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“The War of the Wor(l)ds”: (De-)Legitimation in Russia-EU Normative Competition”

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Abstract

The paper analyzes two distinct stances Russia has been employing as a reaction to normative de-legitimation stemming from its non-compliance with European democratic norms. The first stance which can be conceptualized as “normative imitation” serves the purpose of legitimizing non-normative practices at home with the help of references to similarly interpreted normative practices in Europe, which are presented as a universal standard of good governance. The paper will closely look at the official rhetoric employed by the Russian authorities prior to and after the adoption of two controversial legislative initiatives: the so-called “Anti-Protest Law” 2012 and the “NGO Law” 2006. The second stance is conceptualized as “normative criticism”, a rhetorical technique of de-legitimizing the non-normative practices of the others by referring to their non-compliance with European standards, which are being referred to as “commonly accepted”, i.e. “normal” practices. Both rhetorical techniques can be viewed as a reactive mechanism towards normative de-legitimation and a means of reducing the negative effects to power legitimacy, caused by internal non-normative practices. Both stances demonstrate a certain level of acceptance of Europe’s power to “shape the conceptions of the normal”, since it is European standards and norms which are referred to as universal normative standards. However, as the paper shows, acceptance of European normative standards as pre-requisites for power legitimacy does not guarantee and does not pre-suppose compliance with these norms.

Power Legitimacy and Normative Compliance

This paper shies away from a prescriptive and legal understanding of legitimacy in favor of a subjective/social view. Hurd (2007:30) argues that “legitimacy refers to the belief by an actor that a rule or institution ought to be obeyed. Such a belief is necessarily normative and subjective [...]”. Thus, legitimacy may be understood as normative compliance, based on consent (in Clark’s (2007: 20) words “consensus”) and acceptance. Clark stressed that “socially, legitimacy functions to prescribe recognition of the relevant actors and also to prescribe appropriate forms of conduct” (Ibid: 18). However, the normative foundations of legitimacy as well as the substance of relevant norms itself is subject to constant contestation and re-negotiation, therefore there can be no static or fixed set of norms which legitimacy derives from and compliance with which it can potentially influence. Against the backdrop of critique of both the empirical and normative aspects of legitimacy, it can be argued that legitimacy can neither be strictly prescriptive, nor strictly normative, since it is in itself a social category. In this sense, legitimacy is, as Koskenniemi argued, an “empty” concept and the discourse on legitimacy is not about normative substance, “but its point is to *avoid* such substance”, which in turn lets “power re-describe itself as authority *on its own terms* [...] and nonetheless to uphold the resemblance of substance” (2003: 367-8, emphasis of the cited author). Taking this into account, it is worth looking at the relationship between legitimacy and power. “Normative power” is now almost conventionally understood as a power which is able to “shape the conceptions of the “normal”¹ (Diez, 2005: 615). This understanding of normative power to a certain degree corresponds with the English School’s concept of “great power legitimacy”. Bull (2002) sees international great power legitimacy as a “right to play a part in determining issues that affect the peace and security of the international system” (2002: 196). Thus, great power legitimacy is closely linked to the ability of exerting influence by means of norm-setting practices; it is also closely connected to the concept of “normative power” as a power to define the content of norms. Power status, as it has been confirmed by previous studies (Bull, 2002), does not derive exclusively from material sources, but is also a social category which requires recognition of other participants of world politics. This is where the concepts of power legitimacy and normative power have been separating their ways in most academic research, since the tradition of defining normative power rarely (if at all) spoke of the necessity of recognition and acknowledgement by others. Legitimacy understood

¹ There have been heated debates about the nature of normative power Europe, which this project does not aim at touching upon. The definition proposed by Diez is adopted due to its flexibility and wide applicability.

as in terms of power derives not only from the formal adherence to practices, which are considered “normal”, but also from the ability to socialize and disseminate norms.

Normative De-Legitimation as a Perceived Threat to Power Legitimacy

Diez (2011) proposes to abandon the concept of “normative power” and substitute it with that of “hegemony”, whereas Haukkala (2009: 1762) argues that the EU can be envisaged as a “regional normative hegemon”, which seeks to transfer its norms and values in order to promote its influence. At the same time, Simao (2011: 85) warns against the increasing challenge that the “outsiders” are posing in reaction to EU’s normative advance and EU’s regional hegemony. If we look at EU’s normative expansion from the point of view of regional hegemony it becomes clear that the promotion of norms and EU’s power to define the content of the norms is closely linked to the inclusion/exclusion problem which entails de-legitimation of those actors which do not comply with the “exclusive” legitimate norm. The EU’s *acqui* is *per se* a closed and exclusive norm-setting mechanism, meaning that only the members of the EU have the right to define and set specific norms, which are further projected into the environment through the conditionality tool. The normative “zero-sum game” between Russia and the EU is not so much a matter of lack of trust, but is a natural consequence of the exclusive norm-setting and norm-projecting principles of EU’s legitimate power. Since a dialogue between Russia and the EU on the normative content of the *acqui* is impossible, the advance of the EU’s norm-setting power is seen as a “one-way street”, which entails de-legitimation of “non-normal” practices exclusively defined within the Community. Accepting that legitimacy is a constituent of power (Clark, 2006: 20), it can be argued that normative de-legitimation entails a threat to power legitimacy and status security and produces the need to ensure the “rhetorical” survival of the self in the face of the de-legitimizing practices of the other. The perceived de-legitimation threat, following the argument of the Copenhagen School, produces norm politicization practices. Norm politicization is understood as reactive mechanisms aimed at countering the normative de-legitimation threat and mending damaged status. Kratochvil’s (2004) take on the balance of threat theory and security dilemma produces further analytical suggestions applicable to very specific foreign policy areas which have potential to link norm politicization practices to policy acts. Thus attitudinal and behavioral changes on norm-related issues will be studied as reactions² to EU’s normative challenge for Russia’s legitimate power status. The analytical model is structured around the “*perception – politicization – reaction*” scheme, where the

² “Reaction” here is a general and neutral term which can encompass negative and positive, defensive and offensive reactions.

perceptions of normative threats to status provoke practices of norm politicization, which in turn enable practical policies designed to restore legitimacy.

The key for the analysis of dynamic change has been recently provided by Schweller (2011) and his assumption about rising great powers as conflicted states with “multiple identities variously adopting roles” and constructing policies depending on the issue and the audience. A systematic examination of the changing rhetoric on normative issues within the official communication aims at distinguishing meaningful fluctuations in Russia’s normative positioning conceptualized in distinct forms: norm-reproduction, criticism and revisionism³. This allows for the identification and documentation of turning points in rhetorical positioning on specific normative issues. The outline of rhetorical dynamics serves as a framework for tracing the dynamic of political behavior. Respective of changes in normative positioning specific reactive policies are traced and sorted by degree of normative compliance - from compliant and cooperative to revisionist (non-compliant). The points of intersection of attitudinal and behavioral changes provide further material for in-depth analyses of individual cases of connections and disconnections in FP normative rhetoric and practice dynamics. Along the intersections of re-iterative, critical and revisionist rhetorical stances with compliant, status-quo and non-compliant political behavior respectively distinct stances will be conceptualized⁴. A sketch of the analytical matrix is provided below:

Table 2. Convergences and Divergences of Rhetorical Positions and Policy Acts on Normative Issues.

Rhetoric/ Policy nexus	Compliant (cooperative)	Status-quo (no corresponding action)	Non-compliant (assertive/revisionist)
Re-iterative – norm reproduction	Norm-Taker	Norm-Faker	-
Critical – critical articulations over the substance of the norm.	Limited Opposition	Norm-Breaker	Norm-Reformer
Revisionist – alternative reading of the norm	Subdued Opposition	Limited Provocation	Norm-Maker

The differentiation of various roles/stances draws somewhat upon Kratochvil’s (2004) role-identity concept. But unlike Kratochvil who attaches primary importance in the distribution of different roles to the external others who act as receivers of a particular normative message,

³ This distinction is strictly analytical.

⁴ These modes roughly correspond to the roles that rising powers can selectively adopt in regard to international order and its’ normative set-up conceptualized by Schweller (2011): Spoilers (“hell-bent on revising the international order”) – Norm-Maker, Supporters (“responsible stakeholders of the Western liberal order”) – Norm-Taker, and Shirkers (“demand greater voice and representation, but shirk their fair share of responsibilities”) – Norm-Breaker.

this study will base its conceptualization of role-identity on the specific attitudes towards norms. This approach can be justified by the social identity theory (SIT) which defines various “identity management strategies” (Welch, Schevchenko, 2010) as reactions to exclusion from the dominant group. Since exclusion is based on the actor’s compliance or non-compliance with specific normative criteria, it is the attitude to the norm which forms the base for the definition of a specific role/stance and not the “others” and the self’s identity positioning towards them. SIT views role-identity as relatively unstable which contradicts the constructivist thesis about the relatively fixed character of identity. In order to avoid confusion we shall concentrate on roles as a mechanism of social adaptation and not use the much debated identity concept. Thus, we shall adopt a different take on role-identities as linked to “norms”, and not “others”, – specifically the dominant norms promoted by normative power EU.

Table 3. Conceptualization of Distinct Normative Stances

Norm-Taker	reproduction of the legitimate norm/ compliance
Norm-Breaker	criticism of the substance of the norm/ no corresponding action
Norm-Faker	reproduction of the set norm/ no corresponding action
Norm-Maker	proposal of an alternative reading of the norm/ non-compliance

Management Strategies: Imitation and Normative Criticism as “Norm-Faking” Techniques

This paper analyzes two distinct stances, which Russia has been employing in regard to the threat to normative de-legitimation. The first stance can be conceptualized as “normative imitation”: it serves the purpose of legitimizing non-normative practices at home with the help of references to normative practices in Europe, which are presented as a universal standard of good governance. The paper will closely look at the official rhetoric employed by the Russian authorities prior to and after the adoption of two controversial legislative initiatives: the amendments to the Federal Law on “Assemblies, Rallies, Street Processions and Pickets” adopted by the State Duma in June, 2012 and the amendments to the “Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation” (shortly known as the “NGO Law”) adopted by the State Duma in December, 2005. The second stance is conceptualized as “normative criticism”, a rhetorical technique of de-legitimizing the non-normative practices of the others by referring to their non-compliance with European standards, which are being referred to as “commonly accepted”, i.e. “normal” practices.

Both rhetorical techniques can be viewed as a reactive mechanism towards normative delegitimation and a means of reducing the negative effects to great power legitimacy, caused by internal non-normative practices. Both stances demonstrate a certain level of acceptance of Europe's power to "shape the conceptions of the normal", since it is European standards and norms which are referred to as universal normative standards. However, as the paper shows, acceptance of European normative standards as pre-requisites for power legitimacy does not guarantee and does not pre-suppose compliance with these norms.

Self Legitimation through Imitation: "Best European Standards"

Russia's "Anti-Protest Law" 2012⁵

The "March of Millions" from May 6, 2012 in Moscow has been marked by clashes with riot police, thus breaking the tradition of peaceful protests which sparked after the parliamentary elections in December, 2011, and is commonly viewed as a tragic climax of the anti-government protest movement. More importantly, it is argued, that the March itself, the subsequent "popular promenade" and the "Occupy Abai" camp⁶ triggered an intensive "reactive" legislative process in the Russian Duma, the "Anti-Protest Law", NGO "Foreign Agents" Law, "Internet Censorship Law" and finally the "Slander Law" being the most outstanding products of the spring-summer 2012 parliamentary activity.

On May 10, while the protesters were still camping in Chistye Prudy, Duma deputy from the ruling "United Russia" party, Alexander Sidyakin, proposed amendments to the Federal law on rallies to the State Duma, arguing that the fines imposed on organizers of public events by the existing legislation were too low. He compared the existing fines to fines for similar

⁵ The amendments to the Federal Law on "assemblies, rallies, street processions and pickets" and to the Code of Administrative Offences, nicknamed "Anti-Protest Law", were adopted by Russia's State Duma on June 5, 2012, the bill was approved by the Federation Council (upper house of the Russian parliament) on June 6, signed by President Putin on June 8 and published in Rossiyskaya Gazeta (entering into force) the same day, thus becoming one of the most hastily adopted laws in Russian legislative history. The amendments impose stricter penalties for organizers of public rallies (the maximum fines for individuals have been raised from 5000 RUB to 300000 RUB and from 50000 RUB to 600000 RUB for officials, the maximum fine of 1 Mio.RUB for legal persons has not been changed), they introduce mandatory community service for offenders, a ban on masks at public rallies and imposes fines on unsanctioned public assemblies.

⁶ Ideologically the Russian "Occupy Abai" camp did not have anything to do with the international anti-capitalist "Occupy" movement. After massive clashes between police and protesters during the (first) "March of Millions" on May 6, some opposition leaders have called upon people to continue peaceful protest on the day of Putin's presidential inauguration (May 7). Small groups of people, chased by the police, have been spontaneously gathering all around the centre of Moscow. The so-called "narodniye gulianiya" ("popular promenade") ended up with massive sleep-over on Staraya Ploshad square on the night from May 7 to May 8. Once the square had been cleared by the police, people continued moving around the centre until the camp ended up on Chistye Prudy Boulevard on May 9. The "Occupy Abai" camp (Abai Qunanbaiuli was a Kazakh poet and philosopher, his monument became a meeting point for the "campers") has been cleared by court decree fourteen days afterwards on May 16 (Chronicles of the "March of Millions", "popular promenade" and "Occupy Abai" camp here: <http://www.novayagazeta.ru/news/56559.html>).

offenses in Europe (where, according to his words, organizers had to pay up to “100000 EUR for violating the provisions of the laws on rallies”) and concluded that a fine of 2000 RUB was “no fine at all” (Gazeta.ru, 10.05.2012). From there on the reference to European legislation became the main tool of legitimizing the law in the eyes of the public and the international community. The argument was quickly taken up by journalists, party deputies, state officials, human rights activists and protesters alike, regardless of their actual standing on the proposed regulation; it appeared almost in all public debates and official statements on the new initiative and dominated the public discourse on the new initiative.

In the wake of the discussions, when the probability of the law’s potential entry into force was still perceived skeptically, information portal RIA Novosti⁷ prepared an information leaflet containing a table which compared sanctions for violating demonstration laws in the USA, Great Britain, Germany, France, Italy, Sweden, Switzerland and Japan to those in Russia (RIA Novosti, 14.05.2012). Unfortunately, the table did not provide for any references, but it did give off a strong impression, that the Russian legislation in its “unamended” state was way more liberal than the analogous Western/European regulations. According to the RIA comparison table the fine for “spontaneous gatherings, which had been planned beforehand” in Germany is five times higher than the average wage (15000 EUR to approx. 3000 EUR respectively), a similar ratio is true for France, where an additional fine for “disguising the face at a public gathering” is eighteen times the average wage (45000 EUR to 2500 EUR) (Ibid.). Russian fines clearly looked rather meek in comparison: 1500-2500 RUB fine compared to the average wage of 26 614 RUB (Ibid.).

In his parliamentary speech in favor of the bill, Sidyakin once again stressed the compatibility of the proposed regulations with those existing in Europe. He used the German case as an example, stressing that the fine for violating the law on rallies in Germany constitutes 500000 RUB (approx. 12500 EUR), and once again reminded that Russia had “one of the lowest fine scales for such offenses” (Sidyakin, 2012a)⁸.

⁷ RIA (Rossiyskoe Informatsionnoe Agentstvo) – Russian Information Agency.

⁸ A comparative analysis of, e.g. German legislation reveals the truth of these statements. The German Public Assemblies Act (VersG, §§ 21 – 28) imposes strict sanctions on organizers, “who lead the assembly or street procession in a way, which substantially differs in its form from that previously declared by the organizer” (the penalty for this infringement is six-month imprisonment or a fine of 180 daily allowances). According to §29, an administrative offense is committed by any person who “participates in an assembly or street procession, which is legally prohibited”, “does not immediately leave after the disbandment of the assembly or street procession by a responsible authority”, or “as the organizer of an assembly or a street procession denies access or does not provide enough space for the police officers” (the fine for such acts ranges from 1000 DM to 5000 DM). This roughly matches the fines of 30000 RUB (approx. 750 EUR) to 100000 RUB (approx. 2500 EUR), which deputy Sidyakin proposed to impose on organizers of public rallies for violation of the assembly procedure (Sidyakin,

The initiative of the ruling party produced a wide public debate. An Internet-poll on the bill had been opened on the website of “United Russia” (<http://golos.er.ru/#44>), following Putin’s electoral call for “direct democracy”, which in his view was supposed to include elements of public Internet-voting. The poll was closed showing relative support for the initiative (46,22% in favor and 46,07 – against with 7,71% abstaining). A number of bloggers and some opposition leaders claimed that the results of the poll had been rigged by the ruling party in order to fake public support. The poll had been quickly forgotten and public support for the initiative has never been used by the advocates or opponents as an argument in favor or against the bill. References to European legislation, on the other hand, have proven to be a popular, if not the main legitimating argument used by both, advocates and opponents of the initiative. Ilya Yashin, the leader of an opposition movement “Solidarnost” (Solidarity), in an emotional radio debate with A. Sidyakin jumped onto the bandwagon of referencing European experience, but gave it a different twist:

“Great Britain: average wage – 150,000 Rubles, fine – up to 20,000 Rubles, about one seventh of an average citizen’s monthly wage. [...] Russia: average wage – 21,700 Rubles, fine – up to 300,000 Rubles. [...] The fine equals 14 monthly wages of an average citizen. Now I have a question to Mr. Sidyakin: are you out of your mind [...]?” (Radio Interview: “Radicalization of the authorities and opposition: a road that leads nowhere”, 2012)

One can notice that the sources used by different actors obviously differed greatly in what concerned the exact sum of the fines and the average wages in various European countries, as well as in Russia.

Mikhail Fedotov, Chairman of the Presidential Council for Civil Society and Human Rights, had openly appealed to the President urging him to veto the bill. However, at a meeting which took place on May 23 Putin first gave the floor to the members of the ruling party, who once again referred to “international experience”, and then stressed himself that he would not “interfere into parliamentary procedures” (Kommersant-Online, 23.05.2012). Dismissing the rumor about Putin’s intention to veto the bill, Putin’s Spokesman Dmitry Peskov insisted, that the President would act against it if and only if the document contradicted “*universally accepted European standards*” (Peskov, 2012a). Having signed the bill on June 8 Putin argued at the meeting on improving the judicial system that he had compared the bill with “similar legislative acts of other European countries” (Germany, France, Italy, Spain and Great Britain) and concluded that the Russian law did “not contain a single provision that [was] harsher than the measures stipulated in similar laws” of the above-mentioned European

2012a). However, as it is being argued by international and internal critics, it is not the norm itself which appears undemocratic, but rather its potential misuse by the authorities.

states (Putin, 2012). The official position of the authorities was echoed by some political experts and policy researchers. Thus, political expert, CEO of the Centre for Political Information, Alexander Mukhin, also mentioned that the law was “not only not stricter, but to a certain degree much less suppressive than its Western analogues” (RIA Novosti, 08.06.2012).

The argument has not only been used in order to legitimize the draft in the eyes of the domestic public, but has also been employed in the foreign policy discourse with European counterparts. In response to an article “Duma Imposes Protest Crackdown” by Charles Clover published in The Financial Times and criticizing the “draconian” Russian Anti-protest Law (Clover, 2012) Dmitry Peskov, Spokesman to Vladimir Putin, argued that Russia is “striving for legislation that is comparable to the regulation of political protests in the West and that is, indeed, inspired by the European example” (Peskov, 2012b).

The issues of human rights and democracy were kept off the agenda of the Russia-EU Summit in St.-Petersburg. However, in response to a journalist’s question Putin stated: “The only thing we have to do is to introduce such provisions of European law into Russian legislation, provisions which are used in many European countries, on regulating the activities of this kind. These regulations are absolutely democratic, but at the same time they establish a certain procedure for holding public events” (Putin, Van Rampoy, Barroso, Joint News Conference, 2012). On June 5 after the “business as usual” Russia-EU summit, the Alliance of Liberals and Democrats for Europe (ALDE) issued a press-release criticizing EU’s lack of engagement on the issue of democracy and rule of law in Russia. MEP Kristina Ojuland, ALDE Group Spokesperson on Russia, noted that “the new legislative proposal that calls for excessive sanctions against all protesters [...] [is] a clear sign that the Kremlin does not take into account the large scale internal and external criticism over the lack of democracy and the rule of law in Russia” (ALDE Press Release, 2012a). On June 12, – the day of the so-called (second) “March of Millions”, – four days after the President signed the amendments to the Federal Law on “assemblies, rallies, street processions and pickets”, a statement by the spokesperson of EU High Representative Catherine Ashton has been issued. The primary message was to express concern “about the steps taken recently in Russia to limit the scope for public rallies” (Statement by the spokesperson of High Representative Catherine Ashton on Right of Assembly in Russia, 12.06.2012). Ironically, Ashton called upon the Russian government to “engage with European institutions to ensure that the new law on public rallies *meets European standards, as [was] the expressed intention of President Putin*”. The irony of

the statement lies in the fact that the EU High Representative referred to the argument Putin used *before* having signed the bill. By signing it he had indirectly confirmed that it did indeed meet European standards.

The same day MEP Werner Schulz, Vice-Chair of the Delegation to the EU-Russia Parliamentary Cooperation Committee, issued a statement “Opposition resists the Tsar in Kremlin”, where he labeled the restriction of right to demonstration as “absurd” (Schulz, 2012b). He addressed the European leaders with the words: “who in Western Europe still has any naïve doubts about Putin’s motives, should better wake up now” and announced that “[Putin’s] promises for more democracy in Russia, given only a couple of weeks before, seem as unconvincing as the crocodile tears shed in the process”. Prior to that he declared, that “Russia [did] not appear as a strategic partner for the EU. There are no common interests and values both partners share” (Schulz, 2012a), a statement which has been thereafter echoed by MEP Alexander Graf Lambsdorff who noted that the EU cannot call Russia a strategic partner since such “double standards in Foreign policy undermine” Europe’s “credibility” (ALDE Press Release, 2012b). Kristina Ojuland explicitly stated that the amendments to the law on public rallies were “not in line with European standards and international practice as authorities claim[ed]” (Ibid). The Russian Ministry of Foreign Affairs, however, has not issued any official statement in response to European official and unofficial concerns.

Russia’s “NGO Law” 2006⁹

Following the extraordinary legislative activity of the Russian State Duma in spring and summer 2012, Oleg Kashin noticed a “peculiar change” in Russian official rhetoric: “for many years [Russian officials] have claimed that Russia had its own special path and mechanic copying of Western standards was out of the question. [...] And now something has changed. Its’ every step the Russian authority is supporting with extensive references to foreign experience” (Kashin, 2012). Kashin’s conclusion, although interesting for the analysis of internal perception of the developments within Russia’s official normative discourse, is not exactly correct, since “extensive references to foreign experience” have been a rather popular

⁹ The law “On Introducing Amendments to Certain Legislative Acts of the Russian Federation” was introduced to the Russian Parliament in November 2005, adopted by the State Duma on December 23, 2005, signed by the President on January 10, 2006, officially published on January 18, 2006 and entered into force on April 16, 2006. The new legislation introduced additional registration procedures for non-commercial organizations, banned subsidiaries of international NGOs and required them to re-register as local public organizations, introduced a prohibition for foreign persons and stateless persons to found, join or participate in the work of NGOs, provided the registration body of the Ministry of Justice with significant control over the NGOs, etc. and has been widely perceived as a crackdown on human rights non-state organizations.

instrument of legitimizing legislation that appeared undemocratic in the eyes of Russia's counterparts. Another example of this "imitative" legitimation strategy could be demonstrated by the rhetoric employed to justify the controversial "NGO Law" adopted in 2006, six years prior to the "Foreign Agents NGO Law" 2012¹⁰ which imposed additional restrictions on the activities of non-state organizations active in Russia.

After the law went through the first reading in the State Duma on November 23, 2005 and arguably in response to a wave of international and internal criticism a delegation headed by the Russian Justice Minister Yury Chaika was sent to the Council of Europe in order to receive a written expert legal opinion on the legislation draft¹¹. Later at the meeting between Putin and the members of Government on December 5, 2005 Chaika concluded, that according to the CoE experts "registration of non-commercial and non-governmental organizations conform[ed] to European standards" (Extract from Meeting with the Government Cabinet (on the Draft Law on Changes to the Laws on Public and Non-Profit Organizations, 2005).

In an interview from December 2005 Foreign Minister Sergey Lavrov stated that the Foreign Ministry had analyzed the analogous legislation of third countries, specifically, those that are referred to as countries of "developed democracy" and concluded that the Russian approach did not at all deviate from the norms applied in those countries (Foreign Ministry, 2005b). This statement echoed earlier words of the Ministry's Spokesman, Mikhail Kamynin, who stressed, that stricter governmental control over NGOs "is considered normal" and concluded that a "comparative analysis show[ed] that the law adopted by the State Duma [did] not go beyond the international standards of regulation of NGO activities" (Foreign Ministry, 2005a). In an open letter to representatives of human rights organizations from January 18, 2006 Lavrov referred to the conclusions of the CoE experts and stressed, that "the necessity of registration of NGOs conforms to European standards", and that "financial control over their activities is altogether *considered a norm for European practice*" (Russian Foreign Ministry, 2006a). He referred to the legislation of France and Finland, specifically, and concluded that restrictive provisions for NGO registration in Russia coincided with those of "developed

¹⁰ Notably, in 2012 the new "NGO Law" which requires non-state organizations working in Russia and receiving international funding to officially register themselves as "foreign agents" has been presented as being inspired by the USA Foreign Agents Registration Act (FARA) enacted in 1938.

¹¹ In an interview for "Izvestiya" newspaper on December 26, 2005 Lavrov stated that the delegation to the Council of Europe was sent by the Justice Ministry. Earlier, however, at the meeting with the members of government on December 5, 2005 Putin mentioned that he himself ordered the Justice Minister to consult with European colleagues. He later confirmed this at a press-conference following negotiations with Angela Merkel in January, 2006.

democracies” (Ibid). Later at the Russia-EU Troika Session in Vienna on February 15 he once again stressed that those sections of the law, which provoked the most critique from Russia’s Western counterparts and domestic human rights NGOs “[did] not differ, but [had] in fact been drawn upon the legislation of countries which it is customary to call developed democracies” (Russian Foreign Ministry, 2006b). Lavrov also noted that some provisions of the Russian law were “less tough as regards registration than in some other countries” (Ibid).

Confronted with a question concerning the “NGO Law” at a press-conference with German Chancellor, Angela Merkel, in January, 2006 Putin dismissed criticism by once again referring to the expert opinion of the Council of Europe, which report, according to his words, lay the foundation for the amendments that were later considered by the State Duma (Press Conference Following Talks with the Federal Chancellor of Germany, Angela Merkel, 2005).

Other’s Delegitimation through Normative Criticism: The “Bad” Europeans

Latvia and Estonia as EU Accession Candidates (2004)

It is being argued that critical articulations directed at Baltic States became “common practice” among Russian political and intellectual elites already starting in 1992 - 1993 (Morozov, 2009: 383; Zavelyov, 2008: 276). Morozov argued that the intensity of critical statements did not remain stable and developed in different phases. In 1998-1999 the “Baltic problem” became a central issue of the Russian foreign policy discourse (Ibid: 384), in 2002-2003 following a relative improvement in Russia’s relations with the West critical articulations became less prominent (Ibid: 398). However with the deterioration of relations in 2004-2007 criticism has once again become the main language of communication with Latvia and Estonia (Ibid: 409), spiking in 2007 with the Russian-Estonian conflict over the Second World War memorial in Tallinn (Makarychev, 2008: 8). The main themes of Russia’s critical articulations traditionally revolved around: violations of human rights of the Russian-speaking minorities in Latvia and Estonia, discriminatory naturalization laws and glorification of Nazis in these countries.

The pre-accession year of 2004, has proven to be exceptionally rich on critical statements, insistently-voiced frustrations and diplomatic stand-offs between Russian, on the one side, and Estonian and Latvian authorities, - on the other. Throughout the year the Russian Ministry of Foreign Affairs had been voicing strong criticism on the following topical issues: the

amendments to the Estonian law “On foreigners”¹², the amendments to the Latvian law “On education”¹³, glorification of SS legions in Latvia and Estonia¹⁴, Latvia’s suppression of civil protests organized by the “Russian School Defense Staff” against the new Education law¹⁵, the amendments to the Latvian Constitution that should have allowed for citizens of the EU to take part in municipal elections and the work of local administration¹⁶ and the desecration of Soviet soldiers’ graves in Latvia¹⁷. Russia’s representatives have been bringing up the question of Russian minority rights discrimination at the United Nations Human Rights Council, Organization for Security and Cooperation in Europe (OSCE), Council of Europe (CoE), EU and at bilateral meetings with EU Member-States’ officials. Vocal criticism was accompanied by a series of reciprocal diplomatic expulsions based on suspicions of espionage: in March two Russian diplomats were expelled from Estonia, in response to which Russia expelled two Estonian diplomats from Moscow, later in April Latvia had expelled a Russian embassy official, which was followed by the expulsion of a Latvian diplomat from Russia. Although criticism and accusations followed the traditional thematic patterns listed above, a new element has appeared in Russia’s official critical remarks starting in 2003 – 2004: insistent references to the Baltic States’ status as candidates for accession into the EU, as well as direct and indirect articulations on the normative role of the European Union in “civilizing” its soon-to-be members.

The day before the visit of Swedish Foreign Minister Laila Freivalds to Russia on March 1, 2004 the official representative of the Russian Foreign Ministry noted that Moscow had been “puzzled” by Laila Freivald’s speech in Washington D.C., where she “called upon the EU and NATO to pose a united front against [...] Russia’s supposedly implemented “policy of suppression” towards neighboring countries”, meaning the Baltic States (Russian Foreign Ministry, 2004c). The same day an article written by Russia’s Foreign Minister Igor Ivanov

¹² According to the Russian Foreign Ministry Spokesman the law deprived retired Russian servicemen and members of their families of the right of obtaining permanent residence permits (Russian Foreign Ministry, 2004a).

¹³ The amendments provided that “acquisition of the study curriculum in the official language [should] be effected according to the proportion of three fifths of the total study load during the school year in schools implementing the national minority education programs” (Ministry of Foreign Affairs of the Republic of Latvia, 2004). That meant that the proportion of classes taught at Russian minorities high schools in the Russian and Latvian languages should have been 40% to 60%, respectively (Russian Foreign Ministry, 2004b).

¹⁴ Russian Foreign Ministry, 2004h, Russian Foreign Ministry, 2004i.

¹⁵ Russian Foreign Ministry, 2004j. Russian Foreign Ministry 2004k, Russian Foreign Ministry 2004l.

¹⁶ The frustration of Russian diplomats was not caused by the regulation itself, but by the fact that Russian-speaking permanent residents possessing the status as “non-citizens” were deprived of the right of participating in local elections, whereas “foreigners” (EU-citizens) were granted this right according to the new law (Russian Foreign Ministry, 2004f).

¹⁷ Russian Foreign Ministry, 2004g.

with the most unambiguous title “European Standards Must Be Uniform for All” was published in a Swedish newspaper. Ivanov stressed that Russia was “legitimately worried” about the situation around its compatriots living in Latvia and expressed deep regret that despite having been assured that once “Latvia would join the EU and NATO, it would all work out by itself”, Russia found it hard to believe, since “there [were] only several months left before entry and no positive signals from Riga [were] forthcoming” (Ivanov, 2004a). Moreover, in the aftermath of the visit the Foreign Ministry issued a press-release, where it specifically referred to the normative role of the European Union: “by accepting these countries as its members the EU takes upon itself a great part of responsibility for the humanitarian situation emerging there.” (Ivanov, 2004b)

Russia has also been explicitly addressing its concerns to the EU. At the talks with the Troika of the European Union (Ireland, the Netherlands, the CEC, the Secretary General of the Council of the EU/High Representative for the Common Foreign and Security Policy) on April 14, 2004 Foreign Minister Sergey Lavrov pointed out that “some counties” aspiring for membership had not ratified the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities and did not “implement the standards provided for in EU Treaties”, specifically the Copenhagen Criteria (Russian Foreign Ministry, 2004e). Expressing concern about the forthcoming amendments to the Latvian constitution Russia has been calling upon the EU to “convince its new member of the counterproductive character of the legislative act being planned for adoption, which will draw a new dividing line not only within that country, but also between the Latvian "noncitizens" and the citizens of the EU member countries” (Russian Foreign Ministry, 2004f).

The rhetoric of normative criticism has not only been employed on the official diplomatic level, but President Putin has also been touching upon the topic with his European counterparts. At the Russia-EU Summit in May, 2004 he addressed the problem of Russian-speaking minorities in the Baltic States and expressed his conviction, that “the wave connected to enlargement will subside and the new Member States of the European Union will have to integrate into the common EU framework in the sphere of minority rights protection” (Press Conference following the Russia-European Union Summit, 21.05.2004). At a meeting with Finnish President Tarja Halonen in December, 2004 the issue has once again been risen by the journalists. Despite the fact that Halonen stressed that the “EU [had] been closely monitoring compliance with human rights norms in all Member States and had concluded that the situation in these countries conforms to international norms, standards”,

Putin referred to the critique voiced by the representatives of the European Parliament, UN, OSCE and announced that “such problems still existed” and Russia “agreed” with the concerns of EU and international representatives (Press Conference Following Russian-Finnish Negotiations, 14.12.2004).

The reference to the EU and to the Baltic State’s candidate status appeared not only in bilateral statements directed at the representatives of Latvia and Estonia, EU as a collective body and Member-States’ officials, but has become salient in the broader foreign policy discourse. Apart from the reference towards the EU’s role as a norm-setter and a kind of normative authority for the Baltic States the rhetoric of the 2004 human rights criticism explicitly and saliently employed references to “European standards”, “European values” and “European norms”, which were represented as a sort of *étalon de mesure* of democratic development, that all “civilized” states had to conform to:

“We have repeatedly heard that not all EU-Members have ratified the Framework Convention of the Council of Europe, and therefore one should not demand its ratification from Latvia. [...] But Latvia is a state which openly and clearly announced its choice for democratic development, which committed itself to the highest European and international values. Why can we not demand that it be guided by the best European examples of compliance with fundamental human rights and freedoms?” (Alekseyev, Statement to the OSCE Permanent Council, 12.02.2004)

“We are concerned with the humanitarian situation emerging in Latvia and Estonia – countries which will soon become members of the European Union. EU membership should presuppose a relatively high level of compliance with internationally accepted standards in the area of human rights, which are moreover viewed as common European values in the EU” (Fedorov, Statement at the UN session, 17.03.2004).

Concluding Remarks

In an interview following the adoption and the entry into force of the “Anti-Protest Law” 2012 the initiator of the bill, Alexander Sidyakin, once again argued that the amendments presented an “exact copy of the French or British legislation” (Sidyakin, 2012b). In response to the journalist’s sarcastic question “Why do you keep referring to copies? Russia has its own special path, doesn’t it?”, the Parliamentary retorted: “We have our own path, that’s why *we take the best* from various legislations and add something of our own” (Ibid).

The imitation theme has recently become rather prominent in the analysis of Russia’s political development. In 2007 Dmitry Furman “Apologia of Imitation” (Furman, 2012) claimed that imitation appears when one *does not comply* with the norm which one *acknowledges*: “a

“total” system of imitation of the norms of a jural democratic society also means a “total” acceptance of these norms. Acceptance neither presupposes appreciation for the norms, nor a deep inner necessity to follow them. It just means that there are no other norms” (Ibid).

As for normative criticism, Ambrosio labeled this rhetorical strategy as “*tu quoque*” (Latin for “you, too”) and described it as “an ad hominem legal defense in which the accused does not defend him/herself on the basis of fact or law, but rather points the finger at the actions of the accuser, claiming that they, too, have committed the same offense and therefore have no right to accuse the other” (Ambrosio, 2009: 85). Despite the fact that demagogical “*tu quoque*” or “whataboutism”¹⁸ tactics are being commonly and widely used by Russian authorities in order to deflect external criticism of domestic un- or anti-democratic policies, Russia’s critical standoff towards Latvia and Estonia in 2004 and the intensity of its offensive claims show that the actual picture is more complicated. Ambrosio argued that the ultimate goal of this defensive tool was “undermining the legitimacy of external criticism” (2009: 86), but the fact that Russia in its normative “mentoring” of Estonia and Latvia persistently and frequently referred to the EU as a model and democratic standard which the aspiring members had to conform to, suggests These articulations show that the EU has to a certain degree been presented as a legitimate normative force in the Russian official rhetoric. Makarychev (2008: 10) noted that the EU has been viewed as the “norm-setter”, which “false” Europe failed to comply with. The author’s analysis drew from the rhetoric of the 2007-2008 Russian-Estonian conflict over the Second World War memorial in Tallinn, but Russian criticism of Estonia and Latvia in the pre-accession period demonstrates the same normative EU-referential pattern.

Thus, it can be argued that the Russian authorities are aware of the dominance of the Western/European interpretations of normativity in the definition of power legitimacy, but not being able either to confront the normative hegemon with an alternative set of norms and legitimate standards, thus entering a process of re-negotiation and re-definition of the normative substance of legitimacy, or to comply with the normative standards imposed by the accepted hegemon, employ defensive and offensive rhetorical techniques which are designed to reduce the potential damage of non-normative practices to power legitimacy without ensuring compliance with the norms themselves. “European standards” which Russia repeatedly refers to as “universal” and “commonly accepted”, but fails to comprehensively

¹⁸ Neil Buckley in an FT blog described the phenomenon as a “Communist-era tactic of deflecting external criticism [...] by pointing [...] at something allegedly similar in the critic’s own country” (“The Return of Whataboutism” FT Blogs, June 11, 2012 <http://blogs.ft.com/the-world/2012/06/the-return-of-whataboutism/#axzz21jDfPosl>)

define are viewed as an effective tool of legitimating one's own policies and de-legitimizing the policies of the others, when Russia sees them as not conforming to those very standards referenced. This suggests, on the one hand, that Russia does share the vision, that power legitimacy derives from normative compliance to certain "universally accepted" standards, rules and principles, but, on the other hand, it also shows how Russia attempts to employ the language of legitimacy for the purpose of justifying non-normative practices, while avoiding compliance. It has been recently noted that imitative and "finger-pointing" strategies could not have worked for the outside audience, but they did seem to have turned into a rather successful mobilization strategy within the country.

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