‘International Sources of Domestic Policy: Europe and Latvia in the context of minority rights.’

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Since the dissolution of the Soviet Union, Latvia has consistently aimed towards European integration. Specifically, Latvia needed to co-operate with the OSCE, EU and the Council of Europe. Latvia’s relationship with these organisations has been significantly affected by the legacies of its Soviet past. One such legacy is Latvia’s considerable minority communities. Early citizenship and language laws placed the state firmly in the hands of the titular population, while politically alienating the largely Russian-speaking minority community. In response, regional organisations became concerned over the potential for conflict and the overall democratic nature of domestic governance. Given this, successive Latvian governments have had to reconsider these policies as a result of regional pressure. This paper will examine how these organisations have attempted to implement international norms and agreements within the body of Latvian citizenship and language legislation. Such an examination highlights the role of ‘epistemic communities’ in policy implementation.

This paper will concentrate on the use of knowledge-based experts in the European organisations mentioned as well as Latvian public policy. In order to fulfil this task, the paper will need to address several questions. First, on what basis were the OSCE, EU and Council of Europe able to affect domestic policy? The paper will pay special attention to the European integration project carried out by successive Latvian governments. In addition, the paper will focus on the importance of EU membership and Latvia’s relationship with all three organisations. Second, what methods did the organisations use to affect change? Special attention is given to the OSCE’s High Commissioner on National Minorities, the European Commission and the Council of Europe’s Parliamentary Assembly. Finally, how effective were the European organisations in their attempts to bring about change? Before we answer these questions, let us first turn to a discussion of epistemic communities and international organisations.

Institutions and Domestic Policy

The dialogue of international relations theory has been dominated by the agent-structure problem. Since the 1980’s, many authors have attempted to move beyond this conception of international politics towards a more holistic approach. Of primary importance is Alexander Wendt’s discussion in International Organization

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1 Research for this paper was done in Riga, Latvia during the 2002-2003 academic year when the author worked as a Fulbright Scholar. My appreciation goes to Daunis Auers in the Eurofaculty at the University of Latvia’s Department of Political Science as well as Janis Iksitens in the Department of Political Science at Vidižene University College.

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where he challenges structural theories of international relations.\(^3\) He argues that the agent-structure problem is based on two assumptions about social life.\(^4\) He states a) ‘human beings and their organisations are purposeful actors whose actions help reproduce or transform society in which they live;’ and b) ‘society consists of social relationships, which structure the interactions between these purposeful actors.’ From this, we can see that both agency and structure matter in international politics.

The inclusion of both agency and structure as co-determinants of international politics was incorporated into structuration theory. This alternative approach ‘conceptualises agents and structures as mutually constituted or co-determined entities.’\(^5\) In the context of this study, we can assume that international institutions are products of state-interests. However, we may also assume that once institutions are created, they will in turn affect states. Not only will institutions affect a state’s international relations, but also its domestic politics. Those who study European institutions readily acknowledge the give-and-take relationship between states and institutions. However, this has not always been the case in international relations literature.

If this is so, why do states allow institutions to impair their sovereignty? The answer to this question is not new by any means. As many scholars have pointed out, the purpose of international co-operation is to reduce collective ‘bads’.\(^6\) Co-operation has been increasingly governed by what has come to be known as ‘epistemic communities’.\(^7\) Shortly defined, epistemic communities are simply knowledge-based communities.\(^8\) James Sebenius offers a more in-depth definition.\(^9\) He says that an epistemic community is a “special kind of de facto natural coalition of ‘believers’ whose main interest lies not in the material sphere, but instead in fostering the adoption of the community’s policy project.”\(^10\) Sebenius was the first to apply this concept to the European Union, although briefly.\(^11\) We can see that in many issue-areas of the EU, there is a ‘community’ that has focused on a ‘preferred policy choice’. Such preferred policies can be seen, for example, in the Copenhagen Criteria. If epistemic communities do exist within European institutions, we should see policy alternatives to (prospective) member-state governments if ‘these communities are successful in obtaining and retaining bureaucratic power domestically.’\(^12\) In the case of European integration, we have seen epistemic communities at work with domestic

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\(^4\) Ibid, p.337.

\(^10\) Ibid, p.325.
\(^11\) Ibid, p.333.
\(^12\) Haas 1989, p.402.
support as Central and East European electorates have continually returned pro-integration governments. In the case of Latvia, government support was consistent with the predominance of centre-right governments led by Latvia’s Way’s control of the Foreign Ministry.

Although the theoretical role of institutions may seem straightforward, often the political realities are somewhat different. In this way, we need to ask why specifically Latvia was willing to allow international institutions to shape its domestic policy. In an earlier study of international institutions and Latvia, Mark Jubulis offers three such reasons. First, Latvian politicians and much of the titular populace see European integration, and thus membership, as the ultimate security guarantee. These security guarantees are particularly meaningful considering the Latvian national psyche, the result of which is a product of a history of relative subjugation. This has even led to a concentration on NATO to the detriment of EU ESDP (European Security and Defence Policy). Second, Russian accusations of human rights abuses have put Latvian politicians on the defensive. In fact, the Russian Government initially favoured EU membership since Moscow perceived that the integration process would require Latvia to radically change their citizenship and language laws. Finally, Jubulis argues that Latvia’s Soviet past meant that the government did not have experience in dealing with human rights issues. This, in turn, led Latvia to require greater expert assistance.

Haas argues that ‘without the help of experts, they risk making choices that not only ignore the interlinkages with other issues but also highly discount the uncertain future, with the result that a policy choice made now might jeopardise future choices and threaten future generations.’ Compliance through policy implementation is for the move to rejoin Europe. How do epistemic communities work? Put simply, they work through the transfer of ideas. Through international learning, we begin to see the convergence of state policies. Learning happens in two ways: persuasion and policy pre-emption. Persuasion occurs as networks of policy-experts rely on established international standards to pressure actors within the foreign and related ministries to change state policy. Policy pre-emption occurs when the epistemic community usurps decision-making authority and promotes policies consistent with its own perspective. In relation to European integration, I argue that epistemic communities have largely worked through persuasion while in the future we will see policy pre-emption, as traditional domestic policies will be governed by decisions made in Brussels.

One of the most important matters for post-socialist Europe has been the management of majority-minority relationships. As democratisation is as much about redefining the nation as the character of governance, the protection of minorities has been an important issue of conflict prevention. Clearly, Europe’s institutions have used knowledge-based experts to encourage policy convergence. Latvia’s experiences

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15 For example, see *Izvestia* 2 July 1992 and *Sevodnya* 13 July 1994.
17 Haas 1989.
since 1991 can illuminate the relationship between institutions and states by concentrating on minority protection. In the three subsequent sections, I concentrate on this relationship. First, we will see the policy preferences of European institutions. Second, we will see these epistemic communities at work. The final section will focus on how effective the European institutions have been in persuading policy convergence.

Designing conditionality
Nearly from the beginning, the Baltic states had shown their desire for further integration with the West. The most important organisations would be those that would ensure Baltic independence in the future such as NATO, EU, and the Council of Europe. However, one organisation in particular became the primary facilitator for greater European integration: the Organisation for Security and Co-operation (OSCE). The OSCE’s importance lies in the fact that it became the ‘eyes and ears’ of other regional organisations, not to mention the United Nations.

Organisation for Security and Co-operation in Europe
As the Soviet Union began to show stress fractures, the Conference on Security and Co-operation in Europe (CSCE, forerunner of the OSCE) gathered in Paris in November 1990 to mark the end of the Cold War. Even before the breakdown of the Soviet Union, the Baltic states were already a source of discussion. In fact, the Baltic states had formally applied to the OSCE three times previously without success. As expected, opposition to the Baltic states’ participation came from Moscow. Little would change until the 1991 August Coup and the restoration of Baltic independence. Soon afterwards, the Baltic states were official members of the OSCE. OSCE involvement in the Baltic states was immediate. One of the dominant issues of Baltic-Russian relations was troop withdrawal and borders. Initially, the new Russian Federation was unwilling to work within the framework of the OSCE, claiming that it was a bilateral problem. However, given little choice by the EU and United States, Russia entered into OSCE-sponsored negotiations. The catch was that Russia tied the removal of troops and border treaties with the status of the Russophone communities in Latvia. Although the OSCE had been closely watching the ethnic situation in the Baltic states, Russia’s move increased the pressure for the Latvian government to adjust the trajectory of current social policies affecting the large non-titular communities.

Pressure from European organisations began immediately after independence. Many feared that Latvia would experience violent clashes between ethnic groups as happened in Moldova. For instance, to Latvia’s north, Estonia’s Russophone enclaves in the northeast of the country were a particular worry. However, both situations

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20 The CSCE became the Organisation for Security and Co-operation in Europe at the 1994 Budapest meeting. Since the majority of the time frame studied here is beyond 1994, I use the latter name of the organisation.


remained remarkably non-violent. After the Baltic states became OSCE members little more than a month after independence, the organisation began putting pressure on Latvia to modify its nation-building policies.

In the late 1980’s, the CSCE began to focus on intra-state problems of security. The potential for ethnic conflict to de-stabilise the region was significant as events across Eurasia came to show. Three documents redefined the direction of the CSCE. The 1990 Copenhagen Document and Charter of Paris concentrated on the importance of democratic processes in alleviating intra-group pressures. While the former focuses on the rights of the nominal notion of 'national minority', the latter concentrates on the democratic processes needed to insure these rights. Finally, the 1991 Geneva Meeting of Experts on National Minorities established a prescriptive approach to minorities through political accommodation. None of the documents actually define 'national minorities'.

Armed with these documents and reports, the OSCE implemented two methods of observing and influencing the ethnic situation in the OSCE region. The first, and most well known, was the High Commissioner on National Minorities (HCNM). Under Max van der Stoel, the HCNM tended to work behind the scenes in an effort to affect policy changes. This was often done through personal correspondence between the High Commissioner and relevant ministers. Through ‘quiet diplomacy’, the HCNM could avoid over-dramatising the situation or specific events. The High Commissioner’s official mandate was set-out in the 1992 Helsinki Document, which established the office as an early warning mechanism. Sub-section 11b states that ‘the High Commissioner will assess at the earliest possible stage the role of the parties directly concerned, the nature of the tensions and recent developments therein and, where possible, the potential consequences for peace and stability within the [OSCE] area’. Additionally, section 26 establishes the role of the High Commissioner as an independent third party that can facilitate co-operation and reconciliation among conflicting parties. The document encourages the HCNM seek communication with member-state governments as well as ‘representatives of associations, non-governmental organisations, religious and other groups of national minorities directly concerned and in the area of tension . . ..’ Importantly, Section 34 encourages the High Commissioner to communicate its recommendations to the member-state governments while allowing for a public response from the state.

Much of what the High Commissioner has become is based on the character of the first occupant of the position. A former Dutch Foreign Minister, Max van der Stoel chose to ‘promote dialogue, confidence, and co-operation’ through what Kemp has referred as ‘quite diplomacy’. Given the Dutchman’s experience and his reliance on expert led recommendations, we can see an epistemic community at work. The behind-the-scenes nature of the High Commissioner was a technique of van der Stoel rather than it actually being stated in the Helsinki Document or the subsequent 1996 Lisbon Document, which again reaffirmed the role of the HCNM within the OSCE. Interestingly, his predecessor Rolf Ekeus has maintained this style of intervention. Needless to say, the ability of the High Commissioner to remain at times unpublicised

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25 Helsinki Final Act (1975)
has allowed for a greater impact as an impartial, yet quiet, diplomat. This impartiality allows the OSCE to work as a third party mediator while the confidentiality helps the High Commissioner mediate sensitive issues without the fear of sensationalism and misrepresentation. Having said this, Max van der Stoel still remains one of the most well-known foreigners in Latvia.

With the creation of the post of High Commissioner and the active role of its holder, three additional documents were produced to help qualify his duties based on the overlapping themes of education, identity and political participation. This elaboration came about through the Foundation on Inter-Ethnic Relations. The Foundation was established in 1993 as a non-governmental organisation for the support of the HCNM, based on ‘expert’ participation. The experts consulted were academics from several European countries including the United Kingdom, Hungary and Norway. The first document was the *Hague Recommendations Regarding the Education Rights of National Minorities*. Set within the context of the Universal Declaration of Human Rights, the purpose of the Hague Recommendations was an ‘attempt to clarify . . . the content of minority education rights generally applicable in the situations in which the HCNM is involved.’ The recommendations overwhelmingly stress the need for mutual bi-lingualism, which has consistently been eroding since the Baltic restoration of independence.

In 1998, the Foundation produced the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities*. The experts involved in the construction of this document included academics outside of Europe as well as one Latvian. The Oslo Recommendations are grounded in the International Covenant on Civil and Political Rights. In particular, the former focuses on the rights of the national minority to use their language within their own community. It addresses personal names and the use of language in religion, non-governmental organisations, the media and economic life in relation to the state. For example, section 15 states that

> ‘in regions and localities where persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated.’

The Oslo Recommendations afford the High Commissioner a benchmark by which standards for the use of language is measured. Importantly, the Recommendations detail the responsibility of member-states to their own national minorities in regards to language rights.

Finally, the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* were released in 1999. Up to this point the High Commissioner had been quite active in areas where the effective participation of national minorities was limited. The Lund Recommendations relied on a much larger and international base of experts. The document is based on the premise that ‘effective participation of national minorities in public life is an essential component of a peaceful and democratic society.’ Specifically, the document focuses on national minority participation in central government as well as at regional and local levels. Nationally, section 6 says that ‘states should ensure that opportunities exist for

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27 Ibid.
30 Ibid., Section 1.
minorities to have an effective voice at the level of the central government . . ..’ In the case of national, regional and local participation, the document recommends several mechanisms such as reserving a certain number of seats in the national legislature, allocating some cabinet and court positions, agenda-setting influence in relevant ministries and, finally, participation in the civil service. Finally, the document stresses the potential for forms of self-governance. This follows a general theme within other European institutions such as the EU to encourage power-sharing.\(^{31}\) Once again, the Lund Recommendations are set within the context of international agreements such as the United Nations Charter and the Council of Europe’s Framework Convention for the Protection of National Minorities.

While the three recommendations define the High Commissioner’s responsibilities, they do not define the concept of a ‘National Minority’. They do recognise that the HCNM is most often involved in areas where an ethnic/national group is a majority in one state, while being a minority in the other state. The purpose of strictly defining ‘national minority’ is useful for the OSCE as it allows for a wider investigation of alleged discrimination of participating countries. However, it also allows member-states to deny that their minorities are ‘national’ minorities and thus, his remit does not apply to that state.

The second method employed by the OSCE are the long-term missions that, although not existing in the Baltics any longer, do still play a part in conflict zones in Eastern Europe and Central Asia. In general, the aim of the missions was to help the governments draft legislation that would meet OSCE and international standards. However, the mission to Latvia also became used as human rights monitors in relation to the effects of previous legislation. The OSCE Mission to Latvia was deployed in November 1993. This mission was the result of a recommendation by a Special Representative of the OSCE Chairman-in-Office. The Latvian mission was different from that in its northern neighbour. The OSCE Mission to Estonia had a general mandate to encourage communication and stability between the titular and minority community, yet the OSCE Mission to Latvia was sent to address the citizenship issue as well as to be at the disposal of the Latvian government for expert advice. While the Estonian mission’s mandate required that it work with the High Commissioner, the Latvian mission had no such requirement. However, the OSCE Mission to Latvia did have the ability to co-operate with the High Commissioner as well as other OSCE institutions. Despite the differences in mandate, the two missions tended to concentrate on similar issues (e.g. citizenship and the status of military pensioners). Both the High Commissioner and the long-term mission played an overwhelming part in implementing policy in Latvia over time through knowledge-based expertise.

**European Union**

From the beginning of the post-Soviet era, the Baltic governments made EU membership a primary policy goal. The politicians of this early time must be applauded for their optimism, as the idea of actually becoming a part of the EU seemed to be a long time away. However, within weeks we will see Latvia formally enter the EU. No doubt, the path to EU membership has been difficult given the standards set by the accession criteria. Politicians are often required to set aside electorally significant policies for the sake of promoting EU-required reforms. Furthermore, the Copenhagen Criteria affect most policy areas including minority

policy. For Estonia and Latvia, the handling of their large Russophonic, predominantly stateless, communities would be a major hurdle to overcome for EU membership. Having said that, this does not mean the minority issue was the most important policy area in regards to EU membership. Rather, the EU is first and foremost an economic institution, while the battle between inter-governmentalists and supranationalists remains predominantly in the background when it does not touch economic or financial policy. Importantly, many in the minority communities recognise this and distrust the EU project because they feel that Brussels had been unwilling to press for truly liberal reforms that would halt the perceived discrimination currently in the area of language. According Latvian Social Integration Minister Nils Muižnieks, Latvia experienced a major shift in support for the EU amongst its minority community.32

As Duncan Wilson states, ‘ensuring respect for minority rights among the pre-accession countries has had questionable results.’33 Within the Copenhagen criteria, there is only the quite ambiguous requirement that countries respect and protect minorities. Although a part of the Copenhagen criteria, passed by the European Commission in 1993, the minority protection clause was left out of the Amsterdam Treaty, which made the Copenhagen criteria EU law. Thus, the EU left out a fundamental legal basis on which to encourage the protection of minorities in potential new member-states. This is not to say that minority protection is not an important part of the accession criteria. In fact, the European Commission does monitor how potential member-states observe this requirement within the terms of the Charter of Fundamental Rights of the European Union. The lack of a standard definition of minority means that the European Commission must use internationally agreed standards on the protection of minorities as a means of monitoring minority policies. The Commission’s efforts to enforce policy implementation have been best articulated in its Regular Reports for prospective member-states, as we shall see later.

Although the minority protection clause was left out of the Amsterdam Treaty, a ‘Race Equality Directive’ was attached to the acquis communautaire (the body of EU law that must be incorporated into domestic law).34 This EU directive came into force in 2003, but there is no doubt that it was already being applied as a standard. The directive rejects discrimination based on racial or ethnic grounds and ‘therefore performs a vital function in ensuring the aims of integration to benefit all sectors of society.’35 Not only does the directive require that states combat discrimination, it also requires governments to be proactive in their evaluation of direct and indirect discrimination.36 The directive also requires that the party that is accused of discrimination hold the burden of proof, under which the body will have to prove that their acts do not present a discriminatory impact. Other than the political component of the Copenhagen criteria, which has been undercut by its absence from the Amsterdam Treaty, the European Union has few structural assurances for the protection of minorities. Nonetheless, the European Commission was able to set the standard that was required before a country was invited to join the EU as seen in the

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32 Interview with Minister on 5 January 2003 (Riga).
35 Wilson, Minority Rights in Education, p.16.
36 Russian-speakers in Estonia and Latvia are often most likely to suffer as the result of indirect discrimination. That is discrimination that is rooted within a system not necessarily directly targeted against minorities.
Regular Reports. However, the Commission has not been necessarily a consistent body.

**Council of Europe**

Membership of the CoE was a natural Latvian foreign policy objective. Not only is it an important organisation within Europe, but also membership was closely related to Latvia’s prospects of EU membership. The CoE contains many institutional devices in which to insure the rights and protection of minorities. Although not as persistent as the OSCE High Commissioner, the CoE has been far more scrutinising of Latvian minority policies. The Council of Europe Parliamentary Assembly delegations have often visited Latvia in order to monitor the minority situation. Furthermore, through the OSCE, the Council of Europe maintained a constant review of the evolution of social policy in the Baltic states.

This method of policy evaluation is based on several treaties relating to the rights and protection of minorities under the auspices of the Council of Europe. Most notable is the Framework Convention for the Protection of National Minorities (Framework Convention hereafter). As Wilson points out, the Framework Convention is ‘the only binding multilateral treaty on minority rights, which makes no attempt to define to whom it applies.’ Nevertheless, the Framework Convention does offer a normative framework on which to base the treatment of national minorities. For example, Article 4, subsection 1 states:

> The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

Article 5 is more specific and takes into account the need for cohesion within the state (i.e. integration programmes). It states:

1. The Parties undertake to promote the condition necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions, and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Importantly, since the next major step towards the titularisation of the state will be through the educational system, the Framework Convention lays out the rights of national minorities. Article 13 states:

> Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

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37 Wilson, 2000.
2. The exercise of this right shall not entail any financial obligation for the Parties.

Thus, the Framework Convention approves the withdrawal of instruction in the minority language within state-funded schools, while allowing for the establishment of private minority language schools. Interestingly, the Latvian 1998 Education Law allows for public funding to be provided to private schools. However, the law also discriminates against schools that do not practice instruction within the national language. Nevertheless, although arguably discriminatory, the Education Law does not violate Article 13. Having said this, the Framework Convention does require that governments maintain the teaching of minority languages to the national minority under Article 14.

There is little doubt that the rights of minorities are an important issue across Europe. For this reason, the Framework Convention is a vital document laying the foundations for the protection of national minorities under the auspices of the CoE. While Estonia has signed and adopted the Framework Convention, Latvia has signed but rejected the agreement on three separate occasions in the Saeima.\(^\text{39}\) Furthermore, there seemed little initiative under the late Repše Government to approve the Framework Convention any time in the near future. There may be a chance with the new minority Emsis government which will have to depend on left-wing parties for parliamentary support. According to the Latvian Human Rights Committee, the parliamentary debates reveal several reasons why the framework could not be approved, including that the law of Latvia already provides for such protection and terms such as ‘national minority’ are too ambiguous.\(^\text{40}\)

However, the main reason is that the Framework Convention is politically unpopular amongst the largely titular electorate to be seen favouring the Russian-speaking community (although the Framework Convention could hardly be considered discriminatory towards Latvians). However, it seems to me that the main reason is that the Latvian Constitution states that only the near-extinct Finno-Ugric Livonian is a native language other than Latvian. Other languages such as Russian and German are considered to be alien. Thus, this begs the question once again, what is a national minority? In the case of Latvia, could Slavs be a minority but not a national minority? The Latvian constitution and subsequent legislation (i.e. 1999 Language Law) seem to imply this is the case. From this perspective, the Framework Convention hardly applies to Latvia. On the other hand, if approved, Europe could see things another way. Nevertheless, since Latvia has signed the Framework Convention, it is required to abide by the Convention in accordance with the 1969 Vienna Convention on the Law of Treaties, which states that a country must not act in a way that violates the agreement between the act of signing and ratification.

In addition to the Framework Convention, there is also the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) that lies within the CoE.\(^\text{41}\) Although an important document that attempts to ensure basic human right in Europe, its makes very little reference to group rights (i.e. minorities). On the other hand, this European Convention has been tied directly to the United Nations Minority Declaration which does not only target ‘national’ minorities,


\(^{41}\) European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
but all minorities. Furthermore, Article 19 of the Framework Convention directly asserts that it is subject to the limitations of the European Convention. Thus, theoretically, the Framework Convention could be a document insuring the protection of all minorities rather than only national minorities.

There are other agreements under the Council that address minority rights, such as the European Charter on Regional and Minority Languages, but have little practical effect. Nonetheless, the Council of Europe has played an important part in moving Latvia towards liberal democratic governance. While the CoE maintained its own observation of Latvia throughout the 1990’s, it also worked with the OSCE and the EU to fulfil its objectives. A review of its relationship with Estonia and Latvia will further illustrate how the CoE has influenced minority’s policy in the Baltics states.

**Conditionality through knowledge**

The reforms required by the OSCE, EU and CoE are an extension of a European set of values, norms and beliefs. In the following section, we can see how these institutions attempt to implement policy-changes through ‘persuasive’ learning. For the OSCE, this meant the High Commissioner’s frequent letters of recommendations. We can see how the government reacted to these recommendations through their official responses. The EU’s method of conditionality can be seen by the frequent European Parliament visits, but more importantly the European Commission’s Regular Reports on Latvia. Finally, the Council of Europe maintained its observation of Latvian policy reforms through its Secretary General and European Parliamentary Assembly. Importantly, we can see how the technical expertise came to the forefront of methods for policy implementation. Let us first start with the High Commissioner.

**Organisation for Security and Co-operation in Europe**

Correspondence between van der Stoel and Latvia began in April 1993. Previous to the 6 April letter to the Latvian Ministry of Foreign Affairs, the High Commissioner met with the Latvian Supreme Council Chairman Anatolijas Gorbunovs in order to discuss the ethnic situation in January 1993. Van der Stoel told Gorbunovs that he had not observed any violations of human rights of non-Latvians. In his letter of recommendations to Latvian Foreign Minister Georgs Andrejevs, the High Commissioner noted that 93% of non-Latvians have lived in Latvia for more than sixteen years. From this he concluded, as surely did the Latvian government, that there will not be a mass exodus of non-citizens. The High Commissioner looked at one particular issue in Latvia. The Latvian Congress of People’s Deputies were to wait until a new parliament was elected before adopting a new citizenship law. Finally, he also suggested the creation of an office of National Commissioner on Ethnic and Language Questions, which Latvia failed to do until the Latvia First Party came into Parliament after the 2002 elections in the form of the Integration Minister.

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43 CSCE Communication No. 124 and 125/Add.1 The Estonian, Latvian and Lithuanian responses follow each HCNM letter.
In response, the Latvian Government rejected the creation of the special minister stating that ‘we would like to mention that the existing system of human rights protection in Latvia has not been exhausted and provides, in our opinion, sufficient avenues for problem-solving in this area.’ While conceding that the lack of a Citizenship Law is a problem, the response addressed no other points found within the High Commissioner’s recommendations. Rather, the Latvian Government simply stated that the ‘conclusions and recommendations are carefully being examined by the respective Government institutions of Latvia.’

The High Commissioner’s next letter came in December.\(^45\) The High Commissioner’s main concern was the state of the draft citizenship law that had first been discussed in 1992. Realising that an overly conservative citizenship law would not bode well for Latvia’s democratic transition and that a liberal citizenship like that seen in Lithuania is politically unrealistic, he presented a ‘third option’. This included a language test, a civic exam, and an oath to the Republic of Latvia. The object that was most alarming was Article 9 of the draft Citizenship Law, which would implement annual naturalisation quotas. He argued that the annual quotas would cause considerable uncertainty among the stateless population. ‘This uncertainty, moreover could possibly last for many years, even for persons who have been living in Latvia for a long time or have been born in Latvia, and for persons with a sincere willingness to integrate in Latvian society.’ Rather than the annual quotas, the High Commissioner proposed the controversial ‘window’ system, which would allow different categories to apply for citizenship with all who wish to be able to apply by 1998. Although assuaging the fears of the more nationalist elements in the Latvian governments, the window system itself was less than ideal, as Pabriks and Purs have noted.\(^46\)

Despite the OSCE’s objections to the original draft, the Latvian Parliament passed the legislation. However, Latvian President Ulmanis refused to promulgate the law and it was returned to parliament. Eventually, the quotas were dropped from the legislation, although the other three points were adopted in July 1994. Although the OSCE was unable to influence a large change in the 1994 Law on Citizenship, it was able to encourage legislators to drop the most egregious component. In the end, it may have been important to discourage the use of quotas in principle, but there was little need in reality. The rush of non-citizens to seek naturalisation did not occur. The naturalisation windows barred many from applying citizenship and hurt future attempts of integration. Once Latvia had created a citizenship law that largely fit the expectations of the OSCE and other regional institutions, the High Commissioner recommended that Latvia be admitted into the CoE.\(^47\) Important for the sake of estimating the effect of the HCNM on Latvia’s relationship with European institutions, van der Stoel’s opinion did matter.

Furthermore, the OSCE missions played a large role in recommending changes that would mirror international norms to the national governments.\(^48\) Not only did the OSCE attempt to influence legislative negotiations in Latvia, but they also monitored the implementation of the naturalisation policies. The OSCE mission monitored citizenship examinations, even going so far as to sit in on naturalisation examinations. Furthermore, the OSCE made on-site inspections to ensure that

\(^{45}\) Letter to Latvian Minister of Foreign Affairs, Reference No. 1463/93/L.
residence permit applications were being processed following the relevant policies. Although the missions would not take up individual cases, the OSCE would look into ‘patterns of rigid or arbitrary administrative practices and discusses these findings with the Government’. Finally, the OSCE went even further by becoming involved in activities relating to titular language training for non-citizens in Latvia.

Once the citizenship law was established, the High Commissioner turned his attention to the residency and naturalisation process. The Latvian Government exhibited a pro-active approach to the naturalisation issue in a responding letter. In particular, Foreign Minister Birkavs described the publication of an informative book to assist applicants for naturalisation entitled ‘The Basic Issues of Latvian History and the State Constitutional Principles’. However, it must be noted that the information was published in Latvian with only Russian summaries at the end of each chapter. Additionally, Birkavs reported a 50% reduction in the naturalisation fees for students aged 16 to 20. This also included a similar reduction for orphans, which seems a bit harsh given that their access to income would be negligible. Unfortunately, this came at a time when the budget for the Naturalisation Board was severely cut by the Government.

During a visit to Latvia in October 1996, the High Commissioner discussed the large non-citizen community with Foreign Minister Birkavs and President Ulmanis. In his comments following the visit, the High Commissioner pays particular attention to the low numbers that had applied for citizenship since its adoption in 1995. Some elements within the Latvian Government at the time estimated that there would be a mass rush to apply for naturalisation. Quite the opposite occurred. With the ‘windows’ system in place rather than annual quotas, the naturalisation process was spread over seven years. In the High Commissioner’s view, there was no evidence to suggest that the Latvian Government needed to continue with institutional constraints on the number of applicants. He stated, ‘I hope therefore that due consideration will be given to the abolishment of the window system’, the very mechanism he helped to create. In his response, Birkavs stated that any negotiation over amending the Citizenship Law would be delayed since ‘political difficulties remain in this regard.’

A year later, the High Commissioner criticised the history component of the naturalisation test in response to the fact that only 4 per cent of those who were eligible to apply for citizenship did so. He stated that most citizens of the Netherlands would fail similar questions relating to Dutch history and law. Latvian Naturalisation Office Director Eizenija Aldermane argued that the history test was not ‘too complicated’. Arguing that only a small percentage of those eligible to apply have actually sought information, she stated that non-citizens were more likely not entering the naturalisation process because they were trying to avoid military service. On the other hand, People’s Harmony Party Leader Janis Jurkans agreed with the High Commissioner arguing that it impeded the integration of non-citizens.

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50 Individual European nations also funded language programs. For example, see RFE/RL Daily Report, ‘Finland Provide Funds for Latvian State Language Program,’ 27 August 1999.
51 Letter to Latvian Minister of Foreign Affairs, Reference No 516/96/L.
53 Letter to Latvian Minister of Foreign Affairs, Reference No. 1085/96/L.
54 Letter to OSCE High Commissioner on National Minorities, No. 31/1003-7767.
In a final letter of recommendations to the Latvian Government, the High Commissioner attempted to reverse the trend of continued low levels of naturalisation. He considered the fact that military service and visa requirements for travel to Russia may be important stumbling blocks to naturalisation. However, he found that the primary impediment to naturalisation is the language requirement. Importantly, he called for international financial assistance ‘in achieving the aims of the National Programme for Latvian Language Training.’ Furthermore, he recommended the review of the civic exam in order to make it easier. He argued that despite the fact that over 90% of applicants pass the test, this does little to promote the insecurity within the stateless community. Interestingly, he criticised particular questions in the test. Specifically, he argued ‘I wonder whether it is really necessary for candidates for citizenship to know what Swedish educational policy was like in Vidzeme in the seventeenth century . . .’ Finally, the High Commissioner presented similar arguments about the rights of children in Latvia. Like Estonia, the High Commissioner’s views would be adopted in the amended Citizenship Law.

Setting the naturalisation issue to one side, the HCNM turned towards the issue of language. In the 1989 Language Law adopted by the Latvian Supreme Council, bilingualism became an official policy with the same treatment given to Latvian as Russian had received for years. The law also stated that there would be a three-year transition period in which Russian-speakers in the public sphere would begin to learn Latvian depending on their occupation. For example, a doctor would be required to know more Latvian than a tram attendant. Once the transition period was over, the 1992 Law on Language dropped Russian as an official language despite the fact that around 30-35 per cent of the population used Russian as a first language.

Attempts to change the Law on Language to regulate the use of language in the private sphere began in 1997. After the Citizenship amendment debates, centre-right forces in the government and parliament began drafting new legislation that would allow the Latvian Government the ability to determine language proficiency levels in the private sphere. Again, the major European players jumped into action. The OSCE, EU and the Council of Europe stressed that this would be a violation of many of the international conventions Latvia had signed. Again, the High Commissioner became the primary voice urging reconsideration. His diplomatic offensive began with a trip to Riga in January 1999. Van der Stoel argued that the draft legislation would ‘over-regulate’ language in the private sector. He concluded his visit stating, ‘it is possible to have meaningful laws on language that perform the function of promoting and protecting the Latvian language while at the same time choosing regulations in conformity with international law.’

Following the High Commissioner’s recommendations, the minority Kristopans Government called for changes in the amendment that would only regulate language in cases of national security, territorial integrity, or public safety. Showing a lack of party discipline, the amendment passed with help from deputies within the ruling coalition without the recommendations of the Prime Minister in July 1999. President Vaira Vike-Freiberga returned the legislation to parliament complaining that it had several legalistic ambiguities, although many saw the veto as bowing to Western pressure. In fact, Olafs Bruvers, head of the State Human Rights Office was

56 Letter to Latvian Minister of Foreign Affairs, Reference No. 376/97/L.
quite open about accommodating the recommendations of the High Commissioner in the changed amendment. The changed amendment finally passed in December with the changes that resembled the plans of the government regarding national security and public safety, and was subsequently promulgated by the president.

**European Union**

As was to be expected, Latvia’s first encounter with the EU was economic in nature. Within six months after the practical restoration of Baltic independence, Latvia had signed trade and co-operation agreements with EU member-states. The agreements allowed for the elimination of trade barriers on many goods but not on more traditional manufactured goods and agriculture. Importantly, the trade and co-operation agreements initiated the relationship between the EU and Latvia. We should even be able to date Latvia’s road to EU membership to when the agreements were signed. Even this early, questions over minority issues may have affected the economic agreement when the European Parliament (EP) delayed its vote. In a similar situation, British MEP Gary Titley stated that the vote on the accord with Estonia was delayed because of concerns over the constitutional referendum, citizenship law, and election law. On the other hand, EP Secretariat officials stated that the delays were due to ‘purely technical’ matters.

Indeed, on-the-ground observations made by the EU were few and far between in comparison to the OSCE, nor did the EU have a constant mission to any of the Baltic states. However, there were some such visits to Latvia to observe the minority situation. For example, an EP delegation visited Latvia in April 1993 in order to make an assessment of the validity of the claims made by politicians in Moscow. However, the delegation found no evidence ‘for the recent accusations by Russian President Boris Yeltsin and other Russian leaders of massive and grave violations of human rights in Latvia.’

As Latvia began the road towards European integration, the pressure on the government to liberalise its minority policies. With the growing relationship with the EU after 1995, officials in Brussels began applying greater pressure on Estonia and Latvia. Overall, the EU largely worked through the OSCE missions and the High Commissioner to monitor the status of national minorities in Latvia. However, Brussels also maintained communication on social policies through the EU Commissioner for Central and Eastern Europe. For example, in 1997, EU Commissioner Hans van den Broek stressed that legislation in Estonia would need to be changed in order to give greater independent oversight to the way social policies were implemented. In particular, Estonia, unlike Latvia and Lithuania, had been unwilling to appoint an ombudsman to oversee minority and non-citizen complaints. Tallinn was unwilling to create the ombudsman institution because it would overlap with the office of the Legal Chancellor.

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Latvia’s efforts to gain fast-track status for EU Membership continued to be delayed, despite the fact that it had signed the European Social Charter in 1997. Although it can be argued that Latvia had not been as successful in their market transition as Estonia, the former was not far behind. Much of the controversy relating to Latvia’s inability to progress on the road to European Integration surrounded the stringent 1994 Law on Citizenship. As negotiations over drafting a new citizenship law began in late 1997, the European pressure began to build. In fact, the negotiations gained much attention from the OSCE, EU, NATO, Council of Europe, the Baltic Council, and individual Western states. Despite disagreements in the government amidst controversy over an alternative more conservative amendment, the Latvian Parliament passed a new amendment to the 1994 Citizenship Law in late June 1998. The final amendment eliminated the ‘naturalisation windows’, granted citizenship for children after independence without age or language limitations, and simplified the language tests for people over 65. The controversy increased as the more nationalist parties gathered enough signatures to hold a referendum on the approval of the new changes to the citizenship law in October. Through the success of the amendment in the Saeima and the referendum, Latvia marked a major turning point in relation to its future of European integration.

The EU method of policy implementation through persuasive learning is seen in the European Commission’s Regular Reports on proposed member-states. The Reports were part of the EU’s reform initiative Agenda 2000 that was born out of the 1998 Luxembourg European Council. Concentrating on agricultural and financial reform, the document also mandated that regular reports would be made to the Council, ‘reviewing the progress of each Central and East European applicant state towards accession in the light of the Copenhagen criteria.’ In a previous study, Hughes and Sasse find that the ‘Reports do not systematically assess the structure and operation of institutional frameworks or policies for dealing with minority groups.’ While the Reports do illustrate the lack of ‘hard’ law in relation to minority rights, it must be remembered that regimes are usually based on ‘soft’ laws and thus we should not expect the minority rights regime in Europe to be different. Most importantly, the Reports illustrate the role and conclusions of European experts. While Hughes and Sasse see the Report’s concentration on the OSCE and Council of Europe as a weakness, an epistemic communities approach allows us to view the Reports as exemplifying community co-ordination to further policy implementation.

The first Reports were delivered to the European Council at the end of 1998. The reports have four objectives. First, they describe the relationship between the applicant countries at the Union in relation to the Europe Agreement. Second, the Reports analyse the status of ‘democracy, rule of law, human rights, and the protection of minorities’. Note that the Reports do not refer strictly to ‘national’ minorities. Third, the Commission assesses the economic conditions of the applicant countries. Finally, the Reports assesses whether the applicant country will be able to adopt the obligations of membership. In this capacity, the Commission Reports offer an important perception of policy implementation.

The first Regular Report was issued at the end of 1998. Of most concern, the Report points out that Latvia had failed to ratify the Framework Convention for the Protection of National Minorities and the European Social Charter. In addition, the Report points out that naturalisation process had been too slow. The Commission blames this specifically on the inclusion of the ‘window’ system into the 1994 Law on Citizenship. However, the Report does recognise that changes of the Law on Citizenship had occurred in 1998 with the amendments and subsequent referendums. In conclusion, both the short and medium-term goals concentrate on the acquisition of Latvian skills by minorities.

Subsequent reports concentrated on the ability of the naturalisation service to process applicants. The 1999 Report stated, ‘the major outstanding problem in the first half of 1999 concerned the capacity of the Naturalisation Board and its branches to receive and process the increasing numbers of requests within the necessary time limits.’ Furthermore, the documents reports, ‘Latvia now fulfils all recommendations expressed by the OSCE in area of citizenship and naturalisation . . . Latvia fulfils the Copenhagen political criteria’. The 2000-2001 Reports review the process of change in relation to the naturalisation system as well as language legislation. Most importantly, however, the Commission points out the problems that come with transitioning from a parallel to a single education system. The problem is largely as it stands today; there are not enough ‘State’ language teachers to implement the changes. Surprisingly, little is said about the effects of the changes on the ability to learn of minority children once the education system is reformed. While the minority issue is/was important for the EU, other issues such as corruption and the criminal just system were far more important.

Council of Europe

Council of Europe interest in Eastern Europe came quickly after the restoration of independence. At the same time that Latvia was signing trade agreements with the EU, the Council of Europe Secretary General Catherine Lalumière was in Latvia. Lalumière expressed her support for the stand taken in draft citizenship guidelines in the Latvian parliament to require sixteen years of residency before a non-citizen could be naturalized, hardly within the standards of Europe. In a meeting with the Latvian Supreme Council’s Commission on Human and Nationality Rights, the Secretary General argued that Latvia’s position was understandable since the Russian minority did not fit the ‘traditional’ concept of a national minority since it was above ten per cent.

At this point, Latvia remained the last Baltic state outside the Council of Europe. On 15 September, a delegation of experts headed by the Council’s Secretariat Director Hans Peter Furrer came to analyse the draft citizenship law in the Saeima. The delegation met with both parliamentary factions and Russophone leaders. Furrer

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69 Commissioner of the European Communities, 1999 Regular Report on Latvia’s Progress towards Accession.
called on the Latvian Parliament to pass a citizenship law that relied on the principles of human rights. Parliamentary deputies went ahead with the first draft of the citizenship law that passed its second reading on 9 June 1994. Afterwards, Latvia’s State Minister for Human Rights Olafs Bruters stated that the Council of Europe was not happy with the present state of the legislation. As to be expected, the quota system was the primary complaint of the Council. Eventually, as the OSCE section illustrated, the Latvian Parliament passed a citizenship law acceptable to Europe. Subsequently, Latvia became a member of the Council of Europe on 10 February 1995 and signed the Framework Convention on 12 May.

By 1998, the Council of Europe added its voice to the European organisations calling for changes in Latvia’s citizenship law. The Council of Europe’s Parliamentary Assembly monitoring committee head Terry Davis stated that ‘after seven years of independence, Latvia has not yet managed to successfully integrate its non-citizens.’ He further pointed out that the stateless status of many children was worrying as well as insistence on a fluent knowledge of Latvian for employment in the private sector. In November, the Council of Europe’s Parliamentary Assembly openly stated that the EU had not included Latvia for fast-track membership in the past because of Riga’s failure to integrate the Russophone community.

**Measuring success**

Thus far, this paper has attempted to illustrate an epistemic community in motion within a European minority protection regime. Overall, the case study provided indicates that European institutions such as the OSCE, EU and the Council of Europe have had a large influence over the policy-making process and policy evolution in Latvia through ‘persuasive’ learning. Did they work?

The OSCE High Commissioner and the long-term mission was not able to influence large-scale policy revision at the beginning of the independence period. However, the OSCE in particular did facilitate a positive outcome in four ways. First, the High Commissioner and the long-term missions were able to provide a normative direction for policies related to minorities. Second, the long-term missions provided ‘on-the-ground’ information, which eliminated the need to filter political rhetoric. Third, the OSCE was able to lend an ear to the minority communities who often felt as though their governments were not listening. Finally, the OSCE was able to act as an ear and mouthpiece for the EU, Council of Europe, and other regional institutions. The OSCE Mission to Latvia ceased on 31 December 2001.

Most definitely, the OSCE’s actions did not come without a backlash. Among Latvian politicians, the OSCE was often considered to be unfairly interfering into internal state affairs. In addition came the claim that the High Commissioner was only acting in response to dramatic claims from Moscow or was an agent of Russian Imperialism. Often, as the face of the OSCE in Latvia, van der Stoel received undue attention for his efforts to persuade Baltic politicians to work on the basis of consensus. Furthermore, the long-term missions were considered to be too intrusive and ill aimed in their mission. For example, in May 1999, Estonian President Lennart Meri argued that the OSCE Mission to Estonia should be re-organised into an

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75 *RFE/RL Newsline*, ‘Decision on Latvia Linked to Russian-Speakers’ Situation?’ 5 November 1998.
76 See the OSCE’s website, www.osce.org.
educational centre ‘to help Estonia overcome the burden of its Soviet past.’ Despite the perceived intrusion, European organisations have been able to allow Latvia to develop policies that reinforce their sense of nation while making the road to European integration easier. The evolution of social policy in the Baltic states gives some indication of the European organisation’s commitment to cohesion, co-operation and multi-culturalism. Nevertheless, European integration has remained largely an elite-led process. People in Latvia still have many questions regarding increased integration. While collective security arrangements remain fairly popular among titular communities, it is not difficult to find voices arguing that their nation has exchanged rule by Moscow for rule by Brussels.

Although the EU has not been as active as the OSCE in its pressure on Latvia to adopt more liberal minority legislation, the voice of Brussels carries the greatest weight of any of the regional institutions. Now, Latvia stands at the threshold of the European Union. It is ironic that a former communist state will join a new ‘Union’ on International Worker’s Day, 1 May. The EU comments regarding minority policies in Latvia have largely ceased after the citizenship law revision. Brussels primary concern has been corruption and Latvian relations with Russia, including a mutually agreed border. Largely, the EU was able to enforce policy implementation by ‘persuasive’ learning. In other words, EU membership was held as the incentive for change. Following Latvia’s induction, the EU’s efforts to change domestic policy will change to pre-emptive methods of control. In this way, Latvia will fit into the usual role of other EU member-states by trying to maintain as much autonomy as possible while engaging with a supra-national institution.

Following the changes to Latvia’s citizenship laws, the Council of Europe became less of a voice for Europe in the Baltic states. By 2000, the Council of Europe, although still an important institution for the region, became less visible in relation to the minority issue. Since the restoration of independence, the Council was an effective institution in moderating nationalising policies in Estonia and Latvia. Primarily, the Council of Europe’s Parliamentary Assembly was the main instrument of influence. Similar to the OSCE, the Council of Europe’s recommendations were influential primarily because of the importance put on EU membership. In effect, satisfied Council of Europe meant a ticket on the fast-track route to Brussels.

Although the OSCE is less well known amongst the wider European community, the three organisations work well together in providing a foundation for regional stability and propagating politically liberal ideals. Although three separate organisations, as they are treated in this section, the OSCE, EU and the Council of Europe do rely on each other for observation, information, and practical enforcement that tends to blur the boundaries of where one organisation ends and another begins. In this way, they have maintained an epistemic community or regime focusing on the protection of minorities. With EU enlargement, Europe will begin a new phase that will require different approaches for policy implementation in its new member-states.

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