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Caultron of Unwisdom: The Legislative Offensive on Insidious Foreign Influence in the Third Term of President Vladimir V. Putin, and ICCPR Recourse for Affect Civil Advocates

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Abstract

Part I discusses Russian and international statutory law. It briefly outlines the structure of the government of the Russian Federation and discusses relevant articles of its Constitution. It then illustrates the legislative trend in question by discussing select legislation passed and proposed during President Putin's third term that seeks to restrict non-Russian influence in Russian society. Part I closes with a discussion of Russia's international human rights obligations, and the international redress available to Russian nationals affected by the laws in question. Part II considers the practical application of the laws discussed in Part I. This includes an examination of potential procedural issues relating to the complaint process a Russian national would have to navigate at one of the international human rights tribunals or treaty bodies founded under the conventions. Additionally, Part II briefly outlines international jurisprudence relevant to the prospect of Russian nationals' success before the United Nations Human Rights Committee. Based on the interplay between the federal statutes in question and Russia's international human rights obligations, this Note asserts in Part III that Russian nationals should file complaints to the UN Human Rights Committee. The Note also advocates for a progressive change to Russia's domestic civil-political environment. But in the absence of such a change, individuals affected by the legislation in question can seek recourse through the Committee's individual complaint mechanism. Those petitioning would ideally include the heads of targeted civil society and human rights monitoring and advocacy groups.

KEYWORDS: Russia, International Law, Human Rights, European Convention, ICCPR, Putin, Committee, UN, Foreign Agent Law

NOTE

CAULDRON OF UNWISDOM: THE LEGISLATIVE OFFENSIVE ON INSIDIOUS FOREIGN INFLUENCE IN THE THIRD TERM OF PRESIDENT VLADIMIR V. PUTIN, AND ICCPR RECOURSE FOR AFFECTED CIVIL ADVOCATES

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“Закон—что дышло, куда повернёшь—туда и вышло.”

(“The law is like a cart shaft—whichever way you turn it, that’s the way it goes.”)

—Russian rhyming proverb

INTRODUCTION

Despite Russian civil advocates’ apparent preference to litigate human rights violations at the European Court of Human of Rights, the United Nations Human Rights Committee may provide a better recourse mechanism to challenge a recent trend in Russian legislation.¹ This legislative trend centers on federal laws that directly and indirectly restrict freedom of expression and association, and also implicate individuals’ rights to privacy by identifying certain civil

1. A search of the European Court’s jurisprudence database for decisions with Russia as a party produces 1,542 results, *available at* [http://hudoc.ECHR.coe.int/sites/eng/Pages/search.aspx#{"languageisocode":\["ENG"\],"respondent":\["RUS"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\]}](http://hudoc.ECHR.coe.int/sites/eng/Pages/search.aspx#{); a search of United Nations Human Rights Committee Views at the United Nations Office of the High Commissioner for Human Rights database that include Russia as a party produces only forty-seven, *available at* http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=RUS&Lang=EN.

society activists and advocates as agents of insidious non-Russian influence on Russian society.² This Note concludes that affected Russian nationals should file complaints based on these laws at the Human Rights Committee.

Russia is an important regional and international economic and political player, and its recognition of the jurisdictions of multiple international human rights tribunals is commendable.³ Its Constitution provides for a multi-party democracy with separations of the executive, judiciary, and legislature.⁴ It also enshrines the freedoms of expression, association, and privacy.⁵

The legislative trend under discussion coincides with the third term of President Vladimir V. Putin, which began in May 2012.⁶ It codifies a general theme in contemporary Russian political rhetoric that identifies amorphous non-Russian actors—colloquially and sometimes explicitly understood to be Western governments and their

2. Federal'nyj Zakon N 121-ФЗ, “O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossijskoj Federacii v chasti regulirovanija dejatel'nosti nekommercheskih organizacii, vypolnjajushih funkcii inostrannogo agenta” [Federal Law No. 121-FZ, “On changes to individual legal acts of the Russian Federation in the regulation of activities of non-commercial organizations performing the functions of a “foreign agent”] (as amended June 4, 2014) [hereinafter *Foreign Agent Law*].

3. See, e.g., JEFFREY MANKOFF, *RUSSIAN FOREIGN POLICY: THE RETURN OF GREAT POWER POLITICS*, (2009); Paul Dibb, *The Bear is Back*, AM. INTEREST, Nov./Dec. 2006; BOBO LO, *PUTIN AND THE EVOLUTION OF RUSSIAN FOREIGN POLICY* (2003); THOMAS AMBROSIO, *CHALLENGING AMERICA'S GLOBAL PRE-EMINENCE: RUSSIA'S QUEST FOR MULTIPOLARITY* (2005).

4. See *infra* notes 13-14 and accompanying text (Articles of the Russian Constitution outlining multi-party democratic system with separation of branches of government).

5. See *infra* notes 24-26 and accompanying text (Articles of the Russian Constitution protecting expression, association, and privacy).

6. Ellen Barry & Sophia Kishkovsky, *Putin Takes Helm as Police Punish Moscow Dissent*, N.Y. TIMES, May 7, 2012, available at <http://www.nytimes.com/2012/05/08/world/europe/vladimir-putin-returns-to-presidency-in-russia.html> (noting President Putin's return for a third term); *Vladimir Putin Inaugurated as Russian President*, BBC NEWS, May 7, 2012, available at <http://www.bbc.com/news/world-europe-17979914> (reporting on President Putin's return following “controversial” March 2012 elections). A former spy alleged to have close ties with Russian and Ukrainian organized crime syndicates, Mr. Putin held various positions in the Saint Petersburg municipal government and the federal government in the 1990s. In 1999, he was appointed Prime Minister of Russia under then-President Boris Yeltsin, and later that year, Acting President upon Yeltsin's resignation. In March 2000 he was elected President of the Russian Federation, a post he held for two terms, ending in 2008. He began a new four-year term that year as Prime Minister in the government of then-President Dmitry Medvedev, announced his return to the executive office in late 2011, then returned to that office the following Spring. Russia's Constitution was amended shortly before Mr. Putin's 2012 return to the executive to extend the duration of presidential terms to six years from four years.

agents—as the sources of Russia’s domestic woes.⁷ One bill submitted to Russia’s parliament, which is discussed below, refers concretely to US and European sanctions against Russian nationals as the impetus for its introduction.⁸ The Foreign Agent Law, which is the most well-known statute under examination, requires some civil society groups receiving funding from outside Russia to register and advertise their status as “foreign agents.”⁹

These laws create a legal means for the Kremlin to discourage Russians from exercising constitutionally granted freedoms of association and expression when that exercise is alleged to be political. They also implicate privacy and reputational rights and pose physical safety concerns for Russians who are forced to declare—accurately or not—that they are working in the interests of non-Russian powers.¹⁰ It is for these reasons that the relevant statutes facially contravene relevant sections of the International Covenant on Civil and Political Rights (the “ICCPR”) and the European Convention on Human Rights.¹¹

7. See generally *Bol'shaja press-konferencija Vladimira Putina* [Great Press Conference of Vladimir Putin] (transcript) (Dec. 18, 2014), <http://kremlin.ru/news/47250> (asserting that opposition-minded activists constitute a “fifth column” in Russian society whose activities are “dictated by the interests of a foreign government”); see also *Obrashhenie Prezidenta Rossijskoj Federacii* [Message from the President of the Russian Federation] (transcript), (Mar. 18, 2015), <http://www.kremlin.ru/news/20603> (last visited Mar. 10, 2015) (asserting Western powers’ bid to stir up “national traitors” in Russia by issuing sanctions in connection with the reincorporation of Crimea); and David Remnick, *Watching the Eclipse*, *NEW YORKER* (Aug. 11, 2014), (interview with former US Ambassador to Russia Michael McFaul, describing President Putin as “on the offensive against any sign of foreign interference”).

8. See *infra* note 51 and accompanying text.

9. *Foreign Agent Law*, *supra* note 2.

10. To be clear, these activists and advocates are primarily in the human rights field, and would maintain that their work is in the service of the Russian people.

11. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 17.1 (“No one shall be subjected . . . to unlawful attacks on his honour and reputation”); *id.* art. 19.2 (“Everyone shall have the right to . . . impart information and ideas of all kinds . . . either orally, in writing or in print”); *id.* art. 22.1 (“Everyone shall have the right to freedom of association with others”). Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14, 213 U.N.T.S. 222, ETS No. 5, Section I Rights and Freedoms, art. 10 (Freedom of expression) and art. 11 (Freedom of assembly and association); Council of Europe Treaty Office, Convention for the Protection of Human Rights and Fundamental Freedoms Status as of 12/19/2014, available at <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=19/12/2014&CL=ENG> (showing Russian ratification of the Convention May 5, 1998 and its entry into force for Russia the same day) (last accessed March 10, 2015, 4:28 PM).

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Part II considers the practical application of the laws discussed in Part I. This includes an examination of potential procedural issues relating to the complaint process a Russian national would have to navigate at one of the international human rights tribunals or treaty bodies founded under the conventions. Additionally, Part II briefly outlines international jurisprudence relevant to the prospect of Russian nationals' success before the United Nations Human Rights Committee.

Based on the interplay between the federal statutes in question and Russia's international human rights obligations, this Note asserts in Part III that Russian nationals should file complaints to the UN Human Rights Committee. The Note also advocates for a progressive change to Russia's domestic civil-political environment. But in the absence of such a change, individuals affected by the legislation in question can seek recourse through the Committee's individual complaint mechanism. Those petitioning would ideally include the heads of targeted civil society and human rights monitoring and advocacy groups.

I. *RUSSIAN AND INTERNATIONAL LEGAL BACKGROUND*

The following Section offers background on the Russian and international laws that frame subsequent discussions and international legal evaluations of this recent legislative trend. It begins by discussing the structure of the Russian government, as set forth by its Constitution, and continues with discussions of notable Russian federal laws. These include rights-protection provisions of the Russian Constitution and various laws and bills illustrating the anti-“foreign influence” trend in President Putin's third term. Part I then outlines Russia's international human rights obligations, including redress mechanisms contained within the notable treaties.

A. The Russian Federal Structure

The Russian Federation is similar, at least on paper, to Western governments. The 1993 Russian Constitution and related constitutional law establish a federative republic with the President as head of state and the Prime Minister as head of government.¹² The Russian Federation is set up as a multi-party democracy with a tripartite federal apparatus similar to that of the United States.¹³ The bicameral Federal Assembly of Russia, which comprises the 450-seat State Duma and the 170-seat Federation Council, adopts federal law, declares war, approves treaties, exercises spending power, and may impeach the President.¹⁴ The President is the Commander-in-Chief of the Armed Forces, shapes Russia's domestic and foreign policy, and enjoys broad authority in appointing various federal officers and representatives, including but not limited to a cabinet.¹⁵ Russia's Constitutional Court, whose judges are appointed by the Federation Council from a selection of presidential nominees, interprets and

12. KONSTITUTSIJA ROSSIJSKOJ FEDERATSII [KONST. RF] [CONSTITUTION] art. 1.1 (Russ.) (“Russia is a democratic federative constitutional state with a republican form of government”) (This and all subsequent translations from Russian to English are by the author, unless otherwise noted); *Id.* at art. 80.1 (“The President of the Russian Federation shall be the Head of State”); Federal’nyj konstitucionnyj zakon ot 17.12.1997 “O pravitel’sve Rossijskoj Federacii” (red. ot 12.03.2014) [Federal Constitutional law of 12.17.1997 “On the leadership of the Russian Federation” (amended as of 03.12.2014)] art. 24 (“The Prime Minister of Russia heads the government of the Russian Federation[.]”).

13. KONST. RF, *supra* note 12, art. 13.3 (“Political diversity and the multi-party system shall be recognized”); *id.* art. 10 (“The bodies of legislative, executive, and judicial authority shall be independent.”).

14. *Id.* art. 108.2 (“A federal constitutional law shall be considered to have been adopted if it is approved by a majority of not less than three quarters of the total number of members of the Federation Council and not less than two-thirds of the total number of deputies of the State Duma”); *id.* art. 106.f (federal laws on “war and peace” are adopted by the State Duma and are required to be examined by the Federation Council); *id.* art. 106.d (federal laws on “ratification and denunciation of international treaties of the Russian Federation” are adopted by the State Duma and required to be examined by the Federation Council); *id.* art. 106.a (federal laws on the federal budget are adopted by the State Duma and required to be examined by the Federation Council); *id.* art. 102.1.f (“impeachment of the President of the Russian Federation” is one object of the jurisdiction of the Federation Council).

15. *Id.* art. 87.1 (“The President of the Russian Federation shall be the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation”); *id.* art. 80.3 (“The President of the Russian Federation shall, in accordance to the Constitution of the Russian Federation and federal laws, determine the basic objectives of the internal and foreign policy of the State”); *id.* art. 83 (outlining President’s power to appoint various government posts and make other domestic and foreign policy determinations).

reviews statutes and may overturn those it deems unconstitutional.¹⁶ Russia's Constitution creates a judiciary separate from the executive branch.¹⁷

Russians elect their president by popular vote every six years with the possibility of reelection for a second consecutive term.¹⁸ The number of non-consecutive terms an elected Russian President may serve is constructively unlimited.¹⁹ Government ministries comprise the Prime Minister and his deputies, ministers, and others.²⁰ All of these positions are presidentially appointed with the recommendation of the Prime Minister.²¹

B. Russian Federal Legislation

1. The Constitution of the Russian Federation

The Constitution of the Russian Federation is the supreme law of the land.²² Its current iteration was passed in 1993 following the

16. *Id.* art. 128.1 (“Judges of the Constitutional Court of the Russian Federation . . . shall be appointed by the Federation Council upon nomination by the President of the Russian Federation”); *id.* art. 125.2.a (The Constitutional Court of the Russian Federation, at the request of the President of the Russian Federation, the Federation Council, the State Duma, one fifth of the members of the Federation Council or of the deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation, and bodies of legislative and executive power of constituent entities of the Russian Federation, shall, *inter alia*, “decide cases on conformity to the Constitution of the Russian Federation of . . . federal laws, normative acts of the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation”).

17. *Id.* art. 10 (*inter alia*, “Bodies of legislative, executive and judicial authority shall be independent”).

18. *Id.* art. 81 (“1. The President of the Russian Federation shall be elected for six years by citizens of the Russian Federation on the basis of universal, equal, direct suffrage by secret ballot. . . 3. One and the same individual may not hold the office of President of the Russian Federation for more than two consecutive terms.”).

19. See, e.g., *Bol'shaja press-konferencija*, *supra* note 7, (including questions from elite journalists regarding President Putin's plans to remain in office); *Chetvertyj srok Putina [Putin's Fourth Term]*, MOSKOVSKIJ KOMSOMOLEC, (Mar. 9, 2015) <http://www.mk.ru/politics/2015/03/09/chetvertyy-srok-putina.html> (quoting Russian political scientists speculating on why, halfway through President Putin's third term, he has been “silent” on, for example, “naming” a successor). Putin perennially fields questions about his plans to run in the next cycle, and media and others speculate that he could remain in power for decades to come.

20. KONST. RF, *supra* note 12, art. 83.

21. *Id.*

22. *Id.* art. 15 (“The Constitution of the Russian Federation shall have supreme legal force . . . and other legal acts, which are adopted in the Russian Federation, must not contradict the Constitution[.]”).

dissolution of the Soviet Union.²³ Article 29 of the Russian Constitution enshrines freedom of expression, with some minor limitations.²⁴ Freedom of association is protected under Article 30.²⁵ Meanwhile, Article 23 protects Russian nationals from State interference with their reputation.²⁶ The text of all provisions generally mirrors that of the relevant sections of the ICCPR.²⁷

2. The Foreign Agent Law

On July 13, 2012, two months into President Putin's third term, Russia's legislature passed the Foreign Agent Law.²⁸ It went into effect four months later.²⁹ Among other features, it outlines the establishment and maintenance of a federal register of civil society groups deemed "foreign agents" due to the fact that they receive

23. Russia has had Constitutions dating back to the Imperial period. See *Osnovnye gosudarstvennye zakony, utverzhennye ukazom Nikolaja II, 1906 g., Aprelja 23* [Basic Governing Laws, ordered by decree of Nicholas II, Apr. 23, 1906] (CONST.) (Rus. Emp.), available at <http://www.rusconstitution.ru/library/constitution/articles/9269>; *Osnovnoj zakon (Konstitucija) Rossijskoj Sovetskoj Federativnoj Socialisticheskoj Respubliki, 10 ijulja 1918 g.* [Fundamental Law (Constitution) of the Russian Soviet Socialist Republic, July 10, 1918] (CONST.) (Rus. Sov. Soc. Rep.) available in facsimile at http://www.1000dokumente.de/index.html?c=dokument_ru&dokument=0005_ver&object=facsimile&l=ru.

24. KONST. RF, *supra* note 12, art. 29.

“1. Freedom of thought and speech is guaranteed to all.

2. Propaganda or agitation arousing social, racial, national or religious hatred and hostility are prohibited. Propaganda of social, racial, national, religious or linguistic supremacy are prohibited

5. The freedom of mass media shall be guaranteed. Censorship is prohibited.”)

25. *Id.* at art. 30 (“Everyone shall have the right of association[.] The freedom of activity of public associations shall be guaranteed.”).

26. *Id.* at art. 23.1 (“Everyone shall have the right to the inviolability of his (her) private life, personal and family privacy, and protection of his (her) honour and good name.”).

27. Compare KONST. RF, *supra* note 12, art. 29, and *id.* art. 30, with UN General Assembly, *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 (December 16, 1966), art. 18 [hereinafter ICCPR or the Covenant]:

“1. Everyone shall have the right to freedom of thought, conscience and religion,” and KONST. RF, *supra* note 12, art. 19.

“1. Everyone shall have the right to hold opinions without interference.”

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Also compare KONST. RF, *supra* note 12, art. 23.1, with ICCPR, art. 17: “1. 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.”

28. Foreign Agent Law, *supra* note 9. Russian human rights NGOs are nearly universally funded by non-Russian sources.

29. *Id.*

material support from sources outside the Russian Federation, or that there are allegations stating as much.³⁰ Russia's Presidential Council on Civil Society Institutions and Human Rights has characterized the Foreign Agent Law as "totally redundant and legally meaningless."³¹

In language and spirit, the Foreign Agent Law mirrors a 1938 US statute called the Foreign Agents Registration Act, which requires that organizations alleged to be engaged in political activities that further the interests of non-US governments register with the Attorney General.³² However, the Russian statute—which is actually a set of twenty-seven amendments to or nullifications of provisions of five existing laws—is considerably more detailed than its two-page American inspiration.³³ A "non-commercial organization"—as non-governmental organizations ("NGOs") are called in Russia—satisfies the legal requirements of the Foreign Agent Law if it: (1) operates in Russia; (2) receives money or other material support from non-Russian government agencies, international and other non-Russian organizations, non-Russian citizens, stateless persons, or even Russian legal persons that receive such support; and (3) engages in

30. *Id.* arts. 1(1), 1(2)(b), 2(3)(a-b), 2(5)(k), 3(2).

31. Sovet pri Prezidente Rossijskoj Federacii po razvitiju grazhdanskogo obshhestva i pravam cheloveka, *Zaklyuchenie na proekt Federal'nogo zakona N109968-6* [Council to the President of the Russian Federation on Civil Society and Human Rights, *Conclusions on the Project of Federal Law N109968-6*] http://old.president-sovet.ru/upload/files/zaklyuchenie_soveta_109968-6.php?sphrase_id=12513 (last visited Mar. 10, 2015) (Concluding that the law is "meaningless"); Polina Matveeva, *Inostrannye agenty po-amerikanski* [Foreign Agents, American Style], GAZETA.RU (Jan. 16, 2014, 8:30 PM), http://www.gazeta.ru/politics/2014/01/16_a_5852381.shtml (describing President Putin's suggestion to create a Russian Foreign Agent Law as an analogue to the American statute, and quoting a member of the Council who refers to the Russian law as "incomprehensible" and to its basis as "untruth").

32. Compare Registration of Foreign Propagandists, 22 U.S.C. § 611 (1938) ("political activities" means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States . . . with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party"), with *Foreign Agent Law*, *supra* note 2, at art. 2.2, ¶ 2 ("A noncommercial organization . . . shall be deemed engaging in political activity carried out in the territory of the Russian Federation if, irrespective of the goals and objectives stated in its founding documents, it takes part (including through financing) in the organization and conduct of political actions aimed at influence over the decision-making by state bodies indented for change of state policy pursued by [said bodies], as well as in the shaping of public opinion for the aforementioned purposes").

33. The US statute is still in effect.

“political activities” on Russian territory.³⁴ The UN Human Rights Committee, which reviews State Party compliance with the ICCPR in addition to its role as a tribunal, called on Russia in March 2015 to either repeal the law or revise it in order to remove the term “foreign agent” entirely and to define political activity.³⁵

i. Reporting requirements

The Foreign Agent Law creates various reporting standards for organizations falling within the definition of the statute; for example, an organization’s financial statements are subject to random audit.³⁶ The Russian “foreign agent” NGO must also report to the Ministry of Justice on its activities.³⁷ It must provide to the Ministry of Justice an accounting of its personnel, including the members and structure of any governing bodies, as well as documents illustrating current and future budget allocations.³⁸ These requirements are in addition to an auditor’s report.³⁹ Such submissions were originally required annually, but summer 2014 amendments to the law increased the regularity of reporting to every six months.⁴⁰

“Foreign agent” organizations are also required to advertise their status on the front page of their website and on all official publications.⁴¹ The requirements have changed several times, but in

34. *Foreign Agent Law*, *supra* note 2, at art. 2.2 (explaining that political activities include bids to “influence . . . decision-making by state bodies intended for the change of state policy pursued by them, as well as the shaping of public opinion for the aforementioned purposes,” but not including, *inter alia*, sport, “social support,” “promotion of healthy living,” and other goals). This section excepts open joint-stock companies and their subsidiaries part-owned by the Kremlin.

35. United Nations Human Rights Committee, *Concluding observations on the seventh periodic report of the Russian Federation* (Advance Unedited Version) (Mar. 2015), ¶ 22 (“The State party should repeal or revise the legislation requiring non-commercial organizations that receive foreign funding to register as ‘foreign agents’ with a view to bringing it in line with the State party’s obligations under the Covenant, and take into account the opinion of the European Commission for Democracy through Law (Venice Commission) in this regard. It should, at the very least: (a) drop the term ‘foreign agent’ from the law; (b) clarify the broad definition of ‘political activities’[.]”).

36. *Foreign Agent Law*, *supra* note 2, art. 2.5.a (subjecting annual accounting statements of “foreign agent” NGOs, including departmental finance reports, to statutory audit).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Foreign Agent Law*, *supra* note 2, art. 2.5.b (requiring biannual reporting on accounting and personnel).

41. *Id.* art. 2.4 (requiring that “foreign agent” organizations state on their website that any information they provide is done so by such an organization).

June 2013 Russia's Ministry of Justice was granted the authority to add organizations to the Foreign Agent Register of its own accord, without being required to notify the organizations in question.⁴²

ii. Liability

The creation or management of a “foreign agent” NGO whose activities are “associated with inciting citizens to refuse to fulfill their civic duties”—which are not defined—carries a liability of a RUB200,000 fine or the forfeiture of eighteen months' salary or other compensation; up to three years' imprisonment; or the same term of community service.⁴³ “Participation in” such an organization is punishable by a fine of up to RUB120,000 or the forfeiture of a year's salary or other income, or two years in prison or of community service.⁴⁴ Notably, the statute's language does not limit liability to the organization's employees or directors, and could include, for example, a volunteer translator.⁴⁵ An organization's failure to register as a foreign agent—or, as it is put in the statute, its “desertion of duties”—once satisfying the requirements carries a fine of up to RUB300,000 or two years' salary or other income, up to 480 hours of compulsory labor, or correctional labor or imprisonment for up to two years.⁴⁶

iii. Inspections of foreign agent organizations

The Foreign Agent Law prescribes more than registration requirements and fines. Russian NGOs receiving funding from

42. *Moscow School of Civic Education Added to the Foreign Agents List*, RUSSIAN LEGAL INFO. AGENCY (Sept. 12, 2014, 5:08 PM), <http://rapsinews.com/news/20141209/272741463.html> (noting that “Russia's Justice Ministry has put the Moscow School of Civic Education on the foreign agents list”); Federal'nyj zakon 121 “Ob inostrannyh agentah” [The Federal Law “On Foreign Agents”] RIA NOVOSTI (June 16, 2014, 9:19 AM), <http://ria.ru/spravka/20140616/1011656413.html> (noting that on June 4, 2014, President Putin signed an amendment to the law “giving the Justice Ministry of Russia the right to include non-commercial organizations to the register of ‘foreign agents’ of its own accord”).

43. *Foreign Agent Law*, *supra* note 2, art. 3.2 (assigning RUB200,000 liability for “foreign agent” organizations that “incite citizens to abandonment of civic duties”). For context, RUB100,000 was equivalent to about US\$1735.00 in the third week of March, 2015. At the time of the passage of the statute, it was equivalent to about US\$3030. The average annual gross salary in Russia was RUB388,896 (as of the third week of March, 2015, equivalent to about US\$6750) in 2013.

44. *Id.*

45. *Id.*

46. *Foreign Agent Law*, *supra* note 2, art. 3.1 (assigning RUB300,000 liability, or prison time or compulsory labor, for an organization's failure to register).

outside Russia are also subject to “routine checks” by federal law enforcement.⁴⁷ In practice, these function as random, unannounced raids on operations-related and other official documents and sometimes computers.⁴⁸

3. The Rights and Freedoms Law

In December 2012, the Russian legislature passed the Rights and Freedoms Law.⁴⁹ This statute was covered in Western media due to a provision banning US citizens from adopting Russian children.⁵⁰ The Rights and Freedoms Law is said to be a response to the so-called Magnitsky Act passed by the US Congress in 2012, which bars particular members of the Russian political class from entering the United States or accessing the US banking system.⁵¹

47. *Id.* art. 5.zh (specifying fines without explaining whose “salary or other income” would set the standard for liability for failure to register as a “foreign agent”).

48. *Russian police raid rights group Memorial and other NGOs*, BBC NEWS (Mar. 22, 2013, 7:21 AM), <http://www.bbc.com/news/world-europe-21896424> (noting that “up to 2,000 organisations had been targeted with inspections and searches” in March 2013 alone); *Raids In Russia On Foreign NGOs Spark International Concern*, NPR (Mar. 27, 2013, 11:40 AM), <http://www.npr.org/blogs/thetwo-way/2013/03/27/175466242/raids-in-russia-on-foreign-ngos-spark-international-concern> (noting unannounced searches of various internationally-funded human rights NGOs across Russia in March 2013).

49. Federal'nyj zakon ot 28 dekabrya 2012 goda N 272-FZ “O merah vozdejstvija na lic, prichastnyh k narushenijam osnovopolagajushhih prav i svobod cheloveka, prav i svobod grazhdan Rossijskoj Federacii” [Federal Law from December 28, 2012 No. 272-FZ “On measures against persons involved in violations of fundamental rights and freedoms of the person, rights and freedoms [sic] of citizens of the Russian Federation”] [hereinafter the *Rights and Freedoms Law*]. It became effective the following month.

50. *Id.* art. 4.1 (“It is prohibited to transfer children who are citizens of the Russian Federation for [adoption] by citizens of the United States of America”); *see also Putin Signs Bill That Bars U.S. Adoptions, Upending Families*, N.Y. TIMES, <http://www.nytimes.com/2012/12/28/world/europe/putin-to-sign-ban-on-us-adoptions-of-russian-children.html>; *Russia: Vladimir Putin Signs Bill Banning Americans From Adopting Russian Children*, ASSOCIATED PRESS (Dec. 28, 2012) (asserting that the law is “part of a harsh response to a U.S. law targeting Russians deemed to be human rights violators”).

51. *Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012*, Pub. L. No. 112-208, § 404, 126 Stat. 1496; Darya Lyubinskaya, *Ban on U.S. Citizens Adopting Russian Children May Be Amended*, RUSSIA BEYOND THE HEADLINES (Feb. 12, 2015, 5:42 PM), http://rbth.com/news/2015/02/12/ban_on_us_citizens_adopting_russian_children_may_be_amended_43659.html (“The law is described as a response to the so-called Magnitsky Bill in the United States”); *Children's Ombudsman Wants Probe Into U.S. Adoptions of Russian Orphans*, THE MOSCOW TIMES (Feb. 10, 2015, 6:36 PM) <http://www.themoscowtimes.com/news/article/children-s-ombudsman-wants-probe-into-u-s-adoptions-of-russian-orphans/515706.html> (“Russia passed a law banning U.S. adoptions in 2012, in retaliation for the U.S. Magnitsky Act”). The *Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012*, Pub.L. 112–208 (2012), personally sanctions eighteen Russian nationals, the majority of

The first provision of the Rights and Freedoms Law specifically bans US citizens who meet various requirements—for example, engagement in “unjustified legal actions” against Russians—from entering the Russian Federation.⁵² According to this law, Russians holding dual citizenship with the United States are barred from leadership of, or “membership” in, an NGO or “foreign agent” organization in any capacity.⁵³ This provision authorizes the President of Russia to order the assets seizure of an NGO that employs or otherwise associates with a US citizen in violation of the section on participation in the NGO’s activities.⁵⁴ The executive may authorize such an organization to resume operations if it either stops receiving money from US sources, or ceases operation in Russian territory.⁵⁵ This law allows courts to shut down NGOs receiving support from the United States, as well as organizations that run projects, programs, or other activities on Russian territory that are seen as threatening to Russian interests.⁵⁶

4. The Dual Citizenship Law

In July 2014, the Russian legislature amended the law “On Citizenship,” thereby creating the Dual Citizenship Law.⁵⁷ This law

them officials seen as linked to the torture and subsequent death in prison of Russian whistleblower Sergei Magnitsky, as well as another individual seen as the hired assassin of *Forbes Magazine* journalist Paul Klebnikov, who was shot dead on the street in Moscow in 2004.

52. Rights and Freedoms Law, *supra* note 49, art. 1.1 (Americans “involved in violations of fundamental human rights and freedoms” or “engaged in unjustified legal actions against citizens of the Russian Federation” are nominally prohibited from entering the country). This provision is a not-so-veiled reference to members of the American political class directly involved in sanctions regimes affecting Russian nationals.

53. *Id.* art. 3.2 (“A Russian citizen, having United States citizenship, may not be a member or director of a non-profit organization . . . or the structural unit of an international or foreign non-profit organization . . . participating in political activities carried out in the territory of the Russian Federation.”).

54. *Id.* art. 3.3 (stating that “the decision to impose a seizure is made by a court at the request of the federal executive”).

55. *Id.* art. 3.4 (the organization’s activities may be resumed “by decision of the federal executive authority responsible for the formulation and implementation of public policy and legal regulations in the sphere of registration of non-profit organizations”). The statute does not reveal the sources of the Russian executive’s power to authorize the operation of a civil organization located outside Russian territory.

56. Kremlin statement in English regarding the Rights and Freedoms Law, *available at* <http://eng.kremlin.ru/acts/4810> (last visited Oct. 10, 2014).

57. Postanovlenie Pravitel'stva Rossijskoj Federacii ot 30 ijulja 2014 g. N 733 “Ob utverzhenii Pravil osushhestvlenija Federal'noj migracionnoj sluzhboj i ee territorial'nymi organami ucheta pis'mennyh uvedomlenij o nalichii u grazhdan Rossijskoj Federacii

requires Russian citizens who permanently reside in Russia and hold dual citizenship with any other State to register with the federal government.⁵⁸ Dual-citizen Russians are required to register within sixty days of acquiring the second citizenship, after which they are subject to criminal liability.⁵⁹ The related article of the Russian Criminal Code imposes a fine of up to RUB200,000 for the failure to timely register a second citizenship or residency.⁶⁰

5. The Expatriate Amendments

In June, July, and December 2014, Russia's legislature amended its law "On Foreign Citizens," creating the Expatriate Amendments.⁶¹ The changes to the law require certain classes of non-Russians seeking work permits or other long-term residency in Russia to pass a Russian language and culture exam.⁶² The certificate demonstrating

grazhdanstva inogo gosudarstva" [Resolution of the Government of the Russian Federation of July 30, 2014 g. No. 733, Moscow, "On approval of the Rules of the Federal Migration Service and its territorial bodies on the written accounting of citizens of the Russian Federation of the citizenship of another government"] [hereinafter the *Dual Citizenship Law*].

58. *Id.* art. 1 (establishing "a procedure for the [Federal Migration Service] to receive from citizens of the Russian Federation" or their legal guardians "(except for Russian citizens permanently residing outside the Russian Federation), written notice" that they hold citizenship with another state).

59. Federal'nyi Zakon "O grazhdanstve Rossijskoj Federacii" [Federal Law "On citizenship of the Russian Federation"], SOBRANIE ZAKONODATEL'STVA ROSSIJSKOI FEDERATSII, [Russian Federation Collection of Legislation], 2014, No. 62-FZ, art. 6.3 (Requiring any Russian citizen permanently residing in Russia to submit a written notice of, *inter alia*, his "other citizenship or residence permit, or other valid document confirming the right to permanent residency in a foreign country . . . within sixty days from the date of receipt" of the second citizenship or residency permit).

60. Uголовnyj kodeks Rossijskoj Federacii [UK RF] [Criminal Code of the Russian Federation] art. 330.2 (Russ.) ("a fine of up to two hundred thousand rubles or the salary or other income for a period of up to one year, or compulsory labor for a term of up to four hundred hours"). Note that at the time of passage, this sum was more than half the average Russian annual net income.

61. Federal'nyj zakon ot 25.07.2002 N 115-FZ (red. ot 01.12.2014) "O pravovom polozhenii inostrannyh grazhdan v Rossijskoj Federacii" [Federal Law from 25 July 2002, N 115-FZ (amend. from 1 December 2014) "On the legal status of foreign nationals in the Russian Federation"] (hereinafter the *Expatriate Amendments*). In addition to the provisions on the Russian language and culture proficiency certification, the 2014 amendments include, for example, extensive additions to sections on the deportation and transfer of foreign nationals to their home states or to third states. They became effective January 1, 2015.

62. *Id.* art. 15.1 ("Foreign Nationals' Confirmation of Russian Language Skills, Knowledge of the History of Russia and Foundations of Law of the Russian Federation. (1. Unless otherwise provided by international treaty of the Russian Federation and the present article, the foreign citizen, when applying for a temporary residence permit, residence permit, work permit or patent . . . shall confirm knowledge of the Russian language, knowledge of the

passage of the exam is valid for five years; the law does not address renewal.⁶³

6. The “Aggressor” Bill

A late-summer 2014 legislative proposal calls for the creation and maintenance of a federal register of lawyers, accountants, other professionals, as well as some corporations that are registered in “aggressor states.”⁶⁴ This law went to the State Duma for a vote in the first week of December 2014.⁶⁵ Though not referred to by name, the United States is implicitly identified as an “aggressor state” given reference to governments imposing sanctions on the Russian Federation or on Russian nationals personally—both of which the United States has done during President Putin’s third term.⁶⁶ A memo attached to the bill notes, “given the aggressive and unpartnerlike behavior of countries imposing restrictive [sanctions] with respect to the Russian Federation, citizens [thereof] and Russian legal entities, the bill introduces a definition of ‘aggressor.’”⁶⁷ Under the Aggressor Bill, the Russian government would classify another State as an

history of Russia, and the foundations of law of the Russian Federation” by producing, *inter alia*, “a certificate of proficiency in Russian, knowledge of the history of Russia, and the legal framework of the Russian Federation.”).

63. *Id.* art. 15.1.3 (“The validity of the certificate . . . shall be five years from its date of issuance.”).

64. Federal’nyi Zakon #667782-6 O vvedenii mer zashhity nacional’noj jekonomiki Rossijskoj Federacii i ogranichenii dejatel’nosti juridicheskikh lic i grazhdan stran agressorov na territorii Rossijskoj Federacii Izvestija [Federal Law #667782-6 On the introduction of measures to protect the national economy of the Russian Federation and the limitation of legal entities and citizens of aggressors on the territory of the Russian Federation], Dec. 13, 2014 [hereinafter the *Aggressor Bill*] (including explanatory note that, “Given the aggressive behavior of partner countries imposing sanctions on the Russian Federation, citizens of the Russian Federation and Russian legal entities, the bill introduces a definition of ‘aggressor.’”); *Gosduma vvedet v zakonodatel’stvo ponjatie “strana-agressor”* [The State Duma will Introduce the Notion of the “Aggressor Country” into Legislation], IZVESTIJA, (Jul. 29, 2014, 12:01 AM), <http://izvestia.ru/news/574512> (On parliamentary deputies’ intent to “introduce a new concept in the Russian legislation - the ‘aggressor state.’ According to deputies, the law will spell out that ‘an aggressor is a state that introduces sanctions against the Russian Federation, Russian citizens, and Russian legal entities.’”).

65. Rossijskaja Gazeta, *Zakonoproekt o stranah-agressorah postupil v Gosdumu* [The Bill on Aggressor-Countries was submitted to the Duma], ROS. GAZ., (Dec. 3, 2014, 6:50 PM) <http://www.rg.ru/2014/12/03/agressori-site.html> (“Companies and individuals from aggressor-countries, by design, will be banned from certain activities”).

66. *See supra* note 51 (discussing the U. Magnitsky Act).

67. Aggressor Bill, *supra* note 64, at Explanatory Note.

“aggressor” within thirty days of that State’s issuing sanctions or other restrictive measures against Russia or Russian nationals.⁶⁸

The Aggressor Bill invokes both the economic and national security implications of foreign interference in Russian affairs as impetuses for its creation.⁶⁹ As law, the Aggressor Bill would bar foreign legal entities and individuals registered in the aggressor country from providing legal and other advisory services on Russian territory.⁷⁰ This ban would also extend to Russian legal entities affiliated with or reliant upon foreign companies, organizations, or individuals for operational support, thus covering organizations not subject to the Foreign Agent Law.⁷¹

7. The Undesirable Organizations Bill

In one of Russia’s first legislative movements of 2015, the State Duma preliminarily approved in the first reading the Undesirable Organizations Bill, which seeks to amend portions of the Rights and Freedoms Law.⁷² This bill would give the Russian government the power to deem certain foreign and international organizations “undesirable.”⁷³ Organizations deemed undesirable would have their

68. *Id.* art. 1.2 (“The leadership of the Russian Federation, in order to protect the constitutional order, the sovereignty of the Russian Federation, the country’s defense and state security, the protection of the domestic market and the national economy of the Russian Federation, will approve a list of aggressors within thirty days of the date of acceptance of restrictive measures (sanctions)”).

69. *Id.* at Conclusion (noting that current geopolitics “require an immediate response to foreign countries’ internationally unlawful acts or unfriendly actions that threaten the interests and security of the Russian Federation and (or) violate the rights and freedoms of its citizens”).

70. *Id.* art. 1.3 (Requiring that corporations and individuals linked to “aggressor governments” shall be “prohibited from conducting on the territory of the Russian Federation auditing, legal, and other consultation services”).

71. *Id.* (Applying the ban to “foreign legal entities registered on the territory of the aggressor country, citizens of such countries, and likewise Russian legal individuals affiliated or dependent upon such foreign legal entities”).

72. *Russia: Law on ‘Undesirable Organizations’ Will Further Tighten the Noose on Dissent*, AMNESTY INTERNATIONAL (Jan. 20, 2015, 12:00 AM), <https://www.amnesty.org/en/articles/news/2015/01/russia-law-undesirable-organizations-will-further-tighten-noose-dissent/> (noting that the bill had passed its first reading and that it would “go through two more readings before being sent to President Vladimir Putin to be signed into law”). Some legislators expressed uncertainty to Russian media in late February 2015 over the necessity of such a law, extending the deadline on amendments; Andrej Vinokurov, *Nezhelatel'nyj zakon otkladyvaetsja [Undesirable Law Delayed]*, GAZETA.RU, (Feb. 20, 2015, 10:00 PM), http://www.gazeta.ru/politics/2015/02/20_a_6421141.shtml (“the fate of the bill on undesirable foreign organizations appears to have fallen into question”).

73. *Federalnyi Zakon o vnesenii izmenenij v nekotorye zakonodatel'nye akty Rossijskoj federacii*, No. 662902-S at STAT. 1, 2014 [Federal Law on Amendments to Certain Legislative

activities limited or banned on Russian territory, and their assets could potentially be frozen.⁷⁴ These organizations are described generally as those presenting a threat to Russian “defensibility” or State security.⁷⁵ Organizations presenting perceived threats to social order or public health are also described as targets in the Undesirable Organizations Bill.⁷⁶ A related provision would amend the Russian Criminal Code to include a fine reaching RUB500,000 for continued operations following an “undesirable” determination.⁷⁷

If accepted as law, the Undesirable Organizations Bill would create another federal register; in contrast to other Russian federal registers of organizations, this would exclusively feature non-Russian and international organizations.⁷⁸ The bill explicitly asserts that the Prosecutor General, in consultation with the executive, should determine which organizations are to be deemed “undesirable.”⁷⁹

Acts of the Russian Federation] [hereinafter *Undesirable Organizations Bill*] The ban on activities would range from operations in brick-and-mortar offices, for example, to publication on the Internet and elsewhere. See art. 1.2.1-3.

74. *Id.*

75. *Id.* art. 1.2 (“The activities of foreign or international organizations presenting a threat to the defensibility or security of the state, or otherwise to social order or public health, in order to preserve the foundations of constitutional order, morality, rights and the legal interests of various entities, may be deemed undesirable on the territory of the Russian Federation”).

76. *Id.* These provisions would form a new Article 3 of the Rights and Freedoms Law.

77. *Id.* art. 4. (Violations would be “punishable by a fine of three hundred thousand to five hundred thousand rubles or the salary or other income of the convicted person for a period of two to three years, or community service of up to five years, with the restriction of liberty for a term of up to two years, or without a fine, either arrest from four to six months, or imprisonment for a term of two to eight years with restrictions on the right to occupy certain positions or to engage in certain activities for a period of up to ten years, or a restriction of liberty of up to two years, or without a fine.”). RUB500,000 was equivalent to USD\$8282 during the third week of March, 2015.

78. *Id.* at Perechen’, section 2 (The law would require “publication by the Ministry of Justice of the Russian Federation . . . an order establishing the procedure of maintenance for a list of foreign and international organizations working in the Russian Federation recognized to be undesirable.”). Compared with the Foreign Agent Law and the Aggressor Bill, respectively. Note that in addition to the Federal List of Foreign Agent Organizations, the Russian Ministry of Justice also maintains, *inter alia*, a Federal List of Extremist Materials (banned literature and other media, including such granular items as single individual posts to social media) and a Federal List of Extremist Organizations (purportedly a list of groups presenting a security threat to Russia, but primarily minority religious and ethnic movements, with some neo-Nazi groups).

79. *Id.* art. 1.2 (“A decision on the recognition of the undesirable activities on the territory of the Russian Federation of foreign or international organizations shall be adopted by the General Prosecutor’s Office of the Russian Federation in coordination with the federal executive authority . . . based on information and documents received from police and security agencies and other federal executive bodies.”).

In an explanatory note attached to the Undesirable Organizations Bill, the authoring legislators refer generally to internal politics, military concerns, and international conflicts facilitating the development of “destructive organizations” on Russian territory.⁸⁰ These organizations are said to espouse terrorist, extremist, or nationalist ideologies.⁸¹ They also assert that obstructions to such organizations’ attempts to influence Russia’s social and political institutions should be seen as a primary objective of the Russian government.⁸² These laws are designed to restrict expression and association, but for reasons that conflate human rights and other civil reporting with extremist ideologies or threats to State security.⁸³ For these reasons, international human rights law provides recourse.

C. The Foundations of Recourse: Russia’s International Human Rights Obligations

This Section outlines the Russian Federation’s international human rights obligations. As a member of the Council of Europe, Russia is bound by the European Convention on Human Rights, as discussed in Part I.C.1. Russia also has various obligations as a ratifying State of the ICCPR, which is the subject of Part I.C.2. This Section also covers obligations under the First Optional Protocol to the ICCPR, which Russia has ratified. Both treaties protect the right to expression and association, while the ICCPR also protects the right to reputation.

1. The European Convention on Human Rights

The European Convention on Human Rights, which became effective in 1953, obligates States Parties—which includes all members of the Council of Europe—to protect human rights and

80. *Id.* Pojasnitel'naja zapiska k projektu federal'nogo zakon O vnesenii izemenenij v nekotorye zakonodatel'nye akty Rossijskoj Federacii [Clarification Note on the Federal Bill on Amendments to Certain Legislative Acts of the Russian Federation] Nov. 27, 2014 (“Internal-political, military, and international conflicts, which in recent days have drawn in more and more governments, are paving the way for the development of destructive organizations on their territories.”).

81. *Id.* (asserting that such organizations, which propagate “criminal goals,” “espouse terrorist, extremist, and nationalist ideas.”).

82. *Id.* (“Counteracting the penetration of these organizations on the territory of the Russian Federation, and blocking their attempts to influence the social and political institutions of Russian society, must be regarded as a priority area for the organs of government power.”)

83. *See supra* note 81 and accompanying text.

freedoms spanning several thematic areas.⁸⁴ Russia ratified the Convention, with some reservations and understandings, in May 1998.⁸⁵ For this Note, Articles 10 and 11, which address freedom of expression and freedom of association, respectively, are at issue.⁸⁶

While Section I of the Convention enumerates rights protections, Section II establishes the European Court of Human Rights (“ECtHR”) in Strasbourg, France.⁸⁷ The ECtHR hears applications from individuals, organizations, and High Contracting Parties alleging that a given State Party has violated one or more of the Convention’s provisions regarding civil and political rights.⁸⁸ In addition to judgments, the ECtHR has jurisdiction to advise on interpretive questions concerning the Convention and its Protocols.⁸⁹

The ECtHR employs the margin of appreciation doctrine in deciding cases against High Contracting Parties.⁹⁰ Under margin of

84. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, Nov. 4, 1950, E.T.S. No. 5 [hereinafter European Convention]. See, e.g., *id.* art. 3 (the prohibition on torture); *id.* art. 7 (the prohibition on retroactive criminal laws); *id.* art. 11 (freedom of assembly); *id.* art. 12 (the right to marry).

85. Council of Europe, *List of Declarations Made with Respect to Treaty No. 005* (Convention for the Protection of Human Rights and Fundamental Freedoms), <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=&CL=ENG&VL=1> (last visited Mar. 12, 2015). Russia’s reservations and declarations apply almost exclusively to criminal procedure.

86. European Convention, *supra* note 84, arts. 10-11. Article 10 states, in relevant part, “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.” *Id.* Subsection 2 of Article 10 permits restrictions on this right that are “prescribed by law and are necessary in a democratic society,” in the interests of national security the protection of health or morals, or that are subject to legal privilege. *Id.* Article 11 states, in relevant part, “1. Everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. Everyone has the right to freedom of peaceful assembly, and to freedom of association with others,” with the same list of permitted restrictions as the previous Article. *Id.*

87. *Id.* (establishing the European Court of Human Rights) [hereinafter the *ECtHR*].

88. *Id.* art. 34 (“The Court may receive applications from any person, nongovernmental 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.”); *Id.* art. 33 (“Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.”).

89. *Id.* art. 47.1 (“The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.”).

90. In *Handyside v. United Kingdom*, App. No. 5493/72, ¶ 48 (Dec. 7, 1976), the Court locates the “margin of appreciation” doctrine in Article 10.2 of the Convention, which

appreciation, the ECtHR defers to the laws and customs of the States being sued.⁹¹ This practice is the ECtHR's effort to consider the norms of different High Contracting Parties.⁹²

Russian individuals and organizations frequently bring cases to the ECtHR.⁹³ For example, the ECtHR ruled recently that Russia violated, *inter alia*, the Article 11 rights of a prominent liberal nationalist politician and an associate opposition member who faced prosecution related to their role in organizing a rally.⁹⁴ Notably in that ruling, the ECtHR recognized that the margin of appreciation has its own limits, including that some interferences with rights must meet a social need and be proportionate to that need.⁹⁵

2. Redress for Repression Through the United Nations System: The ICCPR and the First Optional Protocol

i. Rights implicated under the ICCPR

The ICCPR, adopted by the UN General Assembly in 1966, creates obligations on States Parties to ensure the civil and political rights of individuals subject to their jurisdiction, including the freedoms of speech, assembly, electoral rights, due process, a fair trial, and others.⁹⁶ The UN Human Rights Committee, which was

describes allowable instances of rights restrictions. The *Handyside* Court states that domestic European legislators enjoy the margin of appreciation when writing laws restricting rights, while judicial bodies enjoy it when interpreting and applying laws in force.

91. *Id.* (stating, “The Court points out that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights[.] The Convention leaves to each Contracting State, in the first place, the task of securing the rights and liberties it enshrines.”)

92. *Id.* ¶ 57 (“The Contracting States have each fashioned their approach in the light of the situation obtaining in their respective territories; they have had regard, *inter alia*, to the different views prevailing there about the demands of the protection of morals in a democratic society”).

93. *See, e.g., The European Court of Human Rights' online opinion depository*, HUDOC, [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["russian federation"\],"sort":\["kupdate Descending"\],"documentcollectionid2":\["GRANDCHAMBER," "CHAMBER"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (last visited Mar. 12, 2015) (listing European Court rulings including the Russian Federation as a party, including eight alone in the first three months of 2015).

94. *See Navalnyy & Yashin v. Russia*, 76204/11 (Dec. 4, 2014).

95. *Id.* ¶ 53 (stating, in relevant part, “When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered ‘necessary in a democratic society,’ the Contracting States enjoy a certain but not unlimited margin of appreciation.”).

96. ICCPR, *supra* note 27 (“Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976”).

established pursuant to ICCPR Article 28, monitors compliance with the Covenant.⁹⁷ Committee Review follows communications, as complaints to the Committee are called, by individuals—but not organizations or groups of individuals—regarding a State Party’s violation of given provisions of the ICCPR.⁹⁸ Committee Review may also follow a regular report on implementation of the Covenant, which States Parties are required to submit to the Committee within one year of the Covenant’s entry into force, and whenever the Committee requests such a report thereafter.⁹⁹ The Soviet Union, to which the Russian Federation is the legal successor, ratified the ICCPR in 1973.¹⁰⁰

For the purposes of this discussion, the ICCPR provisions of interest are Articles 17, 19, and 22, which treat the right to reputation, freedom of expression, and freedom of association, respectively.¹⁰¹ Article 17 has two subsections. The first protects nationals of States Parties against, *inter alia*, unlawful interference with their honor or reputation.¹⁰² States Parties are obligated under the second provision

97. *Id.* art. 28.1 (“There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.”).

98. United Nations Optional Protocol to the International Covenant on Civil and Political Rights, *infra* note 112, art. 1 (“A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”).

99. ICCPR, *supra* note 27, art. 40.

100. United Nations International Covenant on Civil and Political Rights, I Multilateral Treaties Deposited with the Secretary-General IV.4 (Human Rights), at sec. Declarations and Reservations. The Soviet Union’s one declaration to the Covenant, which Russia inherited, reads:

The Union of Soviet Socialist Republics declares that the provisions of . . . article 48 of the International Covenant on Civil and Political Rights, under which a number of States cannot become parties to [the ICCPR and the International Covenant on Economic, Social, and Cultural Rights], are of a discriminatory nature and considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation.

101. ICCPR, *supra* note 27, art. 17.1 (“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.”); *id.* art. 19.2 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”); *id.* art. 22.1 (“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”).

102. *Id.* art. 17.1.

of Article 17 to give legal protections and recourse to the victims of such attacks.¹⁰³ Section 2 of Article 19 guarantees the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print.”¹⁰⁴ Article 22 guarantees freedom of association in brief, general terms.¹⁰⁵ Section 2 of Article 22 describes permissible restrictions on that freedom, for example those “necessary in a democratic society.”¹⁰⁶

In colloquial Russian, the term “foreign agent” is equivalent with “spy.”¹⁰⁷ For this reason, Article 17’s protections on reputation are implicated.¹⁰⁸ The political rhetoric in question has real consequences; for example, consider the February 2015 assassination of Russian liberal opposition politician Boris Nemtsov following his designation in State media as an “internal enemy.”¹⁰⁹ Though Nemtsov was not designated an “enemy of Russia” by any of the laws discussed here, he was by State media.¹¹⁰ Where a State Party deems certain members

103. *Id.* art. 17.2.

104. *Id.* art. 19.2. Russia will come up for review in its second Universal Periodic Review round in January 2018. In its first review (2013), Russia did not accept a single recommendation addressing ICCPR Article 19, which it asserts to be non-universal.

105. *Id.* art. 22.1 (“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”).

106. *Id.* art. 22.2 (“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”). Russia has a law on public emergencies that it could use to legally restrict freedom of association under ICCPR Article 22, but has not invoked it in a decade.

107. Proverka petersburgskoj organizacii “Nemecko-russkij obmen” napugala Berlin [Check of Petersburg Organization “German-Russian Exchange” Scares Berlin], PETERBURGSKIJ DNEVNIK, available at <http://www.spbdnevnik.ru/news/2015-01-21/proverka-peterburgskoy-organizatsii--nemetsko-russkiy-obmen--napugala-berlin/> (quoting St. Petersburg NGO employee discussing “foreign agent” designation as equal to designation as agent of foreign power); see also *infra* note 128 (Wash. Post article noting “foreign agent” as “a term used in Stalin’s day to stigmatize and discredit people as spies.”).

108. ICCPR, *supra* note 27, art. 17.1 (“No one shall be subjected to . . . unlawful attacks on his honour and reputation.”).

109. See Andrew E. Kramer, *Fear Envelops Russia After Killing of Putin Critic Boris Nemtsov*, N.Y. TIMES, Feb. 28, 2015; see also Ivan Nechepurenko, *Analysts Blame Nemtsov’s Death on Russia’s ‘Legitimized Hate’*, MOSCOW TIMES, Feb. 28, 2015 (noting that state-directed media had “emphatically placed” Nemtsov “in the category of enemies” of Russian society).

110. See *supra* note 109 and accompanying text.

of society as somehow anti-Russian, creating real threats to physical safety, the protection of reputation is certainly implicated.¹¹¹

ii. The individual complaint mechanism

The General Assembly adopted the Protocol in December 1966, and it entered into force in March 1976.¹¹² The individual complaint mechanism came into force simultaneously.¹¹³ Pursuant to the Protocol, an individual under the State Party's jurisdiction may file a complaint to the Committee for violations of rights protected in the Covenant.¹¹⁴

The Russian Federation acceded to the Protocol in 1991, thereby recognizing the Committee's competence to review complaints regarding Russia.¹¹⁵ The Soviet Union's single understanding to the Protocol does not effectively modify its legal status in Russia.¹¹⁶ This is because the Understanding requires that the complaint not be under review at another international tribunal, and that its author has exhausted the domestic court system.¹¹⁷ The language of the Understanding is nearly identical to that of Article 5.2 of the Protocol.¹¹⁸

111. Nemtsov, a longtime and vocal critic of President Putin, had been repeatedly declared a "national traitor" and a member of the hated "fifth column" by state media. *See supra* note 109 and accompanying text; Joshua Yaffa, *Assassination in Moscow*, NEW YORKER, Feb. 27, 2015, available at <http://www.newyorker.com/news/news-desk/assassination-in-moscow> (describing Russian state media's fixation on a dubious cabal of "national traitors," of which Boris Nemtsov was alleged to be one).

112. UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171 [hereinafter Protocol].

113. *Id.*

114. *Id.* art. 1.

115. *Id.*

116. "The Soviet Union also proceeds from the understanding that the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that the individual in question has exhausted all available domestic remedies" *Id.* at Declarations and Reservations, Russian Federation (replace "Soviet Union" with "Russian Federation").

117. *See id.*

118. *See id.* art. 5.2 ("The Committee shall not consider any communication from an individual unless it has ascertained that [t]he same matter is not being examined under another procedure of international investigation or settlement [and t]he individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged."). The Soviet Union's understanding eliminates the exception for constructive domestic exhaustion under "unreasonable prolongation" of process, which not coincidentally characterized the Soviet justice system.

The Protocol requires that the aggrieved individual personally file the complaint with the Committee, that the subject of the complaint is not currently under review at another international forum, and that the complainant has exhausted domestic remedies.¹¹⁹ Once admissibility is determined, the Committee raises the issue of contention with the State Party, who is required to submit to the Committee within six months “written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.”¹²⁰

Only individuals, and *not organizations or groups of individuals*, may file complaints under the Protocol.¹²¹ Though the Committee discussed the prospect of allowing groups or organizations to file, the final Committee rules of procedure did not include this option.¹²² There are “no formal cooperation arrangements between the Committee and NGOs,” but NGOs regularly file documents in support of individual communications to the Committee.¹²³

119. *Id.* art. 3; *id.* art. 5.2.a-b.

120. *Id.* art. 4.

121. *See supra* note 112 and accompanying text.

122. *See* annotations to the *Draft International Covenant on Human Rights* as prepared by the Secretary-General, 10 U.N. GAOR Annex at 81, U.N. Doc. A/2929 (1955) (“Opinion was deeply divided concerning the right to initiate proceedings before the committee. Some held that only States should be allowed to appeal to the committee. Others proposed various ways of enlarging the right to initiate proceedings. In resolution 421 (V), section F, the General Assembly requested the Commission on Human Rights to consider provisions ‘to be inserted in the draft covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the covenant’. Again, by resolution 737 B(VIII), the Assembly transmitted to the Commission a proposal requesting it to draft ‘provisions recognizing the right of petition of every natural person, every duly constituted group of individuals and every recognized non-governmental organization’, for inclusion in the covenant in accordance with the decision of the General Assembly in its resolution 421 (V), section F, mentioned above. All the proposals, which would extend the right to initiate proceedings, were either rejected or withdrawn.”). *Report of the Ninth Session of the Human Rights Commission*, 16 U.N. ESCOR Supp. (No. 8), 16-17, U.N. Doc. E/2447 (1953) (“[C]ertain non-governmental organizations could bring to the notice of the United Nations matters falling within the purview of the Economic and Social Council and this recognition should be taken into account in considering the admissibility of communications from non-governmental organizations. To limit the right of complaint . . . would hamper the work which those organizations were doing, and would make the United Nations appear isolated in the eyes of many ordinary people. They strongly supported the proposals which empowered the Committee to act on its own motion and to receive communications from non-governmental organizations and individuals.”).

123. Ida Lintel & Cedric Ryngaert, *The Interface between Non-Governmental Organisations and the Human Rights Committee*, 15 INT’L CMTY. L. REV. 359, 361 (2013).

After deliberating on admissibility and the merits, the Committee issues “Views,” which are distributed to the aggrieved individual and the receiving State Party.¹²⁴ While Committee Views were once characterized as “non-binding recommendations” to the State Party, the Committee has stated more recently that the Views *are* legally binding.¹²⁵ Prominent Russian human rights attorneys have expressed doubts as to the ICCPR’s individual complaint mechanism, citing the “very uncertain legal status” of the Committee Views and the effectiveness and timeliness of UN institutions.¹²⁶ Academic authorities, however, assert that Committee Views *do* constitute “hard law,” and thus are binding on States Parties.¹²⁷

To provide context for the analysis ahead, Part I first discussed the structure of the Russian government, including the places of the executive, the legislature, and the courts in it. It then surveyed recent Russian federal legislation to demonstrate a legislative trend predicated on limiting foreign influence in Russian society. The statutes and bills in question were all passed or proposed in the first half of the third presidential term of Vladimir V. Putin, which began in May 2012.

The laws and bills described create various obligations for Russian nationals and are thematically linked in their effort to combat non-Russian interference with Russian society. The Foreign Agents Law requires civil organizations receiving funding from abroad to register and advertise their status as “foreign agents.” The Dual Citizenship Law imposes sizeable criminal fines on Russian nationals failing to report dual citizenship to the federal government within sixty days of acquiring the second citizenship. The Rights and Freedoms Law bans the adoption of Russian children by US parents. The Aggressor Bill proposes a federal register of foreign individuals and corporations allegedly linked to “aggressor states.” Finally, the Undesirable Organizations Bill seeks to ban the operations of foreign and international organizations deemed “undesirable.”

Part I closed with an examination of Russia’s international legal obligations. Of primary interest are those regarding right to reputation

124. Protocol, *supra* note 112, art. 5.4.

125. Report of the Human Rights Committee (1997), U.N. Doc. A/52/40 94, ¶ 532; Report of the Human Rights Committee (1988), U.N. Doc. A/43/40 151, ¶ 645.

126. See correspondence on file with the author.

127. J. TH. MOLLER & A. DE ZAYAS, UNITED NATIONS HUMAN RIGHTS COMMITTEE CASE LAW, 1977-2008: A HANDBOOK 48 (2009) (“[T]he views constitute international case law and, as such, may be considered as part of what is known as ‘hard law.’”).

and freedom of expression and association, particularly under the European Convention on Human Rights and the ICCPR. Finally, a brief discussion of the First Optional Protocol to the ICCPR outlined how Russian individuals may seek recourse at the United Nations Human Rights Committee following the application of the national laws at issue.

II. *PRACTICAL APPLICATION*

Prosecutions of Russian nationals under the new federal laws discussed above highlight the practical implications of the described legislative trend. Part II explores some notable prosecutions and discusses the Russian government's targeting of an American attorney married to a Russian human rights activist, based on allegations that her presence in the country threatened national security. A discussion of international human rights jurisprudence regarding the rights implicated by the relevant statutes from Part I follows.

A. *The Foreign Agent Law*

While the Foreign Agent Law was in effect by November 2012, investigators and prosecutors only started enforcing it at the end of March 2013.¹²⁸ Speaking on February 14, 2013 about NGOs operating in Russia, President Putin warned that foreign governments hoping to weaken Russia are known to use "various instruments of pressure, including mechanisms of so-called 'soft power.'"¹²⁹ Though

128. *Russia Again Tries to Intimidate Civil Society Groups*, WASH. POST, Mar. 27, 2013, http://www.washingtonpost.com/opinions/russia-again-tries-to-intimidate-civil-society-groups/2013/03/27/99b4e0ac-9717-11e2-97cd-3d8c1afe4f0f_story.html (noting investigators' inspection of the offices of Memorial "this week for the third time, along with those of dozens of other groups. The raids appear to be a concerted effort by President Vladimir Putin to intimidate such organizations. Last year, Mr. Putin pushed through legislation requiring nongovernmental groups that receive money from abroad and are involved in politics to register as 'foreign agents,' a term used in Stalin's day to stigmatize and discredit people as spies."); *Russian Search for 'Foreign Agents' Widens as NGOs Raided*, EURONEWS.COM, Mar. 28, 2013, <http://www.euronews.com/2013/03/28/russian-search-for-foreign-agents-widens-as-ngos-raided/> (noting the March 2013 initiation of raids after a February announcement by President Putin "that to crack down on 'terrorism' he would be focusing on 'foreign agents.' That was seen as a veiled threat, which now appears to have turned into action.").

129. Prezident Rossii, *Zasedanie kollegii Federal'noj sluzhby bezopasnosti* [President of Russia, *Meeting of Colleagues of the Federal Security Service*], Feb. 14, 2013, <http://kremlin.ru/transcripts/17516> (Speaking of NGOs receiving operational funding from abroad, President Putin states that "any direct or indirect interference in our internal affairs,

the Foreign Agents Law had lain dormant for a year, by the third week of March 2013, Human Rights Watch, Amnesty International, Transparency International, and Memorial—Russia’s oldest consistently operating human rights reporting organization—were all visited and inspected by federal law enforcement officials.¹³⁰

In April 2014, the Constitutional Court of Russia—the country’s supreme court—upheld the constitutionality of the Foreign Agents Law.¹³¹ At the end of 2014, the Federal Register of Information on NGOs Acting as a Foreign Agent included twenty organizations located across Russia, while at the beginning of 2015, it included forty-one.¹³² Three of these organizations registered voluntarily following adverse administrative rulings.¹³³ Moscow, home to twelve organizations on the list, is the most-represented city.¹³⁴

The organizations on the Register are involved in, *inter alia*, LGBT advocacy, elections monitoring, civil liberties litigation reporting, pro bono advocacy, and compiling information on the

any form of pressure on Russia, our allies and partners is unacceptable.”) The clear message of President Putin’s speech to the security services seemed to spark swift action.

130. *Russia’s Putin calls NGO inspections “routine”*, REUTERS <http://www.reuters.com/article/2013/03/28/us-russia-ngos-idUSBRE92R0MF20130328> (Mar. 28, 2013) (“Human Rights Watch, Amnesty International and Memorial, Russia’s oldest rights group, are among those whose offices have been visited by prosecutors and other state officials, prompting criticism from the United States and the European Union.”); Harvey Morris, *Raids in Russia Target ‘Foreign Agents’*, N.Y. TIMES, Mar. 29, 2013, available at <http://rendezvous.blogs.nytimes.com/2013/03/29/raids-in-russia-target-foreign-agents/>.

131. *Konstitucionnyj sud odobril zapis' v “inostrannye agenty”* [Constitutional Court Endorses “Foreign Agents” on the Record], KOMMERSANT, <http://www.kommersant.ru/doc/2447993> (Apr. 4, 2014) (“Today the Supreme Court (KS) of Russia decided on a complaint from non-commercial organizations, claiming the legislation requiring human rights organizations register as ‘foreign agents’ to be unconstitutional. It affirmed that the relevant requirements of the legislation complied with the Russian Constitution, but recommended a reduction to fines for NGOs.”); *Russia: Constitutional Court Upholds ‘Foreign Agents’ Law*, HUMAN RIGHTS WATCH (Apr. 9, 2014) <http://www.hrw.org/news/2014/04/08/russia-constitutional-court-upholds-foreign-agents-law> (“Russia’s Constitutional Court has upheld the controversial ‘foreign agents’ law.”).

132. *Svedenija reestra NKO, vpolnjajushhij funkcii inostrannogo agenta*, MINISTERSTVO JUSTICII ROSSIJSKOJ FEDERACII, [the Ministry of Justice’s Federal Register of Information on NGOs Acting as a Foreign Agent], <http://unro.minjust.ru/NKOForeignAgent.aspx> (last visited Mar. 23, 2015) [hereinafter *the Register*].

133. *Russia: Government against Rights Groups*, HUMAN RIGHTS WATCH (Mar. 23, 2015), <http://www.hrw.org/news/2014/12/15/russia-government-against-rights-groups> (“And the three NGOs which registered voluntarily: Non-commercial Partnership ‘Supporting Competition in the CIS Countries’ - June 27, 2013, ‘The Union of Young Political Scientists’, Karachay–Cherkess Republican Youth Social Organization - December 15, 2014, Regional Social Movement ‘Novgorod Women’s Parliament’ (Veliky Novgorod) - March 6, 2015”).

134. See *supra* note 132 and accompanying text.

Soviet—not Russian—prison system.¹³⁵ The Register also includes, for example, the Moscow School of Civic Education.¹³⁶ All but one organization on the Register, the majority of which are civil advocacy groups, were added between the middle of 2014 and the beginning of 2015.¹³⁷ While chief officers at some of the organizations assert that they are working in the interests of the Russian people, the label “foreign agent” creates the impression at first glance that they are working if not against the interests of the Russian State and people, then at least for the benefit of another State.¹³⁸ These organizations, of course, are required to advertise their status as “foreign agent.”¹³⁹

Beyond registration, federal prosecutors have made use of a Civil Procedural Code provision granting authority to file suit “in defense of the rights, freedoms and legitimate interests of citizens.”¹⁴⁰ Using this provision, they have won Foreign Agents cases against six groups.¹⁴¹ Four of those groups have been ordered to register, while two were shut down altogether.¹⁴² Prosecutors filed based on the claim that the groups’ failures to register as “foreign agents” threatened public safety.¹⁴³

Prosecutors have obtained administrative penalties for six civil society groups due to their failure or refusal to register as “foreign agents.”¹⁴⁴ The organizations fined under the law include the elections monitoring group Golos and the environmental protection group Ekozashchita.¹⁴⁵ Failure to register creates significant financial liabilities for both organizations and their directors.¹⁴⁶ However, the

135. The Saratov Center for Social Politics and Gender Research, GOLOS, Public Verdict, and Memorial, respectively. *See supra* note 132 and accompanying text.

136. *See supra* note 132 and accompanying text.

137. *See supra* note 132 and accompanying text.

138. *See supra* notes 8, 18, 129 (demonstrating the mainstream idea in Russian political rhetoric that civil society and human rights reporting are seen as provocations by non-Russian powers).

139. *Foreign Agent Law*, *supra* note 2, art. 2.4.

140. *Grazhdanskii protsessual'nyi kodeks Rossiiskoi Federatsii* [GK RF] [Civil Procedural Code of the Russian Federation] art. 45.1 (Russ.). (“The Prosecutor may apply to a court for the protection of the rights, freedoms and legitimate interests of citizens [or] an unspecified group of individuals, the interests of the Russian Federation, and the federal municipal subjects of the Russian Federation.”)

141. *Supra* note 133 and accompanying text.

142. *Id.* (The Saint Petersburg LGBT advocacy center *Vykhod* [Coming Out] and the Saint Petersburg branch of Memorial).

143. *Id.*

144. *Id.*

145. *Id.*

146. *See generally supra* Part I.

need to register once designated is not guaranteed: at least four organizations have successfully appealed designations as “foreign agents.”¹⁴⁷

Finally, the directors of six civil society groups have personally faced administrative liability, though four of them were acquitted.¹⁴⁸ Twenty-nine NGOs across Russia had received official notices that they were in violation of the Foreign Agent Law, while another fifty-four had received official warnings that, if they plan to engage in “political activities,” they must register as “foreign agents” in order to avoid liability.¹⁴⁹ These prosecutions are significant in that they implicate the freedoms of association, expression, and reputation for the individuals associated with the organizations forced to wear the label that they are acting in the interests of a non-Russian power.

B. *The Dual Citizenship Law*

According to major commercial Russian media, some 43,000 Russian nationals were subject to administrative fines for failing to report second citizenships by the end of 2014—the six-month period since the passage of the Dual Citizenship Law.¹⁵⁰ Though the potential for liability under this law reaches RUB200,000, the fines in these cases ranged from RUB500 to RUB1000—about US\$8 to US\$16 at the time of writing.¹⁵¹

On December 9, 2014, the first and, so far, sole criminal charges under the Dual Citizenship Law were filed in the Leningrad

147. *Supra* note 124 and accompanying text. It is material that three of the successful groups were tried in the same regional (Perm) court.

148. *Id.*

149. *Id.*

150. *See, e.g.,* *Rossijan nachali shtrafovat' za dvojnoe grazhdanstvo*, [Russians Start to Get Fined for Dual Citizenship], PRAVDA, Dec. 5 2014, <http://www.pravda.ru/news/society/05-12-2014/1238722-rossia-0/> (“The Federal Migration Service of Russia reported that more than 40 thousand Russians were fined for not reporting by October 4, a current second citizenship”); *Za dvojnoe grazhdanstvo v Rossii oshtrafovali bolee 40 tys. Chelovek*, [More Than Forty Thousand People Were Fined For Dual Citizenship in Russia], INTERFAX, Dec. 5, 2014, <http://www.interfax.ru/russia/411287> (“More than forty thousand people have been fined for the fact that they did not report that they had a second citizenship by October 4.”) For context, the population of Russia (including the recently reincorporated Republic of Crimea) is about 145,000,000.

151. *Id.*; *Over 40,000 Russians fined for concealing dual citizenship – report*, RAPSI (Dec. 5, 2014) <http://rapsinews.com/news/20141205/272717675.html> (“Administrative penalties have been meted out to 43,000 people, who have been fined between 500 and 1,000 rubles”).

Region.¹⁵² According to the Federal Investigative Committee for the Leningrad Region, the defendant is a Leningrad Region resident who has held a residence permit in nearby Estonia since 2013.¹⁵³ The defendant failed to report his dual residency to Customs upon leaving Russian territory, and was detained.¹⁵⁴ He faces criminal liability up to RUB200,000, or alternatively, up to 400 hours of compulsory labor if convicted.¹⁵⁵

C. Use of Other Russian Laws of Concern

It is true that the Foreign Agent Law is the most-used of any of those discussed. Meanwhile, two legislative projects of concern—the Aggressor State Bill and the Undesirable Organizations Bill—are awaiting passage in the State Duma. There have not been any prosecutions under the Rights and Freedoms Law.¹⁵⁶

D. Other Thematically Linked Developments

It is not only Russian nationals who face prosecutions in relation to real or perceived ties to non-Russian powers.¹⁵⁷ In August 2014, Jennifer Gaspar, the American wife of Russian lawyer Ivan Pavlov—who has represented organizations tried as “foreign agents”—had her residency revoked based on FSB (Russia’s federal security and intelligence service) allegations that she had called for the overthrow of the Russian government and that her presence in the country

152. *Pervoe za vtoroe*, [First for the Second], GAZETA.RU, Dec. 9, 2014, <http://www.gazeta.ru/social/2014/12/09/6335101.shtml> (“The Investigative Committee of the Leningrad Region has filed the first criminal case for the concealment of a second citizenship.”); *First criminal case filed under Russian law on dual citizenship*, RUSSIA BEYOND THE HEADLINES (Dec. 9, 2014), http://rbth.com/news/2014/12/09/first_criminal_case_filed_under_russian_law_on_dual_citizenship_42103.html (“The first criminal case has been filed under a new law requiring Russians with dual citizenship to disclose their status to the federal authorities.”) The official press release on the case, which was available at the end of December 2014, *available at* <http://lenobl.sledcom.ru/news/detail.php?news=20288>, has since been taken down.

153. *Id.* Customs is handled by the FSB in Russia. Ethnic Russians are treated poorly (sometimes subjected officially to second-class status) in post-Soviet Baltic (Estonia, Latvia, and Lithuania) states due to the fact that the Baltics were forcefully incorporated into the Soviet Union after the beginning of World War II. For this reason, Russians and others perceived as having any kind of allegiance to the Baltic States are viewed with suspicion by Russian law enforcement and others.

154. *Id.*

155. *See* Russian Criminal Code, *supra* note 60, art. 330.2

156. That is, as this Note was submitted for publication.

157. *See infra* note 159 and accompanying text.

constituted a national security threat.¹⁵⁸ The case against her was widely perceived within the Russian legal and human rights communities as a politically motivated threat to her husband based on his representation of alleged “foreign agent” organizations.¹⁵⁹ The St. Petersburg City Court, which heard her case, dismissed her challenge to the revocation on December 18, 2014.¹⁶⁰ Mr. Pavlov stated to media that the couple had planned to appeal the decision, and in February 2015, a St. Petersburg city court suspended the investigation.¹⁶¹

E. European Court Article 11 Jurisprudence¹⁶²

Though the captions of 2014 Article 11 (freedom of association) decisions adverse to Russia read like a “who’s-who” of prominent dissidents and opposition members, the majority of the cases deal with the right to public assembly, not with ideological or professional association.¹⁶³ The principles the ECtHR sets out regarding Article

158. *Sud priznal amerikanskiju pravozashhitnicu “ugrozhajushhej nachezopasnosti RF”*, [Court Recognizes Human Rights Advocate as “Threatening the Security of the Russian Federation”] FILANTROP, Dec. 19, 2014, <http://philanthropy.ru/news/2014/12/19/19547/> (“The St. Petersburg City Court dismissed U.S. citizen Jennifer Gaspar’s complaint against the cancelation of her residence permit. The court followed the FSB and [Federal Migration Service] in deciding that she poses a threat to Russian security.”); *Gaspar proigrala sud FSB*, [Gaspar Loses Case to FSB], LENIZDAT.RU, Dec. 18, 2014, <http://lenizdat.ru/articles/1125734/> (“The St. Petersburg City Court dismissed a claim by human rights advocate Jennifer Gaspar against the regional Federal Security Service (FSB) office, contesting the grounds of the deprived her of residence and her expulsion from Russia under the pretext of a threat to national security.”).

159. See correspondences on file with the author.

160. See *supra* note 158 and accompanying text.

161. See *id.*; Zhurnal “Fontanka,” *Sud priostanovil rassmotrenie iska o sekretnosti prichin vydvorenija Dzhennifer Gaspar*, [Court Suspends Consideration of Claim of Secret Reasons for Expulsion of Jennifer Gaspar], Feb. 19, 2015, <http://www.fontanka.ru/2015/02/19/131/> (“The City Court has suspended a case in which American Jennifer Gaspar contested secret documents which were the reason behind the deprivation of her residency.”)

162. The ECtHR’s small body of Article 10 jurisprudence as it relates to Russia deals overwhelmingly with censorship, so this Note leaves Article 10 complaints out of the discussion. See generally [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"languageisocode":\["ENG"\],"respondent":\["RUS"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"violation":\["10"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (HUDOC search limiting to determinations of Russian Article 10 violations).

163. See generally [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"sort":\["kpdate Descending"\],"respondent":\["RUS"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"violation":\["11"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (Navalnyy v. Russia, Nemtsov v. Russia, Kasparov v. Russia). See also *Nemtsov v. Russia*, 1744/11 Eur. Ct. H. R. 1, 18, ¶ 79 (2014) (identifying Article 11 violation in restriction on right to “peaceful assembly”).

11, however, are applicable to such types of association; for example, in *Vogt v. Germany*, a landmark Article 11 case, the ECtHR held that the means of State restriction of or interference with association must be proportionate to a legitimate State aim.¹⁶⁴ That is, where the State Party's restriction on Article 11 rights is disproportionate to the stated aim of the restriction, the ECtHR will find a violation.¹⁶⁵

Further, the ECtHR holds that restrictions on or interference with association must be a necessary method of upholding public order in a democratic society.¹⁶⁶ Specifically, to find a violation of Article 11, it applies a three-tiered test.¹⁶⁷ A restriction of a protected right will constitute a breach of Article 11 unless the restriction is: (1) prescribed by law; (2) enacted in pursuance of one or more legitimate aims under paragraph 2 of the Convention; and (3) is "necessary in a democratic society" for the achievement of those aims.¹⁶⁸

F. ICCPR Articles 17, 19, and 22 at the Human Rights Committee

The Articles of the ICCPR specifically relevant here are 17 (which includes the right to reputation), 19 (freedom of expression), and 22 (freedom of association).¹⁶⁹ It is for that reason that the Committee, the treaty oversight body of the ICCPR, comes into play.¹⁷⁰ Article 41 of the ICCPR creates the inter-state complaint mechanism at the Committee, while the First Optional Protocol, which Russia has ratified, creates recourse for individuals complaining about human rights abuses by a State Party.¹⁷¹

In contrast to the ECtHR, the Human Rights Committee has reviewed only a few complaints from Russians regarding violations of civil and political rights.¹⁷² In fact, the Committee has never reviewed

164. *Vogt v. Germany*, 17851/91 Eur. Ct. H. R. ¶ 68 (1995).

165. *Id.* (finding that the state-administered school's decision to fire the complainant was "disproportionate to the legitimate aim pursued," and therefore a violation of Article 11).

166. *See, e.g.,* *Alekseyev v. Russia*, 4916/07, 25924/08, 14599/09 Eur. Ct. H. R. 1, 16 ¶ 69 (2011). Due to the Court's principle of margin of appreciation, whereby it defers to the culture and customs of the respondent State, this paper cites European Court case law regarding Russia wherever possible.

167. *Primov v. Russia*, 17391/06 Eur. Ct. H. R. 1, 24 ¶ 121 (2014).

168. *Id.*

169. *See supra* note 12 and accompanying text.

170. *See supra* note 112 and accompanying text.

171. ICCPR, *supra* note 96, art. 41; ICCPR, *supra* note 96, at Preamble.

172. The Committee has reviewed one Article 19 complaint against Russia. *See Kholodova v. Russian Federation*, CCPR/C/106/D/1548/2007 (2011). It has reviewed a total of 47 First Optional Protocol complaints against the Russian Federation (*see* the list at United

an Article 22 complaint against the Russian Federation.¹⁷³ This means that not only has the Human Rights Committee never viewed a freedom of expression-related complaint from a Russian national, but also that no Russian has ever actually filed such a complaint with the Committee.¹⁷⁴ While the Committee has reviewed three Article 17 complaints against Russia, these all have centered on the right to privacy or family life provisions of that article, and not on the right to reputation.¹⁷⁵

However, the Committee has issued Views as recently as 2014 on the freedoms of association and expression, including in consideration of complaints by members of NGOs.¹⁷⁶ These rulings were in countries with law enforcement cultures comparable to Russia's, and which are in Russia's immediate neighborhood.¹⁷⁷ Samples of all of those decisions are included in this Section's discussion, in addition to an unsuccessful Article 17 complaint against the formerly Soviet state of Tajikistan that provides some procedural illustration.¹⁷⁸

One of the most important cases for the discussion is *Toregozhina v. Kazakhstan*. The complainant in *Toregozhina* is the head of an NGO that was arrested in her office five days after a rally in Almaty, Kazakhstan's largest city, in a purportedly preventative

Nations High Commissioner for Human Rights, Optional Protocol to the International Covenant on Civil and Political Rights, *Acceptance of individual complaints procedures for Russian Federation*, § CCPR-OP1, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=RUS&Lang=EN.

173. *Individual Communications – database on decisions*, CENTRE FOR CIVIL AND POLITICAL RIGHTS, [http://www.ccpcentre.org/individual-communications/decisions-search/?p2p_country_to_decision\[\]=347&relevant_articles\[\]=165](http://www.ccpcentre.org/individual-communications/decisions-search/?p2p_country_to_decision[]=347&relevant_articles[]=165) (search narrowed to "Russian Federation" and "Article 22") (last visited Mar. 24, 2015, 3:18 AM).

174. *Individual Communications – database on decisions*, CENTRE FOR CIVIL AND POLITICAL RIGHTS, [http://www.ccpcentre.org/individual-communications/decisions-search/?p2p_country_to_decision\[\]=347](http://www.ccpcentre.org/individual-communications/decisions-search/?p2p_country_to_decision[]=347) (listing the Human Rights Committee Views with the Russian Federation as a party, noting no instances of Article 22 rulings either on the merits or on procedural grounds).

175. See generally *Khakdar v. Russian Federation*, CCPR/C/112/D/2126/2011 (2014) (partially admissible, but no Article 17 violation); *V. A. v. Russian Federation*, CCPR/C/105/D/1526/2006 (2012) (inadmissible); *Y. D. v. Russian Federation*, CCPR/C/101/D/1521/2006 (2011) (inadmissible).

176. See, e.g., *Toregozhina v. Kazakhstan*, *infra* note 177.

177. See, e.g., United Nations Human Rights Committee, Views of the Human Rights Committee under art. 5, ¶ 4 of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session); Communication No. 2137/2012 [hereinafter *Toregozhina v. Kazakhstan*] (2010).

178. *M.N. v. Tajikistan*, CCPR/C/106/D/1500/2006 (2012).

measure.¹⁷⁹ In deciding the merits of Ms. Toregozhina's Article 19 complaint, the Committee recognized the argument that though Kazakhstan had provided a legal basis for restricting Ms. Toregozhina's freedom to impart information, the State action was de facto based on her status as a civil activist.¹⁸⁰ Ms. Toregozhina asserted that Article 19 protects an individual's right to criticize or publicly evaluate their national government without having to fear interference or punishment.¹⁸¹ In finding that Kazakhstan had violated Ms. Toregozhina's freedom of expression, the Committee reiterated its requirement that a State demonstrate that the restrictions it imposes are the least intrusive possible in proportion to the interest protected.¹⁸² Further, the Committee noted that limitations are not necessarily appropriate, proportionate, or justified simply by virtue of being imposed pursuant to and in compliance with domestic law.¹⁸³

In *Nepomnyaschikh v. Belarus*, the complainant Vladimir Nepomnyaschikh was a political activist harassed by police and other law enforcement—pursuant to domestic law—after he invited others to attend a rally.¹⁸⁴ Mr. Nepomnyaschikh asserted that the Belarusian law on which he was charged constituted a prima facie violation of Article 19 of the ICCPR by virtue of its restrictions on the impartation of information.¹⁸⁵ In deciding in Mr. Nepomnyaschikh's favor, the Committee again noted a proportionality requirement for restrictions on the freedom of expression.¹⁸⁶ The Committee asserted that State interference with expression must strictly observe necessity and proportionality, and must be applied strictly in relation to the purported State interest on which they are predicated.¹⁸⁷ As in other Views, the Committee stressed its position that freedom of expression is “essential for any society.”¹⁸⁸

179. See United Nations Human Rights Committee, *supra* note 177, ¶ 2.2.

180. *Id.* ¶ 3.3. Russia's restrictions on the impartation of, for example, human rights monitoring information fits this mold.

181. *Id.*

182. *Id.* ¶ 7.5.

183. *Id.*

184. U.N. Human Rights Committee, Views of the Human Rights Committee Under Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights concerning Communication No. 2156/2012*, 112th Sess., ¶¶ 2.1-6 (2014) [hereinafter *Nepomnyaschikh v. Belarus*].

185. *Id.* ¶ 3.2.

186. *Id.* ¶¶ 9.2-3.

187. *Id.* ¶ 9.3.

188. *Id.*

Regarding Article 22, the Committee holds that the freedom of association afforded to individual subjects of a State Party's jurisdiction extends to the activities of an association.¹⁸⁹ While organizations and associations may not file complaints to the Committee, this language indicates that affected individuals may file complaints *in relation to* their status as members of associations.¹⁹⁰ In the cited decision, *Mikhailovskaya and Volchek v. Belarus*, the complainants were administrators of a legal aid NGO who alleged State obstruction in the process of registering their organization, in addition to years of police harassment alleged to have included physical violence.¹⁹¹ Holding in favor of Ms. Mikhailovskaya and Mr. Volchek, the Committee emphasized that the State Party must demonstrate that a given restriction on an association's operations "is necessary to avert a real and not only hypothetical threat to national security or democratic order, that less intrusive measures would be insufficient to achieve the same purpose, and that the restriction is proportionate to the interest to be protected."¹⁹²

To review, for limitations of the rights protected under both Articles 19 and 22, the Committee emphasizes the need for a demonstrable necessity of the restriction, with a view to legitimacy in principle.¹⁹³ Committee Views on a State Party's interference with the freedoms of expression and association stand in contrast to the ECtHR's jurisprudence due to the high level of scrutiny regardless of legality under the State Party's domestic law.¹⁹⁴ Most notably, the Committee extends the freedom of association to individuals as a

189. U.N. Human Rights Committee, Views of the Human Rights Committee Under Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights concerning Communication No. 1993/2010, 111th Sess., ¶ 7.2 [hereinafter *Mikhailovskaya and Volchek v. Belarus*]. This is one of two complaints (of twelve reviewed) that the Committee found fully admissible and in which it held in favor of the complainants.

190. *Id.* ¶ 2.3 ("The authors claim that because of their activities, members of the NGO were subjected to constant harassment."); *id.* ¶ 7.2. ("the Committee observes that article 22 of the Covenant guarantees that everyone shall have the right to freedom of association with others, and the protection afforded by that article extends to all the activities of an association.").

191. *Id.* ¶ 2.1-9.

192. *Id.* ¶ 7.3.

193. *Compare Committee Views* (noting strict proportionality and necessity requirements in application, e.g., *Nepomnyaschikh v. Belarus*), with the European Court's margin of appreciation principle, which generally allows the Court to defer to the State Party's cultural practices and idiosyncratic legal customs in reviewing otherwise questionable legislation and law enforcement activity.

194. *See, e.g., id.*

function of their membership in targeted organizations, though individuals are still required to file complaints personally with the Committee.¹⁹⁵

There have been relatively few Committee Views dealing with right to reputation, which is also referred to as “legal personality.”¹⁹⁶ Most Article 17 Committee Views that result in violation determinations deal with more run-of-the-mill privacy violations.¹⁹⁷ Of the eighteen “legal personality” Committee Views invoking Article 17, none in Russia’s political-geographic region has been found admissible.¹⁹⁸ In *M.N. et al. v. Tajikistan*, for example, the authors of the complaint claimed a violation of Article 17 after Tajik State actors ordered the publication of articles and other materials that adversely affected their reputation.¹⁹⁹ This claim in particular was found to be inadmissible because the information submitted by the authors was too general to substantiate assertions that their reputations were put at risk.²⁰⁰ Indeed, the Committee Views actually do not refer to any information submitted that would substantiate such claims.²⁰¹

G. The First Optional Protocol and Constructive Exhaustion

The European Convention, the Protocol, and the Russian Federation’s understanding to the Protocol all require that complainants exhaust domestic remedies before a complaint can be reviewed.²⁰² However, the Committee views domestic exhaustion requirements as applicable only to the extent that the remedies

195. See Toregozhina, *supra* note 177.

196. See *Individual Communications – database on decisions*, CENTRE FOR CIVIL AND POLITICAL RIGHTS (last visited Mar. 26, 2015, 10:51 AM), [http://www.ccpcentre.org/individual-communications/decisions-search/?relevant_articles\[\]=111&decision_keywords\[\]=164](http://www.ccpcentre.org/individual-communications/decisions-search/?relevant_articles[]=111&decision_keywords[]=164).

197. See, e.g., Khaokha Marouf v. Algeria, CCPR/C/110/D/1889/2009 (Mar. 27, 2014) (failure to conduct an effective and thorough investigation); Faroun v. Algeria, CCPR/C/109/D/1884/2009 (Nov. 27, 2013) (enforced disappearance).

198. *M.N. et al. v. Tajikistan*, CCPR/C/106/D/1500/2006 (Oct. 29, 2012); *V. A. v. Russian Federation*, CCPR/C/105/D/1526/2006 (Jul. 23, 2012).

199. *M.N. et al.*, *supra* note 198, ¶ 3.3.

200. *Id.* ¶ 6.5.

201. *Id.* ¶¶ 2.1-3.7.

202. European Convention, art. 35.1; Protocol at art. 2 and 5.b, *supra* note 112; Protocol, *supra* note 118.

necessary are effective and available.²⁰³ A claim of constructive exhaustion would require functionally prohibitive red tape in the Russian court system, which is not a certainty.²⁰⁴ The Committee may also review a communication by a complainant who has not exhausted domestic remedies, where it can be established that the application of the remedies in question has been unreasonably prolonged.²⁰⁵

Most importantly for the circumstances of this Note, the Committee considers situations where the judiciary and the executive are “not clearly distinguishable or where the latter is able to control or direct the former [as] incompatible with the notion of an independent and impartial tribunal.”²⁰⁶ Observers of Russian government in the Putin era characterize the interaction between executive and judiciary in these terms often enough for the claim to be uncontroversial: for example, consider sections of legislation discussed that require prosecutors’ “coordination with the executive.”²⁰⁷ Further, the March 2015 Human Rights Committee review of Russia’s compliance with the ICCPR noted concern with an entire section entitled “Independence of the Judiciary.”²⁰⁸ The Committee considers “*all information* made available to it by the individual and by the State Party concerned.”²⁰⁹

To date, applications of the Russian statutes described in Part I have principally included inspections of well-known international human rights monitoring groups employing Russian nationals, as well as prosecutions and other administrative actions against smaller, fully domestic organizations.²¹⁰ It has also included the registration of dozens of civil organizations across the country as “foreign agents.”²¹¹ In St. Petersburg, a US human rights worker married to a Russian civil advocate was denied residency in Russia, in what some

203. Alfred de Zayas, *Petitions before the United Nations Treaty Bodies: Focus on the Human Rights Committee’s Optional Protocol Procedure 51* (Martinus Nijhoff Publishers 2009).

204. *See supra* note 131 and accompanying text (Russian Constitutional Court ruling regarding the Foreign Agent Law).

205. *See supra* note 118 and accompanying text.

206. Angel Olo Bahamonde v. Equatorial Guinea, Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 (1993).

207. *See, e.g., supra* note 79 and accompanying text.

208. *See, e.g., supra* note 35 and accompanying text.

209. Protocol, art. 5.1 (emphasis added).

210. *See supra* notes 131, 133 and accompanying text.

211. *See Register, supra* note 132.

advocates have alleged to be an indirect threat to her husband over his representation of “foreign agent” organizations.²¹² Meanwhile, tens of thousands of Russians have been subjected to minor liability after failing to disclose a second citizenship or other residency document to Russian federal authorities.²¹³

Though the ECtHR has a strong jurisprudential history with the freedoms of expression and association, the Committee gives greater deference to legitimacy and proportionality as legal concepts when reviewing potential violations of these rights.²¹⁴ Examining recent Committee Views regarding political activists and civil society NGOs in the former Soviet Union, the Committee appears to defer less to local laws that restrict basic rights.²¹⁵ But the domestic exhaustion requirement remains a potential obstacle under the Protocol, and indeed at any international tribunal in question.²¹⁶ A demonstration of constructive exhaustion may be useful if Russian activists decide to file communications with the Human Rights Committee.²¹⁷ It would allow the Committee to review a complaint even if the complainant has not exhausted domestic remedies, due to obstructive legal conditions within the State Party.²¹⁸ A Russian activist or advocate should expect to be required to show either true domestic exhaustion or constructive exhaustion when filing a complaint at the Committee.²¹⁹

III. *RECOURSE FOR RUSSIAN ACTIVISTS AND ADVOCATES*

Russian activists are right to challenge the cauldron of legislative and jurisprudential unwisdom leading to such a hostile civil-political environment at international legal tribunals including the ECtHR. Doing so is, at the very least, an exercise in disobedience in the face of authoritarianism. At most, it is a method of incentivizing Russian prosecutors to cease the use of the laws in question, given these tribunals’ ability to turn odious domestic legislation into an international spectacle. No matter what, it should be uncontroversial

212. *See supra* notes 158, 161 and accompanying text (regarding Jennifer Gaspar).

213. *See supra* note 153 and accompanying text.

214. *See* Nepomnyaschikh, *supra* note 184.

215. *See* Toregozhina, *supra* note 177; Nepomnyaschik, *supra* note 184; Volchek, *supra* note 189.

216. *See* Protocol, *supra* note 112.

217. *See id.*

218. *See id.*

219. *Id.*

that Russians are able to litigate in jurisdictions to which the Russian Federation has volunteered.

Even in light of legitimate reservations regarding the uncertain legal status of Committee Views, Russian nationals may benefit from filing communications with the Committee as an alternative to the ECtHR.²²⁰ The ICCPR's triangular protections of association, expression, and reputation, in conjunction with the Committee's jurisdiction over Russia, make that venue the preferable tribunal for Russian nationals seeking recourse in relation to these laws.²²¹ Additionally, the ECtHR's margin of appreciation principle may work against complainants where the point of contention concerns a national law.²²²

The relevant Russian statutes, most notably the Foreign Agent Law, violate ICCPR Articles 17, 19, and 22 facially and in practice.²²³ The legal culture that follows the enforcement of these statutes is creating an environment in which civil society NGOs, particularly those engaged in human rights research and reporting, are in a constant state of uncertainty about their future while their employees and associates are subjected to an administrative character assassination campaign.²²⁴ By legally threatening to tarnish the reputation of organizations and their employees and directors, the Foreign Agent Law in particular has real implications on freedom of expression and association.²²⁵ Meanwhile, by forcing organizations working in the interests of Russian civil society to publicly declare their status as "foreign agents," the Law creates a legally unjustifiable obstruction to the exercise of their freedom to impart information.²²⁶

In arguing violations of the relevant ICCPR provisions, a Russian complainant will need to prove individual victim status, and not that the given NGO has been targeted—even if such targeting has occurred.²²⁷ This could prove difficult, but not insurmountable.²²⁸ For example, restrictions on expression may take substantive or

220. *See generally supra* Part II.F.

221. *See supra* note 101 and accompanying text.

222. *See Handyside, supra* note 90.

223. *See supra* note 101 and accompanying text.

224. *See, e.g., supra* notes 129 and 131 and accompanying text.

225. *Id.*

226. *See supra* note 41 and accompanying text.

227. *See supra* note 98 and accompanying text.

228. *See generally supra* note 177 and accompanying text.

procedural forms affecting the individual NGO director.²²⁹ The Foreign Agent Law may cause the closure of an organization due to its failure to report its status or to comply with all provisions of the statute.²³⁰ But procedurally, the auditing requirement and the required documentation regarding personnel and expenses have the potential to obstruct an organization's ability to impart information by unnecessarily forcing it to redirect already scant resources to ensure compliance.²³¹ In this not unusual scenario, the NGO director would have the opportunity to argue that her individual right to impart information has been violated by way of legal obstructions to the effective operation of her organization.²³²

Article 17 of the ICCPR provides a good chance of redress for Russians targeted by these laws.²³³ It has already been established that designation as "foreign agent" is roughly equivalent in Russian to designation as "spy."²³⁴ In this connection it is crucial to note the real consequences of State designations, legislative or otherwise, of certain Russian nationals as actors in the interest of insidious non-Russian forces.²³⁵ One example is the February 2015 assassination of right-wing-liberal politician Boris Nemtsov, discussed above.²³⁶ Russian "foreign agent" activists and human rights workers would be well-advised to cite Nemtsov's treatment by official State media outlets, and his fate, when complaining to the Committee about State action designating them as actors in the interests of non-Russian powers seeking to destabilize Russia.²³⁷ Consider also the ECtHR's deference to States Parties under the margin of appreciation principle, and the Committee's apparent consideration of potential conflicts between domestic laws and ICCPR obligations—with preference for the latter.²³⁸

Russia's Understanding of the First Optional Protocol to the ICCPR, which establishes the individual complaint mechanism

229. *Id.*

230. *See supra* note 36 and accompanying text.

231. *Id.*

232. *See, e.g., supra* note 177 and accompanying text.

233. *See, e.g., supra* note 200 and accompanying text (noting the Committee's emphasis on substantiating claims in comparison to the abundance of information available to Russian activists in order to do so).

234. *See Kramer, supra* note 109; Nechepurenko, *supra* note 109.

235. *See generally id.*

236. *See generally id.*

237. *See generally id.*

238. *See Handyside, supra* note 90; *see Nepomnyaschikh supra* note 184.

advocated here, does not affect its legal status in Russia.²³⁹ The only potential hang-up for Russian activists seeking recourse at the Committee is the domestic exhaustion requirement contained in both the Protocol and the Russian Understanding.²⁴⁰ Russians should therefore take all measures available to them to litigate these issues within Russian the court system.²⁴¹ In practice, this amounts to appealing any adverse decision all the way up to Russia's Constitutional Court.²⁴² Should the domestic litigation process be obstructed by arbitrary delays or other administrative problems, Russians will have the opportunity to argue constructive exhaustion before the Committee.²⁴³ The Committee has recognized constructive exhaustion in 2014 cases regarding human rights activists and advocates in the former Soviet Union.²⁴⁴

It is important to note that individuals alleging victimhood must personally file communications with the Committee pursuant to the Protocol.²⁴⁵ However, that requirement, as it relates to the laws in question, creates two potential benefits. First, most of those individuals targeted by the Foreign Agent Law are either attorneys or human rights advocates with intimate understandings of Russia's laws, its international legal obligations, and the potential venues of recourse.²⁴⁶ Second, the law creates a vast pool of potential individual victims to litigate the issue.²⁴⁷ That is, though it is not possible for organizations to file communications with the Committee, at least as alleged victims under the Protocol, it is not necessary given the pool of staff at the considerable number of human rights NGOs operating in Russia.²⁴⁸ All of the substantive law and strategic procedural points here support the individual complaint procedure of the First Optional Protocol to the ICCPR as a preferable alternative to the European Court of Human Rights for questions related to the freedoms of expression, association, and reputation in President Putin's Russia.

239. See Protocol, *supra* note 112.

240. See *id.*

241. See *id.*

242. *Supra* note 16 and accompanying text.

243. See *supra* note 112 and accompanying text.

244. See, e.g., Nepomnyaschikh *supra* note 186.

245. See Protocol, *supra* note 112.

246. See Register, *supra* note 132 (noting the number of public interest and human rights defense groups listed).

247. *Id.*

248. *Id.*

CONCLUSION

A legislative trend initiated under the third term of Russian President Vladimir V. Putin, and which claims to target dangerous foreign interference in Russian society, adversely affects civil activists and advocates to the point of violating major international human rights treaties.²⁴⁹ The laws directly or indirectly restrict these individuals' abilities to exercise their freedoms of expression and association, and also implicate their reputations in ways that could put them in physical danger.²⁵⁰ The UN Human Rights Committee put its concerns about the ICCPR implications of these laws on the record as this Note was being submitted for review.²⁵¹

This Note calls on the Russian legislature, judiciary, and executive to take steps to bring the country's legal framework into compliance with Articles 19, 22, and especially 17 of the ICCPR in order to facilitate an environment in which civil society groups are able to operate openly and without fear. As it stands, however, Russians should complain to the UN Human Rights Committee about the unjust restrictions on the exercise of their freedoms of association and expression. Given the provisions of recent statutes purporting to target insidious foreign interference with Russian society, the conflation of human rights reporting with such interference, and the recent assassination of a prominent dissident politician similarly and explicitly characterized as an enemy of Russia, they have ample grounds to do so.

249. *See generally supra* notes 128, 130 and accompanying text.

250. *See generally Foreign Agent Law, supra* note 2; Rights and Freedoms Law, *supra* note 49; Aggressor Bill, *supra* note 64; Nechepurenko, *supra* note 109; Yaffa, *supra* note 111.

251. UN Hum. Rts. Comm., Concluding observations on the seventh periodic report of the Russian Federation, *supra* note 35.