

# Too Much of a Good Thing? Conditionality and Change in Post-Soviet States

Jeffrey Checkel

October 2000

PONARS Policy Memo 169

University of Oslo

Conditionality--the use of incentives to alter a state's behavior or policies--is a core strategy through which international institutions promote compliance by national governments. While traditionally associated with World Bank and especially International Monetary Fund (IMF) lending programs, the use of political conditionality has grown dramatically in recent years. Perhaps nowhere is this more evident than in post-Cold War Europe, with organizations such as the North Atlantic Treaty Organization (NATO), European Union (EU) and Council of Europe (CE) offering membership to various countries in East Europe and the former Soviet Union. The conditions they impose upon applicants--restructuring of civil-military relations, establishment of the rule of law, creation of new human rights agencies--go far beyond the standard IMF conditionality package and instead intrude into the core socio-political attributes of these states.

Indeed, the last decade has seen an explosion in both the overall use of conditionality and a change in its underlying purpose, with the promotion of political and institutional reform now on a par with the economic sort. In itself, such "mission creep" is no problem. However, difficulties arise--in Russia, Ukraine and elsewhere in East and Central Europe--when it is not coupled with a more multi-faceted set of conditionality strategies.

## **Conditionality and Its Discontents**

Conditionality is an arrangement by which a government takes or promises to take certain policy actions, in support of which an international institution (II) provides specified amounts of assistance. Pre-conditions are its most important component part. These are policy actions agreed upon during negotiations between an II and a national government that must be undertaken *before* the former approves a credit arrangement (in the case of the IMF) or formally grants membership (in the case of the EU). Pre-conditions are the bread and butter of contemporary conditionality strategies. For example, it is not unusual for the IMF to stipulate upwards of 60 such conditions in a lending agreement. Likewise, the EU is demanding that applicant countries in East Europe adopt the entire body of Community law (the so-called *acquis*) as a pre-condition of membership.

The above exemplifies *ex ante* or prior conditionality. It has been employed by international institutions throughout the former Communist area--be it the IMF in Ukraine or the EU and its accession partnerships with prospective members. Its widespread use is somewhat surprising, given the growing consensus among both policymakers and academics that *ex ante* conditionality, when practised in isolation, does not work.

In fact, critics now advance two additional conditionality strategies. Most important, analysts argue that IIs should move away from the taskmaster role implied by prior or *ex ante* conditionality to that of knowledge banks, where the emphasis is on the production and dissemination of knowledge. Compliance is induced not so much by incentives and coercion as through education and teaching by the II and learning at the national level.

In addition, a number of scholars and policymakers advocate that prior conditionality be supplemented by a policy-dialogue approach. Such dialogues should not only transfer expertise (the knowledge-bank role), but also help build political support for reforms. For sure, there is still an element of external imposition here, but it is softened by much greater II appreciation of and efforts at consensus building. Policy dialogues accelerate the transfer of new knowledge to national elites, who then comply because they learn new ways of doing things.

At this point, the skeptic might ask if all this talk about alternative forms of conditionality is, well, just talk--nice-sounding in principle, but lacking any basis in reality. However, recent developments in post-Communist Europe suggest this is not the case.

### **Human Rights in Ukraine: Conditionality *and* Dialogue**

The story of human rights in post-Soviet Ukraine demonstrates that carefully crafted and nuanced conditionality strategies can promote domestic change in a direction consonant with Western values. Here, I consider such strategies as pursued by the Council of Europe--the main European institution charged with promoting human rights and the rule of law in the formerly Communist states.

In the early post-Cold War years and in stark contrast to institutions such as the IMF or EU, the Council adopted a soft form of conditionality. States like Ukraine were granted membership very quickly, with the hope that they would later bring policy into line with basic CE norms. However, by the late 1990s, it was clear that this policy had failed.

Consider capital punishment. A fundamental condition of CE membership is that states eliminate the death penalty from their judicial codes. When Ukraine joined the Council in November 1995, it agreed that such laws would be removed within three years; however, this still had not occurred as of mid-1999. In fact, Ukraine conducted 167 executions during 1996, which world-wide was second only to China. To say the least, Council officials were dismayed at this sequence of events, and began to rethink their policies on

conditionality. The outcome was not a turn to the ex ante conditionality practiced by the IMF or EU, but a two-track, mixed response.

First, since 1997, there has been a much greater willingness on the CE's part to employ the pressure and incentives that are the stock in trade of the traditional conditionality toolkit. This is seen most notably in a series of monitoring resolutions passed by the Council's Parliamentary Assembly (PACE), which have demanded compliance with CE norms of certain states by fixed dates. These resolutions are in the public domain and intended to generate pressure on recalcitrant governments by mobilizing domestic and transnational pressure. For non-compliant states, the incentive to comply is an explicit threat to suspend them from PACE and, at a later date, to recommend their expulsion from the Council.

Second, the CE has sought to reinforce the social context of membership, where compliance is not coerced, but learned through interaction and debate. Since late 1994, the Council's Committee of Ministers--its top decision-making body--has been developing a new, confidential monitoring procedure, many features of which resonate with the policy-dialogue approach advocated by critics of conditionality. This non-public process is designed not to sanction, but persuade recalcitrant members to move toward compliance. It is built around an ongoing series of small, private meetings in Strasbourg that bring together CE bureaucrats, experts and national officials. There are at least three such meetings per year, each of which lasts two days. They are thus not a set of disconnected events, but a continuous exercise designed to promote constructive social interaction and exchange; the central dynamic at the sessions is not finger-pointing and shaming, but discussion and persuasion.

If the above outlines how the CE's two-track conditionality strategy works in theory, the next step is to explore its practical application. Has it made a difference in improving the compliance record of Ukraine, and, if so, how exactly has this occurred? In official documents, the Council argues the new strategy has had some success, and that in certain cases governments have changed policies.

To assess the latter claim, I return to the case of Ukraine and capital punishment. Recall that by late 1998, the country was non-compliant with an obligation it had undertaken to remove death penalty laws within three years. The Council's response proceeded along the two tracks described above: increased pressure and coercion, and enhanced dialogue and attempts at persuasion. On the former, the CE gradually escalated pressure on Ukraine, most notably through hearings and resolutions of its Parliamentary Assembly. These began in December 1997 and became more specific and threatening with time. By late 1998, these threats had led Ukrainian President Leonid Kuchma to realize that he had to do more than issue decrees to eliminate the death penalty. In December 1998, he called on the Ukrainian legislature to pass a law abolishing the death penalty.

During the latter half of 1999, the pressure was further increased. In May and June, PACE issued a report that went into considerable detail on Ukraine's record of non-compliance on the death penalty. It gave a deadline of January 2000 by which point the

Assembly should start procedures that could lead to Ukraine's expulsion. This first CE track thus sought to use explicit incentives--continuing membership in the Council--to influence the calculations of Ukrainian elites. Compliance with CE norms on the death penalty would result from public pressure and shaming.

In parallel with this first track, however, a much less public effort was underway to convince Ukrainian elites that abolishment of capital punishment was the appropriate thing to do as a democratizing, rule-of-law polity. Here, the Council's new confidential monitoring procedure played an important role. By the fall of 1998, the Committee of Ministers had decided that compliance with CE norms on the death penalty should be a theme of the in-camera monitoring; in June and November 1999, two such sessions were held.

What happened during these meetings? Most important, they were not characterized by finger-pointing and arm-twisting; rather, they were marked by attempts at persuasion, peer pressure and giving practical advice. Certainly, it was immediately obvious to all that Ukraine--and Russia--were the problem cases. Yet, when a Ukrainian representative noted that it would be political suicide to ban the death penalty given popular support for it, he/she was not threatened with expulsion from the Council. Instead, CE officials and representatives from several other member states offered practical advice on changing public opinion about the issue, or how they in earlier years had dealt with a public supportive of capital punishment.

The sessions thus tried to walk a fine line when it came to non-compliant states. On the one hand, it was felt that peer pressure and persuasion would only work if such states felt themselves in a weak and exposed position, if they were a bit "uncomfortable," as one participant put it. On the other, stretching things too much would humiliate and embarrass a country. This would lead to a breakdown in the collective spirit of problem-solving and learning.

Did any of this talk matter? Did attempts at dialogue and persuasion have an impact? The answer is a partial yes. Indeed, one sees a dramatic change in Ukrainian policy on the death penalty during December 1999--that is, in the period immediately following the two in-camera monitoring sessions. In that month, Ukraine ruled capital punishment to be unconstitutional, thus removing any legal basis for it in domestic legal statutes. The CE praised this ruling and its Parliamentary Assembly has since put in abeyance moves toward suspending Ukraine's membership.

The Council thus had some success in teaching Ukraine about its ways, as the death penalty case suggests. In part, compliance was learned through social exchange, and not coerced through incentives. My choice of language here--partial, in part--is intentional. For the evidence is clear that the overt CE pressure documented above played a role as well. It is no accident, as the Soviet news agency TASS used to declare, that the change in Ukrainian policy came in the face of escalating public pressure and threats from the Council and PACE especially.

The utility of the CE's multi-faceted conditionality strategy for promoting compliance finds additional support in the experience of other regional organizations. Most important, NATO has practiced a similar two-track policy for several years. On the one hand, it has established a number of explicit political pre-conditions--for example, effective civilian control of the military--for applicant countries. On the other, NATO has gone to great lengths to promote dialogue and to build a broader domestic political consensus favoring change. From the modest beginnings of the North Atlantic Cooperation Council in the early 1990s, these efforts were significantly accelerated with the January 1994 adoption of the Partnership for Peace (PfP) program. Over the past 6 years, PfP has developed dramatically, with most NATO officials now arguing that the level of knowledge and cooperation is nearly as great for countries that participate fully in PfP as for full NATO members. In other words, just as with the CE, compliance is not just coerced, but also learned.

## Conclusions

Policymakers can glean three lessons from the experience of international institutions seeking to promote compliance with core Western values in post-Soviet states.

- 1) *Ex ante* or prior conditionality, when practiced in isolation, either does not work well (e.g., the IMF in Russia and Ukraine) or, if successful, is likely to have detrimental consequences in the future. On the latter, the EU's very strict conditionality regime vis-à-vis East European applicant countries is already generating serious domestic political backlash--as critics could have predicted.
- 2) Soft, more participatory approaches--again when practised in isolation--do not work. When the Council of Europe tried this tactic in the early 1990s, the record is clear. Where such policies worked, they were not needed to promote compliance in the first place--for example, with a country such as Hungary that was well on the way to being a rule-of-law democracy when it joined the CE. Moreover, they failed spectacularly vis-à-vis hard cases like Ukraine or Russia.
- 3) A two-track, conditionality-plus-dialogue approach is a real alternative. The national compliance record attained by both NATO (prior, political conditionality plus the robust participatory element found in PfP) and, more recently, the CE (its combined incentives-persuasion strategy) appears promising. Such approaches, which lack the element of strong external imposition characteristic of *ex ante* conditionality, can help transition states develop the necessary domestic institutional capacity and political consensus for making compliance in word turn into compliance in deed.