“Babushka Said Two Things—
It Will Either Rain or Snow;
it Either Will or Will Not”:
An Analysis of the Provisions and
Human Rights Implications of Russia’s
New Law on Nongovernmental
Organizations as Told Through Eleven
Russian Proverbs


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I. “Babushka Said Two Things—It Will Either Rain or Snow; it Either Will or Will Not”: An Introduction

An old Russian proverb expresses the simple truth that a future outcome remains an uncertainty, and that—at the present time—it could go one way or the other. This adage readily describes the situation in the Russian Federation today, and more specifically for the purposes of this paper, the nature of the recently amended law on nongovernmental organizations (NGOs), passed by the Duma and signed by President Vladimir Putin in early 2006.

Longtime observers of Russia increasingly have called attention to and expressed profound concern for the direction the Russian Federation has taken in recent years. In advancing President Putin’s vision of “dictatorship of law” and “managed democracy,” the Russian government has retreated from key democratic reforms, undermining the transition away from Soviet rule and imperiling significant gains in fundamental human rights. Indeed, a direct correlation may be made between the steep decline in respect for human rights during the past few years and the “rise of authoritarian trends” in the Russian Federation. Foremost among the discouraging developments indicating the halt—if not reversal—of democratic progress in Russia, is the escalation in state persecution of “socially active” groups and individuals, using...
unfair, and “obviously selective” methods “directed against those who are not liked by the authorities or…individual officials,”6 the consolidation of state control over media outlets,7 and tighter restrictions on “non-traditional” religious communities and NGOs, particularly those undertaking human rights activities.

According to the U.S. Department of State, continuing “centralization of power in the executive branch, a compliant State Duma, political pressure on tolerance of ethnic minorities, corruption and selectivity in enforcement of the law, continuing media restrictions and self-censorship, and harassment of some [NGOs] resulted in an erosion of the accountability of government leaders to the population.”9 Further, the U.S. Commission on International Religious Freedom (USCIRF) reported that actions and statements by Russian officials “indicate a declining level of tolerance for unfettered NGO activity, chiefly for those NGOs receiving foreign funding,” and a number of NGOs have alleged that lengthy government investigations of their finances and other tactics are used to restrict their activities.10 Human Rights Watch has concluded that Russia’s internal crackdown on independent voices signals an intent to rebuild “a sphere of influence, especially among the nations of the former Soviet Union, even if that means embracing tyrants and murderers.”11

Although Russia is a state party to major regional and international human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention)12 and the International Covenant on Civil and Political Rights (ICCPR),13 government officials have challenged universally recognized human rights principles, as well as the overarching validity of human rights advocacy in Russia, charging that both are being used for political purposes. In President Putin’s not so subtle words, “when speaking of common values, we should…respect the historical diversity of European civilisation. It would be

6 Id.


10 Challenge to Civil Society, supra note 8, at 6.


useless and wrong to try to force artificial ‘standards’ on each other.” On international funding of NGOs, Putin is more blunt: “What bothers us? I can say—and I think that it is clear for all—that when these nongovernmental organizations are financed by foreign governments, we see them as an instrument that foreign states use to carry out their Russian policies.” To be certain, this characterization has heightened the vulnerability of Russia’s human rights advocates and those they defend, as well as undermined the value and content of international law.

It is against this backdrop that, in January 2006, President Putin ratified major amendments to the 1996 Law on Nonprofit Organizations, which regulates the creation, reorganization, activity, and liquidation of NGOs in Russia. Putin has claimed that the amendments to the NGO law are “aimed at preventing the intrusion of foreign states into Russia’s internal political life and at creating favorable and transparent conditions for the financing of [NGOs].” He also has stated that the law is needed to “combat terrorism and stop foreign spies using NGOs as cover.” Nikolai Patrushev, head of the Russian Federalnaya Sluzhba Bezopasnosti or Federal Security Service (FSB), repeated this viewpoint in December 2006, publicly accusing international NGOs of harboring foreign spies. According to Patrushev, Russia had seen a “sharp increase” in spy

14 Vladimir Putin, Europe Has Nothing to Fear From Russia’s Aspirations, FIN. TIMES, Nov. 22, 2006, at 19.


16 Federal Law No. 18-FZ on Introducing Amendments to Certain Legislative Acts of the Russian Federation (Jan. 12, 2006) amends Federal Law No. 7-FZ on Nonprofit Organizations (Jan. 12, 1996), http://www.legislationline.org/legislation.php?tid=2&lid=644&less=false, and also includes a series of similar amendments for Federal Law No. 82-FZ on Public Associations (May 19, 1995), http://www.legislationline.org/legislation.php?tid=2&lid=640&less=false. These two laws are essentially identical and NGOs in Russia can elect either framework for registration purposes. For the aims of this paper, the terms nonprofit organization, public association, and NGO are used interchangeably. Analysis of the law on nonprofit organizations (or NGO law) is based on English translations of the original Russian legislation prepared by a number of sources, including the Federal News Service (FNS) and the International Center for Not-for-Profit Law (ICNL). The author benefited greatly from linguistic clarifications and other consultations concerning aspects of Russian law provided by a number of Russia specialists, and expresses thanks especially to Natalia Bourjaily at ICNL.


18 Elif Kaban, “Foreign Humanitarian Agencies Suspend Work in Russia,” REUTERS, Oct. 19, 2006, http://today.reuters.com/News/CrisesArticle.aspx?storyId=L19198883. This is not a new allegation. In 1999, Putin claimed foreign intelligence agencies were using environmental groups as cover for their operations. Sarah E. Mendelson, The Putin Path, PROBLEMS OF POST-COMMUNISM (Sep/Oct2000, Vol. 47 Issue 5), 3 at 7. Similar claims also were raised during the Cold War era. Within the United Nations Economic and Social Committee (ECOSOC), the Soviet delegation “several times criticized ‘infringement of national sovereignty’ by…Western-dominated civil rights NGOs.” Kjell Skjelsbaek, The Growth of International Nongovernmental Organizations in the Twentieth Century, 25 INT’L ORGS 420, 433 (footnote 29). In 1967, the New York Times reported that the CIA had secretly funded “several anti-communist NGOs,” triggering a reappraisal of the role of NGOs at the UN, driven in large part by the Communist bloc and African and Asia states. At the same time, governments historically have leveled charges of bias and politicization against arguably independent NGOs. For example, the U.S.S.R. accused Amnesty International and other human rights NGOs of abusing their consultative status at the UN by engaging “in slander and political attacks on member states.” Robert C. Blitt, Who Will Watch the Watchdogs? Human Rights NGOs and the Case for Regulation, 10 BUFF. HUM. RTS. L. REV. 261, 358.
activity under the cover of such international organizations.\textsuperscript{19} While these rationales are not stated explicitly in the text of the amended NGO law, they suggest a more ominous intent.

As the title of this paper indicates, this essay seeks to provide a detailed analysis of the provisions of the amended NGO law, with an eye to exposing the human rights implications of a law that is both menacingly overbroad and blatantly discriminatory in its form and content. The purpose of this exercise is to alert legal scholars, international lawyers, policy makers, and NGO activists both in Russia and elsewhere to the obfuscatory and mostly bureaucratic nature by which a government is seeking to stifle and assert control over a vital sector of civil society. Already, there are alarming signs that other countries are prepared to follow in kind by instituting similar regulatory measures.\textsuperscript{20} This unfolding reality represents a testament to the warning flags raised in an earlier paper concerning the regulation of NGOs,\textsuperscript{21} and serves as a critical test for the international community, as well as an opportunity for the international NGO community to introduce more authoritative, uniform, and meaningful standards within their industry as a means of preempting accusations of the kind being leveled by President Putin and his associates.

After providing some historical background on NGO operations and related developments in Russia, the following sections of this paper will introduce and analyze key sections of the NGO law, measure the provisions of the law against domestic, regional, and international standards related to the formation and operation of NGOs, and discuss the impact of the NGO law based on its initial enforcement since coming into effect. The paper will conclude by exploring implications for Russia’s civil society within the broader context of political developments in that country, as well as measures that may be taken to minimize the impact of the NGO law and ensure that organizations are able to operate freely and without undue restrictions.

II. “This Happened Long Ago and Isn’t True”: A Brief Overview of NGOs and Related Legal Developments in Russia

A. NGO Life Back in the USSR?

A Russian proverb which brushes off the painful reminder of an actual unpleasant event by employing sarcasm is particularly apropos for addressing the historical experience of NGOs

\textsuperscript{19} Simon Saradzhyan, Patrushev Says More Spies Work in NGOs, MOSCOW TIMES, Dec. 20, 2006 and Schofield, \textit{supra} note 15. Other Russian authorities have contended that many groups posing as NGOs are actually criminal or terrorist organizations. Oksana Yablokova, NGOs Face Paperwork Hurdle, MOSCOW TIMES, Oct. 17, 2006.

\textsuperscript{20} In countries such as Peru. Eduardo Bertoni, Recent Developments in International NGO Activities: Building Credible Self-Accountability Principles in An Age of Increasing Government Regulation, ABA International Spring Meeting Presentation, May 3, 2007, \url{http://www.abanet.org/intlaw/spring07/agenda.html}.

\textsuperscript{21} See Blitt, \textit{supra} note 18.
during the Soviet era, as well as related political developments leading up to today.\textsuperscript{22} Like all other aspects of public life, NGOs were not spared from the domineering, omnipresent role asserted by the Communist party. Essentially, the premise and action of the state government eliminated any possibility for establishing independent NGOs as conventionally understood. Simply put, “[n]o organized interest group was permitted within the Soviet system.”\textsuperscript{23} As a consequence, all semblance of activism and organization was channeled through communist-controlled bodies,\textsuperscript{24} which “depended upon the regime for funding and personnel and often acted as a means of social control rather than of individual empowerment.”\textsuperscript{25} Confronted with this reality, many Russian citizens chose to forgo the public arena and focus on the already difficult task of taking care of themselves and their family members. Even in the face of this tight control, approved Soviet NGOs were still subject to regulation under the All-Union Law on Public Associations. This all-encompassing legislation addressed the registration and operation of “political parties, trade unions, and all non-governmental membership organizations.”\textsuperscript{26}

Ironically, some scholars have attempted to argue that the term “nongovernmental organization” was “planted” in the “lexicon of international diplomacy” by Joseph Stalin.\textsuperscript{27} In 1934, the USSR decided to join the International Labor Organization, the only “tripartite” UN agency (formerly League of Nations agency) which “brings together representatives of governments, employers and workers to jointly shape policies and programmes.”\textsuperscript{28} At the time, Western labor leaders alleged that the Soviet’s management and labor delegates to the ILO were not independent, but

\begin{thebibliography}{99}
\bibitem{22} Э́то было давно, и непра́вда.

\bibitem{23} Ivan Kurilla, \textit{Civil Activism Without NGOs: The Communist Party As a Civil Society Substitute}, 10 DEMOKRATIZATSIIYA No. 3 (Summer 2002), \url{http://www.findarticles.com/p/articles/mi_qa3996/is_200207/ai_n9119082}. According to Tom Lantos, “The Soviet state monopolized political power, ruthlessly suppressing any organization that dared even to think of opposing it. State power reached deep into the homes of its citizens, repressing the most innocent and innocuous expression of free thought.” Tom Lantos, \textit{Putting Democracy First in Relations With Russia}, 29-Sum 

\bibitem{24} C.J. Albertie, \textit{A Survey & Critique of Russian Law & its Effect on NGOs}, 2 INT’L J. CIV. SOC’Y L. 12, 14-15. Russia’s Tsarist period also hints at a dearth of organization and activity on the part of civil society in the face of government monitoring of “all forms of civic activism.” Richter, \textit{supra} note 23, at 58.

\bibitem{25} Richter, \textit{supra} note 23, at 58.

\bibitem{26} Richard Remias, \textit{The Regulation of the NGO in Central Asia: Current Reforms and Ongoing Problems}, 3 ASIA QUARTERLY 4 (Summer 2000), \url{http://www.asiaquarterly.com/content/view/75/40/}.

\bibitem{27} Jeremy Rabkin, “Why the Left Dominates NGO Advocacy Networks” (paper delivered at conference), “We’re Not From the Government, But We’re Here to Help You—Nongovernmental Organizations: The Growing Power of an Unelected Few,” American Enterprise Institute, Washington DC (June 11, 2003), at 2, \url{http://www.aei.org/events/eventID.329.filter.all/event_detail.asp}.

\bibitem{28} International Labor Organization, “About the ILO,” \url{http://www.ilo.org/global/About_the_ILO/lang--en/index.htm}.

merely additional arms of the government. The Kremlin insisted that the impugned components of the Soviet tripartite delegation were “entirely non-governmental organizations.” In fact, it appears that earlier usage of the term NGO can be found readily in both the relevant literature and international practice dating back to at least 10 years before the Soviet effort.

Nevertheless, what is evident from the ILO incident is that NGOs under communist rule were for practical purposes either non-existent or so far removed from any conventionally accepted definition of a NGO as to be something altogether different, and that “[e]ven Soviet ‘trade unions’ appeared to be labor departments of the same state-party machine.” As confirmation of this reality, despite the Soviet Union’s admittance to the ILO, that body’s Committee of Experts on the Application of Conventions and Recommendations did not hesitate to disclose Soviet shortcomings with respect to the fundamental right to freedom of association. For example, in 1979, the Committee of Experts concluded that “provisions of Soviet law were incompatible” with Art. 8, and that the role of the Communist party violated Art. 3 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, 1948, which provides, inter alia:

2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

3(2). The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Ultimately, the 65th International Labor Conference adopted the Committee’s report, “despite objections made by the representative of the Soviet Government in the (tripartite) Conference Committee on the Application of Conventions and Recommendations,” essentially confirming

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30 Rabkin, supra note 27, at 2.

31 Steve Charnovitz traces the term to “just after World War I,” with some indication that it may have been used even earlier. Steve Charnovitz, Nongovernmental Organizations and International Law, 100 A.J.I.L. 348, 351.

32 For a discussion concerning competing definitions of the term “NGO” and problems related to those definitions, see Blitt, supra note 18, starting at 279.

33 Kurilla, supra note 23.


35 Theodor Meron, Violations of ILO Conventions by the USSR and Czechoslovakia, A.J.I.L. Vol. 74, No. 1. (Jan., 1980), 206, 207.
the reality that “[a]ll of the civic activism that appeared in the Soviet era was [being] channeled into existing party/state-controlled organizations.”

**B. Transition to Post-Soviet Russia: Opening & Uncertainty**

From this inauspicious historical experience, observers of the “Third Sector” in Russia could only feel a sense of hope in the face of the Soviet Union’s demise. In particular, Mikhail Gorbachev’s reform efforts related to perestroika and glasnost triggered “the rise of optimism concerning the prospects for the emergence of independent social organizations,” and indeed, the proliferation—“with astonishing rapidity”—of such independent, informal groups. This rapid growth of the NGO sector continued through the dramatic political developments of 1991, and was viewed as “a rare sign of hope in an otherwise bleak economic and political landscape.”

By 1997, reports estimated that over 50,000 Russian NGOs had registered with the Ministry of Justice in the short period of six years. Despite the dramatic numerical increase in NGOs, the early 1990s failed to produce an “autonomous third sector, either in practice or in mentality, and there were no effective links between local government and independent groups.” Confronted with this reality, Russian scholars reached a “consensus that the hopes for the flourishing of civil society…had largely…disappointed,” and concluded that NGOs played only marginal role “on the periphery of social development.”

Indeed, even the term NGO was slow in taking root within Russia. According to one survey taken in Siberia, only 26 percent of the population could name an NGO in 1995; by 1997 the figure had increased only slightly, to 32 percent.

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37 The term “Third Sector” is used by Russians when describing “the realm in which…independent associations and initiatives take place….Though some scholars make a distinction between a civil society and a third sector, the terms tend to be used interchangeably in the Russian literature.” Marcia A. Weigle, *On the Road to the Civic Forum: State and Civil Society From Yeltsin to Putin*, 10 DEMOKRATIZATSIYA No. 2 (Spring 2002), [http://findarticles.com/p/articles/mi_qa3996/is_200204/ai_n9067291](http://findarticles.com/p/articles/mi_qa3996/is_200204/ai_n9067291).

38 Alfred B. Evans Jr., *Recent Assessments of Social Organizations in Russia*, 10 DEMOKRATIZATSIYA No. 3 (Summer 2002), [http://www.findarticles.com/p/articles/mi_qa3996/is_200207/ai_n9119395](http://www.findarticles.com/p/articles/mi_qa3996/is_200207/ai_n9119395).


40 *Id.* Other estimates claim Russia’s Third Sector boasted 50,000 organizations in 1993 and 66,000 in 1997. See Weigle, *supra* note 37. Others still claimed 60,000 such groups by 1990. Evans Jr., *supra* note 38.

41 Weigle, *supra* note 37. According to Ivan Kurilla, “In the early 1990s, communist organizations composed the only existing nationwide network of civil activists. Newly democratic networks did appear in the big cities, or in the regions with diverse economic and social structures. However, in [some smaller] cities…the only alternative that appeared at the time was a Cossack revival organization.” Kurilla, *supra* note 23.

42 For example, K.G. Khodakovsky and others concluded that “the civil society that was emerging in Russia…had not come close to fulfilling its potential several years later,” and had acquired “deformed or distorted…features.” Evans Jr., *supra* note 38.

This gap between expectation and reality stemmed from a number of diverse factors which forced those who did try to build Russian civil society to confront “a chaotic, even hostile, environment.” In the first instance, while the number of NGOs may have increased significantly, the economic upheaval associated with the transition away from communism “caused most Russians to worry about more immediate, tangible goals than raising public consciousness.” Deeper still, there was a recognition by Russian scholars that contemporary Russian society had been tainted by “postcommunist syndrome,” which bred “pervasive mutual alienation and distrust among citizens” and discouraged “most Russian citizens from participating voluntarily in the work of independent social organizations that attempt to change society from the bottom up.”

Political, cultural, and legal aspects of post-Soviet life also contributed to exacerbating the obstacles to development of the “Third Sector.” For example, “some conservative elements of society and the government” viewed newly established NGOs as a potential “threat to their power and control over resources.” To counter this perceived threat, political elites discouraged activism during the initial phases of postcommunist state construction, thereby frustrating the ability of independent activism to flourish freely. Furthermore, an underdeveloped legal system meant that independent groups lacked a supportive framework that could facilitate their operations. For example, Russia retained a tax code that offered little incentive for fostering a tradition of philanthropy, and most citizens continued to view charitable organizations as a form of “organized theft.”

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44 Richter, supra note 23, at 59.

45 Id., at 58. Russian scholars have confirmed this trend with regard to the environmental movement: “by the middle of the 1990s, most people in Russia were so deeply engaged in a struggle to survive and were so ‘morally depressed’ that they were unable to serve as the basis for an environmentalist movement.” Evans Jr., supra note 38.

46 Evans Jr., supra note 38. This distrust was viewed as a “reaction to the often phony collectivism that was imposed by the party-state regime.” Yet, it is also “inimical to the growth of independent social organizations, in which interpersonal trust is an indispensable element of social capital for those seeking to develop organized, cooperative endeavors.”


48 Weigle, supra note 37.

49 Richter, supra note 23, at 59. Among other things, the tax code could be used to treat NGOs like commercial businesses, by taxing international grants as profits, making NGOs contribute to the pension funds of individuals benefiting from their services, and by forcing those to pay taxes on the value of any NGO assistance received. John Squier, Civil Society and the Challenge of Russian Gosudarstvennost, 10 DEMOKRATIZATSIYA No. 2 (Spring 2002), http://www.findarticles.com/p/articles/mi_qa3996/is_200204/ai_n9066740.

50 Evans Jr., supra note 38.
C. The 1995 Federal Law on Public Associations

The Russian Constitution, ratified in 1993, held out the promise of broadly defined individual civil liberties and human rights, including “the right to association,” and the guarantee of “freedom of public association activities.”51 However, when the Duma did promulgate a new Federal Law on Public Associations in 1995,52 it retained “ambiguous regulations and arbitrary powers of government.”53 These flaws were in line with much of the legislation being passed during this period across the Former Soviet Union (FSU) to replace Soviet law. For example, the Federal Law on Security, passed in 1992, was criticized for reflecting “Soviet-style legalistic thought” because it contained “enough qualifications and exceptions [so as to] to legalize continued abuse of power,” and facilitated a legal foundation “which grants the former KGB many of the powers it…enjoyed under the Soviet regime to repress individuals and groups who displease the government or the special services.”54 Likewise, the 2002 Federal Law on the Counteraction of Extremist Activity” includes a lengthy yet vague catch-all definition of extremist activity, which continues to be enlarged until today.55 The extremism law has been labeled “an invitation to abuse,”56 and a threat to the operation of religious communities “through a tightening of registration and liquidation procedures […] and arbitrary application.”57 Numerous other laws passed in post-Soviet Russia bear similar hallmarks of state interference and a curtailment of individual freedoms, including the 1997 Federal Law on Freedom of

51 RUSS. FED. CONST. art. 30(1).

52 Law No. 82-FZ, supra note 16.

53 Remias, supra note 26. Remias notes that, in most cases across the FSU, the text of the laws was not changed, and only cosmetic amendments were made to reflect newfound independence.


Conscience and Religious Associations. Part IV(D) of this paper addresses how some of these various laws interact with one another to further limit civic life in Russia.

Among other things, the public associations law established a deadline by which NGOs founded before 1994 were required to reregister with the Federal Ministry of Justice (or through regional and local departments and agencies), and mandated liquidation proceedings for any organization which failed to meet the deadline. The U.S. Department of State concluded that it was “difficult to assess the scope of the [liquidation] problem due to the large number of registered NGO’s that exist only on paper, as well as the large number of active but unregistered organizations.” However, human rights activists contended that human rights and environmental organizations were most vulnerable under the law and that “a significant number of public associations were denied re-registration, either on illegal grounds, or on the basis of far-fetched and formal pretexts”:

Many organizations were pressured by justice departments to change the name of their organization or its statutory goals. Organizations were forced to comply, for fear of losing their legal status and endangering the well-being of the people they serve. There are good reasons to believe that regional and local authorities used the requirement for NGOs to re-register as an opportunity to get rid of “undesirable” organizations which criticize the authorities’ actions in certain areas or suggest alternative remedies.

The Glasnost Public Foundation, one of the Russian government’s most vocal critics, observed that the uniformity of reasons given for denial of reregistration “was strongly suggestive of a


60 Bureau of Democracy, Human Rights, and Labor, U.S. Dept. of State, Russia Country Report on Human Rights Practices for 1999 (Feb. 2, 2000), http://www.state.gov/g/drl/rls/hrrpt/1999/356.htm. The State Department report acknowledged that “there were several high profile cases in which well-known activists or organizations were refused reregistration—such as Sergey Grigoriants’ Glasnost Foundation and environmentalist Alexey Yablokov’s Ecology and Human Rights association—by regional departments of justice on grounds that these organizations [were] illegal and discriminatory.”

61 For example, a “very common requirement was the deletion of the phrase ‘protection of citizens’ rights’ from the organization’s name, statutory goals and objectives.” Grishina and Dzhibladze, supra note 59. These allegations were reiterated by at least one motion for a resolution submitted in the Council of Europe (COE): “A large number of public associations (nearly half on the federal level) failed to re-register in time; a number of other NGOs were forced to change their name or statute to obtain re-registration; others were denied re-registration by the authorities. There are allegations that some regional and local authorities used the requirement for NGOs to re-register as an opportunity to silence critical NGOs, in particular those working in the field of human rights and on ecological issues.” See “Problems of Registration of Non-Governmental Organisations Dealing with Human Rights in the Russian Federation,” (Motion for a resolution) Doc. 8799, Jul. 8, 2000, http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc00/edoc8799.htm.
centrally coordinated policy,” although no “‘smoking gun’” has appeared in the form of a memorandum or other directive instructing officials to deny registration to particular organizations or categories of organization.”

Despite these obstacles, a survey of U.S. foundations operating grant programs in the FSU completed in the late 1990s found that the NGO movement “had made great strides,” with “growth in both the number and sophistication of NGOs, especially in countries like Russia.”

For example, the Ford Foundation reported that Russian NGOs:

show signs of influence and promise....New types of cooperation between government and NGOs are emerging. On a federal level, several leading NGO representatives advise Duma committees; in Russia’s regions, NGOs are increasingly looked to by local administrations to share the burden of providing services. A few companies and banks now employ consultants to advise them on charitable giving; the media, in particular the press, is beginning to consider some NGO activities potentially newsworthy.

Nevertheless, funders observed that “the weak legal and financial infrastructures for nonprofits create obstacles to NGO development…and contribute to the ongoing harassment of NGO,” and some concluded that “NGOs are still hindered by inexperienced management, low credibility with the public, a lack of media savvy, and the inability to build links with their own constituents or work in coalition with others.”

**D. The 2001 Civic Forum**

Much like President Putin has sought to bring the media, trade unions, and religious communities within his control, the 2001 Civic Forum was “originally announced as a means of organizing civil society organizations throughout Russia into a single corporatist body that would allow them an official consultative role with the government.” In other words, it was “an effort to draw civil society into government structures,” as a means of further consolidating power. Unwilling to endorse the “sudden proliferation of pseudo- or wholly government-organized ‘nongovernmental’ organizations (GONGOs) formed under the auspices of the Kremlin…

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62 Squier, supra note 49.


64 Id., at 25.

65 Id., at 26.

66 Squier, supra note 49.

67 Alexander Nikitin and Jane Buchanan, *The Kremlin’s Civic Forum: Cooperation or Co-optation for Civil Society in Russia?* 10 DEMOKRATIZATSIYA No. 2 (Spring 2002), http://www.findarticles.com/p/articles/mi_qa3996/is_200204/ai_n9066945.
[which] diligently undertook the task of helping to select Civic Forum participants from across Russia,"68 the NGO community instead publicly “rejected Putin’s attempts to privilege certain NGOs over others…and determine the composition and orientation of the Civic Forum.”69 In the face of this outcry—and the mounting realization that no legitimate civic forum could exclude respected and recognized leading NGOs70— the Kremlin backed down from its initial vision, settling instead on a meeting intended to start “a dialogue on how independent civil initiatives can help address national problems.”71

To be certain, the two-day Civic Forum was unprecedented insofar as it brought President Putin and other senior administration officials face to face with approximately 3,500 representatives from Russia’s “Third Sector.”72 However, the actual face time was brief. In negotiating the opening plenary session, Putin’s handlers required that after NGO representatives be allowed to speak only after the president and official state representatives. Putin promptly excused himself from the plenary following four speeches from official state representatives—“people with whom he meets virtually every day.” Other attending high officials soon followed Putin out the door.73

In his address to the delegates, President Putin remarked that: “It is impossible to have a strong state, a flourishing and prosperous society, if there isn’t good relations of partnership between the state and civic society,” and that the state has only one task: “creat[ing] the most favorable environment to develop a civic society.”74 Some observers described this speech as “clearly afford[ing]” an opportunity for NGOs to consolidate their gains and strengthen “the consistency of civil society development throughout Russia.”75 Others concluded that Putin’s remarks

68 One such GONGO chose for itself the ironic name Grazhdanskoe Obshchestvo (Civil Society). Id. For a discussion of the impact of GONGOs and other quasi-NGOs, see Blitt, supra note 18, at 330.

69 Weigle, supra note 37. Others felt “the early development of the Civil Forum simply recalled too closely Soviet preparations for Communist Party Congresses, whose attendance would be limited to reliable…delegations hand-picked by [the] Kremlin.” Nikitin and Buchanan, supra note 67.

70 Nikitin and Buchanan, supra note 67.


72 By 2001, activists estimated that the number of NGOs in Russia had risen to the impressive number of 350,000, employing “about one million people who assist 20 million Russians.” It is worth reiterating here Marcia Weigle’s caveat concerning these numbers: “there is a substantial amount of self-reporting involved; not all the registered groups are active; some of the registered groups are fronts for criminal organizations; and other dissolve after a short existence. Despite tendencies toward number inflation, there has been an objective increase in the number of NGOs…active throughout Russia.” Weigle, supra note 37.

73 Nikitin and Buchanan, supra note 67. President Putin also did not attend the closing plenary session.


75 For a detailed—and fairly optimistic—account of the lead-up to and outcome of the Civic Forum meeting, see Weigle, supra note 37.
embodied “the most murky and problematic developments in Russia: what the president says so eloquently very often fails to correspond with events as they actually occur.”

Whatever Putin’s true intention, as continuing trends since 2001—as well as this paper—will demonstrate, his speech by no means signaled the start of a new relationship between the Russian government and NGOs. Some NGOs refused to participate in the forum altogether, believing Russian authorities were “unlikely ever to truly change their attitudes toward human rights”; others criticized the event as “simply a public relations exercise organized by the Kremlin.” As Dr. Grigory Yavlinsky, Chairman of the Russian Democratic Party Yabloko, presciently commented, “I hope that sensible people will not take the Civil Forum very seriously. It is a one-time action that will end, while the issues of cooperation between civil organizations will remain.” In the end, even the working-level roundtable discussions held during the Civic Forum failed to produce any concrete results, and “nothing permanent or binding emerged from the two hectic days of meetings.” Moreover, despite much clamor in the press over the Civic Forum, the national news service “Versty” concluded that the event “remained unnoticed by the majority of Russians.” The event did prompt the government, however, to take the rather ironic step of issuing 26 public recommendations on civil society, including the need for “further debureaucratization, greater governmental transparency, and the establishment of nongovernmental-governmental cooperation committees.”

**E. Writing on the Wall**

It is difficult to write off the Civic Forum as a simple publicity stunt since it did provide some small measure of public recognition for NGOs. At the same time, it is equally difficult to attribute much to the fact that President Putin—for one ceremonial moment—went on record “as

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76 Nikitin and Buchanan, *supra* note 67. This analysis provides a useful contrast to Weigle’s.

77 Mereu, *supra* note 74.


80 Nikitin and Buchanan, *supra* note 67, at footnote 51.

81 Nikitin and Buchanan, *supra* note 67. The ironic and superficial nature of these recommendations is only intensified in the face of the amended NGO law.
recognizing the autonomy, diversity, and policymaking potential of Russia’s NGOs,” or enjoined government officials and regional leaders, “once dismissive or highly critical of NGO…activity—to both promote the activity of and develop a partnership with civil society activists.”82 In fact, as the following sections will establish, the idea for the Civic Forum can probably best be understood as a “trial balloon” floated to determine whether NGOs could be co-opted. In the face of vociferous opposition to that idea, the Forum most likely cemented in the minds of Putin and his Kremlin advisors the need to look for other means of imposing controls on these independent and divergent voices.

To be certain, some of these other methods of control being utilized by the government were by no means subtle. Since Putin took office, many advocacy groups “reported being harassed by police, security, and tax agents, some of whom have been known to barge unannounced into NGO offices and confiscate files while dressed in ski masks and bearing assault weapons.”83 According to a survey from 2000, “two-thirds of all Russians interviewed had difficulty labeling their society democratic.”84 A subsequent survey found that 86 percent of the population agreed with the statement “People in positions of authority…absolutely don’t care what happens to the citizens of that country.”85 Although a certain level of government harassment had existed prior to Putin’s ascendance, by 2000, the pattern of journalists, “environmentalists, human rights activists, and even academics—Russians but also Americans and Europeans—who [were] intimidated, interrogated, tailed, jailed, robbed, accused of treason, run out of the country, and, [even] ‘disappeared,’ all by the federal authorities” had become virtually self-evident.86

Further to this pattern, Putin in 2002 “moved to rein in the often independent-minded”87 regional governors, and—within two years—outright eliminated their popular election. In place of elections, Putin empowered himself to appoint regional governors directly.88 This signaled a clear break from the approach taken by Boris Yeltsin, Putin’s predecessor, and had far-ranging implications across all branches of regional government. Yeltsin urged regional leaders to grab

82 Weigle, supra note 37.

83 Leslie Powell, Western and Russian Environmental NGOs: A Greener Russia?, in THE POWER AND LIMITS OF NGOs, supra note 23, at 146.

84 Id. The All-Russian Center of Public Opinion Studies (VTsIOM) conducted this survey in October 2000. In September 2004, Russian authorities took control of VTsIOM, “the country’s most respected polling firm,” reportedly acting in response to a “series of polls showing dwindling support for the ongoing war in Chechnya and majority support for a negotiated solution.” FREEDOM IN THE WORLD - RUSSIA (2004), supra note 79.

85 Nikitin and Buchanan, supra note 67.

86 Mendelson, supra note 18, at 4.


88 Even before taking this step, some observers estimated that 90 percent of Russia’s governors were already being selected by the Kremlin and that “voting had lost much of its meaning.” Peter Baker, Putin’s Plan for Governors Only Confirms His Control, WASH. POST, Sept. 16, 2004, at A28.
“all the sovereignty you can swallow,” which resulted in regional leaders asserting “almost total control over local courts and federal agencies” through negotiated power-sharing treaties and other means. Thus, in one stroke, Putin was able to dominate not only the executive arm of Russia’s regional governments, but—by virtue of trickle down influence—regional agencies and the local judiciary as well.

At least one observer has sought to frame Putin’s actions in a positive light, whereby the president “diagnosed the problem as the progressive disintegration of the federation as a result of the weakened authority of the central state and the federal legal system,” and accordingly “prescribed a strong dose of recentralization” to correct the existing division of powers which had been “unwisely delegated from above, or unlawfully appropriate from below.” What is so remarkable about this analysis is that it fails to take into account the parallel actions being undertaken by Putin’s administration to further consolidate power across all playing fields in Russian society. Given this greater context—of developments related to press freedom, religious groups, NGOs, political parties, trade unions, etc.—it is unrealistic at best to suggest that Putin’s moves were undertaken merely to “rebalance center-periphery relations into a viable federal system.” At worst, the framing of Putin’s actions as reflecting a “campaign for the unification of legal space” sanitizes the reality of a campaign for unchecked and unopposed power.

Putin also took direct action against the wealthy oligarchs who seemingly controlled Russian politics prior to his election. In July 2000, he brought together a group of 20 leading businesspeople and flatly warned them that the only way they would be able to keep their money was if they stayed out of politics. Those who failed to abide by this bargain subsequently faced

89 Id.


92 It should be noted that many of the steps taken to consolidate power were couched in the need to centralize power so as to better defend against Russia’s dismemberment at the hands of ethnic separatists and other similar threats to Russia’s national sovereignty.

93 Sharlet, supra note 91.

94 Id.

95 Id. Sharlet concludes that “however frustrating [the campaign to re-centralize power was] for the federal officials involved, the net result has been positive for Russia’s future development.” The evidence submitted herein points to a very different conclusion.

96 Jeffrey Kahn, The Search for the Rule of Law in Russia, 7 GEO. J. INT’L L. 353, 404.
consequences including tax evasion charges and other allegations brought about by government investigations.97

With regard to the media, in 2004 the Russia government seized the country’s last independent national television network, “allegedly to settle the company’s debts.” In its annual Freedom in the World report, Freedom House noted that this action “followed similar takeovers that had resulted in government control of two other independent television networks—NTV, in April 2001, and TV-6, in January 2002.”98 According to the Committee to Protect Journalists, “14 journalist murders committed since President Vladimir Putin took office in 2000 remain unsolved.”99 Most recently, the October 2006 assassination of Russian investigative journalist Anna Politkovskaya resulted in the silencing of one of Putin’s most vocal critics with respect to the ongoing war in Chechnya. According to Human Rights Watch, “There seemed little doubt she was killed because of her work.”100

To be certain, the developments illustrated above confirm the “creeping statism” that increasingly has come to characterize Putin’s rule.101 As further affirmation of this trend, it is worth noting that between the years 2002-2004, Freedom House rated Russia as “Partly Free” in its annual survey of freedom in the world.102 However, in 2004, the organization issued a downward trend arrow for Russia “due to increased state pressures on the media, opposition political parties, and independent business leaders.” By 2005, Russia’s freedom rating was downgraded further to “Not Free,” due to the “virtual elimination of influential political

97 For example, the ongoing Yukos Oil affair, resulted in criminal and civil charges against Platon Lebedev and Mikhail Khodorkovskyy based on fraud, tax evasion, and other allegations, but may have been motivated by the company’s open contributions to opposition political parties. Khodorkovskyy and Lebedev were subsequently sentenced to eight years in a Siberian prison camp. The demise of Yukos has meant “the rise of Rosneft, the state-controlled company that has acquired many of Yukos’s assets.” Peter Finn, Sale of Building Seals Yukos’s Demise, WASH. POST, May 12, 2007, at A11. Recently, Russian prosecutors leveled additional charges of embezzlement and money laundering against Khodorkovskyy and Lebedev, which could carry prison sentences of 15 years. C. J. Chivers, New Charges in Russia Against Oil Executives, N.Y. TIMES, Feb. 6, 2007, at A10. See also Artyom Liss, Yukos Trial Raises New Questions, BBC NEWS, June 1, 2005, http://news.bbc.co.uk/2/hi/business/4598239.stm.

98 FREEDOM IN THE WORLD - RUSSIA (2004), supra note 79. Laura Belin observed that NTV’s “nationwide reach and its role in breaking the state monopoly on television news [made] its rise and fall especially significant. NTV once represented the end of the state’s ability to control the media agenda. Now it is a reminder that the Kremlin retains leverage over Russian media, thanks to the media’s financial dependence on corporations that are themselves dependent on the state. Laura Belin, The Rise And Fall of Russia’s NTV, 38 STAN. J. INT’L L. 19, 42.

99 Committee to Protect Journalists, “Testimony Before the Commission on Security and Cooperation in Europe,” Aug. 2, 2007, http://www.cpi.org/regions_07/europe_07/testimony_russia_internet_02aug07.html. According to CPJ, Russia “is the third deadliest country in the world for journalists over the past 15 years…behind only the two war-riven nations of Iraq and Algeria.”

100 WORLD REPORT 2007, supra note 11, at 406.

101 Mendelson, supra note 18, at 3.

102 For a detailed explanation of the methodology used by Freedom House in compiling its annual FREEDOM IN THE WORLD survey, see http://freedomhouse.org/template.cfm?page=351&ana_page=292&year=2005.
opposition parties…and the further concentration of executive power.”\textsuperscript{103} Russia has retained the rating of “Not Free” until 2007, when Freedom House issued another downward trend arrow for “the government’s intensified crackdown on NGOs, particularly those receiving foreign funding.”\textsuperscript{104}

III. “You Cannot Hide an Awl In a Sack”: The 2006 Amendments to the NGO Law

A. Overview

This Russian proverb rightly counsels that, truth, like the sharp point of an awl, will inevitably find its way out by piercing through the subterfuge.\textsuperscript{105} Accordingly, it aptly describes the purpose of this section, which seeks to break through the NGO law’s vague language, confusing amendment process, and poorly defined scope, to provide a candid assessment of its implications for Russian civil society.

Remarkably, the amended Russian NGO law bears some stark resemblances to the practice of the Soviet Union with respect to NGO regulation. As noted above, Soviet legislation enabled “government officials to utilize their arbitrary powers in combination with legal ambiguities to restrict NGO development” through “subjective interpretation and strict regulation.”\textsuperscript{106} As demonstrated below, the similarities do not end at requiring NGOs to be registered by the state, but can also be seen in regulating and monitoring NGO activities, as well as affecting all aspects of society, including some possibly unintended elements.\textsuperscript{107} Significantly, all of these tasks—registering, regulating, and monitoring—have been ascribed to the same bureaucratic agency, the Federal Registration Service (FRS).\textsuperscript{108} Before assessing specific provisions of the amended law, it is useful to describe this federal organization in some detail.

\textsuperscript{103} Freedom House, FREEDOM IN THE WORLD - RUSSIA (2005), http://freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2005&country=6818&pf. Most recently, the Russian Supreme Court ordered the Republican Party of Russia to cease operating, based on a request filed by the Federal Registration Service (FRS) that alleged the political party violated the law on political parties, and specifically failed to have “the minimum required number of members - 50,000” and the “stipulated number of offices in the Russian regions.” Supreme Court Rules Republican Party Must Cease Functioning, INTERFAX Mar. 23, 2007, (2007 WLNR 5776984).


\textsuperscript{105} Лбом сте́нку не расшибёшь. As evidence of the fact that there are no original ideas, this proverb also is cited by Jeffrey Kahn in his informative paper on rule of law in Russia. Kahn, supra note 96, at 357.

\textsuperscript{106} Remias, supra note 26. See Part II(A), above.

\textsuperscript{107} See infra, note 332 for the Russian Orthodox Church’s reaction to the NGO law.

\textsuperscript{108} The FRS, or Rosregistratsiya, maintains a website (in Russian only) available at http://www.rosregistr.ru.
B. “Neither ‘Baaaaah,’ Nor ‘Maaaaah’; Not Even ‘Cock-a-doodle-doo’”: The Federal Registration Service

The proverb selected here reflects the FRS’ inability to offer forthright and unambiguous answers to straightforward questions, based on the author’s interactions with senior FRS staff, as well as the public statements made by its spokespersons. The consistent theme that emerges from this federal agency is a downplaying of the implications of the amended NGO law, as well as a sharp disconnect between private and public assurances and public actions.

In October 2004, a presidential decree created a consolidated Federal Registration Service (FRS) within the Ministry of Justice, and assigned that body responsibility to register all property, political parties, NGOs, and religious organizations operating in Russia. This decree further tasked the FRS with monitoring the compliance of all organizations with their respective charters. The new FRS bureaucracy became operational in January 2005 and within 18 months had a total staff estimated at 30,000 across Russia, with 2,000 employees working on NGO registration alone. The FRS has requested an additional 12,000 personnel be hired for 2007-08, representing a 40 percent increase in staff.

Despite FRS assurances that it would—at least initially—not seek to enforce the amended NGO law strictly, early FRS actions indicate a contrary intention unfolding in practice. First, the FRS

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109 Ни бэ, ни мэ, ни кукаре́ку.

110 Law No. 125-FZ creates a cumbersome and highly bureaucratic registration process for religious entities as well as a hierarchical classification system for such entities. Law No. 125-FZ, supra note 58. Most significantly, the law divides religious associations in Russia into religious “groups” and “organizations,” and requires that the latter, to obtain status as a legal entity, apply for registration at either the federal or local level. Status as a legal entity entails the organization to basic rights, including the right to own property. The legal obstacles created by this law “continued to seriously disadvantage many religious groups considered nontraditional.” Bureau of Democracy, Human Rights, and Labor, U.S. Dept. of State, Russia Country Report on International Religious Freedom 2005 (Nov. 8, 2005), http://www.state.gov/g/drl/rls/irf/2005/51576.htm. The legal obstacles to registration presented by Law No. 125-FZ were also the focus of a recent ECHR ruling discussed in Part V(C), below.


112 Interview with FRS Senior Staff, Moscow (June 23, 2006). The FRS was represented by its director, Sergei Movchan (a Putin appointee), and two senior attorneys in charge of the Directorate for Registration of Political Parties and Public, Religious and Other Organizations, and the Directorate of Religious Organizations. According to the FRS, the widely quoted estimate of 450,000 to 500,000 NGOs operating in Russia is overstated, and many of these organizations have “essentially ceased to exist.” The FRS estimates the number of NGOs closer to 100,000 based on information from Russia’s Tax Authority. This estimate is mirrored by U.S. Department of State, which concludes that only “20-25 percent of the approximately 450,000 registered public associations and nongovernmental, noncommercial organizations were regularly active.” Russia Country Report on Human Rights Practices for 2006, supra note 9.
directed the registration applications submitted by a number of U.S.-based NGOs to the FSB for “evaluation and comment”—a step that is not provided for under the law or its implementing regulations. Second, rather than permit those organizations which had submitted applications prior to the October 18, 2006 registration deadline to continue operations until approval of their applications, the FRS instead elected to interpret the law strictly, forcing approximately 100 groups to “suspend their principal activity aimed at fulfilling their objectives and tasks.” This ban on activities meant that on October 18, unregistered organizations were forced to cease any operations beyond skeletal administrative work until the FRS approved their registration.113

Finally, a number of organizations have either been harassed, denied registration on tenuous grounds, or have been pressed by the FRS to modify their activities. For example, the Institute for War and Peace Reporting (IWPR)—a British Foreign Office-funded NGO that reports on developments in the North Caucasus through a local branch in Vladikavkaz—has been denied registration and recently had its offices subjected to a MVD (Internal Affairs Ministry) search. During the search, computers and documentation were confiscated in connection with a charge of tax evasion.114 According to Valery Dzutsev, coordinator of IWPR’s Vladikavkaz office, the “problems with the authorities began a month after the NGO law went into effect.”115

This brief outline of the FRS’ virtually omnipresent role in Russia cannot be complete without a final footnote: In April 2007, officers from Russia’s Interior Ministry raided FRS headquarters and reportedly detained the head of the agency’s real estate registration division on suspicion of attempting to extort over $250,000 to process an individual’s paperwork.116 More arrests were expected to follow as this paper went to print, and the Justice Ministry promised to undertake an investigation into how “registration officials artificially create bureaucratic backlogs that force people to wait months to have documents processed only to have them returned under various pretenses.”117 As will be outlined below, this pattern is but one of the many problems now confronting NGOs, and—despite the Justice Ministry’s assurances to the contrary—there is nothing artificial about the bureaucracy.


C. A Brief Note on Russian Terminology and the NGO Law Amendment Process

The NGO law introduces a complex—yet often artificial and inconsistent—distinction between the “affiliate” or “representative” offices of foreign NGOs, which are not considered Russian legal entities, and the branches of foreign NGOs, which are deemed Russian legal entities. This distinction generates differences in how these organizations operate and are treated under Russian law. For example, affiliate and representative offices of a foreign NGO are not required to register, since they have no status as Russian legal entities. Rather, they are required to undergo a “notification” process, which is similar in many ways to the registration procedure, but technically remains a different process. In contrast, branch offices of a foreign NGO are required to register according to the NGO law. Although the law makes a further distinction between removal from the register in the case of “affiliate” or “representative” offices, and liquidation in the case of “branch” offices of foreign NGOs (and all other domestic Russian NGOs), the end result for all organizations which run afoul of the law is the same. That is, the NGO is no longer able to operate legally on the territory of the Russian Federation, and must again go through the entire registration or notification procedure to re-qualify. Although a key feature of the NGO law, these distinctions are minimized in the following analysis to enable a sharper focus on the law’s overarching detrimental effects for Russian civil society as a whole.

Similarly, the process by which the Duma amended the NGO law is also complex, and made more unwieldy by virtue of the fact that no consolidated version of the law has been published to date. Federal Law No. 18 on Introducing Amendments to Certain Legislative Acts of the Russian Federation” amends no less than six Russian laws as well as the Civil Code of the Russian Federation. However, the bulk of the amendments introduced by Law No. 18 affect Federal Law No. 7 on Nonprofit Organizations and Law No. 82 on Public Associations. Although the public associations law is equally relevant for determining the status and operation of NGOs broadly defined, given the overlaps between the two law, an analysis restricted to the NGO law will capture the most significant implications of the January 2006 amendments. Therefore, for the purposes of clarity and efficiency, only the provisions of the amended NGO law (Federal Law No. 7) are considered below.

D. Key Provisions of the Amended NGO Law

1. The Registration Process: Filing an Application to Register an NGO

Articles 13.1 and 13.2, introduced by the January 2006 amendments, set out the requirements for registering new domestic NGOs and affiliate or representative offices of a foreign NGO under Russian law. Under these provisions, all new domestic NGOs, as well as existing foreign NGOs operating in Russia, are required to register with the FRS. According to regulations promulgated by the Ministry of Justice, existing foreign NGOs operating in Russia were given until October 18, 2006 to register successfully with the FRS. Failure to register by this deadline automatically suspended the organization’s ability to operate legally until the FRS approved the registration application.
To begin the registration process, an organization must submit to the FRS an application form as well as various supporting documents, including:

1) Three copies of the NGO’s constituent documents;
2) Two copies of the resolution establishing the NGO and indicating the composition of governing bodies;
3) Two copies of forms containing detailed information on the NGO’s founder(s); and
4) An excerpt from the register of foreign legal entities from the respective country of origin and the equivalent legal document certifying the legal status of the founder (i.e. the foreign organization), where applicable.\(^{118}\)

Establishing an affiliate or a representative office of a foreign NGO on the territory of the Russian Federation requires submitting various additional supporting materials, including:

1) Constituent documents of the foreign NGO;
2) Resolution from the foreign NGO’s governing body regarding the establishment of an affiliate or representative office in Russia;
3) Statute of the affiliate or representative office;
4) Decision on appointing the head of an affiliate or representative office; and
5) A document specifying the goals and objectives of a foreign NGO’s affiliate or representative office.\(^{119}\)

Any subsequent amendment to an NGO’s constituent documents requires that the organization undergo the entire registration procedure again, with the requisite deadlines, timeframes, and fees.\(^{120}\) It should be noted that under Soviet legislation, any “expansion of [NGO] activities” similarly required re-registration of the organization in question.\(^{121}\)

### 2. Denial of NGO Registration

The distinction between foreign and domestic NGOs established under the application process is carried over to other areas of regulation. Most notably, there are a number of grounds for denying registration that apply only to affiliate or representative offices of a foreign NGO. Of particular concern under article 13.2(7)(4), a foreign NGO may be denied entry into the register where the FRS deems its “goals…create a threat to the sovereignty, political independence, territorial

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\(^{118}\) Law No. 7-FZ, supra note 16, art. 13.1(5).

\(^{119}\) Id., art. 13.2(2).

\(^{120}\) Id., art. 23.

\(^{121}\) Remias, supra note 26.
integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.”

When the FRS denies a registration request, it is required under the law to notify the applicant “in writing not later than within one month of the day of the receipt of the submitted documentation.” This notification must provide “specific references...to the provisions of the Constitution of the Russian Federation and legislation of the Russian Federation” which serve to justify the denial. However, in sharp contrast to this detailed notification provision, where the FRS invokes article 13.2(7)(4) as the basis for its denial of registration, the NGO law requires only that the applicant be “informed about the reason for the said denial,” without specifying any need for justification based in law or written notice.

Finally, the NGO law also provides a general clause for rejecting registration, applicable to all NGOs, which stipulates that the FRS may deny registration where:

the documentation required...has not been submitted in full, or the said documents have not been executed in a procedurally valid manner, or have been submitted to the wrong body of the government.

As will be discussed below, this type of provision can enable FRS to deny registration applications on account of something as trivial as a spelling mistake or other technical error.

3. Restrictions on the Right to Establish an NGO

The NGO law expressly forbids certain legal persons from becoming founders of an NGO, including:

1) A foreign national or a stateless person living in Russia and deemed as “undesirable” under the law;

2) A public association or a religious organization whose activities have been suspended in compliance with Law No. 114-FZ On Counteraction of Extremist Activities (2002), on the grounds that the organization exercised “extremist activity that involved the violation of the rights and freedoms of man and citizen, the infliction of damage to the personality and health of

122 Law No. 7-FZ, supra note 16, arts. 13.2(7)(4) and 23.1(2)(2).

123 Id., art. 13.2(8).

124 Id., arts. 13.2(8) and 23.1(4).

125 Id., art. 23.1(1)(4).

126 See Parts IV(c)(2) and VI(A), below.

127 Id., art. 15(1.2)(1).
individuals, the environment, public order, public security, the property and the lawful economic interests of natural and/or juridical persons, the society and the State [or] that [it] poses a real threat of inflicting such damage”;¹²⁸ and

3) A person whose actions were recognized as bearing signs of extremist activities by the decision of a court of law, which has come into effect.¹²⁹

As will be discussed below, many of the terms included in this provision lack proper definition under Russian law and may be subject to abuse on the part of Russian authorities.¹³⁰

4. Grounds for NGO Liquidation: Russian Law, Reporting Requirements, Inconsistent Activities, and Failure to Comply with FRS Orders

The amended NGO law provides that a nonprofit organization “may be liquidated on the basis and under the procedure stipulated by the Civil Code of the Russian Federation, the present Federal Law and any other federal laws.”¹³¹ This general basis for liquidation is expanded upon under article 18(2.1), whereby a branch of a foreign NGO on the territory of the Russian Federation may be liquidated for several additional reasons, including:

1) Failure to submit required information, *in certain instances on a quarterly basis*, concerning:
   • the volume of financial and other resources obtained by said structural unit;
   • the proposed allocation of such resources;
   • the purposes for which said resources will be expended or used;
   • the actual expenditure of said resources;
   • the programs to be implemented on the territory of the Russian Federation; and
   • the use of cash assets and other property allocated to physical and juridical persons.¹³²

2) Undertaking activities that are deemed by the FRS to be inconsistent with declared statutory goals or with other reported information, as outlined above.¹³³

¹²⁸ Law No. 114-FZ, *supra* note 55, art. 10.

¹²⁹ Law No. 7-FZ, *supra* note 16, art. 15(1.2)(4).

¹³⁰ See Part IV(D), below.

¹³¹ *Id.*, art. 18(1).

¹³² This information is specified under Law No. 7-FZ, *supra* note 16, art. 32(4).

¹³³ *Id.*, art. 18(2.1)(3).
In addition to the liquidation guidelines set forth in article 18, the amended NGO law expands FRS powers considerably under article 32. According to article 32(9), the FRS may exclude from the register any affiliate or representative office of a foreign NGO when that organization fails “to submit in a timely manner” all of the reporting information required by the FRS under the NGO law. Further, under article 32(10), the FRS can exclude a foreign NGO from the register when it determines that the NGO has acted outside of its mandate or contrary to other information reported to the FRS. According to the legislation, both of these FRS actions can be taken without any court procedures. In contrast, article 32(11) provides that “a repeated failure” on the part of a domestic NGO to “submit in a timely way” required information to the FRS “shall provide grounds for a court claim…requesting liquidation” of the NGO in question. Finally, the NGO law also allows the FRS to exclude from the register any foreign NGO that fails to “terminate its activities in connection with the implementation” of a pending program which the FRS has banned by written order.134 This provision further stipulates that such action may result in liquidation of the organization in question, but does not specify whether a court order would be required.

5. Control Over NGO Activities

In addition to its oversight of the registration process, article 32 of the NGO law grants the FRS extensive powers to monitor and investigate the activities of NGOs, and further to initiate liquidation proceedings for failure to comply with the law. Originally, FRS officials insisted that article 32 of the NGO law “definitely applies to religious organizations,” in addition to other NGOs.135 Of particular interest, article 32 empowers the FRS to:

1) Request documents containing resolutions by the NGO’s governing bodies;
2) Request and obtain information regarding the NGO’s financial and economic activities from state statistical and revenue agencies, and other agencies of state control and supervision, as well as from financial institutions;
3) Send its representatives to participate in events held by the NGO; and
4) Review compliance of the NGO’s activities, including its financial expenditures and property management, with its statutory goals up to once a year.136

As noted above, article 32 grants the FRS further powers with respect to foreign NGOs. Under sub-section 13, the FRS, by way of a written decision, can ban a foreign NGO from implementing a pending program on the territory of the Russian Federation. Failure to comply with such a directive “may entail the exclusion of [the foreign NGO’s] branch or representative

134 Id., art. 32(13). This provision is addressed in greater detail in Part IV(F)(3), below.

135 FRS Interview, supra note 112. At the time this statement was made, it represented a dramatic development, since all other Russian officials had insisted that the NGO law bore no implications whatsoever for religious groups. For an update on the application of this provision to religious organizations, see Part VI(B(1), below.

136 Law No. 7-FZ, supra note 16, art. 32(5).
office from the register and liquidation of said structural unit.”137 A similar provision in article 32 (14) enables the FRS:

For the purposes of protecting the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, and with the aim of defending the country and state security…to issue a substantiated written decision banning a transfer by a foreign nonprofit non-government organization’s structural unit of cash and other resources to certain recipients of such resources and other property.138

IV. “Law is Like the Shaft of a Cart, It Points Wherever You Turn It”: An Analysis of the Amended NGO Law

A. Overview

Much of the early discussion surrounding the amended NGO law revolved around the premise that what was written down on paper was not necessarily what would be implemented in practice. Consequently, some observers preferred to take a wait-and-see attitude with respect to the law, stressing that implementation—rather than content—was key. In Russian tradition, there is a perception that the law is a powerful tool that can be manipulated to the advantage of those who are able to control it, whether they be powerful, wealthy, or otherwise connected.139 In this respect, the NGO law is no different. As the following analysis demonstrates, the law is replete with undefined powers, as well as vague, discriminatory, and overbroad provisions that—in the hands of the powerful—are ready to be and already are being pointed in the desired direction.

B. Implementation of Registration Process

The practical aspects of the registration process as conducted to date, particularly with respect to foreign organizations operating in Russia, appear to run contrary to assurances made by the FRS. FRS director Sergei Movchan insisted that the new registration requirements for NGOs would not require professional lawyers, “since organizations already have filled out the forms.”140 In addition, Alexei Jafarov, director of the FRS’ registration department, reasoned that the new

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137 Id., art. 32(13).

138 Id., art. 32(14).

139 Зако́н что ды́шло, ку́да повернёшь - туда́ и вы́шло.

140 FRS Interview, supra note 112.
registration regulations “will leave little discretion to officials.” Yet, during the registration application process, many organizations found it necessary to seek legal counsel, in addition to translation and notary services. In the view of at least one NGO official, the registration process was “by no means an easy task,” requiring “a very meticulous effort,” the hiring of a local consultant, and many hours of legal counsel. According to other observers, NGOs were given conflicting information by different FRS officials concerning what supporting documents were required and what should be written in the registration application itself, thus introducing a clear element of discretion in the FRS’ approach.

The typical NGO registration form is approximately 50 pages, with additional supporting documentation and other forms required on a case-by-case basis that may total hundreds of pages. In practice, FRS forms require organizations to collect and notarize information ranging from passport data to “home addresses for founding members,” and further require NGOs to amend their charters to authorize explicitly the opening of an office in Russia. Other NGOs report having to submit copies of “all press coverage of their activities,” and notarized death certificates of founders dating back to 1919.

The registration process also mandates that foreign NGOs operating in Russia have all application materials “translated into Russian and duly certified,” which at first glance appears to be a reasonable request. However, the FRS declined a number of registration applications on the basis of poor translations, forcing organizations to pay for the re-translation of materials until FRS staff was duly satisfied. The fact that at least one FRS official claimed that many applications had been rejected because of “repulsive” translations further underscores the existence of subjective decision-making within the registration process, despite assurances from

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141 Interview with Alexei Jafarov, director of the FRS Directorate for Registration of Political Parties and Public, Religious and Other Organizations, Washington, DC (July 27, 2006). The ICNL has noted that well-drafted regulations underpinning the NGO Law “could have [limited] the potential harmfulness of the Law by setting [forth] the forms and accordant definitions and requirements for NGOs in a manner which responds to and ameliorates the concerns previously identified…however, the regulations have confirmed our initial concerns as to the restrictive nature of the Law.” ICNL, Analysis of the Decree No. 212 Approved By the Government of the Russian Federation ‘On Measures Aimed at Implementing Certain Provisions of the Federal Laws Regulating Activities of Non-commercial Organizations’, May 8, 2006, at 2.

142 This NGO official also noted that the Moscow office of the U.S. Agency for International Development was of “limited value and assistance” in completing the registration process. Roundtable, NGO Law Registration Process for Foreign NGOs in Russia, Freedom House, Oct. 3, 2006.

143 For an example of how these mixed messages operate in practice to harm the interests of civil society, see the case of the Stichting Russian Justice Initiative, discussed in Part IV (C)(2), below.

144 Yablokova, supra note 19.

145 Kaban, supra note 18.

146 Law No. 7-FZ, supra note 16, art. 13.2(4).

147 Yablokova, supra note 19.
senior FRS staff to the contrary. Disturbingly, Movchan himself publicly decried as “shoddy” the translated documents submitted by NGOs, and insinuated that the alleged poor quality testified to a lack of respect toward the Russian state on the part of NGOs.

Under the law, a decision to register an NGO “shall be rendered [by the FRS] on the basis of the documents submitted” in compliance with article 13.1(5). Yet, reports indicated that the FRS forwarded registration applications submitted by several prominent U.S. organizations operating branch offices in Russia to the FSB for comment. The ability to take this additional step—one nowhere spelled out in the law—again points to the extensive discretion afforded to the FRS, even when operating outside the parameters of the NGO law.

According to Movchan, the FRS would not be “very strict” about enforcement at the beginning of the process, since it was “all very new.” Yet, in addition to rejecting applications based on poor translations, the FRS also sought to enforce the NGO law strictly by forbidding those organizations whose pending applications had not been processed by the registration deadline—including Doctors Without Borders, Amnesty International, the National Democratic Institute for International Affairs, and the International Republican Institute—from operating legally. As one Russian Justice Ministry official stated, these “NGOs will not cease to exist after October 18…they will be simply unable to function.”

C. Grounds for Denial of NGO Registration

1. Grounds for Denying Registration of a Foreign NGO

The provisions for denying the registration of an NGO differ depending on whether that organization is registering as a foreign rather than Russian NGO. The criteria for denial of registration of a foreign NGO are vague, overly broad and can be invoked by the FRS with substantial discretion. According to high-level FRS officials, denials of NGO registration applications is based on what the FRS determines amounts to goals which threaten “the sovereignty, political independence, territorial integrity, national unity, unique character, cultural

148 Id., quoting Anatoly Panchenko, deputy director of the FRS’ NGO department.

149 Romanov, supra note 113.

150 Law No. 7-FZ, supra note 16, art 13.1(6).

151 Freedom House Roundtable, supra note 142.

152 FRS Interview, supra note 112. This seemingly contradicted Movchan’s previous statement that NGOs already were familiar with the process. See supra note 140.

153 As of this writing, these organizations have been successfully entered into the register.

154 Yablokova, supra note 19. According to an FRS directive, “termination of activity” requires an unregistered NGO to cease: “implementation of purposes and goals of an organization directly, as well as through funding of activities of Russian organizations, and shall not apply to its obligations as an employer, and economic obligations.” FRS, “On Procedure of Establishing an Affiliate or a Representative Office of an International or Foreign Non-commercial Non-governmental Organization on the Territory of the Russian Federation,” (ICNL translation).
heritage and national interests of the Russian Federation.” There are no objective legal definitions, additional explanatory notes or guidelines in the regulations accompanying the law that provide any guidance as to the precise scope or meaning of these criteria. For example, no regulations expand upon the legal meaning of a “threat” to Russia’s “cultural heritage” or “unique character,” or, for that matter, precisely what constitutes Russia’s heritage or character. Furthermore, the FRS confirmed that neither it nor the Ministry of Justice had plans to draft regulations clarifying these terms. In other words, this provision may serve as a catchall clause under which the goals and objectives of any foreign NGO may be scrutinized and deemed unfit for registration, if so desired by Russian government officials.

The FRS has provided mixed messages concerning the enforceability of this clause. One official stated that, “as a practitioner of law [he] would not know how to enforce this provision.” He further ventured that this clause would “only be used against well-known threats such as al-Qaeda,” and that the courts would have to sort out any “overstep” on the part of the FRS. However, during another media interview, the same official reasoned that this provision in its entirety could and would be enforced “to deny an entry into the register to organizations whose activities foment ethnic strife or undermine the sovereignty of Russia.” In the event that the FRS elects to invoke this article in rejecting an application for registration, it remains free to do so without providing written reasons grounded in law, and without clarifying guidelines or regulations—again underscoring the substantial discretion that is woven into the enforcement provisions of this law. As noted above, it is particularly troubling that under article 13.2(8) of the legislation, the obligation to provide written reasons is explicitly waived in instances where the vaguest grounds for denial of registration may be invoked.

Given the operation of these two provisions together, the law raises serious due process concerns for foreign NGOs with respect to the application procedure. In light of these provisions, a situation may emerge whereby repeated attempts to register are rejected without any reference to Russian law, or alternatively registration applications are met with endless requests for additional information on the part of the FRS. It should be stressed that although the NGO law does extend the right of a court appeal to NGOs that have been denied registration, the NGO will be forbidden from operating legally in Russia during the interim period, and moreover, will be faced with the significant burden of costs associated with a court proceeding if it elects to appeal the FRS decision. Likewise, although the NGO law provides organizations that have been denied

155 Law No. 7-FZ, supra note 16, arts. 13.2(7)(4) and 23.1(2)(2).

156 FRS Interview, supra note 112. The FRS intends to use any court rulings that arise based on NGO challenges to denial of registration as further guidance for refining its internal determinations.

157 Jafarov Interview, supra note 141.


159 See Part III(D)(2), above.

160 This threat has been noted elsewhere, including by the ICNL.
registration the right to re-submit an application, an FRS denial on the basis of article 13.2(8) means that an NGO’s re-application may occur without any specific guidance on what changes may be required to satisfy the FRS. Therefore, this route appears no more attractive an option for securing registration and in fact may draw NGOs re-submitting a registration request into an endless loop of applications being denied without a clear basis grounded in law. Indeed, there is already mounting evidence that the FRS can and will deny registration applications on multiple occasions based on different grounds.\textsuperscript{161}

2. Grounds for Denying Registration of Any NGO

FRS officials need not rely on the catchall clause of article 13.2(7)(4) alone to deny registration to a foreign NGO. The law also provides that all NGOs—domestic and foreign alike—can be denied registration where the FRS determines that “the documentation required for the state registration…has not been submitted in full or…[has] not been executed in a procedurally valid manner,”\textsuperscript{162} or in cases where the FRS establishes that the constituent documents submitted by a foreign NGO “contain unreliable information.”\textsuperscript{163}

This provision has already been put to use against a number of NGOs seeking registration. Perhaps most egregiously, the case of the Stichting Russian Justice Initiative (SRJI) is indicative of the arbitrary and discretionary nature of article 23.1(1)(4) of the NGO law, as well as the potential application of the law to stifle critics of Russian government policy. The SRJI, an NGO registered in the Netherlands “that since 2001 has provided legal assistance to victims of grave human rights abuse in the North Caucasus,” currently represents clients in more than one hundred cases before the European Court of Human Rights (ECHR). Many of these cases deal with rights abuses in Chechnya and adjacent areas. In the past six months, the Court has issued four rulings in favor of applicants represented by SRJI, and the Russian government has agreed to pay compensation in at least some of these cases.\textsuperscript{164} The FRS rejected SRJI’s registration applications not once, but twice, before finally agreeing to register the organization.

Despite having closely consulted with FRS officials over several months and preparing “all the documents in accordance with their instructions,” the SRJI received its first denial of registration notice from the FRS in December 2006. The rejection letter cited the following grounds: first, SRJI’s application had not been properly signed; second, the organization’s executive director did not have proper authority to represent the organization; and finally, the registration

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\textsuperscript{161} See, for example, the case of the SRJI and the case of the political party Great Russia, respectively discussed in Parts IV(C)(2) and VI(A), below.

\textsuperscript{162} Law No. 7-FZ, \textit{supra} note 16, art. 23.1(1)(4).

\textsuperscript{163} \textit{Id.}, art. 13.2(7)(2).

application contained inconsistencies. According to SRJI, during an October 2006 meeting with the FRS, officials “had indicated that submission of [a single signature] would be sufficient” to complete the application and that an additional document empowering the executive director to represent the organization “would be superfluous.” The inconsistency in SRJI’s application stemmed from a reference to its representative office “in the city of Moscow,” rather than what current guidelines require—that is, “in the Russian Federation.”

Following initial denial of its request, SRJI amended its application and reapplied, only to be denied again by the FRS, this time on the grounds of an “entirely new problem.” On January 19, 2007, the FRS denied SRJI’s second application, reasoning that SRJI should have sought registration as a “branch office” rather than a “representative office,” because its goals and objectives were not compatible with the latter, and also based on a number of other technical errors. Coincidentally, this rejection followed on the heels of Chitayev and Chitayev v. Russia, an ECHR ruling issued in favor of two Chechen brothers who alleged, inter alia, violations of Articles 3 and 5 of the European Convention pertaining to the prohibition of torture and the right to liberty and security. Significantly, SRJI represented the applicants in this landmark case—the first successful petition against Russian officials since the Chechnyan conflict began in 1994.

In the face of mounting international and press scrutiny of SRJI’s situation, the FRS retorted that it was “inappropriate to make a tragedy our [sic] of the fact that this organization has been unable to receive re-registration on two occasions. Moreover, it is wrong to say that there are any political motives” underpinning the FRS’ decisions in this case. Ultimately, FRS approved

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165 Id. These are not new tactics. In the wake of the original passage of the NGO law, the Union of Kuzbass Youth, a local NGO, was reportedly denied registration based on the formatting of its application. According to a Justice Department, “the font [was] too small,” and “there [were] too many papers.” Grishina and Dzhibladze, supra note 59.

166 “Russian Government Rejects Registration,” supra note 164.

167 Telephone interview with Ole Solvang, SRJI Executive Director, Washington DC (Jul. 25, 2007).


170 No Politics Behind Decision on Dutch Group, supra note 168.

Disturbingly, the SRJI’s experience hints at the reality that denial of registration may be motivated by factors other than simple technical errors in an NGO’s application package. Moreover, it is difficult to downplay the impact that significant international attention may have had in pressuring FRS authorities to approve SRJI’s application, despite obstructing their work for four months.\footnote{Among other steps, the Dutch Embassy in Moscow raised SRJI’s application with the Russian Ministry of Foreign Affairs to “make clear they were concerned with SRJI’s case.” Interview with Solvang, supra note 167.} In any event, once registered, NGOs have no guarantee under the law that they are entitled to retain this status. On the contrary, the general and vague content of the provisions governing denial of registration—coupled with the FRS’ free hand in interpreting and enforcing their meaning—ultimately may facilitate the \textit{post facto} denial of registration, even after an NGO is entered into the register successfully. According to Jafarov:

\begin{quote}
If [an NGO decides] to mislead [the FRS], perhaps they will prepare documents in such a way that we will not notice this during our analysis of that [registration] package…But they will have to bear in mind that they are laying a delayed action bomb, because if we find this out later, \textit{this will certainly be grounds for expulsion from the register. And this will be an obstacle to reentry into the register for that organization}.\footnote{Jafarov Press Conference, supra note 158 (emphasis added).}
\end{quote}

In other words, the FRS reserves the right to conclude \textit{at any time} that registration information provided by an NGO is either insufficient or is otherwise “unreliable,” and further, to determine whether that omission or error stems from an NGO’s desire to “mislead” the FRS, in which case the organization may be excluded from the register. It is conceivable that the FRS could base such an action on either article 23.1(1)(4) in the case of domestic NGOs, or article 13.2(7)(2) in the case of foreign NGOs. The ability of the FRS to strike organizations from the register is bolstered by the requirement that an NGO repeat the entire registration process in the event that there is any change to its constituent documents,\footnote{Law No. 7-FZ, supra note 16, art. 23(1). See Part III(D)(1), above.} and further, by the ability to exclude foreign NGOs from the register where the FRS concludes the organization’s activities are inconsistent with its declared goals.\footnote{\textit{Id.}, art. 32(10).} Alarmingly, Jafarov appears to insinuate here that such a “delayed-action bomb” may also be grounds for discriminating against an NGO that attempts to reapply after being deleted from the register by the FRS, a power that does not appear anywhere in the text of the NGO law.

\begin{thebibliography}{99}
\footnotetext[172]{Among other steps, the Dutch Embassy in Moscow raised SRJI’s application with the Russian Ministry of Foreign Affairs to “make clear they were concerned with SRJI’s case.” Interview with Solvang, supra note 167.}
\footnotetext[173]{Jafarov Press Conference, supra note 158 (emphasis added).}
\footnotetext[174]{Law No. 7-FZ, supra note 16, art. 23(1). See Part III(D)(1), above.}
\footnotetext[175]{\textit{Id.}, art. 32(10).}
\end{thebibliography}
D. Restrictions Limiting the Right to Establish or Participate in an NGO

As noted above, the NGO law establishes specific restrictions limiting the pool of legal persons entitled to establish or participate in an NGO. Perhaps most egregious among the limitations set forth under Art. 15(1.2) is the acknowledgement on the part of FRS officials that no legal definition for the term “undesirable” person exists under Russian law, nor is there any plan to draft additional regulations to clarify the term in the NGO law. The International Center for Not-for-Profit Law (ICNL) has reported that certain Russian authorities retain “the right to determine that it is ‘undesirable’ for a foreign national to remain in the [Russian Federation], and these agencies have complete discretion to set their own rules for making that determination.” 176 In this instance, the NGO law will be enforced based on FRS interpretations of the various provisions (or the discretion of other governmental agencies), and any modifications to this understanding will occur only in the event that an impugned “undesirable” person successfully challenges the FRS’ interpretation and/or related actions in court.

Putting aside the vague wording of article 15(1.2) of the NGO law, it is crucial to note that this provision—and the entire law for that matter—does not operate in a vacuum. Rather, it is part of an elaborate legislative web that has emerged in Russia to constrict the ability of civil society—and specifically those elements perceived as challenging the current government’s policies—to operate freely. For example, the Sovietsky district court in the town of Nizhny Novgorod sentenced Stanislav Dmitrievsky, the director of the Russian-Chechen Friendship Society (RCFS), 177 to a suspended two-year prison term and four years’ probation for inciting ethnic hatred under Russia’s extremism law. 178 The charges against Dmitrievsky stemmed from publication of statements issued by Chechen separatist leaders in Pravo-Zashchita (Rights Protection), the RCFS newspaper. 179 One of these statements appealed to the European Parliament to hold Russia responsible for genocide in Chechnya and was authored by Aslan Maskhadov. 180 International human rights groups, including Amnesty International and Human

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177 Prior to its liquidation, the RCFS monitored human rights violations in Chechnya and other parts of the North Caucasus. It was “almost entirely underwritten by the European Union, the U.S. government-funded National Endowment for Democracy and the Norwegian Foreign Ministry.” Peter Finn, Russian Court Backs Closing of Chechen Rights Group, WASH. POST, Jan. 24, 2007, at A-8.


179 Pravo-Zashchita is published jointly by RCFS and another Nizhny Novgorod-based human rights NGO.

180 Carl Gershman, The Darkness Spreading Over Russia, WASH. POST, Oct. 21, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/10/20/AR2006102001242.html. Maskhadov was elected president of Chechnya in 1997 following settlement of the first Chechen war, but was wanted by Russian authorities who believed he was involved in the 2004 Beslan school massacre that left 331 people dead, including 186 children. Russian forces killed Maskhadov in March 2005. Finn, supra note 177.
Rights First, roundly condemned the charges against Dmitrievsky and his subsequent trial as proceeding on illegitimate grounds. According to Human Rights First, the Dmitrievsky case confirmed the Putin government’s intent to apply “laws intended to control religious extremism against those who work daily to prevent it through their non-violent activities.”

Based on the inter-operation of the NGO law and the extremism law, human rights activists such as Dmitrievsky can now not only find themselves under threat of government sanction, but also may have charges against them serve as the justification for initiation of liquidation proceedings against any organizations with which they are affiliated. Under article 15 of the extremism law:

If the leader or a member of the governing body of a public or a religious association or any other organisation makes a public statement that calls for extremist activity without any reference to the fact that this reflects his personal opinion, and likewise in case of the entry into legal force of a court decision in respect to this person for an offence of an extremist character, the corresponding…organisation shall be obliged to state in public its disagreement with the pronouncements or actions of such person...If the corresponding...organisation fails to make such a public statement, this may be regarded as a fact testifying to the presence of extremism in their activity.

The extremism law further provides that where an NGO fails to distance itself from “facts testifying to the presence of signs of extremism” in its activity, that organization “shall be liquidated.” In tandem with this, the NGO law stipulates that an NGO “may be liquidated on the basis and under the procedure stipulated by the Civil Code of the Russian Federation, the present Federal Law and any other federal laws,” and further, that “a person whose actions were recognized as bearing signs of extremist activities by the decision of a court of law” cannot...
be a founder, participant, or member of a nonprofit organization. In other words, these laws impose a kind of vicarious liability on those NGOs that fail to condemn publicly words or deeds imputed to their leadership and/or membership that may be construed as falling under Russia’s ever-expanding definition of “extremist activity.”

By invoking this complex legal framework—and specifically art. 15 of the extremism law noted above—regional prosecutors convinced the Nizhegorod Oblast Court in October 2006 that Dmitrievsky’s prior conviction and his relationship with the RCFS were sufficient grounds to order the NGO closed. Under the extremism law, RCFS could have avoided prosecution by removing Dmitrievsky from the organization’s board and membership roll, as well as issuing a public denunciation of his actions within five days of his conviction. For obvious reasons, RCFS chose to forgo such a move. Human Rights Watch described the court’s verdict as a “blatant attempt to silence a strong critic of human rights abuses in Chechnya,” and an act which “flies in the face of international standards protecting civil society.” Amnesty International similarly condemned the decision as “the latest move in a carefully calculated strategy to get rid of an organization that has been outspoken on behalf of victims of human rights violations in Chechnya.”

On January 23, 2007, the Russian Federal Supreme Court upheld the lower court’s ruling shutting down RCFS. In the wake of the verdict, Amnesty International’s proclaimed that the ruling against RCFS “sends a chilling signal that other NGOs stepping out of line can share its fate.” The RCFS has been closed since October 2006, but it has been partially reconstituted as three new organizations, including the Nizhny Novgorod Foundation for Promoting Tolerance, the Russian-Chechen Friendship Society in Europe, registered in Finland, and another regional

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186 Id., art. 15(1.2). The Russian term used in this provision applies broadly to encompass not only founders but members and participants as well.

187 The expanding legal definition of extremism in Russia is discussed in greater detail supra note 55.


189 “Court Orders Closure of RCFS,” supra note 181.


191 Finn, supra note 177.

tolerance association registered in Chechnya in March 2007. As of this writing, the organization had filed an application to appeal to the ECHR under article 34 of the European Convention.

The experience of the RCFS starkly illustrates in a concrete manner how the NGO law not only can prohibit individuals whose actions bear “signs of extremist activity” from founding NGOs, but may also function as the pretense for liquidating any NGO with which that individual is associated. Disturbingly, therefore, this incident serves as an early indicator of how Russia’s amended NGO law—and specifically its overbroad, discretionary and interlocking nature—can be manipulated to constrict the operation of Russian civil society. The RCFS case also is a fitting transition to the following section, which addresses grounds for liquidating an NGO under the amended NGO law.

E. FRS Powers to Liquidate NGOs

1. Reporting Obligations for Domestic and Foreign NGOs

The NGO law delineates a number of specific reporting obligations imposed on domestic and foreign NGOs, and also sets out the consequences for failure to meet these reporting criteria. Expectations of timely reporting are more stringent for foreign NGOs than for domestic ones, and failure of foreign NGOs to meet established deadlines also leads to more severe penalties. Foreign NGOs also are required under the law to report on their activities—both financial and programmatic—with greater frequency and in greater detail than domestic NGOs.

a. Strict Deadlines for Reporting

In the case of a domestic NGO, the law requires a “repeated failure” to “submit in a timely way” required information to the FRS before any liquidation action can be taken against the organization. In contrast, the law implies that a foreign NGO may be removed from the register after only one “failure to provide the information” required. The NGO law further enables the FRS to exclude a foreign NGO from the official Unified State Register of Legal Entities in the event that either:

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194 Article 34 of the European Convention provides that the ECHR “may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

195 Law No. 7-FZ, supra note 16, art. 32(11). For background on information NGOs are required to provide the FRS see Part III(D)(4), above.

196 Id., art. 18(2.1)(2).
1) The NGO in question, even in a single instance, fails “to submit in a timely manner all of the information” required by the FRS; or
2) The FRS determines that an affiliate or representative office is carrying out activities inconsistent with its declared goals.

Nothing in the NGO law or its underlying regulations provides a definition for “timely manner.” More problematic, the law authorizes FRS to strike affiliate or representative offices of foreign NGOs from the register under article 32(9) and (10) without requiring a court order. Although there is a distinction between exclusion from the registry and liquidation, it is worthwhile to note here that exclusion from the register effectively removes an NGO’s ability to conduct activities legally, resulting in both penalties having essentially the same end result—an inability to continue operations legally in Russia. Even though an NGO would retain the right to appeal such an administrative decision through the courts, the FRS’ ability to remove the legal basis for an NGO’s operations without due process risks not only interrupting NGO activities, but also draining its financial resources by compelling the organization to engage in a costly struggle over its legality.

b. Frequency and Extent of Reporting Obligations

Extensive mandatory reports covering the “volume of financial resources and other assets acquired...prospective allocation of said resources, [and the] purposes for which said resources are spent or used,” must be submitted by foreign NGOs on a quarterly basis. This quarterly reporting obligation is in addition to mandatory annual reporting for structural subdivisions of foreign NGOs on “actual expenditure and utilization of financial resources.” In the case of domestic NGOs, the regulations require annual reporting containing:

- a report regarding the [NGO’s] activities, information regarding the composition of its governing bodies, documentation containing information regarding financial spending and use of other property, including assets acquired from international and foreign organizations, foreign nationals and stateless persons.

In both instances, FRS-mandated reporting comes in addition to any other reporting obligations required by other agencies, including Russia’s tax authority.

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197 Id., art. 32(9).
198 Id., art. 32(10).
200 Id.
201 Id., art. 2(b).
As the U.S. Department of State has observed, the information required by the FRS may compel NGOs to disclose “potentially sensitive information, including sources of foreign funding and detailed information as to how funds are used.”\(^{202}\) The requirement of quarterly reporting also may give rise to a significant administrative burden, particularly for smaller NGOs. For example, Form No. OH0003 requires reporting information on the actual use of every asset costing above approximately $360.00.\(^{203}\) Furthermore, the law is also unclear as to whether a minor oversight in financial reporting—for example, a misreported small donation made by an individual donor or an unreported minor expenditure—may be invoked by the FRS as a basis for removing a foreign NGO from the register on the grounds outlined in article 32(9).\(^{204}\) Given these potentially high penalties, the need for foreign NGOs to expend substantial financial and human resources to ensure full compliance with the law’s provisions grows more apparent. This reality is addressed more fully in Part VI, below, which explores the current status of implementation regarding the NGO law.

### 2. Nature of NGO Activities: Mandatory Advance Reporting on Programs and Incompatibility with NGO Charters

Regulations supplementing the NGO law require foreign NGOs to submit extensive annual reports to the FRS outlining programs that the organization “plans to implement on the territory of the Russian Federation” \textit{for the coming year}.\(^{205}\) According to FRS forms, required reporting on planned activities must include data on the names, phone numbers and passport numbers of participants at events such as conferences.\(^{206}\) Although the regulations make some provision for exceptions,\(^{207}\) it is unrealistic at best to expect all foreign NGOs operating in Russia to know precisely what their programmatic plans may be for the coming year and which individuals will be participating in them. Effectively, the law empowers the FRS to use an unreported NGO program—perhaps initiated as an urgent response to a string of xenophobic attacks or an earthquake—as justification for excluding that organization from the register or initiating


\(^{203}\) Analysis of Decree No. 212, \textit{supra} note 141, at 2.

\(^{204}\) “Organizations that rely on public fundraising, for example, may not know the citizenship of their many small donors, and may not be able as a practical matter to report on all funds received from foreign donors.” “Analysis of Law No. 18-FZ,” \textit{supra} note 176, at 8.

\(^{205}\) Decree No. 212, \textit{supra} note 199, art. 2.

\(^{206}\) Under FRS Form No. OH0001, which addresses NGO reporting on activities already undertaken, NGOs are required to provide the “number and profile of participants of each event conducted…and how these events were publicized.” Analysis of Decree No. 212, \textit{supra} note 141, at 2.

\(^{207}\) For example, where the NGO fails to provide information on a program one year in advance, the regulations allow NGOs to report on planned programs “not later than 1 month prior to commencement of the program.” The law makes no provision for undertaking programs without advance notice being submitted to the FRS. Decree No. 212, \textit{supra} note 199, art. 2.
liquidation proceedings. FRS officials have sought to quell such concerns as “imagined fears,” reasoning that most NGOs have work plans that are developed far in advance.

Requiring foreign NGOs to report in advance on planned programs also creates an opportunity for significant state interference in its operations. For example, if the FRS concludes that a planned program is inconsistent with the NGO’s statutory goals or is otherwise contrary to provisions of the NGO law, it can order the program canceled or modified. One representative from a leading American NGO privately characterized this power as essentially giving the FRS a “line-item veto” on all foreign NGO activities. Interpreted broadly, the NGO law also may provide the FRS with the ability to initiate liquidation proceedings against a foreign NGO for the mere act of planning a program deemed to fall outside of its mandate.

While the NGO law requires that NGOs be notified in writing where the FRS determines that a given program is incompatible with an organization’s statutory goals, the law provides no guidance or objective grounds for enabling the FRS to reach such determinations. Rather, it leaves these findings to the discretion of the FRS, and moreover, places the onus for contesting such a warning on the NGO in question. This could have a chilling effect on the planning and execution of activities, particularly for foreign NGOs, since once found to be acting outside of its charter or the information furnished in previous reports, the organization becomes subject to exclusion from the registry without court order. Although the law provides NGOs with the ability to contest such warning letters through the courts, this process inevitably introduces impediments of its own, including the time and cost associated with litigation. NGOs faced with a warning letter might easily find themselves deciding to forgo the impugned program rather than incur the substantial expenditures of time, finances and personnel necessary to contest the FRS order. More troubling still, multiple warnings from the FRS across a range of programmatic activities being planned or undertaken by an NGO or group of NGOs might put those or other organizations into a position where they cannot act, are fearful to act, or simply preemptively elect to suspend activities altogether.

Although there may be circumstances under which some powers enumerated above may be necessary to advance legitimate state interests, absent clear and specific definitions of what constitutes an NGO “event,” and under which guidelines the FRS will interpret the statutory goals of an NGO or determine whether NGO activity in fact complies with stated goals, this provision gives the FRS significant discretion which may lead to arbitrary and discriminatory

208 These actions conceivably could be grounded on either Art. 32(13) or Art. 18(2.1)(3).
209 Jafarov Interview, supra note 141.
210 Freedom House Roundtable, supra note 142.
211 Law No. 7-FZ, supra note 16, art. 32(6) and (7).
212 As noted above, the RCFS unsuccessfully went through the Russian courts seeking judicial relief. The founders of that organization are now confronted with the financial, programmatic, and time costs associated with an appeal to the ECHR, as well as establishing a new NGO.
enforcement of the NGO law. The fact that NGOs are entitled to a warning and may petition the
court to appeal decisions ensuing from this provision does little to temper this broad discretion,
and moreover, once again places the onus on NGOs rather than requiring the FRS to satisfy any
identifiable or objective test before being able to act against the legitimate privacy, policy and
programmatic interests of an NGO.

Rather, the discretionary powers that underpin the new NGO law establish the FRS as the official
arbiter of precisely which activities fall within or outside of an NGO’s mandate, begging a
number of disquieting questions: Will the FRS elect to interpret NGO mandates narrowly?
Broadly? Or as intended by the scrutinized NGO’s founders? Will NGOs need to amend their
charters to account for the new function of having to report to the FRS on a quarterly and annual
basis? Clearly, it is this power of interpretation that creates an expansive gray area in the law,
which in turn affords substantial discretion to FRS officials and regional prosecutors, and upon
which removal from the registry or the initiation of liquidation proceedings hinges.213

F. FRS Authority to Control and Monitor NGO Activities

1. FRS Access to NGO Documents

FRS officials have stressed that the authority provided under article 32 for oversight of NGO
documents would be limited to that which is necessary to determine whether NGO activities
correspond to an organization’s charter. Although FRS officials acknowledged that no written
guidelines exist to delineate precisely which type of documents could be requested from an
NGO, or under what circumstances such requests could be made, they stressed that any requests
which overstepped the informal boundary defined by FRS leadership would “not be tolerated and
would be punished” internally through informal controls.214 Despite best assurances from the
FRS, the failure to constrain this oversight power by way of transparent regulations leaves open
the possibility of arbitrary governmental interference in NGO affairs. Without any possibility of
lodging complaints against overzealous or arbitrary interpretation and application of the NGO
law, this possibility becomes only more likely. Indeed, it is reasonable to envision a scenario
whereby virtually any document may be said to be related in some manner to an NGO’s
mandate, and therefore subject to FRS review.

213 Article 18(1.2) of the NGO law provides that a “court claim requesting liquidation of a nonprofit organization
may be lodged by a prosecutor of the relevant jurisdiction of the Russian Federation,” or by the FRS. The ability of
both local prosecutors and the centralized FRS office to initiate liquidation proceedings gives rise to additional
accountability concerns since it enables the FRS to claim that the matter is outside of its jurisdiction or that it is
powerless to regulate the actions of local prosecutors. Accordingly, any efforts to monitor enforcement of the NGO
Law will require not only the scrutiny of FRS actions, but also those of regional prosecutors.

214 FRS Interview, supra note 112.
2. FRS Participation in NGO Events

The FRS currently is drafting regulations to implement some of the provisions contained in article 32. That said, FRS officials also have claimed that the right to attend public NGO events is unlimited. These officials further reasoned that the ability to attend “internal” NGO events would require, in certain circumstances, an invitation from the NGO since they “could not reasonably attend events of which they were unaware.” Yet, given the fact that other implementing regulations mandate extensive advance reporting on all planned programs—and the term “program” remains undefined—it is reasonable to assume that the FRS will be in a position to demand that all NGO “events” be reported in advance. Thus, it will indeed have foreknowledge of all foreign NGO events, whether public or internal. Exercise of the FRS’ power to attend any NGO event may have a chilling effect on NGO organizing and on participants’ willingness to attend such events.

3. FRS Ability to Ban NGO Programs and Financial Transfers

The FRS’ ability to ban a foreign NGO’s implementation of a pending program under article 32 (13) is linked directly to the law’s requirement that such NGOs submit information on all planned work one year in advance, as discussed in Part IV(E)(2), above. This provision allows the FRS, by way of “a written decision substantiating the ban,” essentially to compel an NGO to “terminate its activities in connection with the implementation of the said program.” Where an NGO fails to comply with the decision, the law provides for “the exclusion of the said foreign nonprofit non-government organization’s [affiliate] or representative office from the register and liquidation of the [branch office] of the foreign nonprofit non-governmental organization.” In other words, not only can the FRS exclude an organization from the register without court order (as is the case under article 32(10) and (11)), it also may be able—given the law’s silence on the latter power—to liquidate an NGO with the same lack of due process.

Given that the NGO law already requires foreign NGOs to divulge all information related to financial transfers and other monetary activities, the FRS is well-positioned to prevent those transfers “to certain recipients of such resources and other property” that it deems necessary for the purposes of “protecting the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, and with the aim of defending the country and state security.” However, the NGO law makes no provision here regarding what, if any, penalties may apply for noncompliance with the FRS-ordered ban, nor does it specify the precise meaning of terms such as “other resources” or “certain recipients.”

215 Id.

216 See Part IV(E)(2), above.

217 Law No. 7-FZ, supra note 16, art. 32(13) (emphasis added).

218 Id., art. 32(14).
V. “Many Different Countries, Many Different Customs”: Best Practices Related to Government Regulation of NGOs, International Standards, and Russia’s Constitution

A. Overview

The previous section highlighted the amended NGO law’s shortcomings with respect to even basic legislative drafting standards, and signaled that overbroad and vaguely drafted provisions will permit—if not tacitly encourage—excessive and discretionary state intervention within the NGO sector. Given that the law introduces potential restrictions on any number of fundamental individual and collective rights, it is worth taking the analysis one step further by examining how the law interacts with both international and regional human rights standards, as well as with standards introduced by the Russian Federation’s 1993 constitution. This analysis is facilitated by virtue of the fact that Russia’s constitution explicitly provides that “the rights and freedoms of man and citizen are recognized and guaranteed in conformity with the commonly recognized principles and norms of international law and this Constitution,” and, more significantly, that:

The universally recognized principles and norms of the international law and the international treaties of the Russian Federation are a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those established by the law, the rules of the international treaty shall apply.

Although the origin of the proverb for this chapter cannot be attributed directly to any Russia lineage, it has entered into the Russian lexicon. While the trans-boundary migration of this axiom makes it seem paradoxical or even anachronistic, the reality perhaps is telling of a larger trend that is very much relevant here. As countries can coalesce around a common proverb, adopting it as part of their own custom, so too can they come to agree on minimum standards with respect to fundamental rights such as freedom of association and expression, as well as best practices for the regulation of NGOs. In other words, while some customs may indeed continue to vary among states, the international community—and particularly the European states—for the most part no longer differ on the scope and extent of the rights and duties implicated by the NGO law. Rather, as this section indicates, there is a single emerging global “custom” to which Russia has consented, yet is not falling short of satisfying.

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220 Id., art. 15(4).
221 Сколько стран, столько и обычев.
222 For example, the World Bank has indicated that “it can be argued that international law imposes an obligation on countries to enact sound NGO laws” as a requirement for satisfying “the full and meaningful implementation of the freedoms of association and speech.” World Bank, Handbook On Good Practices For Laws Relating To Non-Governmental Organizations (Discussion Draft), May 1997, at 12.
Curiously, Russian officials have taken great pains to portray the NGO law as being in line with regional and international standards. For example, Russia’s Ministry of Foreign Affairs published a chart ostensibly demonstrating that Russia’s NGO law compared favorably with similar laws in other countries. Likewise, in January 2006, Foreign Minister Sergey Lavrov wrote an open letter to critics of the draft NGO law restating the same arguments, including an assertion that the final law included many of the recommendations made by the Council of Europe (COE).

These efforts can only be described as disingenuous at best. The Ministry study contains any number of inaccuracies and false parallels, and altogether omits the most egregious provisions of Russia’s NGO law. Of note, the tables compiled by the Ministry fail to acknowledge the fact that Russia’s law empowers the authorities to demand that NGOs terminate specific programs and ban financial transfers, both without court order. Indeed, the legitimacy of the Russian effort has been questioned by at least two independent observers, with both concluding that the comparative document suffers from grave flaws.

The World Bank has undertaken a more reasoned approach to NGO law standards. In its study of best practices, the Bank’s experts conclude that laws governing NGOs “should be written and administered so that it is relatively quick, easy, and inexpensive to establish an NGO as a legal person. Establishment should also be allowed for branches of both foreign and domestic NGOs.” Further, the registration process “should require filing a minimum number of clearly defined documents and should be a ministerial act involving a minimum of bureaucratic judgment or discretion.” As demonstrated above, the Russian system is neither quick nor easy. Moreover, while the actual registration application fee is nominal, other associated costs—time required to complete the registration process and costs related to translation, notarization, and

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legal advice services—expose a system that quickly can become prohibitive for all but the most well-funded prospective applicants.228

In a similar vein, the World Bank’s experts acknowledged “the ever-present danger of over-regulation by the government, or, indeed, the use of reporting and audit requirements to harass NGOs that are critical of the government or otherwise unpopular.”229 To minimize this risk, they reason that, “to the maximum feasible extent, reports should be as simple to complete and as uniform among agencies as is possible,”230 and that “small organizations should be given simplified reporting requirements or exempted altogether,”231 two simple steps the Russian NGO law fails to adopt. Moreover, the World Bank’s study has concluded that the fear “that foreign funders are trying to subvert the security of the state is not well grounded…So long as the laws requiring accountability and transparency from NGOs are applied firmly but fairly, the responsible organ will know whether any NGO, whether funded locally or from abroad, has used funds improperly.”232

Beyond identified best practices, the NGO law’s vague criteria and broad discretion for denying registration may also conflict with Russia’s regional and international human rights obligations, as well as with the Russian constitution. Under the European Convention:

> Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.233

Although the European Convention and ICCPR contain virtually identical guarantees concerning freedom of association—which elaborate on the Universal Declaration of Human Rights’ promise of “the right to freedom of peaceful assembly and association”234—the ECHR has been far more active in developing the content and scope of that right, and benefits from stronger

228 For example, Ole Solvang, Executive Director of SRJI, estimates that his organization spent several thousand Euros on the registration process, in addition to time spent by staff trying to navigate and comply with FRS requirements and being forced to suspend activities for five months. Interview with Solvang, supra note 167.


230 Id., at 67.

231 Id., at 68.

232 Id., at 93. If an organization has acted illegally, “vigorous steps should be taken to correct the abuse and preclude its repetition.”

233 European Convention, supra note 12, art. 11(1). The ICCPR similarly provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” ICCPR, supra note 13, art. 22(1).

enforcement mechanisms, than the UN’s Human Rights Committee.235 As Prof. Jeremy McBride has written elsewhere, “given the lack of specificity in the language used in most of the [international] guarantees, the most helpful source of guidance in determining the scope of the general freedom of association is to be derived from the case law generated under those instruments which enable individual or collective claims to be brought.”236 With this understanding in mind, the following section primarily focuses on the jurisprudence of the ECHR, with the understanding that Russia’s obligations extend equally to the international level by virtue of its ratification of the ICCPR.

B. The Right to Freedom of Association As Related to NGOs

In United Communist Party of Turkey and Others v. Turkey, the ECHR ruled that the right to freedom of association was not limited to trade unions, since “the conjunction ‘including’ clearly shows that trade unions are but one example among others of the form in which the right to freedom of association may be exercised. It is therefore not possible to conclude…that by referring to trade unions…those who drafted the Convention intended to exclude political parties from the scope of Article 11.”237 The Court added that more persuasive than the wording of article 11 was “the fact that political parties are a form of association essential to the proper functioning of democracy. In view of the importance of democracy in the Convention system…there can be no doubt that political parties come within the scope of Article 11.”238 By natural extension of the same rationale—and by virtue of the crucial function NGOs play in a democratic society—it is reasonable to conclude that article 11 protection ought to apply fully to the right of individuals to form and join NGOs. Indeed, the Court decisively concluded as much in Gorzelik and Others v. Poland:

While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage…seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built

235 In fact, the right of peaceful assembly (Article 21) and freedom of association (Article 22) are some of the least developed rights addressed under the ICCPR, supra note 13. For example, the Human Rights Committee has not produced a general comment on either of these articles. See http://www.ohchr.org/english/bodies/hrc/comments.htm. However, some questions are being raised about NGO rights related to freedom of association. See, for example, Human Rights Committee, Summary Record of the 2050th meeting, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant (Egypt), CCPR/C/SR.2050 24 Oct. 24, 2002, at para. 47.


238 Id., at ¶ 25.
on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.\textsuperscript{239}

This statement built upon pre-existing ECHR jurisprudence concerning the right to establish NGOs, which affirmed that:

The right to form an association is an inherent part of the right set forth in Article 11 of the [European] Convention. The ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. \textit{The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned.}\textsuperscript{240}

The Court also concluded in \textit{United Communist Party of Turkey} that “an association…is not excluded from the protection afforded by the Convention simply because its activities are regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions.”\textsuperscript{241} Significantly, the Court added that “notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10 [freedom of expression]. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in


Article 11.” In light of this, the Court stressed that the interaction between articles 10 and 11 was even more relevant in relation to political parties because of “their essential role in ensuring pluralism and the proper functioning of democracy,”—again, a conclusion extended by the Court to NGOs:

Given that the implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions…the protection of opinions and the freedom of expression within the meaning of Article 10 of the Convention is one of the objectives of the freedom of association…Such a link is particularly relevant where…the authorities’ stance towards an association was in reaction to its views and statements.

Finally, the judgment in United Communist Party of Turkey rightly observed that the protection afforded by article 11 “would be largely theoretical and illusory if it were limited to the founding of an association, since the national authorities could immediately disband the association without having to comply with the Convention.” To that end, the Court held that “the protection afforded by Article 11 lasts for an association’s entire life and that dissolution of an association by a country’s authorities must accordingly” respect the limitations set forth in paragraph 2 of that article.

In a related vein, the ongoing efforts of the Organization for Security and Cooperation in Europe (OSCE) to better elucidate state obligations related to freedom of association reaffirm the direction of the ECHR’s jurisprudence. At the same time, Russia’s long-standing membership in this organization serves as further concrete evidence of that country’s endorsement of the emerging standards related to freedom of association, particularly as they apply to NGOs. For example, the OSCE’s 1990 Copenhagen Document expressed the commitment of participating states to “ensure that individuals are permitted to exercise the right to association, including the

242 Id., at ¶ 42.
243 Id., at ¶ 43.
245 United Communist Party of Turkey, supra note 237, at ¶ 33.
246 The U.S.S.R. was admitted to the OSCE on June 25, 1973. OSCE, “About Participating States,” http://www.osce.org/about/13131.html#R.
247 The Copenhagen Document reflected the conclusions reached during the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. According to the OSCE, this Document “remains the most important source of OSCE commitments in the human dimension. It established that the protection and promotion of human rights is one of the basic purposes of government and that their recognition constitutes the foundation of freedom, justice and peace.” OSCE, “End of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,” June 29, 1990, http://www.osce.org/item/15352.html.
right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups.”

The OSCE’s acknowledgement of the key role played by NGOs in promoting democratic society also mirrors the ECHR’s jurisprudence. The Copenhagen Document recognizes “the important role” of NGOs, including human rights organizations, “in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.” This understanding is deepened by the 1991 Moscow Document, which provides that participating States “will facilitate the ability of [NGOs] to conduct their national activities freely on their territories,” and will “welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension.” In 1999, the OSCE expanded this understanding, acknowledging that NGOs “can perform a vital role in the promotion of human rights, democracy and the rule of law,” and pledging further “to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.”

Given the content of Russia’s NGO law and the manner of its enforcement to date, it is difficult to conclude that the Russian government is meeting these regional undertakings.

C. Legitimate Limitations on the Right to Freedom of Association

Admittedly, the right to freedom of association is not without certain limitations. The limits set forth in Article 11(2) of the European Convention are similar to those enumerated under the ICCPR. Both treaties permit restrictions of freedom of association only where prescribed by law and deemed necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime (to maintain public order), for the protection of health or morals, or for the protection of the rights and freedoms of others.

According to ECHR jurisprudence, any limitation on this right ultimately must be proportionate to the legitimate objective sought by the government. Moreover, the ECHR has held that the list


249 Copenhagen Document, supra note 248, at ¶ 30.


251 Id., at ¶ 43(3).


253 European Convention, supra note 12, art. 11(2), and ICCPR, supra note 13, art. 22(2).
of exceptions contained in article 11(2) is exhaustive. In *Salvation Army v. Russia*, the Court reiterated its view that: “The exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.”

Again, the OSCE’s position strengthens the Court’s findings with respect to the scope of limitations impinging on freedom of association. The Copenhagen Document affirms that participating States agree to:

> ensure that the exercise of all the human rights and fundamental freedoms…will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the [ICCPR], and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. *Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.*

Nothing in these international instruments or in the jurisprudence of the ECHR would appear to envision restrictions to the fundamental human right to freedom of association based on such vague grounds as threats to a country’s “sovereignty,” “cultural heritage,” or “unique character,” or, for that matter, permit arbitrary provisions characterized by significant administrative discretion. In fact, the ECHR specifically has ruled that efforts to limit freedom of association on similar grounds such as “upholding…cultural traditions and historical and cultural symbols,” do not constitute legitimate government aims under article 11(2) of the European Convention. In tandem with this, the Court has held that: “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles—however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be—do a disservice to democracy and often even endanger it.” Clearly, the FRS’ ability to preemptively ban the planned program of a foreign NGO represents such a sweeping measure, and plainly goes against the Court’s understanding of a legitimate limitation on freedom of association.

Other distinctions in treatment between domestic and foreign NGOs created by Russia’s NGO law similarly may signal limitations on the right to freedom of association that are not condoned by either international law or best practice. According to the World Bank, “The rules for foreign

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254 *Salvation Army*, supra note 240, at ¶ 76. See also *Sidirooulos*, supra note 240, at ¶ 40.

255 *Copenhagen Document*, supra note 248, at ¶ 24 (emphasis added).

256 *Sidirooulos*, supra note 240, at ¶¶ 37-38.

257 *Stankov*, supra note 244, at ¶ 97.
NGO establishment should generally be the same as for domestic NGO establishment… Similarly, there should be no special rules or limitation for NGOs that include foreign nationals on their board or staff.” As discussed above, the Russian NGO law draws a number of discriminatory distinctions between treatment of domestic and foreign NGOs, as well as citizens and non-citizens. Among other things, depending on how the term “undesirable” is interpreted at art. 15(1.2)(1), the NGO law also may conflict with the COE’s *Fundamental Principles on the Status of Non-Governmental Organisations (NGOs) in Europe*, which provides that “Any person, be it legal or natural, national or foreign national, or group of such persons, should be free to establish an NGO.”

The principles enunciated by the COE also establish that a government “should be required to provide a written statement of reasons for any refusal to establish an NGO,” and that a “change in the statutes of an NGO…should require approval by a public authority only where its name or its objectives are affected.” As observed above, the Russian NGO law falls short of these basic standards on both counts: First, all NGOs are required to resubmit a registration application in the event of any changes to the organization’s constituent documents; and secondly, the FRS is not required to provide written reasons in all instances of denial of registration.

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261 *COE Fundamental Principles*, supra note 259, at ¶ 42 (emphasis added). The rationale for this principle is elucidated in the accompanying explanatory note: “The rule laid down in paragraph 42…is intended to ensure that the statutes of an NGO can be amended under a simple, expedited procedure. Approval should only be needed in the case of significant matters, such as the name or objectives of an NGO.” Council of Europe, *Explanatory Memorandum to the Fundamental Principles on the Status of Non-governmental Organisations in Europe*, at ¶ 51 (emphasis added), http://www.coe.int/t/e/ngo/public/PrincFondam%20en%20engl.pdf.

262 Law No. 7-FZ, supra note 16, art. 23. See Part III(D)(1), above.

263 Id., arts. 13.2(8) and 23.1(4). See Part III((D)(2), above.
Perhaps not by coincidence, the ECHR recently discussed the deleterious effect of denial of registration in the context of Russian law. In *Salvation Army v. Russia*, the Court found that the process imposed on religious organizations seeking re-registration “necessitated complex bureaucratic steps and a diversion of resources from [the organization’s] activity,” which, in turn, created “negative publicity which severely undermined…efforts at charitable fund-raising and generated distrust among landlords,” and “made it impossible for 25 foreign employees and seven non-Moscow Russian employees to obtain residence registration.”

In light of the NGO law’s similarly onerous provisions concerning registration, it is likely that these issues will again become the focus of ECHR scrutiny, and—in all likelihood—lead to the same judicial conclusion by the Court. Indeed, a legal analysis of the draft NGO law undertaken on behalf of the Council of Europe in 2005 has already concluded, *inter alia*, that certain provisions “lend themselves to subjective determinations and are so broad that they may easily be abused,” and that “second-guessing or speculation about the true intentions of the founders of the organization” runs contrary to existing ECHR jurisprudence. As an alternative, the COE opinion recommended that the more appropriate route would be for the law “to judge an association by its actions, which, if unlawful, [could] give rise to legal steps to dissolve it.” In a related manner, the COE’s *Fundamental Principles* conclude with respect to liquidation provisions that:

> The legal personality of an NGO should only be terminated pursuant to the voluntary act of its members—or, in the case of a non-membership NGO, its management—in the event of bankruptcy, prolonged inactivity or misconduct.

Based on the analysis above, and as demonstrated by the case of the Educated Media Foundation (EMF) discussed below, it would appear that the Russian NGO law clashes with this provision insofar as it is being used to attach vicarious liability to NGOs for the “misconduct” of individuals affiliated with those organizations. To be certain, such actions go beyond the threshold of the COE’s principles, and inevitably have a chilling effect on the activities and affiliations maintained by other NGOs, thereby further limiting exercise of the right to freedom of association. Indeed, while Russian officials claim that the final NGO law satisfies all COE recommendations, Mr. Rene van der Linden, President of the Parliamentary Assembly, publicly

264 The registration, activity, and liquidation of religious organizations in Russia is governed by Law No. 125-FZ. See *supra* note 58 and related discussion, *supra* note 110.

265 *Salvation Army*, *supra* note 240, at ¶¶ 30-33.


267 *COE Fundamental Principles*, *supra* note 259, at ¶ 25.

268 The EMF case is discussed in Part VI(A), below.
expressed the Council’s dissatisfaction with the role it was provided by Russian authorities during discussions on the preparation of the law.269

D. The Right to Privacy
The FRS’ ability to attend events or demand documents may also give rise to potential violations of Russia’s obligations under article 8 of the European Convention and article 17 of the ICCPR. Article 8 of the European Convention provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.270

Although it may be argued that the privacy right enunciated in article 8 applies only to the private life of an individual, the ECHR concluded in Niemietz v. Germany that:

There appears…to be no reason of principle why…the notion of “private life” should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world…. More generally, to interpret the words “private life” and “home” as including certain professional or business activities or premises would be consonant with the essential object and purpose of Article 8…namely to protect the individual against arbitrary interference by the public authorities.271

As Prof. McBride has concluded, “There ought not, therefore, to be any power to search the association’s premises and seize documents and other material there without there being objective grounds for taking such measures. Furthermore the authorisation for them ought to be

269 Press Conference with PACE President Rene Van Der Linden, INTERFAX, Jan. 12, 2007. To be certain, this paper underscores the fact that most of the COE concerns remain unaddressed in the final law.

270 European Convention, supra note 12, art. 8. The ICCPR provides that: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”, and that “Everyone has the right to the protection of the law against such interference or attacks.” ICCPR, supra note 13, art. 17.

given by a judge and the terms of an warrant ought to be precise…and it applies whether or not the object of the source is an individual or an association.”

This understanding is confirmed by COE Fundamental Principle No. 67, which states that:

NGOs should not be subject to any power to search their premises and seize documents and other material there without objective grounds for taking such measures and prior judicial authorisation.

It should also be noted that the Council of Europe’s analysis of the oversight provisions enumerated in article 32 of Russia’s NGO law concludes, inter alia, that the supervisory powers granted to the FRS “appear to be excessive and it is necessary to circumscribe them more precisely,” that “unlimited power for state representatives to attend events interferes with the autonomy of NGOs,” and finally, that any intervention “should be restricted to cases where there are reasonable grounds for suspicion that the legislation in force has been violated.”

However reassuring, statements by the FRS that their powers to obtain documents would be exercised with responsibility and restraint simply do not satisfy the level of transparency and objectivity demanded by the ECHR and COE. Further, as McBride correctly observes, where privacy rights are not respected from the outset, with NGOs placed in a position to challenge the state before an independent judge with full jurisdiction, “then there will undoubtedly be violations of the rights to a fair hearing and an effective remedy,” thus triggering a snowball effect leading to additional violations of European Convention obligations, such as the right to a fair trial contained in Article 6.

E. A Brief Note on Terrorism and International Obligations

As noted above, one of the ostensible justifications for amendments to the NGO law stemmed from a perceived need to “combat terrorism and stop foreign spies using NGOs as cover.” Although protecting Russia’s citizens and combating international terrorism may in fact represent legitimate grounds for regulating the NGO sector, the international community is of one mind that such actions cannot come at the expense of respect for fundamental human rights standards. As early as 2002, the OSCE explicitly declared in its Charter on Preventing and Combating Terrorism, that: “All measures against terrorism and all counter-terrorism measures

272 McBride, supra note 236, at 61.
273 COE Fundamental Principles, supra note 259, at ¶ 67.
274 Van der Ploeg, supra note 266, at ¶¶ 26 and 29.
275 These statements are described in Part IV(F)(1), above.
276 McBride, supra note 236, at 62.
277 Kaban, supra note 18.
and cooperation should be conducted in accordance with the rule of law, the UN Charter and the relevant provisions of international law, *international standards of human rights* and international humanitarian law.”

The OSCE Charter was soon followed by UN Security Council Resolution 1624, which reiterated this balancing requirement by stressing that all governments “ensure that any measures taken [to combat terrorism] comply with all of their obligations under international law, *in particular* international human rights law, refugee law, and humanitarian law.”

It is doubtful, from the analysis presented above, that the Russian NGO law in its current form succeeds in upholding this vital balance.

**F. The Russian Constitution**

One need not necessarily rely only on international or regional standards to reach a determination that the NGO law conflicts with human rights standards. The human rights protections provided under the Russian Federation’s 1993 constitution likewise signal that the NGO law conflicts with what are intended to be supreme legal norms. Article 55 of the Russian constitution states, “Laws that deny or derogate from rights and freedoms of man and citizen shall not be issued in the Russian Federation.” Furthermore, any restrictions on individual rights and freedoms are permitted “only to the extent needed for the purposes of protecting the foundations of [the] constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state.”

The Russian constitution also provides that, “*Everyone* has the right to association...to protect their interests. The freedom of public association activities is guaranteed.” It establishes that “Public associations are equal before the law,” and “guarantees the equality of rights and freedoms without regard to gender, race, *nationality*, language, *origin*, property or employment condition, attitude toward religion, membership in public associations or any other circumstances.” Further, the Russian Constitution guarantees every individual’s “right to privacy of correspondence, telephone conversations, post, telegraphic and other communications,” and specifies that restrictions “on this right may be imposed only by a decision of the court.”

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280 *Russ. Const.*, *supra* note 51, art. 55(2) and (3). Admittedly, these allowances may be broader than those permitted under international law.

281 *Id.*, art. 30(1) (emphasis added). It should be noted that this provision is drafted in a manner that makes it applicable to every individual, rather than only to citizens of the Russian Federation.

282 *Id.*, art. 13(4).

283 *Id.*, art. 19(2) (emphasis added).

284 *Id.*, art. 23(2).
Observers of the Russian judiciary have argued that the Constitutional Court “has steadily accumulated political and moral capital essential to its mission within the constitutional system and, in the process, accrued the respect, or at least the political deference, of all significant players in the political game.”\(^\text{285}\) Despite this apparent—however tenuous—respect, and the clear enumeration of rights in the Russian Constitution, there is no signal from the courts that the constitution will be interpreted and applied with a rights-based approach in mind. Indeed, the backlog of Russian cases pending at the ECHR testifies to the fact that the courts are taking a backseat to litigation moving through the judicial branch, possibly reflecting a throwback to the Soviet era of “telephone justice,” whereby government officials called in the “correct” verdict to the judge hearing the case.\(^\text{286}\)

Interestingly, Chairman of the Russian Constitutional Court Valery Zorkin, recently bemoaned the rising number of complaints\(^\text{287}\) against the Russian Federation being directed to the European Court, calling the phenomenon “a crisis of our legal system” revealing “serious mistakes in the Russian judicial system, in the operation of law enforcement bodies and authority as a whole.” He further labeled discussions within the Duma aimed at limiting Russian exposure to the ECHR, “absurd and unrealistic” given that the European Convention is now part of the Russian legal system.\(^\text{288}\) That said, the Chairman did endorse an approach that would enable Russian citizens “to file human rights cases against the state in Russian courts—something they cannot do now.”\(^\text{289}\) To be certain, the passage of such a proposal represents a double edged sword: on the one hand, it may allow for Russian citizens to obtain justice inline with European Convention rights directly in their own country; on the other, it may delay that justice by prolonging the court hearings required before an exhaustion of domestic remedies can be achieved. This potential delay is only exacerbated by a long-standing skepticism among COE members concerning the “perceived inexperience or inability [of Russia’s courts] to apply effectively constitutional


\(^{286}\) Kahn, *supra* note 96, at 379. Alexander Solzhenitsyn described the concept thusly: “In his mind’s eye the judge can always see the shiny black visage of truth—the telephone in his chambers. This oracle will never fail you, as long as you do what it says.” Kahn, *supra* note 96, at 385. See also Kathryn Hendley, “Assessing the Rule of Law in Russia,” 14 CARDOZo J. INT’L & COMP. L. 347, 352.


provisions dictating the direct applicability and direct effect of Russian’s international human rights treaties."\(^{290}\)

VI. “It’s Not Getting Easier By the Hour”: Recent Developments

At first glance, recent developments related to the NGO law might make Babushka’s eyes light up, satisfied in the knowledge that she was right to hedge her bets. However, when the situation is examined more closely, it becomes clear that on balance, things are indeed not getting easier by the hour for Russia’s NGO community. And in fact, things may grow worse still.

A. A Looming Pattern of Bureaucratic Coercion, Threats, and Pressure

Russia’s Presidential Council for Human Rights and Assistance in the Development of Civil Society Institutions has estimated that NGOs collectively have spent an estimated $280 million on reporting to the FRS—approximately 3 percent of their annual budgets.\(^{291}\) According to Pavel Chikov of the Agora Interregional Human Rights Association, 80 percent of Russian NGOs failed to submit their first activity report to the FRS by the April 15, 2007 deadline.\(^{292}\) Those organizations that did manage to file, typically were forced to divert staff resources from other projects. For example, the World Wildlife Fund’s final report was 100 pages long and “occupied a good portion of the organization’s Russia-based staff for two weeks.”\(^{293}\) A clear consensus concerning the impact of the law’s reporting requirements is evident within the NGO community: Activists claim that they are “suffocating under the additional paperwork,”\(^{294}\) that it is “nearly impossible to cope…especially for small organizations,” and that the repeated obligation to report “distracts [NGO] attention from their main tasks—charitable, humanitarian

\(^{290}\) Peter Krug, Internalizing European Court of Human Rights Interpretations: Russia’s Courts of General Jurisdiction and New Directions in Civil Defamation Law, 32 BROOK. J. INT’L L. 1, 3.


\(^{292}\) NGO Law Causing Major Problems, (7/3/07 WRLDNWSC 10:03:35), http://www.finrosforum.fi/?p=244&language=en. This figure is confirmed by the FRS, which announced that “only 20-25% of all registered organizations managed to submit annual reports,” which translates into hundreds of thousands of NGOs facing the threat of liquidation. Mikhail Moshkin, NGOs Beg To Be Rid of Redundant Bureaucratic Oversight, VREMYA NOVOSTEI, July 5, 2007. Johnson’s Russia List, 2007-#148, Jul. 5, 2007. By April 5, 10 days before expiry of the reporting deadline, FRS reported that only “1,500 of some 200,000 NGOs operating in the country had submitted their paperwork.” NGO Annual Report Deadline Passes, MOSCOW TIMES, Apr. 17, 2007 (2007 WLNR 7219346).

\(^{293}\) Wilson and Chebotarevo, supra note 291.

\(^{294}\) NGO Annual Report Deadline Passes, supra note 292.
and human rights programs.”295 With respect to human rights NGOs, the situation appears even bleaker. According to Oleg Orlov of Memorial, a leading Russian human rights NGO, “These days, the regime reduces all dialogue with [NGOs]…The FSB constantly interferes. Our activists are intimidated and urged to inform on other activists. The human rights situation has never been so bad.”296

Similar to their position during the lead up to the October 2006 registration deadline, FRS officials again attempted to minimize concerns surrounding the April 2007 reporting deadline. One highly-placed official told the press:

We expect the process to proceed quietly and the documents will be submitted on time, which is the most important thing. If questions arise, they will be dealt with on the way…The new form of reporting will not be easy for some organizations. But there’s nothing fatal in it and I wouldn’t make a problem of it.297

In another unconvincing press statement, an FRS spokeswoman commented that: “There won’t be any serious consequences…There is a law. Everything will be done according to the law…We work exclusively according to the law. Those measures that are written in the law will be the measures that we take.”298 However, such assurances leave much to be decided later—and also much to be desired, particularly in light of the bureaucracy’s past practice and the actual content of the NGO law. As noted above, failure to report—as well as errors in reporting—may indeed be fatal, by triggering the threat of FRS action against an NGO, including liquidation proceedings. Further, vague or overbroad will be left to the subjective discretion of FRS officials interpreting the law. Consider, for example, the grounds invoked by FRS to deny registration to Great Russia, an anti-immigrant political party co-founded by former Rodina head Dmitry Rogozin. The FRS based its decision on a finding that the party’s charter violated the law on political parties (although a spokesperson for Great Russia claimed it was identical to that of another pro-Kremlin party that successfully registered previously), and other errors including ”a spelling mistake on a financial document.”299


297 Rights Groups See Problems Emerging, supra note 295. The acknowledgement that it would “not be easy” also contradicts Movchan’s assurances that NGOs have been through this process already and are familiar with it. See supra note 140.


Coupled with reporting concerns, the FRS continued to take specific action against NGOs that raised the ire of the government. For example, Human Rights Watch reported that the International Defense Assistance Center, a Russian NGO representing Russian citizens before the ECHR, received an invoice for back taxes and penalties totaling $167,000—a bill that appears aimed at shutting down the organization, which has 250 cases pending before the ECHR.\(^3\) In a similar manner, the Educated Media Foundation (EMF)\(^3\) was forced to shut down in the wake of a series of seemingly unconnected, if orchestrated, events. In January 2007, customs officials at Moscow’s Sheremetyevo Airport detained EMF executive director, Manana Aslamazian, for allegedly bringing an undeclared “sizeable” amount of cash into Russia.\(^3\) A criminal investigation was subsequently opened against Aslamazian on January 31, and by mid-April, officers from the Interior Ministry’s economic crimes department “locked themselves inside” EMF’s Moscow office, “seizing thousands of documents and computer servers in [an 11 hour] search that lasted until midnight.”\(^3\) The Interior Ministry acknowledged that the raid on EMF’s office was “related to a previously opened criminal investigation.”\(^3\) However, Aslamazian observed that the move against EMF represented a warning to other foreign-funded NGOs engaged in politically sensitive activities: “We’re a large, visible organisation, and if they find some mistakes we’ve made, it will be easy to make an example of us for others.”\(^3\) Due to the seizure of office equipment, the organization was forced to “temporarily halt its activities” on April 24.\(^3\) By June, Aslamazian fled Russia for Paris out of fear of being jailed on smuggling charges filed against her. According to her attorney, “the small amount of money involved should not have been the basis for criminal prosecution.”\(^3\) Unable to operate as a consequence of the

\(^3\) WORLD REPORT 2007, supra note 11, at 407.

\(^3\) The EMF, formerly known as Internews Russia, is part of Internews Network, a California-based NGO which promotes independent media training worldwide. It has branches in 23 countries and receives funding from the U.S. government and private foundations such as the Open Society Institute. See [http://www.internews.org/](http://www.internews.org/). Internews Russia received $8 million from the U.S. Agency for International Development since June 2004, including $3.5 million in 2006. Steve Gutterman, Head of U.S.-Funded Group Fled Russia, A.P., Jun. 29, 2007.

\(^3\) Aslamazian was approximately $12,400. In Russia, travelers must declare amounts equivalent to more than $10,000 to customs officials. Aslamazian explained that she was unaware of the requirement to declare the money. Svetlana Osadchuk, “Raising Fears, Police Officers Raid U.S. NGO,” MOSCOW TIMES, Apr. 19, 2007.

\(^3\) Osadchuk, “Raising Fears, Police Officers Raid U.S. NGO.”

\(^3\) NGOs Uneasy As Deadline Passes, supra note 298.


\(^3\) Top US NGO in Russia May Close Down After Raid, supra note 305.

\(^3\) Id.


\(^3\) Gutterman, supra note 301.
on-going criminal probe against it, EMF began liquidation proceedings in July. This decision was only facilitated by the Tverskoi District Court’s indefinite postponement of hearing a complaint lodged by Aslamazian over the criminal investigation proceeding against EMF. Ironically, because of the seizure of information from EMF’s office, it may be difficult to undertake the liquidation process in accordance with the NGO law.\(^{310}\)

An account of the difficulties generated by the amended NGO law would be incomplete without taking note of the role Russia’s courts have played in permitting the law to operate without any meaningful judicial scrutiny. In October 2003, Russia’s Supreme Court issued Decree No. 5 “Concerning the Application by the Courts of General Jurisdiction of Generally-recognized Principles and Norms of International Law and International Treaties of the Russian Federation,” which established that the European Convention—as well as all other international agreements to which Russia was a party—is binding on Russia’s legal system, and that, wherever applicable, lower courts must “take into account” the ECHR’s “practice” so as “to avoid violations of the [European Convention].”\(^{311}\) However, as pointed out by Peter Krug, this directive is “indeterminate as to its scope and to the nature of the legal effect to be given to [ECHR] ‘positions.’” Similarly, it offers little clarification as to the meaning of the phrase “take into account”,\(^{312}\) thus leaving unanswered whether ECHR judgments should be treated “as binding precedent, or something more akin to persuasive authority.”\(^{313}\) Krug’s conclusion is that Decree No. 5 demands only “a mid-level degree of bindingness,” whereby the courts are “required to act preventively, to avoid an unreasonably high level of risk that their decisions ultimately will result in findings of violation” by the European Court.\(^{314}\)

Given the nature of some of the cases discussed here, it is unlikely that the Russian courts are satisfying even this “mid-level” threshold of respect for the 2003 Explanation. In neglecting this threshold, however, the courts may be satisfying the desires of certain government officials, who share with Stalin’s Commissar of Justice, Nikolai Krylenko, a common vision of the judiciary as “an organ of state administration…designed…to carry out one and the same governmental policy.”\(^{315}\) Significantly, under President Putin, fewer court challenges have been brought before Russia’s constitutional court, and the “cases that [do] address the constitutionality of [his]}


\(^{311}\) Krug, *supra* note 290, at 28-29.

\(^{312}\) *Id.*, at 43. This characteristic vagueness should be familiar to readers by this point.

\(^{313}\) *Id.*

\(^{314}\) *Id.*, at 44.

\(^{315}\) Kahn, *supra* note 96, at 380.
legislative initiatives tend to go his way.”316 While the court remains institutionally “one of the few actors capable of standing up to Putin…it has rarely done so.”317

B. Windows of Hope?

1. “It Was Smooth On Paper, But We Forgot About the Ravines (and Now We’ll Have to March Over Them)”: The NGO Law and Its Impact on Religious Organizations in Russia

Despite its track record, signs exist that the Russian government may be prepared to address some of the most egregious shortcomings of the NGO law. Foremost among these indicators is the decision reached by a government commission chaired by First Deputy Prime Minister Dmitry Medvedev to exempt religious organizations—the proverbial ravine in this instance—from the NGO law’s reporting requirements.319 A subsequent decree issued on April 10, 2007 promulgated new regulations for religious organizations “when it comes to accounting for services and donations,”320 and also extended the reporting deadline for those organizations from April 15 to June 1, 2007.321

To reach this compromise, leaders from a wide range of religious communities in Russia were obliged to lobby vigorously. Russian Orthodox, Protestant, Muslim, and Jewish leaders publicly criticized the application of article 32 to religious organizations after realizing that it would compel them to report on “how many parishioners attend every service, how much parishioners give to their religious organizations, and what is discussed at meetings of senior religious officials.”322 According to Ksenia Chernega, an attorney for the Russian Orthodox Church (ROC), the ROC would “experience great difficulties” with the new system of reporting, and

316 Hendley, supra note 286, at 359.

317 Id.

318 Russian officials initially claimed religious organizations were exempt from the NGO law and that it would have no impact on their activities. This assertion was either ill-informed or disingenuous. Article 1(4) of the amended NGO law specifies that articles 13-19, 21-23, and 28-30 shall not be applicable to religious organizations. Based on these exemptions, most of the law’s registration, organization, and liquidation procedures effectively do not apply to religious organizations in Russia. That said, some of the most onerous features of the amended NGO law did apply to religious organizations prior to the April 10, 2007 decree. In particular, article 32, which establishes exhaustive reporting obligations for NGOs and extensive state powers to intervene in NGO activities, was applicable to religious organizations. The provisions addressing the registration, organization, and liquidation of religious organizations in Russia are set out in Law No. 125-FZ, supra note 58. As noted, this law, like the NGO law, gives rise to many of the same concerns regarding registration regimes, administrative discretion, arbitrariness, and subjective application. See discussion concerning Salvation Army in Part V(C), above and supra note 110.

319 The proverb used here, Гладко было на бумаге, да забыли про овраги (а по ним шагать), reflects the proposition that sometimes well-laid plans overlook obvious obstacles—in this case, the Russian Orthodox Church—which in turn threaten to upset execution of the plan.


322 Religious Groups Get a Waiver, supra note 320.
religious organizations could not “be put on the same footing as other NGOs.” Further, Rabbi Zinovy Kogan, chairman of the Congress of Jewish Religious Communities and Organizations in Russia, observed that the “new rules [were] undoubtedly an encroachment on the inner life of the church,” and Ravil Gainutdin, chairman of the Board of Muftis of Russia, commented that “such controlling measures [were] unacceptable in democratic conditions…The state has only one responsibility—that of registering a religious organization, not of counting up its worshippers and the money collected.”

According to the new reporting form, instead of specifying types of activities, objectives, and number of participants, religious organizations only have to indicate whether they have “conducted religious rites, preaching, education, literature distribution, pilgrimage, charitable work and/or ‘other’ activities.” Religious organizations will still be expected “to account for donations made by outside organizations as well as for ‘use of other property’.”

At first glance, the waiver extended to religious organizations appears to indicate a willingness on the part of Russian authorities to remain flexible with respect to correcting the NGO law’s obvious flaws. However, an understanding of the rising influence of the ROC in Russia—and particularly its growing ties to the government—arguably colors the motivation driving Russian officials enough to make it impossible to interpret the move as motivated by anything more than a need to appease the ROC.

Christian Orthodoxy has burgeoned in Russia after years of repression under the Soviet regime. According to the FRS, there are 22,500 registered religious organizations in Russia. Fifty-five percent of these are registered to the ROC. Today, “Church hierarchs attend every secular event of importance, and politicians have become exemplary parishioners. The Church is positioning itself as a stronghold of domestic values and basic morals.” Notably, two of Putin’s potential successors—first deputy prime ministers Sergei Ivanov and Dmitry Medvedev—have spoken favorably about the role of the ROC in Russian society. For example, Medvedev has commented that the state “must create conditions to satisfy a need of a person to go to church, [and that] the Church assumes the function of improving the society.” To underscore the contentious nature of this burgeoning relationship, a group of prominent academics at the


325 Religious Groups Get a Waiver, supra note 320.

326 FRS Interview, supra note 112. The remaining 45 percent breaks down as follows: 20 percent Protestant, 20 percent Muslim, and five percent other.

327 Vladimir Simonov, “Religion Clashes with Science in Modern Russia,” RIA NOVOSTI, July 23, 2007

328 Scientists Alarmed By Clericalisation in Russia, ROC Disagrees, ITAR-TASS, July 26, 2007.
Russian Academy of Sciences recently published an open letter to President Putin expressing concern over “the growing clericalisation of the Russian society” and “an active penetration of the church into all spheres of public life.”\textsuperscript{329} It is also worth noting in this respect, that Russia’s 1993 constitution explicitly declares the state secular. Under Article 14, “The Russian Federation is a secular state. No religion may be instituted as state-sponsored or mandatory. Religious associations are separated from the state, and are equal before the law.”\textsuperscript{330}

The growing proximity between the ROC and state is further cemented by the ROC’s opinion of western-funded NGOs, and particularly those advancing human rights in Russia—a view that is shared by senior Russian government officials. For example, Metropolitan Kirill, external affairs spokesman of the Moscow Patriarchate of the ROC, has publicly argued that human rights groups “advance the political agendas of those foreigners who fund their activities.” To address this situation, Kirill has suggested that Russia “reserves the right to deviate from international human rights norms to correct the ‘harmful emphasis’ on ‘heightened individualism’ which has infiltrated Russian society under the cover of Russian civil society organizations.”\textsuperscript{331}

Given the shared vision of the ROC and Russian government concerning the danger of “western”-driven NGO activities on the fragile fabric of Russian society, it is not difficult to imagine the ROC’s eager endorsement of the NGO law and its regulatory provisions. What must have been disconcerting, however, was the heavy-handedness of the government’s “spray and pray” approach to regulation. In a letter to the FRS, Russian Orthodox Archbishop Nikon (Vasyukov) of Ufa and Sterlitamak summed up the mixed feelings of endorsement of the government effort and utter confusion:

\begin{quote}
We understand the state’s close interest in the activity of all types of social and so-called “human rights” organisations which…are actively financed by foreign secret services and openly conduct provocative and anti-Russian activity, but it is completely incomprehensible why this interest has been transferred to the activity of traditional religious organisations like the Russian Orthodox Church…In our
\end{quote}

\begin{flushright}
329 Nobel Prize winner Zhores Alferov and Vitaly Ginzburg were among some of the letter’s signers. \textit{Id.}


331 Challenge to Civil Society, supra note 8, at 6-7.
\end{flushright}
opinion the accounting stipulated amounts to state interference in the activity of religious organisations unprecedented since Soviet times.”

In summary, it would be short-sighted to interpret the decision to waive reporting obligations for religious organizations under article 32 as anything more than a thinly veiled effort to appease the ROC and ensure its continued support of the Putin government and its related activities.

2. Much Ado About Talk of Future Amendments

Ella Pamfilova, head of Russia’s Council for the Promotion of Civil Society Institutions and Human Rights, recently commented that elements of the Russian government, including the FRS, “are jointly monitoring the implementation of the NGO law,” and would propose amendments based on their findings. This move apparently grew out of a realization that “whether the authorities wanted it or not, the accountability mechanism has in itself become repressive,” as well as Putin’s statement that “the existing instructions concerning the law on NGOs are overly bureaucratic.”

In a related development, the Public Chamber held a consultation on June 20, 2007 with NGO representatives on “new legal working conditions” for foreign NGOs, where participants spoke of how registration requirements are seriously obstructing their work. Also in June, a group of leading human rights NGOs sent an appeal letter to all 450 Duma deputies requesting changes to

332 Geraldine Fagan, “Religious Organisations’ NGO Law Financial Accounting Simplified,” Forum 18 News Service, Apr. 17, 2007. It is worth calling attention here to Archbishop Nikon’s use of the term “traditional” religious organizations as those being entitled to a waiver regarding reporting obligations. USCIRF has observed that “Many of the problems faced by minority religious communities in Russia stem from the notion set forth in the preface to [Law No. 125-FZ] that only four religions—Russian Orthodoxy, Islam, Judaism, and Buddhism—have ‘traditional’ status in that country. Other religious groups are held to be ‘non-traditional’ and their activities and leaders are subject to official oversight and possible restrictions.” In Archbishop Nikon’s mind, therefore, it is more than acceptable that other “non-traditional” religious organizations in Russia continue to be bound to the NGO law’s reporting requirements. USCIRF, Policy Focus: Russia, Fall 2006, http://uscirf.gov/countries/publications/policyfocus/Russia.pdf.


334 Moshkin.

335 In the wake of the Beslan massacre, the Russian government established the Public Chamber to serve as an advisory body of civil society representatives to the president. One-third of its members are appointed by the president, and the presidential appointees select the remaining members. Although the Public Chamber ostensibly is supposed to monitor the activity of civil society, it has been criticized as a meaningless body essentially created as window dressing. Freedom House, FREEDOM IN THE WORLD - RUSSIA (2006), http://freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2006&country=7044&pf. According to Nikolay Petrov, “On the whole...the Public Chamber, is largely a meaningless institution.” Nikolay Petrov, “All Smoke and Mirrors,” MOSCOW TIMES, July 20, 2007, http://www.moscowtimes.ru/stories/2007/07/20/006.html or http://www.carnegie.ru/en/pubs/media/76581.htm.

the NGO law.\textsuperscript{337} While the arguments being raised by opponents of the NGO law do not differ significantly from those raised prior to the law’s adoption, they do carry the added weight of experience. According to Dmitry Makarov of the Youth Human Rights Movement (MPD), “many of the fears expressed by rights activists when the changes were passed in 2006 have been borne out. We hope now that our recommendations will be considered. After all, better late than never.”\textsuperscript{338}

More than any talk of recommended amendments, three internal realities weigh in favor of at least some superficial amendments being formulated by the government: first, a number of key organizations have already been “neutralized” by the law; second, a strong message already has been communicated to the NGO sector concerning the boundaries of permissible operation;\textsuperscript{339} and third, the reality that the reporting process will have significant financial and personnel costs for the state. Russian economists have calculated that if each NGO report submitted is processed “in about 45 minutes, it will still require 140 employees each year to complete the process.”\textsuperscript{340}

\textbf{VII. “It’s Better To Be Too Aware Than Too Unaware” or “What You Plant, That You Will Harvest”: A Brief Conclusion}

To conclude this analysis, two Russian proverbs appear equally relevant. The first acknowledges the warning bell nature of this paper given the reality that—despite the number of incidents discussed above—much in the NGO law still remains unenforced.\textsuperscript{341} However, being overcautious is not without its merits. An authoritative human rights critique of the NGO law’s immediate dangers—as well as its long-term implications—can generate greater public awareness, which in turn strengthens the hand of Russian civil society, a benefit of increasing import in the face of competing developments such as pending elections, Russia’s suspension of

\begin{flushright}
\textsuperscript{337} Id.
\textsuperscript{338} Id. Human rights NGOs have focused on amending three key areas of the law: first, restricting FRS inspection powers; second, streamlining registration and re-registration procedures; and third, streamlining NGO reporting obligations to the FRS. Moshkin.
\textsuperscript{339} According to Oleg Kalugin, a former KGB general, this is Putin’s \textit{modus operandi}. While Stalin used mass repressions, imprisoning and executing hundreds of thousands, Putin “is more selective: [only] individuals who he finds too hostile or harmful for his rule [are targeted]. Putin has actually put the country back to the authoritarian state; it’s not as bloody but just as criminal as Stalin’s regime.” Foreign Policy, “Seven Questions: A Little KGB Training Goes a Long Way,” July 2007. \url{http://www.foreignpolicy.com/story/cms.php?story_id=3911}. Indeed, Irina Yasina, chairperson of Russia’s Regional Journalists Association, has argued that the case brought against the EMF is “all about making an example of one to scare others.” Jamey Gambrell, \textit{Putin Strikes Again}, 54 N.Y. REV. BOOKS 12, July 19, 2007. \url{http://www.nybooks.com/articles/20350}. Putin took a similar approach in his dealings with Russia’s oligarchs. See Part II(E), above and \textit{supra} note 97.
\textsuperscript{340} Wilson and Chebotarevo, \textit{supra} note 291.
\textsuperscript{341} Лучше перебдеть, чем недобдеть.
the Treaty on Conventional Armed Forces in Europe, and the on-going diplomatic row between the U.K. and Russia over the extradition of businessman Andrei Lugovoi, wanted in connection with the Alexander Litvinenko murder.

That said, in the final analysis, this paper represents more than a mere warning to be “too aware.” Rather, it rejects the ‘wait and see’ approach advocated by some. As one observer of the Russian NGO law has reasoned:

Russian civil society may be threatened if uniform and objectively fair standards are not applied in implementing the latest law regulating NGOs....While many human rights groups and NGOs complain that the new law in Russia will result in the end of civil society, this is unlikely to be the case. Similar laws in other countries have not resulted in such an outcome and, therefore, much will depend on the effective implementation of fair and uniform methods to enforce the new law.

If anything, this paper has demonstrated the fact that the situation in Putin’s Russia today is sui generis, and that no comparison with other countries or similar NGO laws can paint an adequate or accurate picture of the implications for Russia’s civil society. In the context of Russia, it is not an issue of whether civil society may be threatened by the failure to implement uniform and objectively fair standards; the reality is such that civil society is being threatened by such standards, and that these standards are an inherent part of the legal culture being facilitated by President Putin. Putin has gone to great lengths to shape the media and the political landscape of Russia, and civil society will be no exception to this trend. As this paper goes to print, the state is expanding rapidly into the non-profit sector, shaping civil society institutions to suit itself. A telling example of this is the fact that President Putin in July 2007 signed a directive on

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343 See for example, Serge Schmemann, who concludes that “Russia is still a work in progress, and it is too early to predict which way it will go when—or if—a new president replaces Mr. Putin next year.” Schmemann, supra note 4.

344 The key difference is that those other countries are not Russia. Michael P. Maxwell, “NGOs In Russia: Is the Recent Russian NGO Legislation the End of Civil Society In Russia?” 5 TUL. INT'L & COMP. L. at 262-263.

345 To understand Putin’s regime, Garry Kasparov, former world chess champion and chairman of the United Civil Front of Russia, a pro-democracy opposition organization, urges that observers “go directly to the fiction department and take home everything you can find by Mario Puzo. If you are in a real hurry to become an expert on the Russian government, you may prefer the DVD section, where you can find Mr. Puzo’s works on film. ‘The Godfather’ trilogy is a good place to start.” Garry Kasparov, Don Putin, WALL ST. JOURNAL, July 26, 2007, at A13.

346 Recently, some opposition parties and independent media sources have claimed that “murky forces have committed vast resources to hacking and crippling their Web sites in attacks similar to those that hit tech-savvy Estonia as the Baltic nation sparred with Russia over a Soviet war memorial.” The groups all point the finger at the Kremlin, “calling the electronic siege an attempt to stifle Russia’s last source of free, unfiltered information.” Mansur Mirovalev, Russia Accused of Crippling Online Media, ASSOC. PRESS, July 22, 2007. Johnson’s Russia List, 2007-#159, Jul. 23, 2007.
government support for NGOs participating in the development of institutions of civil society. According to the plan, six select Russian NGOs will be granted approximately 1.2 billion rubles for the allocation of grants to other organizations.\textsuperscript{347} This move to impose further controls on civil society through direct government funding of select organizations reinforces the prescient words of Russian journalist Vitaly Pornikov, written in 1999:

[Russia] will be a state, in which the government draws authority not from the enthusiasm of the active members of society, but from the secret service and the army elites…The federal authorities will claim as much power and influence…as they will deem necessary….No freedom of speech will exist in this state.\textsuperscript{348}

With this reality in mind, it is the second proverb that makes for a more accurate conclusion. It signals that the seeds for undermining or completely destroying any authentic, independent, and pluralistic civil society in Russia already have been planted and—if not removed in time—promise to deliver bitter fruit.\textsuperscript{349} This pending harvest is made only more inevitable based on the prior season’s seeds, sowed to control the political process, regional autonomy, media, and business, and whose plants already have developed thick stalks and continue to grow unabated.

As this analysis has demonstrated, there are many shortcomings with respect to Russia’s amended NGO law. Not only is the law drafted in a vague manner that significantly expands administrative discretion, but it also forces NGOs to operate in a legal space that breeds uncertainty concerning compliance. This environment ensures a chilling effect on the diversity and direction of NGO activities and again raises the specter of the Soviet analogy. U.S. Representative Tom Lantos has observed that Putin’s Russia “bears an unsettling resemblance to the former Soviet Union, albeit with consumer goods and a wealthy business class. Voices of criticism, opposition, and alternative opinion are jailed, curtailed, or come to practice self-censorship.”\textsuperscript{350} What is so startling is that this parallel of authoritarianism does not end with the with Putin’s approach to controlling Russian society: similarities with the Soviet era can be seen in Russia’s reaction to international scrutiny and its response to international law norms. For example, in objecting to the release of a U.S. human rights report on Russia, the Ministry of Foreign Affairs asserted: “we are convinced in the inadmissibility of the use of the ideas of

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\bibitem{347} Igor Romanov, \textit{The Duma Has Raised its Hand Against Education}, NEZAVISIMAYA GAZETA, July 9, 2007. Johnson’s Russia List, 2007-#151, Jul. 10, 2007. Some of the biggest recipients of this grant will be the National Charitable Foundation, the Foundation for the Training of Personnel Reserve for the State Club, the Znaniye Foundation, and In Support of Civil Society. The formula bears more than a passing resemblance to the one used to appoint the Public Chamber, discussed \textit{supra} note 335.

\bibitem{348} Vladimir Vedrashko, \textit{Civil Society in Russia: Bearing the Unbearable in the Name of the State}, 26-Fall FLETCHER F. WORLD AFF. 177, 184.

\bibitem{349} Что посевешь, то и пожнёшь.

\bibitem{350} Lantos, \textit{supra} note 23, at 13.
\end{thebibliography}
democracy and human rights as a cover for interference in internal affairs.” On a prior occasion, Putin had expressed his astonishment that “[Russia’s] internal law-making is of such great interest to foreign governments.”

The assertion of this positivist stance has been fueled by a growing pattern of acceptance by Western states and international organizations of Russian noncompliance with international norms. For example, Nikolay Spasskiy, Deputy Secretary of the Russian Federation Security Council, talked down the original draft of the NGO law as a “trial balloon,” floated to test the reaction from Europe and the U.S. Even in light of the protest raised in the west, the Russian government undertook only minor changes to the final version of the law. This pattern sends a message to Russian policy-makers that there are few, if any, costs involved with violating treaties to which their country is a party or international norms.

Confronted with this deteriorating reality, the international community—and particularly the COE—must take concrete measures to ensure that Russia’s legislation and judicial rulings adhere to the standards set forth in the European Convention. Seeking repeal of the NGO law would alleviate many of the concerns raised herein. The alternative, at a minimum, is for the Russian government to take steps to amend or clarify problematic provisions and regulations in a manner that ensures the law’s respect for international human rights. Moreover, the rationales invoked by Russian authorities to justify the NGO law need to be countered head-on, by explicitly invoking Russia’s international obligations, including with respect to the proper enforcement of anti-terrorism measures. Given the government’s track record to date and its continued direction, there can be no valid justification for delaying this urgent action.

The obligation to stand up to the deficiencies of the NGO law, however, does not fall to states and intergovernmental organizations alone. Russian and international NGOs alike must take concrete steps to increase transparency and accountability in a measurable and objective manner.


355 These amendments and clarifications should, inter alia, reflect international best practices discussed here, as well as recommendations advanced by the COE, USCIRF, and the international NGO community. The Parliamentary Assembly of the Council of Europe is expected to undertake an evaluation of the implementation of the NGO law by April 2008. Press Conference with PACE President, supra note 269.
to ensure quality within the industry, and moreover, minimize the risk of exposing themselves to attacks regarding their relevancy or objectivity. Some of this is already taking place, but more needs to be done to disseminate and meaningfully enforce standards.

What is being “floated” in Russia today with respect to the regulation of NGOs represents a breach of well-defined and long-standing international human rights standards and best practices. Faced with this reality, the most fitting way to close this paper is by reminding the reader of a final Russian proverb: You can’t throw a handkerchief over somebody’s mouth. Acting with this maxim in mind, the international community can remind Russian officials that the world is watching.

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356 See generally Blitt, supra note 18.

357 Recently, the International NGO Accountability Charter signals additional movement from within the international NGO community, however the charter does little at this point to promote standards among domestic NGOs or provide for outside monitoring with the possibility of sanctions. Also, the number of signatories only counts in the handfuls. See http://www.ingoaccountabilitycharter.org/.

358 На чужой роток не накинешь платок ог На чужой роток не накинешь платок.