RUSSIA'S NEW TREASON STATUTE, ANTI-NGO AND OTHER REPRESSIVE LAWS: "SOVEREIGN DEMOCRACY" OR RENEWED AUTOCRACY?

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I. INTRODUCTION AND OVERVIEW

Treason is the only crime referenced in the Constitutions of most countries. Treason statutes aim to protect the security of the people and preserve the integrity of the state. Invoked especially in times of war or other crises, treason laws can be both a powerful mechanism to punish betrayal, and a dangerous path to penalize political dissent.

In 2012 the Russian Duma (the lower house of Parliament) amended the treason statute with several significant revisions that can seriously impede civil society and complicate the lives of ordinary citizens.[1] Both international and domestic developments preceded the revision. The international community witnessed a global wave of political uprisings, including the Color Revolutions in the former Soviet republics, and worldwide opposition movements manifested in the "Occupy" movements and the so-called "Arab Spring." In addition, the post-9/11 world has seen a drastic weakening of the Rule of Law through the actions of the major democracies, including the United States of America, as new laws such as the USA Patriot Act[2] and analogous security laws around the world[3] have resulted in enhanced state surveillance,[4] indefinite detention,[5] and even extrajudicial killing without due process[6] of

1. *See Russia: New Treason Law Threatens Rights*, HUMAN RIGHTS WATCH (Oct. 23, 2012), http://www.hrw.org/news/2012/10/23/russia-new-treason-law-threatens-rights ("Russia's parliament on October 23, 2012, adopted a new law on treason that directly threatens the exercise of protected fundamental rights . . . ").

2. *See* Charles Lugosi, *The Patriot Act and the End of the Rule of Law*, JURIST (Aug. 12, 2011), http://jurist.org/sidebar/2011/08/charles-lugosi-rule-of-law.php (discussing how the Patriot Act has encroached upon U.S. residents' personal privacy, free flow of information, and freedom of association).

3. Joe W. Pitts, *Tough Act Followed*, WASH. POST, Sept. 14, 2003, at B3.

4. *See* Joe W. Pitts, *The End of Illegal Domestic Spying? Don't Count on It*, WASH. SPECTATOR (Mar. 15, 2007), http://washingtonspectator.org/the-end-of-illegal-domestic-spying-dont-count-on-it (characterizing the Bush administration's use of warrantless wiretaps as an attack on American constitutional values).

5. Joe W. Pitts, *Democracy in Action?*, TRUTHOUT (June 12, 2005), http://archive.truthout.org/article/chip-pitts-democracy-action.

6. Joe W. Pitts, *The Legacy of 9/11: An Institutionalization of Terror at Home and Abroad*, COMMON DREAMS (Sept. 10, 2011), http://www.commondreams.org/views/2011/09/10/legacy-911-institutionalization-terror-home-and-abroad.

allegedly treasonous citizens as well as foreigners, while the scope for legitimate dissent has been diminished.[7]

Within Russia's domestic polity, however, the Russian middle class has become more active—stepping up protest activity.[8] It has thus shown itself somewhat more able and interested in mobilizing against the deeply rooted and widely acknowledged paternalistic and authoritarian traditions of Russia.[9] Meanwhile, President Putin has reinforced his regime through the illiberal means of "managed" or "Sovereign Democracy," which favors the sovereign state over self-government by an empowered people.[10] This less authentic approach to democracy had been slightly interrupted by the liberal policy of Putin's temporarily designated successor Dmitry Medvedev, but with Putin back at the helm, it now appears to have returned in full force.

This article aims to demonstrate that there has been a degradation of democracy, civil rights, and the Rule of Law from the beginning of Putin's third term. We will give particular attention to the new treason law as an illustrative exemplification of the other regressive trends also mentioned. Overall, the human rights situation in Russia not only parallels the continued global trends by governments to take restrictive steps against potential political protest and revolt following the so-called "Arab Spring" and Color Revolutions, but goes further—evidencing what appears to be President Putin's agenda to return Russia to an authoritarian state. Parts II and III address the most extreme recently passed laws infringing on

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7. Joe W. Pitts, *Cherish – and Work to Protect – Our Rights*, TRUTHOUT (Dec. 22, 2010), http://archive.truthout.org/cherish-and-work-protect-our-rights66187.

8. Michael Birnbaum, *A Year into Crackdown in Russia, Protesters Try Again*, WASH. POST (May 5, 2013), http://www.washingtonpost.com/world/europe/a-year-into-russia-crackdown-protesters-try-again/2013/05/05/b7c35870-b5a4-11e2-b94c-b684dda07add_story.html.

9. Alexey Alyushin, *The Paternalistic Tradition and Russia's Transition to Liberal Democracy*, 1 DEMOCRATIC INSTS. 1 (1992).

10. Nikolai Petrov, *From Managed Democracy to Sovereign Democracy: Putin's Regime Evolution in 2005,* PONARS 181–82 (Dec. 2005), http://www.gwu.edu/~ieresgwu/assets/docs/ponars/pm_0396.pdf (discussing electoral reform, the appointment of governors, and other moves that further expanded the power of the Kremlin through nondemocratic means).

political freedoms: the treason law, foreign-agents law, and the "Dima Yakovlev Law." They demonstrate steps taken by the government to punish political dissent and restrict contact with foreigners on personal, organizational, and national levels. In the course of describing these laws, we also note the existence and elaborate on the likely impact of other recently passed laws that violate the freedoms of speech, assembly, association, and expression in Russia.

A. International Factors

The Color Revolutions in Georgia, Ukraine, and Kyrgyzstan, along with the uprisings in Tunisia, Egypt, Libya, Yemen, and Bahrain, and NATO expansion eastward in seeming violation of earlier promises made to Russia,[11] contributed to Russian paranoia that the West supported regime change and the division of Russia into small ethnic republics.[12] Russia's authorities thus perceived a need to amend legislation to discourage foreign intervention. Foundations and financing from the United States and the West, such as financing from the Open Society Foundation, admittedly played a role in promoting democracy in the Color Revolutions and in former Soviet satellites,[13] so there is some understandable and long-standing

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11. Jeanne L. Wilson, *The Legacy of the Color Revolutions for Russian Politics and Foreign Policy*, 57 PROBLEMS OF POST-COMMUNISM, Mar.–Apr. 2010, at 21; Uwe Klussmann et al., *NATO's Eastward Expansion: Did the West Break Its Promise to Moscow?*, SPIEGEL ONLINE (Nov. 26, 2009), http://www.spiegel.de/international/world/nato-s-eastward-expansion-did-the-west-break-its-promise-to-moscow-a-663315.html.

12. *See* Wilson, *supra* note 11, at 21 (noting that "Russian leadership viewed the outbreak of the Color Revolutions . . . [as evidence of] the efforts of Western actors, foremost the United States, to initiate regime change"). State-run media in Russia similarly portrayed the Fall 2014 Hong Kong protests as a U.S. plot for regime change. *See* Paul Sonne, *Russia State Media Portray Hong Kong Protests as U.S. Plot*, WALL ST. J. (Sept. 30, 2014), http://online.wsj.com/articles/russian-state-media-portray-hong-kong-protests-as-u-s-plot-1412103539.

13. *See* Abel Polese & Donnacha O. Beachain, *The Color Revolution Virus and Authoritarian Antidotes*, 19 DEMOKRATIZATSIYA 111, 116–17 (2011) (discussing the post-Soviet influence of various sources of funding from the West); Richard Miniter, *Are George Soros' Billions Compromising U.S. Foreign Policy?*, FORBES (Sept. 9, 2011), http://www.forbes.com/sites/richardminiter/2011/09/09/should-george-soros-be-allowed-to-buy-u-s-foreign-policy (discussing how Soros and his Open Society Institutes have poured money into organizations in the former Soviet world, fueling the Rose Revolution

concern by regional autocrats that exposure to foreign ideas and influence will lead to enhanced freedoms. It is no coincidence that in repressive regimes, such as Iran and Syria, local protesters are frequently equated with foreigners, treasonous actors, or terrorists; the truth, however, is that local citizens usually display extraordinary courage to peacefully assert their universal human rights, and to seek recognition of those rights and an environment of enhanced dignity, fair participation, and justice.

For its own part, Moscow intervened to promote its policies and interests in Ossetia and Ukraine,[14] with Kremlin advisors supporting the successful 2010 campaign of Ukrainian president Viktor Yanukovych, who succeeded the Orange Revolution hero Viktor Yushchenko and adopted Putinesque policies against civil liberties.[15] Demonstrations in Kiev were scrupulously monitored by the Kremlin even before Russia's 2014 military incursion into Ukraine (replete with apparent war crimes) and the annexation of Crimea following a referendum in the majority ethnic-Russian Ukrainian province.[16] Aware of the potential for a Color Revolution in Russia itself, the Kremlin adjusted its regional foreign policy with the goal of "limiting the infiltration of Western influence in the region [the Commonwealth of Independent States], and . . . the expansion of NATO membership."[17] In March 2013, after calculating possible

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in Georgia as well as funding opposition parties).

14. Charles King, *The Five-Day War, Managing Moscow After the Georgia Crisis*, FOREIGN AFFAIRS, http://www.foreignaffairs.com/articles/64602/charles-king/the-five-day-war (last visited Nov. 18, 2014); Petrov, *supra* note 10, at 181.

15. *See* JOSHUA KURLANTZICK, DEMOCRACY IN RETREAT: THE REVOLT OF THE MIDDLE CLASS AND THE WORLDWIDE DECLINE OF REPRESENTATIVE GOVERNMENT 75 (2013) (discussing how the Ukrainian people voted for Yanukovych because they believed his ties to the Russian government would bring about the same trade-off Russia experienced when they elected Putin: a substantial boost to their national economy for a significant reduction to national freedoms).

16. *See Ukraine President Yanukovych Suspends Mayor of Kiev*, BBC NEWS (Dec. 14, 2013), http://www.bbc.co.uk/news/world-europe-25381559 (discussing Russia's reaction to the Ukrainian protests, including customs delays and a ban on Ukrainian chocolates); *Ukraine: Mounting Evidence of War Crimes and Russian Involvement*, AMNESTY INTERNATIONAL, (Sept. 7, 2014), http://www.amnesty.org/en/news/ukraine-mounting-evidence-war-crimes-and-russian-involvement-2014-09-05.

17. Wilson, *supra* note 11, at 29.

consequences to Russian stability, Russian Foreign Minister Sergei Lavrov responded to the U.S. announcement of 60 million USD in humanitarian aid to the Syrian opposition by saying that it would merely encourage further uprisings and instability among states.[18]

After twenty years of independence and two Chechen wars, Russia is still struggling with separatist movements across its regions. Several ethnic republics—mostly from the Caucasus region—are known to have independence movements.[19] Russia's recent strong reaction prohibiting a Siberian independence march and threatening to ban the British Broadcasting Corporation for its coverage of the movement is only the latest reminder of Moscow's sensitivity to its own territorial integrity.[20] Putin frequently reiterates his stance that the territorial integrity of Russia must be maintained. Unsurprisingly, in November 2013 one of the working groups in the Russian Duma heeded the President's concern and introduced a bill to penalize separatist propaganda with up to twenty years in prison.[21]

Although substantive—as opposed to merely procedural or formalistic—notions of the Rule of Law recognize that it must be imbued with both structural and rights-based protections, namely those that stem from designated constitutional rights, and checks and balances among different branches and levels of

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18. *See* Michael R. Gordon, *In American Aid to Syria, A Measure of Caution*, N.Y. TIMES, Mar. 1, 2013, at A9 (discussing the distribution of 60 million USD in aid to improve the delivery of basic sanitation and education to areas wrestled from the Syrian government's control); *Lavrov: Russia 'Not in Regime Change Game' in Syria*, RIA NOVOSTI (Mar. 8, 2013), http://rianovosti.com/world/20130308/179889429/Lavrov-Russia-Not-in-Regime-Change-Game-in-Syria.html (quoting Lavrov's comments describing how Russia does not support interference in domestic conflicts).

19. *See* Ellen Barry, *Russia's Recognition of Georgian Areas Raises Hopes of Its Own Separatists*, N.Y. TIMES, Sept. 10, 2008, at A6 (discussing the potential of more separatist movements in northwest Caucasus, but focusing in particular on the Circassians).

20. Alec Luhn, *Russia Bans Siberia's Independence March*, GUARDIAN (Aug. 5, 2014), http://www.theguardian.com/world/2014/aug/05/russia-bans-siberia-independence-march-extremism-law.

21. Steve Gutterman, *Putin Allies Submit Bill to Punish Separatism with Prison*, REUTERS (Nov. 8, 2013), http://uk.reuters.com/article/2013/11/08/uk-russia-separatism-idUKBRE9A70ZB20131108.

government,[22] the post-9/11 moves of the United States and other major Western democracies toward a less balanced system favoring executive power did not set a good example for Russia's emerging Rule of Law and democracy. Justification of intrusive surveillance, repression of free speech,[23] and other abuses such as kidnapping and torture[24] by John Yoo and other lawyers working for the George W. Bush administration gave apparent license to autocrats everywhere to use such methods against their own alleged national security threats, including designated "terrorists" and perpetuators of "treason" (even if those actors had advocated merely peaceful means of protest).

Thus, the increased reliance during the Bush Era on ironically named "free-speech zones" (where speech is cordoned off and cannot be widely heard) has now become part of the norm in major Western democracies.[25] While the Bush administration *threatened* to prosecute journalists and whistleblowers, the Obama administration has actually *done*

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22. *See* Joe W. Pitts, Keynote Address at the World Justice Project Texas Rule of Law Conference (Oct. 20, 2009), http://standdown.typepad.com/CHIP_PITTS-Keynote-WorldJusticeProject.pdf (describing a successful Rule of Law as depending on both individuals and the government being held accountable under the same laws, enforced by an independent judiciary).

23. *See* Memorandum from John C. Yoo, Deputy Assistant Attorney Gen. & Robert J. Delahunty, Special Counsel, for Alberto R. Gonzales, Counsel to the President 24 (Oct. 23, 2001), *available at* http://www.justice.gov/sites/default/files/opa/legacy/2009/03/09/memomilitaryforcecombatus10232001.pdf (discussing the threat of war as a legitimate justification to override First Amendment protections concerning free speech and press).

24. *See* THE TORTURE MEMOS: RATIONALIZING THE UNTHINKABLE 143 (David Cole ed., 2009); Scott Horton, *John Yoo's Reckoning with Justice Draws Closer*, HARPER'S BLOG (June 15, 2009, 2:37 PM), http://harpers.org/blog/2009/06/john-yoos-reckoning-with-justice-draws-closer.

25. *See* Dahlia Lithwick, *Don't Even Consider Talking About the Olympics: What's Behind the Shocking Suppression of Free Speech at U.S. Political Conventions and the London Games?*, SLATE (July 25, 2012), http://www.slate.com/articles/news_and_politics/jurisprudence/2012/07/london_olympics_protests_what_s_behind_the_shocking_suppression_of_free_speech_at_u_s_political_conventions_and_the_olympic_games_.html (discussing the widespread use of "free speech zones" placed behind fences for political conventions in the United States since the 2004 Democratic National Convention in Boston); *see also* Mary M. Cheh, *Demonstrations, Security Zones, and First Amendment Protection of Special Places*, 8 UDC/DCSL L. REV. 53, 53 (2004) (discussing the widespread deployment of "free-speech zones" located great distances from the objects of protests).

so—to an extent unprecedented in the nation's history. As the *New York Times* Public Editor puts it: "[W]hile vowing transparency and accountability, [the Obama administration] has actually become ever more secretive and punitive: stamping 'classified' on everything in sight, pursuing whistle-blowers as never before, and prosecuting journalists for publishing leaked information."[26] Under the Obama administration, the government has more frequently invoked national security exceptions to maintain secrecy in response to Freedom of Information Act requests.[27]

These actions by the United States government send exactly the wrong signal, encouraging further repression by autocrats instead of promoting human rights and civil liberties. Russia's recent crackdowns on domestic opposition and protesters, and its moves against transparency and due process, are made much easier in light of such strongly negative U.S. examples.

In 2011, for instance, the Russian authorities collected personal data about everyone who supported Alexei Navalny, a political activist and blogger, then and now an opposition leader, by tracking those who donated money to him through the Yandex money transfer engine as part of an anti-corruption campaign.[28] In 2013, the website of the independent newspaper *Novaya Gazeta* was subjected to a distributed-denial-of-service attack[29] when its journalists started to collect signatures for a petition[30] on dissolution of the Russian State Duma.[31] Social

26. Margaret Sullivan, *Keeping Secrets*, N.Y. TIMES, Feb. 10, 2013, at SR12.

27. Jack Gillum & Ted Bridis, *FOIA Requests Being Denied More Due to Security Reasons than Any Time Since Obama Took Office*, HUFFINGTON POST (May 11, 2013), http://www.huffingtonpost.com/2013/03/11/foia-request_n_2851980.html.

28. Ekaterina Drobinina, *Russian Search-Engine Yandex Passed Information to FSB*, BBC NEWS (May 3, 2011), http://www.bbc.co.uk/news/business-13274443.

29. *Hacker Attacks Hit Russian Media Outlets*, RIA NOVOSTI (May 9, 2013), http://en.ria.ru/russia/20130509/181052156.html.

30. *See Obshchestvennye Iniciativy [Civil Initiatives]*, NOVAYA GAZETA (Mar. 5, 2013), http://www.novayagazeta.ru/news/63298.html (showing that in 2012, Vladimir Putin ordered the government to consider, as a legislative initiative, every petition signed by more than 100,000 Russian citizens); *see also Petition Webpage*, NOVAYA GAZETA (Dec. 24, 2012), http://www.novayagazeta.ru/inquiries/12.html (showing a petition, started at the end of 2012, on State Duma dissolution initiated by *Novaya Gazeta*, which is now signed by more than 131,000 people).

media, including VKontakte, the Russian analogue of Facebook, is also under significant security service surveillance to prevent calls for demonstrations through online services, which were popular mobilization channels in December 2011.[32]

The 2013 case regarding Edward Snowden's U.S. state secrets leak and the resulting EU-U.S. crisis on mass surveillance[33] were followed by a new amendment to Russian law. A month after Vladimir Putin defended the U.S.'s counter-terrorism public surveillance, though emphasizing the need to secure a special legal warrant,[34] the Russian President signed a bill that expands tremendously the prosecution agencies' power to freely access citizens' confidential data.[35] Such data were until recently shielded as private by other federal laws[36] and the Russian Constitution.[37] While pursuing

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31. *See Opposition Daily Close to Initiating State Duma Dissolution*, RUSSIA TODAY (Jan. 9, 2013), http://rt.com/politics/opposition-initiating-duma-dissolution-626 (arguing that this petition fell on deaf ears of the government, like the petition against the "Dima Yakovlev Law," discussed below).

32. *Vkontakte Social Network Targeted by Security Services*, REPORTERS WITHOUT BORDERS (Dec. 9, 2011), http://en.rsf.org/russie-vkontakte-social-network-targeted-06-12-2011,41519.html.

33. Kate Connolly et al., *U.S. and Germany to Hold Talks Over European NSA Surveillance Concerns*, GUARDIAN (July 4, 2013), http://www.theguardian.com/world/2013/jul/04/usa-germany-obama-merkel-talks-nsa; Philip Oltermann, *Merkel Urged to Press Obama on NSA Scandal Ahead of Washington Talks*, GUARDIAN (Apr. 27, 2014), http://www.theguardian.com/world/2014/apr/27/merkel-obama-nsa-scandal-washington-talks.

34. Max Fisher, *Vladimir Putin Defends the U.S. on Spying Programs, Drones and Occupy Wall Street*, WASH. POST (June 13, 2013), http://www.washingtonpost.com/blogs/worldviews/wp/2013/06/13/vladimir-putin-defends-the-u-s-on-spying-programs-drones-and-occupy-wall-street.

35. *See* Marina Savintseva & Veronika Burachevskaya, *Analysis of Legislative Changes on Public Prosecution Bodies' Powers for Personal Data Processing and Access to Restricted Information*, FREEDOM OF INFO. FOUND. (Aug. 2, 2013), http://svobodainfo.org/en/node/2765 (allowing public prosecution bodies to collect and process personal data).

36. Federal'nyj Zakon RF o Vnesenii Izmenenii v Otdelne Zakonodatelne Acty Rossisskoi Federatsii v Svyasi s Utochneniem Polnomochii Organiv Prokuraturyi Rossiiskoi Federatsii po Voprosam Obrabotki Personalnikh Dannikh [Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Specification of the Powers of the Procuracy of the Russian Federation Concerning the Processing of Personal Data], ROSSISSKAIA GAZETA [ROS. GAZ.], July 26, 2013 [hereinafter Federal Law 205]; Savintseva & Burachevskaya, *supra* note 35.

prosecution, the agencies can access financial, medical, and other data on a Russian citizen without any special warrant or explanation to a judge regarding the surveillance purpose.[38]

Notwithstanding increased concerns about the state of human rights in Russia, the ruling Russian elite including Putin himself views U.S. expressions of those concerns as hypocritical and unjustified interference in Russian sovereignty. This was certainly the elite reaction, in the wake of the tragic and mysterious death of lawyer Sergei Magnitsky while in police custody,[39] to the U.S. Congress passing the Sergei Magnitsky Rule of Law Accountability Act of 2012,[40] the substance of which was also passed as a non-binding resolution by the EU in late 2012.[41] This law sanctions Russian officials implicated in Magnitsky's death or responsible for serious human rights violations in Russia by limiting visas for entry into the United States and imposing various asset sanctions.[42] President Putin argued that the law poisons the U.S.-Russia relationship,[43] and ordered matching the U.S. list of 18 banned Russians

37. *See* KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 23; *Russia Adopts Privacy Protection Legislation*, FROST BROWN TODD (Aug. 8, 2006), http://www.frostbrowntodd.com/resources-988.html (stating that the Russian Constitution recognizes rights of privacy, data protection, and communication).

38. *See generally* Savintseva & Burachevskaya, *supra* note 35 (discussing Federal Law 205's purpose of allowing timely access to a variety of personal information). *See also* Andrei Soldatov, *Russia's Spying Craze*, MOSCOW TIMES (Oct. 31, 2013), http://www.themoscowtimes.com/opinion/article/russias-spying-craze/488773.html (clarifying the type and detail of access the Russian government and agencies have to their own citizens' personal information).

39. *See* David M. Herszenhorn, *Dead Lawyer, a Kremlin Critic, Is Found Guilty of Tax Evasion*, N.Y. TIMES, July 11, 2013, at A4 (discussing the death of Sergei Magnitsky and the Kremlin's characterization of international criticism as merely "unwanted meddling").

40. Russia and Moldova Jackson-Vanick and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112–208, 126 Stat. 1496 [hereinafter Sergei Magnitsky Act].

41. Richard Solash, *Push for Magnitsky Sanctions Intensifies in Europe*, RADIO FREE EUROPE/RADIO LIBERTY (Mar. 11, 2013), http://www.rferl.org/content/magnitsky-russia-europe-sanctions/24925139.html.

42. Sergei Magnitsky Act, *supra* note 40, §§ 5(a)–(b), 6(a).

43. Alexei Anishchuk & Timothy Heritage, *Putin Backs Tit-For-Tat Response to U.S. Rights Law*, REUTERS (Dec. 20, 2012), http://uk.reuters.com/article/2012/12/20/uk-russia-putin-usa-idUKBRE8BJ0AQ20121220.

allegedly implicated in human rights abuses with Russia's own list banning 18 Americans (including John Yoo and former counsel to Vice President Dick Cheney, David Addington) implicated in U.S. human rights abuses, such as those at Guantanamo.[44] A law preventing U.S. couples from adopting Russian children—the "Dima Yakovlev Law," discussed in more detail below—was another direct response.[45] The recent Russo-Ukrainian crisis also boiled over between the United States and European Union on the one hand and Russia on the other hand, as each side sanctioned the other.[46]

B. Domestic Factors

Trying to recover from the world economic crisis, which began in 2007 to 2008, Moscow failed to propose any replacement to its dead-end, oil-centered economy. Both middle- and lower-income groups in Russia lost their investments and, therewith, significant confidence in Putin's administration.[47] Indeed, many middle-class entrepreneurs have realized that the Kremlin's repressive policy impedes not only political and legal development, but also economic prosperity and progress, as anti-NGO laws and other restrictive policies can impede anti-corruption activities and transparency awareness campaigns.[48] The lower-income group, in turn, has witnessed the government's inability to fulfill its part of the social contract

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44. Steve Gutterman, *Russia Bars 18 Americans in Retaliation for Magnitsky List*, REUTERS (Apr. 13, 2013), http://www.reuters.com/article/2013/04/13/us-russia-usa-rights-idUSBRE93B0PU20130413.

45. Herszenhorn, *supra* note 39.

46. *EU Sanctions against Russia over Ukraine Crisis*, EUROPEAN UNION NEWSROOM, http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm (last visited Nov. 18, 2014); *Russia Reacts to EU Sanctions with further Western Trade Embargos*, GUARDIAN (Sept. 11, 2014), http://www.theguardian.com/world/2014/sep/11/russia-eu-sanctions-west-trade-embargos-cars-ukraine.

47. THE CENTER FOR STRATEGIC RESEARCH, RUSSIAN STATE AND SOCIETY IN POLITICAL CRISIS 44–47 (Brian Anderson et al. eds., Dmitry Belanovsky trans., 2012).

48. *See* ORG. FOR ECON. CO-OPERATION & DEV. WORKING GROUP ON BRIBERY, PHASE 2 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE RUSSIAN FEDERATION ¶¶ 23–24 (Oct. 2013), http://www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf (suggesting that the burden that the 2012 legislation places on foreign NGOs has deterred these organizations from investing in the Russian economy).

that previously had kept people away from politics in exchange for welfare payments.[49] In this regard, the Russian government's previous dual strategy of repressing civil liberties while simultaneously "bribing" the populace with direct payments—a strategy which has been used so successfully in the wake of the "Arab Spring" by oil-rich nations such as Saudi Arabia and Algeria—became less tenable as Russia continued to experience stagnation and economic difficulties. Consequently, these major social groups began appealing more directly, and not merely through the often co-opted "official" or "systemic" opposition, for political and social reforms focusing on the Rule of Law, free-markets, and effective anti-corruption measures.[50] This came to a head in the December 2011 protests in Moscow involving more than one hundred thousand people who objected to the Duma elections that month, considering them to be illegitimate and possibly fraudulent.[51] The 2014 decline in oil prices will only continue these economic and political pressures in Russia.

Anticipating possible threats to his power, President Putin and his administrative chief, Vladimir Surkov, had earlier introduced the concept of so-called "Sovereign Democracy."[52] Centralized in Putin's office,[53] "Sovereign Democracy"

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49. *See* Nikolay Petrov, *Is Russian Society Waking Up?*, 213 PONARS EURASIA POLICY MEMO 3 (2012) (discussing historically how a large segment of the Russian population has traded their political voice for economic benefits that raise their standard of living).

50. *See* Julia Loffe, *The Loneliness of Vladimir Putin*, NEW REPUBLIC (Feb. 2, 2014), http://www.newrepublic.com/article/116421/vladimir-putins-russia-has-crushed-dissent-stillfalling-apart (discussing the online formation of social and political groups that were aimed at fighting corruption, and demanding economic and political reforms within the Russian government); *see also* Elena Milashina, *Russia Intensifies Restrictions on Blogs, Social Media*, COMM. TO PROTECT JOURNALISTS (July 3, 2014), http://cpj.org/blog/2014/07/russia-intensifies-restrictions-on-blogs-social-me.php (discussing the new internet restrictions that were put in place to combat criticism of the government and judiciary).

51. Vera Kichanova, *Russian Repression Continues After the Olympics*, FORBES (Feb. 27, 2014), http://www.forbes.com/sites/realspin/2014/02/27/russian-repression-continues-after-the-olympics; Gregory L. White & Rob Barry, *Russia's Dubious Vote*, WALL ST. J. (Dec. 28, 2011), http://online.wsj.com/news/articles/SB10001424052970203391104577124540544822220.

52. *See* Petrov, *supra* note 10, at 181 (examining Putin's acquisition of power to the Russian government under the guise of Sovereign Democracy in 2005).

53. *See id.* at 182 (highlighting that the first basic element of any managed

emphasizes two points: first, it privileges the sovereign state over authentic democracy by the people in the running of the state.[54] Second, it aligns itself with autocratic Russian traditions of ruling the country rooted in the Soviet and tsarist regimes.[55] It presupposes strict supervision over national and regional elections (as reflected in Putin's earlier systematic shift from elected to appointed regional governors),[56] control of civil society, and nurturing of youth loyal to the Kremlin.[57]

Putin's approach seems calculated to also stoke the fires of anti-American and anti-Western xenophobia to shore up his model of "Sovereign Democracy," as demonstrated by the "Dima Yakovlev Law" against adoption of Russian children by foreigners, and the frequent official outrage against the supposed but often exaggerated ill-treatment of Russian children abroad.[58] Recently, the ruling "United Russia" Party proposed, and Vladimir Putin signed, a bill that forbids people from countries accepting same-sex marriages to adopt Russian orphans.[59] Emphasizing Western states' tolerance for the LGBT

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democracy system—in this case Putin's "sovereign democracy"—is the strengthening of the presidential office).

54. *See id.* (discussing how the features of a managed democracy system allow the government to control elections to the extent they just become a tool of the ruling elite to legitimize their actions).

55. *See id.* at 182–83 (forecasting that the Russian government will continue to shift toward allowing a wide consolidation of power in the office of the President as was experienced during the peak of the Soviet Union).

56. *See* Peter Baker, *Putin Moves to Centralized Authority*, WASH. POST, Sept. 14, 2004, at A1 (discussing how Putin opted for the appointment of governors and independent lawmakers, rather than elections, as a move to bolster his power).

57. *See* Petrov, *supra* note 10, at 183–84 (discussing the outreach programs funded by the Russian government primarily for promoting patriotism and religious Orthodox ideas among the Russian youth as merely another mechanism to control civil society).

58. *See* David M. Herszenhorn, *Russia Backs Off Claim of Murder in Death of Adopted Boy in Texas*, N.Y. TIMES, Feb. 22, 2013, at A10; *"Shame on the Scum!": 20,000 Furious Russians March in Protest of Adoption Ban for American Parents*, DAILY MAIL (Jan. 13, 2013), http://www.dailymail.co.uk/news/article-2261730/20-000-furious-Russians-march-protest-adoption-ban-American-parents.html (discussing the opinion of the protesters that the United States adoption ban was merely an attempt by the government to win favor with the anti-American sentiments that have become prevalent among a segment of the Russian population).

59. *Russia's Putin Signs Law Limiting Adoption by Gays*, USA TODAY (July 3, 2013), http://www.usatoday.com/story/news/world/2013/07/03/russia-putin-gay-adoption/

community, the lawmakers even discussed forbidding minors from travelling in such countries.[60] The notorious anti-gay law, which was depicted by the authorities and the Russian Orthodox Church leaders as a tool to protect the people from moral degradation emanating from the West, has already received a furious reaction from the international community and will probably harm not only the economic,[61] but also the political[62] position Russia holds in the world.

Implementing this agenda upon his return to power as President in May 2012, Putin abolished the changes that Medvedev had undertaken to depoliticize national youth organizations, including the well-known "*Nashi* [Ours]," and to liberalize legislation regarding NGOs.[63] Then, to establish a regime more akin to the Soviet period—from which he sprang, as a former KGB officer—Putin promoted anti-treason legislation

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60. *See* Cai Wilkinson, *Russia's Anti-Gay Laws: The Politics and Consequences of a Moral Panic*, DISORDER OF THINGS (June 23, 2013), http://thedisorderofthings.com/2013/06/23/russias-anti-gay-laws-the-politics-and-consequences-of-a-moral-panic (describing the West's corruptive influence on minors in connection with the European liberal values tolerating LGBT "propaganda"); Vladimir Ryzhkov, *Controlling Russians Through Travel Bans*, MOSCOW TIMES (May 26, 2014), http://www.themoscowtimes.com/opinion/article/controlling-russians-through-travel-bans/500914.html (explaining how travel bans may be used to keep youth in Russia in order to protect them from the corrupting influence of the West).

61. *See Russia's Anti-Gay Law Will Impact Foreign Tourists, Possible Olympic Athletes: Report*, HUFFINGTON POST (July 11, 2013), http://www.huffingtonpost.com/2013/07/11/russia-gay-law-tourists-_n_3581217.html (examining the negative impact Russia's stance against the LGBT community could have on tourism, in particular the attendance at the 2014 Winter Olympics in Sochi); Carol J. Williams, *Stoli Boycott Targets Russian Anti-Gay Law — But Hits Latvian Vodka*, L.A. TIMES, (Aug. 2, 2013), http://articles.latimes.com/2013/aug/02/world/la-fg-wn-russia-stoli-vodka-boycott-latvia-20130802.

62. *See* Wilkinson, *supra* note 60 (examining the European Parliament's resolution decrying Russia's anti-gay legislation).

63. *See Russian Parliament Votes to Recriminalize Defamation*, COMM. TO PROTECT JOURNALISTS (July 11, 2012), http://www.cpj.org/2012/07/russian-parliament-votes-to-recriminalize-defamati.php (discussing a new law that will label NGOs receiving international funding as foreign agents); *see also* Tatiana Stanovaya, *The Fate of the Nashi Movement: Where Will the Kremlin's Youth Go?*, INST. OF MODERN RUSSIA (Mar. 26, 2013), http://imrussia.org/en/politics/420-the-fate-of-the-nashi-movement-where-will-the-kremlins-youth-go (offering a historical view of the Nashi organization, and how the Russian government is trying to revive this organization).

as well as several other bills that will have a chilling effect both on civil society institutions and on foreign activity within Russia's territory and in relation to its affairs.[64]

The Ukrainian crisis of 2013–2014 again boosted Putin's standing in the polls.[65] Again, nationwide propaganda and an appeal to the great and powerful past of the Soviet empire helped the Kremlin accumulate unprecedented support for military intervention in a foreign territory. Characterizations of a hostile and depraved West played a major role in state polemics.[66] Nevertheless, major sociologists predict that nationwide euphoria after "recovering" Crimea will be replaced by a new wave of national protests with the currency going down[67] and prices rising in the future.[68]

II. DEVELOPMENT OF RUSSIAN TREASON LAW

Treason in Russia has gone through several revisions during its centuries-long history. Depending on political order, internal problems, or international context, Russian legislation changed the interpretation of treason from a crime identified with attacks or insults against the Tsar's person, to the support of capitalism, to the dissemination of scientific findings to Western

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64. *See* Ellen Barry, *Russia Moves to Redefine Treason*, N.Y. TIMES, Sept. 21, 2012, at A7 (discussing how Russia substantially broadened the legal definition of high treason); *see also* Gutterman, *supra* note 21 (discussing a new Russian law which would make spreading separatist views punishable by imprisonment); David M. Herszenhorn, *New Russian Law Assesses Heavy Fines on Protestors*, N.Y. TIMES, June 8, 2012, at A5 (discussing a new Russian law that will impose heavy fines on people who organize or take part in unsanctioned demonstrations).

65. Michael Sokolov, *Lev Gudkov: Ukraina Zaslonila Vse [Lev Gudkov: (Policy in) Ukraine Overruled Everything]*, RADIO SVOBODA (Oct. 23, 2014), http://www.svoboda.org/content/transcript/26652268.html.

66. Morozov V. E., *Svyato Mesto Pusto ne Byvaet [The Holy Place is Never Empty]*, ROSSIYA V GLOBALNOJ POLITIKE (July 22, 2014), http://www.globalaffairs.ru/number/Svyato-mesto-pusto-ne-byvaet-16766.

67. A prediction that, at time of this writing, seems to have come true. *See, e.g.*, Ye Xie & Fion Li, *Putin Reserve Rubles Vanish in Crimea Grab*, BLOOMBERG NEWS (Oct. 1, 2014), http://www.bloomberg.com/news/2014-09-30/putin-reserve-rubles-vanish-in-crimea-as-yuan-holds-gain.html

68. *Lobkov Vechernee Shou [Lobkov Evening Show]*, TV DOZHD (Oct. 31, 2014), http://tvrain.ru/articles/gleb_pavlovskij_idet_usilenie_jadovitoj_massovoj_aktivnosti_pochemu_grjadet_novaja_volna_protestov-377396.

countries. In 2012, the treason law again underwent several revisions that might drastically aggravate conditions for the development of Russian civil society, including by potentially criminalizing contact with foreign citizens and organizations.[69]

A. Treason Laws in the Russian Empire

The first Russia law code describing treasonous crimes was the 1649 *Sobornoe Ulozhenie* by Tsar Alexis Mikhailovich.[70] *Ulozhenie* recognized the Tsar's health and life as strategic prerequisites for the state's stability. Although malicious intent against the Tsar's life was not directly called treason, the foremost statute in the Code, "On State Honor and the Health of the Tsar," was dedicated to the security of the ruler.[71] Article 1 of the Code decreed capital punishment for those who inflicted harm or conspired against the Tsar.[72] Similar to English law statutes on monarchy,[73] the Code also ordered the death penalty for anyone who harmed or conspired to harm members of the royal court.[74]

State territories were also a focus of the law. Being a Tsardom of a dozen fiefdoms, Russian statehood relied on loyalty and allegiance of provinces. Consequently, attempts to seize

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69. Barry, *supra* note 64.

70. The first Russian code of law was *Russkaya Pravda*, written by Yaroslav in 1016. Stanley R. Boots, Note, *The Personal Contacts Alternative—A Comparison of Japanese and Russian Legal Cultures in the Russian Far East Timber Trade*, 9 INT'L LEGAL PERSP. 257, 284 (1997). The second formal code of law was *Sudebnik*, written by Ivan III in 1497. H.W. Dewey, *1497 The Sudebnik*, BUCKNELL UNIV., http://www.departments.bucknell.edu/russian/const/sudebnik.html (last visited Nov. 18, 2014). Both documents focused on communal relations, trade organization, and slavery regulation, saying nothing about treason crimes. *See generally id.* (showing that the text of the *Sudebnik* contains no mention of treason). *See also* NANCY KOLLMANN, CRIME AND PUNISHMENT IN EARLY MODERN RUSSIA 29 (2012) (identifying the 1649 Code as the first time a sphere of crimes against the state was drafted).

71. SOBORNOYE ULOZHENIE (1649) (Code of Law) ch.2 [hereinafter Code of 1649].

72. *Id.* art. 1.

73. *See* Kristin E. Eichensehr, *Treason in the Age of Terrorism: An Explanation and Evaluation of Treason's Return in Democratic States*, 42 VAND. J. TRANSNAT'L L. 1443, 1446–48 (2009) (examining the Treason Act of England that was drafted in 1351, which calls for capital punishment for a variety of reasons, including perceived threats to the King's life).

74. Code of 1649, *supra* note 71, art. 21.

power over Moscow or its fiefdom, the intention to hand power over any Russian town to an enemy, or a plan to burn a town with treasonous intent were equivalent to treason and subject to the death penalty.[75] In other words, treason legislation included the intent to levy war or assist an enemy.

Until 1912, any malicious intent and criminal act against the life, health or honor of the Tsar, any intent "to depose Him from the throne, to deprive Him of liberty or sovereign power, or to limit his rights or impose any violence on Him" was considered treason punishable by death.[76] Two hundred years after Alexis Mikhailovich's *Ulozhenie*, Tsar Nicolas I signed the first Russian Criminal Code, "[T]he 1845 Code on Criminal and Correctional Punishments."[77] The Code's Chapter 2 "On State Crimes" commanded capital punishment, exile to Siberia, or penal servitude for anyone who organized, instigated, or assisted a rebellion or plot against the Tsar.[78] Moreover, the Code formalized the state-of-war criteria, first introduced in the 1649 Code, into the treason statute.[79] Capital punishment or exile was ordered for assistance to the enemy during a war or dissemination of state secrets, involuntarily or with malicious aforethought, to foreign states.[80]

Given these points, the treason law in early Russia was mostly similar to legislation in other countries that punished attacks against the ruler and help to invaders.

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75. *Id.* arts. 2 & 4.

76. ULOZHENIE O NAKAZANIYAKH UGOLOVNIKH I ISPRABITELNIKH (1885) [Code of Crimes and Corrections] [hereinafter 1885 Penal Code].

77. *See Basic Regulations on Legal Procedure Reformation in Russia Approved*, YELTSIN PRESIDENTIAL LIBRARY, http://www.prlib.ru/en-us/history/pages/item.aspx?itemid=688 (last visited Nov. 18, 2014) (stating that Emperor Nicholas I approved the Code on Criminal and Correctional Punishments in 1845).

78. ULOZHENIE O NAKAZANIYAKH UGOLOVNIKH I ISPRABITELNIKH § 1 art. 19, § 3 art. 271 (1845) [Code of Crimes and Corrections] [hereinafter 1845 Penal Code].

79. *Compare* Code of 1649, *supra* note 71, art. 2 (proscribing treason along the lines of an aiding the enemy theory), *with* 1845 Penal Code, *supra* note 78, § 1 art. 19, § 3 art. 275 (defining treason formally as conspiring with the enemy).

80. 1845 Penal Code, *supra* note 78, § 1 art. 19, § 3 art. 275.

B. Treason Laws in the USSR

After the Bolsheviks came to power in 1917, Communist ideology immediately left its mark on treason legislation, which focused on the counter-revolutionary struggle and ran to the extremes of the Red Terror.[81]

After the Russian Empire was dismantled, the honor and safety of the Tsar gave way to the honor, preservation, and stability of the "Bolshevik's power brought by the honorable victory of the workers and peasants against bourgeoisie."[82] Following the secret service's zeal to eradicate all remnants of imperialism and dissident thought, Soviet officials expanded treasonous crimes to acts against the Revolution or support to "international capitalism."[83] The first Penal Code of the Russian Soviet Federative Socialist Republic (RSFSR), written in 1922, defined treason broadly:

> Article 57. Efforts to overthrow the power of the Soviets, and assistance to the part of the international bourgeoisie, that does not accept the equality of the communist principles of property and seeks to overthrow it by intervention, blockade, espionage, financing of mass media, or other means.
>
> Article 59. Contacts with foreign governments or citizens in order to instigate a war with the RSFSR.
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> Article 66. Participation in espionage of any kind,

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81. Molly Warner Lien, *Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion*, 30 STAN. J. INT'L L. 41, 65 (1994) (describing the effect of communist ideology in Russia after the Bolsheviks came to power in 1917); Sharon Harzenski, *Terrorism, A History: Stage One*, 12 J. TRANSNAT'L L. & POL'Y 137, 164–68 (2003) (describing the coming to power of the Bolsheviks and Communism as it brought about the torturous and extreme Red Terror). The *Red Terror* was the period of harsh repression, murder, and torture carried out by the Bolshevik government upon coming to power, and periodically by the Soviet Regime thereafter. *Id.* at 163–64.

82. *See generally* Lien, *supra* note 81, at 61–67 (explaining how the Bolsheviks took rule from the Tsars and established their own state, fueled partially by peasant uprisings before the revolution); David F. Forte, *Western Law and Communist Dictatorship*, 32 Emory L.J. 136, 166–68 (1983) (indicating that the Bolshevik abolition of the Tsardom signified their rejection of the bourgeoisie).

83. *See generally* UGOLOVNYI KODEKS RSFSR (1922) [UK RSFSR] [Criminal Code RSFSR] art. 57 [hereinafter 1922 Criminal Code] (defining crimes against the state as including any actions that help the "international bourgeoisie").

> including collection and dissemination of a state secret to a foreign government or counter-revolutionary organization with counter-revolutionary intentions or for economic consideration.
>
> Article 70. Propaganda and agitation for assistance to the international bourgeoisie.
>
> Article 73. Insinuation and dissemination of false rumors or unverified data that may instigate panic, or cause distrust or defamation of the Soviet government.[84]

The death penalty with total forfeiture of estate, or one to five years of solitary confinement with appropriation of property, was the formal punishment for violating any of the abovementioned Articles 57, 59, and 66.[85]

On January 1, 1927, a new Criminal Code introduced amendments to the henceforth-notorious Article 58 that previously covered "organization of military coup . . . in order to seize power in the Soviets."[86] The Code's authors wrote a detailed description of high treason:

> Article 58.1 a. Treason, id est, acts in prejudice of military power of the USSR, its independence and territorial integrity, including espionage, disclosure of a military or state secret, adhering to the enemy, and escape abroad, is liable to death by firing squad and appropriation of property or ten years imprisonment (in case of extenuation).
>
> Article 58.1 c. All emancipated relatives of the military man who escaped abroad are penalized with five to ten year imprisonment with appropriation of property, in the case that those relatives knew about his escape plans. Other members of the family are to be exiled for five years in remote regions of Siberia.[87]

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84. *Id.* arts. 57, 59, 66, 70, 73.

85. *Id.* arts. 32, 57, 58, 59, 66, 70, 73.

86. *Id.* art. 58; *see* SOVIET CRIMINAL LAW AND PROCEDURE 18 (Harold J. Berman & James W. Spindler trans., 2d ed. 1972) (stating that the 1926 Criminal Code came into effect on January 1, 1927).

87. *See* SOVIET CRIMINAL LAW AND PROCEDURE, *supra* note 86, at 29 (explaining that, for the first time the term *izmena rodine*, meaning "betrayal of the Motherland" and generally translated as "treason," was introduced into Soviet law in June 1934, and

After the 1932–1933 collectivization famine resulting in a death toll of an estimated 5.7 million,[88] the Red Terror further instigated mass flight of Soviet citizens abroad. Concerned with a demographic crisis, the USSR officials proposed and passed a law of June 8, 1934 charging attempts to escape abroad with capital punishment.[89]

The notorious Article 58 classified its convicts as "enemy of the people." While such stigmatization helped governments in other countries reinforce a sense of social identity and create a negative public perception of "out-group" traitors,[90] the alleged traitor's designation in the Soviet Union during Stalin's repression went beyond this meaning. It was not due to the stigma of genuine traitors that society avoided contacts with "enemies of the people." People were mainly afraid of being caught up in dragnets and arrested for their contact with an "enemy."[91] The perceived omnipotence of the security services and an unconstrained application of the treason statute hardened the Soviet people to such repression and overbroad treason adjudications.[92]

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was incorporated into Article 58 of the RSFSR Criminal Code on July 20, 1934); *see also* Meelis Maripuu & Argo Kuusik, *Political Arrests and Court Cases from August 1940 to September 1941*, ESTONIA 1940–1945: REPORTS OF THE ESTONIAN INT'L COMM'N FOR THE INVESTIGATION OF CRIMES AGAINST HUMANITY 319, 329 (Thomas Hiio et al. eds., 2006) (listing the 1934 versions of Article 58-1a and 58-1v of the 1926 Code).

88. Michael Ellman, *The Role of Leadership Perceptions and of Intent in the Soviet Famine of 1931–1934*, 57 EUR.-ASIA STUD. 823, 828 (2005).

89. SOVIET CRIMINAL LAW AND PROCEDURE, *supra* note 86, at 29.

90. Eichensehr, *supra* note 73, at 1489 ("There are several possible positive effects of prosecuting treason. First, treason's emphasis on the duty of allegiance owed by the accused traitor can reinforce social identity . . . The prosecution also can reinforce the identity indirectly by highlighting the enemy's identity and showing that the state opposes the enemy. The identification of an enemy allows a state's leaders to take advantage of the in-group bias that results from the perception of an out-group 'other.'").

91. *See id.* (describing how governmental prosecution of treason reinforces an "in-group'[s]" identity as separate from that of the enemy, strengthening the group's allegiance to its country, and serving as a reminder of the dangers of the enemy and its actions).

92. *See* Anna Kruglyak, *Massovyi Stalinskii Terror [Mass Stalinist Terror]*, UNIVERSITET G. BRATSK (Oct. 27, 2000), http://www.memobratsk.narod.ru/pub1.htm (describing the omnipotence of Stalin and his security service, who brought about repression by using the broad, vague language of Article 58 of the 1926 Criminal Code to adjudicate and convict an increasing number of people); *see also* Maripuu & Kuusik,

Stalin did not suspend his search for "infidels" during World War II. Six million Soviet soldiers and civilians who had escaped from German captivity were charged with treason upon their return home and sent to concentration camps.[93]

After Stalin's death in 1953, the Ministers of the Interior and Justice and the Attorney General wrote a letter to the new First Secretary, Nikita Khrushchev, reporting that about four million people were convicted of treason or counter-revolutionary activity during the Red Terror of 1937–1939, persecution of dissidents and supporters of capitalism.[94] Of those charged with treason during that period, 642,980 people were sentenced to death.[95] The ministers claimed many people were sentenced "without sufficient evidence of their guilt . . . legal investigations were held in suspect's and witnesses' absence."[96] Unfortunately, no law revisions were made, and the 1960 Criminal Code appeared without any amendments to the treason investigation or punishment process.[97] In fact, penalties for treasonous crimes became more severe. According to Article 64, escape or refusal to return from abroad was punished with ten to fifteen years' imprisonment or the death penalty plus the appropriation of a violator's property.[98]

The Cuban Missile Crisis and overall Cold War tensions likely played a part in motivating such statutes, as espionage, covered in Article 65, became subject to the death penalty

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supra note 87, at 329 (showing that treason is a crime included in Article 58 of the 1926 Criminal Code).

93. *See* Kruglyak, *supra* note 92 (discussing special Soviet prisons for Soviet citizens liberated from Nazi concentration camps).

94. Pis′mo 1-mu Sekretaryu CK KPSS N. S. Khrushchevu [Open Letter to the 1st Secretary of the USSR CP S. Khrushchev], (Feb. 1, 1954), http://www.alexanderyakovlev.org/fond/issues-doc/1009140 [hereinafter Letter to the 1st Secretary].

95. *Id.*

96. *See id.* (discussing cases of "ill-founded convictions," which were cases held in the absence of the accused and the witnesses).

97. *See* Anatoyli V. Naumov, *The New Russian Criminal Code as a Reflection of Ongoing Reforms*, 8 CRIM. L. F. 191, 192–214 (1997) (discussing the enactment of the Russian Code of 1960 as "conform[ing] precisely" to previously held fundamental principles, including citing to specific provisions restricting the freedoms of Soviet citizens).

98. Ugolovnyi Kodeks RSFSR (1960) [UK RSFSR] [RSFSR Criminal Code] art. 64 (Russ.) [hereinafter 1960 Criminal Code].

or seven to fifteen years' imprisonment plus appropriation of property.[99]

We can see how the USSR started to divert in its legal wording on treason from a conventional "state versus enemy" or "aid and comfort for the enemy" theory into the realm of "state versus citizens." While treason statutes in other countries, including the U.S. and the UK, referred to the "existence of war, or at least a military conflict of the same scope and intensity,"[100] Soviet law applied treason accusations to peacetime activities.[101] Instead of elaborating on military enemies, legal language abounded with blurry definitions of "imperialists versus capitalists." That finally resulted in the general demonization of foreigners. A contact with a foreign person or operation with foreign currency became illegal. Penal sanctions were handed out to those who had or tried to obtain foreign money: from 1959 to 1974 approximately two thousand people were sentenced for foreign exchange transactions.[102] From 1967 to 1974 more than eleven thousand citizens were imprisoned for "having suspicious connections with foreigners or nurturing hostile intentions."[103] During this period almost one in every hundred people was investigated for state crimes.[104]

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99. *Id.* art. 65.

100. *See* Kristen Eichensehr, *Treason's Return*, 116 YALE L.J. 229, 229–30 (2007) ("Treason, as defined by the Constitution and by federal statute, means either 'levying war' against the United States or adhering to [its] enemies, giving them aid and comfort with the intent to betray"); *see also* SELECT STATUTES CASES AND DOCUMENTS TO ILLUSTRATE ENGLISH CONSTITUTIONAL HISTORY, 1660–1832, at 275 (C. Grant Robertson ed., 3d ed. 1919) (citing the English Treason Act of 1795, which defined treason as, among other things, the levying of war against the crown or stirring foreigners to invade the Majesty's realms); TREASON ACT 1795 (REPEALED 30.9.1998), *available at* http://www.legislation.gov.uk/apgb/Geo3/36/7 (announcing the repeal of the 1795 Treason Act).

101. *See* 1960 Criminal Code, *supra* note 98, art. 64 (listing as treason a series of intentional acts committed by a citizen of the USSR that are detrimental to the sovereignty, territorial immunity, or defense capabilities of the USSR, regardless of whether or not they were committed during war).

102. MOSCOW HELSINKI GROUP, VLAST' I DISSIDENTY: IZ DOKUMENTOV KGB I CK KPSS [STATE AND DISSIDENTS] 62 (2006) (on file with the *Houston Journal of International Law*).

103. *Id.*

104. *See* Memorial, Zhertvy Politicheskogo Terrora v. USSR [Victims of Political Mass Terror in the USSR], http://lists.memo.ru (stating that from 1921 to 1985, more than five million people were arrested on political charges).

Thus, treason legislation in the USSR went through several pivotal revisions that led to the indictment and imprisonment of many millions of people. Blurry definitions and countrywide "witch-hunts" for supporters of capitalism gave the secret service agencies carte blanche in making enemy-of-state accusations.

C. Treason Laws in Post-Soviet Russia

After the collapse of the Soviet Union, Russia implemented a revised version of the USSR's treason law. Though communism-centered definitions were replaced with more neutral formulations, ambiguous language remained and allowed equivocal and arbitrary interpretation of the law.

For five years after Mikhail Gorbachev declared the demise of the USSR, Russian legislators worked on a new Criminal Code.[105] In 1996, the document took effect.[106] The revised treason legislation was as follows:

> Article 275. High Treason
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> High treason, that is espionage, disclosure of state secrets, or any other assistance rendered to a foreign State, a foreign organization, or their representatives in hostile activities to the detriment of the external security of the Russian Federation, committed by a citizen of the Russian Federation, shall be punishable by deprivation of liberty for a term of 12 to 20 years with confiscation of property or without such confiscation.
>
> Article 276. Espionage
>
> Transfer, and also collection, theft, or keeping for the purpose of transfer to a foreign state, a foreign organization, or their representatives, of information constituting a state secret, and also transfer or collection of other information under the order of a

105. *See* Richard Thornburgh, *The Soviet Union and the Rule of Law*, FOREIGN AFFAIRS (1990), http://www.foreignaffairs.com/articles/45435/richard-thornburgh/the-soviet-union-and-the-rule-of-law (following the demise of the USSR, the Russian legislators labored on a new criminal code).

106. UGOLOVNYI KODEKS ROSSIISKOI FEDERATSII [UK RF] [Criminal Code] (Russ.) [hereinafter 1996 Criminal Code].

> foreign intelligence service, to the detriment of the external security of the Russian Federation, if these deeds have been committed by a foreign national or a stateless person, shall be punishable by deprivation of liberty for a term of 10 to 20 years.
>
> Article 283. State secrets dissemination
>
> 1. Disclosure of information comprising a state secret, by a person to whom it has been entrusted or to whom it has become known through his office or work, if this information has become the property of other persons, in the absence of the characteristic features of high treason, shall be punishable by arrest for a term of four to six months, or by deprivation of liberty for up to four years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or without such disqualification.
>
> 2. The same deed, which involved through negligence grave consequences, shall be punishable by deprivation of liberty for a term of three to seven years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years.[107]

With references to the counter-revolutionary context deleted, the law became more focused on the external security of Russia. Concern for the enemy's ideological or market orientation gave way to foreign citizenship of a person the accused contacted. As for the prosecution toll, unlike the millions charged and convicted of treason during the Soviet period, there were only a few public cases involving treason charges in the 1990s.[108]

The first cause célèbre was against an expert of the Norwegian environmental NGO "Bellona," Alexander Nikitin,[109]

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107. *Id.* arts. 275, 276, 283.

108. *See* Leon Aron, *Russia Reinvents the Rule of Law*, AEI ONLINE (Mar. 20, 2002), https://aei.org/article/foreign-and-defense-policy/regional/europe/russia-reinvents-the-rule-of-law (mentioning the Nikitin and Sutyagin cases occurring despite groundbreaking legal reforms taking place in the 1990s in Russia, which lessened the powers of the prosecution and strengthened the Rule of Law); Letter to the 1st Secretary, *supra* note 94 (stating that almost 3.8 million citizens were convicted of counterrevolutionary crimes, among which treason figures, from 1921 to 1960).

109. *Bellona's Nikitin Marks 10 Years of Freedom After Defeating the FSB*,

former nuclear safety engineer. In October 1995 the Federal Security Service (FSB) suspected the activist of high treason and dissemination of state secrets in his earlier report on radioactive pollution from decaying nuclear submarines.[110] Nikitin was arrested in February 1996 and freed in December 1996, but only after a special Attorney General's order.[111] While Amnesty International considered him a "prisoner of conscience,"[112] the Russian Supreme Court declared Nikitin innocent only in April 2000.[113]

Igor Sutyagin is another scientist who was impeached for treasonous crimes. He served as the head of the military-economy and military-technical research division in the Political-Military Research Department of the U.S.-Canadian Institute at the Russian Academy of Science. In October 1999, Sutyagin was arrested on suspicion of disseminating state secrets to his American colleague Joshua Handler from Princeton University.[114] Sutyagin argued that all the information he gave to Handler was collected from public sources[115] and was not marked as confidential. Moreover, Sutyagin claimed was never given access to secret information in his work at the Institute.[116]

BELLONA (Sept. 13, 2010), http://bellona.org/news/russian-human-rights-issues/nikitin-case/2010-09-bellonas-nikitin-marks-10-years-of-freedom-after-defeating-the-fsb.

110. *Alexander Nikitin*, GOLDMAN PRIZE, http://www.goldmanprize.org/1997/europe (last visited Sept. 24, 2014).

111. *Id.*

112. *Russia: Nikitin Is a Prisoner of Conscience, Says Amnesty*, RADIO FREE EUROPE/RADIO LIBERTY (Aug. 9, 1996), http://www.rferl.org/content/article/1081462.
html.

113. Anna Badkhen, *Supreme Court Says Nikitin Innocent*, MOSCOW TIMES (Apr. 18, 2000), http://www.themoscowtimes.com/news/article/tmt/264088.html.

114. *See* John Sullivan, *The Grad Student Sent into the Cold*, N.Y. TIMES (Jan. 14, 2001), http://www.nytimes.com/2001/01/14/nyregion/education-the-grad-student-sent-into-the-cold.html (describing the Russian authorities' search of Joshua Handler's apartment in Moscow because of his friendship with Sutyagin).

115. *See* Atle Staalesen, *No Early Release for Igor Sutyagin*, BARENTS OBSERVER (Mar. 2, 2010), http://barentsobserver.com/en/sections/society/no-early-release-igor-sutyagin (arguing in his defense that all materials he handed over to a group of British researchers were available in public sources).

116. *See* Zoya Svetova, *Igor Sutyagin and the Price of Freedom*, OPEN DEMOCRACY (July 26, 2010), https://www.opendemocracy.net/od-russia/zoya-svetova/igor-sutyagin-and-price-of-freedom (examining Sutyagin's defense that he had no access to state

On October 29, 1999, the FSB prosecutor accused Sutyagin of high treason and dissemination of state secrets.[117] In 2004, after a five-year proceeding,[118] the Court convicted Sutyagin of high treason and sentenced him to fifteen years in a penal colony.[119] Amnesty International recognized him as a political prisoner.[120] In 2010, the FSB officials exchanged four convicted of treason, including Sutyagin, for ten secret agents charged with spying for Russia in the U.S.[121]

The most recent treason case is against two professors of Baltic State Technical University. Yevgeny Afanasiev and Svyatoslav Bobyshev were accused of espionage for China.[122] Later, the indictment included high treason, stating that the professors sold state secrets regarding space and missile equipment to Chinese intelligence for seven thousand USD.[123] In June 2012, Afanasiev was sentenced to twelve and one-half years for high treason, and Bobyshev was sentenced to twelve years for being an accessory to treason.[124] The hearing was held behind closed doors with no detailed evidence presented to the public.

Overall, the Public Committee for Protection of Scientists mentions ten scientists that were accused of or investigated for

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secrets).

117. Sutyagin v. Russia, Eur. Ct. H.R. (2011) § 1, ¶¶ 8, 10, *available at* http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104651.

118. *Id.* § 1, ¶ 104. In November 2011, the European Court of Human Rights ruled that Sutyagin's rights were violated during the criminal proceedings and that "the trial court was not independent and impartial." *Id.* § 6, ¶¶ 2–3.

119. *Id.* § 1, ¶ 104.

120. AMNESTY INTERNATIONAL, JOINT STATEMENT ON THE CASE OF IGOR SUTYAGIN (2004) [hereinafter JOINT STATEMENT]; Svetova, *supra* note 116.

121. *See* Mary Beth Sheridan et al., *U.S., Russia Reach Deal on Suspected Spies*, WASH. POST, July 9, 2010, at A1 (identifying the four individuals accused by the Russian government of passing state secrets that the United States acquired in this prisoner swap).

122. Galina Stolyarova, *Scientists Dished 12-Year Sentence for Espionage*, ST. PETERSBURG TIMES, June 21, 2012, at 24.

123. *See* Nina Petlyanova, *Chekisty Chitali Lekcii [Security Officers Lectured]*, NOVAYA GAZETA (Feb. 4, 2013), http://www.novayagazeta.ru/politics/56564.html (discussing the indictments of Afanasiev and Bobyshev).

124. *Id.*

the crime of high treason: Mirzayanov,[125] Sutyagin, Danilov,[126] Kaibyshev,[127] Reshetin,[128] Soifer,[129] Korobienitchev, Babkin,[130] Shchurov,[131] and Tsepilova.[132] Many of them examined air or water pollution associated with nuclear waste, or collaborated

125. Letter from the Public Committee to Protect Scientists to Secretary Evgeny Pavlovich Velikhov (Apr. 17, 2006) [hereinafter Letter from the Public Committee].

126. *See id.* (citing Valentin Danilov as one of the scientists persecuted by the FSB). *See generally Freed Spy, Russian Physicist Arrives Home*, RIA NOVOSTI (Nov. 26, 2012), http://en.ria.ru/science/20121126/177738524.html [hereinafter *Freed Spy*] (offering a brief summary of Danilov's prosecution). *See* PRESS CENTER FOR DEFENSE ATTORNEYS MIKHAIL KHODORKHOVSKY AND PLATON LEBEDEV, CHRONICLE OF POLITICAL PERSECUTION IN PRESENT DAY RUSSIA 13 (2005) [hereinafter Press Center] (citing Sutyagin among numerous others to highlight a trend by the Russian government to prosecute scientists and other prominent members of Russian society for treason).

127. *See* Press Center, *supra* note 126 (discussing the espionage charges against Oskar Kaibyshev, a well-known scientist in the scientific community). *See generally* Elena Racheva, *Space as Evidence*, NOVAYA GAZETA (Dec. 17, 2007), http://en.novayagazeta.ru/society/7696.html (offering a brief summary of Kaibyshev's prosecution).

128. *See* Letter from the Public Committee, *supra* note 125; Natalya Krainova, *Scientists Accuse FSB of 'Witch Hunt' in Letter*, MOSCOW TIMES (Aug. 13, 2009), http://www.themoscowtimes.com/sitemap/free/2009/8/article/scientists-accuse-fsb-of-witchhunt-in-letter/380637.html (discussing the Public Committee for Protection of Scientists' acknowledgement of the indictment of Reshetin); *see also Russians Held in China Spy Probe*, BBC NEWS (Nov. 14, 2005), http://news.bbc.co.uk/2/hi/europe/4435702.stm (stating that the FSB charged Igor Reshetin with illegally selling technology).

129. *See* Press Center, *supra* note 126. *See generally* Robyn Dixon, *Convicted Journalist Sees Threat in Ruling*, L.A. TIMES, July 21, 1999, at A4 (offering a brief summary of Soifer's prosecution).

130. *See* Press Center, *supra* note 126 (citing Anatoly Babkin as one of the scientists that have been persecuted by the FSB). *See generally Russian "Spy" Avoids Jail Term*, BBC NEWS (Feb. 19 2003), http://news.bbc.co.uk/2/hi/europe/2779959.stm (offering a brief summary of Babkin's prosecution). *See* Anatoly Medetsky, *Reasearchers Throw Up Their Arms*, MOSCOW TIMES (July 28, 2006), http://www.themoscowtimes.com/news/article/researchers-throw-up-their-arms/203485.html (discussing the Federal Security Services' accusations against Oleg Korobeinichev for divulging state secrets).

131. *See* Press Center, *supra* note 126 (citing Vladimir Shurov as one of the scientists that have been persecuted by the FSB). *See generally* Steven Lee Myers, *Russia: Treason Trial for Scientists*, N.Y. TIMES, July 4, 2002, at A5 (offering a brief summary of Shurov's prosecution).

132. *See* Press Center, *supra* note 126 (citing Olga Tsepilova as one of the scientists that have been persecuted by the FSB). *See generally* Brett Forrest, *Olga Tsepilova*, TIME (Oct. 17, 2007), http://www.time.com/time/specials/2007/article/0,28804,1663317_1663320_1669922,00.html (offering a brief summary of Tsepilova's prosecution).

with foreign environmental organizations.[133] Notably, each of these treason accusations against scientists was accompanied by fraud or embezzlement indictments that helped stigmatize the convict and motivate support for treason charges.[134]

In his book on high treason cases in post-Soviet Russia, Ernest Cherny, researcher at the Moscow Helsinki Group, cites the cases of Pasko,[135] Moiseev,[136] Khvorostov,[137] Kovalchuk,[138] and Kalyadin.[139]

While data on treason cases against scientists is broadly available, there is little information on espionage or other treasonous crimes committed by military officials or politicians, who actually have greater access to state secrets. Until now only four FSB agents' treason cases have been revealed to the public: Valerij Mikhailov (sentenced to eighteen years' penal colony imprisonment), Vladimir Nesterec (thirteen years), Alexander Zaporozhskij (eighteen years), and Alexander Poteev (twenty-five

133. *See, e.g.*, Michael R. Gordon, *Russia Frees Journalist Who Exposed Nuclear Dumping*, N.Y. TIMES, July 21, 1999, at A3 (describing the indictment of a Russian scientist for documenting the Russian Navy dumping nuclear waste at sea).

134. *See, e.g.*, *Freed Spy*, *supra* note 126 (discussing the treason and embezzlement charges against Valentin Danilov).

135. *See* ERNST CHERNY, SHPIONY ROZHDAYUTSA NA LUBYANKE [THE SPIES COME FROM LUBYANKA] 5 (2003); *see also* Gordon, *supra* note 133 (offering a brief summary of Pasko's prosecution).

136. *See* CHERNY, *supra* note 135, at 23; *see also* Andrei Shary, *Interview: Former Jailed "Spy" Says Russia Must Stop Seeing 'Enemies Everywhere,'* RFERL (Nov. 13, 2012), http://www.rferl.org/content/russia-espionage-interview-moiseyev/24769817.html (offering a brief summary of Moiseev's prosecution).

137. CHERNY, s*upra* note 135, at 52; *see also* Myers, *supra* note 131 (offering a brief summary of Khvorostov's prosecution).

138. CHERNY, *supra* note 135, at 16; *see also* HUMAN RIGHTS WATCH, RUSSIA'S "SPY MANIA": A STUDY OF THE CASE OF IGOR SUTIAGIN 9 (2003) (offering more information about Kovalchuk).

139. CHERNY, s*upra* note 135, at 13; *see also* Nabi Abdullaev & Natalia Yefimova, *Court Nullifies State Secrets Order*, ST. PETERSBURG TIMES (Feb. 15, 2002), http://sptimes.ru/story/6497?page=2 (offering a brief summary of Kalyadin's prosecution).

years).[140] All were accused of high treason and dissemination of state secrets to the CIA.[141]

While the treason clause was applied rarely after the collapse of the Soviet Union, investigations of treasonous crimes abounded, replete with ambiguous and arbitrary interpretations of the law. Vague definitions either confused judges or let the FSB prosecutors apply the clause for a broad range of crimes. The "aid and comfort" theory usually lacked evidence.[142] That helps explain why FSB prosecutors often accompanied the high treason charges with embezzlement accusations. The persistence of Cold War and arms-race mentalities allowed the KGB's disciples in the FSB to target scientists for treason indictments.

The use of treason laws in Russia in recent years does not parallel treason cases in such Western countries as the U.S. and the UK. Eichensehr has argued that after Al-Qaeda's attacks on 9/11, treason law's application in the West depended not on the "magnitude of the threat," but on the perceived existential nature of the threat.[143] By declaring a war on terror, and authorizing use of all necessary means to punish those responsible for 9/11 attacks,[144] the U.S. government under the George W. Bush administration clearly emphasized the supposedly existential character of Al-Qaeda's threats, even though critics of the administration's policies pointed out repeatedly that the threat from Al-Qaeda was likely not existential for the country when compared, for example, to the many missiles pointed at the United States by the Soviet Union.[145]

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140. Maria Lokoteckaya, Agent CIA Valerii Mijaiilov Syadet za Gosizmenyu na 18 Let [CIA agent Valery Mikhailov Sit for Treason for 18 Years], (June 6, 2012), http://www.bfm.ru/news/182967.

141. *See id.* (summarizing concisely concise the facts underlying the cases against Mikhailov, Nesterec, Zaporozhskij, and Poteev).

142. *See, e.g.*, JOINT STATEMENT, *supra* note 120 (discussing the lack of evidence in Sutyagin's treason conviction).

143. Eichensehr, *supra* note 73, at 1445.

144. *Id.* at 1458.

145. *See* William Fisher, *Welcome to Post-Legal America*, PUBLIC RECORD (June 9, 2011), http://prism-magazine.com/2011/06/welcome-to-post-legal-america (criticizing the length of time dedicated by the U.S. government towards resolving the less existential threat of the War on Terror as opposed to the time it took for the United States to take a

Moreover, terror attacks in the West resulted in the focus of the treason statute shifting from "enemy-state-based treason,"[146] which was historically common during most wars, to the creative use of the legislation against non-state actors, like members of Al-Qaeda.[147] Citizens as well as non-citizens of the U.S. were incriminated in treasonous crimes under this view.[148] Despite difficulties in a precise interpretation of the concepts, "aid and comfort" and "adhering-to-enemy" theories were used against terrorist suspects.[149] The Seditious Conspiracy statute, which is similar to the U.S. treason law,[150] was used several times to make charges of conspiracy against the United States without requiring evidence for "aid and comfort" or the "actual act of levying war."[151]

By contrast, despite the obvious attractiveness of such broad interpretations to Vladimir Putin and the Russian regime in dealing with its own actual and feared threats of separatist or

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reasonable approach to combat the fear of Soviet espionage during the McCarthy Era).

146. *See* Eichensehr, *supra* note 73, at 1457 (considering treason charges against individuals because of their connections to terrorist organizations, as opposed to the traditional approach of this charge being reserved for agents of a formally recognized state).

147. *See id.* at 1457–58 (discussing the similarities between the successful treason prosecutions of propagandists in World War II and the treason indicted against U.S. citizen Adam Gadahn for appearing in Al Qaeda propaganda videos).

148. *See id.*; *see also* Tom W. Bell, *Treason, Technology, and Freedom of Expression*, 37 ARIZ. ST. L.J. 999, 1019–20 (2005) (discussing the Hamdi Court's decision to allow U.S. citizens to qualify as enemy combatants as a sign that both citizens and noncitizens could qualify as enemies under the treason clause).

149. *See* Bell, *supra* note 148, at 1010, 1012–16, 1020–23 (analyzing in depth the Supreme Court's definitions of the key components that make up both the "aid and comfort" and "adhering-to-enemy" theories of treason and how they would apply to suspected members of Al-Qaeda).

150. *See* Henry Mark Holzer, *Seditious Conspiracy*, FRONT PAGE MAGAZINE (Sept. 12, 2005), http://archive.frontpagemag.com/readArticle.aspx?ARTID=7311 (contrasting the Seditious Conspiracy Statute with the Treason Clause through analysis of recent Circuit court decisions).

151. *See* Benjamin A. Lewis, Note, *An Old Means to a Different End: The War on Terror, American Citizens . . . and the Treason Clause*, 34 HOFSTRA L. REV. 1215, 1239–42 (2006) (citing how a lack of evidence concerning the defendant actually giving aid and comfort in the *Khan* case made a successful prosecution under the Treason Clause unattainable, yet the defendant's intent of wanting to fight alongside the Taliban against the United States fulfilled the conspiracy element within the Seditious Conspiracy statute.).

revolutionary terrorism, suspects in terror attacks throughout Russia in the 2000s were charged under the 1998[152] and 2006[153] federal anti-terrorism—not treason[154]—laws. Even members of illegal armed groups from Chechnya, whose crimes were similar to the acts of those imprisoned for high treason in the United States (in which civilians were attacked using terroristic methods), faced terrorism, not treason, accusations.

Overall, as illustrated by the large number of Russian suspects considered "prisoners of conscience" by Amnesty International, the uncertainty of the treason statute's language in post-Soviet Russia has been used for subjective and biased application of the law. Those convicted of treason in Russia were mostly scientists or environmental activists who collaborated with foreign colleagues. The FSB prosecutors initiated cases without sound evidence, and often reinforced treason accusations with embezzlement indictments as a sort of "back-up" or additional route to obtaining convictions.

In December 2008, FSB lobbyists proposed a revision to the treason law.[155] After being tabled for three years, the bill was taken up by the Russian Duma on January 12, 2012.[156]

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152. Federal'nyi Zakon o Bor'be s Terrorizmom [Federal Law of the Russian Federation on The Fight Against Terrorism], ROS. GAZ. July 25, 1998.

153. Federal'nyi Zakon RF o Bor'be s Terrorizmon [Federal Law of the Russian Federation on the Fight Against Terrorism], ROS. GAZ. Mar. 6, 2006; *see* COUNCIL OF EUROPE, COMMITTEE OF EXPERTS ON TERRORISM, PROFILES ON COUNTER-TERRORISM CAPACITY: RUSSIAN FEDERATION 2 (2008) (stating that Russia adopted new antiterrorism legislation in 2006).

154. *See, e.g.*, *Chechenskiy Terrorist Prigovoren k 17 Godam Lisheniya Svobody* [Chechen Terrorist Sentenced to 17 Years in Prison], KOMMERS (July 28, 2011), http://www.kommersant.ru/news/1687049 (stating that a terrorist was convicted of terrorism and not under treason laws).

155. *See* Vladimir Isachenkov, *Russia Expands Treason Law, Critics Fear Crackdown*, ASSOCIATED PRESS (Nov. 14, 2012), http://bigstory.ap.org/article/controversial-treason-law-takes-effect-russia (stating that the revised treason bill was first proposed by the FSB in 2008).

156. RUSSIAN STATE DUMA, LEGISLATIVE ACTIVITY FOR BILL NO. 139314-5 ON AMENDMENTS TO THE CRIMINAL CODE OF THE RUSSIAN FEDERATION AND ARTICLE 151 OF THE CRIMINAL PROCEDURE CODE OF THE RUSSIAN FEDERATION, *available at* http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=139314-5 (showing that the revision of the treason law was not looked at for three years and was taken up again by the Duma on January 12, 2012).

D. New Version of the Treason Statute

President Putin signed the new treason bill on November 12, 2012, after senators in both the Duma and the Federal Council (the upper house of Parliament) voted overwhelmingly in favor of it.[157]

The two main articles, 275 and 276, which cover high treason and espionage, respectively, received the most amendments. Five major revisions now define the *who*, *when*, *how*, and *what* of a treasonous crime.

1. Who: International and Non-Governmental Bodies

Previously, the articles stipulated punishment for dissemination of state secrets to *foreign* governments or organizations, or providing any help to *foreign* secret services "in their hostile activity against the external security of the Russian Federation."[158] The new wording states that high treason, espionage, or state secret dissemination crimes now can be prosecuted not only for a connection with a foreign government, but also for a relationship with an *international* organization.[159] The explanatory note to the bill, written by FSB lobbyists, states that:

> Due to the fact that foreign special services actively use the facilities of international, both governmental and non-governmental, organizations for their investigations and other work aimed at causing damage to security of

157. Federal'nyi Zakon RF Ovnesenii Izmeneniy v Ugolovnyy Kodeks Rossiyskoy Federatsii I Stat'yu 151 Ugolovno-protsessval'nogo Kodeksa Rossiyskoy Federatsii [Federal Law of the Russian Federation On Amendments to the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] Nov. 14, 2012 [hereinafter Amendments to Treason Law]; *Russian Parliament Votes in First Reading to Expand Treason Laws – Casting a Darker Shadow on the Future of NGOs*, BELLONA (Sept. 24, 2012), http://bellona.org/news/russian-human-rights-issues/russian-ngo-law/2012-09-russian-parliament-votes-in-first-reading-to-expand-treason-laws-casting-a-darker-shadow-on-the-future-of-ngos; *Russia's Upper House of Parliament Passes Treason Bill as Season of Broad Repression Continues*, BELLONA (Nov. 2, 2012), http://bellona.org/news/russian-human-rights-issues/russian-ngo-law/2012-11-russias-upper-house-of-parliament-passes-treason-bill-as-season-of-broad-repressions-continues.

158. 1996 Criminal Code, *supra* note 106, art. 275.

159. Amendments to Treason Law, *supra* note 157, art. 1.

> the Russian Federation, it is necessary to include international organizations and their representatives in the list of those who receive the aid for inflicting harm to the security of the Russian Federation.[160]

Special attention is given to *supranational* organizations, whose "membership and jurisdiction are not limited to the territory of one state."[161] Moreover, the law covers the dissemination of secrets to organizations "founded by individuals for activities on the territory of several states."[162] By including international organizations in the list of suspect bodies, the 2012 law enables the prosecution of non-governmental, private, or charitable organizations if their activity is conceivably jeopardizing the country's security. Private corporations and non-governmental as well as intergovernmental bodies, including the International Court of Justice, the European Court of Human Rights, or the United Nations, may now also be persecuted as the legal wording extends to the entities whose activities span more than one country.

2. When: Study or Other Activity

Another new amendment to the article claims that not only secrets with which one is entrusted in one's *work*, but also classified information that one becomes aware of in one's "*study, or other activity*" may be considered a highly secret subject.[163] The explanatory note gives no clear reasons to justify this amendment. But by recalling the abovementioned treason cases in post-Soviet Russia, we may, nevertheless, suppose that such an extension could stem from the typical pattern of alleged violations committed by scientists and environmental activists in those prior cases. Furthermore, the lawmakers did not

160. RUSSIAN STATE DUMA, POYASNITEL'NAYA ZAPISKA K PROYEKTU FEDERALNOGO ZAKONA "O VNECENII IZMENENII V UGOLOVNII KODEKC ROSSIISKOI FEDERTSII I V STATYU 151 UGOLOVNO-PROTSESSUALNOGO KODEKSA ROSSIISKOI FEDERATSII" [EXPLANATORY NOTE TO THE DRAFT OF FEDERAL LAW "ON THE AMENDMENTS TO THE CRIMINAL CODE AND ARTICLE 151 OF THE CRIMINAL PROCEDURE CODE OF THE RUSSIAN FEDERATION"], at 2 (2008), *available at* http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&6A9E625C85E0AF26C325752000414031 [hereinafter Explanatory Note 1].

161. *Id.*

162. *Id.*

163. *Id.*

consider, or perhaps deliberately ignored, the possibility of arbitrary interpretations of this newly expanded law. Work or service, study or research, interviews or self-education may now be grounds for criminal charges provided they allow a person to become privy to secret information. This is unlike the argument made in the U.S. Court of Appeals for the First Circuit appellate case *Chandler v. United States*, in that the guilt of the citizen does not depend on whether, for example, enemy propaganda was heard or broadcast by anyone.[164]

In addition, now in Russia, the definition of treason no longer depends on whether a person intended to help his country[165] by working for a scientific discovery, or attempting to prevent crimes or corruption, or trying to attract attention to an environmental disaster. As noted in the *Chandler* case, even if giving aid and comfort to the enemy occurred, the crime of treason in the United States still required adherence to the enemy or intent to betray.[166] This is a crucial distinction

164. Chandler v. United States, 171 F.2d 921, 941 (1st Cir. 1948); Eichensehr, *supra* note 73, at 230.

165. *Compare* Amendments to Treason Law, *supra* note 157, art. 1, para. 2, *with* 1996 Criminal Code, *supra* note 106, art. 275 (showing that there was a removal of the word "hostile," used to describe activities that could fall under treason, inferring that even acts that were not considered "hostile" can be considered treason, such as those performed with the intent of helping one's country). It is necessary to mention the recent U.S. case of Private Bradley (a.k.a. Chelsea) Manning. *See* Emmarie Huetteman, *'I Am a Female,' Manning Announces, Asking Army for Hormone Therapy*, N.Y. TIMES, Aug. 23, 2013, at A17. She copied secret files regarding U.S. military operations in Iraq and Afghanistan from a secure military database and released them through WikiLeaks. Charles Savage, *Soldier Admits Providing Files to WikiLeaks*, N.Y. TIMES, Mar. 1, 2013, at A3. The main intention, Manning claims, was as a whistleblower with no intent to harm the United States but intent instead to reveal war crimes and "spark a debate about foreign policy in relation to Iraq and Afghanistan." *Id.* The official crimes of which she is accused include, among others, espionage and assistance to the enemy. *Id.* While technically not treason, the Espionage Act charges are akin to treason charges, and some legal commentators have pointed out that applying the Espionage Act to the facts of the Manning case, where there has been no contact with the 'enemy' could chill investigative journalism and whistleblowing, effectively turning them into potential "treason." *Glenn Greenwald on Bradley Manning: Prosecutor Overreach Could Turn All Whistleblowing into Treason*, DEMOCRACY NOW (Mar. 5, 2013), http://www.democracynow.org/2013/3/5/glenn_greenwald_on_bradley_manning_prosecutor.

166. *See* Chandler, 171 F.2d at 938 ("The significant thing is not so much the character of the act which in fact gives aid and comfort to the enemy, but whether the act is done with an intent to betray.").

necessary to avoid use of a treason law to repress even vigorous but valuable political dissent.[167] A major risk under the new Russian law is that no such intent to betray need be present for a conviction. The new law thus wrenches from the offense the core element of intent to betray allegiance to one's own country, which typically has been, in addition to the requirement of overt acts, an integral part of the offense in Russia and other states.

3. How: Any Aid

The new law also broadens the type of aid that can be considered high treason. The phrase "any aid" is now rewritten as "*financial, technical, consulting, or other aid*."[168] The formal FSB purpose of this change is to eliminate "contradictory and arbitrary interpretations"[169] of the law.

One of the main triggers for the law's revision was the term "hostile activity" in the 1996 version. According to the explanatory note, high treason "in the present [1996] version is extremely difficult to prove as advocates use the absence of 'hostile' activity evidence in their defense arguments to free their defendants from punishment."[170] Consequently, the revised 2012 statute speaks about "aid . . . in activity against . . . the Russian Federation."[171] Thus, by excluding the hostile nature of the act, the treason statute erases the difference between intentional treason and the innocent dissemination of a secret.

4. What: Vague Definition of State Secret

The new treason statute has no clear definition of what should be considered secret information. Indeed, as the

167. *See* Willard Hurst, *Treason in the United States*, 58 HARV. L. REV. 395, 412 (1945) (explaining that without the intent-to-betray element of treason, the crime could then be "put to oppressive use against political foes or restless class" and repress the "normal processes" of valuable political dissent).

168. Amendments to Treason Law, *supra* note 157, art. 1, para. 2.

169. *See* Explanatory Note 1, *supra* note 160 (stating that controversial and arbitrary interpretations drew attention as a reason for changing "any aid" to "financial, material, technical, consulting, or other aid" in the amended law).

170. *Id.*

171. Amendments to Treason Law, *supra* note 157, art. 1, para. 2.

Constitution of the Russian Federation[172] and the Federal Law "On State Secrets"[173] provide, federal law must list information concerning what is considered a state secret. After the 2004 and 2005 Constitutional Court rulings N° 188-O[174] and N° 238-O,[175] however, the Constitutional Court declared that the details about the list of what constitutes state secret information might be announced in "classified subordinate legislation."[176] Thus, the information that specifies what secret data is might not be made available to the public. Consequently, people might not—probably would not—know that information acquired from open sources may be considered a secret and, if so, that it must not be disseminated.

Despite the initial goal to make the language more precise and certain, the new version of the treason statute became, if this was possible, even more equivocal. The law's vague formulations broaden its jurisdiction to international and foreign organizations, and criminalize activities that, by chance or intentionally, may be seen as harmful to Russia's security. Considering the vagueness of the "state secret" definition, the amended law cannot but depend on a law enforcer's personal interpretation and, thus, is vulnerable to political bias and manipulation. As a result, contact with a foreigner, a presentation of research findings at an international conference, or a donation to an NGO might be considered high treason.

The new Russian treason law thus brings back with great force Blackstone's warning, in his *Commentaries*, that the crime of treason is so serious that it "ought therefore to be the most

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172. KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 29, § 4 (Russ.).

173. Federal'nyi Zakon RF o Gosudarstvennoy Tayne [Federal Law of the Russian Federation On State Secrets], ROSSIISKAIA GAZETA [ROS. GAZ.] July 21, 1993.

174. Konstitutsionnyi Sud Rossiiskoi Federatsii (Konst. Sud RF) [Russian Federation Constitutional Court], ROSSIISKAIA GAZETA [ROS. GAZ.] May 27, 2004, No. 188-O.

175. Konstitutsionnyi Sud Rossiiskoi Federatsii(Konst. Sud RF) [Russian Federation Constitutional Court], ROSSIISKAIA GAZETA [ROS. GAZ.] Apr. 21, 2005, No. 238-O.

176. *See* KOMMENTARY K STAT'YE 29 KONSTITUSIIA ROSSIISKOI FEDERATSII [COMMENTARY TO ARTICLE 29 OF THE CONSTITUTION OF THE RUSSIAN FEDERATION] Dec. 12, 1993 ("Limitations exist only for confidential information").

precisely ascertained" crime.[177] If it "be indeterminate," says Blackstone, quoting Montesquieu, "this alone . . . is sufficient to make any government degenerate into arbitrary power."[178] There is a reasonable assumption based on the political context described in Part I above that the real or at least a major motivation for the 2012 treason law revision was to assist in the consolidation of domestic power, especially given the fear of foreign or international intervention into the internal affairs of the country. The following section finds further evidence of this in describing other recent laws that violate basic civil liberties in Russia.

III. OTHER LAWS AGAINST CIVIL SOCIETY AND FREEDOMS

The treason law revision was not the only amendment that affects the development and political freedoms of individuals and civil society in Russia. Several new laws introduced further serious limitations on the freedoms of foreign and local NGOs, human rights activists, journalists, and ordinary people in the country.

A. NGO, i.e., "Foreign Agents" Law

Indeed, the overall hardening of conditions for civil society can be seen in the example of NGO legislation. The first amendment to the 1996 law regulating creation and activity of NGOs in Russia[179] was made in 2006, during President Putin's second term.[180] The law obligated all NGOs to inform the federal government about the amount, goals, and actual usage of all financial or any other aid from "international and foreign organizations and citizens."[181] The law also denies registration

177. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 76 (William Carey Jones ed., 1916).

178. *Id.*

179. Federal'nyi Zakon RF o Nekomercheskih Organizatsiyah [Federal Law of the Russian Federation on Non-Profit Organizations], ROSSIISKAIA GAZETA [Ros. Gaz.] Jan. 12, 1996 [hereinafter Federal Law on Non-Profit Organizations].

180. Michael P. Maxwell, Comment, *NGOs in Russia: Is the Recent Russian NGO Legislation the End of Civil Society in Russia?*, 15 TUL. J. INT'L & COMP. L. 235, 236 (2006).

181. Federal'nyi Zakon RF o Vnesenii Izmenenii v Nekotorie Zakonodatelnie Aktie

of an NGO whose "goals and tasks . . . create threats to the sovereignty, political independency, territorial integrity, national unity, cultural heritage, and national interests of the Russian Federation."[182] Moreover, an ad hoc federal agency was enabled to ban financial transfers to the local branch of an international NGO "in order to protect the constitutional system, morality, health, rights and legitimate interests of people, and provide security of the country."[183]

In 2009, the new President, Dmitry Medvedev, revised the law and made several amendments liberalizing the NGO registration process.[184] In 2012, however, President Putin not only changed the NGO law back to its original wording, but also toughened several NGO regulations.[185] Effective from November 21, 2012, the law proclaimed that:

> All non-profit[186] organizations that receive financial or any other aid from foreign states, state departments, international and foreign organizations, foreign citizens, stateless persons . . . and that participate in political activity in Russia would be required to call themselves non-profit organizations functioning as "foreign agents."[187]

Rossiiskoi Federatsii [Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation], ROSSIISKAIA GAZETA [Ros. Gaz.] Jan. 10, 2006 Document2, art. 29.

182. *Id.* art.2, para. 9.

183. *Id.* art. 3, para. 10.

184. *See* Clifford J. Levy, *Russia: Fewer Hurdles for Nonprofit Organizations*, N.Y. TIMES, June 18, 2009, at A8.

185. *NGO Law Monitor: Russia*, INT'L CTR. FOR NOT-FOR-PROFIT LAW, http://www.icnl.org/research/monitor/russia.html (last updated July 23, 2014).

186. It is important to note that there is no such official term or legal category in Russian law specifically for non-*governmental* organizations. All organizations considered NGOs in other countries are simply called non-*profit* organizations in Russia. Whether this is due to the pervasive reach of Russia's government or simply semantics is a topic for another study and occasion. *See* Federal Law on Non-Profit Organizations, *supra* note 179.

187. Federal'nyi Zakon RF o Vnesenii Izmenenii v Otdelinie Zakonodatelnie Aktie Rossiiskoi Federatsii v Chastii Regulirovania Deiatelnosti Nekomercheskih Organizatsii Vipolnyaiushtih Funkcii Inostranogo Agenta [Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation in the Regulation of Nonprofit Organizations Acting as a Foreign Agent], ROSSIISKAIA GAZETA [Ros. Gaz.] July 23, 2012, art. 2, para. 2 [hereinafter Amended Federal Law on NGOs].

Consequently, every NGO that receives foreign aid must: (a) register as a foreign agent in the state list of foreign agents; (b) provide reports on its activity, funding, and expenditures (quarterly), and governing board (once every six months); and (c) provide audit reports annually.[188] All materials of foreign-agent NGOs published in mass media must be marked as from a foreign-agent NGO.[189] In addition, a vague authorization allows the state committee to implement unscheduled inspections if "there is information in the mass media that an NGO's activity bears the signs of extremism."[190] If an NGO refuses to register as a foreign agent, the state committee is empowered to stop the NGO's work for up to six months until it registers.[191] The law also modifies the Criminal Code of Russia, providing two years' imprisonment for refusal to register as a foreign-agent NGO as well as three years for the creation of, and two years for participation in, a foreign-agent NGO whose activity "is to invite Russian citizens to ignore their civil obligations and commit unlawful acts."[192]

The Russian State Duma legislators justified the new additions to the law by alleging a necessity to "bring openness and publicity to the work of NGOs . . . and organise public control over NGOs functioning as foreign agents."[193] Russia's Minister of Foreign Affairs, Sergei Lavrov, claimed that the new revisions "are borrowed from the U.S. Foreign Agent

188. *Id.* art. 2, para. 5.

189. *Id.* art. 2, para. 4.

190. *Id.* art. 2, para. 5; *Legal Update – New Law on "Foreign Agent" NGOs*, RUSSIA MONITOR (Aug. 2, 2012), http://therussiamonitor.com/2012/08/02/legal-update-new-law-on-foreign-agent-ngos.

191. Amended Federal Law on NGOs, *supra* note 187, art. 2, para. 5.

192. *Id.* art. 3, paras. 1, 2.

193. RUSSIAN STATE DUMA, POYASNITEL'NAYA ZAPISKA K PROEKTU FEDERALNOGO ZAKONA "O VNESENII IZMENENII V OTDELINIE ZAKONODATELNIE AKTIE ROSSIISKOI FEDERATSII V CHASTII REGULIROVANIA DEIATELNOSTI NEKOMERCHESKIH ORGANIZATSII VIPOLNYAIUSHTIH FUNKCII INOSTRANOGO AGENTA" [EXPLANATORY NOTE TO THE DRAFT OF THE FEDERAL LAW OF THE RUSSIAN FEDERATION ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION IN THE REGULATION OF NONPROFIT ORGANIZATIONS ACTING AS A FOREIGN AGENT], 2012, *available at* http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&0C05ED49C136DEEF43257A2C00596CAF.

Registration Act."[194] While U.S. law requires registration of an NGO that "acts at the order, request, or under the direction or control"[195] of a foreign organization or person, it is narrower in focus and effect than the Russian law, being targeted primarily at political or semi-political activities such as lobbying Congress, distributing "political propaganda," or funding elections. By contrast, the Russian "foreign agent" law compels every NGO that receives any aid from a foreign government, organization, or citizen to register as a foreign agent.[196] Thus, the law automatically assumes and alleges that organizations receiving any funds from abroad will operate under the orders of, and for the benefit of, that foreign funder. The main human rights-oriented NGOs in Russia, including Transparency International-Russia, the anti-discrimination organization "Memorial," and the Moscow Helsinki Group, whose work depends significantly on financial assistance from abroad, decided to ignore the law, refusing to register as foreign agents.[197] Some NGOs in Russia, including "Memorial," have been threatened with closure.[198]

The first NGO strongly warned according to the law was the charity foundation "No to Alcoholism and Drug Addition," from

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194. *LibDems: Bill Tagging NGO's "Foreign Agents" is Reasonable*, RUSSIA TODAY (July 5, 2012), http://rt.com/politics/ngo-bill-lavrov-agents-492; *see also* Vladimir Kara-Murza, *FARA and Putin's NGO Law: Myths and Reality*, INST. MODERN RUSSIA (May 9, 2013), http://imrussia.org/en/politics/455-fara-and-putins-ngo-law-myths-and-reality ("The Kremlin's parallel between Putin's NGO law and the U.S. Foreign Agent Registration Act (FARA) is false. Apart from the name, these two pieces of legislation have hardly anything in common.").

195. 22 U.S.C. §§ 611(c)(1), 612(a) (2009).

196. Amended Federal Law on NGOs, *supra* note 187, art. 1, para. 1.

197. Robert Bridge, *Russian NGOs Threaten to Boycott Foreign Agent Law*, RUSSIA TODAY (July 25, 2012), http://rt.com/politics/russia-ngo-foreign-agents-us-009; Anastasia Kornya, *Transparency International Refuses to Comply with NGO Law*, RUSSIA BEYOND HEADLINES (Nov. 12, 2012), http://rbth.com/articles/2012/11/12/transparency_international_refuses_to_comply_with_law_on_foreign_age_19999.html; *Russian NGOs Refuse to Abide by Kremlin Law Ordering Some to Declare Themselves "Foreign Agents"*, CBS NEWS (Sept. 28, 2012), http://www.cbsnews.com/news/russian-ngos-refuse-to-abide-by-kremlin-law-ordering-some-to-declare-themselves-foreign-agents.

198. European Parliament Resolution of 23 October 2014 on the Closing-Down of the NGO 'Memorial' (winner of the 2009 Sakharov Prize) in Russia (RSP) 2903/2014, O.J. (C 68).

Saratov.[199] Better known is the case of the U.S. Agency for International Development (USAID). The Russian Ministry of Foreign Affairs ordered USAID to stop any activity in Russia after October 1, 2012. The Ministry argued that USAID tried "to affect political developments in Russia by giving grants and financial assistance to civil society organizations."[200] USAID funds were essential to the existence of such famous human rights NGOs as "*Golos* [Voice]," which monitored and reported violations in the 2011 parliamentary and 2012 presidential elections.[201] The Moscow Helsinki Group also received USAID funds.[202]

The "foreign agents" law violates not only international human rights norms, including the Universal Declaration of Human Rights (Articles 2, 19, and 20), the International Covenant on Civil and Political Rights (Articles 17, 19, 21, and 22), the European Convention on Human Rights (Articles 1, 8, 10, 11, and 18), and the OECD Principles (Principle VII), but also the Russian Constitution (Articles 17, 23, 29, 30, 31, 32, and 55).[203] The law gives the governmental officials apparently limitless power to "obstruct registration applications with endless requests for additional information."[204] Open for

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199. *Russia Issues First Warning Under Fresh 'Foreign Agents' Bill – Report*, RUSSIA TODAY (Dec. 13, 2012), http://rt.com/politics/russia-issues-first-foreign-951. *But see* Ruth McCambridge, *Vote Watchdog GOLOS First to be Prosecuted Under Russia's "Foreign Agent" Rule*, NONPROFIT Q. (Apr. 11, 2013), https://nonprofitquarterly.org/policysocial-context/22119-vote-watchdog-golos-first-to-be-prosecuted-under-russia-s-foreign-agent-rule.html (stating that GOLOS was the first NGO to be prosecuted under Russia's "foreign agent" law).

200. MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION, KOMMENTARIJ O PREKRASHCHENII DEYATEL'NOSTI AGENTSTVA SSHA [COMMENTARY OF THE FOREIGN AFFAIRS MINISTRY SPOKESPERSON ON THE CESSATION OF USAID WORK IN RUSSIA], 2012, http://www.mid.ru/brp_4.nsf/newsline/E04283AF23C3AAA144257A7E002E5DF0.

201. Alice Shtykina, *Pravozashchita Prosit Rublya* [Human Rights Defenders Need Money], Ros. Gaz. (Dec. 6, 2012), http://www.gazeta.ru/politics/2012/12/06_a_4881209.shtml; *Golos Election Monitoring NGO Fined Under New Law*, RADIO FREE EUROPE/RADIO LIBERTY (Apr. 25, 2013), http://www.rferl.org/content/russian-election-monitoring-golos-trial/24968090.html.

202. *Gosdepu Otrubili Ruku* [U.S. State Department Lost its Arm], LENTA (Sept. 20, 2012), http://lenta.ru/articles/2012/09/19/usaid1.

203. Alison Kamhi, *The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation*, 9 INT'L J. NOT-FOR-PROFIT L. 35, 35–49 (2006).

204. Robert C. Blitt, *An Analysis of the Provisions and Human Rights Implications*

manipulation to the advantage of powerful, wealthy, or otherwise well connected,[205] the law will target human rights organizations, and further stigmatize and criminalize human rights activities in the country.[206]

B. Part of a Global Anti-NGO Trend

Russia's anti-NGO legal initiatives should be seen in the context of a global trend. In addition to Russia, China has become very concerned about growing democratic assertiveness after the Color Revolutions and again after the so-called "Arab Spring." As a result,

> China cracked down on foreign NGOs to make sure they couldn't serve as instigators of unrest. Chinese security forces raided the offices of several local NGOs backed by American democracy promotion organizations, and after 2005 Beijing imposed much tougher restrictions on local NGOs, resulting in the closure of thousands of them.[207]

These concerns on China's part only strengthened after the more recent Hong Kong pro-democracy protests of 2014.[208]

After the Orange Revolution in the Ukraine, Russian-supported counterrevolutionary candidate Viktor Yanukovych went on to arrest many of the former government officials including former Prime Minister Yulia Tymoshenko, and to

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of Russia's New Law on Non-Governmental Organizations as Told Through Eleven Russian Proverbs, 40 GEO. WASH. INT'L L. REV. 32, 38 (2008).

205. *Id.* at 34.

206. *Cf.* OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS, VIOLATIONS OF THE RIGHT OF NGOS TO FUNDING: FROM HARASSMENT TO CRIMINALISATION 56 (2013), *available at* http://www.omct.org/files/2013/02/22162/obs_annual_report_2013_uk_web.pdf (stating that the Inter-American Commission of Human Rights recommended that public officials refrain from making statements that stigmatize human rights defenders merely because of their work protecting human rights).

207. KURLANTZICK, *supra* note 15, at 143.

208. Simon Denyer, *Hong Kong Erupts Even as China Tightens Screws on Civil Society*, WASH. POST (Sept. 30, 2014), http://www.washingtonpost.com/world/hong-kong-erupts-even-as-china-tightens-screws-on-civil-society/2014/09/30/f2c874aa-4586-11e4-8042-aaff1640082e_story.html.

pressure via investigations both domestic and foreign NGOs in Ukraine.[209]

Beginning under the Mubarak dictatorship, Egypt had considered, and around the turn of the century passed, successive laws aimed at repressing and controlling NGOs,[210] imposing strict registration requirements, authorizing or denying foreign funding (thus controlling the very existence of many organizations in an environment where domestic private funding isn't readily available),[211] and granting the government "a great deal of power and discretion to grant or deny registration, and consequently interfere in the operations and fundraising of an organization or even order its dissolution."[212] A number of organizations were banned under the Mubarak regime using the powers granted under this law.[213]

Israel, like Russia, has claimed to use the U.S. Foreign Agent Registration Act[214] as the inspiration and basis for recent NGO regulations.[215] Despite criticism from foreign governments and the international community,[216] on February 24, 2011, the

209. KURLANTZICK, *supra* note 15, at 148–49.

210. *See* Mohamed Agati, *Undermining Standards of Good Governance: Egypt's NGO Law and Its Impact on the Transparency and Accountability of CSOs*, 9 INT'L J. NOT-FOR-PROFIT L. 56, 57 (2007); *see also NGO Law Monitor: Egypt*, INT'L CTR. FOR NOT-FOR-PROFIT LAW, http://www.icnl.org/research/monitor/egypt.html (last updated September 27, 2014) (stating that civil society in Egypt has been governed by the provisions of the Law on Associations and Community Foundations (Law 84 of 2002) and the Implementing Regulation for Law 84 of 2002, which implements and clarifies the provisions of the parliamentary law); Leila Fadel, *Egypt Revives Law Allowing Government to Control NGOs*, NPR (Sept. 10, 2014), http://www.npr.org/2014/09/10/347468308/egypt-revives-law-allowing-government-to-control-ngos.

211. Agati, *supra* note 210, at 65.

212. *Id.* at 63.

213. *See Egypt: Margins of Repression*, HUMAN RIGHTS WATCH (July 4, 2005), http://www.hrw.org/en/node/11675/section/7 (stating that up to five organizations were unable to register under the compulsory registration system established by law, due to pressure from security forces, bureaucratic obstacles, and legal prohibitions on political activities carried out by NGOs).

214. 22 U.S.C. § 612(a) (2009).

215. *See* Gil Ronen, *Expert Calls for Law Against Foreign Political Intervention*, ARUTZ SHEVA (Dec. 3, 2009), http://www.israelnationalnews.com/News/News.aspx/134794 (indicating Israel's intent to have a similar law requiring disclosure of NGO funding).

216. *See* Barak Ravid, *U.S., EU Pressure Netanyahu to Scrap Proposed Bill*

Knesset passed the "NGO Transparency Law," which obligates every NGO to report foreign financial aid and indicate foreign support in all publications.[217] The right-wing, Jerusalem-based NGO Monitor Group, in its 2012 NGOs' funding report, stated that NGOs funded by EU governments or organizations such as George Soros' Open Society Foundation and NGO Development Center pursue goals "contrary to the stated positions" of the Israeli government.[218] In this, NGO Monitor is part of a growing movement calling for greater NGO transparency and accountability, but one significantly imbued from the political right with a deep skepticism about NGOs in general (as potentially jeopardizing national sovereignty), and human rights and humanitarian NGOs in particular (as revealed by NGO Monitor's stated "aim and objective" of publicizing "distortions of human rights issues in the Arab-Israeli conflict").[219] The Washington, D.C. think tank the American Enterprise Institute and the conservative Federalist Society in the United States share this concern, having established their similar "NGO Watch" initiative.[220]

Against Israeli NGOs, HAARETZ (Nov. 13, 2011), http://www.haaretz.com/print-edition/news/u-s-eu-pressure-netanyahu-to-scrap-proposed-bill-against-israeli-ngos-1.395220 (stating that the EU ambassador to Israel and diplomats from three European countries have concerns with the bill harming Israel and other countries' activities in Israel).

217. *See* 2011 Act Disclosure Requirements for an Entity Supported by the Foreign State, 2011, SH No. 2279 p. 362 (Isr.); *see also* Avi Yellin, *New Law Demands Transparency for NGOs with Foreign Funding*, INDY NEWS ISRAEL (Feb. 22, 2011), http://www.indynewsisrael.com/new-law-demands-transparency-for-ngos-with-foreign-funding (stating the law requires NGOs to issue quarterly funding reports and report they are funded by foreign countries via their website or promotional materials); *Israeli NGOs: Foreign Funding, Transparency, and Knesset Legislation*, NGO MONITOR, http://www.ngo-monitor.org/article/ngo_transparency_boycotts_and_knesset_legislation (last visited Nov. 6, 2014).

218. *See* Gil Ronen, *Foreign States Meddling in Israel to Tune of 35M NIS Annually*, ARUTZ SHEVA (Feb. 3, 2013), http://www.israelnationalnews.com/News/News.aspx/134794#.URjnI5b4JHh (stating NGOs involved in the Arab-Israeli conflict are being funded "contrary to the stated positions of the government funders").

219. *About NGO Monitor*, NGO MONITOR, http://www.ngo-monitor.org/articles.php?type=about (last visited Nov. 18, 2014).

220. *Global Governance Watch*, INST. FOR POL'Y STUDIES (Aug. 3, 2008), http://rightweb.irc-online.org/profile/profile/Global_Governance_Watch.

To take another example, Peru passed an NGO law in December 2006.[221] Though it mandates registration only for NGOs that operate solely on foreign funding, many human rights activists still warn not only about the practical chilling effects and other problems with the law, but also about the anti-constitutional character of the regulation.[222]

Cases like these present a very troubling development. They make it far too easy for politicians to take the low road of equating patriotism with unquestioning loyalty to the state, and human rights activism with high treason.

The local consequences in Russia of this global trend became apparent during the last week of March 2013, when officials from the Russian tax agency and general prosecutor's office raided over two hundred NGOs in forty-seven Russian regions,[223] including the Moscow offices of Human Rights Watch, Amnesty International, and Transparency International.[224] Insisting that the purposes of the search were merely routine "audits," the inspectors demanded founding documents and organizational financial statements.[225] Major human rights groups expressed concern that "this is just round one, and, after the smearing, the forced closures will come."[226]

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221. María Beatriz Parodi Luna, *State Supervision of NGOs in Perú*, 12 INT'L J. NOT-FOR-PROFIT L., 55, 58–59 (2009) (describing Law 28925, enacted in December 2006).

222. *See, e.g.*, Angel Páez, *PERU: Apristas, Fujimoristas, Back Law Increasing Oversight of NGOs*, INTER PRESS SERV. (Dec. 8, 2006), http://ipsnews.net/2006/12/peru-apristas-fujimoristas-back-law-increasing-oversight-of-ngos (discussing the law as endangering basic freedoms, including the freedom of association).

223. *Pravozazhchitniki: Proveryayushchie Ne Trebuyut ot Nas Stat'tinoagentami [Human Rights Defenders: The Authorities Do Not Require us to be Foreign Agents]*, RIA NOVASTI (Apr. 4, 2013), http://ria.ru/society/20130404/931009554.html.

224. Miriam Elder, *Russia Raids Human Rights Groups in Crackdown on 'Foreign Agents*,' GUARDIAN (Mar. 27, 2013), http://www.theguardian.com/world/2013/mar/27/russia-raids-human-rights-crackdown.

225. David Herszenhorn & Andrew Roth, *Russian Authorities Raid Amnesty International Office*, N.Y. TIMES, Mar. 26, 2013, at A9; Emily Alpert, *'Massive' Wave of Russian State Inspections of NGOs Continues*, L.A. TIMES (Mar. 27, 2013), http://articles.latimes.com/2013/mar/27/world/la-fg-wn-russian-ngo-inspections-20130327.

226. Alpert, *supra* note 225.

C. The "Dima Yakovlev Law"

Another law that condemns connections with foreign governments and organizations is the recently passed "Dima Yakovlev Law." It was named after the Russian orphan Dima Yakovlev, who died after his U.S. stepfather locked him in a car that was left in the hot sun for a few hours.[227] The incident happened in summer 2008 and caused strong indignation in Russian society.[228] In December 2012, Russian senators proposed a bill that purported to ban the adoption of Russian orphans by U.S. citizens.[229] Nevertheless, only Article 4 of the law addresses this adoption regulation.[230] Indeed, the remaining articles correspond to the 2012 U.S. Sergei Magnitsky Rule of Law Accountability Act,[231] which blacklisted Russian citizens suspected in human rights violations.[232] For instance, Articles 1 and 2 of the "Dima Yakovlev Law" ban U.S. citizens who have been involved in human rights abuse from entering Russia.[233] More importantly, the activities of all NGOs involved in politics and funded from the United States must be suspended,

227. Robert Bridge, *Moscow Responds to U.S. Magnitsky Act with Dima Yakovlev Law*, RUSSIA TODAY (Dec. 12, 2012), http://rt.com/politics/russia-us-yakovlev-magnitsky-human-rights-898.

228. *See id.* (explaining that the Magnitsky Act had a unifying effect by bringing the four diverse factions of the Russian State Duma to a "rare consensus" to co-write the Dima Yakovlev Law).

229. FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION, FEDERATION COUNCIL COMMITTEE ON SOCIAL POLICY, ZAKLIUCHENIE PA FEDERALNOMU ZAKONU "O MERAKH VOZDEISTVIYA NA LITS, PRICHASTNYKH K NARUSHENIYU OSNOVOPOLAGAYUSHCHIKH PRAV I SVOBOD CHELOVEKA, PRAV I SVOBOD GRAZHDAN ROSSIISKOI FEDERATSII" [CONCLUSIONS UNDER THE FEDERAL LAW "ON MEASURES AGAINST PERSONS INVOLVED IN THE VIOLATION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS, RIGHTS AND FREEDOMS OF CITIZENS OF THE RUSSIAN FEDERATION"], 2012, *available at* http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&8740C501C0EF900443257ADF004D0881.

230. *Id.*

231. Sergei Magnitsky Act, *supra* note 40, § 401.

232. *Id.* §§ 404–406; *Russia Strikes Back with Magnitsky List Response*, RUSSIA TODAY (Apr. 13, 2013), http://rt.com/news/anti-magnitsky-list-russia-799.

233. Federal'nyi Zakon RF o Merakh Vozdeistviya na Lits, Prichastnykh k Narusheniyu Osnovopolagayushchikh Prav i Svobod Cheloveka, Prav i Svobod Grazhdan Rossiiskoi Federatsii [Federal Law of the Russian Federation on Measures against Persons Involved in the Violation of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] Dec. 29, 2012, art. 1, para. 2.

according to Article 3.[234] Additionally, Russian citizens who have U.S. citizenship are prohibited from serving as a member of an NGO or international organization involved in politics in Russia.[235] Article 6 extends these regulations to the citizens of all states that decide to impose visa restrictions on Russian citizens suspected of human rights violations.[236]

D. Other Recent Restrictions on Political Freedoms

Freedom of assembly was seriously restricted by the June 2012 amendments to the so-called assembly law "On Meetings, Demonstrations, Marches, and Picketing."[237] The law requires registration of prospective demonstrations two weeks beforehand.[238] Moreover, organizers must describe the purpose and the route of the march in detail.[239] If the actual schedule, itinerary, or slogans of the protest do not match the registered ones, the law imposes a fine up to six hundred thousand rubles for individuals and one million rubles for organizations.[240] These new restrictions represent major burdens on the rights of free speech, expression, association, and assembly in Russia.[241]

By promoting a new law concerning the Internet in June 2012, the senators of the "United Russia" Party expressed intent

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234. *Id.* art. 3, para. 1.

235. *Id.* art. 3, para. 2.

236. *Id.* art. 6.

237. Federal'nyi Zakon RF o Sobraniiakh, Mitingakh, Demonstratsiiakh, Tzhestviiakh I Piketirovaniiakh [Federal Law of the Russian Federation on Meetings, Rallies, Demonstrations, Marches and Pickets], ROSSIISKAIA GAZETA [ROS. GAZ.] June 23, 2004 [hereinafter Law on Meetings].

238. *Id.* art. 7.

239. *Id.*

240. Federal'nyi Zakon RF o Vnesenii Izmenenii v Kodeks Rossiiskoi Federatsii ob Administrativnikh Pravonarutzheniiakh i Federalnyi Zakon "O Sobraniiakh, Mitingakh, Demonstratsiiakh, Tzhestviiakh I Piketirovaniiakh" [Federal Law of the Russian Federation on Amendments to the Code of Administrative Offences and the Federal Law "On Meetings, Rallies, Demonstrations, Marches and Pickets"], ROSSIISKAIA GAZETA [ROS. GAZ.] June 9, 2012, art. 7, para. 4 Document2 ("if the violation in question results in harm to human health or property"); Herszenhorn, *supra* note 39, at A5.

241. *'You Feel that just Anybody can be Detained' – Russia's Shrinking Space for Peaceful Protest*, AMNESTY INT'L (Oct. 6, 2014), http://www.amnesty.org/en/news/you-feel-just-anybody-can-be-detained-russia-s-shrinking-space-peaceful-protest-2014-10-06.

to prevent broadcasts of information unsuitable for children.[242] The senators proposed to create a blacklist of websites that host content pertaining to child pornography, materials promoting drug use, or instructions for suicide.[243] The resulting new bill, signed into law on July 28, 2012, however, broadly allows a special inspection agency to deactivate webpages if there is any information "banned from publishing in the territory of Russia."[244] Although, formally, that definition refers to materials instigating extremism, there is no public list of what constitutes such information established by the government. Thus, there is a serious risk that an ad hoc agency can use unchecked executive discretion to blacklist websites that criticize a current government or generally express political dissent.

To control online speech, the Russian parliament proposed a bill that will force bloggers whose audience exceeds 10,000 views per day to register as journalists and have legal responsibility for the content and comments of the blogs.[245]

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242. *See* RUSSIAN STATE DUMA, POYASNITEL'NAYA ZAPISKA K PROYEKTU FEDERAL'NOGO ZAKONA "O VNESENII IZMENENII V FEDERAL'NYI ZAKON O ZASHCHITE DETEI OT INFORMATSII PRICHINYAYUSHCHEI VRED IKH ZDOROV'YU I RAZVITIYU" I OTDEL'NYYE ZAKONADATEL'NYYE AKTY ROSSIISKOI FEDERATSII [EXPLANATORY NOTE TO THE DRAFT OF THE FEDERAL LAW ON AMENDMENTS THE FEDERAL LAW "ON PROTECTION OF CHILDREN FROM INFORMATION HARMFUL TO THEIR HEALTH AND DEVELOPMENT" AND CERTAIN LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION], 2012, *available at* http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&F76D61A06D5DB63743257A1600479905 (proposing implementing technological measures to shield children from accessing potential harmful, negative information).

243. *See id.* (proposing the creation of an integrated automated information system to prohibit internet materials relating to pornography, drug distribution, and suicide in the Russian Federation).

244. *See* Federal'nyi Zakon RF o Vnesenii Izmenenii v Federal'nyi Zakon "O Zashchite Detei ot Informatsii Prichinyayushchei Vred ikh Zdorov'yu i Razvitiyu" i Otdel'nyye Zakonadatel'nyye Aktyu Rossiiskoi Federatsii] [Federal Law of the Russian Federation on Amending the Federal Law "On the Protection of Children from Information Harmful to their Health and Development" and Certain Legislative Acts of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] July 30, 2012, art. 3, para. 2; *see also* Andrei Richter, *New Rules for Internet*, EUROPEAN AUDIOVISUAL OBSERVATORY, http://merlin.obs.coe.int/iris/2012/8/article36.en.html (discussing Roskomnazdor, the agency that created a blacklist database to notify web host providers to block access to a website if the owner does not remove the webpage within 24 hours).

245. *Russia Considers Forcing Bloggers to Get Journalist Accreditation*, RIA NOVOSTI (Feb. 20, 2014), http://en.ria.ru/russia/20140220/187683825/Russia-Considers-Forcing-Bloggers-to-Get-Journalist.html.

A journalist, on the other hand, can still criticize the government—as long as (in practice) the material is published in a small, unpopular newspaper.[246] Actors and poets, who historically played a great role in the battles for democracy and freedom,[247] can still openly perform their mocking performances and poems as long as they do not invite the audience to engage in active opposition.[248] As soon as the newspaper or the published material receives a wide audience, however, such authors or performers immediately become a target for the security forces. Killings, persecutions, and raids in media outlets' offices are the Kremlin's notorious tools for mass media self-censorship.[249] Those who, nevertheless, ignore threats and continue disclosing officials' crimes in the relatively censorship-free Internet space face other obstacles established by, for example, "defamation" law.

The latest "defamation" law became effective on August 10, 2012.[250] It prescribes a fine up to five million rubles for libel in the mass media.[251] Already one of the most dangerous countries for journalists,[252] Russia uses that law to further curtail freedom of expression and press. Additionally, the State Duma has been considering a new bill to include on the list of foreign agents

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246. Maria Lipman, *Freedom of Expression Without Freedom of Press*, 63 J. INT'L AFF. 153, 158 (2010).

247. *See, e.g.*, Sophie Pinkham, *Oligarchs and Graphomaniacs*, NATION, Apr. 29, 2013, 27, 30 (discussing a writer that became a political hero and how Soviet writers overcame political censorship).

248. *See* Ellen Barry, *Satirizing Putin with Boldly Poetic Flair*, N.Y. TIMES, Nov. 19, 2011, at A4 (explaining how the "Citizen Poet" project has attracted a politically passive audience to the satiric performances).

249. *Reporters Without Borders: Russian Laws 'Lead to Self-Censorship*, DW (Jan. 29, 2014), http://www.dw.de/reporters-without-borders-russian-laws-lead-to-self-censorship/a-17394661.

250. Federal'nyi Zakon RF o Vnesenii Izmenenii v Ugolovnyi Kodeks Rossiiskoi Federatsii i Otdel'nye Zakonodatel'nye Aktyu Rossiiskoi Federatsii [Federal Law of the Russian Federation on Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] Aug. 1, 2012.

251. *Id.* art. 1.

252. *Attacks on the Press: Journalism on the Front Lines in 2012*, COMM. TO PROTECT JOURNALISTS (2013), https://cpj.org/2013/02/attacks-on-the-press-in-2012-russia.php.

every mass media outlet[253] that covers political issues in Russia and receives financial support from abroad.[254] As happened with alleged foreign-agent NGOs, foreign media agents would be required to account for any financial assistance received from any foreign government, organization, citizen, or international organization.

The notorious 2002 extremism law was also amended in 2012.[255] Originally, the law strove to define extremist activity, and called "making mass disturbances . . . for the reasons of . . . political . . . hatred"[256] extremism.[257] Any organization that implements extremist acts is subject to legal prosecution and final banning in Russia's territory.[258] On December 25, 2012, President Putin enacted amendments, according to which displaying the logos and materials of banned extremist organizations[259] is subject to a fine of two thousand rubles or fifteen days of administrative arrest.[260] Four videos of a

253. *MPs Mull Over 'Foreign Agent' Status for Media*, RUSSIA TODAY (July 16, 2012), http://rt.com/politics/foreign-agents-media-status-244.

254. RUSSIAN STATE DUMA, PROEKT FEDERALNYI ZAKON O VNESENII IZMENENII V FEDERALNYI ZAKON "O SREDSTVAKH MASSOVOI INFORMATSII" [PROJECT OF FEDERAL LAW ON AMENDING THE FEDERAL LAW "ON MASS MEDIA"], http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&874905FBC2A1A36943257ACA00310BAC.

255. Federal'nyi Zakon RF o Protivodeistvii Ekstremistskoi Dertel'nosti [Federal Law of the Russian Federation on Countering Extremist Activities], ROSSIISKAIA GAZETA [ROS. GAZ.] July 25, 2002 [hereinafter 2002 Extremism Law], *amended by* Federal'nyi Zakon RF o Vnesenii Izmenenii v Stat'iu 20.3 Kodeksa Federatsii ob Administrativnj Pravonarusheniiakh i Stat'iu 1 Federal'nogo Zakona 'O Protivodeiistvii Ekstremistskoii Deiatel'nosti' [Federal Law of the Russian Federation on Amendments to Article 20.3 of the Code of Administrative Offences and Article 1 of the Federal Law 'On Countering Extremist Activity'], ROSSIISKAIA GAZETA [ROS. GAZ.] Dec. 25, 2012 [hereinafter Amended Extremism Law].

256. 2002 Extremism Law, *supra* note 255, art. 1, para. 1.

257. *See id.*; *see also* Mike Eckel, *Russian Extremism Law Casts Wide Net*, WASH. POST (Sept. 3, 2007), http://www.washingtonpost.com/wp-dyn/content/article/2007/09/03/AR2007090300470_pf.html.

258. 2002 Extremism Law, *supra* note 255, arts. 6, 7, 9.

259. Today, the list of banned extremist organizations includes 36 political and religious organizations, including the National-Bolshevik Party and the regional branch of Jehovah's Witnesses in Taganrog. MINISTRY OF JUSTICE OF THE RUSSIAN FEDERATION, PERECHEN' NEKOMMERCHESKIH ORGANIZACIJ [THE LIST OF THE BANNED EXTREMIST NONGOVERNMENTAL ORGANIZATIONS], http://minjust.ru/nko/perechen_zapret (last visited Oct. 28, 2014).

260. Amended Extremism Law, *supra* note 255, art. 1, para. 2.

"punk prayer" by the band Pussy Riot, whose main members were recently given amnesty after twenty-one months' imprisonment,[261] were ruled as extremist in November 2012.[262]

When we were writing this article, the Russian senators introduced and passed still additional bills that will further violate the freedoms of movement and assembly in Russia. After creating a new "Iron Curtain" for minors who cannot be adopted and moved to the U.S. and countries where sexual minorities' rights are protected, lawmakers decided to further restrict freedom of movement inside Russia. On December 13, 2013, the State Duma passed a bill that makes living in Moscow without registration a criminal offense punishable by imprisonment.[263] Russian citizens will face legal trial if they stay in Moscow without registration—which involves bureaucracy, fines, and thus, corruption risks—for more than 90 days.[264] The same is true for the city of Sochi, where, before the 2014 Olympic Games, policemen raided all apartments in the city and checked the registration of every inhabitant.[265] Further curbing freedom of movement, the Russian authorities imposed penalties for Russians who conceal their double citizenship or residence permit in a foreign country.[266]

Perhaps even more threatening to human rights is the senators' recent work on the bill that will allow ad hoc agency action to arbitrarily block Internet websites calling for

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261. Mark Memmott, *Their Release is Just a 'PR' Stunt, Pussy Riot Member Says*, NPR (Dec. 23, 2013 6:45 AM), http://www.npr.org/blogs/thetwo-way/2013/12/23/256478469/their-release-is-just-a-pr-stunt-pussy-riot-member-says.

262. Anastasia Berseneva & Daria Zagvozdina, *Èkstremistskie Plyaski* [Extremist Dance], ROS. GAZ. (Nov. 29, 2012), http://www.gazeta.ru/social/2012/11/29/4872449.shtml.

263. Tamra Shkel, Shtrafnye Mery [Penal Measures], ROS. GAZ. (Dec. 16, 2013), http://www.rg.ru/2013/12/13/duma-site.html.

264. *Id.*

265. Katerina Paukyanova, *Sochi Residents Complain About Difficulties with Registration*, CAUCASIAN KNOT (Dec. 8, 2004), http://eng.kavkaz-uzel.ru/articles/26604; Ezekiel Pfeifer, *Sochi Authorities Begin Raids to Find Illegal Migrants*, MOSCOW TIMES (Sept. 11, 2013), http://www.themoscowtimes.com/olympic_coverage/article/sochi-authorities-begin-raids-to-find-illegal-migrants/485868.html.

266. Alexey Eremenko, *Deadline Set for Disclosing Dual Citizenship*, MOSCOW TIMES (Aug. 7, 2014), http://www.themoscowtimes.com/news/article/deadline-set-for-disclosing-dual-citizenship/504769.html.

participation in unsanctioned demonstrations and meetings.[267] Considering the facts that, first, city governments almost never allow demonstrations at the requested time or place,[268] and, second, the regulations for assembly organization have strict time limits to schedule a meeting,[269] demonstration organizers usually have to change the format of an unsanctioned meeting into single-person pickets in order to make their voices heard. If the bill becomes law, personal webpages of activists, websites of human rights organizations, and even social media pages might be banned without any legal procedure or investigation by the unchecked discretionary order of the appointed agency.

As a capstone illustration of this trend, in late December 2013, Russian senators proposed to cancel the primacy of international law within Russia's constitutional and legal structure.[270] The arguments in favor are twofold. First, the senators appeal to Russia's great power status to say that it should not incorporate international norms into its law in the way Germany, Italy, and Japan did following their defeat in World War II.[271] Second, the lawmakers play their currently popular anti-gay card, stressing that homosexual marriages, which are legalized in many Western states, should not be accepted in Russia.[272] In fact, the real reason behind such a rush to revise the rules relating to the primacy of international law might be the hundreds of decisions by the European Court of Human Rights in which Russia was found guilty of human rights violations.[273] One way or another, this legislative

267. *Russia's Government Might Block Websites for Calls to Unsanctioned Rallies*, GLOBAL VOICES (Dec. 15, 2013), http://globalvoicesonline.org/2013/12/15/russias-government-might-block-websites-for-calls-to-unsanctioned-rallies.

268. *See Russia's Onslaught on Protest*, AMNESTY INT'L (June 3, 2014), http://www.amnesty.org/en/for-media/press-releases/russia-s-onslaught-protest-2014-05-29.

269. Law on Meetings, *supra* note 237, art. 1, para. 4.

270. *European Court of Human Rights Decisions May Become Invalid in Russia*, RUSSIA TODAY (Dec. 24, 2013), http://rt.com/politics/court-constitution-echr-law-726.

271. Lyuba Lulko, *Should International Law Prevail over Russian Constitution?*, PRAVDA (Dec. 12, 2013), http://english.pravda.ru/russia/politics/12-12-2013/126368-international_law_russian_constitution.

272. *Id.*

273. *ECHR Issued 120 Rulings against Russia in 2013*, MOSCOW TIMES (Jan. 9, 2014), http://www.themoscowtimes.com/news/article/echr-issued-120-rulings-against-

initiative, if it becomes law, will drastically affect economic life in Russia, undermine the foundation of international relations with Moscow, and further call into question respect for the panoply of human rights within Russia.

IV. CONCLUSION

On December 12, 2013, the Russian President rhetorically urged support of civil rights movements and emphasized the significance of civil society control over municipal administration in his annual state of the nation address.[274] Unfortunately, the recent redefinition of the treason law, along with the other repressive legal changes described above, demonstrate that Putin's rhetoric does not match his deeds.

New laws on NGOs, defamation, extremist activity, and mass media represent the efforts of the Putin administration to move Russia's current political system in a more authoritarian direction. By restraining political dissent and criminalizing foreign funding directed to civil society organizations, the Kremlin apparently aims to prevent any opportunities for foreign intervention and the consolidation of an effective opposition or, indeed, any means of developing effective countervailing civil society influence outside the ambit of sovereign state control. Whereas the United States and many other nations have legally focused their concerns with the monitoring of foreign influence on elections and domestic politics, Russia has gone much further in the direction of actually criminalizing associations with foreign individuals and groups.

Motives are rarely, if ever, simple or unidimensional, and extensive speculation as to the motives of President Putin and the other members of his regime may not be necessary or fruitful. President Putin's motives for reasserting such authoritarian and xenophobic approaches represented by his "Sovereign Democracy" ideology undoubtedly include a genuine

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russia-in-2013/492439.html.

274. Uwe Klussmann, *Russia in Stagnation: Putin Speech Hints at Big Problems*, SPIEGEL (Dec. 13, 2013), http://www.spiegel.de/international/world/putin-speech-hints-at-big-problems-and-stagnation-in-russia-a-938761.html.

desire to reassert Russian autonomy and nationalism in the wake of the Soviet Union's dissolution—which President Putin has called the "greatest geopolitical catastrophe" of the 20th century.[275] His actions clearly have precedents; many have described Russia's history, cultural traditions, and even psychology as antithetical to full and authentic democracy.[276] The changes in the 1990s were a time of profound instability and fear for many Russians, a fact that continues to exert a powerful influence on Russia's politics today. Serious concerns also undoubtedly exist about defusing ethnic separatism, which, as noted above, is an issue especially important to Putin. The Russian regime strongly resists such tendencies toward ethnic fragmentation, instead favoring stability and the preservation of Russia's national sovereignty against any potential regime change—especially under the auspices of U.S. and Western human rights interventionism—of the sort seen in Iraq, Libya and, perhaps at present, in Syria. Other nations, including China, have analogues to these concerns, and have developed their own particular "interpretations" of the term "democracy" (if the word can bear the weight of such distortions), just as Putin has formulated his "Sovereign Democracy." Whatever the rhetoric, Russia and its people certainly have legitimate national security, cultural, and other interests which motivate a substantial part of the decision-making by officials.

Yet there are also democratically illegitimate interests, including preserving a sphere of unchecked personal and executive authority, safeguarding avenues of corrupt maintenance of power, and siphoning off national resources and assets for personal profit—none of which should form any part of a legitimate decision-making process. The fact that these repressive new laws largely coincided with the signs of domestic protests against elite autocracy and corruption, like the "Arab Spring" and the various Occupy movements, is no coincidence.

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275. *Putin Deplores Collapse of USSR*, BBC NEWS (Apr. 25, 2005), http://news.bbc.co.uk/2/hi/4480745.stm.

276. *See* Alyushin, *supra* note 9, at 9 (stating that traditional state paternalism challenges post-Soviet Russia's transition to liberalism).

And, as widely recognized across legal systems, the legal means to address even legitimate interests should be narrowly tailored when it comes to safeguarding fundamental rights. By contrast, these overbroad, anachronistic, and even absurd measures (criminalizing even the existence of foreign connections and communication) do not come close to passing the basic tests of narrow focus or reasonableness.

Such regressive and repressive laws, reminiscent of the worst characteristics of the former Soviet Union, are so out of step with the current objective needs of the Russian nation and its populace that they should have no place in a 21st century state—especially one of Russia's standing, given its current role as a United Nations Security Council Permanent Member and nuclear state, and even more significantly considering the potentially vital roles the country could play in international relations. The current era of interdependent globalization both demands and thrives on good governance principles including transparency and accountability,[277] and on global norms, such as the human rights norms, that are being undermined by this latest spate of Russian laws. Historically, nations that have retreated into isolation at similar periods of expanding global opportunity, such as China, are only now recovering.

Laws have consequences and reflect the character of the societies that engender them. For Russia to have hearkened back to Cold War mindsets and approaches, and to attempt to inculcate in still further generations customs of not dissenting, of chilling personal expression, of simply accepting conformist thought—at the very time when the needs of both Russia and the larger global environment require precisely the opposite habits of mind, to meet new and profoundly different post-Cold War challenges—is to condemn the nation to further stagnation and truncated achievements.

Whether the new laws of "Sovereign Democracy" will stand or not, and for how long, is an open question. They are so out of

277. *Ethics, Transparency and Accountability*, UNITED NATIONS PUB. ADMIN. NETWORK, http://www.unpan.org/DPADM/ProductsServices/AdvisoryServices/EthicsTransparencyandAccountability/tabid/675/language/en-US/Default.aspx (last visited Nov. 18, 2014).

step with global expectations, and with contemporary needs and realities, that they may be moderated over time or ultimately repealed by responsible elements within the Russian elite. That would be desirable, since it would represent a self-correction of the self-defeating path Russia has taken.

If no such self-correction is made, Russia will find itself increasingly isolated within the global institutions it has tried so hard to join and at risk of not receiving the global recognition and foreign investment it has sought.[278] A very real risk is that the "security" seemingly offered by the regressive new laws will prove illusory, brittle, and short-term, as pressures continue to build in Russian society for exactly the sort of debate and progress once enabled by recently repressed rights. In that case, to paraphrase John F. Kennedy, the absence of avenues for peaceful evolution will mean the encouragement of violent revolution[279]—ironically the sort of "extremism" President Putin saw in the Color Revolutions of the region and has actively tried to discourage. While there seems to be rapidly shrinking room for that sort of political mobilization in the current anti-dissent environment in Russia, Putin and his colleagues would be well counseled to remember the human rights repression that gave rise to other revolutions in the past and in the present, in Western nations, in the recent "Arab Spring," and in the history of Russia itself.

278. *Russia Faces Deepening Isolation from International Community: WH*, NEW INDIAN EXPRESS (Aug. 1, 2014), http://www.newindianexpress.com/world/Russia-Faces-Deepening-Isolation-from-International-Community-WH/2014/08/01/article2359246.ece.

279. John F. Kennedy, U.S. President, Address on the First Anniversary of the Alliance for Progress (Mar. 13, 1962) ("Those who make peaceful revolution impossible will make violent revolution inevitable.").