

# NGOs In Russia: Is the Recent Russian NGO Legislation the End of Civil Society in Russia?

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I.	INTRODUCTION .....	235
II.	BACKGROUND.....	240
	A. <i>Defining an NGO</i> .....	240
	B. <i>Functions of NGOs in International Law</i> .....	241
	1. Fostering Civil Society and Democracy.....	242
	2. Criticisms of NGOs.....	244
	C. <i>The Role of NGOs in Russia</i> .....	245
	D. <i>Legal Foundations for NGOs in Russia</i> .....	247
III.	FEDERAL LAW NO. 18-FZ .....	251
	A. <i>Original Draft</i> .....	251
	B. <i>Current Version</i> .....	252
	1. Denial of Registration .....	253
	2. New Authority To Exercise Control over Public Associations and NCOs .....	256
	3. Reporting Requirements of Foreign NGO Branches or Representative Offices .....	257
	4. Restrictions on Foreign Nationals .....	257
	C. <i>The Role of the Judiciary</i> .....	258
IV.	THE END OF CIVIL SOCIETY? .....	262

## I. INTRODUCTION

In the last few decades, the number of nongovernmental organizations (NGOs) operating throughout the world increased dramatically.<sup>1</sup> NGOs have pressed for and gained greater recognition and participatory rights in international law and policy making, whereas before they played only a negligible role.<sup>2</sup> While many feel that NGOs currently play an invaluable role in promoting human rights, political

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1. Kerstin Martens, *Examining the (Non-) Status of NGOs in International Law*, IND. J. GLOBAL LEGAL STUD., Spring 2003, at 1.

2. Stephan Hobe, *The Era of Globalisation as a Challenge to International Law*, 40 DUQ. L. REV. 655, 660 (2002).

freedoms, and a solid civil society, others argue that they fail to make any significant differences in the countries where they operate and should be held to higher standards.<sup>3</sup> Furthermore, there is tension between NGOs and governments over issues of control, political involvement, and financial transparency.<sup>4</sup> NGOs face challenges from many host governments, “especially those outside of the Western liberal democratic mold.”<sup>5</sup> However, almost all agree that there is a role for these groups in the international arena, and many governments, especially those in the West, continue to fund and promote NGO activities abroad.<sup>6</sup>

In the middle of this growing trend of increased activity and scrutiny of NGOs, Russia recently passed a law that appears on its face to further restrict and reign in NGO operations in Russia.<sup>7</sup> Federal Law No. 18-FZ, signed on January 10, 2006, by President Vladimir Putin,<sup>8</sup> aims “to regulate the activities of non-governmental and non-commercial organizations operating in the Russian Federation and includes the establishment of new registration procedures and stricter monitoring of NGO activities, financial contributions, and budgets.”<sup>9</sup> The draft law is designed “to contribute to the prevention of terrorist activities, in particular by ensuring that NGOs are not created or abused to facilitate the planning, organisation or financing of terrorist activities.”<sup>10</sup> However,

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3. Matthew Spence, Book Note, 29 YALE J. INT'L L. 581, 600-01 (2004) (reviewing SARAH L. HENDERSON, *BUILDING DEMOCRACY IN CONTEMPORARY RUSSIA: WESTERN SUPPORT FOR GRASSROOTS ORGANIZATIONS* (2002)).

4. Igor Khrestin, *New NGO Law in Russia: The Implementation Matters More than Substance* (Feb. 28, 2006), <http://www.ngowatch.org/articles.php?id=209>; see also U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: 2005* (Mar. 8, 2006), <http://www.state.gov/g/drl/rls/hrrpt/2005/61550.htm> (noting that in 2005, a disturbing number of countries across the globe passed or selectively applied laws against the media and NGOs).

5. Khrestin, *supra* note 4.

6. See Nilda Bullain & Radost Toftisova, *A Comparative Analysis of European Policies and Practices of NGO-Government Cooperation*, INT'L J. NOT-FOR-PROFIT L., Sept. 2005, at 64, 64-67, available at [http://www.icnl.org/JOURNAL/vol7iss4/art\\_1.htm](http://www.icnl.org/JOURNAL/vol7iss4/art_1.htm) (discussing partnerships and cooperation of governments and NGOs). See generally Spence, *supra* note 3 (discussing the role of foreign funding of NGOs in Russia).

7. See Gregory L. White, *West Hits a Wall with Putin; Despite Rising Doubts, Leaders Are Reluctant To Alienate Moscow*, WALL ST. J., Jan. 12, 2006, at A11; see also Julie Finley, U.S. Ambassador to OSCE, Address to the Permanent Council, Vienna, Austria: Statement on Russian NGO Law (Jan. 26, 2006), [http://www.usosce.rpo.at/archive/2006/01/Russian\\_NGO\\_Law\\_01\\_26\\_06.pdf](http://www.usosce.rpo.at/archive/2006/01/Russian_NGO_Law_01_26_06.pdf) [hereinafter Finley Address].

8. *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 3, Item 282, available at GARANT 12044310.

9. Khrestin, *supra* note 4.

10. J. Tymen van der Ploeg & Secretariat Gen. of the Council of Eur., *Provisional Opinion on Amendments to Federal Laws of the Russian Federation Regarding Non-Profit Organisations and Public Associations*, para. 3 (Dec. 1, 2005), available at [http://www.coe.int/T/E/Com/Press/News/2005/20051206\\_opinion.asp](http://www.coe.int/T/E/Com/Press/News/2005/20051206_opinion.asp) [hereinafter *COE Provisional Opinion*].

the new law comes in the wake of several recent events that seem to indicate this is just another example of President Putin attempting to gain effective control over the entire political system.<sup>11</sup>

In fact, some critics believe that the law is a response to the perception that Russian officials have of the role foreign organizations played in creating the Rose Revolution in Georgia and the Orange Revolution in Ukraine, and that Russia is launching a preemptive strike against a possible repeat during Russia's 2008 elections.<sup>12</sup> Others believe that the law is in response to a spying scandal in which Russia's Federal Security Service (FSB) uncovered four MI6 intelligence agents from Britain who were involved in transmitting classified information using a fake rock containing a radio transmitter.<sup>13</sup> One of the alleged agents was the British Embassy's main contact for Russian NGOs, raising suspicions regarding the use of these organizations for foreign intelligence gathering.<sup>14</sup> Russian officials claim that the British agent was responsible for distributing "Foreign Office grants to 12 organizations, including the Moscow Helsinki Group, one of Russia's oldest and most respected human-rights organizations."<sup>15</sup>

Although the bill was viewed by many as a move toward the centralization of political power by the Kremlin, Russia tempered the bill after its first reading in response to outcries by the international community. The original version of the bill, which would have required all foreign and Russian NGOs to reregister with government authorities, brought swift and immediate criticism from Western governments shortly after its first reading in the Russian State Duma (State Duma) in early December 2005.<sup>16</sup> A nonbinding concurrent resolution, passed by the United States Congress, noted that "regardless of the stated intent of the Government of the Russian Federation, the restrictions in this legislation [would] impose disabling restraints on the establishment, operations, and activities of nongovernmental organizations and on civil society throughout the Russian Federation."<sup>17</sup> Congress urged the Russian government to withdraw the first reading of the proposed legislation or,

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11. See White, *supra* note 7.

12. Khrestin, *supra* note 4; see George Melloan, *Putin's KGB Instincts Serve Russia Badly*, WALL ST. J., Feb. 14, 2006, at A23.

13. Guy Chazan, *Kremlin Accuses British Diplomats of Espionage*, WALL ST. J., Jan. 24, 2006, at A19. The "rock" contained a transmitter used by British spies to communicate with a Russian agent and was located in a Moscow Park. Peter Finn, *Russia Says British Used Rock To Spy; Security Service Accuses Four Diplomats*, WASH. POST, Jan. 24, 2006, at A12.

14. Chazan, *supra* note 13.

15. *Id.*

16. See, e.g., H.R. Con. Res. 312, 109th Cong. (2005).

17. *Id.*

in the alternative, "to modify the legislation to ensure the unobstructed establishment and free and autonomous operations and activities of such nongovernmental organizations in accordance with the practices universally adopted by the Western democracies. . . ."<sup>18</sup>

Although the bill actually signed into law is less restrictive than the first draft, it has nonetheless received strong criticism from governments, NGOs, and human rights groups alike.<sup>19</sup> Many of these groups have expressed concerns that the new law is inconsistent with Russia's own constitution as well as a number of treaties to which Russia is a signatory, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (EHRC).<sup>20</sup> Some groups lament that this law will be the end of Russian civil society.<sup>21</sup> One NGO concerned with the development of civil society stated that it feared the proposed legislation would

[d]angerously increase the intrusive power of the state by allowing unprecedented control over independent NGOs; [c]reate an overly complicated registration procedure for NGOs and permit government officials to deny registration arbitrarily; [s]ubject NGOs to inspections and audits at any time and without limitation; [l]iquidate NGOs unable to obtain registration; [o]utlaw foreign representative offices; [and] [d]iminish the necessary checks and balances intrinsic to any democratic society.<sup>22</sup>

Although there is substantial criticism surrounding Russia's new law, some commentators and scholars feel that it will not adversely affect Russian civil society and is, in fact, nearly identical to laws passed in many other democratic nations, including the United States.<sup>23</sup> They argue that, given Russia's changing legal environment, it is essential for Russia

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18. *Id.*

19. *See, e.g.*, Finley Address, *supra* note 7 (stating concern over the recent law signed by Putin); Khrestin, *supra* note 4; Julie A. Corwin, *Russia: U.S. Official Says New NGO Law Part of Antidemocratic Trend* (Feb. 2, 2006), <http://www.rferl.org/featuresarticle/2006/2/2648B6DB-4E6D-469E-9BF6-EF11D893B295.html> (interviewing Barry Lowenkron, U.S. Assistant Secretary of State for the Bureau of Democracy, Human Rights, & Labor, about reactions by U.S. and German officials to the NGO crackdown in Russia); Letter from Anne-Sophie Parent, Chair of the EU Civil Soc'y Contact Group, to José Manuel Barroso, President of the Eur. Comm'n (Dec. 5, 2005), <http://act4europe.horus.be/module/FileLib/CSCG%20Russian%20NGO%20legislation%2005.12,%20EC.pdf>.

20. Khrestin, *supra* note 4; *see also* COE Provisional Opinion, *supra* note 10, ¶ 5 (noting that the law may conflict with article 11 of the EHRC).

21. Khrestin, *supra* note 4; *see also* Finley Address, *supra* note 7.

22. Letter from Anne-Sophie Parent, *supra* note 19.

23. Nabi Abdullaev, *How Russia's NGO Law Stacks Up*, MOSCOW TIMES, Feb. 15, 2006, <http://www.ngowatch.org/articles.php?id=154>; *see also* Nicolai N. Petro, *Russian NGO Legislation Is a Step in the Right Direction* (Dec. 9, 2005), <http://www.cdi.org/russia/johnson/9319-7.cfm> (arguing that the new law is necessary for Russian development and is similar to legislation in the United States).

to modernize statutes to regulate NGO and noncommercial organization (NCO) activities uniformly; the laws governing these organizations have not been updated in almost a decade.<sup>24</sup> Furthermore, one report noted that because NGOs are significantly influencing decision-making processes in the countries in which they work, governments are increasingly concerned with enhancing the accountability, transparency, and oversight of NGO activities.<sup>25</sup> Thus, it would appear that Russian lawmakers are merely following trends established in countries such as France, Finland, and Israel with respect to monitoring and regulating the powerful influence of NGOs.<sup>26</sup>

Other commentators, however, recognize that while the law itself is nothing extraordinary, the method with which the law was passed should be a cause of concern.<sup>27</sup> One of these commentators, for example, argues that the swiftness and manner in which President Putin pursued the NGO law is yet another indicator of a continued movement towards consolidation of power by the Russian executive and further evidence of growing antidemocratic trends in Russia.<sup>28</sup> Still others, including at least one NGO director in Russia, believe the law could have either positive or negative effects, but that no one will be able to tell without first observing the implementation of the law.<sup>29</sup> She argued that it may reign in NGO abuses and prevent them from “pursuing objectives contrary to those of the average citizen and to the stability of the fragile government.”<sup>30</sup>

This Comment will first explore what constitutes an NGO and the role of these groups in international law. Next it will look specifically at NGOs in Russia and their impact on Russian politics and civil society, including a look at the laws regulating NGOs and public associations prior to enactment of the new law. In Part III, this Comment will analyze how the new Russian Federal Law No. 18-FZ affects Russian civil society and democracy and how it compares to similar ones in other democratic nations including the United States. Finally, this Comment

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24. Petro, *supra* note 23; Khrestin, *supra* note 4.

25. Heide B. Malhotra, *NGOs Losing Privileged Status*, EPOCH TIMES (Boston), Jan. 30-Feb. 5, 2006, at A3 (quoting an Oxford Analytical report calling on greater accountability and transparency for NGOs).

26. See Abdullaev, *supra* note 23.

27. Khrestin, *supra* note 4.

28. *Id.*

29. William Fisher, *Russia: NGO Law Could Strengthen Civil Society, Group Argues* (Jan. 25, 2006), <http://www.ipsnews.net/news.asp?idnews=31908>.

30. *Id.* (quoting Sharon Tennison, the director of an NGO based in Moscow).

will evaluate whether the new law raises legitimate concerns regarding Russian democracy and civil society.

## II. BACKGROUND

### A. *Defining an NGO*

The term “nongovernmental organization” is defined and interpreted in numerous ways, many of which are ambiguous, misleading, or contradictory.<sup>31</sup> An NGO may refer to a variety of different types of organizations that are not affiliated with government, including multinational companies or national liberation groups.<sup>32</sup> Others view NGOs as private nonprofit organizations designed to promote and encourage higher values within society.<sup>33</sup> Domestic legislation regarding private associations often serves to give official recognition and regulate NGOs within a given country, however, there are no similar legal standards established at an international level.<sup>34</sup> Thus, what constitutes an NGO may vary from country to country, and while some consider this an opportunity for maintaining the diversity of civil society in the international sphere by allowing a number of societal actors “to contribute to the political process when they would otherwise be excluded,” it also leaves ample opportunity for abuses by organizations.<sup>35</sup> The lack of a uniform definition and regulation for what kind of group qualifies as an NGO raises real issues of who NGOs represent and whether they do so legitimately.<sup>36</sup>

Article 71 of the U.N. Charter explicitly mentions NGOs.<sup>37</sup> The United Nations used this language for the purpose of “encompass[ing] a variety of actors under one heading, without defining it sufficiently.”<sup>38</sup> The term “NGO” has since increasingly been used by academics and activists to reference societal actors operating outside the U.N. framework.<sup>39</sup>

While a precise definition of nongovernmental organizations does not exist, there are a number of elements helpful in identifying what type of group, at least in principle, should constitute an NGO, including that it

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31. Martens, *supra* note 1.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 2-3.

36. *Id.*

37. *Id.* at 15 (citing U.N. Charter art. 71).

38. *Id.*

39. *Id.*

be “founded by private individuals; independent of states; oriented toward the rule of law; pursuing public rather than private interests as an objective; demonstrating a transnational scope of activities; and possessing a minimum of organisational structure.”<sup>40</sup> Often, NGOs are founded to sponsor interests that are perceived as “inadequately represented by nation-states,”<sup>41</sup> although they do not necessarily represent the public interest.<sup>42</sup> On the contrary, “NGOs are not elected bodies” and “their legitimacy stems from their mission to address a genuine need in the community or society” rather than the public interest.<sup>43</sup> Thus, NGOs represent a form of democracy, but not representative democracy.<sup>44</sup>

### B. *Functions of NGOs in International Law*

The role of NGOs in international law is a topic that has received much attention in the past decade.<sup>45</sup> NGOs are gaining increasing influence and recognition as legitimate players on the international scene.<sup>46</sup> In part, this is because of the role they played in a series of world conferences in the early 1990s.<sup>47</sup> Research on the function of NGOs in these conferences indicates that NGOs contributed experience and know-how throughout the preparation and negotiation of international law<sup>48</sup>

NGOs work in both political and nonpolitical arenas advancing the views of their members in the international arena or “lobby[ing] altruistically for public goods.”<sup>49</sup> Specifically, these groups promote a wide range of purposes and goals “in the fields of human rights, the environment, development assistance, humanitarian aid, peace, education, and family.”<sup>50</sup> The flexibility, adaptability, mobility, and demonstrated potential to influence international negotiations, coupled with increases in the numbers and activities of these groups, indicates that they have become an integral part of the procedures and structures of

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40. Hobe, *supra* note 2, at 660.

41. *Id.*

42. Bullain & Toftisova, *supra* note 6.

43. *Id.* at 84.

44. *Id.*

45. See Martens, *supra* note 1.

46. See *id.*; see also Kerstin Martens, *NGOs in the UN System: Examining Formal and Informal Mechanisms of Interaction*, 2 INT’L J. CIV. SOC’Y L. 11, 11 (2004).

47. See Martens, *supra* note 46, at 11. “More than 840 NGOs participated in the Vienna Conference on Human Rights in 1993; around 1400 NGOs took part in the Earth Summit in Rio in 1992.” Martens, *supra* note 1 (citation omitted). In both of these conferences “[t]hey did more than participate as outside observers” but rather worked with government delegations and as advisors to help “shape the outcome of legal documents.” *Id.*

48. Martens, *supra* note 1.

49. *Id.*

50. *Id.*

international law and policy-making.<sup>51</sup> Thus, NGOs play important roles “in the process of establishing new international standards or modifying existing international law according to evolving criteria.”<sup>52</sup>

Interactions between NGOs and intergovernmental organizations (IGOs) further expand the influence that NGOs have on “political processes on a global level.”<sup>53</sup> For example, NGOs have been shown to advance international standards of human rights protection by gathering information on human rights abuses, proposing new laws, putting pressure on individual governments to adopt new standards, and assisting with drafting international conventions.<sup>54</sup>

Many NGOs have sought regular cooperation with IGOs, and the IGOs have in turn established institutional frameworks to regulate their interaction with NGOs.<sup>55</sup> “Formal interactions between NGOs and the UN are governed by the UN Charter and related resolutions of ECOSOC [U.N. Economic and Social Council].”<sup>56</sup> For example, consultative status was established for many NGOs in the United Nations through article 71 of the U.N. Charter, which provides for the ECOSOC to consult with NGOs for certain specific purposes.<sup>57</sup> “NGO work related to the UN comprises a number of activities including information dissemination, awareness raising, development education, policy advocacy, joint operational projects, and providing technical expertise and collaborating with UN agencies, programmes and funds.”<sup>58</sup> Other IGOs, such as the Organization for the Security and Co-operation in Europe (OSCE) and the Council of Europe (CoE), have followed suit and established procedures for cooperation with a number of NGOs.<sup>59</sup>

### 1. Fostering Civil Society and Democracy

One of the most widely recognized and touted roles of NGOs in international law is that of developing civil society.<sup>60</sup> The term “civil society” encompasses a wide variety of different “voluntary organizations operating outside of the realm of government, business,

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51. See Martens, *supra* note 46, at 11; see also Martens, *supra* note 1.

52. Martens, *supra* note 1.

53. *Id.*

54. *Id.*

55. Martens, *supra* note 46, at 11-12.

56. U.N. Non-Governmental Relations Liaison Serv., U.N.-NGO Relations, <http://www.un-ngls.org/ngorelations.htm> (last visited Oct. 7, 2006) [hereinafter UN-NGLS Web Site].

57. Martens, *supra* note 46, at 12; Martens, *supra* note 1; U.N. Charter art. 71; UN-NGLS Web Site, *supra* note 56.

58. UN-NGLS Web Site, *supra* note 56.

59. Martens, *supra* note 1.

60. See HENDERSON, *supra* note 3, at 2.



and the family.”<sup>61</sup> It includes any number of diverse civic groups such as a social movement organization or even a simple bowling association.<sup>62</sup> The idea that power inheres in a strong civil society has dramatically increased as it has been credited with bringing down authoritarian regimes in Latin America, Asia, and Eastern Europe.<sup>63</sup> Civic groups are seen as especially important in states transitioning from authoritarian to democratic governments as they often serve as substitutes for weak or nonexistent political parties.<sup>64</sup>

Civil society also improves the quality and functioning of already transitioned and stable democracies.<sup>65</sup> “Civic groups act as watchdogs on state power, convey citizen interests, and serve as mediators between private citizens and institutions of the state.”<sup>66</sup> They help to develop social capital and other attributes that together act as “civic glue against the dangers of the constant pursuit of naked self interest.”<sup>67</sup> Civil society is considered by most scholars as a required element for developing and sustaining democracy.<sup>68</sup>

Western countries’ foreign policy agendas reflect the role civil society plays in developing democracy.<sup>69</sup> Various governments and international organizations have sponsored aid programs under the rubric of “democracy promotion” and “civil society assistance.”<sup>70</sup> “Specifically, donors have identified nongovernmental organizations . . . as vehicles for civil society development programs and have given thousands of NGOs around the world small grants, training, and other forms of technical assistance.”<sup>71</sup> These actions demonstrate the recognition that civil society plays a crucial role in the early states of democracy.<sup>72</sup> The Westminster Foundation for Democracy noted:

Lack of civil society and democratic institutions can leave a country more vulnerable to the whim of whichever group may have climbed to the top of the power ladder. . . .

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61. *Id.* at 1.

62. *Id.* See generally ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000) (discussing extensively the role of civic involvement in developing social capital and subsequently a stronger democracy).

63. HENDERSON, *supra* note 3, at 1. For example, many scholars credit the fall of the Berlin wall as partially a product of civil society or “people power.” *Id.*

64. *Id.* at 2.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

NGOs play a key role in creating civil society. Their focus on mobilizing resources, providing services, undertaking research and public education while also providing advocacy for membership organization and people's associations gives NGOs an unparalleled liaison role between civil society and government. Effective NGOs contribute to civil society development by pressing for transparency in government and business practices; by helping citizens become involved in solving local problems; by lobbying for the government on behalf of citizens and promoting awareness of these concerns locally, nationally, and internationally.<sup>73</sup>

The United States Department of State (State Department) recently recognized that “[f]ree and democratic nations that respect the rights of their citizens help to lay the foundation for lasting peace,” and that “[a] robust civil society and independent media help create conditions under which human rights can flourish by raising awareness among publics about their rights, exposing abuses, pressing for reform, and holding governments accountable.”<sup>74</sup> Furthermore, the report indicates that “[g]overnments should defend—not abuse—the peaceful exercise of fundamental freedoms by members of the media and civil society even if they do not agree with their views or actions.”<sup>75</sup> In the eyes of Western policy makers, civil society plays an important role in spreading and establishing democracy and NGOs are important in helping to develop the basis of that society.

## 2. Criticisms of NGOs

Despite the apparent widespread acceptance of the importance of NGOs in international law, there are strong criticisms of NGOs' effectiveness.<sup>76</sup> Some scholars contend that there is, in reality, “no direct correlation between NGO presence and the robustness of a transitional state's civil society.”<sup>77</sup> Instead, they argue that the “means and methods by which NGOs have sought to provide democratic assistance to Eastern Europe and Eurasia have often compromised their capacity to serve as a driving force of democratic change in society at large.”<sup>78</sup> One scholar noted, for example, that in Russia's independent women's movement, competition for Western aid may have encouraged an oligopoly, or rather

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73. *Id.* at 73 (citation omitted).

74. *Country Reports on Human Rights Practices—2005*, *supra* note 4.

75. *Id.*

76. See Michael Jacobsohn, Book Note, 16 HARV. HUM. RTS. J. 281, 282 (2003) (reviewing *THE POWER AND LIMITS OF NGOS: A CRITICAL LOOK AT BUILDING DEMOCRACY IN EASTERN EUROPE AND EURASIA* (Sarah Mendelson & John K. Glenn eds., 2002)).

77. *Id.*

78. *Id.*

an “association of bureaucratized, corporate-like entities more concerned with their own survival than with the kind of grassroots activism necessary to garner popular support for the feminist movement and provide tangible benefits to Russian women.”<sup>79</sup> However, these scholars do not contend that NGOs have no useful purposes; rather, they argue that NGOs do not utilize their full potential “to contribute to the expansion and consolidation of democratic institutions and values in the post-communist world.”<sup>80</sup>

### C. *The Role of NGOs in Russia*

Early development of the NGO sector and civil society in Russia was slow.<sup>81</sup> A “German-Marx tradition proscribing state control of society has historically dominated the Russian Communist ideology.”<sup>82</sup> Civil society was essentially nonexistent in the Soviet Union because the state controlled many aspects of social life, and the need for civic groups to address citizen concerns and interests was not necessary.<sup>83</sup> Because the Communist party dominated the operation of these social organizations, the Russian Federation lacked a “parallel culture,” or a culture consisting of institutions such as universities, which developed separate and independent of the Communist state and would have foreshadowed the framework of the development of a civil society following the fall of Communism.<sup>84</sup> Independent organizations did eventually develop in the mid-1980s as groups were formed to pursue common interests and hobbies, but “these groups played . . . a minimal role in the flowering of civil society in the [Russian Federation].”<sup>85</sup>

Over the past two decades governments and international organizations have begun to recognize NGOs as useful tools in fostering civil society and developing democracy and have begun to use NGOs as the carriers of substantial political, economic, and social benefits to post-Communist Russia.<sup>86</sup> In the 1990s, NGOs were organized all over Russia and it is currently estimated that there are more than 300,000 registered

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79. *Id.* at 283.

80. *Id.*

81. HENDERSON, *supra* note 3, at 63.

82. C.J. Albertie, *A Survey & Critique of Russian Law & Its Effects on NGOs*, 2 INT'L J. CIV. SOC'Y L. 12, 14 (2004).

83. *Id.*

84. *Id.* at 14-15.

85. *Id.* at 15 (citation omitted).

86. *Id.*

NGOs in Russia today.<sup>87</sup> Most groups provide social or charitable services, however a number of groups, particularly human rights and environmental organizations, focus their work on actively changing government policies and/or monitoring and criticizing the government's performance.<sup>88</sup>

For example, NGOs played important roles in monitoring elections and in facilitating political change in Russia and the former Soviet republics.<sup>89</sup> NGOs were crucial in both the Rose Revolution in Georgia and in the Orange Revolution in Ukraine.<sup>90</sup> Ukraine's Orange Revolution was a series of protests and political events throughout the country in response to allegations of massive corruption, voter intimidation and direct electoral fraud during the 2004 Ukrainian presidential election.<sup>91</sup>

The Rose Revolution was a peaceful revolution in Georgia that displaced president Eduard Shevardnadze after reports that the elections were grossly rigged.<sup>92</sup> Georgians demonstrated against Shevardnadze's government and engaged in nonviolent civil disobedience.<sup>93</sup> The main democratic opposition parties united to demand Shevardnadze's ouster and the repetition of the elections.<sup>94</sup> NGOs played important roles in training local political groups, monitoring government activities, and observing the elections.<sup>95</sup> Russia has since criticized foreign NGOs for interfering with local political affairs.<sup>96</sup>

NGOs also play important roles in monitoring human rights and civil liberties in Russia. This is especially apparent in Chechnya. Over the course of a decade, it is estimated that armed conflict displaced close to one million people from Chechnya.<sup>97</sup> Human rights groups provide humanitarian assistance and monitor the situation.<sup>98</sup>

[They] can provide rapid information through the internet and other media; they can provide humanitarian assistance; they can represent [Internally

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87. HUMAN RIGHTS WATCH, *MANAGING CIVIL SOCIETY: ARE NGOS NEXT?* 16 (2005), <http://hrw.org/backgrounders/eca/russia1105/>.

88. *Id.*

89. Charles H. Fairbanks, Jr., *Georgia's Rose Revolution*, J. DEMOCRACY, Apr. 2004, at 110; Adrian Karatnycky, *Ukraine's Orange Revolution*, FOREIGN AFF., Mar.-Apr. 2005, at 35.

90. Fairbanks, *supra* note 89; Karatnycky, *supra* note 89.

91. Karatnycky, *supra* note 89.

92. Fairbanks, *supra* note 89.

93. *Id.*

94. *Id.*

95. *Id.*

96. Guy Chazan, *Russian Law Puts Foreign Aid Group in Limbo*, WALL ST. J., Oct. 19, 2006, at A6.

97. See Mary Holland, *Chechnya's Internally Displaced and the Role of Russia's Non-Governmental Organizations*, 17 J. REFUGEE STUD. 334, 335-36 (2004).

98. See *id.* at 343-44.

Displaced Persons] and other victims in legal actions against the government in Russian courts and in the European Court of Human Rights; and they can apply international legal principles to a domestic Russian context and hold the government accountable according to those international principles.<sup>99</sup>

Both domestic and international NGOs perform these tasks.<sup>100</sup>

Recent trends show a Russian crackdown on some human rights organizations in Chechnya by “refusing to register them, arbitrarily closing down existing organizations, or accusing them of extremism.”<sup>101</sup> Thus, as a result of this crackdown, NGOs are forced to allocate resources to defend their organizations rather than dealing with substantive matters.<sup>102</sup>

Additionally, Russian NGOs generally lack access to financial resources necessary to operate and, thus, funding for the nonprofit sector is heavily dependent on foreign sources of income<sup>103</sup> subject to intense competition among the NGOs.<sup>104</sup> The scarcity of local funding sources, the extreme competition for foreign funding, and restrictive government regulations all combine to create an environment that makes it difficult for Russian NGOs to focus on anything except their own survival. As a result, “[c]ivil society in contemporary Russia suffers at the hands of a weak economy, inexistent governance structure, and lack of trust.”<sup>105</sup>

#### *D. Legal Foundations for NGOs in Russia*

The legal environment for NGOs combined with a lingering distrust by the government of outside foreign groups continues to hinder the development of NGOs in Russia.<sup>106</sup> Properly structured legislation is important to encourage participation in NGOs; a weak legal foundation may further hinder the establishment and functionality of these groups.<sup>107</sup>

Laws on the creation and regulation of NGOs function to establish: (1) the legal status of an NGO; (2) judicial recourse by [which] an NGO can defend its rights; (3) rules that govern NGO activity in public life; (4) the registration procedures for NGOs at the federal level; (5) the framework by

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99. *Id.* at 343.

100. *Id.*

101. HUMAN RIGHTS WATCH, *supra* note 87, at 17.

102. *Id.*

103. Albertie, *supra* note 82, at 15.

104. Jacobsohn, *supra* note 76, at 283.

105. Albertie, *supra* note 82, at 15.

106. *Id.* at 16.

107. *Id.*

which NGOs interact with government officials; and (6) a template for related laws at the regional and local level.<sup>108</sup>

The Russian Federation Constitution provides for freedom of association.<sup>109</sup> It states that “[e]veryone shall have the right to association, including the right to establish trade unions in order to protect one’s interests. Freedom of activity of public associations shall be guaranteed. No one may be forced to join or to maintain membership in any association.”<sup>110</sup> Article 30 provides the basis for the operation of NGOs in Russia and the constitution further provides that NGOs are to be treated equally before the law, while at the same time prohibits them from engaging in any activity that would threaten the constitution or the state.<sup>111</sup> Russian citizens, likewise, “are granted equal protection of the law without regard to ‘affiliation with public associations,’” meaning they cannot be discriminated against for belonging to a particular organization.<sup>112</sup>

International law also governs the operation of NGOs in Russia.<sup>113</sup> “Generally recognized principles and norms of international law supplement the constitutional freedom to association.”<sup>114</sup> Furthermore, international treaties to which Russia is a signatory take precedence over Russian domestic law<sup>115</sup> and several international treaties provide for the freedom of association.<sup>116</sup>

The Russian Civil Code likewise provides a framework for the operation of NGOs.<sup>117</sup> “The Section on Non-Commercial Organizations, defines the different types of non-commercial organizations, their legal rights, status, and duties.”<sup>118</sup> An organization that qualifies as an NCO, whether a social or religious association, is treated as a judicial person and “may assume debt, enter contract, receive tax benefits, and assume liability.”<sup>119</sup>

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108. *Id.*

109. *Id.*

110. *Id.* (citing KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 30).

111. *Id.* (citing KONSTITUTSIIA ROSSIISKOI FEDERATSII arts. 13(4)-(5), 30).

112. *Id.* (citing KONSTITUTSIIA ROSSIISKOI FEDERATSII art. 19(2)).

113. *Id.*

114. *Id.* (citing KONSTITUTSIIA ROSSIISKOI FEDERATSII art. 17(1)).

115. *Id.* (citing KONSTITUTSIIA ROSSIISKOI FEDERATSII art. 15(4)).

116. *Id.* at 17 (stating that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the EHRC each recognize freedom of association).

117. *Id.* (citing CIVIL CODE OF THE RUSSIAN FEDERATION: PARTS ONE, TWO AND THREE (William E. Butler ed., Oxford Univ. Press 2d ed. 2003) (2002)).

118. *Id.* (citing CIVIL CODE OF THE RUSSIAN FEDERATION).

119. *Id.* (citing CIVIL CODE OF THE RUSSIAN FEDERATION art. 50(3)).

One of the most pertinent laws regarding NGO activity in Russia is the 1995 Law on Public Associations.<sup>120</sup> The law defines public association as “a voluntary, self-managed non-commercial formation created on the initiative of citizens associating on the basis of common interest for the realization of common goals.”<sup>121</sup> The purpose of the law is regulation of “the relationship between government authorities and NGOs.”<sup>122</sup> The legislation implements NGO registration and provides for reregistration of existing organizations.<sup>123</sup>

Registration of each NGO requires filing a number of documents within the proper judicial agency.<sup>124</sup> Denial of registration is possible if an NGO’s charter is contrary to particular constitutional or statutory provisions or “if legal papers for registration are incomplete, do not follow format, if an NGO of same name in same place already exists, if registration papers are false, or if the applicant NGO’s name offends public morals, ethnic, or religious feelings.”<sup>125</sup> Denial of registration requires the state to issue an explanation that could be appealed in a court of law.<sup>126</sup>

Similar to the Law on Public Associations, the Law on Non-commercial Organizations “acts to determine the legal status, procedure for foundation, activity, [and] reorganization” for those entities classified as NCOs.<sup>127</sup> “A non-commercial organization is one that does not have profit making as a main purpose, nor distributes profit earned between members of the organization.”<sup>128</sup> The qualified organization is designed “to reach social charitable, cultural, educational, scientific, and administrative purposes, protect health, develop physical culture and sport, to satisfy the spiritual and other non-material needs of citizens, protect the rights, legal interests of citizens and organizations . . . and also in other purposes, directed to common good.”<sup>129</sup>

Many scholars and commentators claim that the reregistration provision of the 1995 Law on Public Associations stunted the development of civil society in Russia.<sup>130</sup> Although originally designed to

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120. *Id.* at 18 (citing *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF]* [Russian Federation Collection of Legislation] 1995, No. 21, Item 1930, available at GARANT 11064186).

121. *Id.* (citing SZ RF 1995, No. 21, Item 1930, art. 5).

122. *Id.* (citing SZ RF 1995, No. 21, Item 1930, art. 4).

123. *Id.*

124. *Id.* at 19 (citing SZ RF 1995, No. 21, Item 1930, art. 21).

125. *Id.* (citing SZ RF 1995, No. 21, Item 1930, art. 16, 19-21, 23).

126. *Id.* (citing SZ RF 1995, No. 21, Item 1930, art. 23).

127. *Id.* (citing SZ RF 1996, No. 3, Item 145, art. 1).

128. *Id.* (citing SZ RF 1996, No. 3, Item 145, arts. 2, 50(1)-(3)).

129. *Id.* at 19-20 (citing SZ RF 1996, No. 3, Item 145, art. 2(2)).

130. *E.g., id.* at 20.

“eliminate record of inactive NGOs, update administrative information on active groups, and determine individual NGO tax status,” the reregistration provision was instead used to “eliminate troublesome and undesirable organizations.”<sup>131</sup> Human rights and government watchdog groups were most often the groups deemed “undesirable.”<sup>132</sup> Furthermore, registration was often denied without explanation or based on illegal justifications.<sup>133</sup> Although NGOs have the right to appeal a decision, many found this to be of little value.<sup>134</sup> Instead, judicial impropriety and pressure from local authorities often led the courts to uphold illegal denials of reregistration.<sup>135</sup> The courts justified their decisions on minor technical violations, such as failure to provide certain documents that were withheld from NGOs by local governments in the first place.<sup>136</sup>

According to one commentator, “the registration and re-registration provision effectively denied the freedom of association to countless NGOs.”<sup>137</sup> However, others argue that a denial of registration does not violate freedom of association if the NGO is allowed to continue operating.<sup>138</sup> They argue that denial of registration merely prevents the recognition of the group as a legal entity in Russia.<sup>139</sup> This implies that the group could still meet informally if it desired. However, others countered that because registration determines the legal status of an NGO and brings with it all the rights necessary to run an effective organization, the denial of registration essentially results in curtailing the group’s right to freedom of association.<sup>140</sup>

In summary, the laws governing NGOs were outdated and unfavorable to the existence of those groups. This, combined with an unfavorable tax code and an even greater centralization of power in the Russian government, led to the current hostile environment for NGOs

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131. *Id.* (citation omitted).

132. *Id.* at 21 (discussing how registering officials interpreted certain provisions to “exclude NGOs from the business of human rights”) (citation omitted).

133. *Id.* (citation omitted).

134. *See id.* at 22 (citing *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF]* [Russian Federation Collection of Legislation] 1995, No. 21, Item 1930, art. 23, *available at* GARANT 11064186).

135. *Id.*

136. *Id.* (discussing the appeal of the Collegiate Association for the Research of the Principle group, where the court upheld a denial of registration for failure to provide a letter confirming the legal address of the organization when the local municipal government should have provided the letter but refused to do so).

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*



and the poor development of civil society in modern Russia, even before President Putin signed the controversial NGO law. However, the outdated law and the current state of Russian civil society may also serve as justification for the current legislative efforts to revise and update the laws governing NGOs.

### III. FEDERAL LAW NO. 18-FZ

#### A. *Original Draft*

Federal Law No. 18-FZ was originally introduced to the State Duma on November 8, 2005, by representatives of several parties, including United Russia, Motherland, the Liberal Democratic Party of Russia, and the Communist Party of the Russian Federation.<sup>141</sup> NGO groups immediately protested the draft law.<sup>142</sup> Additionally, several members of the Russian Public Chamber<sup>143</sup> sought to delay the State Duma's consideration of the draft law until January 2006, when the full Public Chamber would be able to meet and have public discussions on the proposal.<sup>144</sup> Commentators indicated that if enacted as originally proposed, the law "would lead to the oppression of citizen activism, the closure of many Russian NGOs, the departure of foreign NGOs, the termination of foreign funding to many socially critical projects, and, overall, to a reversal of democracy in Russia."<sup>145</sup> Western governments, such as the United States and Germany, were also critical of the law.<sup>146</sup>

Additionally, the Council of Europe submitted opinions indicating that the law in the original version would be contrary to Russia's international obligations and treaties.<sup>147</sup> In particular, the law as originally proposed would have

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141. Int'l Ctr. for Not-for-Profit Law, Analysis of the Draft Law: On Introducing Amendments to Certain Legislative Acts of the Russian Federation (draft under revision) 1 (Nov. 23, 2005), <http://act4europe.horus.be/module/FileLib/ICNLanalysis.doc>.

142. *Id.*

143. The Public Chamber is an independent public institution recently created to conduct public review of legislation but it did not become operational until January 1, 2006. *Id.* at 1 n.1.

144. *Id.* at 1.

145. *Id.* at 2.

146. Barry Lowenkron of the State Department discussed the positions of countries such as the United States and Germany with respect to the new law on Radio Free Europe. See Corwin, *supra* note 19.

147. See COE Provisional Opinion, *supra* note 10; Int'l Ctr. for Not-for-Profit Law, *supra* note 141, at 2 & n.2 (commenting that several experts and think tanks provided opinions on the current law including the Council of Europe); Finley Address, *supra* note 7 (discussing possible violations of OSCE Copenhagen Document paragraph 10.4, which provides for guarantee of the "right to unhindered access to and communication with similar bodies outside their countries").

[e]stablish[ed] a burdensome registration procedure for all [NCOs], placing them at a disadvantage compared to for-profit legal entities, which benefit from a simple and efficient registration process[;] [p]rovid[ed] unlimited authority to the registration authorities to audit the activities and finances of all NCOs and to request any documents from them[;] [r]equir[ed] all informal groups (without the status of a legal person) to inform the government authorities of their existence[;] [p]rohibit[ed] foreign citizens and persons without citizenship, if not permanently residing on the territory of the Russian Federation, from establishing public associations and non-commercial organizations, or from becoming members or participants in such bodies[; and] [o]utlaw[ed] all existing representative offices and branches of foreign [NGOs] and require[d] foreign NGOs to register as local public organizations.<sup>148</sup>

Scholars also believed that enacting such a law would have hurt “the international reputation of the Russian Federation and Russia’s status with the G8.”<sup>149</sup>

### B. *Current Version*

Following the first reading of the draft law, several modifications were made by the State Duma, including eliminating the requirement of reregistration for foreign NGOs.<sup>150</sup> However, despite the revisions, human rights groups and Western policymakers were still critical of the new law.<sup>151</sup> Ignoring the controversy surrounding the new amendments, President Putin signed the revised version of the bill on January 10, 2006.<sup>152</sup> The law went into effect in April 2006, ninety days after its official publication on January 17, 2006.<sup>153</sup>

Commentators noted that it was difficult to anticipate the effects of the law without first seeing how the law was implemented.<sup>154</sup> The law contains broad and vague provisions that will need to be explained

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148. Int’l Ctr. for Not-for-Profit Law, *supra* note 141, at 2.

149. *Id.*

150. Khrestin, *supra* note 4. Russian NGOs must still reregister with the State. However, “after criticism by foreign leaders, including U.S Secretary of State Condoleezza Rice, lawmakers late last year removed a clause that would have required foreign NGOs to register as Russian legal entities.” Christian Lowe, *Russia NGOs Fear Trouble as Law Comes into Force* (Apr. 17, 2006), [http://www.ncsj.org/AuxPages/041706Reuters\\_NGO.shtml](http://www.ncsj.org/AuxPages/041706Reuters_NGO.shtml). Foreign NGOs may still be required to stop a program if Russian officials deem it as a threat to national interests. *Id.*

151. *Id.*

152. Int’l Ctr. for Not-for-Profit Law, Analysis of Law #18-FZ: On Introducing Amendments to Certain Legislative Acts of the Russian Federation 1 (2006), *available at* [http://www.icnl.org/knowledge/news/2006/01-19\\_Russia\\_NGO\\_Law\\_Analysis.pdf](http://www.icnl.org/knowledge/news/2006/01-19_Russia_NGO_Law_Analysis.pdf).

153. *See id.*

154. *Id.*; *see also* Khrestin, *supra* note 4.

through the creation of additional regulations.<sup>155</sup> Proper enactment through well-drafted regulations “could alleviate some of the perceived burdens imposed upon civil society.”<sup>156</sup> However, as history has shown with the enactment of the original Law on Public Associations, abuse is a real possibility that could hurt the development of civil society while failing to accomplish the purposes of the law.<sup>157</sup>

The new law actually alters four existing laws: the Civil Code, the Law on Public Associations, the Law on Non-profit Organizations, and the Law on Closed Administrative Territorial Formations.<sup>158</sup> Specifically, it creates new rules for public associations, NCOs, and Foreign NGOs.<sup>159</sup> “These new requirements restrict who may form an organization in the [Russian Federation], expand the grounds on which registration may be denied, and expand the supervisory powers of the state over organizations.”<sup>160</sup> Of specific concern to the international community is whether Russia is meeting its treaty obligations, such as its duty to provide freedom of association under article 11 of the EHRC.<sup>161</sup> Interference with this right is allowed only “where ‘necessary in a democratic society’ for compelling state reasons.”<sup>162</sup>

### 1. Denial of Registration

The new law provides broader grounds for denying registration to organizations.<sup>163</sup> Registration to a branch of a foreign NGO may be denied by the proper executive authority if its “goals and objectives . . . create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.”<sup>164</sup> This standard is broad and would probably not pass muster with the European Court of Human Rights

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155. Int’l Ctr. for Not-for-Profit Law, *supra* note 152, at 1.

156. *Id.*

157. *See generally* Albertie, *supra* note 82 (discussing how enactment of the 1995 law did not accomplish the intended purposes for which it was enacted but rather resulted in abuse by the registering agencies).

158. Int’l Ctr. for Not-for-Profit Law, *supra* note 152, at 1.

159. *Id.* at 2.

160. *Id.*

161. *Id.*; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter EHRC].

162. Int’l Ctr. for Not-for-Profit Law, *supra* note 152, at 2 (citing EHRC, *supra* note 161, art. 11).

163. *Id.*

164. *Id.*

(ECHR) with respect to protecting the Article 11 rights of freedom of association.<sup>165</sup>

In *Sidiropoulos v. Greece*, the ECHR found that a Greek court's denial of registration of an association based on assertions by the government that it was required to uphold "Greece's cultural traditions and historical and cultural symbols," was not "a legitimate state aim which could be used to restrict the right to associate under Article 11."<sup>166</sup> The court noted that the "[e]xceptions to freedom of association must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive."<sup>167</sup> The court next considered whether the denial could be justified under one of the express exceptions listed in article 11, namely whether it was for "the protection of national security and prevention of disorder."<sup>168</sup> The court found:

Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region's culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a "democratic society" had to tolerate and even protect and support according to the principles of international law.<sup>169</sup>

Additionally, since the decision of what constitutes a "threat to sovereignty," and interpretation of other such vague language is left to the subjective determinations of the registering authorities, those decisions are subject to abuse.<sup>170</sup> These overly broad and vague provisions thus are not likely to meet the standards outlined under the EHRC for restricting the right to associate and should be revised.<sup>171</sup>

The Council of Europe recognized that combating criminal and terrorist activities is a legitimate aim within the reach of paragraph 2 of article 11 of the EHRC, but that any regulation or restriction on the right to associate must not unnecessarily restrict legitimate organizations.<sup>172</sup> The Council of Europe noted, however, that "[a] registration requirement is not inherently objectionable in terms of the freedom of association guaranteed under Article 11 of the [EHRC]."<sup>173</sup> It continued, stating that

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165. *Id.*

166. *Id.* at 5 (citing 4 Eur. Ct. H.R. 500 (1998)).

167. *Id.* (citing *Sidiropoulos*, 4 Eur. Ct. H.R. 500).

168. *Id.* (discussing EHRC, *supra* note 161, art. 11).

169. *Id.* (citing *Sidiropoulos*, 4 Eur. Ct. H.R. 500).

170. *COE Provisional Opinion*, *supra* note 10, para. 21.

171. *See id.*

172. *Id.* para. 8.

173. *Id.* para. 6.

“[t]he legal criteria for any decision must be entirely compatible with this freedom” and that “[i]t is for the competent authorities to ensure that the process [of registration] is not used in such a way as to prevent legitimate activities from being pursued by those belonging to the body concerned.”<sup>174</sup> Thus, a denial of registration, or any restriction on the freedom of association, should be based only on objective evidence.<sup>175</sup>

The ECHR has made clear that “the principal basis for control over associations must be their deeds once they are registered.”<sup>176</sup> “Respect for freedom of association thus requires that there be a presumption that whatever individuals collectively propose to do will be lawful unless it is clearly evident that there is a constitutional or legal defect in the constituent documents.”<sup>177</sup> Thus, an association should be evaluated based on its actions.<sup>178</sup> When subjective interpretations of vague terms constitute the basis for denial of registration, it leads to possible “second-guessing or speculation about the true intentions of the founders of the organisation” and, consequently, a high potential for abuse by government officials.<sup>179</sup> Therefore, only convincing and compelling reasons can justify restrictions on the right to associate and those restrictions must be construed strictly and objectively.<sup>180</sup>

The new law has also expanded the basis for denying NCO registration.<sup>181</sup> Now registration may be denied “if an NCO presents by-laws that are contrary to the Constitution or legislation, if it has the same name as another NCO or if it is one that offends public morality or the national or religious feelings of citizens.”<sup>182</sup> It is this last provision that causes concern for legal analysts. Denial for a name “that offends public morality or national or religious feelings of citizens” gives too much discretion to registration officials.<sup>183</sup> Otherwise, the other reasons for denial listed in the new law do not appear problematic according to legal analysts.<sup>184</sup>

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174. *Id.*

175. *Id.* para. 19.

176. *Id.*

177. *Id.*

178. *Id.* para. 21.

179. *Id.*

180. Int'l Ctr. for Not-for-Profit Law, *supra* note 152, at 5.

181. *Id.* at 6. Previously, denial of NCO registration was limited to situations where an applicant had filed the required documents incorrectly. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

## 2. New Authority To Exercise Control over Public Associations and NCOs

The second issue raised by the new law is that new powers are given to government authorities to supervise public associations and NCOs.<sup>185</sup> These associations must now provide information regarding any funding or property received from foreign sources and indicate how these resources are used or allocated.<sup>186</sup> This aspect of the law could force associations to cut back or substantially change their fundraising to avoid collecting funds for which they cannot later identify the donor.<sup>187</sup> However, this may also prompt organizations to keep better records and, thus, accomplish the underlying goal of accountability by NGOs operating in Russia.

Commentators worry primarily that the law extends too much power to the registration authority to arbitrarily “interfere in the internal operations” of a public association or NCO.<sup>188</sup> First, they contend the new power to require NCOs to submit explanations of their internal governance “should not be scrutinized by the government absent some good cause.”<sup>189</sup> Next, the government has the power to monitor a group’s activities by sending a representative to every event, even if it is a meeting closed to the public, possibly violating the right to privacy under article 8 of the EHRC, which protects against unwarranted interference by public authorities.<sup>190</sup> The government can inspect premises or request records of public associations in Russia, but commentators argue that there should be certain limits that respect the rights of associations under international law.<sup>191</sup> The final invasive power is the right of the government registration authority to review an organizations’ compliance with their stated goals on an annual basis.<sup>192</sup> Commentators opine that government intrusion into determining whether an organization’s activities conform to its mission “is inappropriate, and serves no real purpose.”<sup>193</sup>

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185. *See id.* at 8.

186. *Id.*; *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 3, Item 282, available at GARANT 12044310*; *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1995, No. 21, Item 1930, arts. 29, 38, available at GARANT 11064186.*

187. Int'l Ctr. for Not-for-Profit Law, *supra* note 152, at 8.

188. *Id.* at 9.

189. *Id.*

190. *Id.* (citing EHRC, *supra* note 161, art. 8).

191. *Id.*

192. *Id.*

193. *Id.*

### 3. Reporting Requirements of Foreign NGO Branches or Representative Offices

Similar to the reporting requirements for public associations and NCOs, foreign NGOs will also be required to provide reports to the registration authority regarding the use of their resources.<sup>194</sup> Furthermore, they will be subject to the same powers of supervision by the registration authority as are NCOs.<sup>195</sup> However, some worry because the registration authority now has the additional power to bar transfers of funds by NGOs or branches “for the purposes of protecting the basis of the Constitutional system, morality, [or] health.”<sup>196</sup> Human rights and NGO commentators argue that these provisions are contrary to article 11 of the EHRC because the government should only be able to interfere with the right to associate if it can justify that it is necessary in a democratic society.<sup>197</sup> The new law gives broad discretion to the government to terminate programs.<sup>198</sup> It does, however, provide for the right of foreign NGOs to appeal actions taken against them by the government, although the extent to which this right to appeal is a legitimate remedy is still undetermined.<sup>199</sup>

### 4. Restrictions on Foreign Nationals

The final major concern of human rights groups, commentators, and Western policymakers is the requirement that “only those foreign nationals and stateless persons who are ‘legally domiciled in the Russian Federation’ [may be] founders, members, or participants in public associations or [NCOs].”<sup>200</sup> EHRC article 1 provides that the rights protected by the convention should be protected for everyone within the jurisdiction of the signatory state.<sup>201</sup> “The right to associate, including the right to found or become a member of an association, as well as the right

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194. *Id.* at 10; see *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF]* [Russian Federation Collection of Legislation] 1996, No. 3, Item 145, art. 23, *available at* GARANT 11005879.

195. Int'l Ctr. for Not-for-Profit Law, *supra* note 152, at 10.

196. *Id.* (citation omitted).

197. *COE Provisional Opinion*, *supra* note 10, para. 5.

198. Int'l Ctr. for Not-for-Profit Law, *supra* note 152, at 5.

199. *See id.* at 6.

200. *Id.* at 12 (citing *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF]* [Russian Federation Collection of Legislation] 1995, No. 21, Item 1930, art. 19, *available at* GARANT 11064186; *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF]* [Russian Federation Collection of Legislation] 1996, No. 3, Item 145, art. 15, *available at* GARANT 11005879).

201. *Id.*

to free expression, is protected by the [EHRC] and as a result must be made available to all within the jurisdiction of the member states.”<sup>202</sup>

The definition of jurisdiction indicates that the benefits of the EHRC were supposed to be available to “all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word.”<sup>203</sup> “According to the European Court of Human Rights’ interpretation of ‘within their jurisdiction,’ the protections of the [EHRC] must at a minimum apply to all those on the territory of the contracting country, whether or not they are legally domiciled there.”<sup>204</sup> Thus, the limitation imposed by the Russian Federation threatens to be inconsistent with the EHRC.<sup>205</sup>

### C. *The Role of the Judiciary*

While the issues discussed above regarding the new law raise certain questions and concerns regarding civil society in Russia, some commentators are quick to point out that many of the effects of the new amendments will depend on the implementation of the law through regulations yet to be promulgated.<sup>206</sup> In fact, some commentators and scholars note that the new law has limited effects and only reaches a small proportion of the civil society groups in Russia.<sup>207</sup> The real issue, according to them, is whether “the Kremlin chooses to selectively utilize this legislation to punish its political opponents,” thereby indicating whether the purpose of the law is truly transparency and accountability, as put forth by Russian legislators, or, instead, a consolidation of power and control.<sup>208</sup> Furthermore, “the circumstances of the application of laws usually are much more important than the letter of the law in Russia. The law frequently defines only the general route . . . .”<sup>209</sup> In fact, scholars note that the new legislation is similar to or even less restrictive than laws used in Western democratic nations.<sup>210</sup>

The United States, for example, still uses the Foreign Agents Registration Act (FARA).<sup>211</sup> The purpose, as explained by the United

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202. *Id.*

203. *Id.* (citing *Bankovic v. Belgium*, (2001) 11 BHRC 435, para. 19/21).

204. *Id.*

205. *Id.* at 12-13.

206. *Id.* at 1.

207. Khrestin, *supra* note 4.

208. *Id.*

209. *Id.* (quoting Andrei Kortunov, President of the New Eurasia Foundation in Moscow).

210. *Id.*; Petro, *supra* note 23.

211. See Khrestin, *supra* note 4; see also U.S. Dep’t of Justice, FARA Q&A, [http://www.usdoj.gov/criminal/fara/q\\_A.htm](http://www.usdoj.gov/criminal/fara/q_A.htm) (last visited Oct. 8, 2006) [hereinafter DOJ Web Site].



States Department of Justice, was “to insure that the American public and its law makers know the source of information (propaganda) intended to sway public opinion, policy, and laws.”<sup>212</sup> The current law focuses more on controlling the activities of foreign lobbyists and “requires every agent of a foreign principal to register with the Department of Justice and file forms outlining its agreements with, income from, and expenditures on behalf of the foreign principal. These forms are public records and must be supplemented every six months.”<sup>213</sup>

In its present form, FARA seems more restrictive in that the new Russian law only requires an annual inspection and filing of forms once a year, while FARA requires updates every six months.<sup>214</sup> Foreign principals are defined as “foreign political parties, a person or organization outside the United States, except U.S. citizens, and any entity organized under the laws of a foreign country or having its principal place of business in a foreign country.”<sup>215</sup> Similarly, an agent of a foreign principal is defined as

any individual or organization which acts at the order, request, or under the direction or control of a foreign principal, or whose activities are directed by a foreign principal who:

1. engages in political activities, or
2. acts in a public relations capacity for a foreign principal, or
3. solicits or dispenses any thing of value within the United States for a foreign principal, or
4. who represents the interests of a foreign principal before any agency or official of the U.S. government.<sup>216</sup>

Thus, FARA encompasses a wide variety of organizations that operate under foreign control similar to the new law enacted in Russia. The law also provides for criminal penalties for foreign agents who engage in the above activities without registration.<sup>217</sup> The new Russian law, however, does not provide for criminal penalties for violations of the registration requirement.<sup>218</sup>

Essentially, FARA provides for a national registry of foreign agents, including NGOs operating for foreign principals, similar to that proposed

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212. DOJ Web Site, *supra* note 211.

213. *Id.*

214. *Id.*; Petro, *supra* note 23.

215. DOJ Web Site, *supra* note 211.

216. *Id.*; Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 (1938).

217. DOJ Web Site, *supra* note 211 (“It should be noted, however, that FARA officials find most violations to be unintentional and normally seek to obtain voluntary compliance with the statute rather than to obtain criminal convictions.”).

218. Petro, *supra* note 23.

by prior Russian laws and their recent amendments.<sup>219</sup> However, FARA contains a number of exemptions which do not require registration for persons soliciting funds for private and nonpolitical activities or funds to be used for “medical aid and assistance” or to “relieve human suffering.”<sup>220</sup> Furthermore, it does not require registration of persons “engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.”<sup>221</sup> There are essentially no grounds for subjective determinations that would cause a foreign applicant to be denied registration. The only recourse if a foreign agent is suspected of violating any requirement under the act is that the Attorney General may make application for injunctive relief to the appropriate U.S. district court, but registration is not denied.<sup>222</sup>

Thus, while on the face it appears that FARA and the new Russian law are designed to accomplish the same objectives, FARA provides for narrow and well defined criteria for registration and does not provide for penalties except upon application by the enforcement authority to the proper courts; Russian Law No. 18-FZ allows denial of the registration of an applicant by the registering authorities based on their subjective interpretation of vague and broad terms.<sup>223</sup> The role of the Russian courts comes into play on appeal of the decision only after the registration has been denied.<sup>224</sup>

Other countries have strict NGO laws. French NGOs “must report all donations and bequests and can collect the money only with authorization from the head of the local administration, who first must examine the group’s activities.”<sup>225</sup> Russian NGOs are only to report foreign donations.<sup>226</sup> French NGOs must submit to an audit of their accounting records on request, but authorities are restricted to determining whether the economic activities of the NGO are unfairly competing with private enterprises.<sup>227</sup> Russian law allows for officials to audit financial records of an NGO annually, however, authorities use this power to determine if the NGO is spending its money in the manner it

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219. 22 U.S.C. § 612.

220. *Id.* § 613(d).

221. *Id.* § 613(f).

222. *Id.* § 618(f).

223. *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation]* 2006, No. 3, Item 282, art. 23, *available at* GARANT 12044310.

224. *See id.*

225. Abdullaev, *supra* note 23.

226. *Id.*

227. *Id.*

specified.<sup>228</sup> However, unlike the Russian law, the French registering authority cannot deny legal status to an NGO, but may subsequently appeal to a court for dissolution or nullification of the association if it believes the group's activities are illegal.<sup>229</sup>

Therefore, the general difference that appears to exist currently between Russian law regarding NGOs/NCOs and those laws in other countries, is that in Russia, power is given to the registering authorities to deny registration of public associations, including NGOs, based on the subjective interpretation of vague or broad terms up front. The courts only become involved in Russia if an applicant appeals a denial of registration.<sup>230</sup> Appeals can be difficult, as seen by the application of the older versions of the Law on Public Associations, because local authorities could prevent groups from gathering the proper information or documents needed for an appeal.<sup>231</sup> Other countries with similar registration laws do not prevent groups that file the proper documents from registering, as in France, where if authorities suspect illegal activity, they must petition a court to dissolve a group.<sup>232</sup>

While implementation of the new law will determine how it affects Russian civil society and democracy, development of a more independent judiciary could help with the task of ensuring its fair and uniform application. Over the past two decades, Russia's judiciary made great strides toward gaining independence from the executive.<sup>233</sup> However, many scholars believe that the Kremlin has been trying to reverse this trend and exert pressure on the judiciary to reach desired verdicts.<sup>234</sup> The International Bar Association reported:

[I]t is apparent that a number of high profile cases have given rise to a widespread public perception of political and/or economic influence over the judiciary. These cases have the unfortunate effect of reducing public confidence in the judiciary and eroding the confidence of the judiciary itself to withstand pressure, particularly with politically sensitive cases.<sup>235</sup>

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228. *Id.*

229. Council on Founds., U.S. Int'l Grantmaking, Country Information: France 11 n.2 (2005), available at <http://www.usig.org/countryinfo/france.asp> (last visited Oct. 8, 2006); see also Abdullaev, *supra* note 23.

230. See Int'l Ctr. for Not-for-Profit Law, *supra* note 152, at 6.

231. See Albertie, *supra* note 82, at 22.

232. Council on Founds., *supra* note 229; see also Abdullaev, *supra* note 23.

233. HUMAN RIGHTS WATCH, *supra* note 87, at 13.

234. *Id.*

235. *Id.* at 13-14 (citing INT'L BAR ASS'N HUMAN RIGHTS INST., STRIVING FOR JUDICIAL INDEPENDENCE: A REPORT INTO PROPOSED CHANGES TO THE JUDICIARY IN RUSSIA 43 (2005), available at [http://www.ibanet.org/images/downloads/2005\\_06\\_June\\_Report\\_Russia\\_Striving%20for%20Judicial%20Independence\\_Final\\_English.pdf](http://www.ibanet.org/images/downloads/2005_06_June_Report_Russia_Striving%20for%20Judicial%20Independence_Final_English.pdf)).

However, despite public mistrust, a greater initial role by the judiciary in making registration status determinations would help eliminate the potential for abuse by local registering officials and would accomplish the goals of the legislation by developing transparency on the part of both NGO/NCO groups and the government.

#### IV. THE END OF CIVIL SOCIETY?

Several recent incidents, including attacks on Mikhail Khodorkovsky's Open Russia Foundation, the expulsion of the United States Peace Corps, and incidents such as the British Spy Rock scandal, indicate that, despite criticisms that the law exists to enable Russian officials to eliminate troublesome groups, the new law is certainly not necessary to remove unwanted groups from Russia.<sup>236</sup> However, it is the general trend toward subverting genuine grassroots movements by "utiliz[ing] the weakness of civil society," which has many scholars worried.<sup>237</sup>

The United States Congressional Human Rights Caucus indicated:

"Since Vladimir Putin became president of Russia in 2000 . . . there has been serious regression in democratic governance. The Russian president and government have become increasingly authoritarian, freedom of the press no longer exists, government authority has been increasingly centralised in the Kremlin, and democracy has been declared a luxury not suited for Russia.

One of the most disturbing trends has been the government's effort to eliminate or strictly control NGOs and other institutions that make up civil society."<sup>238</sup>

Therefore, given the trend of increasing centralization of power in Russia and an already weak civil society, Russian civil society may be threatened if uniform and objectively fair standards are not applied in implementing the latest law regulating NGOs. One possible solution to ensure fair and uniform application and lessen the impact of vague and arbitrary terms in the legislation is to provide a larger role for the judiciary. The judiciary could do much to soften the effects of the move toward centralization of power, assuming that the judiciary can function independently of the executive. 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

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236. Khrestin, *supra* note 4.

237. *Id.*

238. Fisher, *supra* note 29 (quoting the United States Congressional Human Rights Caucus).

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. However, if implementation regulations permit opportunities for abuse and censure of NGOs, then Russia may stifle an already weakened civil society and continue down a path away from democracy.<sup>239</sup>

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239. As of October 2006, news reports have speculated that hundreds of foreign human rights groups and other organizations in Russia will have to suspend operations as a result of the reregistration requirements of the new law. Chazan, *supra* note 96. Out of 175 foreign NGOs that submitted registration documents on time, only 87 had their applications processed by the target date, a small percentage of the over 400 active groups in Russia. Some opine that the delay is a result of Russia's slow bureaucratic system. Russian officials blame the groups themselves, while the groups argue that the volume of paperwork required unduly burdens what should be a straightforward process. Thus, there is still concern that authorities will use their discretionary powers to prevent certain groups from performing certain activities. *Id.*