



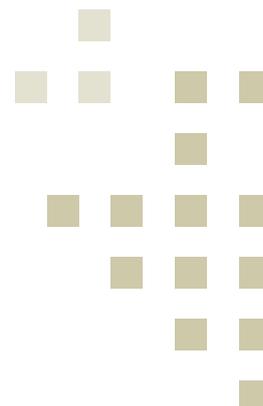
[706] Notat

Implementing Human Rights Norms

A Case Study of Russia's Partial Compliance to ECHR Protocol No. 6

Trude Johnson

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Besøksadresse: C.J. Hambros plass 2d
Adresse: Postboks 8159 Dep.
0033 Oslo
Internett: www.nupi.no
E-post: pub@nupi.no
Fax: [+ 47] 22 36 21 82
Tel: [+ 47] 22 99 40 00

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Trude Johnson

[Sammendrag] In December 1991, Russia started down the road of its post-Soviet existence. The re-emergence of Russia as a separate, independent entity compelled the state to come to terms with its revived national identity. Russia's relationship with the West lay at the core of the challenge to define what Russia is and how it should relate to the outside world. Opinion divided over whether Russia should rapidly integrate with Europe and "return to the civilized community of nations" or whether it should seek "a strengthening of Russia's positions in the East" and rather pursue its unique mission as a mediator between the East and West.

Against this backdrop I have analysed Russia's membership in the Council of Europe (CoE) and Russia's partial compliance to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) Protocol No. 6, which refer to the abolishment of the death penalty in peacetime.

Employing constructivist insights, I argue that this partial compliance is explained by the lack of a coherent and widely accepted national identity. Due to different perceptions of Russia's identity among various state actors, identities collide, and interests, and consequently action, will be in a competing and conflictual relationship to each other. Thus, norm compliance is challenged when identities overlap and their norms conflict. This, I argue, is evident in Russia's relationship with the European ideational community and the country's dealing with the death penalty issue. The more Russian state actors value the European identity of their state, the more they will seek to comply with "European" norms, such as the strong European abolitionist norm, and vice versa.

In my analysis, I also discuss whether it is right to completely dismiss rational explanations to Russia's partial compliance. In this way I bring my case into the midst of the rational-constructivist debate in International Relations theory. Contributing to this debate, I investigate whether an either-or approach is the most productive way of explaining Russia's ideational behaviour or whether rational and constructivist assumptions combined may shed new light on how to understand Russian compliance with international human rights norms or the lack of such.

[Presentation] Trude Johnson is a political scientist from the University of Oslo. She has also a background in Russian studies, and has twice lived in Moscow for extended periods. While working on her MA thesis, she had a scholarship at the Centre for Russian Studies at the Norwegian Institute of International Affairs.

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1. Introduction

In December 1991, with three-fourths of the former USSR's territory and just over half of its population, Russia started down the road of its post-Soviet existence. As a successor state to the Soviet Union, the Russian Federation was faced with multiple challenges. The re-emergence of Russia as a separate, independent entity compelled the Russian Federation to come to terms with its revived national identity and to redefine its national interests. The dissolution of the Soviet Union also changed the international environment. The bipolarity of the Cold War and the time of global superpowers came to an end. Emerging from the disintegration of a superpower, the Russian Federation was faced with the challenge to define its place in the new system of international relations.

Russia's relationship with the West lay at the core of its challenge to define what Russia is and how it should relate to the outside world. Opinion divided over whether Russia should rapidly integrate with Europe and "return to the civilized community of nations" or whether it should seek "a strengthening of Russia's positions in the East" and rather pursue its unique mission as a mediator between the East and West (Richter in Wallander 1996: 77, 81; Stankevich 1992: 48). Whereas the former approach saw Russian membership in European institutions as a way to ensure Russia's newborn democracy and respect for fundamental human rights, and eventually a full-fledged membership in the European community, the latter view opposed efforts to integrate Russia into Western institutions. Accordingly, Russia should rather protect its distinct traditions and culture from European domination and pursue to counterweight Western power by focusing its efforts on neighbouring countries (Arbatov 1993; Crow 1993; Richter in Wallander 1996).

After the fall of the Soviet Union, Russian foreign policy and domestic opinion has vacillated between pro-western sentiments on the one hand and statist and nationalist sentiments on the other. Upon achieving independence pro-western sentiments dominated the Russian scene. Foreign Minister Andrei Kozyrev emphasised the importance of universal human rights as a way to integrate Russia into the family of democratic states and to revive Russia as a normal great power. With the support of President Boris Yeltsin and Yeltsin's close associates in the presidential administration and cabinet of ministers, Russia's first aim was to establish close ties with Western states and organisations (Arbatov 1993: 9; Oldberg *et al.* 1999: 9). Russian membership in EU, NATO and WTO among others was discussed, and in 1992 Russia applied to join the Council of Europe (CoE). However, the pro-Western orientation within Russia's governing elite was not universally shared throughout Russian society. The electoral victories by neo-nationalist Vladimir Zhirinovskii in 1993 and the CPRF in 1995 led democratic reformers on the defensive whereas anti-Western sentiments surfaced and found a stronghold in the State Duma (Donaldson & Noguee 1998; Tuminez in Wallander 1996). The pro-Western orientation came to a final end when Yeltsin in January 1996 dismissed Kozyrev and appointed Yevgenii Primakov as his

successor, a person known for his anti-Western and pro-Eastern stances (McFaul 1997/98: 26; Oldberg *et al.* 1999: 15; Richter in Wallander 1996).

President Vladimir Putin on the other hand has seized every opportunity to emphasize that Russia considers itself to be an indisputable part of Europe, seeking to enhance its participation in integrationist processes on the continent (Lo 2003: 102). However, as one has put it, “unlike during the early years of Boris Yeltsin’s presidency – on Russia’s terms” (Legvold 2001: 65). As opposed to Yeltsin, Putin enjoys full support in the State Duma after the Duma election in 2003. At the same time, however, statist sentiments is the dominant thought in Russian foreign policy discourse (Morozov 2002). Thus, Russia’s ambivalent relationship with the West is apparent during Putin’s presidency as well.

It is against this backdrop that I will analyse Russia’s membership in the Council of Europe and its compliance to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) Protocol No. 6. Russia has abolished the death penalty *de facto*, but not *de jure*. Thus, so far Russia has not managed to fully meet the commitments undertaken when becoming a member of the Council of Europe. Nevertheless, by having outlawed the death penalty in practice Russia has taken a fundamental step forward to meet the Council’s requirements.

Employing constructivist insights, I argue that Russia’s partial compliance to Protocol No. 6 is explained by the lack of a coherent and widely accepted national identity, which is part of a wider, more fundamental identity debate that has lasted for centuries in Russia. To Russian Westernizers a CoE membership would incorporate Russia into Europe’s most developed normative structure, thereby certifying Russia’s path to democracy and protection of human rights. Moreover, this would confirm Russia as a European state built on the same norms and values. Anti-Western sentiments on the other hand have opposed a European orientation and any integration into Western institutions. These opposing views, I argue, have led to a vacillating adherence to European human rights standards and a Russian fluctuation in foreign policy.

In my analysis chapter I will bring in alternative explanations to Russia’s partial compliance with Protocol No. 6. Given my constructivist orientation, the logical alternative explanations to norm compliance are more rational explanations. In this way I bring my case into the midst of the rational–constructivist debate in International Relations (IR) theory. Contributing to this debate I investigate whether an either-or approach is the most productive way of explaining Russia’s ideational behaviour or whether rational and constructivist assumptions combined may shed new light on how to understand Russian compliance with international human rights norms or the lack of such.

1.1. A Constructivist Approach to Russia’s Partial Compliance

I turn to constructivism for three reasons. First, Russia’s compliance to international human rights standards is a question of norms and norm-compliance. The constructivist project has helped to bring about a revival of

interests in norms and ideas by highlighting the independent role of norms and ideas in affecting international and domestic policy outcomes. “What makes the world hang together” is the belief that the environment in which states operates is as much ideational and social as it is material (Hansen 2002b). Norms may not merely constrain the behaviour of states, but by carrying social content they provide states with understanding of interests and may change behaviour independent of underlying power distribution (Checkel 1999). Empirical studies have documented the impact of norms on patterns of international outcomes, and developed mechanisms to investigate how norms work. By drawing on this scholarly research I will examine how the Council of Europe’s robust abolitionist norm has coincided with Russian domestic norms, and how this has had an impact on Russia’s compliance.

Second, whereas the more dominant paradigms of neorealism and neoliberal institutionalism within the field of IR treat the identity and interests of actors as exogenous and given, constructivism believe that the interests and identities of states are created – at least in part – through interaction and can change through interaction. Constructivism assumes that the selves, or identities, of states are a variable; they depend on historical, cultural, political, and social context (Hopf 1998). What follows is that interests are the product of identity (*ibid.*; Wendt 1994). By using these insights, I will look into how the Russian “dual identity” and the century old discussion between Slavophiles and Westernizers may have led to divergent interests and subsequently resulted in contradictory action and behaviour when dealing with ECHR Protocol No. 6.

Third, the constructivist approach challenges the rational paradigm that treats states as rational and unitary actors. Constructivists argue that in order to understand states’ behaviour in international relations it is necessary to look into “the black box”. Whereas Yeltsin’s pro-Western orientation turned out to meet strong opposition in the State Duma, Putin has enjoyed strong support in his choices. The constructivist approach allows us to investigate what is taking place on the domestic arena; how policy preferences and underlying identities of domestic actors may be channelled through different political institutions and consequently what kind of behaviour that results in. In the thesis I will therefore look into how especially the executive and the legislative branches of power have dealt with the death penalty issue, and subsequently map out how that has influenced Russia’s partial compliance.

1.2. Methodological Considerations

Various research situations correspond with different research strategies, and each strategy is a different way of collecting and analysing empirical evidence. When choosing research strategy, one needs to take into consideration the type of research question, the extent of control an investigator has over actual behavioural events, as well as the degree of focus on contemporary as opposed to historical events (Yin 1994: 4). According to Yin, a case study is an empirical inquiry that “investigates a contemporary phenomenon within its real-life context, especially when the boundaries between the phenomenon and context are not clearly evident” (*ibid.*: 13). Put differently, a

case study strategy has a distinct advantage when one seeks to explore the “why” or “how” in a contemporary set of events in which the investigator has little or no control (*ibid.*: 9). Eckstein brackets down the definition of a case to be defined technically “as a phenomenon for which we report and interpret only a single measure on any pertinent variable” (Eckstein 1975: 85).

In general, case studies can serve five main purposes: testing theories, creating theories, identifying antecedent conditions, testing the importance of these antecedent conditions, and explaining cases of particular importance.¹ In my case study I pursue the first purpose; namely to test the explanatory power of constructivism in Russia’s partial compliance, followed by an investigation of how alternative explanations may shed light on Russia’s behaviour. Van Evera points to three formats for testing theories used in case studies: controlled comparison, congruence procedures, and process tracing (van Evera 1997). In this study the latter design will be pursued. The process-tracing format allows the investigator to explore the chain of events or the decision-making process by which initial case conditions are transformed into case outcomes (*ibid.*: 64). As van Evera explains: “the cause–effect link that connects independent variable and outcome is unwrapped and divided into smaller steps; then the investigator looks for observable evidence of each step” (*ibid.*). Consequently, no other theories predict the same pattern of events and therefore a careful process-trace of one single case can provide a strong test of a theory.

During recent years much scholarly literature on case-study methodology has appeared, but no complete catalogue of research design for case studies has emerged (Yin 1994: 18–19). However, the “why’s” and “how’s” are part of a case study’s research design as is the study’s propositions, its units of analysis, the logic link from the data to the propositions, and the criteria for interpreting the findings (*ibid.*: 20). Why has Russia partially complied with ECHR Protocol No. 6? What might explain Russia’s de facto moratorium on the death penalty, and in general how has Russia dealt with the death penalty issue? These questions imply my study questions and my study propositions. The third component of a research design is the unit of analysis, which is related to the fundamental challenge of defining what a case is. The unit of analysis for my case study is Russia’s compliance or non-compliance with international human rights norms, more specifically ECHR Protocol No. 6. Moreover, following Yin’s fourth criteria, I use process-tracing as a way to link data and propositions. I attempt to interpret my findings by using constructivist insights, but by bringing in alternative explanations the findings are put in a comparative perspective through two rival propositions.

When addressing the designing of case studies a primary distinction is drawn between single- and multiple-case designs. When investigating Russia’s partial compliance to Protocol No. 6, the study corresponds to a single-case design. The choice to follow a single-case research strategy is justified when the case represents a critical test of existing theory, where the case is a

¹ Naturally, these functions overlap and they are often used simultaneously. For instance one can explain cases, create theories and test theories in one study, as well as identify and test antecedent conditions in another. For further elaboration, see van Evera (1997: 55).

rare or unique event, or where the case serves a revelatory purpose (Yin 1994: 44). Van Evera (1997) lists several case-selection criteria. However, one should select a case that best serves one of the five purposes for case studies. This of course, requires that the investigator is clear about his or her purpose before selecting a case.

By choosing Russia as a case my hope is that I will be able to discover valuable empirical findings as well as contribute to the general theoretical debate within the field of International Relations. By applying constructivist insights, I use Russia's partial compliance as a critical case in testing a well-formulated theory. In turn, I use the single case to determine whether the theory's propositions are correct or whether rationalism and instrumental calculation as alternative explanations may add valuable insights to the explanation. Following van Evera's case selection criterions, I then select a case which competing theories make opposite predictions about and which resemble current situations of policy concern. Moreover, I argue that Russia's partial compliance may serve as a case of intrinsic importance and as an outlier case.

By studying reports on the human rights situation in Russia by various NGOs and IGOs one may easily find examples of how Russia is violating some of the most basic human rights, the Chechen case of course being the prime example. At the same time, as a Contracting Party to the ECHR, Russia has taken important steps in improving the protection of human rights in the country. By choosing a case of *partial compliance* I wish to capture this vacillating approach towards human rights in *one* particular right firmly embedded in the European human rights regime through ECHR Protocol No. 6. My hope is that this will reveal some of the features that characterize Russia's discrepancy in regards to compliance with European norms and standards, *both* the ones that encourage compliance and the ones discouraging it, and not only one or the other.

Of course, Russia's *partial* compliance inclines that this is neither a clear-cut case where "the dog didn't bark", nor a case where Russia is completely deviating from "happy liberal norms".² Nevertheless, I believe that the case will contribute to the scholarly field in several ways. First of all, as Russia is a great power, the Russian case may uncover features that are decisive for norm-compliance among powerful states. Secondly, by focusing on the president and his administration and the Russian parliament, the role of decision-makers in norm compliance is in focus. Thirdly, by looking into how domestic norms correspond with international norms one may obtain an understanding of how this may influence the state's adherence to an international norm. Finally, there is the question of identity; in line with my theoretical argument, a state's interest to comply with an international norm will depend on the domestic salience of the identity specified by the norm.

² Sarah Mendelson notes, "in many ways, Russia looks like another case of diffusion of 'happy' liberal norms", but when taking a closer look at the country, she continues, "Russia dramatically contrasts with the 'success stories' of norm diffusion" (Mendelson 2002: 45). In his study Checkel calls for greater consideration of cases where the "dog didn't bark" (Checkel 1999: 86).

1.2.1. Data Collection

According to Yin (1994), there are three principles of data collection that will significantly increase the reliability of the case study if incorporated into the investigation. The first is the use of multiple sources of evidence converging on the same set of facts. The second principle is the importance of establishing a case study database, emphasizing the significance of maintaining a chain of evidence in which there are explicit links between the questions asked, the data collected, and the conclusions drawn. The third principle refers to the reliability of the information in a case study, which allows for others to trace any evidence in the case study conclusions back to the initial research (or the other way round).

To uphold the first principle, I base my empirical material on data collected in multiple ways. The case study evidence has been built on three common primary sources: documentation, archival records, and a handful of interviews. The documentation sources are essential in the dissertation and consist of letters, speeches, administrative documents (progress reports, resolutions, recommendations, reports of events), and newspaper articles. Yin has clarified the importance of reading documents with care and a critical sense to avoid over-reliance on documents, and understanding that the documentary evidence is a communication between parties attempting to achieve some other objectives (Yin 1994: 82). When interpreting the content of such evidence, I have throughout the thesis tried to my best capacity to bear this in mind.

To some extent archival records have been used in the study, mostly what I have obtained from a visit to Strasbourg. The time and effort spent on interviews have been substantial, even though I did not manage to carry out as many interviews as I had hoped. This was mainly due to the lack of resources in Strasbourg and of access to the “right people” in Russia. Nevertheless, visits to Moscow and to the Council’s headquarters in Strasbourg proved to be very valuable. The rationale behind the two visits is evident; in order to obtain an impression of the Russian domestic debate, it was essential to speak with persons who could provide new important insights into the situation and who simply corroborated already established facts. An interview with an independent Duma member who has been very active in the death penalty debate in Russia certainly contributed to this. Even though the same motivation was relevant for doing interviews in Strasbourg, the objective was slightly different. To maintain the two-level perspective, I saw it as crucial to understand the Council’s perception of the topic. In addition to interviewing people in the Council, I managed to gather valuable documentary sources. Furthermore, the thesis draws on secondary sources obtained from research carried out by scholars in both the legal field and the IR-field.

By utilizing various primary and secondary sources, I have endeavoured to develop converging lines of inquiry. Yin also refers to this as a process of data triangulation, which in turn addresses the validity in a research project (Yin 1994: 92–93). Any findings are likely to be much more convincing and accurate when they are based on several different sources of information. Moreover, in this way, what I say should correlate to what I observe, identify and measure (Bryman 2001). By using process-tracing, I attempt to obtain a

strong degree of internal validity by for instance showing how Russia's dual identity and the lack of domestic salience for the international abolitionist norm lead to a vacillating adherence to European human rights norms.

2. Constructivism and Human Rights: An Ideational Turn in IR

As recently as the early 1970s, most policy-makers believed that the promotion of human rights was a moral concern not appropriate for international politics (Schmitz & Sikkink 2002: 517). However, today due to an ideational turn in international politics human rights are conceived as being an integral part of foreign policy and international relations. With the establishment of the United Nations, human rights emerged as a standard subject of international relations (Donnelly 1993: 7). Certainly, normative and ideational concerns have always informed the study of international politics. Attempts in the 1960s and 1970s to build a science of politics modelled on economics or natural science, however, displaced these concerns (Finnemore & Sikkink 1998). It was the regimes scholarship of the early 1980s that opened the door for a re-emphasise of ideational and social phenomena (*ibid.*).

In this chapter I have two main tasks. First, I lay out my theoretical argument. I argue that interests and consequent behaviour is the product of identity, and in turn I claim that norms are ultimately linked to behaviour and identity. In my outline I show how I arrive at my theoretical argument by building on constructivist research that has focused on norms, identity and domestic politics. Next, I take my theoretical argument and implement it on empirical material. The dissolution of the Soviet Union reinvented an old question of the Russian identity; was it European or something else? I argue that due to the lack of a coherent and unified identity among state actors in post-Soviet Russia, these actors have conflicting interests as to whether they should comply with European norms or not. Consequently, this leads to a vacillating adherence to European human rights norms, which may be seen in Russia's partial compliance with ECHR Protocol No. 6.

2.1. The Concept of Norms

Naturally, all research on norms revolves around the concept of "norm". When studying norms "as causes" for behaviour the analytical focus is on ways of behaviour in relation to types of norms, such as human rights and environmental standards (Wiener 2004: 198; Checkel 2001). Finnemore and Sikkink understand a norm as shared expectations about appropriate behaviour held by a collectivity of actors (Finnemore & Sikkink 1998). Wiener distinguishes between two categories of norms (Wiener 2004: 199). On the one hand is a generic category of social norms that provides "reason" which appear persuasive to decision-makers, and on the other hand a specific category of procedural norms, which entail "instructions" that are applicable under given circumstances (*ibid.*). According to Wiener, the first category encompasses worldviews or core constitutional norms and principles, and are therefore also termed as normative structure or frame. The latter category on the other hand is understood as "behavioural rules" such as specified regulations and prescriptions (*ibid.*). Herrmann and Shannon (2001) focus on prescriptive norms. They state that norms affect conceptions of identities and

interests in the process of actor decision-making and that “prescriptive norms give rise to feelings of moral obligation to abide by and defend the norm” (*ibid.*: 623). Furthermore, they note that prescriptive norms are inevitably connected to behaviour or action (*ibid.*: 625). Action may be affected by several considerations relating to both moral concerns springing from established descriptive norms and material desires for wealth and strategic advantage.

2.1.1. The Emergence and Operation of Norms

Much of constructivist research on norms has begun at the broadest level of analysis by emphasizing the international normative context. According to this perspective, the impact human rights can have depends on the strength of international norms. Lutz and Sikkink argue that in order to understand the improvement in human rights practices one needs to consider how a regional norm shift may lead to an increased regional and international consensus (Lutz & Sikkink 2000). They refer to a norm cascade – a rapid shift toward new international human rights norms – and its impact on greater compliance with international human rights norms. Furthermore, they suggest that norm cascades are collections of norm-affirming events, such as formal articulations of norms in declarations or treaties, statements in speeches of governmental officials, or the incorporation of the international norm into domestic legislation. Thus, norm-affirming events are discursive events; verbal or written statements asserting the norm.

In an earlier work, Finnemore and Sikkink illustrate how norm influence may be understood as a three-stage process (Finnemore & Sikkink 1998). They refer to a norm’s “life cycle” involving norm emergence, norm “cascade” and norm internalisation. So-called norm entrepreneurs with organizational platforms who through the “logic of appropriateness” persuade a “critical mass of states” characterize the first stage.³ Finnemore shows in her research how agents having strong notions about appropriate behaviour build norms (Finnemore 1996). Furthermore, for an emergent norm to reach a threshold and move toward the second stage, it must become institutionalised in specific sets of international rules and organizations. With the support of “a critical mass of states” which endorse the norm and the expertise of international organizations, the norm reaches a tipping point followed by a process of socialization that describes stage two. At the far end of the norm cascade, in the third stage norms are internalised and taken for granted.

Finnemore and Sikkink (1998) point to notions of “world time” as another way of norm emergence. According to the argument, ideas and norms associated with the losing side of a war are particularly at the risk of being discredited, opening the door for new alternatives. Furthermore, the current period of globalisation may be seen as one that promotes dramatic expansion of new norms. Since the Second World War, the number of international organizations has exploded and more opportunities to address and negotiate

³ The authors propose two hypotheses about what constitutes a critical mass and when and where to expect norm tipping. First, at least one-third of the total states in the system must adopt the norm. Second, it matters which states adopt the norm. One criterion of critical states is that they are those without which the achievement of the substantive norm is compromised. States may also be critical because they have a certain moral stature.

on a broad range of normative issues is contributing to an acceleration of this process. Risse and Sikkink emphasize how changes in “world time” may account for the growing visibility of human rights norms (Risse *et al.* 1999). Thus, the influence of international human rights approaches is greater now than during earlier historical periods (*ibid.*: 19–22). The arguments put forth by Florini are similar to the notion of “world time” when she stresses the importance of norm “prominence” and legitimacy in the international environment (Florini 1996). A norm is reproduced either vertically or horizontally, where the former is simply a continuation of a norm through generations of leaders within a single state. The latter, however, refers to emulation and is the mechanism by which norms change across state boundaries. This, she argues, may happen in large-scale turnover of decision-makers, as in wars or revolutions (*ibid.*).

2.2. States’ Interests and Actions: a Product of Identity

The constructivist project has challenged the conventional IR theories on some of its most fundamental assumptions. Whereas rational approaches sees the identity and interests of actors as exogenous, constructivism treats identity as an empirical question to be theorized within a historical context and as variables endogenous to interaction (Wendt 1994). Identity is something possessed by individual persons in “a deep psychological sense (i.e. male and female identity, class, race) or can involve self-ascription as belonging to a group with others who similarly identify and are committed to similar values, practices and meanings” (Young 1997: 33). Individuals can possess multiple identities that have both personal and collective dimensions (Castells 1997). States’ identities “emerge from their interactions with different social environments, both domestic and international” (Katzenstein 1996: 24). Wendt stresses, that “actors acquire identities – relative stable, role-specific understandings and expectations about self – by participating in (...) collective meaning” (Wendt 1992: 397).

Moreover, identities are inherently relational, and “identity, with its appropriate attachments of psychological reality, is always identity within a specific, socially constructed world” (Berger in Wendt 1992: 398). Thomas states that international relations involve repeated encounters with others “that provoke reflection on what shared practices makes us ‘us’, what characteristics ‘we’ share (or not share) with ‘them’, and what we need to do to be true to ourselves or to gain the approval of others ‘like us’” (Thomas 2001: 13). In this way identity becomes definitions of self in relation to others that give guidance for how one should act in a given context. According to Hopf (1998), “in telling you who you are, identities strongly imply a particular set of interests with respect to choices of action in particular domains, and with respect to particular actors”.

A central argument in the constructivist approach is that states might form collective identities and interests through interaction; the intersubjective structure is the arbiter of meaning (Hopf 1998: 175). Through social practice, actors and structures mutually constitute each other and identities and interests as well as communities are produced and reproduced (*ibid.*;

Wendt 1994). With repeated reciprocal cooperation, actors form mutual expectations that enable them to continue to cooperate. As Wendt notes, through repeated acts of cooperation “an actor will gradually change its own beliefs about who it is”, and he continues, “actors are simultaneously learning to *identify* with each other – to see themselves as a ‘we’ bound by certain norms” (Wendt 1994: 390). By causing certain expectations with regard to behaviour, the collective identity enables members of the “in-group” to share positive understandings of each other (Hansen 2002b). Consequently, as behaviour changes to meet the prescribed norms, the collective identity formation makes possible the transition from “them” to “us”. This development may be fuelled by cooperation between states and by international organizations that serve as forums for collective identity formation.

The constructivist approach and its emphasis on collective identity formation have been criticized for neglecting domestic politics. Wendt only briefly pays attention to the domestic level as he writes, “in view of my concern with endogenizing identity change to systemic level, I shall limit my focus to factors at the systemic level, even though domestic factors may matter, as well” (Wendt 1994: 388). Commenting on the works of Wendt, Ringmar states “how the problem of identity formation is constantly seen from the perspective of the system and never as a problem each state and each statesman has to grapple with” (Ringmar in Hansen 2002b: 403) and adds that “[structure] cannot by itself explain changes in identities” (*ibid.*). As Checkel notes, it is necessary to relax the unitary-actor assumption, and in this way restore the role of agency “in its rightful place in constructivism” (Checkel 1999). By doing so, one can provide explanations for important cross-national variation in compliance with international norms, and how and why norms diffuse into the domestic arena (Risse *et al.* 1999). Hence, in the next section I will investigate how research has endeavoured to bring analysis of domestic politics into the study of norms and norm-compliance.

2.3. The Reinforcement of Domestic Politics

When addressing the issue of domestic politics, a natural point of departure is to elucidate how scholars define domestic politics. Milner seems to underline institutions as the way to recognize domestic politics (Milner 1998). She highlights that the rational institutionalist view can show how diverse domestic preferences are aggregated into collective choices, given different political institutions (*ibid.*: 761). This key characterization of domestic politics highlights domestic interests and institutions, and thus (reconnects) IR to other fields in political science. Correspondingly, although in a slightly different way, Martin and Simmons (1998) emphasize the role of institutions in IR. They argue that to understand the relation between domestic and international institutions the central question is where domestic actors intentionally delegate policy-making authority to the international level when this furthers their pursuit of interests in areas like territorial disputes and trade policy (Martin & Simmons 1998). Belonging to the constructivist school Ted Hopf presents a very different perception of domestic politics (Hopf 2002). His research is centred on the conception of identities and how this subsequently

has an impact on a country's foreign policy. His study seems to proclaim that identities are domestic politics.

2.3.1. *International Norms and State Performance*

Substantial constructivist literature on domestic politics highlights norms and norm-compliance. Risse, Ropp and Sikkink's work from 1999 demonstrate how civil society and social movements influence state compliance to international norms (Risse *et al.* 1999). Other studies draw attention to the domestic configuration of ideas and identity. Within this field, Checkel's studies investigate the adoption and diffusion of norms. He investigates the degree to which norms promoted by the Council of Europe affect the discussion over citizenship and national minorities in contemporary Germany (Checkel 1999). The argument put forth demonstrates how domestic structure may predict the diffusion pathways international norms take, either through societal pressure or elite learning. The emphasis on domestic structures when explaining an international norm's domestic impact is in accordance with Koh's argument. "Legal internalization", Koh claims, "occurs when an international norm is incorporated into the domestic legal system through executive action, judicial interpretation, legislative action, or some combination of the three" (Koh 1997: 2657).

Research undertaken by Cortell and Davis stresses the need to focus on a norm's domestic salience as well as its international legitimacy if one is to achieve further progress on a domestic approach to norm-compliance (Cortell & Davis 2000). Greater attention must be given to the measurement of a norm's strength, legitimacy, or salience in the domestic political arena and the mechanisms and processes by which international norms may or may not achieve domestic legitimacy (*ibid.*: 68). The authors point to three indicators that imply what level of domestic salience the international norm has achieved: the norm's appearance in the domestic political discourse is the first sign of domestic impact, changes in national institutions provides a second indicator, and the third indicator involves analysis of the state's policies.

To understand how international norms are introduced and embedded into a nation's domestic level, Cortell and Davis identify five key factors. The first factor is the "cultural match", which implies that pre-existing domestic understandings condition the impact of international norms in policy debates (Cortell & Davis 2000: 73). The four other key factors Cortell and Davis describe are the pathways through which an international norm can enter the domestic arena (namely through national political rhetoric), material interests of domestic actors, domestic political institutions, and socializing forces (*ibid.*: 2000).⁴ Scholars working in this tradition expect international pressure to be most influential when a "cultural match" exists between the international and domestic norm. By measuring the degree of fit between the international and domestic norm one may determine the pattern and de-

⁴ National rhetoric or persuasive discourse is a mechanism for generating collective understandings and the domestic salience of an international norm. See Kratochwill (1989). If the international norm supports important domestic material interests, then it is more likely that it will become salient. Domestic institutions contribute to the salience of an international norm.

gree of diffusion and make predictions of the norm's empowerment (Checkel 1999).

2.4. Human Rights in IR: from Written Statements to Actual Behaviour

The outline above demonstrates the “added value” of constructivism to the study of international relations. Its contribution to international relations studies has led scholars within the field to conclude that the debate between rationalists and constructivists either currently is, or is about to become, the most significant one in the discipline (Zehfuss 2002: 2). One of the central assumptions is the belief that the environment in which states operates is as much social as it is material. The rational paradigm, it is argued, is not equipped to capture the important social forces interacting with and giving meaning to material factors (Hansen 2002b). By focusing on norms, identity and interests the constructivist paradigm attempts to explain how this may shape the material world and explain forces of change (*ibid.*).

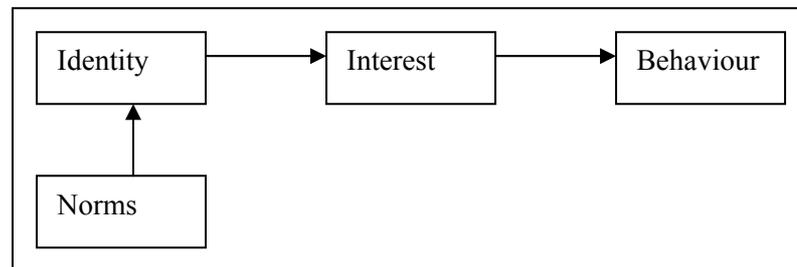
As the review above shows, scholars within the constructivist school have in various ways focused on norms, identity, interests, behaviour and – recently – domestic politics. What is essential in this thesis is the interplay between these concepts. I will build on the constructivist argument that norms are ultimately linked to behaviour and identity, as “a norm is a standard of appropriate behaviour for actors with a given identity” (Finnemore & Sikkink 1998). The normative framework that norms create serves as the background against which any action has to be viewed (Hansen 2002b). To quote Hopf: “given that interests are the product of identity (...) and that identities are multiple, constructivist logic precludes acceptance of pregiven interests” (Hopf 1998: 175).⁵ Identities give each state an understanding of other states, its interests, probable actions, attitudes, and role in any given political context (*ibid.*: 193). Jepperson, Katzenstein and Wendt point out that states may develop interests linked to particular identities, or domestic identity politics may be reflected in foreign policy interests (Katzenstein 1996). Wendt further highlights the role between identity and interest:

I argue that interests are dependent on identities and so are not competing causal mechanisms but distinct phenomenon – in the one case, motivational, in the other, cognitive and structural – and, as such play different roles in explaining action (Wendt 1994: 385).

What follows is that identity becomes the link between norms and interests that motivate behaviour, and whether it is in the state's interest to comply or violate a norm depends on how it defines the self in relation to others. In turn the adherence to a community norm may redraw the boundaries between “us” and “them”, therefore when behaviours change to meet the prescribed norms, the collective identity formation makes possible the transition from “them” to “us” (Hansen 2002b: 402). Fig. 1 draws up the relationship between norm, identity, interests and behaviour outlined above.

⁵ I use the term interests and preferences interchangeably.

Figure 1: The relationship between norm, identity, interests and behaviour



Moreover, the reinforcement of domestic politics enables us to better comprehend a state's response and performance to international norms. Constructivism provides an approach for uncovering features of domestic society and culture that should matter to state identity and state action in global politics. Hopf highlights a key point:

Any state identity in world politics is partly the product of the social practices that constitute that identity at home. In this way, identity politics at home constrain and enable state identity, interests, and actions abroad (...) within the state itself might exist areas of cultural practice, sufficiently empowered through institutionalisation and authorization, to exert a constitutive or causative influence on state policy (Hopf 1998: 194–95).

Thus, by incorporating domestic politics into the equation one must also pay attention to the norm's domestic legitimacy, as well as its international salience. I will argue that state compliance to an international norm depends upon whether the norm is seen as legitimate at the domestic level, but also that a state actor's sense of duty to comply with that norm will vary with the salience of the *identity* specified by the norm (Thomas 2001: 15). A state has multiple identities, and when these identities collide interests and consequently action will be in a competing and conflictual relationship to each other. Thus, norm compliance is challenged when identities overlap and their norms conflict. As an example, one may point to the value a state put on a European identity. The more state actors value the European identity of their state, the more they will seek to comply with norms incumbent upon European states (*ibid.*). It follows that in the opposite case actors will be more reluctant to abide by European norms, and norm violation is more likely.

2.5. CoE and Russia's Partial Compliance to ECHR Protocol No. 6

The dissolution of the Soviet Union catalysed a transition that questioned the norms and values of the Soviet society and its view of history and the political world (Suny in Brown 2001). The fall of communism and the Soviet Union may perhaps be characterized as a notion of "world time" (cf. Finnemore & Sikkink 1998), which opened up the door for new ideas and norms. More-

over, Russia's post-Soviet "identity crisis" reinvoked an old question: Is Russia part of Europe or is it an Asian or Eurasian power? Whereas reform-minded politicians and commentators argued that Russia was undoubtedly a European state, those more nationalistically minded claimed a unique Eurasian role for Russia. At the same time the weakening of the Soviet value system confronted the majority of people with a system they were completely unfamiliar with (Suny in Brown 2001). Consequently, Russia became deeply divided between those who supported the general direction of change initiated by Gorbachev and Yeltsin and those who disapproved of the westward orientation of the state. Research has demonstrated how state actor's perceptions of Russian identity subsequently define the country's interests. Herman states, "in the case of the sweeping redefinition of interests that yielded the radical variant of New Thinking, constitutive norms of identity were the principal motor force" (Herman in Katzenstein 1996: 283). In addition to explaining the shift in Soviet foreign and military policy, others demonstrate how Russia's relationship to the EU and endorsement of the European Security and Defence Policy (ESDP) may be viewed in a context of shared norms and identities (Hansen 2002a & b).

My thesis will draw on this literature, and argue that Russia's wish to join the CoE is explained by an aspiration to "return to Europe". The identity of the CoE rests on two pillars: democracy and human rights. Since the CoE more than any other European organization has been built on these two pillars, Russia would by becoming a member finally recognize its identity as belonging to the European ideational community. Having developed one of the most advanced systems for protection of human rights anywhere in the world, the CoE would make out a normative structure – or in Wiener's terms, frame. The rights are laid down in the ECHR and its Protocols.

The CoE has led the way in the European movement towards the abolishment of death penalty, and in 1994 the abolition of the punishment was made a precondition for membership in the organization. By 2005, all CoE members, except Russia, has ratified the protocol and abolished the death penalty *de jure*. Hence, there is a strong European consensus on the abolishment of capital punishment; "a critical mass of states" has endorsed the norm. Recapturing Finnemore and Sikkink's understanding of a norm; there is therefore a shared expectation in the CoE that to abolish the death penalty is the appropriate way to behave as a member. Moreover, the abolitionist norm would be classified as a prescriptive norm, which as stated above is inevitably connected to behaviour (Herrmann & Shannon 2001).

With a Russian identity embedded in the European normative structure, Russia should have an interest in complying with CoE standards and take action to fully abolish the death penalty. However, Russia has only partially complied. Why? I will argue that in order to explain this, one also needs to bring in the domestic politics argument. By relaxing the unitary-actor assumption, one will be able to disclose how policy-making in Russia is characterized by ongoing battles among actors that adhere to a European identity and actors that oppose this orientation. These actors have conflicting interests as to whether they should comply with European norms or not. Through social practice with the CoE actors with a pro-western orientation would want to behave in accordance with what is seen as appropriate behaviour in

the European community, whereas other actors are more reluctant to abide by European norms.

By opening up of the “black box”, one may investigate how these different sources of influence play an important role in defining how Russia acts. Additionally it opens up for a study of how policy preferences and underlying identities of domestic actors may be channelled through different political institutions. Earlier research has established that Russian contacts with the CoE have been led by Russian elites and authorities, particularly the presidential apparatus and the Foreign Ministry (Checkel 1997). In the statist structure characterizing the Russian state, state officials serve as the primary means by which international norms and rules affect national policy outcome (*ibid.*). Additionally, since decision-making authority is centralized, domestic human rights NGOs and other societal actors play a little role in empowering CoE norms (*ibid.*; see also Cortell & Davis 1996). Thus, it is natural to look for answers to Russia’s partial compliance within state institutions. In my thesis I will focus on the Presidential Administration and the State Duma, and show that a pro-western Presidential Administration has contributed to a *de facto* abolishment, while a more nationalistic and anti-western State Duma has hindered Russia in fully complying with ECHR Protocol No. 6.

Equally important, by bringing in domestic politics one may investigate how the international norm is embedded in the domestic arena and to what extent there is a “cultural match” between the international and domestic norm. By studying the domestic salience of the international norm we are able to reveal cultural practices that may “exert a causative influence on state policy”, a point stressed by Hopf above. In Russia’s dealing with the death penalty issue this is a central element. Throughout history, Russian legal practice has frequently applied the death penalty, and surveys conducted in the Russian Federation shows that a large majority of the public supports the death penalty. In the next chapter I will show how Russian adherence to European human rights norms has been part of the greater identity debate in Russia throughout history.

3. The Practice of European Human Rights in Russia's Search for Identity

I argue that Russia's vacillating adherence to European human rights norms is part of the historical and ongoing identity debate in Russia. The tension in Russian national identity can be interpreted in the light of a struggle between Slavophiles and Westernisers.⁶ Romantic nationalists gathered under the banner of "Slavophilism" stressing Russia's native traditions and distinct culture, while those who were oriented towards Western values and Russia's integration into European processes became known as Westernisers (Sakwa 1996: 287; Neumann 1996: 28).⁷ Primarily, the dispute was about the value of individual freedom. Whereas the Westernisers saw human value deeply connected to his/her freedom, the Slavophiles believed that individual freedom was dangerous Western individualism, which had to be fought for the sake of the greater community (Nistad 2004: 86). Throughout history there are examples of Russian liberal reforms recognizing the rights of individuals and reforms of the judiciary in accordance with European models. However, it is also easy to depict a counter-tendency. In the next three sections I will illustrate how the tension between the two opposing views has materialized itself in Russia's approach towards European human rights standards, putting the most emphasis on post-Soviet Russia.

3.1. Tsarist Russia

Inspired by the French enlightenment, Catherine the Great initiated elections to a Legislative Commission in 1767 to consider the problems of individual and collective rights. About one century later, Aleksandr II ordered his officials to prepare a report guided by "those fundamental principles, the undoubted merit of which is at present recognized by the science and experience of Europe" (Hosking in Bowring 2001: 7). Three years later the Basic Principles were approved, which established one of the most important, indeed indispensable, preconditions for the rule of law; namely judicial independence (Bowring 2001: 8). In 1899, on Russia's initiative the first world conference on international law was held in Hague to discuss humanitarian issues (Chugrov in Forsythe 2000: 150). And under Prime Minister Peter Stolypin (1906–11), Russia moved closer to European standards, with Stolypin paying special attention to the problems of formal human rights.

Aleksander Herzen (1812–70), a distinguished Westernizer, declared that history is a united movement for ever greater degree of individual freedom and that one should look to Western Europe for civil rights, secularization and liberal reforms (Nistad 2004: 97). However, the westernising reforms were highly controversial. Russia turned out to be one of the countries most hostile to the French revolution, which according to Chugrov may be ex-

⁶ Zapadniki or Westernisers are also labeled "Europeanists" (Nistad 2004: 86).

⁷ For a discussion on the difference between Russian conception of the "West" and "Europe" see for example Morozov (2004).

plained by the traditional Russian ideal society seen as “a religious community that had no need to defend human rights because Love and Good took the place of rights” (Chugrov in Forsythe 2000: 150). Consequently, there was a mixture of legal and religious rules leading to a complex network of relations between the individuals and the state, which in turn emphasized collectivism at the expense of individuals (*ibid.*). As an example Russia’s strong *mir* was based on the idea of sacrificing individual rights for the sake of collectivist values (*ibid.*).⁸

Moreover, MacFarlane claims that Western ideas concerning justice and rights had limited resonance in Russia’s imperial period (MacFarlane in Foot *et al.* 2003: 184). Neumann comments that: “Periods (...) when the Russian Westernizers have the upper hand in the debate have in the past been superseded by a turn away from the concurrent political life of Europe” (Neumann 1996: 2). This is further elucidated by Bowring who states that “the adoption of Western European models was seen as threatening essential elements of Russian statehood, even of the Russian mission” (Bowring 2001: 7). This is in line with the Slavophiles who perceived Russia as being cultural superior to the West and feared that contact would weaken the state and pollute Russian culture (MacFarlane in Foot *et al.* 2003: 182). Moreover, Chugrov claims that the fear of excessive liberties facilitated the acceptance of a totalitarian form of government after 1917 to which I now will turn (Chugrov in Forsythe 2000: 151).

3.2. The Soviet Union

Paradoxically, the Western world was at the very centre of the Soviet system. The West was Russia’s alter ego. The myth of a hostile and unjust Western civilization legitimised the Soviet Union. Western-European states attach great value to the rights of the individual citizen vis-à-vis his own government. In communist states, however, individual rights referred to the participation in society rather than protection from society (Baher 1996: 100). Scholars have produced extensive research showing that there is a correlation between regime type and the respect for human rights. Moreover, they conclude that democracy is the best form of government in order to protect human rights. Hence, there is a great gap between communist countries and democracies in regards to respect for human rights. In line with Marxism-Leninism, the individual derives his rights from society, which is fundamentally different from the Western understanding where individuals possess certain natural rights that are given by birth. Since the government was the *collective individual* in the Soviet Union, there could be no antagonism between the government and the individual. Furthermore, as civil and political rights have had precedence in the West, economic and social rights, such as the right to work and the right to health care, received most attention in the Soviet Union. Moreover, throughout the Soviet period there was a strong resistance towards the notion that human – and particularly civil and political – rights constituted matters of legitimate international concern. MacFarlane

⁸ *Mir* is the Russian word for the peasant community, which traditionally has held a strong position in the Russian society.

and Baher claim this was the reason why the Soviet Union abstained from voting during the drafting of the Universal Declaration of Human Rights in the last half of the 1940s (MacFarlane in Foot *et al.* 2003: 193; Baher 1996: 100).

However, as Thomas shows in *The Helsinki Effect*, international human rights norms affected the behaviour, interests and identity of the Soviet Union by specifying which practices are (or are not) considered appropriate by international society (Thomas 2001: 281). The Helsinki process was enthusiastically endorsed by the Soviet Union as a way to secure acceptance of the post-Second World War territorial status quo in Europe and receiving recognition and legitimation of its identity as the protector of “real existing socialism”. However, it ended up conferring vital legitimacy on the ideology of universal human rights and it played a special role in transforming Russia’s relationship to its international obligations. Moreover, it contributed to the emergence of Gorbachev and his “New Thinking” – and with it, the Russian debate about Europe resurfaced (*ibid.*).

Gorbachev spoke of a “common European home” and Europe as a single, “cultural historical entity united by a common heritage” (Sakwa 1990: 237). He clearly signalled that some changes in the state’s position on Western relations were under way with new emphasis to the old theme of the call for extensive European state-based cooperation (Neumann 1996: 160–61). 1987 was declared to be the “year of Europe” (*ibid.*), and Russia was seen as part of Europe and not apart from it:

Some in the West are trying to “exclude” the Soviet Union from Europe. Now and then, as if inadvertently, they equate “Europe” with “Western Europe”. Such ploys, however, cannot change the geographic and historical realities. Russia’s trade, cultural and political links with other European nations and states have deep roots in history. We are Europeans. Old Russia was united with Europe by Christianity. [...] The history of Russia is an organic part of the great European history (Gorbachev 1988: 190).

Along with Gorbachev Vladimir Lukin spoke of “a return to Europe” (Neumann 1996: 166). However, at the same time as Westernization was in the high tide in Russia, the slogan of “Eurasia” came up. A trend towards seeing Russia as a bridge between Europe and Asia evolved. Here one saw a “Eurasian” destiny for the Soviet Union as opposed to a Russian homecoming to Europe. The Eurasianist line of argument may be illustrated by the foreign policy specialist Elgiz Pozdnyakov, who stated that:

Russia cannot return to Europe because it never belonged to it. Russia cannot join it because it is part of another type of civilization, another cultural and religious type (quoted in Neumann 1996: 177).

Furthermore, he saw the coming of the “disease of ‘Europeanism’, of Westernism” during Peter the Great’s reign, and applied in an even more brutal form by Perestroika (Neumann 1996: 177).

Thus, the Russian debate about Europe re-emerged during Perestroika. The Westernizers had to share centre stage with a revitalized Eurasian

movement, which drew on themes from Slavophilism. Eurasianists contested the European direction of Soviet foreign policy. As I argue, these different views on Russia's place in the world, may explain post-Soviet Russia's vacillating approach towards European human rights norms.

3.3. Post-Soviet Russia

Russia is not simply the legal successor state to the USSR but also a continuation of the former Soviet Union. Russia became automatically bound by the Soviet Union's treaty obligations on human right matters by the UN Covenant on Civil and political rights, the Covenant of Economic, Social and Cultural Rights and the Optional Protocol to the Covenant on Civil and Political Rights.⁹ Certain standards were reached during the Gorbachev era, but with more than 70 years under a communist regime the country faced great problems in order to meet international standards. Additionally, Russia had to come to terms with its revived national identity – and its relationship with Europe was an essential part of this. The debate between the Westernisers and Slavophiles that resurfaced during Gorbachev's reign has proven to be one of the most important debates in post-Soviet Russia. Opinion divided over whether Russia should rapidly integrate with Europe or stick to a "Eurasian" concept. The two tendencies, Atlanticism and Eurasianism, emerged in Russian foreign policy and went from being an internal quarrel to a quarrel inside the state structures about the state's position (Neumann 1996: 180).¹⁰ The European trajectory in foreign policy was repeatedly stressed by the Yeltsin administration; however it soon became challenged by the State Duma after the nationalists and the communists enjoyed great electoral successes in the Duma elections in 1993 and 1995 respectively.

The first period of Russian foreign policy after the dissolution of the Soviet Union is referred to as a "romantic phase" or "the euphoria period", where the official philosophy saw the evolving Russian identity as congruent with the "normal" and "civilized" West (Arbatova 1998: 10; Sakwa 1996: 278). The liberal-democratic view dominant in the first post-communist period was firmly oriented towards integrating Russia into international organizations and the West. The "return to Europe" agenda found its most prominent home at the top of Foreign Ministry where Andrei Kozyrev was given the task of articulating the basic principles of Russian foreign policy in the early months of 1992. According to Donaldson and Noguee, he developed foreign policy ideas centred on the promotion of human rights, and universal values of global economic, environmental and nuclear security (Donaldson & Noguee 1998: 124). "The realization of human rights in our country," Kozyrev declared "is inseparable from our policy to integrate Russia into the global family of democratic states" (Kozyrev 1992; Sakwa 1996: 291). Accordingly, Russia made a significant breakthrough in expanding its adher-

⁹ See Buergenthal *et al.* (2002) and Steiner & Alston (2000) for details of the UN human rights system and description of the various Covenants and Protocols.

¹⁰ Westernizers, liberals, democrats, Atlanticists or "international institutionalists" are put together in one group with an ideological foundation including elements of Gorbachev's "New Thinking" and a commitment to the Western liberal values of democracy, human rights and free market (see Kassianova 2001).

ence to international law (Chugrov in Foot *et al.* 2003: 171). In the 1993 Constitution, international law was given priority over national legislation (see Articles 15 (4), 16, 18 & 42). The forming of the Commission on Human Rights by decree in November 1993 was an important measure to strengthen fundamental human rights and freedoms in Russia and to fortify international collaboration on human right issues within an institutional framework.¹¹ A year later Yeltsin established an Ombudsman office.¹² Sergei Kovalyov, Russia's first Human Rights Commissioner under President Yeltsin played a fundamental role in structuring human rights provisions in post-communist Russia despite the leftist majority in the State Duma that did its best to replace him (Chugrov in Foot *et al.* 2003: 154). The first annual human rights report was published by the Presidential Commission, which according to Gilligan is a "historical documents which reflect, for the first time, a serious attempt by the Russian government to face the objective reality of human rights violations in Russia" (Gilligan 2004: 161). Moreover, in accordance with the liberal view, Kozyrev relied heavily on Russian participation in international institutions (*ibid.*). There were hints about a future Russian membership in EU as well as NATO, Russia applied for membership in the Council of Europe, and association with international economic institutions such as GATT, WTO, IMF and OECD was pursued (Kjølberg 1999).

However, an opposition condemning Kozyrev's alleged servility and "romantic" obsession with the West emerged in the spring and summer of 1992, quickly focusing on the question of Russia's identity (Donaldson & Noguee 1998: 125). Officials in a variety of government and academic institutions expressed an "Eurasianist" viewpoint, threatening the liberal line in foreign policy and attacking the Foreign Ministry for "selling out" Russia to the West (Arbatova 1998: 11). According to Arbatova, the Russian leadership started to succumb to primitive "non-idealistic" moods, primarily appealing to humiliated national pride (*ibid.*). As Sakwa assesses, the democrats advocated a normative approach towards foreign policy, claiming that ethical and moral considerations had an important part to play in international relations. The national-patriots on the other hand held a more traditional view in which foreign policy was determined by the power of states (Sakwa 1996: 291).

Moreover, surveys demonstrated that there was no strong and united support among the Russian public for human rights (see for example White *et al.* 2005). Russians strongly advocate economic rights, but show only moderate support for rights of the person, and only weak support for civil liberties (Gerber & Mendelson 2002). The success of the communists and nationalists in 1993 and 1995 might be interpreted as public protest against Western political, economic and social values (Lo 2003). Conceptions of human rights and other elements of civil society were seen by many Russians as benefiting only a small minority of the already privileged. As Lo notes, with the all-consuming material struggle in post-Soviet Russia, few will be engaged in the question of violations of human rights as long as their rulers can

¹¹ Decree No. 1798

¹² Decree No. 1587

assure them political stability, economic prosperity and national security (*ibid.*).

In their “Strategy for Russia”, the Council for Foreign and Defence Policy (CFDP), stated that Russia and the West did not necessarily belong to the “same community” and the gap between the two would probably increase, hence the focus of Russian policy should shift away from the West (Sakwa 1996: 279). Sergei Stankevitch, advisor to the president, assessed that “it will be most likely a strengthening of our positions in the East, straightening the manifest distortion permitted by the creators of the ‘common European home’ concept” (Stankevich 1992: 48). The Russian parliament became the main institutional platform for the Romantic nationalist position, claiming to represent the core of the state, the mainstay of the people and the heir to the long Russian tradition of opposing Westernisation.

Yeltsin’s appointment of Yevgenii Primakov, who had been highly critical of the West, as Foreign Minister in January 1996 signalled an attempt to achieve consensus with the critics in the State Duma (see Neumann 1996: 188; Sakwa 1996: 280). Primakov allied himself with the “pragmatic nationalists” and “Eurasian” viewpoints and quickly found support among broad segments of the Russian political elite for his foreign policy ideas (Donaldson & Noguee 1998: 131–32). The appointment of Primakov was a clear indicator that a new stage in Russian foreign policy had emerged (Arbatova 1998: 16). According to Arbatova, the combination of a confused national identity and disappointment with Western response to Russia’s development, which at the end of the day proved to be superficial and mere rhetoric, lead to a new period labelled “pragmatism” (*ibid.*: 13).

Primakov stressed that “Russia was and is a great power despite its hardships, and its foreign policy should be tailored to this status” (Oldberg *et al.* 1999: 16). The foreign policy should be “multidirectional”, meaning as noted by Oldberg “avoiding dependence on any power centre in the world (...) that is, to balance between them to Russia’s own benefit” (*ibid.*). Moreover, the highest priority in the “new” Russian foreign policy was the country’s relations with the CIS countries.

What is clear from the above outline is that the ambivalent attitude to the West runs as a thread throughout Russian foreign policy in the 1990s, and this has been reflected in Russia’s human rights policy. Naturally, one of the many challenges Putin has faced during his presidency; the normative dimension – the sphere of identity, values and civilization – has proved the most intractable (Lo 2003). The conventional wisdom is that under Putin Russian foreign policy has become “Eurocentric”. However, it is also simultaneously devoting more attention to America, the Asia-Pacific, the Middle East and the CIS (*ibid.*).

Putin’s engagement with the major European and Western structures – EU, CoE, NATO and WTO – needs to be understood on the background that the West was not only a civilizational home but that it also became a metaphor and as Lo argues “the means for Russia’s future progress as a developed nation” (Lo 2003: 102). To a large extent Putin’s task has been to convince the West that Russia has emerged as a qualitatively different country. As Lo notes; “the challenge is (...) to convince a deeply sceptical external audience that it holds dear many of the same values and beliefs” (*ibid.*: 99).

It is against this backdrop, the different ideological trends and the internal strife over foreign policy, that I will investigate a more specific question of foreign and also internal policy: Russia's membership in the CoE and its partial compliance to the abolishment of the death penalty.

4. CoE's Normative Foundation: Part of the Russian Identity?

As assessed in the previous chapter, the human rights provisions of the Helsinki Accords contributed to a gradual diffusion of human rights norms to the Soviet system. The unwavering support for human rights and detente among dissidents, such as Andrei Sakharov, together with Western transnational partners influenced the Soviet in-system reformers (Herman in Katzenstein 1996). More and more often, the Soviet elite was exposed to the norms found in the Western liberal democracies (Hansen 2002b). As political reforms were introduced into the party platform, an intellectual elite captured the agenda in the mid 1980s. As Herman notes the Soviet “New Thinking” was the product of “a profound reconceptualization of state interests” (Herman in Katzenstein 1996). Moreover, the decision to adhere to a new set of norms, Hansen affirms “led the Soviet Union to redefine its identity and international interests” (Hansen 2002a: 449; see also Herman in Katzenstein 1996). This identity saw Russia as part of Europe, and took, as articulated by Gorbachev in the previous chapter, a clear westward orientation.

Following the collapse of the Soviet Union, the embryonic identity shaped by the “New Thinkers” was adopted by Russia. A fundamental part of Russia’s identity was to reintegrate with Europe and incorporate European values and standards, such as respect for human rights and fundamental freedoms. In order to become a part of the European ideational community, Russia aspired for membership in the Council of Europe, Europe’s most developed human rights regime. However, as illustrated, the European orientation was soon contested by the “Eurasianist” view, which sought to preserve Russia’s status as a Eurasian great power distinct and independent from the West. They opposed efforts to integrate Russia into Western institutions. The West, they argued, would use such institutions to exploit Russia’s weakness. In this chapter I will first show how this “dual identity” became visible in the country’s relation to the CoE. Second, I will investigate the strength of the European abolitionist norm.

4.1. Russia’s “Identity Crisis” Disclosed in its Rapprochement to CoE

In line with the European orientation in foreign policy that characterized Russian foreign policy after the disintegration of the Soviet Union, the Yeltsin government applied to join the CoE on 7 May 1992. By declaring that that one of its main tasks was to “act as a political anchor and human rights watchdog for Europe’s post-communist democracies”, and that it should be the “guardian of democratic security – founded on human rights, democracy and the rule of law” the CoE opened up for eastward enlargement.¹³ The Council’s decision to extend to the East was built on the same belief that was held among Russian Westernisers, namely that the Eastern and Western countries shared a common European identity. Foreign Minister Kozyrev put it this way:

¹³ See CoE website at www.coe.int/T/e/Com/about_coe.

The task of our reintegration into the family of European civilization and developing a state based on the rule of law mandates that Russia join the Council of Europe, the most representative forum for European humanitarian and legal cooperation. We have already initiated a formal request for admission to this organization (Kozyrev 1992: 290).

As a member of the CoE, Russia would be part of a highly judicially developed human rights system; also when comparing with the OSCE and EU, the Council of Europe has clearly the longest and most significant record in this field. The Council's human rights system began with the adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which entered into force in 1953, guaranteeing core civil and political rights. Another 14 protocols to the Convention have lengthened the list of guaranteed rights and strengthened the institutional framework to supervise compliance by the Contracting Parties (Buergenthal *et al.* 2002: 134). Furthermore, the Council proclaimed economic and social rights in the European Social Charter from 1961. Other important CoE human rights conventions are the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment adopted in 1987 and the Framework Convention for the Protection of National Minorities from 1995.¹⁴

Upon accession to the Council Russia would thus enter into numerous commitments aiming at the implementation of the Council's conventions and protocols. In accordance with the expectations set by PACE in Opinion 193, Russia was obliged to ratify the ECHR and its protocols, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities, and the European Social Charter just to mention a few. Altogether, as a Contracting Party, Russia would be firmly embedded in the European normative structure. Moreover, the Council's aim of "achieving greater unity between its members for safeguarding and realizing the ideals and principles which are their common heritage, and facilitating their economic and social progress" (CoE, Chapter 1 of its Statue) is clearly in accordance with the European orientation in Russian foreign policy.

On 14 June 1992 Russia was granted guest status, a preliminary period before admission. The application procedure was, however, interrupted when Russian troops went into Chechnya in December 1994; this led PACE to suspend its considerations of Russia's request for membership in light of the "indiscriminate and disproportionate use of force by Russia's military, in particular against the civilian population, [which] constitutes a grave violation of the Council of Europe's most elementary human rights principles".¹⁵ Nevertheless, formal consideration of Russia's application resumed, as Russian authorities reassured the Council that the country would find a political solution in Chechnya.¹⁶

¹⁴ See Buergenthal *et al.* (2002) and Steiner & Alston (2000) for detailed description of the various protocols and conventions adopted.

¹⁵ PACE Resolution 1055 (2 February 1995).

¹⁶ PACE Resolution 1065 (27 September 1995).

In a high-level Russian Message, dated 18 January 1995, Russian authorities affirmed that Russia would help to turn the standards of the Council “into norms generally accepted and generally applied throughout the continent”.¹⁷ Furthermore, the letter stated that after acceding to the ECHR “we will observe in full the obligations thereby accepted by us (...) and continue with even greater perseverance and effectiveness our efforts to improve legislation and law enforcement practice in the Russian Federation in accordance with the standards of the Council” (*ibid.*). The President of the Russian Federation, the Prime Minister, the Chairman of the State Duma and the Chairman of the Federation Council all signed the high-level message. Sergei Filatov, Head of the Presidential Administration, emphasized the significance of the letter when stating that this was the only document in Russia signed by all these four people together and the best evidence of the importance Russia attached to membership. Upon entrance into the Council of Europe Vladimir Lukin, the Chairman of the State Duma Committee for Foreign Affairs, highlighted the effect the membership would have on ensuring human rights and assisting Russia on its “path of democratizing the society” (Lukin 1996). On 28 February 1996 Russia joined the Council of Europe, whereupon the Council concluded that “integration is better than isolation; cooperation is better than confrontation”.¹⁸

However, members of the State Duma quickly disputed the legitimacy and acceptance of the CoE membership and the obligations that were put on Russia. First of all the State Duma’s support for a CoE membership was primarily seen as a way to protect the Russian minorities living in the Baltic States (Bowring 1997). Second, most members of the State Duma did not understand Russia’s obligations to be obligations at all, but simply recommendations (*ibid.*: 633). When debating the Council’s demands in the State Duma, one member asked Lukin whether he did not have the feeling that Russia was being spoken to as if it was Honduras (*ibid.*). Moreover, Vladimir Zhirinovskii made it clear that Russian norms were in many respects quite different from those of the Council of Europe (Bowring 1997).

Kjølberg notes that the suspicion against the Council was strengthened by that fact that the majority of the State Duma members viewed the West in a very negative manner (Kjølberg 1999: 55). After the Duma election in 1993 Zhirinovskii’s nationalistic LPDR and the Communist Party (CPRF) together with the liberal “Russia’s Choice” were the three largest parties. In the 1995 elections, LDPR and CPRF came out as the two largest parties. Not only does this demonstrate that the pro-Western orientation was deeply contested in the public, but also that a large majority in the Duma was devoted to a anti-Western “crusade”, the revival of the Russian Empire, and the reinstatement of the Soviet Union by military forces stressing Russia’s uniqueness and superiority (Arbatov 1993; see also Richter in Wallander 1996 and Vendil in Oldberg *et al.* 1999). They rejected liberalism and its notion of universal values, human rights and the sovereignty of the individual (*ibid.*). It goes without saying that this clearly stands in stark opposition to a Russian

¹⁷ See Annex 3 to Doc. 7443, 2 January 1996, *Report on Russia’s request for membership of the Council of Europe*.

¹⁸ Rapporteur Ernst Muehleemann, *Russia’s Request for Membership of the Council of Europe*, PACE, 1996 Sess., Doc. 7443.

reintegration “into the family of European civilization”. Moreover, the parliamentary opposition managed to have a significant impact on shifting the direction of Russian foreign policy (Crow 1993; Vendil in Oldberg *et al.* 1999). Although the 1993 Constitution clearly states that the President determines the basic guidelines of foreign policy, the State Duma retained the right to ratify international treaties. As a mark of disapproval of government policy, the State Duma postponed and delayed its ratification of treaties, as was the case with the ratification of START II in 1993. The nationalist and communist factions were against START II, and refused to place the treaty on the agenda (Light in Brown 2001).

Above I have attempted to demonstrate how Russia’s post-Soviet “identity crisis” compounded the difficulty of formulating and implementing a consistent foreign policy in the country’s dealing with a CoE membership. The Duma on the one hand and the Foreign Ministry and the President on the other clearly represent different answers to the question as to whether Russia is part of Europe or whether it is an Asian or Eurasian power. In Russia’s case part of the elite valued the European identity of the Russian state; another part opposed it. This identity conflict has paved the way for divergent interests, which in turn cause conflictual and inconsistent behaviour.

As stated above, whether a state will comply with a norm or not will vary with the salience of the identity specified by the norm. Consequently, the pro-European actors in Russia would have an interest in complying with norms incumbent upon European states. In the opposite case, state actors do not have an interest in abiding by European norms and non-compliance is more likely. Of course, a prerequisite for norm-compliance among Russian pro-European actors is that the norm is empowered and enjoys great legitimacy in the CoE, i.e., that it is seen among CoE members as appropriate to comply with the prescribed norm (or as Wendt expressed it above: “Actors see themselves as a ‘we’ bound by certain norms”). Since a norm’s international legitimacy will influence the impact a norm may have, it is thus necessary to examine the norm further. This is also in accordance with Lutz and Sikkink’s constructivist research on the international normative context outlined above. Thus, in the next subchapter I will consider the strength of the death penalty abolitionist norm within the CoE and among its members. This serves two purposes; the first I just described, the second is that in order to evaluate the degree of “cultural match” between the international norm and the domestic norm one needs to first describe the prescriptive norm.

4.2. The European Abolitionist Norm

As seen above the Council of Europe has given real teeth to the protection of a wide range of rights in Europe. In the ECHR, “the right to life” is set up in Article 2, and in Article 2, paragraph 1, it is specified that everyone’s life shall be protected by law and that “no one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”. However, the status of capital punishment under European law was put forth in a later treaty. The primary instrument in this regard is the ECHR Protocol No. 6,

which prohibits capital punishment in peacetime. Article 1 reads: “The death penalty shall be abolished. No-one shall be condemned to such penalty or executed”. In December 1982 the Council’s Committee of Ministers formally adopted Protocol No. 6, and the protocol was signed in 1983 and entered into force in 1985.¹⁹

The roots of the abolitionist movement in Western Europe go back to the period of enlightenment, when Cesare Beccaria in 1764 published *On Crimes and Punishment*. Here he declared that capital punishment was both inhumane and ineffective and an unacceptable weapon for a modern enlightened state to employ (Hood 2002: 9). The death penalty, Beccaria states, is “a war of the nation against a citizen, a campaign waged on the ground that the nation has judged the destruction of his being to be useful or necessary” (Beccaria 1986: 48). In the 1780s the enlightened rulers of Tuscany and Austria took up Beccaria’s ideas, and for a few years capital punishment was abolished (Hood 2000). In Britain and several European states pressure began to mount for restricting the death penalty only for the gravest crimes (*ibid.*). Several Western European countries were frontrunners in abolishing the death penalty; in 1867 Portugal became the first European country to abolish the death penalty for all crimes committed in peacetime (Neumayer 2004: 4). Soon the Netherlands, Romania, Italy, the Republic of San Marino and Switzerland followed (Hood 2002: 23). At the turn of the century, Norway became the first Scandinavian country to become abolitionist, followed by Sweden, Iceland and Denmark. The Federal Republic of Germany abolished capital punishment for all crimes in all circumstances in 1949, as was the case with Finland.

However, it is not until after the Second World War that the abolitionist movement gathered momentum also in other regions of the world. From almost complete absence in 1945, several international and regional human rights regimes have been established where “the right to life” is set out. The major human rights treaties – the International Covenant on Civil and Political Rights (ICCPR), the American Convention of Human Rights (ACHR) and the African Charter on Human and Peoples’ Rights (ACHPR) all refer to the “the right to life”. The status of capital punishment under other regional human rights regimes is put forth in more recent treaties whereby states commit themselves to abolish capital punishment, either totally or with a limited exception for wartime crimes. Such treaties are the Second Optional Protocol to the ICCPR (entered into force in 1991), the Protocol to the ACHR to Abolish Death Penalty (signed in 1990).

However, Europe’s role and the Council of Europe’s significance must be emphasized. Roger Hood states:

What marks the modern period from the past, when abolition was very much regarded as an “internal matter” of national penal policy, is the development from the late 1970s onwards of a European-led political movement to make abolition of the death penalty the touchstone of acceptable international standards of respect for human rights (Hood 2002: 14).

¹⁹ Representatives of Austria, Belgium, Denmark, France, Germany, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and Switzerland signed the treaty in April 1983.

In the emergence of abolition as an international human rights norm, the Council of Europe has been a pioneer by establishing the first binding legal instrument to outlaw the death penalty in peacetime, and it has unquestionably played a fundamental role in Europe's own progress towards the abolition of capital punishment. Protocol No. 6 was opened for signature seven years earlier than the Second Optional Protocol to the ICCPR and the Protocol to the ACHR to Abolish Death Penalty. When the Parliamentary Assembly made the abolishment of capital punishment a precondition for membership in the Council, the European abolitionist movement was further strengthened.²⁰ In Resolution 1044 the CoE states that any country wishing to become a member of the Council of Europe should agree to implement an immediate moratorium on executions and then sign and ratify protocol No. 6 within a set period of years (see CoE Resolution 1044; Hood 2002: 16). By 1990 14 of CoE's members had ratified the Protocol, and by 2005 all except two countries have fully complied with the Council's requirements by ratifying the protocol and abolishing the death penalty *de jure*. Russia and Monaco have signed the Protocol, and abolished capital punishment *de facto*. Thus, the Council could declare Europe a death penalty free zone.²¹ Further advancement in the European abolitionist movement was made when a recent addition to the Convention was put in place. Protocol No. 13, which came into force on 1 July 2003, abolishes capital punishment in all circumstances. So far, 30 out of the CoE's 46 members have ratified Protocol No. 13, and 13 countries have signed the Protocol.

The outline above demonstrates that there is a consensus on the abolitionist norm among European states and that the norm has strong historical roots in European political culture. In the contemporary abolitionist movement the Council has been a pioneer, and all members (except Russia and Monaco) have fully abolished the death penalty. Thus, one can safely conclude with stating that the abolitionist norm has a strong standing in the European identity anchored in the CoE. In the next chapter I will build on the domestic politics argument, and investigate the Russian domestic level in order to find explanations for the country's partial compliance with Protocol No. 6.

²⁰ See PACE Resolution 1044 of 1994 on the Abolition of Capital Punishment.

²¹ See PACE Doc. 8340

5. Russia and the Death Penalty

On the basis of the strength of the abolitionist norm in the CoE and among its members, it should be obvious to the “Europeanist” Russian elite that in order to be a full member of the CoE and part of the European ideational community, it would be in their interest to abolish capital punishment. Yet, the country has only partially complied with CoE requirements specified in ECHR Protocol No. 6. Part of the explanation for this was disclosed in Russia’s dealing with CoE membership – the lack of a unified, coherent and widely accepted identity caused problems for a Russian membership in the CoE. In this chapter I will examine how this has been evident in Russia’s dealing with the issue of capital punishment. The other part of the explanation, I argue, depends on the domestic salience of the prescribed norm. I will begin with elucidating the domestic salience of the abolitionist norm in Russia, and then move on to the colliding interests and conflictual behaviour between the President and the State Duma resulting in partial compliance with Protocol No.6.

5.1. The Domestic Salience of the Abolitionist Norm in Russia

By reintroducing the study of domestic politics, one may uncover cultural practice “sufficiently empowered through institutionalisation” that matter to state action in international relations. According to constructivist research conducted by for example Cortell, Davis and Checkel a “cultural match” between the international and domestic norm increases the likelihood of norm-compliance. Correspondingly, in the opposite case where there is a great value-gap between the international and domestic norm the likelihood of norm-violation increases. In the same manner as I examined the legitimacy of the abolitionist norm in the CoE, I will now study the domestic salience of the abolitionist norm. In this chapter I undertake three tasks. First, I will demonstrate what position death penalty has had in Russian legal practice. Second, I will examine how the judicial has dealt with the issue after the dissolution of the Soviet Union and how legal traditions have influenced the Russian stance. Third, I will look into public sentiments about the death penalty, as public opinion on capital punishment will be crucial for the domestic salience of the norm.

5.1.1. *The Death Penalty’s Historical Trajectory in Russian Legal Practice*

During the consolidation of the Russia centralized state, the all-Russian *Subedniks* of 1497 and 1550 became important sources for legal norms concerning capital punishment (Mikhlin 1999). The system of punishment and the process of its execution was directed towards the maximum terrorizing of criminals and the populace (*ibid.*). The next stage in the formation of the prescriptions concerning capital punishment was the *Sobornoe Ulozhenie* of 1649, in which death penalty became one of the leading measures of pun-

ishment (*ibid.*: 10). The penalty could be applied in more than 60 varieties of criminal acts. With the Military Articles of 1715, however, the severity of punishments and their executions reached new heights. Peter the Great's Military Articles was the first systematization of criminal-law norms in Russia. More than a hundred types of criminal acts entailed death penalty, which was executed by "shooting, sword, gallows, wheel, quartering, and fire" (*ibid.*: 11–12). The death penalty was frequently applied and the number of persons punished was measured in thousands (*ibid.*). On the other hand, the liberal utilitarian and humanistic ideas spawned by the enlightenment in Europe also influenced the Russian empire. The earliest attempt to do away with capital punishment in Russia was made by Peter's daughter Elisabeth. With Empress Elizabeth's reign (1741–61) the use of the death penalty was suspended, although it remained in the statute books and the courts continued to hand out the sentence.

According to Barry and Williams there were several other Russian rulers that instituted moratoriums or near moratoriums on executions for parts of their reign, while leaving the legal provisions permitting the death penalty untouched (Barry & Williams 1997: 232). In a 1767 *Nakaz* (instruction), Catherine the Great (1762–1796), obviously influenced by Montesquieu and Beccaria, called for a limitation on the application of the death penalty. At the same time as fostering a more humanized penal practice, Catherine II nevertheless declared, "the death penalty is a certain medicine for a sick society" (Mikhlin 1999: 13). At this stage, however, a number of Russian scholars began to call for a limitation on the death penalty. According to Mikhlin, a trend towards limitation of the death penalty became evident in the 1845 *Ulozhenie* on Criminal and Correctional Punishments, and strengthened in 1864 with the establishment of the Statute on Criminal Procedure. A procedure for appealing death sentences; for pardoning of convicted persons; and for execution of judgments was set up. As a rule, death penalties were no longer carried out in public and therefore excluding the purpose of terrifying the public. According to Piontkovskii's data, 296 people were executed in the period between 1866 and 1890, and 126 from 1890 to 1900 (*ibid.*: 15). Ideas of humaneness in the penal system was further developed with the Criminal *Ulozhenie* of 1903, in which death sentences were retained for a rather narrow group of political crimes. Additionally, the penalty could not be applied to persons under 21 or older than 70. The penalty was nevertheless still in use, which lead Vladimir Soloviev, a Russian philosopher, to conclude in 1906 that; "[the] Death penalty is the last important position which the barbarian criminal law still upholds in contemporary life" (Kvashis 1999).

Following the February revolution, the Provisional Government suspended the use of the death penalty. However, with the October Revolution the application of death penalty grew rapidly. It was abolished on three occasions, in 1917–18, in 1920–21, and for peacetime offences between 1947 and 1950. However, each time it was rapidly reinstated based on the rationale that the death penalty was necessary to defend the revolution against its class enemies.

The RSFSR 1922 and 1926 Criminal Codes provided for the death penalty in a separate Article, and with the 1960 Criminal Code the list of crimes

that entailed death sentence was expanded. The exact number of who were shot and who died in the camps with the repression and terror under Stalin has yet to be established, one speaks about 20–30 million or maybe more (Mikhlin 1999: 20). At the height of the purges in 1937–38, the number of executions was said to reach 1 million (Hood 2002: 30). Clearly, as Butler states “taking the century as a whole, few countries have used capital punishment so extensively, either judicially or extra-judicially” (quoted in Hood 2002: 30). According to Pristavkin, from 1962 to 1990 21,000 people were executed (CoE 1999: 131). At the same time, however, the so-called “men of the sixties” with Sakharov in the lead followed by Sergei Kovalyev, began to raise their voices in protest against the acts of violence and state executions (*ibid.*). Following Gorbachev’s rise to power in 1985 and the commencement of Glasnost there was a move towards reducing the number of capital crimes, at the same time as the taboo on the public debate on the death penalty came to an end (Barry & Williams 1997: 234). In the USSR Principles of Criminal Legislation adopted in July 1991 there were five capital crimes (*ibid.*).

Obviously, the country’s position on capital punishment has vacillated, but through most of its recorded history, Russia has been a country where the death penalty has been both legally and frequently used (Barry & Williams 1997: 231). Clearly, the states “right to execute” reached unprecedented heights under communism, and during Stalin’s reign the number of execution reached millions. Certainly this has created a strong anti-abolitionist norm in Russia, which collides with an international abolitionist norm. However, the disintegration of the Soviet Union, which should qualify as “world time” in Finnemore and Sikkinks term, opened up for new norms and ideas. The question is how the Russian judicial branch has dealt with capital punishment after the fall of communism. Would the ideas of humaneness in the penal system that developed at the turn of the eighteenth century once again take hold and end capital punishment in the newborn Russian Federation? In the next section we will examine this subject further.

5.1.2. The Russian Federation and the Death Penalty

The Russian Federation continued to decrease the number of capital crimes, however, the 1993 Russian Constitution kept the death penalty as “as an exceptional measure for particular grave crimes against life”. Article 20 of the new Constitution reads:

- 1) Everyone shall have the right to life.
- 2) Capital punishment until its complete abolishment may be envisaged by a federal law as an exclusive penalty for especially grave crimes against life, and the accused shall be granted the right to have his case examined by a jury trial.

Moreover, Russia’s 1996 Criminal Code, effective from 1 January 1997, kept the capital punishment. The number of capital crimes was reduced from 28 to 5, imposing the death penalty on aggravated murder, attempted murder of a state or public figure, attempted murder of a person administering jus-

tice of conducting a preliminary investigation, attempted murder of an employee of a law-enforcement agency, and genocide.²² Although the Criminal Code thus reduced the number of capital crimes, this had no practical impact since no prisoner sentenced to death in recent years had been sentenced on the basis of the 23 articles that no longer carry the death penalty. Moreover, according to the 1997 Criminal Code a death sentence may not be passed on women, on men who were over 65 and under 18 at the time of the offence or when the sentence is passed, nor on mentally ill persons (Mikhlin 1999: 33). In addition, the death penalty may be commuted to life imprisonment or 25 years imprisonment through a clemency process.

Due to an inconsistency concerning jury trials in the Russian Constitution, the Constitutional Court in a 1999 ruling practically made a complete ban on handing down death sentences. The Constitution states that an accused has the right to a jury trial; however, when jury trials do not exist throughout the country, the imposition of death penalties by non-jury courts was constitutionally deficient. The Court therefore concluded that capital punishment may not be imposed until jury trials are established throughout the whole territory of Russia (Feldbrugge 2002). A new Criminal Procedural Code went into force on 1 July 2002, paving the way for jury trials to be gradually introduced throughout the country. The last region to introduce jury trials will be the Chechen Republic (on 1 January 2007). Thus, when jury trials are introduced throughout the country, courts may start to hand down death sentences again.

Evidently, there is little support for an abolitionist norm in Russian legal traditions, both historically and currently. The death penalty is institutionalized in the legal system, both in the Constitution and the Criminal Code, although the number of capital punishments has decreased. Until the Constitutional Court's decision, courts continued to hand down death sentences, thus by 1999 600 prisoners were on the death row. And even if the Constitutional Court's decision prohibited courts to hand down death sentences, this was due to a constitutional deficiency and not because the practice of capital punishment was seen as wrong. Consequently, the domestic salience of an abolitionist norm in the Russian judiciary is evidently low. How about public sentiments?

5.1.2.1. Public Sentiments

Various polls carried out shows that there is a high degree of popular support for capital punishment among the Russian populace, ranging from 65–80%.²³ Furthermore, among the ten most important and vital questions that perturb society, surveys show that the re-introduction of death penalty lies in fifth place (CoE 2004). The Russian Orthodox Church seems to be somewhat ambivalent towards the issue, first calling for the resumption of capital punishment, and then taking a more neutral position (Feldbrugge 2002: 8). In the Basic Social Concept of the Russian Orthodox Church the Church states that:

²² Article 105, 277, 295, 317 and 357 of the 1996 Russian Criminal Code.

²³ *RIA Novosti*, 6 July 2005. See also www.vor.ru for Russian public opinion.

Keeping in mind that mercy toward a fallen man is always more preferable than revenge, the Church welcomes these steps [the abolishment of the death penalty] by state authorities. At the same time she believes that the decision to abolish or not to apply death penalty should be made by society freely, considering the rate of crime and the state of law-enforcement and judiciary, and even more so, the need to protect the life of its well-intentioned members.²⁴

The latest public debate about the death penalty came in the midst of a “sudden surge” in pro-death penalty sentiment that seemed to pick up momentum during 2000 and 2001 (Feldbrugge 2002: 7). Following the murder of a 17-year-old girl, her father, a professor at Moscow State University, published a letter in which he argued for the re-installment of the death penalty, concluding that the moratorium was implemented “in order to satisfy the West’s political demands and despite the people’s will” (*ibid.*). The newspaper publication titled “To the people and the president” was signed by about a hundred well-known Russian figures (CoE 2004: 200). One of the most influential new voices in the pro-death penalty camp is Nobel Prize winner Aleksandr Solzhenitsyn. He expressed the view that the moratorium on executions “was dictated by people in Strasbourg (CoE) who don’t understand conditions in Russia (...) Europe has not experienced the ordeals that Russia has gone through. It simply doesn’t know them” (quoted in Feldbrugge 2002: 6).

As Kvashis states, the capital punishment is not only an instrument of criminal policy, but a social and cultural phenomenon (Kvashis 1999). He claims that the attitude to capital punishment is formed on the basis of a complicated interaction of historical, political, cultural and legal factors. It is worth citing Kvashis further when trying to comprehend why Russians so strongly support the punishment. He assesses that:

The majority of the population tormented by the unsettled state of their lives, tired of waiting for noticeable reforms and being far from understanding the real democratic values highly believe that it is impossible to combat delinquency without cruelty. This conception of justice has been cultivated for the period of many years, but in recent years it became even stronger because of unprecedented growth of delinquency (Kvashis 1999).

Commenting on the particular Russian background and how this has influenced the value of human life, a retentionist has put it this way:

Liberals in our opinion, completely ignore Russian sociocultural “background.” Among us there have always existed an extremely significant number of people who are not deterred from committing murder wither by prison or in particular by labor colonies (...) And the succession of wars and cruel repression [that we have experienced] has lowered catastrophically the value of the human personality, of life itself (...) And this applies even more so to present Russia (quoted in Barry & Williams 1997: 252).

²⁴ See www.mospat.ru/text/e_conception/id/4050.html.

Clearly, the death penalty enjoys strong support not only in the legal system, but also among the Russian population. All together one can reasonably conclude by saying that there is a lack of domestic salience for a European abolitionist norm in Russia. Following the theoretical argument, the likelihood of norm-violation thus increases, as there is a great value-gap between the international and the domestic norm. This, I argue, will partially explain Russia's partial compliance. I will now turn to my other argument; how policy preferences and underlying identities of domestic actors have been channelled through different political intuitions and led to conflicting behaviour.

5.2. Russia's Partial Compliance: the President against the Duma

At the time when Russia applied to join the CoE, a majority of the CoE's members had abolished the death penalty. The Council's work towards a European death penalty free zone was further strengthened in 1994 when all countries wishing to become a member should agree to implement an immediate moratorium on executions and then sign and ratify Protocol No. 6 within three years. Hence, when Russia became a member the country made a commitment to fully abolish the death penalty by 1999. However, the country has still not fully abolished the death penalty. As already noted, with the 1993 Constitution the president has been entrusted to draw up the basic guidelines for Russian foreign policy; however, the State Duma has retained the right to ratify international treaties. Aware of the different perceptions of the State Duma and the President of Russian identity, particularly following by the elections in 1993 and 1995, I will outline how these differences influenced Russia's dealing with the obligations laid out in Protocol No. 6 after Russia became the 39th member of the Council of Europe.

In accordance with the theoretical argument, the "dual identity" will lead to colliding interests and in turn vacillating behaviour. Hence, in the next section I will describe how the interests of the State Duma and the President have collided in the country's dealing with Protocol No. 6, and how this has led to vacillating behaviour resulting in a partial compliance with Protocol No. 6.

5.2.1. *Yeltsin's Moratorium on the Death Penalty*

The presidential decree "On the gradual curtailing of the application of the death penalty in connection with the admission of Russia to the Council of Europe" in May 1996 was the first official act by the Yeltsin administration aimed at coming to terms with the Council's demands.²⁵ The words "gradual" and "curtailing" are clearly in strong contradiction to the Council's firm commitments. According to Ritter, the decree was passed with the understanding that the provisions were recommendations from the Council and not actually binding obligations (Ritter 2000: 139). As Barry and Williams note, the government in its efforts to bring parliament along needed to give the impression that it had not yielded too much to CoE demands (Barry & Williams 1997). However, in complete contradiction to the Council's require-

²⁵ Decree of the President of the Russian Federation No. 742.

ments, Russia continued to execute prisoners after it had become a member. According to the Chairman of the Presidential Clemency Commission, 53 persons were executed in the first half of 1996. The PACE condemned Russia for “a flagrant violation of her commitments and obligations”, and warned the Russian authorities that it would take “all necessary steps to ensure compliance with commitments entered into”.²⁶ One such step would in practice mean to consider the non-ratification of the credentials of the Russian parliamentary delegation at its next session. Hence, Russia ran the risk of expulsion if it did not meet the commitments to place a moratorium on executions and abolish the death penalty. In a resolution by PACE in June 1996, the Council demanded that Russia “honour its commitments and carry out no executions”.²⁷ Hence, on 4 August 1996, the Russian executive branch moved to meet the Council of Europe’s demands and President Yeltsin put a de facto presidential moratorium on capital punishment.

In March 1997, draft legislation was introduced in the State Duma for a moratorium on executions. The Russian deputies Valeriy Borshchev and Yulii Rybakov introduced the first draft on a bill on the moratorium on the death penalty, but on 14 March 1997 the State Duma rejected it with 176 votes against 76 with 6 abstentions.²⁸ Thus, Russia was left with an ad hoc arrangement, where the president reviewed cases where a convicted person made a plea for clemency, at the same time as the courts were handing out new death sentences. Reflecting upon this particularly unpleasant aspect of his presidency, Yeltsin states in his *Midnight Diaries* that:

The green files also contained requests for pardons for those convicted of capital crimes. I dreaded those files the most. How to decide a question of life or death? How, with one stroke of a pen, to determine the fate that only God knows? These were terrible documents, chilling to the soul (Yeltsin 2000: 119).

President Yeltsin attempted to show Russia’s good-faith efforts to fulfil its obligations by ordering the Ministry of Foreign Affairs to sign Protocol No. 6 on behalf of the Russian Federation. Thus, an important step was taken in April 1997 when Russia signed the protocol. However, as the State Duma’s ratification of the treaty was needed for a full abolishment, this did not have any real effects.

In 1999 Russia should, according to the commitments undertaken by accession to the CoE, fully abolish the death penalty. In April 1999, Yeltsin granted clemency to the 600 persons sentenced to death, commuting their sentences to life imprisonment or 25 years imprisonment. And the Constitutional Court’s decision the same year prolonged the moratorium at least till 2007.

5.2.2. *Putin Supports the Abolishment of the Death Penalty*

Putin avoided discussing capital punishment for over a year after his election as president in March 2000. However, increasingly vocal support for ending

²⁶ See PACE Resolution No. 1111 and No. 1997.

²⁷ PACE Resolution No. 1097.

²⁸ See www.prison.org/english/mcprwork.htm.

the moratorium on executions may have made him take a stand. On an international conference on judicial and legal reform organized by the World Bank in July 2001, he spoke for the first time against the death penalty:

If the hypothesis that we suffer most from the evil existing within ourselves is true, then we can say that by making punishment harsher – and the death penalty is in fact not punishment, but rather vengeance on the part of the state – then, by increasing the severity of punishments, the state is not eliminating cruelty but merely reproducing it again and again. The state ought not to assume a right that can belong to the Almighty alone – taking life from a human being. As a result, I can firmly state that I am against restoration of the death penalty in Russia (quoted in Feldbrugge 2002: 8; see also CoE 2004: 203).

Putin's support for abolition of the death penalty did not sway parliament. On the contrary, the State Duma made its position very clear in an appeal to the President on 15 February 2002, asking him to cancel Russia's moratorium. This came as a response to a drafted bill on the abolishment of the death penalty presented by the liberal Union of Rightist Forces party (SPS). The SPS members called upon the State Duma to ratify Protocol No. 6 and to cancel the death penalty provision in the Criminal Code.²⁹ Instead 266 deputies against 85 voted in favour of asking the President to reintroduce the death penalty.³⁰ Putin replied that lifting the moratorium on the death penalty would be "foolish", not succeeding, though, to persuade the State Duma.³¹ Furthermore, Russia's Human Rights Ombudsman, Oleg Mironov, stated that to lift the moratorium "could significantly affect Russia's international prestige", and "Russia would find herself outside the civilized European society if the Duma were to defy international standards" (quoted in CoE 2004: 203). In his report to the CoE in 2002, Mironov stated that with Russia's implementation of its obligations "the issue of choice by Russia of its place in the world and in Europe is clearly in the foreground". He continued:

One possibility is that the country could come back to old totalitarian and authoritarian models, methods, ideals and values under the slogan of "Russian originality" and specific peculiarities (...) Or else, Russia could choose the way towards integration into Europe, towards adaptation to democratic ideals and values with human rights and freedoms in its very center. The continuation of active participation in the Council of Europe, the complete non-revocable implementation of the international obligations undertaken represents to a certain extent the sign, which one of the two directions is chosen (Mironov 2002).

Adding to the strong protest against the moratorium is "the war against terrorism". When establishing counter-terrorism laws, one of the propositions has been to apply the death penalty to those convicted of terrorism. In connection with the State Duma's discussion of anti-terrorism amendments to

²⁹ See www.cdi.org/russia/johnson/5591-15.cfm.

³⁰ See www.hri.org/news/balkans/rferl/2002/02-02-19.rferl.html.

³¹ See <http://news.bbc.co.uk/1/hi/world/europe/1870916.stm> and <http://issues.strana.ru/topics/52/01/07/11/6485.html>.

the Criminal Code in February 2004, Dmitrii Rogozin, Deputy Speaker of the State Duma and leader of Rodina gave his support for the death penalty in cases involving trafficking and terrorism. Furthermore, explicitly dismissing the standards and principles of the Council of Europe he stated: “We have to determine our human rights standards by ourselves, and use them to restore order in the country”.³² Standing firm in the retentionist camp Deputy Prosecutor General Vladimir Kolesnikov advocated the cancellation of Russia’s death penalty moratorium for terrorists, as did Deputy Speaker of the State Duma Lyubov Sliska from the pro-president United Russia party. “I believe that such crimes as terrorism should entail the death sentence”, she told in a news conference in Moscow in April 2004.³³ Also the Deputy Head of the Federal Security Service (FSB), Vyacheslav Ushakov, addressing the State Duma deputies advocated the idea of lifting the moratorium on the use of the death penalty for terrorists.³⁴ Several deputies agreed with Ushakov, adding that as soon as “law enforcers introduce such a motion, the Duma would without hesitation lift the moratorium”.³⁵

Nevertheless, the pro-Kremlin United Russia party, controlling two-thirds of the seats in the State Duma, ruled out a proposal to lift the moratorium on capital punishment in the case of convicted terrorists in February 2004.³⁶ The Chairman of the Federation Council Committee for International Affairs, Mikhail Margelov, stated that a reinstatement of the death penalty would be a step back, and “the revocation of the death penalty moratorium in Russia might lead to harsh reaction from the West. Only US Republicans would probable understand such a decision of Russia”.³⁷ At the same time, bearing in mind Putin’s strong support in the State Duma, one must wonder why Putin has not pushed through the ratification of the protocol in the Duma – especially since he has come out so strong against the death penalty himself. Partially, I would argue that this is exactly due to the weak domestic salience of the abolitionist norm. Nevertheless, due to the European strength of the abolitionist norm Putin should feel obliged by the CoE to fully abolish the penalty. The evidence seems to support that Russia’s current position on capital punishment is a rational equilibrium upheld by the President. How may this be explained theoretically? To what extent does this support the constructivist argument? This is an issue that I will return to in my analysis and try to elucidate. In any case, Russia’s partial compliance is still a fact as it has been since the country became a CoE member in 1996.

In the next section I will illustrate how the CoE through social practice has worked in order to influence Russia to comply with its commitments, and change the country’s behaviour regarding the practice of the death penalty. In accordance with the theory, identities give each state an understanding of its interests, attitudes and probable action. Through social practice states obtain an understanding of what for example a “European identity” entails. Despite Russia’s failure to fully abolish capital punishment, the country has succeeded in changing its action by *de facto* abolishing capital

³² See www.fidh.org/article.php?id_article=604.

³³ See www.mosnews.com/news/2004/04/13/deathpenalty.shtml.

³⁴ See www.hrvic.net/news2004/11-2-04.html.

³⁵ See www.hrvic.net/news2004/11-2-04.html.

³⁶ See <http://web.themoscowtimes.com/stories/2004/09/21/001.html>.

³⁷ See http://english.pravda.ru/printed.html?news_id=14229.

punishment; a change that occurred after the country became a member of the CoE. Even though the abolitionist norm is not internalised, the prescriptions embodied in the norm has become a focus of domestic debate, which implies the norm's empowerment (Checkel 1999). Moreover, due to the moratorium, changes have been made in national institutions and state policy, indicators stressed by Cortell and Davis above as implying that a norm is gaining domestic legitimacy.

5.3. CoE and the Russian Dialogue: Social Practice

Several mechanisms may be at work in changing behaviour. Through persuasion one may change what people value and what they think is right or good (Finnemore 2003). Moreover international institutions bring people into frequent contact, which tends to create a common pool of shared experience, and over time, a shared outlook. Social influence, Finnemore notes, "involves the use of rewards and punishments such as back patting and shaming to change behaviour", however, without necessarily changing private acceptance of new beliefs (*ibid.*: 158). Furthermore, through social practice the international norm is "transferred" from the international level to the particular state(s); states become aware of that the prescribed norm is an essential part of a particular identity. As noted above, constructivism believes that the interests and identities of states are partially created through interaction and can change through interaction. Moreover, states might form collective identities and interests through interaction. In this section I will review the social practice that has taken place between the CoE and Russia as regards the abolishment of the death penalty.

The Council has several of "tools" at its disposal to ensure that member states comply with the EHCR's standards. The Convention provides for a process through which an offender state can be brought before the European Court of Human Rights. Another component of the human rights supervisory mechanisms includes the work of the Parliamentary Assembly (PACE). The Assembly's committees and their rapporteurs may issue critical reports or positive recommendations and a state could risk expulsion if it does not comply with its commitments.

The Council's work with Russia on the death penalty issue has been – and still is – a great test on its ability to ensure that member states comply with its requirements and the ECHR standards. One basic strategy the CoE has promoted is compliance through conditionality. Conditionality, Checkel notes, is "a mutual arrangement by which a government takes, or promises to take, certain policy actions" (Checkel 2000: 2). As noted, in 1994 the CoE made the abolishment of the death penalty a prerequisite for membership, implying that new members were conditioned to promise full abolishment of the death penalty within three years after membership was granted. Much of the Russian–CoE dialogue on the death penalty issue is based on the conditionality strategy, the CoE constantly reminding Russia of the promises it undertook when becoming a member. After membership, the dialogue is characterized by persuasion and discussions. The Council of Europe's work for a European death penalty-free zone has been promoted

through discussions with supporters of death penalty in order to counter their arguments and to give strength to the abolitionist views. The Council has employed several of its mechanisms to make Russia comply. One is the exchange of information and knowledge, such as a clemency conference held in Novgorod in October 2000. One of the aims of this conference was to decide which steps had to be taken in order to fully abolish capital punishment. Other measures are economical assistance. In 1999 the CoE and the EU established a joint awareness campaign at a cost of 670,000 Euros over two years to provide information for the general public, legal experts and parliamentarians (Manners 2002: 250). “Shaming” and threats about sanctions and exclusion are more “hard power tools” that the Council employs. Despite attempts to circumvent, stall or water down its obligations, the Council has paid close attention to Russia’s record.

Assessing the last ten years, the PACE has adopted no less than five resolutions and four recommendations on the abolition of the death penalty, reiterating its total opposition to the death penalty, which it considers a grave violation of human rights. Since 1996 the Council has issued a series of warnings, threats, ultimatums and resolutions. As already pointed out, in 1996 the Council issued Resolution No. 1097 whereby it demanded Russian compliance on abolition of the death penalty. Likewise, in Resolution No. 1111 from 1997, the Council warned the Russian delegation that it might be excluded from the Parliamentary Assembly. In a report from 1998 on Russia’s honouring of obligations and commitments, the PACE rapporteurs recognize Russia’s progress towards the rule of law and democracy.³⁸ However, the Council’s Monitoring Committee underlined the country’s shortcomings in several areas and calls for particular attention to its complete abolition of the death penalty. In May 1999, the PACE Committee on Legal Affairs and Human Rights raised its concern that prisoners remain on the death row in Russia.³⁹ In its report it states, “Russia must realize that the Assembly totally rules out any possibility of releasing them from their commitments to abolish the death penalty.” Furthermore, the report affirmed “the Assembly has consistently warned member states which are reluctant to honour their commitments to bring an end to all executions and abolish death penalty.” At the same time however, it noted that with the moratorium on executions Russia has been keeping its commitments and that “though the situation is still very confused, there is certainly *a trend towards abolition in the medium term*” (my emphasize). On Yeltsin’s decision to commute all death sentences to life imprisonment in 1999 Renate Wohlwend, rapporteur on the death penalty to PACE, commented: “I hope that this decision reflects a commitment to abandoning the death penalty once and for all. I would point out that this announcement comes only just ahead of the deadline giver for Russia’s undertaking to abolish the death penalty”.⁴⁰

Reacting to the most recent death penalty debate in Russia, the PACE issued a declaration in which it again reminded Russia of the possibility to exclude the country from the organization. The debate led the Secretary General to publish an article in *Rossiskaya gazeta*, underlining Russia’s

³⁸ PACE Doc. 8127.

³⁹ PACE Doc. 8340.

⁴⁰ See [http://press.coe.int/cp/99/81a\(99\).htm](http://press.coe.int/cp/99/81a(99).htm).

commitments as a member of “the European family”, followed by a letter from the President of the Parliamentary Assembly stating: “The consequences of not fully meeting its obligations are not theoretical. They are immediate and they are painful for all.”⁴¹ In an official visit to Russia in February 2005. Terry Davis, the Secretary General of the Council of Europe stated: “It would be incorrect to say that Russia has fulfilled everything (...) When Russia joined the Council of Europe, it made a series of promises, but not all of them have been fulfilled. Therefore monitoring still makes sense”.⁴² The latest report from PACE, published on 3 June 2005, strongly urges the Russian authorities “to take advantage of the absolute majority they enjoy in the parliament and to ratify Protocol No. 6 without any further delay by *December 2005*” (my emphasis).⁴³ It remains to be seen whether Russia this time will move towards the full abolishment of the death penalty within the new deadline set by the CoE.

⁴¹ See <http://assembly.coe.int/communication/presidentspeeches/olddocs>.

⁴² See www.moldova.org/print/eng/1/524.

⁴³ PACE Doc. 10568.

6. Analysis

In my analysis I undertake four tasks. First, I briefly recapitulate how my theoretical argument explains Russia's partial compliance to Protocol No. 6. Recognizing that the debate between the rational paradigm and the constructivist paradigm currently is, or is about to become, the most significant in the discipline, I bring in rational approaches as alternative explanations to Russia's partial compliance. Moreover, given my constructivist orientation, the logical alternative explanations to norm (non-) compliance is more rational explanations. Hence, my second task is to elucidate how the rational paradigm within international relations accounts for norms and norm-compliance and how it stands in opposition to constructivism. Here I will also pay attention to the different directions that exist within rationalism, and how these explain norms and norm-compliance in international relations. Third, as a logical next step I will apply rational insights to Russia's partial compliance with ECHR Protocol No. 6, and ask whether we actually may understand the country's conduct in the death penalty issue as instrumental calculations by rational and unitary actors without taking into consideration a state's identity and non-material forces. Here I will draw on literature that explains Russian ideational behaviour within the rational paradigm. Finally, I will discuss the explanatory power of the constructivist approach compared to the rational paradigm when it comes to Russia's partial compliance. I argue that there are several weaknesses with rational explanations to norm compliance, but that one cannot completely dismiss the rational approach as part of the explanation. I conclude with suggesting that instrumental calculations may explain Russia's position on the death penalty after the Duma election in 2003, however, understood within a constructivist framework characterized by identity formation and a value-debate. Consequently, this implies further research aimed at theoretical bridge-building.

6.1. Russia's de facto Abolishment of the Death Penalty: a Constructivist Cut

In my thesis I argue that Russia's partial compliance with Protocol No. 6 is a consequence of the lack of a unified and coherent identity. The dispute between Russian state actors as to whether Russia is part of Europe or not is reflected in its adherence to European human rights standards. As I have illustrated, this is not only visible in Russia's dealing with the death penalty issue, but has been a subject matter during the tsarist time and the Soviet Union period as well. When the Soviet Union came to an end, the pro-western foreign policy quickly became disputed within state institutions such as the State Duma. The Russian "identity crisis" is easily detected in the country's rapprochement to the CoE and Protocol No. 6. The CoE worked as a so-called norm entrepreneur, and recalling Lutz and Sikkink's work, due to an increased regional consensus, the abolishment of the death penalty became part of a European identity. Since interests and the consequent behaviour is a product of identity, it was in the interest of those actors who wanted

to ensure the European identity of the newborn Russian state to embrace the European abolitionist norm. This, I claim, led to a *de facto* abolishment of the death penalty, a change carried out under Yeltsin's watch. The social practice that I have identified gave these actors an understanding of how Russia should behave as a European state. As Wendt states, the transition from "them" to "us" was made possible, and by implementing a moratorium on the death penalty, Russia opened up for a collective identity formation with the European ideational community. The failure to fully comply with Protocol No. 6 within three years is explained by the State Duma rejecting the idea of Russia as part of Europe – it was simply not in the conservative majority's interests to behave according to the standards set forth by the CoE. Additionally, the strength of the anti-abolitionist norm in Russia has made it difficult to legitimate a strong European abolitionist norm, and in this way domestic cultural practices exert a causative influence on state policy. Thus, only a partial compliance with Protocol No. 6 was reached within the three-year time limit set by the CoE.

By emphasizing domestic politics and relaxing the unitary-actor assumption, I am able to disclose how policy-making in Russia results from ongoing battles among actors that adhere to a European identity and actors that oppose this orientation. I argue that norm (non-) compliance is a result from the interplay between identity, interests and the consequent behaviour, a theoretical argument that I derive from the constructivist camp. Why states follow norms (or not) and what motivate them to act in accordance to or violate relate to the state's identity, I claim (see Fearon & Wendt in Carlsnaes *et al.* 2002: 61).

Acknowledging the dispute within IR-theory regarding the role of norms and norm-compliance, I believe it is worth taking a closer look at the alternative explanations within the IR-field, rationalism being the most logical one seeing norm-compliance rather as careful calculations by instrumental actors. According to March and Olsen, the difference between the two paradigms is related to which logic drives norm-conforming behaviour – the "logic of appropriateness" versus the "logic of consequences" (March & Olsen 1998). When dealing with the relation between the premises of action and society, scholars within the constructivist position see political actors as acting in accordance with rules and practices that are socially constructed and held together by socio-cultural bonds, intersubjective understanding and senses of belonging (*ibid.*). The rational position on the other hand understands the international system as being made up of interacting autonomous, egoistic, self-interested actors and preferences as given (*ibid.*). Consequently, governments comply with norms after an instrumental calculation of what action would best serve their own self-interest. The question thus arises: may we understand Russia's partial compliance to ECHR Protocol No. 6 simply as instrumental calculations by a rational and unitary actor operating in an anarchic international environment? Is it really necessary to examine a specific norm's international and domestic legitimacy and the state's identity in order to explain Russia's ideational behaviour? Is it not so that "states adopt to the community beliefs and practices, not because it regards them as true and right, but because adoption is necessary to further its political goals?" (Schimmelfennig 2000: 117). In order to address these

questions I will first elucidate how the rational paradigm within international relations accounts for norms and norm-compliance and how it stands in opposition to constructivism. Here I will also pay attention to the different directions that exist within rationalism, and how they explain norms and norm-compliance in international relations.

6.2. Alternative Explanations to Norm-compliance: Rationalism and Instrumental Calculation

Realism has traditionally held a privileged place on the theoretical menu of international relations. One may distinguish between Morgenthau's classical realism, Waltz's structural or defensive realism, and Mearsheimer's offensive realism or neo-realism (Mearsheimer 2001). Largely, what separate the three are the reasons they give for why states compete for power and their assumptions of how much power states want. The bedrock assumption uniting all three is the understanding of states as rational, unitary actors and the principal actors in world politics. Moreover, the international system strongly shapes the behaviour of states, and structural factors such as anarchy and the distribution of power are what matters most for explaining international politics (*ibid.*). According to Mearsheimer, survival is the most important goal of states and the anarchic international system encourages states to behave aggressively in order to survive (*ibid.*).

Premised on rational assumptions, neoliberalism (or neoinstitutionalism) agrees with neorealism that states are unitary and rational actors that seek utility maximization and that the international system is anarchic. However, neoliberals like Keohane and Nye tend to argue that states are interdependent and rely on international organizations and agreements for creating order out of an anarchic chaos, thus the anarchical character of the international system is modified by regimes and institutions (Jordan 2003). The difference between realism and neoliberalism is further underlined by Cornett and Caporoso, who see that the "decisive difference between neo-realism and neo-institutionalism has to do with the relative significance each attributes to international institutions" (Cornett & Caporoso in Matlary 2002: 84).

In general, realism in its various guises has paid very little attention to the role of international norms and norm compliance in international relations. As mentioned, when governments do employ support for human rights, it is to justify the pursuit of geopolitical interests, and norms have only a limited influence as an intervening variable between power distribution and international outcomes (Moravscik 2000). When states consider non-security goals such as compliance to international norms, they will always be subjugated to security in the hierarchy of state goals (survival is the primary interest). According to realist theories of international relations, governments accept international obligations "because they are compelled to do so by great powers, which externalize their ideology" (*ibid.*: 221).

Neoliberals, who have a relative optimistic view of cooperation, assign more significant influence to norms than realists do. Hence, within the rational paradigm neoliberal institutionalism has been the dominant approach to the study of international norms. Keohane and his functional theory of

regimes focus on how international organizations and agreements are used by governments to reduce uncertainty and produce predictability in the international system (Keohane 1984: 97). Despite how international regimes and rules threaten the “myopic self-interest” of governments, states comply because international regimes facilitate negotiations that lead to mutually beneficial agreements among governments (*ibid.*: 107).

A central point in the debate between realism and constructivism, which has also been touched upon earlier in the thesis, is how the rational paradigm in contrast with constructivism treats identity and preferences as given. In turn this has led to a negligence of domestic politics within rational approaches. However, Moravscik has challenged realism and neo-liberal institutionalism on their own analytical turf by disputing the assumption that state preferences are given, and has taken up the challenge of bringing in domestic politics in the study of norms and norm-compliance. Moravscik proposes a third, “republican” view, which explains the acceptance of norms not in realist terms (where the most powerful democracies coerce or entice weaker countries to accept norms) but as a result of instrumental calculations about domestic politics (Moravscik 1997). While realism and neo-liberal institutionalism view the international system as more state-centric, liberal international relations theory places emphasis on the domestic sources of state preferences as the determinant of outcomes in international politics (*ibid.*). Accordingly, the theory seeks to generalize about the social conditions under which the behaviour of self-interested actors converges toward cooperation or conflict (*ibid.*: 517).

6.3. Russian Conduct in the CoE: Rational Action in a Normative Environment?

Having outlined the rational paradigm and how the different directions explain norms and norm-compliance in international relations, I turn to the issue raised above; namely whether Russian ideational behaviour may simply be explained within the rational paradigm without turning to constructivism. By drawing on work that sees Russia’s ideational behaviour within the rational paradigm, I will investigate Russian partial compliance through a rational understanding.

Schimmelfennig argues that international socialization in Europe is best explained as a process of rational action in a normatively institutionalized international environment (Schimmelfennig 2000). Accordingly, selfish political actors conform to European norms in order to reap the benefits of international legitimacy. Particularly two benefits come with international legitimacy; first, the recognition as a legitimate state enhances the state’s security and autonomy; and second, as a legitimate state it is entitled to join international organizations that gives it a say in international decisions and access to internationally distributed resources such as development aid.

Implementing rational reasoning on the Russian partial compliance one may of course find arguments that support Schimmelfennig’s line of argument. With the disintegration of the Soviet Union, the territorial boundaries of the Russian Federation became radically different not only from those of

the USSR but also from those of any prior independent Russian state. Russia's newly independent neighbours, the former Soviet republics – relations with which were now matters of foreign rather than domestic policy – obviously posed challenges to the new state. Moreover, Russia's new neighbours encompassed many areas of instability, and the resulting military and political concerns for the Russian government were amplified by the fact that 25 million ethnic Russians resided in these new states (Donaldson & Noguee 1998: 109). Furthermore, Russia's economy was in dire straits. And communism, despite of all its failures, had developed a system that in many ways managed to sustain a certain standard of living among the Russian populace that the new Russian state was unable to sustain. Thus, it is not difficult to understand that it was central to the Russian state to be recognized as a legitimate state and thereby enhance the state's security and stability. Furthermore, by joining for instance the CoE, Russia was given a say in international decisions, which in turn would protect Russian national interests. This is reflected in the State Duma's main argument for becoming a CoE member; namely that membership would permit Russia better to defend the interests of ethnic Russians living abroad, particularly in the Baltic republics (Bowring 1997). Moreover, as a member of international organizations, Russia would be eligible to much needed internationally distributed aid. Consequently, a moratorium on the death penalty was a low cost compared to the benefits of being a part of the "good European company". According to the rational logic, the moratorium was simply window-dressing and a way to further the state's political goals.

According to Schimmelfennig, actors calculate whether the benefits of international legitimacy are worth the costs of conformity (Schimmelfennig 2000). By manipulating the standards of legitimacy states may lessen the domestic impact of norms by adapting to the standards at a superficial level without really acting in accordance to the norms or by interpreting the norms in ways more compatible with their interests. In accordance with the rational line of reasoning this would explain why Russia has only partially complied with Protocol No. 6. Because there is so strong support for the death penalty among the Russian public, the parliamentarians fear that norm compliance would challenge their political power and positions, and have therefore refused to ratify Protocol No. 6 (Beach 2005, Schimmelfennig 2000).

Moreover, following Schimmelfennig's argument, by only implementing a moratorium on the death penalty and not *de jure* abolishing capital punishment, Russia has also managed to manipulate the international standard. In this way, Russia has lessened the domestic impact of the abolitionist norm by adapting to the standards at a superficial level. In the rational sense this balance serves to make both the Russian public and the CoE somewhat happy and content with Russia's position. During Putin's presidency, this balance has been upheld.

By weighing costs and benefits of norm compliance, Schimmelfennig argues that successful norm compliance may be explained without taking into account non-egoistic actor utilities and the identification of state actors with the international society (Schimmelfennig 2000). Russia, Schimmelfennig claims, is a most interesting case since state actors have come to power with a liberal-democratic programme in a society with weak Western orientations.

Under these conditions, Schimmelfennig concludes “the government will try to increase their utility by presenting themselves as committed reformers to the Western organizations in order to earn external material gratifications and, at the same time, take care not to lose domestic support as a result of radical reforms” (*ibid.*: 134).

Drawing on rational arguments, but by stressing domestic politics to a greater extent, Moravcsik claims that newly established democracies that have become CoE members employ ECHR norms as a way to “lock in” the domestic political status quo against non-democratic opponents (Moravcsik 1997). He elucidates this by noting that in the face of future political uncertainty international institutional commitments are self-interested means of “locking in” particular preferred domestic policies at home and abroad. Moravcsik notes that “states pursue particular interpretations and combinations of security, welfare, and sovereignty preferred by powerful domestic groups enfranchised by representative institutions and preferences” (*ibid.*: 519). A sitting government weighs two crosscutting considerations: restricting government discretion/judgment (sovereignty cost) and reducing domestic political uncertainty (*ibid.*: 227). Following Moravcsik’s argument, due to the position of the different groupings such as the ultranationalists and the die-hard communists, Yeltsin and his supporters sought membership in international organizations and complied with international commitments purely as a way to secure their own position on the domestic arena. Hence, Yeltsin’s moratorium on the death penalty was nothing more than merely instrumental calculations as to how one could best reduce domestic political uncertainty and increase international acceptance and support. Following the rational reasoning, Yeltsin was faced with weighing up the cost of going against the Russian public, who strongly favoured the death penalty, or against the CoE, which stands for a robust European abolitionist norm. Yeltsin chose the first, as he as a rational actor calculated that a *de facto* abolishment of the death penalty had a greater benefit in terms of increasing his international reputation. According to Moravcsik’s rational logic then, what first seems to be a conversion to moral altruism is in fact an instrumental calculation on how best to “lock in”.

In the same manner, Jordan claims that Russian compliance to CoE norms is best explained by instrumental calculations (Jordan 2003). She states that “countries such as the Russian Federation appears to be motivated more to guard their existing interests in areas their governments see as national security concerns than to meet obligations and take part in social learning” (*ibid.*: 688). Accordingly, the domestic debate about the death penalty and Russia’s partial compliance with the CoE abolitionist norm serve to illustrate that Russia’s ideational behaviour is best explained by instrumental calculations. Since one of Russia’s main arguments for retaining the death penalty is that it would deter crime and counter terrorism; Russia pays more attention to its own national security than to international obligations. In this way, Russia has failed to internalise human rights out of a sense of obligation and an acknowledgement of their legitimacy and in stead protected its status quo national interests in defiance of its pledge to observe human rights norms – a behaviour that confirms a rational understanding of Russia’s ideational behaviour (*ibid.*: 664).

6.4. Russia's Partial Compliance: a Rational Equilibrium within a Constructivist Framework

Above I began with proposing the rational paradigm as an alternative explanation to state compliance with international norms and followed up by elucidating some of rationalism's basic assumptions in order to show how the approach diverges with the constructivist orientation. I illustrated how research within the rational paradigm uses its assumptions to explain state adherence to international norms. In order to make use of this work in my case, I paid particular attention to research that incorporates Russia in its explanations. By drawing on this research I ended with showing how rational approaches would explain Russia's partial compliance to Protocol No. 6. A logical next step is to discuss the explanatory power of the constructivist approach compared to the rational one.

First, however, I will illustrate some of the more general weaknesses of the rational approach when it comes to explaining the role of norms and norm compliance. One weakness relates to one of rationalism's basic assumptions, another to the lack of focus on domestic politics. I argue that constructivism and its focus on identity and the interaction between identity, interests and behaviour can to explain most of Russia's partial compliance. However, towards the end of this section, I question whether it is right to fully dismiss the rational approach as *part* of the explanation for Russia's current position on the death penalty.

As illustrated above, there are different approaches within the rational paradigm that deals with norms and norm compliance. According to realism, security is priority number one in the hierarchy of state goals, as states must ensure survival in the anarchic international system. I question the clear distinction between compliance to international norms and security that the realist theory implies. If one operates with a so-called extended security concept (one that goes beyond territorial conquest), violation of human rights might easily be a threat to state security. This is also a subject that Brooks raises in his work when he argues for a more flexible understanding of the hierarchy of state goals and a recognition that states do not only rely on military to secure their objectives (Brooks 1997). Moreover, because distribution of power is the most important determinant of actor behaviour in realism, changes in international relations, including norm change, come about only when this distribution of power changes (Florini 1996). Hence, realism fails to capture the more everyday changes that take place among states in an international environment.

What follows from realist assumptions is that states are treated like black boxes or billiard balls, and therefore domestic considerations are omitted from the explanation. Mearsheimer himself confirms his theory's weakness when admitting that under these circumstances the theory will not perform as well (Mearsheimer 2001: 11). But in a defensive manner, he argues, "there is a price to pay for simplifying reality" (*ibid.*). Clearly, this is true, but by taking state preferences and interests as given, preference formation and how ideas may constitute power relations is neglected (Jordan 2003). Obviously, this is one of the main problems with power-oriented conceptions of international authority. The two mainstream theories do not address the issues of

preference formation, or when and under what conditions norms shape the interests of states. As a consequence, states' interests and preferences are taken for granted.

As noted, Moravcsik has taken this criticism seriously and disputed the assumptions that state preferences are given and that the state acts as a unitary actor. By drawing on rational reasoning he explains norm compliance as resulting from instrumental calculations about domestic politics, not. The impact of varying domestic political institutions – in particular the scope and bias of political representation – on foreign policy is stressed. Moreover, states are self-interested and rational in their pursuit of (varying) underlying national interests, which reflect in turn variation in the nature of domestic social pressures and representative institutions.

Despite Moravcsik's efforts to stress domestic politics, neither his view nor rationalism in general is able to explain more fundamental, internal changes in an actor's goals (Martin & Simmons 1998: 743). Ruggie elaborates this by noting, "the problem is that power may predict the form of the international order, but not its content (Ruggie in Florini 1996: 365). Realism in its various disguises and neoliberalism (or neoinstitutionalism) fail to explain where particular interests come from by taking them for granted. Moravcsik opens up the "black box" and manages to take hold of the complexity that characterizes domestic politics and shape a state's behaviour in the international system. However, also he assumes interests a priori (although on a different level) by not attempting to explain how domestic actors obtain the particular preferences that they do.

I will argue that precisely because constructivism pays attention to non-material forces such as norms and their impact on policy outcomes and treats identity as an empirical issue to be theorized within a historical context, one may comprehend the particular interests of actors and their consequential behavior. As Ruggie puts it, "a core constructivist research concern is what happens before the neo-utilitarian model purportedly kicks in" (Ruggie 1998: 867). Moreover, as Kahler notes, "choices are simply highly constrained by social and cultural determinants and that socially constituted identities are an ontological issue prior to behavioral modelling along rational choice lines" (Kahler 1998: 936).

In the rational approach one is not able to capture a century long debate in Russia about Russian identity – whether Russia is understood as part of Europe, a Eurasian country or "something of its own" – and how this has affected domestic actors' preferences and behaviour. This question of a state's identity is an issue that the constructivist camp takes seriously. Of course, domestic actors' interests shape policy but these interests are *not* exogenized and given, but influenced by who the actors identify themselves with. Again one may turn to Hopf, who states, "identities strongly imply a particular set of interests with respect to choices of action in particular domains" (Hopf 1998: 175). As shown, a European trajectory in foreign policy was repeatedly underlined by the Yeltsin administration, and particularly by Kozyrev, stressing Russia's "return to Europe". As demonstrated, however, this trajectory was contested for instance by the communists and the LDPR, which have a very different perception of what the Russian identity is. By focusing on domestic factors, one may examine how this "identity crisis" is

channelled through state institutions, in this case, the Presidential Administration and the State Duma. As demonstrated, the Duma repeatedly rejected the abolishment of the death penalty during Yeltsin's presidency, whereas Yeltsin himself strongly favoured an abolishment. Clearly, Yeltsin combined words with deeds by issuing a presidential moratorium on the death penalty. This fits with my argument that the more state actors value the European identity of their state, the more they will seek to comply with norms incumbent upon European states. In the opposite case, as was the case with the State Duma (particularly after the elections in 1993 and 1995), actors will be more reluctant to follow European norms; hence norm violation is more likely.

This is only part of the constructivist story on Russia's partial compliance, however. By highlighting norms and their social forces one also sees how they actually may have an influence on policy outcome. I argue that the "cultural match" between the international norm and the domestic norm is decisive for state compliance with international norms. Consequently, Russia's partial compliance with ECHR Protocol No. 6 is also explained by the strong domestic counter-norm colliding with the European abolitionist norm. If the Russian public did not feel so strongly against the abolition of the death penalty and if the death penalty was not so firmly embedded in the Russian legal practice, it would have been easier to picture a ratification of Protocol No. 6 in spite of the State Duma's resistance against a westward turn in foreign policy.

I believe the argument that state compliance with international norms is dependent upon the domestic salience of the norm is further strengthened by Russia's current position on the issue. As seen, President Putin has come out as a strong supporter of the abolition of the death penalty, stating that, "the state ought not to assume a right that can belong to the Almighty alone – taking life from a human being". At the same time, however, parliamentarians are still resisting a ratification of Protocol No. 6, something that confirms the presence of a strong domestic counter-norm to the international abolitionist norm. Consequently, I argue that contrary to what Schimmelfennig states, the implementation of norms does require personal internalisation at the level of policy-makers and contrary to the work of Risse, Ropp and Sikkink I pay attention to individual belief systems (Schimmelfennig 2000; Risse *et al.* 1999).

For personal internalisation to have an effect on state policy it is of course crucial that the individual is in a position to influence policy. When we talk about the President of the Russian Federation, however, it would be foolish not to examine his personal view. By pointing to official statements as I do, one may of course claim that it is all talk and no action. However, as Fearon and Wendt state, "unless we are prepared to dismiss all talk as cheap, then the kinds of discourse that actors use should count for something" (Fearon & Wendt in Carlsnaes *et al.* 2002: 70). They continue by noting that "on the behavioral side, in turn, we might expect to see observable differences at both the individual and aggregate levels in rates of norm compliance" (*ibid.*).

Nevertheless, despite the evident weaknesses of the rational paradigm when it comes to explaining norms and norm compliance, I am not ready to

completely dismiss the rational approach as a potential *part* of the explanation for Russian partial compliance. As noted, in February 2004 the pro-Kremlin United Russia party, having two-thirds of the seats in the State Duma, ruled out a proposal to lift the moratorium on capital punishment. The State Duma has not, however, taken any measures aimed at ratifying Protocol No. 6. Neither has President Putin pushed through a ratification of Protocol No. 6. One may ask whether there is some kind of a tacit understanding between the two branches of power; if the Presidential Administration does not attempt to push through ratification, the State Duma will not challenge the moratorium and the *de facto* abolishment. Even though the CoE continues to raise the question of Russia's only partial compliance, it has not used the "ultimate" tools (such as expulsion) to force Russia to fully comply with Protocol No. 6. It is thus reasonable to argue that the President calculates that the CoE will not initiate such measures now, as it has not done so during the six years Russia has violated its commitment to fully abolish the death penalty. Hence, the President keeps the State Duma, the Russian public and the CoE all partially content. Obviously, such an explanation fits neatly into the rational paradigm of instrumental calculations.

It will be interesting to see what, if anything will happen as a consequence of the CoE's last country report on Russia, where it gives Russia until December this year (2005) to fully abolish the death penalty. The CoE urges the President and Russian authorities "to take advantage of the absolute majority they enjoy in the parliament" in order to finally ratify Protocol No. 6. As witnessed, so far the President's position on the death penalty issue has been decisive for the outcome. Perhaps Putin will fully abolish the death penalty now as he, knowing how much the CoE values the abolitionist norm, wants to appear as a "good pupil" in the run-up to the Russian Chairmanship in the CoE (from May next year)?

Where does this leave us in the theoretical debate? I began this section by asking whether it is right to fully dismiss the rational approach as part of the explanation for Russia's current position on the death penalty. From the outline above it is reasonable to conclude that the two approaches put together increase the explanatory power of how and why states comply with international norms. Although I have kept a clear constructivist orientation in my thesis, it seems reasonable to argue that Russia's partial compliance to the European norm of abolishing the death penalty entails instrumental calculations as well. Hence, my findings end up contributing to the more general debate over bridge building between rational choice and social constructivism. To bridge the rationalist-constructivist divide requires us to recognize that norms can have *both* constraining and constitutive effects, and that norm compliance may be explained by a normative as well as an instrumental logic of action. As Fearon and Wendt state, "the theoretical challenge is therefore one of identifying the conditions under which each hypothesis holds, rather than showing that one is always right or wrong. In the larger scheme of things, both hypotheses are probably true" (Fearon & Wendt in Carlsnaes *et al.* 2002: 61). Drawing on the same line of reasoning, March and Olsen assert that "political actors are constituted both by their interests, by which they evaluate their expected consequences, and by the rules embedded in their identities and political institutions" (March & Olsen 1998:

952). Below I will briefly illustrate how one may pursue a theoretical bridge-building programme.

6.4.1. *A Theoretical Dialogue: Possibilities and Practices*

Caporaso and Checkel identify four distinct modes of theoretical conversation: competitive testing; additive theory based on complementary domains of application; sequencing of theories; and incorporation (Caporaso *et al.* 2003: 19). Competitive testing attempts to confirm some theories and refute others. Thus, when aiming at theory synthesis, it is not very applicable. The complementary domains of application approach strives for a minimal synthesis, where the aim is to specify scope conditions of each theory, what its domain is, how it relates to others, and finally to bring together each domain of application explain some larger picture. Sequencing approaches suggests that variables from both approaches work together over time to fully explain a given domain, and that each approach depends on the other temporally to explain a given outcome. And finally, the incorporation approach implies that one theory can be logically derived from the other. Empirically, the primary theory needs to show that it explains everything that the derivative theory explains.

In a slightly different manner, but with the same understanding that rationalism and constructivism possess a degree of commensurability, March and Olsen illuminate the four major interpretations of the relationship between the “logic of consequences” and the “logic of appropriateness” (March & Olson 1998). The first interpretation suggests that when preferences and consequences are precise and identities or their rules are ambiguous, a logic of consequences tends to be more important. Conversely, when identities and their implications are clear but the implications of preferences or anticipated consequences are not, a logic of appropriateness tends to be more important (*ibid.*: 952). The second interpretation holds that the two logics have different domains of application. The third sees the relation between consequential action and rule-based action as a developmental one. Accordingly, March and Olsen argue that “actors enter into new relationships for instrumental reasons but develop identities and rules as a result of their experience, thus shifting towards rule-based action, which they then pass on to subsequent actors” (*ibid.*: 953). In a sense, this may be related to the sequencing model outlined above. Finally, the fourth interpretation sees either logic as a special case of the other. It is similar to the incorporation model in the sense that one logic is derived from the other.

Recapitulating my findings, perhaps they may prove to fit into the theoretical conversation labelled sequencing. Constructivism would then explain Russian actors’ interests and identities, while rationalism would best explain the current position of partial compliance as an outcome between actors with fixed preferences. As Tierney and Weaver state, “since the predicted outcome in the rationalist model is dependent upon the preferences of the relevant actors, then in any application of the rationalist model, a good empirical fit between the predictions and results will be driven by the accuracy of the value assigned to the actor’s preferences” (Tierney & Weaver 2004: 17–18).

7. My Findings and the Road Ahead

In conclusion, I would like to emphasize four points that highlights my findings and their implications for further research on international human rights norms within the field of political science and IR theory in general and on Russia's behaviour in particular.

The first refers to the study of human rights within the field of political science in general. Several academic fields such as philosophy, law and religion address human rights, but topics evolving around the domestic implementation of international human rights norms should be in particular focus among political scientists (see Bexell 2003). Askelöf notes that within political science the study of human rights is all about how values laid down in international conventions are implemented in a country's national policy and how those values are put into practice (Askelöf in Bexell 2003: 223). My study of Russia's partial compliance serves as a case that aims to contribute to the implementation literature that ought to be in the focus of political scientists.

The second point I would like to stress is how my theoretical argument suggests a way to implement a constructivist understanding on empirical material. As the constructivist project has evolved in the field over the past twenty years or so, empirical studies have documented the impact of principled norms on patterns of international outcomes and state policies, including the growing significance of human rights. The constructivist project led by John Ruggie, Friedrich Kratochwil, Alexander Wendt, Emanuel Adler and others has carried the study of norms and state (non-) compliance to norms further. Moreover, constructivists have in various ways focused on norms, identity, interests and behaviour. In my study I suggest that the interplay between these concepts may be one possible way to understand Russia's partial compliance to ECHR Protocol No. 6. I argue that interests are the product of identity, and whether state actors comply with norms depend on the salience of the identity specified by the norm. As a state has multiple identities, the interests and consequent action will be in a competing and conflictual relationship to each other when these identities collide. Hence, when identities overlap and their norms conflict, norm compliance is challenged. The constructivist approach allows us to treat identity as an empirical question to be theorized within a historical context, and instead of taking preferences as given and exogenous we can examine the reasons for actors having specific interests. This in turn, I argue, requires us to look into domestic politics and look into the "black box", a research programme strongly advocated by a new wave of scholars within the constructivist camp. In this way one may not only problematize a state's identity but also uncover features of domestic society and culture that should matter to state identity and state action in international relations. By examining the cultural match between the international norm and the domestic norm it is possible to reveal cultural practices that may exert a causative influence on state policy. Thus, in line with the constructivist school, by focusing on social and ideational forces and not only material ones, one may better comprehend "what makes the world hang together".

A third point I would like to pay attention to is the usefulness of applying my constructivist theoretical argument on Russia. First of all, my study implicitly suggests that when examining Russian ideational behaviour, one may come a long way by employing constructivist insights. Gorbachev and his reformers reinvented a century old debate between Westernisers and Slavophiles; is Russia part of Europe or is it an Asian power or perhaps something different with a unique mission? After the dissolution of the Soviet Union Russia's post-Soviet "identity crisis" is an issue that runs as a thread throughout Russian domestic politics and provoked one of the most important debates in post-Soviet Russia. In my study, I take Russia's "dual identity" seriously by employing constructivist insights. In this way it is possible to investigate how the disagreement inside the state structures about the state's identity influences Russian ideational behaviour. I explore how a more pro-western presidential administration has collided with a more anti-western State Duma, particularly during Yeltsin's reign, and how this in turn has affected the actual policy outcome of partial compliance. Furthermore, by examining the domestic salience of an international norm, I aim to show how the degree of cultural match may contribute to a state's level of compliance with an international norm. I have looked into Russian legal practices and public sentiments as a way to evaluate the domestic legitimacy of the international norm. Through this work I have been able to confirm a strong anti-abolitionist norm in Russia, which collides with an international abolitionist norm.

The last point I wish to highlight is what implications my study has for IR theory. Questions like how do internationally codified human right norms make a difference; does the use of international law affect how states or domestic actors behave; and which are the most significant actors are all of increasing interest to IR theorists and policy-makers alike (see for instance Raustiala & Slaughter 2002, Schmitz & Sikkink 2002). At the core of this is of course the questions of why human rights violations occur in the first place or why human rights norms are complied with? Realist, liberal and constructivist theories give different answers to these questions. Given the Russian "identity crisis" that surfaced after the dissolution of the Soviet Union, I saw it fit to choose a constructivist orientation for my thesis. However, after working through my material, I would argue that rational assumptions should not be completely dismissed from the explanation. Rather I suggest that Russia's partial compliance with Protocol No. 6 may be understood as a rational equilibrium within a constructivist framework. By upholding the current position of partial compliance Putin manages to keep the State Duma, the Russian public and the CoE all partially content, an approach that fits into the rational paradigm of instrumental calculations. In this way my findings contribute to the research programme that endeavours to build bridges between rational choice and constructivism. Moreover, I make the proposition that my case may be an example of temporal sequencing, where the constructivist approach explains the underlying interests and identities of those Russian state actors that aim to abolish the death penalty and those that aim to retain it. Rationalism would, however, best explain the current Russian position of partial compliance. Hopefully my findings may contribute to new ways of understanding Russian compliance with international human

rights norms or lack of such by using constructivist insights and theoretical bridge-building.

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