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The Effects of EU Conditionality
on Citizenship Policies
and Protection of National
Minorities in the Baltic States

NIDA M. GELAZIS

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**ROBERT SCHUMAN CENTRE
FOR ADVANCED STUDIES**

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and Protection of National Minorities in the Baltic States**

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Introduction

The protection of human rights and respect for national minorities appears at the top of the list of the European Union's (EU) accession criteria. While this reflects the EU's long-standing commitment to promoting human rights outside its borders, it is no easy task to legally determine the standard of human rights the EU will require applicant countries to meet prior to accession. EU accession demands that applicant countries exhibit the values shared by the member states. Yet, the promotion and protection of human rights does not figure among the objectives listed in Article 2 of the Treaty on European Union (TEU).¹ Although the European Court of Justice (ECJ) has been the leading institution for determining what EU rights are, it has restricted its decisions to cases in which EU laws raise human rights issues and has avoided imposing a European human rights standard on member states' actions.²

Despite the lack of a clear human rights agenda, more than any other international organization, the EU has made a clear impact on raising the standard of human rights in the Baltic States. This influence has been particularly apparent in the Baltic States' policies towards the protection of national minorities and citizenship policies. Although organizations such as the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe have criticized the Baltic States' policies towards their Russian-speaking resident populations, they have had little effect. The first section of this paper will address how the legal process by which the Baltic States regained their independence restricted the application of certain international human rights norms in these countries. It will be seen that due to their peculiar context, the Baltic States were able to bypass certain conventions of international law pertaining to citizenship.

The second part of this paper will address the EU accession process and, in particular, the disparity between the lack of an EU human rights agenda and the relatively high human rights conditions placed on the applicant countries. Furthermore, certain EU accession requirements reflect a higher standard of human rights protection than currently practiced by certain member states. It will be shown that despite this disparity, the Baltic States have made clear attempts to meet these criteria in a relatively short period of time. In conclusion, I will posit that by raising human rights accession criteria, the EU is attempting to build the foundation for increased political unity and the possibility of adopting an EU charter for human rights, which will raise the standard of human rights throughout Europe.

Baltic Independence: State Continuity versus Secession

In their attempt to break free of the USSR, the Baltic States followed two distinct 'paths' to independence. While the Estonians attempted to secede from the USSR based on soviet law, the Lithuanians and Latvians based their strategy on the internationally-recognized illegality of the soviet occupation of the Baltics and asserted their states' continuity. Although their strategies were different, communication between the three soviet satellites was good and their aims were unified, making it possible to exchange information on the progress of their independent attempts to leave the USSR. The idea was that by acting independently and taking alternate routes to independence, one of the three might finally succeed in gaining independence, thereby clearing a legal precedent for the other states to follow. Thus, when Estonia's attempt to secede from the USSR failed due to amendments made to the Soviet Constitution, it was able to abandon that strategy and quickly catch up with Latvia and Lithuania in their attempt to re-establish the legality of their inter-war republics. This strategy was ultimately successful, though it had the unfortunate effect of rendering tens of thousands of people residing in those countries stateless.

Gorbachev's glosnost program and the subsequent deletion of Art. 6 of the Soviet Republics' Constitutions (which granted the Communist Party primacy) opened the door to pluralist elections. As a result, party-like pro-independence organizations were created - the Sajudis in Lithuania, the Estonian Popular Front, and the People's Front in Latvia - which ran in opposition to the Communist Party in the March 1990 elections to the national Supreme Soviets. The electoral results gave substantial majorities to each of the three opposition parties, and so the newly-elected leaders interpreted the results as quasi-referendums for independence, and took steps accordingly.³

Immediately following elections, the Lithuanian Supreme Soviet adopted a Declaration of Independence from the USSR on March 11, 1990. In order to formally bridge the fifty-year gap between the internationally recognized constitutional democracy that existed during the inter-war period, Sajudis leaders immediately reinstated the 1938 Constitution (the last of three constitutions adopted during the 22-year inter-war independence period).⁴ There were two reasons for this largely symbolic act. First, after its declaration of independence, no influential Western democracy acknowledged the Republic of Lithuania. Therefore, Lithuanian leaders continued to work as they had, making sure that no legal loophole remained which Moscow might find to draw Lithuania back into its net. Secondly, because the Lithuanian Communist Party was cooperating with Sajudis in the goal for independence, it had not lost its public credibility or democratic viability and therefore might have insisted on retaining the Soviet

Constitution as the basis for an independent "Lithuanian Soviet Republic." Sajudis needed to assure the West that it was determined to create a liberal democracy in Lithuania. Thus, by re-instating the inter-war Constitution, Sajudis hoped to reassure the West of its intentions to abandon communism. Less than one hour after the reinstallation of the 1938 Constitution, the Lithuanian Supreme Soviet adopted the Provisional Basic Law, which served as an interim constitution for nearly two years. In an effort to avoid calling new elections and to maintain the stability of the current government, the Basic Law resembled the Lithuanian Soviet Constitution in its provisions concerning institutions and power structures.

This move was quickly copied by the Latvian Supreme Soviet, which adopted the Declaration on the Renewal of Independence on May 4, 1990 and reinstated the 1922 Constitution.⁵ Both the Lithuanian and Latvian declarations asserted the illegal nature of the August 23, 1939 treaty between Germany and the USSR which led to the loss of sovereignty of the three Baltic States. More importantly, the United States and other western democracies had for many years openly acknowledged that the Baltic States were in fact illegally annexed by the USSR. On this basis, both countries claimed their right to reestablish their sovereignty. It is interesting to note that Latvia's declaration guaranteed the protection of social, economic, cultural and political rights of "citizens of the Republic of Latvia and those of other nations permanently residing in Latvia," including "those citizens of the USSR who express the desire to continue living in the territory of Latvia."⁶ Subsequent policies regarding citizenship rights will be seen later in this paper to reflect a clear turn-around of this policy.

Meanwhile, the newly-elected Estonian government issued a more moderate declaration on the "Transition Period for Independence" on March 30, 1990. The Estonian Popular Front, which won an overwhelming majority in the 1990 elections to the Supreme Soviet, chose an alternate route towards independence which preferred working within soviet institutions.⁷ They hoped to take advantage of Article 72 of the Soviet Constitution, which proclaimed that "each union republic retains the right freely to secede from the USSR."

The first blow to the separatist aims of the Baltic republics was felt with the deletion of Article 72 of the Soviet Constitution by the central government. Gorbachev promised to consider amendments to the USSR Constitution that would allow the eventual secession of Soviet republics from the USSR, but ultimately these measures demanded that the all-union legislature vote on any bid to secede,⁸ thus placing a sizable hurdle in the path to independence. It particularly stymied Estonia, which relied on this article in its declaration of transition. At the time it seemed highly unlikely that consensus would ever be

achieved throughout the USSR on the issue of Baltic secession. But the constitutional amendment did not effect the legal status of Latvia's and Lithuania's declarations of independence. Nevertheless, these declarations had only symbolic significance at the time, since neither the USSR nor the international community recognized these states.

After several months of anxious waiting, the August 1991 putsch in Moscow offered a window of opportunity. Taking advantage of the chaos, Latvia and Lithuania reasserted their declarations of independence and Estonia quickly drafted the "Resolution on the National Independence of Estonia", on August 20, 1991. With the collapse of the USSR, western democracies began to formally recognize the Baltic States' independence, and the three states began the next phase of institution building and democratic consolidation.

Soviet Era Migration

Despite the assertions of legal continuity by the Baltic States, fifty years of Soviet rule had made a lasting impact on every aspect of these societies which were impossible to ignore. The problems posed by soviet-era migration in particular brought up ethical problems. Soviet ideology strongly supported the creation of cosmopolitan societies and frowned upon nationalistic sentiments. State policies were developed and implemented largely according to these aspirations.⁹ The Russian language was the basic administrative language of the USSR and while families in the soviet republics had a choice between sending children to Russian and native language schools, graduates of Russian schools (in combination with Communist Party membership) surely gave individuals a privileged position in terms of securing good jobs or a university education. Moreover, the Russian language was a requisite course in all native-language schools.

More stringent measures were taken as well to manufacture cosmopolitan cities through forced migration within the USSR. Policies under Stalin were the most brutal, in the sense that force was clearly used to strip the 'bourgeoisie' of their property and to send them far from their native republics. The fortunate were able to emigrate to the West but thousands of people were murdered or forced to migrate within Soviet territory. Baltic State residents were particularly targeted as anti-soviet, with the result that tens of thousands of ethnic Estonians, Latvians and Lithuanians emigrated from their native countries. At the same time, incentives were given to ethnic Russians, Ukrainians, Georgians, and other groups to migrate to the Baltic States, as soviet-era industrialization of the Baltic states demanded a large work force to support these initiatives. The result was that the number of ethnic Estonians, Latvians, and Lithuanians dropped tremendously between 1934 and 1959 in their respective countries: 100,000

ethnic Estonians, 169,000 ethnic Latvians, and 267,000 Lithuanians vanished from census data in 25 years.¹⁰

Citizenship Policies in the Baltic States¹¹

Lithuania

Even before its declaration of independence from the USSR on March 11, 1990, Lithuania adopted its first citizenship law on November 3, 1989. This law enabled all permanent residents of the territory to gain Lithuanian citizenship, regardless of ethnicity, language, religion, or employment status.¹² By the November 3, 1991 deadline for registration, 90 percent of all residents opted to become Lithuanian citizens.¹³ A second law on citizenship was passed on December 5, 1991, which entitled all citizens and permanent residents of Lithuania before June 15 1940 and their descendants to become citizens of the newly independent state. The 1991 law also laid down the criteria for naturalization of new citizens. One may acquire citizenship by birth or by naturalization. Rights of children are protected to the extent that children of Lithuanian citizens (Arts. 9-8), children of non-citizens permanently residing in Lithuania (Art. 10), and children born or found on the territory of Lithuania whose parents are unknown (Art. 11) are entitled to gain automatic citizenship of Lithuania. Naturalization of adults must follow after certain conditions are met (Art. 12). An applicant must pass a written and oral examination of the Lithuanian language and the basic provisions of the Constitution, have lived in Lithuania for at least 10 years, and have a permanent place of employment or a constant legal source of support. Although there is no mention in the law itself prohibiting members of the former soviet army from gaining citizenship, the Constitutional Court has ruled that without special consent of the government, they do not qualify as permanent residents and therefore are not entitled to citizenship.¹⁴

It will become clear after the citizenship legislation of Latvia and Estonia have been reviewed that the Lithuanian citizenship policy is relatively liberal in comparison to the other two Baltic States. Indeed, whereas “the Baltic States” are often invoked as having human rights and ethical shortcomings in terms of their citizenship policies, Lithuania cannot be included in such statements. Yet, the justification for the inclusion of Lithuania in this study is two-fold. First, Lithuanian leaders were more interested in building a new democratic state than relying too much on Lithuania’s (problematic) inter-war democratic legacy.¹⁵ Second, in exploring the reasons behind this seemingly generous policy towards non-ethnic Lithuanians it is important to state that the ‘russification’ of Lithuania was executed to a far less degree than in either Estonia or Latvia. The total proportion of ethnic Lithuanians remained relatively unchanged since the inter-war period, and remains at around 80 percent. In contrast, the difference in the

percentage of ethnic Latvians and Estonians in their respective countries between the 1930s and the 1990s is more profound: in 1935 the percentage of ethnic Latvians was 75.5 while in 1995 that percentage had dropped to 55.1; in 1934 Estonia, the ethnic majority made up 88 percent of the population, while in 1989, the percentage was 61.5.¹⁶ Therefore, the fact Lithuanians felt that they could accommodate a sizable proportion of non-Lithuanians (around 20 percent) without sacrificing their democratic ambitions, sovereignty, or native language and culture was decisive in their decision to adopt a relatively liberal policy on citizenship.

Latvia

While Lithuania and Estonia (see below) chose to rebuild their new democracies from scratch by adopting completely new constitutions, Latvia valued the concept of state continuity to an extreme by keeping the 1922 Constitution in force. To compensate for its short length and important missing elements (for example, it contained no mention of human rights), the Constitution was buttressed by a series of constitutional laws, including the May 4, 1990 Declaration on the Accession to Human Rights Instruments and the Law on the Rights and Obligations of a Citizen and Person of December 10 1991. Nevertheless, these measures were inadequate because of the absence of a law defining the status of constitutional laws vis-à-vis ordinary legislation. This meant that courts had no indicators for deciding on cases in which the rights law contradicted other laws issued by the Saeima (parliament). Eventually, the Saeima adopted several amendments to the 1922 Constitution which finally paved the way for judicial remedies for human rights infractions.¹⁷ On June 12, 1996, the Saeima adopted a constitutional amendment establishing a Constitutional Court. The Saeima eventually adopted an entirely new Section 8 of the Constitution in October 1998, which constitutionalized fundamental rights.

In the spirit of the principle of state continuity, in 1991 Latvian leaders reinstated the 1919 Citizenship Law (as amended in 1927), which granted individuals who possessed Latvian citizenship prior to 1940 automatic citizenship in the restored Latvian state. The “Resolution on the Renewal of the Republic of Latvia, Citizens’ Rights and Fundamental Principles of Naturalization” stated that the restored state considered the 1940 USSR law on citizenship null and void,¹⁸ thus rendering thousands of residents of Latvian territory stateless. This measure was justified by the argument that since the Latvian state never legally ceased to exist, only those who were truly members of the inter-war state and their descendants had the right to participate politically in state recreation. These ‘original’ citizens were thus the only residents of post-1991 Latvia entitled to participate in the first elections of the restored state. As a result of this policy,

only 64 percent of the resident population actually participated in the 1993 elections.¹⁹

Finally, on July 22, 1994 a new law on citizenship was adopted by the Saeima. This law reiterated the fact that pre-1940 citizens and their descendants are entitled to citizenship and laid down the ground rules for naturalization, but it also granted citizenship to individuals who were permanent residents of pre-1919 Latvia (the date of Latvian inter-war state creation). Unlike Lithuania, Latvia made special provisions to encourage Latvian émigrés to repatriate. The “Transitional Provisions” of the 1994 law allow inter-war citizens of the Republic of Latvia to gain citizenship without renouncing their current citizenship. Citizenship was also granted upon registration to soviet-era immigrants of Estonian and Lithuanian ethnicity, to non-ethnic Latvians who finished Latvian language secondary schools, and to spouses (for at least 10 years) of Latvian citizens (Art. 13).

Article 10 of the 1994 law indicates who may not acquire citizenship of Latvia, even through naturalization. This group includes:

- those who have “turned against the Republic of Latvia’s independence, its democratic parliamentary state system or the existing state authority in Latvia, if such has been established by a court decree”
- those who since May 4, 1990 have stirred ethnic hatred or racial discord through the propagation of fascist, chauvinist, national-socialist, communist, or other totalitarian ideas;
- officials of foreign states, those who have served in the armed forces or police of a foreign state (including the USSR) who were not permanent residents of Latvia prior to their conscription;
- those who have been employees, informants, or agents of the KGB or any other foreign security service;
- those who have been convicted of a crime and imprisoned for more than one year;
- and those who participated in the attempts to stop the independence movement after January 13, 1991 through their participation in the Latvian Communist Party, Working Peoples’ International Front of the Latvian SSR, United Council of Labor Collectives, Organization of War and Labor Veterans, or the All-Latvia Salvation Committee and its regional committees.

All other residents wishing to gain Latvian citizenship are required to go through naturalization procedures. These procedures require establishing permanent residence in Latvia for five years starting from May 4, 1990, having command of

the Latvian language, history and the national anthem, and knowing the basic principles of the Constitution and the constitutional law on “Rights and Obligations of a Citizen and a Person” (Art. 12). Chapter III of the law describes the language exam, which includes testing the applicant on his or her ability read, speak, and write in Latvian on topics from everyday life. It also states that the disabled and the elderly are exempt from taking this exam. Applicants must also show proof of a legal source of income and renounce their former citizenship.(Art. 12)

To prevent what Latvian parliamentarians believed would be a run on the naturalization office, the 1994 law also instituted a “windows” system for naturalization (Art. 14). This law distinguished applicants for citizenship by age and whether or not applicants were born in Latvia and separated them into eight groups accordingly. The first group (those born in Latvia who were 16-20 years of age at the time of their application) were scheduled to begin naturalization procedures on January 1, 1996. The eighth set of applicants (those born outside of Latvia and are over 30 years of age) could not begin the naturalization procedures until January 1, 2003.

Unsurprisingly, due to the strict new citizenship law, the number of registered Latvian residents who gained citizenship between 1995 and 1997 rose by only 1.4 percent leaving at least 28 percent of registered residents stateless.²⁰ In the face of international pressure to end the condition of statelessness within its borders, Latvia stood by its citizenship policy and asserted its legality due to state continuity. Instead of amending its citizenship policies, the Latvian parliament adopted a special law on “Status of Former USSR Citizens who have Neither Latvian nor Other States’ Citizenship” of April 12, 1995. This law applies to only those resident non-citizens who qualify for citizenship through naturalization, thus excluding former soviet army personnel and their families. This law states that stateless persons who have registered with the government enjoy the same rights as Latvian citizens according to the constitutional law on “Rights and Obligations of a Person and a Citizen” (Art. 2). Moreover, the law also confirms that resident non-citizens have the right to travel freely; are able to admit their spouses and dependents into Latvia; maintain their native language and culture; and to receive translation services in court proceedings. The law also stipulates that resident non-citizens will not be exiled or expelled from the territory of Latvia except according to law or when a foreign state agrees to receive them.

Estonia

Like the Latvians, Estonia strictly followed the principle of continuity in re-establishing its democratic state, though to a lesser extent. After the Moscow putsch and the quick adoption of the “Resolution on the National Independence

of Estonia”, the Estonian parliament immediately began working on a new constitution. Moreover, as in Latvia and Lithuania at the time, the struggle for independence was linked to democratic intentions and guarantees that no attempts would be made to restrict citizenship of the independent republic on the basis of ethnic origin.²¹ However, the new Constitution betrayed these initial intentions. The Estonian Constitution, adopted by referendum in 1992, included guarantees for the protection of minorities, but also guaranteed social rights to resident non-citizens. Article 28 of the Estonian Constitution stipulates “All persons shall have the right to health care. Estonian citizens shall be entitled to state assistance in the case of old age, inability to work, loss of a provider, and need. . .this right shall exist equally for Estonian citizens, and citizens of foreign states and state-less persons who are sojourning in Estonia. The state shall encourage voluntary and local government social care. Families with many children and the disabled shall be entitled to special care by state and local authorities.” The Constitution also stipulated that resident non-citizens would have the right to participate in local elections.²² These liberal policies implied that the political consensus on the citizenship question was to create a restrictive citizenship policy and foreshadowed a protracted period of transition in which many residents would be left stateless.

Upon the re-establishment of the Republic of Estonia, the Riikigoku (Parliament) re-instated the 1938 Law on Citizenship, as amended in 1940²³, according to which citizenship was extended only to those residents who had Estonian citizenship prior to June 16, 1940 and their descendants.²⁴ An opportunity to gain citizenship automatically was also given to soviet-era citizens who could prove that they supported the national independence movement by presenting their Congress of Estonia membership cards.²⁵ This citizenship law was still in place for the 1993 national elections, therefore severely restricting the number of eligible voters.²⁶ Like Latvia, Estonia adopted the “Law of the Republic of Estonia on Aliens” on July 8, 1993, which was very similar to the Latvian law on resident non-citizens, in terms of granting constitutional rights protection to aliens. However, unlike the Latvian law which guarantees that resident non-citizens will not be deported, the Estonian law includes a negative incentive for non-citizens to register with the local immigration offices within the established time limit or face possible expulsion from the territory of Estonia (Art. 21.7-8). The 1993 elections resulted in the creation of a predictably right-of-center and nationalistic government, dominated by the Fatherland party. And it was this parliamentary majority which designed the new citizenship law adopted on January 19, 1995.

The 1995 “Law of the Republic of Estonia on Citizenship” sets out nearly identical provisions for naturalization as the Latvian citizenship law therefore, for

the purposes of this study, it is sufficient to have described only the Latvian law in detail. One notable difference is that there were no special provisions regarding the repatriation of Estonian emegres, as was the case in Latvia, and no special privileges were given to Latvian or Lithuanian residents. Moreover, the Estonian law does not follow the “windows” system, therefore naturalization procedures were open to all permanent residents from the date the law came into force (April 1, 1995). Nevertheless, naturalization proceeded at a snail’s pace: by 1997 only 1060 applicants had managed to fulfill all the requirements to gain citizenship.²⁷

International Legal Guidelines for Citizenship

The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of April 12, 1930, which states that it is “for each State to determine under its own law who are its nationals” (Art. 1).²⁸ Yet, international law and state practice do indeed provide limits to this right. The Report outlines several general principles which should be taken into consideration when faced with the problem of citizenship in successor states. The principles relevant to the Baltic cases include, prohibition on discrimination on the basis of ethnicity or language, the creation of effective links between potential citizens and the state, the avoidance of the creation of statelessness, and the right of option for residents of successor states to choose their country of citizenship. Although it should be understood that adherence to one of these principles should never be a defense against ignoring one or all of the other principles delimiting a state’s nationality policy, it is useful to show the ways in which one principle may indeed limit another and that the standard of application of each principle is determined by the particular context and values of each state. Finally, the Baltic States have succeeded in defending their citizenship policies by clearly defining their status as re-established states as opposed to successor states.

Anti-discrimination Principle

The prohibition of discrimination on the basis of ethnic origin, color, religion, language, or political opinions in determining citizenship is a well-recognized limitation on a state’s right to determine conditions for acquisition of citizenship. Article 1(3) of the International Convention on the Elimination of All Forms of Racial Discrimination stipulates that “nothing in the Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.” Moreover, Art. 9 of the UN Convention on the Reduction of Statelessness prohibits states from depriving “any person or group of persons of their nationality on racial, ethnic, religious or political grounds.” Thus, the citizenship legislation of all three Baltic States

becomes suspect due to their stiff language requirements and firm stances on not granting citizenship to former soviet military personnel. The Latvian law in particular seems to single out the ethnic Russian population as unsuitable to gain citizenship whereas the soviet era migrants of Estonian and Lithuanian ethnicity enjoyed automatic citizenship.

One argument offered in defense of Latvian and Estonian discriminatory policies towards resident populations of ethnic Russians is that they serve to “correct” 50 years of discrimination of ethnic Estonians and Latvians by Russia. Ziemele asserts that “the measures which were undertaken by the independent governments of the Baltic States were measures of special protection in the sense of Article 26 of the ICCPR aimed at re-establishing *de facto* equality for discriminated groups in the respective societies which also involved the attribution of the status of State language to local languages.”²⁹

The level of fluency required by Latvian and Estonian citizenship procedures has been criticized as unreasonable, but the international community could do little to persuade the countries to ease their demands. Indeed, most states require some working knowledge of the official language of the state prior to granting citizenship. Ultimately, the OSCE High Commissioner on National Minorities recommended exempting the elderly and disabled from taking language examinations as well as simplifying the exam for all applicants. In response, the exemptions were included in citizenship procedures, but both Latvia and Estonia deemed simplification of the language exams unnecessary.³⁰ Moreover, attempts have been made to grant non-citizens equality under the law, in terms of granting resident aliens protection under the constitution, social assistance, and limited voting rights.

Effective Link Principle

In response to the allegations that the citizenship laws of Latvia and Estonia discriminate on the basis of ethnicity and language, the effective link principle was invoked. This principle is derived from the recognition that there must be some kind of link between the state and an individual requesting citizenship. These links are very often birth, domicile and residence in the country in question.³¹ Yet other criteria can be included as well, particularly in terms of the state’s responsibility for defending its citizens against the actions of other states.³² For these reasons, it is customary that successor states may choose not to grant automatic citizenship to individuals who had served in political or military capacities of the previous state.³³ This principle banished any attempts to criticize Baltic citizenship legislation on the grounds that former soviet army, state, or KGB personnel are prohibited from gaining citizenship.³⁴ In the specific case of

ethnic Russians' claims to be granted citizenship of Latvia and Estonia, knowledge of the native language, history, and constitution have been additional requirements for naturalization. The assumption is that Russians feel a stronger allegiance to Russia rather than to the Baltic States even if they have chosen not to live there for economic reasons. Russia has certainly shown concern over the status of Russian minorities living in the Baltic States and its constitutionalized commitment to promote its interests in the "near abroad" far surpasses any other state's claims on foreign territories. Given the history of Russian aggression in the Baltic States, Estonia and Latvia may be justified in demanding that ethnic Russians not only break their political ties to Russia, but also demonstrate a commitment to their adoptive countries.

Avoidance of Statelessness Principle

The principle of avoiding conditions of statelessness has become hard law since the adoption of the UN Convention on the Reduction of Statelessness. In reference to citizenship laws, Art. 8 of the Convention stipulates that State Parties "shall not deprive a person of his nationality if such deprivation would render him stateless." The fact that 13 percent of residents in Estonia and 28 percent in Latvia remain stateless flies in the face of this relatively straightforward principle. Moreover, in line with the Convention on the Rights of the Child and Art. 24 of the International Covenant on Civil and Political Rights, state practice has come to require that states grant citizenship to children born in their territories who would otherwise be rendered stateless.³⁵

Right of Option Principle

The right of option gives residents of succession states the right to choose between taking citizenship in one of the two (or more) successor states or between the successor state and the predecessor state.³⁶ In cases where the option of taking the citizenship of the predecessor state is chosen, it is usually coupled with the obligation to leave the successor state.³⁷ It might be argued by Estonia and Latvia that the current stateless population permanently residing in the countries actually chose statelessness because they were given the option of gaining automatic citizenship by the Russian Federation. Article 13 (2) of the Russian Law on Federation Citizenship, adopted November 28, 1991, states that "Persons born on December 30, 1922, and thereafter, who lost the citizenship of the former USSR shall be deemed in Russian Federation citizenship by birth, where they were born on the territory of the Russian Federation, or where either parent at the moment of their birth was a citizen of the USSR and was in permanent residence on the territory of the Russian Federation." And, though restrictive, the citizenship laws of Estonia and Latvia do offer an option to

residents to become citizens through naturalization. Moreover, it is state practice that the right of option go hand in hand with the principle of effective links, whereby nationality is granted by the country which shares the individual's ethnic, linguistic, or religious identity.³⁸ In the Baltic's case, this would give the primary responsibility for extending citizenship to the Russian resident populations to the Russian Federation. Yet, the resident non-citizen populations have largely chosen to remain in the Baltic States despite their stateless status.

Practice of Granting Nationality Automatically in Cases of State Secession

The practice of granting citizenship to the resident population, that is, that the "population goes with the territory" is said to be an international practice, though it "is not yet a binding rule of codified international law prescribing the automatic acquisition of the nationality of the successor state."³⁹ In cases where there is a successor state and a predecessor state, the rule has been that the successor state confers its citizenship to former nationals of the predecessor state habitually residing in the successor state, in almost all cases this citizenship is conferred automatically,⁴⁰ though the right of option and effective links principles should also be considered. In cases where the predecessor state ceases to exist, as is the case of the USSR, successor states are even more strongly compelled by international practice to offer automatic citizenship to residents of their territories. Article 10 of the 1961 Convention on the Reduction of Statelessness gives effect to this obligation provides that "Every treaty between Contracting States providing for the transfer of territory shall include provisions to secure that no person shall become stateless as a result of the transfer . . . In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition."

The automatic conferment of citizenship to permanent residents of the territory of the successor state was followed only by Lithuania. Why did Estonia and Latvia diverge from this practice and how did they get away with it? To answer this question it is necessary to return to the Baltic "path of independence" and examine more closely the principle of state continuity embraced by the Baltic States. If Estonia's original path of seceding from the USSR had been successful, the Baltic States would have had to sign a treaty with the USSR and thus be subject to the Convention on the Reduction of Statelessness, with all its implications for allocating citizenship. But, by asserting their status as continuous states, the Baltic States subverted the need to base their independence on a secession pact with the USSR, on the basis of international recognition of the illegality of their annexation. Following their re-assertions of independent statehood, inter-war national laws and international treaties were again

recognized.⁴¹ And as a consequence, the Baltic States reinstated their inter-war citizenship laws, with all the ramifications they had on soviet-era migrants. Thus, “these states represent a special case since their claim to be identical with the three Baltic States annexed by the Soviet Union in 1940 was accepted by the international community.”⁴²

As a “special case,” both Latvia and Estonia have been able to forestall disciplinary measures made by the international community. Moreover, clear attempts were made to bestow special status to stateless residents. These states offered protection and responsibility for aliens traveling abroad through the issue of non-citizens’ passports. Social and political rights were given to these groups as well, even to the extent that non-citizens in Estonia may vote in local elections. Indeed these measures were taken to soften the blow (to both the resident non-citizens as to the disapproving international community) of their restrictive policies. Yet these measures are merely a smok-screen for clear discrimination of the Russian minority. But with no international law backing, the hands of the international community were tied.

In 1997 the Council of Europe drew up the European Convention on Nationality in order to give hard-law backing to the general principles and international practices concerning nationality. Few states have since signed on to the Convention, and none of the three Baltic States have acceded to it.⁴³ Nevertheless, the Convention provides important new limitations to states’ nationality policies. Interestingly, Estonian and Latvian policies towards stateless residents have created an important benchmark for citizenship policy which was incorporated into the Convention. Article 20 of the Convention requires that in cases of state succession, nationals of the predecessor state habitually resident in the territory over which sovereignty is transferred to a successor state and who have not acquired its nationality shall have the right to remain in that state and those persons shall enjoy equality of treatment with nationals of the successor state in relation to social and economic rights. Moreover, resident non-citizens may not be excluded from employment in the public sphere.

Human Rights Conditionality in EU Enlargement

While conditionality is not a new international tool for influencing state behavior, relative to other developing countries, this tool has strong potential for success in the Baltic States for at least two reasons. First, the Baltic States, like other postcommunist countries, are in dire need of international finances to support reform - both political and economic. Second, the Baltic States have consistently asserted their “Western credentials” and the desire to return to Europe. This desire is prompted by the even greater desire to “leave” the East, that is, Russia’s

sphere of influence. Thus, even if there are significant cultural differences between the Baltic States and Western Europe, there is a strong incentive for these differences to be bridged in an effort to increase security.

Despite the Baltic States' relative willingness to go along with conditionality, the effectiveness of this tool is also dependent on donor states' and international institutions' treatment of conditionality. Peter Burnell has developed three questions for donors to ask themselves before offering aid for political changes:

First, are they [the donors] convinced the target groups in the aid-receiving world know and understand what the donors want, and why they want it? Second, do those groups display full confidence in the donors' qualifications to suggest such advice, and if not, would they be justified in developing such a confidence? Third, are there features of the operation of political conditionality which, in the reasonable estimation of friends, could actually impede the promotion of good government and democracy, and make these pursuits more vulnerable to the indifference and hostility of their detractors and enemies?⁴⁴

Burnell asserts that the strength and effectiveness of the conditionality tool depends on how it is used. In terms of the Baltic States, the relative strengths of international institutions to credibly employ the conditionality tool becomes quite clear. First, it would seem that those institutions in which the Baltic States are already members have less to offer in terms of conditionality. Indeed, the conditions placed on these countries by the United Nations (UN), the Council of Europe (CE) and the Organization for Security and Cooperation in Europe (OSCE) have largely been met upon entry into the fold. Monitoring and helping to enforce treaty obligations would be their main vehicle for promoting change, although since the states under scrutiny are also equal voting partners, the rights-violating state has a greater advantage in arguing its case than effected groups within the state.⁴⁵ Nevertheless, behind-the-scenes deals seem to be struck between institutions and violator-states through funding by third parties (either other member states or other international organizations), which seem to effectively place "helpful pressure" on problem countries.⁴⁶

At this point, the EU holds the most leverage in terms of placing human rights conditionality on the Baltic States, in view of their applications to join. In principle, the rules simple: apply the *acquis* and association agreements, and EU admission will be granted - failure to comply will delay admission and suspend aid. Previous EU enlargements also required acceding countries to make political and economic adjustments. But the conditions placed on the postcommunist countries are higher than ever for two reasons. The rapid expansion of the EU's competence since the end of the Cold War and the social and economic

devastation due to the soviet legacy in Eastern Europe have both contributed to widening the gap between East and Western Europe. The three basic requirements for membership determined at the European Council meeting in Copenhagen are:

- the applicant state must have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the applicant state must have a functioning market economy with the capacity to cope with competitive pressures and market forces within the Community;
- the applicant state must be able to take on the obligations of membership, including adherence to the aims of economic and political union.”⁴⁷

These seemingly straightforward criteria translate to over 80,000 pages of legislation that will need to be adopted prior to accession.⁴⁸ The vast body of legislation derived from the *acquis communautaire* are presented as ‘objective criteria’ to be used to evaluate the ten postcommunist applicant countries. The EU created these objective criteria in order to increase the transparency of the enlargement process and thus respond to allegations that it has shown favoritism to certain countries.⁴⁹ Nevertheless, each of these countries face different challenges and are at different stages of their political and economic transitions. Thus, the complexity of the task potentially weakens the conditionality tool since the number of criteria is great, monitoring their implementation by the Commission is difficult and the return on the investment (accession to the EU) seems distant.

To address this weakness, the EU’s Agenda 2000 initiated a new strategy which reinforced the conditionality tool. First, those countries that had already progressed further in terms of political and economic development were grouped as “front-runners” in the enlargement process. The Czech Republic, Estonia, Hungary, Poland, and Slovenia were thus rewarded for their strides towards democratization and market reform. This was a sizable carrot to those included in the first wave and a prominent stick to those that were left out, which created incentives for slackers to speed up reforms. Next, through the Accession Partnerships, the EU created a separate strategy for each country, complete with short- and medium-term goals. Each step taken towards reaching these goals is accompanied by promises of financial assistance through PHARE and “catch-up” facilities, directly targeting specific reform measures, such as fighting corruption, rebuilding infrastructure, and promoting foreign investment. This was a significant step in assigning different weights to the huge body of criteria and

adapting an enlargement strategy compatible with each country's unique strengths and weaknesses.

So that there would be no question of its policy, the Council adopted Art. 4 of Regulation 622/98⁵⁰ on March 16, 1998 which gives the Commission the power to suspend financial assistance if it deems that the country in question is not progressing quickly enough, or actually back-pedals in its progress towards adopting the *acquis*. Regulation 622/98 thus legally and institutionally enshrined the conditionality tool in the enlargement process.

Progress in keeping up with the short- and medium-term goals of the Accession Partnerships is documented in the Regular Reports by the Commission. Unlike the Agenda 2000 Opinions and the Accession Partnerships, the Reports are extremely detail-oriented summaries of the progress in meeting the accession criteria in each country, reflecting the problems met by reformers in each of the countries, as well as their achievements. As will be discussed below, the Reports allow the EU to make adjustments in its policies to each country depending on the rate of its progress in specific areas. Although the time-span between the adoption of the Agenda 2000 Opinions and the Regular Reports was scarcely more than one year, progress in the acceding countries has been clear, as was the EU's shift in focus on certain rights. Thus, it seems probable that the EU's standards and expectations will increase the better applicant countries perform.

Human rights in the European Union

Including requirements for human rights protection in the Association Agreements for EU accession is a practical tool for smooth integration of the postcommunist democracies into the Union. Western Europe's commitment to both free market principles and open, democratic societies necessitates that newcomers share and promote not only economic ideals, but also democratic ones - of which human rights protection are an integral part.

Despite their obvious significance, human rights remain a contentious issue within the EU, since each member state remains committed to its own unique constitutional and ideological tradition. The inclusion of human rights in the Treaty of the European Union (TEU) after the Maastricht and Amsterdam Intergovernmental Conferences represents a small triumph for the member states in overcoming their significant political differences in this field. The absence of rights in prior treaties was not a result of their indifference to human rights,⁵¹ but was due to their inability to decide which rights should be incorporated as guiding principles of the Union and at what standard and how they should be applied. In

fact, Art. 13 of the TEU actually reflects the dissonance on human rights among the member states. It states: “Without Prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament may take *appropriate* action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (emphasis added). The EU’s irresolute stance is symptomatic of its reticence to accept the responsibility of promoting human rights within its own borders.

The inability of the EU to create a Human Rights Agenda is another consequence of this dissonance. Article 6 of the TEU states the EU is “founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.” The final part of that Article states that the “Union shall provide itself with the means necessary to attain its objectives and carry through its policies.” Nevertheless, it has not yet introduced new mechanisms for carrying out its commitment to promoting rights.⁵²

The ECJ has been an important forum for the EU human rights debate. Human rights conflicts have touched on other important EU principles, such as supremacy, direct effect, and subsidiarity. Regularly, cases come before the Court that raise important human rights issues, but the ECJ has not been completely consistent in its approach to these questions. Instead, it’s decisions reflect a “push and pull” process in which the Court is “at times [willing] to embrace the invitations of those actors [to review member state action under Community fundamental rights standards] and at other times, explicitly or implicitly has rejected them.”⁵³ The oscillation of the Court stems from the ongoing power balance between the EU institutions, on the one hand, and between the EU and its member states, on the other. Thus the Court has joined that game as well, carefully balancing between protecting and increasing its sphere of competence, while carefully maneuvering around delicate relationships with the national courts of the member states. An important observation has been made reflecting the Court’s interpretation of its competence concerning rights:

“In its jurisprudence, the Court has articulated three critical constitutional principles which inform this field. The first affirms that ‘...respect for human rights is a condition of the lawfulness of Community acts.’ The second affirms that it is the positive duty of the institutions ‘...to ensure the observance of fundamental rights’. In other words, they are obligated not simply to refrain from violating them, but to ensure that they are observed within the respective constitutional roles played by each institution. Finally, the human rights jurisdiction of the Community extends only ‘...in the field of Community law.’”⁵⁴

The groundwork for and active review of human rights in the EU and its member states has thus been laid down, though the ECJ has taken a strong human rights stance in only a few cases.⁵⁵ For now, the role of enforcing and protecting human rights primarily falls on the shoulders of the member states, which only serves to reinforce the need to include human rights in the preaccession criteria for EU membership.

Which Rights are Necessary for EU Accession?

Determining what rights are essential for the creation of a common market and at which standard these rights must be protected has been a contentious issue with which the EU's institutions have been grappling. At the same time, while the conditionality tool was seen as quite strong in the EU enlargement process, human rights constitute only a subsection of the Political Criteria for EU accession. To complicate matters, the *acquis* are in the process of expanding: which means that the conditions for accession are in the process of changing as well.⁵⁶ Moreover, the basic Copenhagen conditions are largely declarative⁵⁷, allowing flexibility of interpretation and do not indicate at what standards these criteria will be judged. The tools used to measure progress and the standards applied in meeting the political and human rights criteria for accession are therefore highly subjective.⁵⁸ In addition to any changes in criteria or evaluation standards that might come from the Commission, the European Parliament (EP) has taken decisions independently that may further expand the accession criteria.⁵⁹ Although the EP's role in determining accession criteria is limited, it does vote on the accession of new member states, and therefore any decision it takes are plausible additions to the already numerous accession criteria.⁶⁰ Therefore, evaluating which rights have been included in conditionality requirements for aspiring members, what standards are required, how human rights protection is measured, and how the EU will 'punish' those countries that do not comply with those conditions is somewhat problematic.

Putting these complicating factors aside, the TEU offers clues about the Commission's direction in terms of what rights are important to the EU. First, Article 6.2 of the TEU clearly states that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) shall be respected by the Union and ratification of the ECHR is part of the *acquis*. The Agenda 2000 cites this article as well, which indicates its importance as a tool for evaluating the protection of human rights in acceding countries.⁶¹ Nevertheless, the ECHR has been deemed by the ECJ as "insufficiently precise" to clearly address European rights and demand that they be implemented at a sufficiently high standard.⁶² This has been interpreted to mean that the ECJ considers the ECHR to set only a minimum standard for rights protection, and that the EU must

provide a higher standard of protection to its citizens.⁶³ The ECJ has often quoted the end of Art. 6.2 which stipulates that in addition to the ECHR the EU must respect rights “as they result from the constitutional traditions common to the Member States,” which also implies a higher standard than that provided for in the ECHR. Thus, looking at the conventions to which applicant countries are a party is a necessary but insufficient indicator of their readiness to accede to the EU.

From the Agenda 2000 Opinions, Accession Partnerships, and Regular Reports, I have determined that the EU has focused on three types of rights. My groupings do not necessarily overlap with traditional classifications of rights, and would probably be clumsy if they were used in another context. Nevertheless, I use them here in order to shed light on the EU’s motivations for including certain rights over others in its human rights policy in the candidate countries. The first group includes rights which are necessary to ensure democratic rule and open societies. These democracy guarantees include: access to justice, right to life, freedom against arbitrary arrest, right to privacy, freedom of association, freedom of expression, and freedom of assembly. These rights and freedoms form the basic requirements for democracy: the right to organize politically and participate in the political process without repercussions. If these rights and freedoms are in place and function properly, then there are no impediments for the society to create and protect a shared system of values. For the EU, this category of rights is essential first of all for its symbolic significance: democracy is a *European* value and is indeed one of the unifying factors of the alliance. But the second reason for including them in the pre-accession criteria is because currently the EU can do little to influence human rights standards in the actions of member states.⁶⁴ Therefore, securing the framework necessary to help develop a national commitment to human rights is essential for any EU member state. This class of rights seem to stem from Art. 177.2 of the TEU, which stipulates that “Community policy in this area [development cooperation] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.” It is also consistent with the requirements for accession in previous enlargements.⁶⁵

There is little resistance to raising the standards of this group of rights in the applicant countries. After all, it was the absence of such rights which drove the anti-communist campaigns of the late 1980s. Nevertheless, protecting these rights is not unproblematic, first of all because of the weak civil society in these countries and second because one of the legacies of the soviet regime is the knee-jerk reaction of strengthening the state in order to regain control over unruly social elements (ie., organized crime).

The second group of rights required by the EU is counter-majoritarian rights. This group includes: protection and non-discrimination of ethnic minorities, non-citizens, asylum seekers, and children, and freedom of religion. For the most part, the Accession Partnerships' Political Criteria are silent on women's rights and non-discrimination due to race, gender, disability, religion, age, or sexual orientation,⁶⁶ which is a clear EU policy. Yet, the Accession Partnerships clearly specify the demand that applicant countries sign and ratify the Framework Convention for the Protection of National Minorities (FCPNM). The FCPNM seems to be important since attitudes towards minorities and foreigners have important consequences in foreign policy and security. The Common Foreign and Security Policy sections of the Opinions concentrate on revealing the applicant countries' good relations with their neighbors which can be destroyed easily by ill-treatment of that neighbor's émigré groups.⁶⁷ It may also be an indication of how receptive these countries will be to the free movement of workers and capital after accession.⁶⁸

This group of rights is somewhat more difficult to sell in postcommunist societies, judging from the rise of nationalism and ethnic discrimination throughout the region. Although all three constitutions of the Baltic States now have clear provisions that promote and protect the rights of national minorities, these protections have been shown as insufficient due to the limited power of their national institutions. Moreover, the parliamentary system has been the most favored system of government throughout the region which, in combination with strong nationalism and weak civil society, can be a recipe for majoritarianism.⁶⁹ Particularly in the Baltic States, where independence was fought for by arguing for national self-determination, and where Lithuanians, Latvians, and Estonians were viewed as second-class citizens by the Russian Diaspora, turning the other cheek and adopting liberal policies towards the Russian minority seems unlikely. Moreover, France and Belgium have not signed the Convention, which reflects these countries' ideological position in the general debate between valuing individual rights over group rights. In addition, the Netherlands, Greece and Portugal have failed to ratify this convention.

The final set of rights could be grouped as quality-of-life rights. I chose this title not because I believe these rights to be less important than others, but because the Commission itself decided to put environmental protection and health care under that title instead of placing them in the human rights section.⁷⁰ I have added other rights (from the human rights section of the Opinions) to the quality of life rights because these rights have high price tags: the right to social security and minimum wage, education, humane prison, army, and refugee camp conditions. Also to this group I have included the right to property and the right to strike and form trade unions because they contribute to raising the quality of life

in acceding countries to EU standards. These rights are primarily socio-economic rights, and form the building blocks for market economy building and smooth integration into the EU framework. They reflect the Union's overall objectives as they are derived from Art 2 of the TEU. Since most involve hefty government expenditures, it is doubtful that these countries would have developed clear policies in these fields so early in their economic transitions without EU intervention.

The Effect of EU Conditionality in the Baltic States

From the concluding paragraphs of each of the Opinions, it seems as though little needs to be done in each country to fulfill the political criteria (see Table X in the appendix). In Latvia and Estonia, it seems, minor adjustments need to be made to accommodate the Russian-speaking population. The Opinion on Lithuania on the other hand, would have us believe that Lithuania has already fulfilled the political criteria. These conclusions, however, are hardly compatible with the preceding paragraphs which raise many human rights concerns in each of the three categories or rights: democratic guarantees, counter-majoritarian rights, and quality-of-life rights.

The Commission's Opinion in the Agenda 2000 identified 14 human rights problems in Lithuania. Five of these are problems within the category of democracy guarantees: inadequate legal recourse in the courts due to lengthy legal proceedings, shortage of lawyers, and absence of procedures for making police and other civil servants accountable for their actions; the second stems from the first and deals with the inadequacy of the state's attempts to prosecute alleged Nazi war criminals; existence of the death penalty; inadequate protection against arbitrary arrest; and inadequate right to privacy. In the category of counter-majoritarian rights, four problems were identified: although freedom of religion is guaranteed by law, there is inadequate protection against anti-Semitic acts; protection of children is lacking in terms of legislation against child pornography, child prostitution, and sexual abuse of children; though the rights of minorities are constitutionally guaranteed, special rules originally granted to ethnic minority parties for entering parliament have been scrapped; and gender discrimination laws are not adequately implemented. Finally, in terms of quality-of-life rights, the Lithuanian government has unnecessarily complicated the procedures ensuring the right to strike; has not completed the land register which is necessary to assure the right to property; prison conditions are inhumane; the health care system needs serious reforms; and serious reforms are necessary in the area of environmental protection.

The Agenda 2000 Opinion on Latvia's application isolates 15 human rights breaches. Among these, two infringe on democracy guarantees: inadequate legal recourse and need to abolish the death penalty. Counter-majoritarian rights are the most problematic in Latvia. The eight problems identified in this category are: restriction on freedom of religion, inhumane and degrading conditions in asylum seekers' accommodation centers; inadequate protection of children; infringements of the rights of minorities to form collective groups; extremely restrictive right to citizenship; discrimination against non-citizens; ethnic minority discrimination; and non-implementation of gender anti-discrimination laws. Within the category of quality-of-life rights, the five problems focused on by the Commission were: restriction on property rights of non-citizens; inhumane prison and army conditions; and inadequate health care system and environmental protection.

In the case of Estonia, 10 human rights problems were identified in the Agenda 2000 Opinion. Breaches of democracy guarantees were identical to those identified in Latvia. Within the counter-majoritarian rights category, the four identified problems included: the lack of measures to promote the collective rights of ethnic minorities; overly-restrictive citizenship laws; discrimination against non-citizens; and gender anti-discrimination laws are not implemented. Finally, the four problems identified in the quality-of-life category were: restrictions of the right to property; inhumane prison conditions; inadequate health care system; and the need to bolster environmental protection.

While the Agenda 2000 was successful in exploring the unique problems of each of the applicant countries and their specific contexts, the Accession Partnerships seem to indicate a return by the Commission to promoting uniform "objective criteria" in each of the three countries. The Commission's concentration on a small set of rights seems to reflect their greater significance in the EU context relative to the other rights problems presented in the Opinions. The Accession Partnerships required all three countries to improve border management and the conditions of refugee reception facilities; improve the operation of the judicial system, implement migration policy and asylum procedures, fight against organized crime including trafficking of human beings, enforce equal opportunities between women and men, improve public health standards, strengthen environmental protection measures, and continue raising the standard of the right to property. In the Latvian and Estonian cases, measures must also be taken to promote integration of national minorities and facilitate the naturalization of non-citizen residents. An additional requirement was placed specifically on Estonia to reform its pension program. The Accession Partnerships indicate that the most important rights problems are in the fields of counter-majoritarian and quality-of-life rights, while no mention is made of problems in democracy guarantees. Nevertheless, the Partnerships reveal an interesting

development in EU financial assistance in democracy projects which seems to show that there is still work to be done in that field. While had previously channeled a mere 1 percent of the PHARE budget to the Democracy Programme,⁷¹ the EU will increase PHARE assistance in institution building (which involves the strengthening of democratic institutions, rule of law, etc.) to 30 percent of the PHARE budget.

By contrast, the Regular Reports by the Commission not only continue to mention problems and developments in all three human rights categories, but the standard of evaluation of certain rights has actually been raised. This is best demonstrated in the Lithuanian case: in the Agenda 2000 Opinion, the position of asylum seekers was deemed to be satisfactory, while in the Regular Report, a detailed critique of foreigner registration center conditions and refugee admission procedures appears. Another example of this is the Opinions' positive evaluation of the freedom of association in both Lithuania and Estonia on the one hand, and the Commission's comment that the NGO sectors in each country are not growing rapidly enough due to the low level of public information. However, if education of the public is to blame, it would hardly be logical to conclude that the public was better educated in 1997 than in 1998 about associations and NGOs. Both examples show that the EU's standards of evaluation have increased.

But the most important revelation of the Regular Reports is the dramatic progress made by the applicant countries in responding to the criticisms of the Agenda 2000 Opinions. Perhaps the most impressive performance was given by Latvia. First, although it was not an explicit requirement by the EU, the Latvian Parliament adopted a constitutional amendment which incorporated a bill of rights in the Satversme (Constitution). Previously, the "Rights and Duties of Citizens" existed as a regular law, with no method to check whether other legislation or state actions comply with it. Next, in spite of its controversial nature, the Parliament managed to adopt a new citizenship law which was subsequently upheld in a national referendum. As a result, the "window system" (which differentiated by age those who could apply for citizenship every year) was abandoned and the naturalization process was opened to all resident non-citizens. Also, modifications to the citizenship law were made to enable children born in Latvia to stateless parents to be granted citizenship and the procedures for naturalization for people over the age of 65 were simplified. Moreover, the Latvian government responded to the Opinion's criticism of its discriminatory policies towards non-nationals by eliminating restrictions preventing non-citizens from working as fire-fighters, airline staff, pharmacists, and veterinary pharmacists and unemployment benefits will now be available to non-citizens without their having to present certificates that they know the Latvian language. Progress has also been demonstrated in other fields by new laws on asylum

seekers and refugees, the start of prison reconstruction and modernization projects, as well as ongoing implementation of environmental protection measures.

Lithuania has also demonstrated some progress in the weak areas identified in the Agenda 2000 Opinion. In response to the call for improvements of the judicial system, several administrative changes were instituted, the preventative detention law was replaced with a more liberal "Law on Crime Prevention" which also includes clear guidelines regarding search and seizure which offer greater protection of the right to privacy, and another new law was introduced to increase the accountability of law enforcement and judicial officers. A law on the protection of children's rights was adopted - which is in line with the UN Convention on the Rights of the Child - and an Ombudsman for the protection of Children's rights was established. Another Ombudsman was established to oversee implementation of the gender anti-discrimination law.

Some improvements have been initiated in Estonia, although progress reports are coupled with further criticisms and improvement requirements, indicating a heightened standard of evaluation most likely due to Estonia's greater proximity to accession than the other two Baltic States. In March, 1998 the death penalty was abolished and Protocol 6 of the ECHR was ratified. Ongoing progress in the restructuring of the police and judiciary was recorded as well. But in the field of counter-majoritarian rights, little progress was demonstrated and it will remain to be seen if the EU will take any measures to punish Estonia's non compliance at future stages of evaluation. For now, Estonia will still receive the same PHARE funding to promote human rights improvements as Lithuania and Latvia.

Despite the EU's many problems with creating a comprehensive human rights agenda, it has been able to create and effectively promote a human rights policy in the Baltic States through conditionality in three areas: democracy guarantees, counter-majoritarian measures, and quality-of-life rights. Even in the course of one year, the three Baltic States have shown dramatic efforts to respond to the specific criticisms and concerns elaborated in the Agenda 2000 Opinions. Moreover, it is important to note that since the Agenda 2000, all three countries have signed and ratified the FCPNM. Perhaps the "stick" of being excluded from the first round of accession negotiations has prompted Lithuania and especially Latvia to push through reforms more quickly than Estonia. Nevertheless, all three countries have been issued a sizable "carrot" to promote further development of human rights protections in the form of extensive PHARE aid devoted to human rights development programs.



The oscillation between the EU's positive evaluation of the political and human rights criteria on the one hand, and its increasing standards for rights protection in the Baltic states seems to reflect the need for diplomacy when promoting human rights outside EU borders. This need stems from the weakness of the EU to influence - let alone harmonize - the standards of rights protection in its member states. Thus, by stating that Lithuania, for example, has fulfilled the political criteria, the EU covers itself from accusations of imposing a double standard. Nevertheless, critiques and requirements for improvements in the field of human rights continue and the standards of evaluation have actually risen with time and progress. Though highly speculative and difficult to prove, it is worth considering other effects of this policy. By demanding a high standard of protection and collectivization of minority rights, might the EU also be provoking change in the UK, Belgium and France, where individual rights have priority?⁷² A better example is the demand that Latvia and Estonia simplify the procedures for granting citizenship to children born in the territory to non-citizen residents. Is it just coincidence that Germany recently adopted similar procedures as well? If there is a link, then the success of the enlargement project will be two-fold: not only will rights be promoted in the applicant countries in the East, but it might well influence member state behavior as well.

If the EU is serious about its requirements to incorporate the stateless residents in Estonia and Latvia into their societies as citizens, there would be little to hold them back from signing the European Convention on Nationality, since the 'toughest' new standards included in that agreement are in line with their policies on granting long-time residents rights almost equal to those of citizens. This may in time compel countries with large resident-alien communities such as Germany to do the same. Moreover, if, for instance resident-alien communities residing in EU member states acquire limited political rights, such as the Russian community's rights to vote in local elections in Narva, this may in turn lead to rethinking the concept of EU citizens and expanding EU citizenship to long-time residents - that is third country nationals, or at least granting them equal free-movement rights as enjoyed by EU citizens⁷³.

Conclusions

This paper has explored the difficulty with which the international community has attempted to influence change in the Baltic States' policies on citizenship and the protection of national minorities. The inability of organizations such as the OSCE and the Council of Europe to reverse discriminatory policies in the Baltic States was due to the lack of progress in international law since the end of WWII regarding nationality policy. Only after the failure of international law to offer a remedy for statelessness in the Baltic States was an effort made to bring law up to

speed with contemporary values which strive to raise the principle of non-discrimination above nationalist sentiments.

The great success of the EU enlargement process in promoting change in the Baltic States' policies, not only towards the Russian minority but also in terms of other human rights, stems from an effective use of conditionality. With the promise of accession, the Baltic States sought to remedy the condition of statelessness in their territories and abandoned discriminatory policies. Despite the fact that certain EU member states have not signed it, all three Baltic States have ratified the FCPNM. The fact that applicant countries are complying with relatively high human rights criteria prior to accession will surely raise the standard of human rights protection in the EU and create a foundation for the EU to step-up political integration and the adoption of a human rights agenda.

Nida M. Gelazis

Endnotes

¹ See Manfred Nowak, "Human Rights 'Conditionality' in Relation to Entry to, and Full Participation in the EU" in *The EU and Human Rights*, Philip Alston, Mara R. Bustelo, and James Heenan, eds. (Oxford: Oxford University Press, 1999).

² See Darcy S. Binder, "The European Court of Justice and the Protection of Fundamental Rights in the European Community: New Developments and Future Possibilities in Expanding Fundamental Rights Review to Member State Action" Harvard Jean Monnet Working Paper 4/95, p.71.

³ It is important to mention that the electorate in 1990 included all residents of the territory of each republic - giving all people, regardless of their ethnic origins the right to cast a vote. The clear electoral defeat of the Communist Party indicated that votes were not cast along ethnic cleavages; it is clear that many ethnic Russians chose to support the independence organizations over the Communist Party. Latvia offers the clearest example that non-Latvians supported independence as well: the People's Front gained two-thirds of all seats in the Supreme Soviet, even though the ethnic breakdown in 1990 Latvia was 52 percent Latvian; 34 percent Russian; 4.5 percent Belarusian; 3.5 percent Ukrainian; 2.3 percent Polish, and 1.3 percent Lithuanian.³ In Latvia and Estonia, the fact that ethnic minority groups supported the initial independence movements was later dismissed and these same groups were largely excluded from future elections due to restrictions on citizenship rights

⁴ See "Constitution Watch: Lithuania" *East European Constitutional Review* Vol. 1, No. 1 (Spring 1992) p. 5.

⁵ Section 3 of "the Declaration of the Renewal of Independence" 4 May 1990.

⁶ Section 8 of "the Declaration of the Renewal of Independence" 4 May 1990.

⁷ See Vello Pettai, "Estonia: Positive and Negative Institutional Engineering" in *Democratic Consolidation in Eastern Europe: Institutional Engineering* Jan Zielonka, ed. (Oxford: Oxford University Press, forthcoming) p. 96.

⁸ See Rasma Karklins *Ethnopolitics and Transition to Democracy: The Collapse of the USSR and Latvia* (Baltimore: The Johns Hopkins University Press, 1994) p. 28.

⁹ See Graham Smith, "Nationalities Policy from Lenin to Gorbachev" in *The Nationalities Question in the Soviet Union* Graham Smith, ed. (New York: Longman Publishing Group, 1990) pp 1-20.

¹⁰ See Appendix 2, Table I in *Return to the Western World: Cultural and Political Perspectives on the Estonian Post-Communist Transition* Marju Lauristin and Peeter Vihalemm eds. (Tartu: Tartu University Press, 1997) pp. 305-306. This table also indicates an even greater loss suffered by the Jewish populations in the region: between 1934 and 1959 56,000 Jews and an astounding 204,000 Jews 'disappeared' from Latvia and Lithuania respectively.

¹¹ In the following sections dealing with the genesis of citizenship legislation in the three Baltic States I have tried to restrict myself to the major laws that have been passed and the end result of this process. Needless to say, this process has been messy and many political and legislative twists and turns have been excluded if they did not result in lasting policies.

¹² See Zenonas Petrauskas "Issues of Citizenship in the New Constitutions" report presented at the Council of Europe's UniDem Seminar on Citizenship and State Succession held in Vilnius, 16-17 May 1997 (Strasbourg: Council of Europe, 1998) p. 27.

¹³ Council of Europe: Doc. 6787, "Report on the application of the Republic of Lithuania for membership of the Council of Europe" March 2, 1993, p. 11.

¹⁴ See Ineta Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" in *The Baltic States at Historical Crossroads* Tavalds Jundzis, ed. (Riga: Academy of Sciences, 1998) p. 260

¹⁵ This partial dismissal of the principle of continuity is also apparent in the reticence of Lithuanian politicians to invite World War II emigres into the political sphere of the restored state. For instance, the electoral law requires ten-year residence for repatriated emigres before they can run as candidates in elections. Also dual citizenship is strictly limited, therefore forcing repatriated emigres to cut their ties to the countries where they settled. These measures have become less stringent, to the point that Valdas Adamkus, formerly a US citizen and Chicago resident was elected president in 1997. See Nida Gelazis "Institutional Engineering in Lithuanian: Stability through Compromise" in *Democratic Consolidation in Eastern Europe: Institutional Engineering*, Jan Zielonka, ed. (forthcoming).

¹⁶ Data on ethnic composition of the Baltic States is found in Ineta Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" in *The Baltic States at Historical Crossroads* Tavalds Jundzis, ed. (Riga: Academy of Sciences, 1998) p. 260

¹⁷ See Ineta Ziemele "Incorporation and Implementation of Human Rights in Latvia" in *International Human Rights Norms in the Nordic and Baltic Countries*, Martin Scheinin ed. (Dordrecht: Martinus Nijhoff Publishers, 1996) p. 78.

¹⁸ See Ineta Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" in *The Baltic States at Historical Crossroads* Tavalds Jundzis, ed. (Riga: Academy of Sciences, 1998) p. 260

¹⁹ See "Constitution Watch: Latvia" *East European Constitutional Review* Vol. 2, No. 3 (Summer 1993) p. 11.

²⁰ These percentages were calculated from the 1997 official Population Register of the Latvian Citizenship and Immigration Board, as reported in the "Latvia: Human Development Report 1997 (Riga: UNDP, 1997) p. 49. Since these numbers only include residents who have actually registered with the government, this number reflects the minimum possible number of state-less persons residing in Latvia.

²¹ See Aleksei Semjonov "Citizenship Legislation, Minority Rights and Integration in Estonia" paper presented for the ECMI Baltic Seminar "Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU" (1998) p. 5.

²² Although the constitution-drafters assumed that this would also give resident non-citizens the right to run for elected office in local councils and for mayor, the May 19, 1993 electoral law denied non-citizens this right. David Laitin explains that "Most delegates of the Riigikogu knew that they were breaking the spirit, if not the letter, of the Constitution, but the political goal of undermining the power of the current city councils in the northeastern cities proved of greater importance to them." See David Laitin "The Russian-Speaking Nationality in Estonia: Two Quasi-Constitutional Elections" in *East European Constitutional Review* Vol. 2-3, No. 4-1 (Fall 1993-Winter 1994) p. 25.

²³ The 1940 amendments to this law dramatically changed what had been originally (in 1938) a relatively liberal law that simplified naturalization procedures for those who had permanently resided in the territory of Estonia for at least ten years, did not envisage any formal exam for knowledge of the Estonian language, and gave automatic citizenship to children born in Estonia to stateless parents. See Aleksei Semjonov "Citizenship Legislation, Minority Rights and Integration in Estonia" paper presented for the ECMI Baltic Seminar "Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU" (1998) p. 7.

²⁴ See Ineta Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" in *The Baltic States at Historical Crossroads* Tavalds Jundzis, ed. (Riga: Academy of Sciences, 1998) p. 257.

²⁵ As much as 27.4 percent of the 1992 electorate had gained citizenship on this basis. See Aleksei Semjonov "Citizenship Legislation, Minority Rights and Integration in Estonia" paper presented for the ECMI Baltic Seminar "Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU" (1998) p. 7.

²⁶ 1992 figures during the constitutional referendum show that only around 60 percent of the 1990 electorate was able to participate. See Aleksei Semjonov "Citizenship Legislation, Minority Rights and Integration in Estonia" paper presented for the ECMI Baltic Seminar "Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU" (1998) p.6.

²⁷ See Aleksei Semjonov "Citizenship Legislation, Minority Rights and Integration in Estonia" paper presented for the ECMI Baltic Seminar "Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU" (1998) p. 7.

²⁸ LNTS. Vol. 179, p. 89, as cited in Council of Europe: "On the Consequences of State Succession for Nationality" Report adopted by the European Commission for Democracy through Law at its 28th Plenary Meeting, Venice 13-14 September 1996, Science and technique of democracy collection, No. 23 (Strasbourg: Council of Europe Publishing, 1998), p. 21.

²⁹ Op. cit. Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" p.264.

³⁰ See appendix of the "Statement by Romans Baumanis, head of the delegation of Latvia" agenda item 16: Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 54th Session of the Commission on Human Rights, Geneva: March 31, 1998.

³¹ Op. cit. "On the Consequences of State Succession for Nationality", p. 22.

³² Nottebohm Case (Second Phase), Judgment of 6 April 1955, ICJ Reports 1955, p. 23, as cited in Ibid.

³³ Ibid. p. 14.

³⁴ Although international law and practice allows states to deny citizenship to military and government personnel of foreign states, this has become an excuse for Estonia to deny residence permits and even deport (formerly soviet) Russian soldiers who are married to Estonian citizens. Certainly, the international community should demand that the right of families to stay together be protected at a higher standard than the right of states to deny citizenship on the basis of the effective links principle. See "Estonia to Expel Eight Russian Reserve Officers" RFE/RL Newline, 11 June 1997).

³⁵ See Ineta Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" in *The Baltic States at Historical Crossroads* Tavalds Jundzis, ed. (Riga: Academy of Sciences, 1998) p. 262.

³⁶ See Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff, 1979), p. 43.

³⁷ Op. cit., "On the Consequences of State Succession for Nationality" p.45.

³⁸ Ibid., p. 46.

³⁹ Ibid., p.39.

⁴⁰ Ibid., p. 14.

⁴¹ Ziemele cites different acts on the part of the international community which support the claim of the Baltic States re-establishment of independent statehood. For instance, the fact that some countries withheld formal recognition of the Baltic States independence due to the pre-existing recognition granted to the inter-war democracies and the act of British and French

banks returning gold reserves deposited by the inter-war republics based on *restitutio ad integrum* were both indicators that the international community accepted the Baltic States' actions. See Op. cit. Ziemele "The role of state continuity and human rights in matters of nationality of the Baltic States" p. 255-256.

⁴² Op. cit., "On the Consequences of State Succession for Nationality" p.38.

⁴³ As of June 23, 1999, the following countries have signed the Convention: Albania, Austria, Bulgaria, Czech Republic, Denmark, Finland, Greece, Hungary, Iceland, Italy, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Sweden, and Macedonia, while only Austria and Slovakia have both signed and ratified the Convention. Found at : <http://www.coe.fr/tablconv/166t.htm>

⁴⁴ See Peter Burnell "Good Government and Democratization: A Sideways Look at Aid and Political Conditionality" *Democratization* Vol. 1, No. 3 (Autumn 1994) p. 503. Although Burnell deals with democratic conditionality, I assume that human rights conditionality falls within the general goal for good government and democratization.

⁴⁵ Take for example the carefully worded diplomacy of the UNDP regarding the state language policies in Latvia and Estonia: "Another challenge in some countries of the region is to ensure that "the restored state" and "restored citizenship" based on ethnicity do not lead to ethnonationalism. Although there has been an understandable reaction to the previous era, which was characterized by an "over-integrationist" tendency, there are dangers associated with "ethnic democracy" that have emerged in countries such as Estonia and Latvia. The fear, which may not be justified, is that the character of democracy is inclined to ethnic favoritism." op. cit. "The New Yalta" p. 27. I believe that any reasonable observer of the stringent citizenship requirements (based on knowledge of the national language) and the restrictive language laws (which demand that workers pass language exams before they receive jobs or licenses) beyond a doubt shows that these regimes practice 'ethnic favoritism.' The question might be posed instead regarding whether or not these practices amount to blatant discrimination.

⁴⁶ It is telling that many NGOs opporating in the region as well as new human rights institutions receive funding not only from international organizations, but also from "partner" countries. In the specific case of the OSCE's High Commissioner on National Minorities, Stefan Vassilev recounts: "It was noted earlier that the mandate of the HCNM does not provide any real "sticks". This is true, as far as direct means of pressure or imposition are concerned. In practice, however, the HCNM has "indirect" or "hidden" means. Indeed, there are many efforts in Central and Eastern Europe to obtain international financial and economic aid, as well as membership in the European Union, the North Atlantic Treaty Organization and the Western European Union... In addition, the HCNM has the political support of the OSCE and its Chariman-in-office, as well as general and specific support of the OSCE key Member States." See Stefan Vassilev "The OSCE High Commissioner on National Minorities: a Non-Traditional Approach to Conflict Prevention" op. cit. *The New Yalta*, p. 144. Or consider "each party has to gain from the final deal more than it would lose...Very often, this requires extra effort by the HCNM to organize a package of "accompanying measures" (sweeteners) to the main agreement, which make it attractive to both sides. The character of these measures varies significantly from situation to situation and may involve tangible as well as intangible elements (starting with an official appraisal at the international level and ending with facilitation of direct financial or economic assistance, through, for example, donor conferences or specific internationally funded projects). Ibid. p. 143.

⁴⁷ The fourth condition addresses the EU, not the candidate countries: "4) the EU must be able to absorb new members and maintain the momentum of integration." European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, SN 180/93, p. 13.

⁴⁸ See Horst Gunter Krenzler "Preparing for the Acquis Communautaire" Michelle Everson, rapporteur, Florence, EUI, RSC Policy Paper 98/6, p.6.

⁴⁹ Ibid. p. 9.

⁵⁰ "Article 4: Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular when the commitments contained in the Europe Agreement are not respected and/or progress towards fulfillment of the Copenhagen criteria is insufficient, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps with regard to any pre-accession assistance granted to an applicant State." Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships, Official Journal NO. L 085 , 20/03/1998 P. 0001 - 0002, also at http://europa.eu.int/eur-lex/en/lif/dat/en_398R0622.html.

⁵¹ See Madeleine Colvin and Peter Noorlander "Human Rights and Accountability after the Treaty of Amsterdam" *EHRLR*, Issue 2 (1998) pp. 191-203.

⁵² Philip Alston and J.H.H. Weiler, "The European Union and Human Rights: Final Project Report on an Agenda for the Year 2000" in *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000: Agenda of the Comité des Sages and Final Project Report* (Florence: Academy of European Law, EUI, 1998) p. 26.

⁵³ supra note 1, "The European Court", p. 9.

⁵⁴ supra note 7, "Leading by Example", p. 47.

⁵⁵ supra note 1, "The European Court"

⁵⁶ supra note 3. "Preparing for the Acquis", p. 7.

⁵⁷ Ibid, p. 9.

⁵⁸ See Horst Gunter Krenzler "The EU and Central-East Europe: The Implications of Enlargement in Stages" RSC Policy Paper 97/2, Florence, European University Institute.

⁵⁹ One example is the EP's "Résolution sur les droits des homosexuels et des lesbiennes dans l'Union européenne" B4-0824 et 0852/98, which includes: "2) demand à tous les pays candidats d'abroger leurs dispositions législatives violant les droits de l'homme des homosexuels et des lesbiennes, en particulier celles qui prévoient des différences d'âge pour les rapports homosexuelles; 3) invite la Commission à tenir compte du respect des droits de l'homme des homosexuels et des lesbiennes lors des négociations relatives à l'adhésion des pays candidats."

⁶⁰ It is difficult to measure the importance of the EP's additional 'conditions' in the negotiations between candidate countries and the Commission. Nevertheless, at least in Lithuania, the EP's resolution on the rights of homosexuals has been co-opted by ngo's and the media, and has thus entered the public debates on the criteria for EU enlargement. See "Lietuvos gejai: bilietas i Europos Sajunga" (Lithuania's gays: the ticket to the EU) in *Veidas* No. 41 (October 8-14, 1998) p.22.

⁶¹ See, for example, "Agenda 2000: Commission opinion on Estonia's application for membership of the European Union" European Commission Bulletin of the European Union Supplement 11/97, p. 15.

⁶² See Case 44/79, Liselotte Hauer v. Land Rheinland Pfalz, 1979 E.C.R. 3727, (1980) 3 C.M.L.R 42 (1979).

⁶³ supra note 1, "The European Court" p. 6-7.

⁶⁴ Ibid.

⁶⁵ The “Declaration for Democracy: stipulated that “respect for an maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities.” Copenhagen European Council, 7-8 April 1978, *EC Bulletin* no. 3, 1978.

⁶⁶ This reflects the dissonance surrounding Art. 13 of the TEU discussed above. Moreover, although excluded from the human rights section, gender discrimination and equal opportunity is briefly mentioned in the Opinions under section 3.5 Economic and Social Cohesion: Employment and Social Affairs.

⁶⁷ The link between human rights and security is documented point 5 of the Human Rights Agenda adopted by the Comité des Sages. *supra* note 7 “Leading by Example” p. 4.

⁶⁸ This argument is seemingly weakened by the fact that, whatever its difficulties in protecting individual rights, the ECJ consistently has been able to protect the rights of EU citizens living and working outside their home countries. Nevertheless, it is still in the EU’s interests that new member states are friendly to non-nationals, at the very least because it will make the EU’s and ECJs work easier.

⁶⁹ See Jon Elster, “Majoritarian Rule and Individual Rights” in *On Human Rights: The Oxford Amnesty Lectures 1993*, Stephen Shute and Susan Hurley, eds. (New York: Basic Books, 1993) pp. 175-216.

⁷⁰ Although the EU may not see these as human rights issues, many East European countries have included the right to a clean environment and right to adequate health care in their constitutions. For example in the Lithuanian Constitution, Art. 53 and 54 enshrine the right to healthcare and a clean environment. Furthermore, the fact that these rights have been constitutionalized does not necessarily mean that they would be implemented even without EU pressure. Such rights are seen by many East European leaders as “aspirational” and governments often postpone addressing such rights in favor of concentrating on economic reform.

⁷¹ Susan Senior Nello and Karen E. Smith, “The Consequences of Eastern Enlargement of the European Union in Stages” *EUI Working Papers* RSC No. 97/51 (Florence: Robert Schuman Centre, 1997) p.12

⁷² *Ibid.* p.20.

⁷³ For a review of the rights of third-country nationals under EU law, see Alvaro Castro Oliveira “The Position of Resident Third-Country Nationals: is it Too Early to Grant Them Union Citizenship?” in *European Citizenship: An Institutional Challenge*, Massimo La Torre, ed. (The Hague: Kluwer Law International, 1998) pp. 185-199.



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