mistreatment of military conscripts;
- adopt a law on alternative military service;¹⁸
- adopt a new law on the secret services, curtailing the role of the Federal Security Services in operating pretrial detention centers;
- improve conditions inside prisons and pretrial detention centers;
- end mistreatment of prisoners and detainees;
- take measures to preserve freedom of the media;
- eliminate provisions that impede freedom of movement;
- take steps to solve problems related to the expulsion of the Meskhetian population from Krasnodar;

- ensure that discrimination and harassment against religious communities such as the Salvation Army and Jehovah's Witnesses ends at the local level;
- ensure that all Russian troops and their heavy weapons withdraw from the Republic of Transdnestr in Moldova by the 31 December 2003 deadline set by the Organization for Security and Cooperation in Europe (OSCE);
- return diplomatic property of the Baltic states transferred to the Soviet Union in 1940 and compensate individuals deported from the Baltic states and their descendants;
- and settle issues related to the return of cultural property claimed by council member states that the USSR had confiscated during World War II.¹⁹

The first two issues are the Council of Europe's main concerns. The second, the penalty issue, is seemingly the more straightforward to resolve. Russia had agreed to sign Protocol 6 on abolishing the death penalty within one year of acceding (by February 1997) and to ratify it within three years. In 1996, President Boris Yeltsin issued a decree requesting that the Duma allow for a stay of executions, reportedly in response to pressure from the PACE, then Secretary-General Daniel Tarschys, and international nongovernmental organizations.²⁰ After Yeltsin's moratorium entered into force in August 1996, defendants continued to be sentenced to death, and more than fifty executions have been carried out since Russia joined the Council.

In a positive step toward compliance, Russia signed Protocol 6 in April 1997. In February 1999, the chairman of the Presidential Clemency Commission, Anatoly Pristavkin, announced that Russia would commute all death sentences to life terms by June 1999.²¹ However, as of April 2003, the Russian Duma has not yet expunged an article from the federal criminal code legalizing capital punishment, nor has it ratified the protocol. After courts introduce jury trials, a requirement of the Russian Constitution that likely will not happen until 2007, the death penalty could be reintroduced.²² The Council of Europe is again concerned. In April 2002, on an official visit to Moscow, Secretary-General Schwimmer reminded Russia of its obligation to ratify the protocol.²³

A number of institutional and cultural factors work against the abolition of capital punishment in Russia. First, the prison system is notoriously underfunded, and prison conditions are inhuman. Prisoners literally have been dying from neglect, as they are typically denied treatment for tuberculosis, which has reached epidemic levels in Russian prisons, and other deadly diseases. Many prisoners would rather be executed than die a slow, painful death there. Second, a majority of Russians (the 2002 PACE Monitoring Committee report cites 80 percent) support the death penalty. Concerned for their personal safety, they view the practice as retributive justice and a viable deterrent.²⁴

Case Study on Compliance: Political Dialogue over Human Rights Violations in Chechnya

The matter of human rights violations in Chechnya presents a far more complex dilemma than the death penalty issue because it more directly affects relations

with European countries and undermines several key European human rights norms. Russia is allegedly violating several articles of the Human Rights Convention, including Article 2 on the right to life, Article 3 on the protection against torture and inhuman and degrading treatment, and Article 14 against discrimination based on race, color, language, religion, and national origin. The Council of Europe has investigated problems in Chechnya and engaged in the most extensive dialogue with Russian authorities over them. The organization has condemned human rights violations there, perpetrated by both Russian military and law-enforcement personnel and Chechen rebels, and called for steps to curb the abuses and end the conflict. However, more often than not, Russian officials chose not to follow the Council's recommendations.

One problem with the way the Council of Europe has fostered a political dialogue with Russian officials on Chechnya is that the Council itself has been inconsistent in its message. For example, in summer 1999, Secretary-General Schwimmer said that it is "a clear right and duty of the Russian Federation to defend Russian territorial integrity and Russian citizens."²⁵ However, by December 1999, his tone had changed dramatically. That month, Schwimmer formally invoked Article 52 of the Human Rights Convention to request information from Russian foreign minister Igor Ivanov about possible violations of the Human Rights Convention committed by Russian soldiers in Chechnya. Article 52 compels a member state to address how its domestic laws protect the rights embodied in the convention.

Schwimmer's letter ignited a tense, three-month correspondence with Ivanov. Ivanov's strategy was to use the very law that Russia was accused of violating, the Human Rights Convention, to defend his government's reasoning. Article 15 provides for the possibility of suspending compliance by a state with the convention "in time of war or other public emergency threatening the life of the nation." Ivanov called the war an "antiterrorist operation" aimed at restoring human rights and establishing legality.²⁶ He invoked the language of the convention, referring to members' having the right to defend themselves in times of war to justify a temporary suspension of human rights practices in Chechnya. Schwimmer, for his part, stressed in his correspondence with Ivanov that, to show full compliance with the Human Rights Convention, "it is not sufficient to rely solely on compliance with domestic law."²⁷ He emphasized that "there should be a fair balance between means and ends," in accordance with the so-called proportionality principle.²⁸

During this time, the Russian government agreed to admit a three-person team of Council experts to assist President Putin's special representative for human

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rights in Chechnya, Vladimir Kalamenov. The team members were the first international personnel with a human rights mandate that Putin permitted to operate in Chechnya. From the Council's standpoint, it had scored a victory for monitoring, even though at the time Kalamenov's office had no authority to investigate or prosecute alleged atrocities. It appears that the Putin government had deliberately chosen the least effective institution possible in an effort to avoid an international backlash.

Moreover, the Council's intervention in Chechnya gave the United Nations, the United States, the European Union, the Organization for Security and Cooperation in Europe, and other governments and institutions a reason not to form an international inquiry.²⁹ The Council apparently used its monitoring team in Chechnya as an excuse not to take more drastic action, such as filing a multi-member lawsuit against Russia before the ECHR or expelling Russia from the Council of Europe. The PACE, as opposed to the Committee of Ministers, acted most boldly in engaging Russia. In January 2000, it adopted Recommendation 1444, in which it called on Russia to introduce a ceasefire and "stop immediately all indiscriminate and disproportionate military action in Chechnya, including use of young conscripts, and to cease all attacks against the civilian population."³⁰

Ultimately, the strongest Council sanction that Russia suffered thus far was suspension of its voting privileges in the Parliamentary Assembly in April 2000. The PACE also took initial steps to suspend Russia's membership if it did not show improvement in Chechnya. The Russian government protested, then warned that relations with Europe would suffer if any of this happened. Almost immediately, the Council leadership began to retreat. Many of the foreign ministers on the Council's Committee of Ministers argued that Russia had already begun to respond to the Council's inquiries.

In September 2000, a team of Council experts met with Russian officials to determine the fate of eighteen thousand missing people in Chechnya and to investigate other alleged human rights violations. Some Russian officials were more open to their visit than others. For example, an executive official told one Council representative not to make "an international show out of little Chechnya."³¹ At the time, members of the Russian Duma began to assert themselves vis-à-vis the government. They agreed to hold hearings on the military campaign in Chechnya. Several Duma deputies strongly criticized Russian forces for their actions against civilians there.

In January 2001, Putin announced that Moscow would reduce its forces in Chechnya.³² On the surface, the action looked like a concession, but ominously, he had transferred control of operations from the military to the FSB. Putin's announcement worked to his advantage. Days later, the Council of Europe restored Russia's voting privileges in the PACE, citing other positive developments in Chechnya, including Russia's attempt to establish a civilian administration and a judicial system there.³³ Council officials later admitted that the decision was made because the Council concluded that it had hurt itself by suspending Russia's voting privileges.³⁴ It claimed that it had only weakened its ability to

monitor the region. NGOs such as Human Rights Watch opposed the decision, but their recommendations were ignored.³⁵

In February 2001, the Ministry of Foreign Affairs marked the fifth anniversary of Russia's membership in the Council of Europe by issuing a press release.³⁶ In it, the ministry listed a number of obligations that Russia was fulfilling, including the transfer of control of the prison system to the Ministry of Justice and plans to implement new judicial reforms. The statement described the Council as Russia's "privileged international partner in Chechnya's democratic reconstruction," insofar as three Council experts had worked with Kalamanov's office. The Ministry of Foreign Affairs stressed that the Council's main calling is to act "in the spirit of partnership and not of alienation."

In March 2001, a new Council body, the Joint Working Group on Chechnya, was instituted to investigate further reported human rights violations there, particularly the conduct of Russian security forces. Its seventeen members were drawn from the Council's Parliamentary Assembly and the Russian Duma, and the group has visited Chechnya several times since its formation. The founding of the group did not prevent the Russian military from perpetrating further attacks on civilians, however. In July 2001, Lord Russell-Johnston warned of "mounting evidence of a rapidly deteriorating human rights situation in Chechnya" and blamed Russian military forces for civilian killings in Assinovskaya and Serovodsk.³⁷

After 11 September 2001, Russian officials, including Putin himself, now made clear that they would not accept strong criticism of the way Russian authorities are waging war in Chechnya. They have stressed that their main goal in fighting another war in Chechnya is to eliminate terrorists and banditry and refused to recognize that the Chechen rebels are part of a separatist struggle.³⁸

Council meetings with Russian officials proceeded behind the scenes. On 15 September, for example, Russian foreign minister Igor Ivanov opened talks with the Council's human rights commissioner, Alvaro Gil-Robles, in an attempt to resolve the organization's concerns that Russian authorities were fostering a "climate of impunity" in their violations of European human rights norms regulating the treatment of civilians and captured enemies. Ivanov gave Gil-Robles the names of fifteen Russian servicemen who had been charged with crimes against Chechen civilians. In October, the Council of Europe was further encouraged to learn that Lieutenant General Vladimir Moltenskoi, commander of the Joint Group of Armed Forces in the North Caucasus, brought action against a number of senior officials accused of extortion and mistreatment of civilians at checkpoints.³⁹ On 29 November, thirty Chechen representatives met with the Joint Working Group in Strasbourg and agreed to form a consultative council with Russian counterparts as a means to ending the war peacefully.

Public statements by President Putin and Lord Russell-Johnston that fall, however, showed that differences between the Council of Europe and Russia were still yet to be bridged. In a speech at a meeting of the 24th Conference of European Ministers of Justice, held in Moscow on 4 October 2001, Putin said that "the shared goal of European justice is to abide completely and faithfully by the legal

standards enshrined in [the Human Rights Convention]. . . . It is important for us all to work in this direction and to understand that territories on which civilized law does not operate become a 'terrorist offshore.'⁴⁰ Only days after Putin's speech, Lord Russell-Johnston commented on Russia's continuing mistreatment of civilians in Chechnya. He noted, "If, after 11 September, there is anything that requires a 'differentiated evaluation' in the world opinion on Chechnya, it is the world leaders' half-hearted, soft-pedaling attitude with regard to the Russian conduct so far."⁴¹

The PACE adopted a resolution on Chechnya in January 2002 in which it "unreservedly condemns the lack of progress" in investigating the most serious crimes, including three alleged mass killings in 1999 and 2000, a mass grave outside Grozny, the disappearance of the former speaker of the Chechen Parliament, and allegations of torture in detention camps confirmed by the Council's European Committee for the Prevention of Torture.⁴²

Only months after the PACE resolution was issued and a month before the NATO-Russia Council was formed, Secretary-General Schwimmer and Russian Foreign Minister Ivanov agreed to enlarge the Council's mandate in Chechnya, beginning in July 2002. The mandate was to allow the Council to continue working with officials in the Office of the Special Representative of President Putin for Human Rights in Chechnya and provide expertise on judicial and educational reform (but notably, did not include any measures strengthening the Council's monitoring capabilities). On 24 April, in a PACE session, Sergey M. Mironov, chairman of Russia's Federation Council, stated that "to us one thing is obvious—criteria for the assessment of the situation in the Chechen Republic must derive from the larger context of combat against the international terrorism, and correlate with the noble principles upon which we are building Greater Europe."⁴³

Despite Mironov's remarks, Council agencies continued trying to persuade Russia to comply with the Human Rights Convention and conventions on the prevention of torture and protecting national minorities. Their message was clear: that there is a climate of impunity in Chechnya, Russian authorities have failed to reverse it, and the international community must now take strong action to bring human rights violators to justice and ensure the wide distribution of humanitarian aid.⁴⁴ A PACE human rights report released in March 2003 called on Council member states to initiate interstate complaints against Russia in the ECHR and all states to consider exercising universal jurisdiction for the most heinous crimes committed in Chechnya.⁴⁵ It also proposed the creation of an international war crimes tribunal for Chechnya, although it is unlikely to happen, given Russia's permanent membership on the UN Security Council and its opposition to the International Criminal Court. A PACE resolution of 2 April outlined these same recommendations.⁴⁶

The Council chose not to send monitors to Chechnya during the referendum (citing security concerns), while the OSCE deployed a small team of experts. Russian authorities reported that Chechen residents had voted in overwhelming numbers for the referendum, although various human rights organizations, including Russia-based Memorial, argued that Russian authorities had likely tam-

pered with the results and over-reported voter turnout rates. The OSCE decided not to comment on the openness of the voting process or the accuracy of the results. For its part, the Council of Europe views the referendum as the beginning of a peaceful political settlement.⁴⁷ But the PACE's most recent resolution and reports have also made clear that it will not stop calling on Russian authorities to reverse the climate of impunity in Chechnya.

Conclusions and Recommendations

Since joining the Council of Europe in 1996, Russia has fulfilled a number of key entrance criteria. It has agreed to adhere to two ECHR decisions that were not in its favor. Domestically, the Human Rights Convention has gained legitimacy, as the Russian Constitutional Court and other courts routinely cite it in their decisions. Human rights activists and legal reformers use Council conventions as tools to promote human rights and publicize violations worldwide. The Russian human rights ombudsman, Oleg Mironov, called on Russia to fulfill its human rights obligations under its accession agreement with the Council of Europe.⁴⁸ In November 2002, the Council granted Russia eighteen million euros in recognition for having fulfilled its obligations to adopt specific legal reforms and to help fund their implementation. Russia's having joined the Council in the first place suggests that its leaders are motivated to integrate more fully with Europe politically and economically, albeit within their own time frame.

Despite Russia's having cooperated with the Council of Europe in several significant ways, the Council has failed to compel Russian officials to comply fully with the obligations and commitments it agreed to before joining the Council in February 1996. Russian officials have chosen to value their sovereignty over their pledge to observe key European human rights norms. The Council considers ending the war in Chechnya and bringing to justice human rights abusers more than just obligations Russia must fulfill to become a member in good standing. Chechnya is also seen as a test case for the organization's future viability. As PACE Resolution 1315 noted, the Council "cannot be what it claims to be while this grave situation continues."

However, these developments should not prevent international organizations, NGOs, and separate governments from exerting more pressure on Russian authorities to honor their international human rights commitments. With closer ties to NATO countries, most of which also belong to the Council of Europe, Russia should be challenged to show its commitment to building trust by fulfilling its human rights obligations. Now that the Russian government has offered further assurances of increased cooperation in investigating human rights violations in Chechnya, Council representatives must insist that they be permitted to work more closely with Russian and international NGOs in documenting human rights violations and attempting to bring violators to justice. For its part, the U.S. administration should increase funding to domestic and international NGOs involved in human rights monitoring and legal reform in Russia. In general, the Council of Europe cannot complete its goal of facilitating the transition to democracy and

human rights observance in Russia without better coordinating and intensifying efforts with the OSCE, the United Nations, and NGOs.

NOTES

1. These twenty-one are Albania (which joined the Council of Europe in 1995), Armenia (1995), Azerbaijan (2001), Bosnia and Herzegovina (2002), Bulgaria (1992), Croatia (1996), the Czech Republic (1993), Estonia (1993), Georgia (2001), Hungary (1990), Latvia (1995), Lithuania (1993), Moldova (1995), Macedonia (1995), Poland (1991), Romania (1993), the Russian Federation (1996), Serbia and Montenegro (2003), Slovakia (1993), Slovenia (1993), and Ukraine (1995).

2. The Council of Europe's official Web site is <<http://www.coe.int>>.

3. "What Identity for Tomorrow's Europe?: Report on European Identity—Part 2," 20–21 September 2001, <<http://www.coe.int>>.

4. "Walter Schwimmer, Timid Moral Policeman," *Economist*, 27 November 1999, 56.

5. The Parliamentary Assembly is made up of a set number of representatives from each member state, based on population, who are appointed by the member states (often by the home parliaments).

6. Jeffrey Kahn, "A Marriage of Convenience: Russia and the European Court of Human Rights," *RFE/RL Russian Political Weekly*, 19 June 2002, <<http://www.rferl.org>>.

7. For transcripts in English of this and other ECHR judgments, go to <<http://www.echr.coe.int>>.

8. "... In Case Called Precedent-Setting," *Radio Free Europe/Radio Liberty Newslines: Russia*, 16 July 2002, <<http://www.rferl.org>>.

9. Lord Russell-Johnston, "The Rule of Law," *The Europeans: The Electronic Newsletter of the Council of Europe Parliamentary Assembly*, September 2000, <<http://www.coe.int>>.

10. Rapporteur Muelemann, "Russia's Request for Membership of the Council of Europe," document 7443, 2 January 1996, <<http://assembly.coe.int>>.

11. Khadine L. Ritter, "The Russian Death Penalty Dilemma: Square Pegs and Round Holes," *Case Western Reserve Journal of International Law* 32, no. 10 (2000): 129–61.

12. PACE, "Opinion No. 193 (1996) on Russia's Request for Membership in the Council of Europe," <<http://assembly.coe.int>>.

13. PACE Monitoring Committee on the Honouring of Obligations and Commitments, "Honouring of Obligations and Commitments by the Russian Federation: Information Report," document 8127, 2 June 1998, <<http://assembly.coe.int>>.

14. A. I. Vladychenko, "Rossiya—Sovet Evropy: Opyt dvukh let sotrudnichestva," *Mezhdunarodnaya zhizn* 4 (1998), <<http://www.coe.ru/koi/05zagl.htm>>.

15. Jeffrey T. Checkel, "International Institutions and Socialization," *ARENA Working Paper* (99/5), <http://www.arena.uio.no/publications/wp99_5.htm>.

16. PACE Monitoring Committee on the Honouring of Obligations and Commitments, "Honouring of Obligations and Commitments by the Russian Federation," document 9396, 26 March 2002, <<http://assembly.coe.int>>.

17. PACE Resolution 1277, "Honouring of Obligations and Commitments of the Russian Federation," adopted on 23 April 2002, <<http://assembly.coe.int>>.

18. In June 2002, the Duma adopted and Putin signed a law on alternative military service. But human rights activists, including Ombudsman on Human Rights Igor Mironov, criticized it for requiring conscientious objectors to perform services in military facilities, requiring them to serve a longer term than military conscripts, and stipulating for draft boards to decide who does alternative military service. "Alternative Service Bill Moves Forward," *Radio Free Europe/Radio Liberty Newslines: Russia*, 30 June 2002, <<http://www.rferl.org>>.

19. The deadline for Russian troop withdrawal has since been extended to 31 December 2003.

20. Checkel, "International Institutions and Socialization."
21. Ritter, "The Russian Death Penalty Dilemma," 141.
22. In February 1999, the Russian Constitutional Court ruled that the death sentences not be imposed until after jury trials expanded across Russia.
23. "Rossiui mogut iskliuchit' iz Soveta Evropy," 19 April 2002, <<http://www.strana.ru>>.
24. Ritter, "The Russian Death Penalty Dilemma," 139.
25. "Walter Schwimmer, Timid Moral Policeman."
26. "Letter from Russian Foreign Minister Igor Ivanov to Council of Europe Secretary-General Walter Schwimmer," 10 January 2001, <<http://www.coe.int>>.
27. "Report by the Secretary General on the Use of His Powers under Article 52 of the European Convention on Human Rights in Respect of the Russian Federation," *SG/Inf*, 10 May 2000, <<http://www.coe.int/T/E/Secretary%5Fgeneral/Documents>>.
28. According to this principle, which is recognized by both the European Union and the Council of Europe, the means and ends of state policies and actions must be weighed in such a way as to avoid overburdening individual citizens. See Klaus-Dieter Borchardt, *The ABC of Community Law* (Brussels: European Commission, 2000), 16.
29. For example, the EU sponsored Resolution 2000/58, "Situation in the Republic of Chechnya of the Russian Federation," on 25 April 2000, at the 56th Session of the UN Commission on Human Rights, but once it was adopted, the EU did not spearhead its implementation. EU leaders argued that Russia was making progress toward accountability. The only response made by the United States to human rights violations in Chechnya was largely rhetorical, and it suggested a tacit understanding that the war was Russia's own problem to solve. Putin neither accounted for abuses in Chechnya nor complied with the UNCHR resolution. In 2002, the Russian government chose not to renew the mandate of the OSCE's Assistance Group in Chechnya. The Russian government also refused most human rights groups access to Chechnya and neighboring regions. In addition, on 19 April 2002, the 58th Session of the UN Commission on Human Rights failed to adopt a resolution criticizing the Russian government's failure to curb human rights abuses by its armed forces in Chechnya and to prosecute lawbreakers.
30. "Conflict in Chechnya—Implementation by Russia of Recommendation 1444 (2000)," document 8697, <<http://assembly.coe.int>>.
31. "Kadyrov Criticizes PACE Approach to Chechnya," *Radio Free Europe/Radio Liberty Newline: Russia*, 19 September 2000, <<http://www.rferl.org>>.
32. Sharon LaFraniere, "Putin Says Some Troops Will Leave Chechnya," *Washington Post*, 23 January 2001, A14.
33. Peter Baker, "Europe Council Restores Russia Rights," *New York Times*, 26 January 2001, A20.
34. *Ibid.*
35. Human Rights Watch, *World Report 2000* (New York: Human Rights Watch, 2001), 313–20.
36. "Statement by the Russian Ministry of Foreign Affairs Regarding the Fifth Anniversary of Russia's Accession to the Council of Europe," 321-27-02-2001, 27 February 2001, <http://www.russiaeurope.mid.ru/RussiaEurope/280201_00.html>.
37. "Statement by Assembly President in Chechnya," 12 July 2001, <<http://press.coe.int>>.
38. Michael Wines, "War on Terror Casts Chechen Conflict in a New Light," *New York Times*, 9 December 2001, A6.
39. "Council of Europe Secretary General Welcomes Military Probe into Abuses in Chechnya," 24 October 2001, <[http://press.coe.int/cp/2001/763a\(2001\).htm](http://press.coe.int/cp/2001/763a(2001).htm)>.
40. Speech by Russian president Vladimir Putin at meeting of 24th Conference of European Ministers of Justice, Moscow, 4 October 2001, <<http://www.russiaeurope.mid.ru/RussiaEurope/speech8.html>>.
41. Lord Russell-Johnston, "We Need to Win Peace, Not Only War," *Frankfurter Alle-*

maine, 10 October 2001.

42. PACE Resolution 1270 (2002), "Conflict in the Chechen Republic," adopted on 23 January 2002, <<http://assembly.coe.int>>.

43. Statement by Sergei M. Mironov (unofficial translation) at the plenary meeting of the 53rd session of the PACE, 24 April 2002, <http://www.coe.int/T/E/Communication_and_Research/Press/Events/2.-Parliamentary_Assembly_Sessions/2002-04_Spring_Session/e_Disc_Mironov2.asp>.

44. See Rudolf Bindig, Rapporteur, PACE Committee on Legal Affairs and Human Rights, Council of Europe, "Report: The human rights situation in the Chechen Republic," Doc. 9732, 13 March 2003, <<http://assembly.coe.int/Documents/WorkingDocs/Doc03/EDOC9732.htm>>; and PACE Resolution 1315 (2003), "Evaluation of the prospects of a political solution to the conflict in the Chechen Republic," adopted 29 January 2003, <<http://assembly.coe.int>>.

45. Bindig Report, 7.

46. Council of Europe Press Division, "Council of Europe parliamentarians call for an end to the 'climate of impunity' in the Chechen Republic," 2 April 2003, <[http://press.coe.int/cp/2003/174a\(2003\).htm](http://press.coe.int/cp/2003/174a(2003).htm)>.

47. Council of Europe Press Division, "Council of Europe stands ready to assist Russia with new Treaty on the Chechen Republic," 26 March 2003, <[http://press.coe.int/cp.2003/158a\(2003\)htm](http://press.coe.int/cp.2003/158a(2003)htm)>.

48. "Russian Human Rights Commissioner's Annual Report," *Newsletter of the Penal Reform Project in Eastern Europe and Central Asia* 12 (spring/summer 2001), <http://www.penalreform.org/english/frset_pub_en.htm>.