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‘So whose agents are we?’ Defining (international) human rights in the shadow of the “foreign agents” law in Russia

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The Russian Federation’s “foreign agents” law has been criticised as a threat to civil society. The negative impact of the law’s implementation has been widespread across the human rights sector. Human rights defenders affected by the law have, in turn, employed counter strategies. They have demonstrated their expertise in engaging non-legal methods by prompting dialogue and engaging critically with the language of the law. Primarily a way of tackling the most harmful effects of reputational damage, this dialogue also serves as a framework within which human rights defenders can position themselves. The dialogue emphasises the depth of engagement between human rights defenders, the state, and the wider public, through vernacularisation and advocacy. Situating my study within a review of recent literature on Russian society and theory on civil society, spanning sociology, anthropology and political science, I foreground modes of engagement between the state, activists and the wider Russian society. Understanding the law’s implementation and NGOs’ responses within this broader framework allows scholars and policymakers a greater knowledge of the “foreign agents” law’s reach, and creates a space from which to discuss possible next steps.

Introduction

In early 2016, the board of the human rights organisation Ryazan’ Memorial published a statement online. ‘So whose agents are we? The answer is simple. We are the agents of Russian citizens, residents of the city of Ryazan’... We act in the interests of people, and exclusively within

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the framework of the law.¹ The statement was a response to being added to a government register² created by Federal Law 121-FZ ‘On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent’³ (the “foreign agents” law), introduced in 2012. The law states that non-governmental organisations (NGOs) qualify for the label “foreign agent” if they receive foreign funding and engage in “political activity”. NGOs labelled as “foreign agents” are required to register with the Ministry of Justice, conduct costly annual audits, and acknowledge the “foreign agent” label in all communications, published or broadcast – failure to do so may incur fines of between 100,000 and 300,000 rubles. Initially, the law did not define “political activity”; this ambiguity was borne out in its application, with NGOs left bewildered when they were told they had engaged in “political activity”. In June 2016, the Russian legislature passed a law that defined “political activity”⁴ but this did little to solve the problem of ambiguity, as it now encompassed ‘any manifestation of civil activism or commitment to solving the problems faced by [Russian] society’.⁵ By subjecting NGOs to such expansive regulation, the law threatened a ‘chilling effect’ on civil society. As demonstrated by the statement from Ryazan’ Memorial, NGOs have not shied away from commenting on this threat; moreover, they have engaged directly and critically with the law and its wording. The straightforward words in Ryazan’ Memorial’s statement convey the incredulity expressed by the human rights community in Russia in the face of law. ‘Whose agents are we?’; for human rights’ defenders (HRDs), *the answer is simple*: they are agents for Russians, not for principals abroad.

¹ Ryazan’ Memorial, ‘We are the agents of the citizens of Russia’ (translated by Simon Cosgrove) (Rights in Russia, 3 February 2016) <<http://hro.rightsinrussia.info/hro-org/foreignagents-205>> accessed 15 August 2017.

² Information portal of the Ministry of Justice of the Russian Federation (‘foreign agents register’), <<http://unro.minjust.ru/NKOForeignAgent.aspx>> accessed 15 August 2017.

³ Federal Law No. 121-FZ “On amendments to legislative acts of the Russian Federation regarding the regulation of the activities of non-profit organisations performing the functions of a foreign agent”, November 21, 2012,

⁴ Human Rights Watch, ‘Russia: Government vs. Rights Groups. The Battle Chronicle’ (Human Rights Watch, 24 July 2017) <www.hrw.org/russia-government-against-rights-groups-battle-chronicle> accessed 26 July 2017.

⁵ PEN International, ‘Russian PEN: Writers and academics speak out against law on “foreign agents”’ (PEN International, 1 February 2016) <www.pen-international.org/centresnews/russian-pen-writers-and-academics-speak-out-against-law-on-foreign-agents> accessed 9 August 2017.

Ryazan' Memorial is a regional branch of the human rights organisation Memorial, active since 1989, and working in human rights education and advocacy. The beneficiaries of this advocacy are Russian citizens; by their own estimations, their work has benefited 12,000 people.⁶

The wording of the “foreign agents” law

The “foreign agents” law is at once brazen and cunning. It plays on historic notions (and present-day fears) of a foreign enemy and subterfuge while hinting at the foreignness that ordinary Russians may feel regarding HRDs and their rhetoric. In the post-Soviet Russian context, the phrase “foreign agent” is a loaded term: with the historical connotation of a “foreign spy” or even traitor,⁷ it provokes fear of heavy reprisals.⁸ In contemporary Russian society, in which NGOs have been accused of heeding the agendas of American and European grant-giving foundations, the reality of being labelled a “foreign agent” is far from inconsequential. To understand how HRDs might continue their work in the shadow of such a law, my research considers the implementation of this law and its reception among HRDs. Since I have relied on openly accessible statements and interviews, I am assured that I have not published any confidential or compromising statements or opinions.

In 2013, Vladimir Lukin, the Ombudsman for the Russian Federation, along with the Kostroma Center for Support of Public Initiatives and three citizens challenged the constitutionality of the “foreign agents” law, referring its provisions and the code of administrative offences to the Constitutional Court of the Russian Federation. The Court upheld the law, arguing that it was in conformity with the Russian Constitution of 1993. They added that ‘any attempt to find, based on stereotypes of the Soviet era that have effectively lost their meaning under modern conditions, any negative connotations in the phrase “foreign agent” would be devoid of

⁶ Ryazan' Memorial (n 1)

⁷ Commissioner for Human Rights for Council of Europe, Opinion of the Commissioner for Human Rights ‘On the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards’, 15 July 2013, Strasbourg, para 57

⁸ Françoise Daucé, ‘The Duality of Coercion in Russia: Cracking Down on “Foreign Agents”’ (2015) 23:1 *Demokratizatsiya* 57, 64

any constitutional and legal basis.’⁹ This argument hints at what the authorities were attempting to do with the “foreign agents” law: promulgate a social, as well as legal, status, stigmatising human rights organisations while distancing themselves from the stigmatising. However, there is overwhelming evidence to demonstrate that the ‘stereotypes of the Soviet era’ have not lost their meaning. In a survey conducted in 2016 by the polling organisation Levada, 45% of respondents associated the term with ‘spy, recruiter, foreign intelligence, double agent, infiltrator, recruited’; 57% of respondents negatively perceived the term.¹⁰

In further evidence of the negative perception of the term, NGOs have reported instances of vandalism and graffiti, much of which makes a clear reference to the “foreign agent”: the night before the law came into effect, the Moscow offices of Memorial were painted with the words “*inostrannyi agent*” (“foreign agent”), a heart and the letters “USA”;¹¹ the offices of the “Women of the Don” Union were spray-painted with the words “*priemnaia gosdepa SShA*” (‘The Reception of the US State Department’);¹² in Syktyvkar, the capital of Komi Republic, members of the pro-Kremlin national-patriotic group Rubezh Severa spray-painted HRDs’ homes with the words “*zdes’ zhivet inostrannyi agent*” (‘A foreign agent lives here’).¹³ Olga Sadovskaya of Committee for Prevention of Torture noted that hostility was associated with the NGO’s interaction with international parties: ‘It’s a rule: when foreigners come – bye-bye wheels’.¹⁴ While it is likely that many of these examples involved organised groups of pro-Kremlin nationalists, the law appears to have had the effect

⁹ Venice Commission, ‘Opinion on federal law no. 121-FZ on non-commercial organizations (“Law on Foreign Agents”), on federal laws no. 18-FZ and no. 147-FZ and on federal law no. 190-FZ on making amendments to the criminal code (“Law on treason”) of the Russian Federation’ (June 2014). <www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29025-e> accessed 15 August 2017, para 55.

¹⁰ Levada Centre, “Foreign Agent” (Levada Centre, 20 March 2017) <www.levada.ru/en/2017/03/20/foreign-agent/> accessed 10 August 2017.

¹¹ Freek Van der Vet and Laura Lyytikäinen, ‘Violence and human rights in Russia: how human rights defenders develop their tactics in the face of danger, 2005-2013’ (2015) 19 *The International Journal of Human Rights* 982.

¹² Human Rights Defenders video documentary project, <<http://hragents.org>> accessed 15 August 2017, “Women of the Don” Union.

¹³ Human Rights Defenders (n 12) Komi Memorial Human Rights Centre.

¹⁴ Human Rights Defenders (n 12) Committee Against Torture, Olga Sadovskaya

of aligning public perception of human rights organisations with foreign interference.

Beyond these more visible acts, the stigmatisation attached to the term had a disruptive impact on the work of NGOs. Yevgenyi Mitrofanov of the Novosibirsk Foundation for the Protection of Consumer Rights reported that ‘almost immediately after we were included on the list, all contacts with the media stopped.’¹⁵ Formerly cooperative organisations were reluctant to be seen working with “foreign agents”.¹⁶ The Commissioner for Human Rights reported hearing of a more concerning case: during the winter months of 2013, a number of homeless people refused shelter from representatives of an NGO, ‘indicating that they were unwilling to accept help from “foreign agents”.’¹⁷ The fact that most HRDs work with marginal or vulnerable groups underlines the danger in eradicating these networks of support.

Russia and international human rights law

In the 1990s, following the collapse of the Soviet Union, Russia adopted its 1993 Constitution which states that the rights and freedoms of man are the ‘supreme value’.¹⁸ Article 15(4) of the Constitution states that international law takes precedence over domestic law. Already a party to the United Nations Declaration on Human Rights, in 1996 Russia joined the Council of Europe, ratifying the European Convention on Human Rights (ECHR) in 1998 and becoming subject to judgments of the European Court of Human Rights (ECtHR). The incompatibility of the “foreign agents” law with the human rights protected in Russia’s Constitution and international treaties has been discussed widely, and,¹⁹

¹⁵ Amnesty International, Report ‘Agents of the People. Four years of “foreign agents” law in Russia: Consequences for the Society’, 18 November 2016.

¹⁶ Kseniia Egorova, ‘Yarlyk inostrannogo agenta na nas povesili za mirotvorcheskuiu deiatel’nost’ [We were labelled ‘foreign agent’ for our peacekeeping activity], Interview with Valentina Cherevatenko (Don News, 13 June 2017) <www.donnews.ru/Yarlyk-inostrannogo-agenta-na-nas-povesili-za-mirotvorcheskuyu-deyatelnost-342> accessed 31 July 2017; Human Rights Defenders (n 12), Committee Against Torture.

¹⁷ Commissioner for Human Rights (n 7).

¹⁸ Constitution of the Russian Federation, Article 2.

¹⁹ Commissioner for Human Rights for Council of Europe (n 7); Chip Pitts and Anastasia Ovsyannikova, ‘Russian’s New Treason Statute, Anti-NGO and other Repressive Laws: “Sovereign

in February 2013, a group of NGOs brought a complaint to the ECtHR under articles 10, 11, 14 and 18 of the ECHR. By March 2017, when the Court began to consider the case, 60 Russian NGOs were party to the complaints. The Court communicated questions to the Russian state in April 2017. In September 2017, the Ministry of Justice communicated a memorandum to the Court, stating that ‘The requirements of the Russian legislation ... do not restrict NGOs in their choice of possible spheres of activity. A variety of similar requirements and regulation are widespread in many countries and are aimed at ensuring the transparency and openness of the activities of NGOs’.²⁰ As will be argued below, such a comparison is easily dismissed. The analogy is in line with the regime’s oft-repeated claims of double standards in the West. In the context of this dialogue between the Russian authorities, the European human rights system, and human rights organisations within Russia, this article sets out to use post-communist Russia as a case study to understand how international human rights law may be protected in the face of excessive regulation and repressive legislation. In doing so, it asks how effectively international human rights law can be protected in the context of an authoritarian or ‘managed’ democracy.²¹

Enforcement of the law

As of August 2017, the “foreign agents” register listed 89 organisations. In the first five years of the register’s existence, the Russian Ministry of Justice designated some 160 NGOs as “foreign agents”. Of these, around thirty opted to shut down rather than accept the “foreign agent” label. The Ministry of Justice removed over twenty organisations from the register, acknowledging that they had ceased to be “foreign agents”, meaning that they had stopped accepting foreign funding.²² In

Democracy” or renewed autocracy? (2014) 37:1 Houston Journal of International Law 83; Vladimir Kara-Murza, ‘Inostrannye agenty’ v Rossii i SSHA: mify i real'nost' [‘Foreign agents’ in Russian and the USA: myths and reality] (*Institute of Contemporary Russia*, 9 May 2013) <<https://www.imrussia.org/ru/politics/1455>> accessed 9 August 2017

²⁰ Anna Pushkarskaia, ‘Miniust otvetil ESPCh po delu inostrannykh agentov’ [The Ministry of Justice responded to the ECtHR on the matter of foreign agents] (*Kommersant*, 19 September 2017) <www.kommersant.ru/doc/3415504> accessed 25 September 2019

²¹ Sergej Ljubownikow and Jo Crotty, ‘Managing Boundaries: the role of non-profit organisations in Russia’s managed democracy’ (2017) *Sociology*

²² Human Rights Watch (n 4)

June 2017, one NGO chairperson, Valentina Cherevatenko of “Women of the Don” Union, faced criminal charges under Article 330.1 (introduced by the “foreign agents” law) of the criminal code, for alleged ‘malicious evasion of duty’ related to complying with the requirements of the law; the case was eventually closed due to lack of evidence of a crime. It is clear from these figures alone that the law has, for many NGOs, had devastating effects. For those who continue to operate while on the register, the administrative burden has distracted from their day-to-day human rights work. Even more damaging has been the stigmatising effect of the “foreign agents” label and the lack of access to foreign funding.

Situating my study within a review of recent literature on Russian society and theory on civil society, spanning sociology, anthropology and political science, I foreground modes of engagement between the state, activists and the wider Russian society. I use two strands of research – drawing on the particulars of implementation on the one hand, and methods for responding to the law on the other – to demonstrate how international human rights law is challenged and defended creatively, with both the state and civil society organisations relying on non-legal narratives and methods. Understanding the law’s implementation *and* NGOs’ responses within this broader framework allows scholars and policymakers a greater knowledge of the “foreign agents” law’s reach, and creates a space from which to discuss possible next steps.

Recent scholarship on human rights and civil society development in post-communist Russia has tried to answer a two-pronged question: how successful have post-communist Russia’s HRDs been in ensuring citizens’ civil and political rights? Why have they not been more successful? The studies that emerged offer a useful overview of human rights defence in Russia, as well as the challenges Russian HRDs faced prior to the “foreign agents” law. In a review of recent literature below I consider the different approaches, from a range of disciplines, and the relevance of these arguments to my own project.

The impact of civil society ‘aid’ from the West

An early wave of scholarship on civil society in post-communist Russia placed much of the blame for the apparent weakness of Russia’s civil society at the feet of the extensive programme of Western aid. Amidst a dearth of funding from within Russia in the 1990s, Western NGOs and

aid programmes arrived with funds to support democratisation in Russia. While their aim was the promotion of grassroots organisations, research suggested that they had instead delivered a stratum of top-heavy, professionalised NGOs, lacking in popular support, with limited success in democratising.²³ Based on her research into women's groups, Sarah Henderson noted that the aid model encouraged foreign-funded NGOs to take on the structural characteristics and programmes of the Western agencies, while promoting accountability to donors over local constituents.²⁴ Julie Hemment argued that these bureaucratic structures were most easily adopted by those who had formed part of the Soviet-era *nomenklatura*, a system of elites in public activity, thereby replicating prior structures of privilege and further engendering resentment towards the powerful few.²⁵

The funding landscape of Russian civil society in the 21st century is very different from the 1990s, when Western aid was bountiful. However, these studies highlighted a range of problems already facing civil society organisations (including human rights NGOs), in spite of an environment of lighter-touch regulation and full access to funding from the West. My project situates the problem that the “foreign agents” law poses for NGOs in the complex environment that already existed. It is against this background that the dangers experienced and strategies employed are explored.

My research, however, does not accept certain assumptions made by this body of scholarship. The authors tended to equate success with the capacity to engage or mobilise a mass movement. In 2007, Jan Kubik argued that future studies on civil society should focus not only on levels of participation ‘but rather on their quality of connectedness with other domains of the polity and the international arena.’²⁶ More recent studies have suggested that civil society organisations in post-communist

²³ Sarah Henderson, *Building Democracy in Contemporary Russia* (CUP 2003); Lisa McIntosh Sundstrom, *Funding Civil Society* (SUP 2006); Julie Hemment, ‘The Riddle of the Third Sector: Civil Society, International Aid and NGOs in Russia’ (2004) 77 *Anthropological Quarterly* 215; Mary McAuley, *Human Rights in Russia* (IB Tauris 2015); Sergej Ljubownikow and Jo Crotty, ‘Civil Society in a Transnational Context: The response of health and educational NGOs to legislative changes in Russia’s industrialized regions’ (2014) 43 *Nonprofit and Voluntary Sector Quarterly* 759.

²⁴ Henderson (n 23).

²⁵ Hemment (n 23) 217.

²⁶ Cited in Samuel Greene, *Moscow in Movement* (SUP 2014) 20.

countries prioritise links with power holders and institutions over mass participation.²⁷ As my research explores, NGOs' strategies are concerned with a delicate balancing act, negotiating their relationship with public bodies (for example: the regional court system) while avoiding complete submission to the regime.

Cultural norms and the language of rights

Lisa McIntosh Sundstrom's research into foreign-funded democratisation built on Henderson and Hemment's work to demonstrate the importance of Russian cultural norms, by determining which types of projects gained wider support.²⁸ According to her study, soldiers' rights groups were more successful at attracting support than women's groups as the human rights norms that they promoted – ending the physical abuse of soldiers – were more in line with Russian cultural norms than the women's groups' goals to end discrimination against women. The cultural argument has filled many pages of scholarship, though it is to be approached with caution. Some have attempted to illustrate a preference for socio-economic over political rights: Maria Lipman noted that socio-economic rights had repeatedly mobilised mass support, whereas political groups failed to attract a strong base.²⁹ Evans argued that Russian citizens are able to mobilise successfully around 'felt needs grounded in everyday experience'.³⁰ However, this perspective tells us more about the urgency of socio-economic rights than it does about any apathy towards civil and political rights, particularly in the context of cycles of poverty and economic crises. In her 2014 book, Mary McAuley argued that 'prioritising socio-economic demands at a time of impoverishment does not necessarily mean a preference for authoritarian rule'.³¹ Bill Bowring has challenged the notion that "individual rights" were only ever Western and that Russia had always favoured the "collective". Citing the role of western European legal theory in the development of legal thought in 18th and 19th century Russia, Bowring argued that Russia's adoption of human rights in

²⁷ Ljubownikow and Crotty (n 21) 2.

²⁸ Sundstrom (n 23).

²⁹ Maria Lipman cited in Alfred Evans, 'Protests and civil society in Russia: The struggle for the Khimki Forest' (2012) 45 *Communist and Post-Communist Studies* 233, 238.

³⁰ *Ibid.*

³¹ McAuley (n 23) 158.

the 1990s was not a “legal transplantation” but rather a restoration of 19th century legal reforms.³²

Several scholars have argued that the limited advancement of human rights defence is not a question of rights typology but rather of framing, through language or dynamics. In Sundstrom’s study of soldiers’ rights groups, she found that the movement’s “success” was achieved not by rights-based arguments, but commonly-held notions of justice and injustice. The strength of these groups’ rhetoric was the use of an “injustice frame”.³³ McAuley highlighted the disconnect between the language used by NGOs and that used by ordinary people. Arguing that the human rights protected in the 1993 Russian Constitution and international treaties had failed to materialise, she suggested that the adoption of international human rights norms had been premature and aspirational, possibly even decorative. The result has been that the population understands rights as something to be given by the state, rather than taken by the citizen. McAuley quoted a prominent human rights professional: ‘[NGOs] talk about human rights in terms of the UN declarations [...] There’s no public demand in this country for what’s called ‘the defence of human rights’.’³⁴ This line of argument is useful to contextualise the particular approach taken to NGO regulation. In accordance with Putin’s rhetoric of patriotism, NGOs are characterised as ‘foreign’, out of touch with Russian citizens and neglecting their interests; their language of rights is, according to this narrative, a means of coding foreign / Western values into Russian discourse. By contrast, recent research by Sundstrom noted that there had been an increase in lower court judges citing the ECHR and referring to the judgments of the ECtHR, suggesting that adherence to this language is a powerful tactic for HRDs. My research explores the role of human rights discourse, as characterised by the authorities and HRDs, in Russian society. Human rights law is a part of the Russian legal system but the power to control, and perhaps even own, this dialogue is what is under attack.

³² Bill Bowring, ‘Does Russia have a human rights future in the Council of Europe and OSCE?’ in Doutje Lettinga & Lars van Troost (eds), *Shifting Power and Human Rights Diplomacy* (Amnesty International Netherlands 2017).

³³ Sundstrom (n 23) 188.

³⁴ McAuley (n 23) 155.

Co-optation and repressive legislation

The control of human rights dialogue and NGOs' precarious independence from the state is understood as part of Putin's "managed democracy",³⁵ through which Putin's regime has demonstrated intentions to "license" civil society.³⁶ In the early stages of this process, Aleksandr Nikitin and Jane Buchanan cast doubt on the notion that Russian civil society could be created from above, pointing out the lack of independent media and the existence of 'a cadre of loyal, easily manipulated pseudo-NGOs that disrupt the work of genuinely grassroots organizations'.³⁷ More recently, research into health and education NGOs by Sergej Ljubownikow and Jo Crotty showed that, with the increased pressure to resort to government-issued grants, NGOs in the Russian context 'are all too easily co-opted, moulded and restricted.'³⁸ While their research subjects expressed wariness of "co-optation" of civil society, they allowed themselves to be "sucked in" to the state sphere and its objectives.

In a funding environment where access to foreign funds has been drastically reduced by legislative acts,³⁹ the dangers of state co-optation loom large. The research by Ljubownikow and Crotty illustrates the diversity of complex narratives that health and education NGOs construct to justify the realignment of their objectives. This reflects the tendency for Russian NGOs to prioritise links with power holders and institutions in order to achieve their aims. The experience for HRDs is likely to differ, however: how might a human rights organisation realign its objectives, based as they are in constitutional rights and international law? The relationship between Putin's system of governing and civil society was further explored in Samuel Greene's research on civic activism.⁴⁰ Greene

³⁵ Ljubownikow and Crotty (n 21) 2.

³⁶ Jo Crotty, Sarah Marie Hall and Sergej Ljubownikow, 'Post-Soviet Civil Society Development in the Russian Federation: the impact of the NGO law' (2014) 66 *Europe-Asia Studies* 1253, 1254.

³⁷ Aleksandr Nikitin and Jane Buchanan, 'The Kremlin's Civic Forum: Co-operation or Co-optation for Civil Society in Russia' (2002) 10 *Demokratizatsiya* 147, 160.

³⁸ Ljubownikow and Crotty (n 21) 11.

³⁹ Ljubownikow and Crotty (n 21) 5; The "de-facto outlawing of overseas funding" is a result of, among others, the following laws: Federal Law of the Russian Federation No. 18-FZ "On introducing amendments to certain legislative acts of the Russian federation", January 17 2006; Federal Law of the Russian Federation No. 272-FZ "On sanctions for individuals violating fundamental human rights and freedoms of the citizens of the Russian Federation", 28 December 2012.

⁴⁰ Greene (n 26).

argued that citizens' relationships with the state are based 'not on formal institutional arrangements but on the real products these regimes deliver.'⁴¹ In his study of civic mobilisation and the work of HRDs, Greene argued that 'mass' movements were effectively mobilised in response to concerted and coherent state engagement of a group of people and in a concrete manner. In contrast, he posited, civil society was contained and the authorities benefited from an individualised and privatised application of the law.⁴² Though primarily focused on mass mobilisation, Greene's reasoning helps us to understand the effectiveness of the regime's system of government and its effect on society, particularly in the context of NGO regulation. This provides a useful background for the work of Françoise Daucé. Daucé surveyed prominent HRDs affected by the "foreign agents" law. Contrasting strict financial and administrative regulation with the creation of state-run institutions that support and fund NGOs, Daucé highlighted a "duality of coercion". This duality has been used to create an environment of individualisation, within which NGOs must negotiate their strategies independently of one another.⁴³ Daucé's article sheds light on the complexity of state-NGO relations in the early stages of the "foreign agents" law. My research builds on these arguments to highlight ways in which NGOs engage strategically with the vagueness of the law in a possible attempt to turn it to their advantage.

My research into the strategies of HRDs is informed by the work of Freek Van der Vet and Laura Lyytikäinen who found that, when faced with repressive policies, though in their case this primarily concerned laws passed before 2012, HRDs employed creative strategies, often using their difficulties to their advantage or challenging the authorities' interpretation of the law.⁴⁴ Like Daucé, Van der Vet and Lyytikäinen conducted their research in 2013, during the earliest stages of the "foreign agents" law, at which time responses to the law were experimental and individualised; my research considers the development of these earlier strategies into more coherent strategies following the 2014 amendments and the expansion of the "foreign agents" register.

⁴¹ *ibid* 15.

⁴² *ibid* Chapter 5 'Private Brutality and Public Verdicts: Defending Human Rights in Russia'.

⁴³ Daucé (n 8).

⁴⁴ Van der Vet and Laura Lyytikäinen (n 11).

Methodology

The research methods of this article were guided largely by the scope of the project. For the section on implementation, the main sources were the Ministry of Justice's register as well as data captured by academics, media and international human rights monitors. The following section focuses on the NGOs' responses to the law. In looking at their challenges to the legality of the legislation, this section relies on data captured by international human rights monitors, for example, Human Rights Watch and Amnesty International, as well as the case communicated to the European Court of Human Rights. When investigating non-legal methods, research questions were formed around how NGOs engaged in the dialogue about what kind of an "agent" they might be. As it was not possible to conduct interviews, documentary and interview material was sought online; this provided examples of HRDs' direct engagement with the law and its effects. In 2015 a group of NGOs, led by Anna Dobrovolskaya of the Youth Human Rights Movements, collaborated on an online video documentary project. The introduction to the project states that:

This project is, on the one hand, our own attempt to explain to the world who we are and why we are doing what we are doing. On the other hand, this is a moment of self-reflection – are we really some kind of agents, and if yes, then the agents of what? What are we "agenting", and who are we "agenting" this for?⁴⁵ This self-reflective exercise mirrors the lines of enquiry within this article. The documentary project includes in-depth interviews with staff of the NGOs, as well as footage of their activity. In an effort to avoid self-reporting bias, the material of this project was supplemented with interviews and statements given in the 2012-2017 period of the law.

Subjects of research

This article focuses on the NGOs that took part in the collaborative video documentary project "Human Rights Defenders". Six NGOs participated, all defined as "human rights defenders", though their work covers a variety of fields: "Women of the Don" Union is a regional

⁴⁵ Human Rights Defenders video documentary project, <<http://hragents.org>> accessed 15 August 2017

organisation focusing on a wide range of human rights and civic participation issues; Soldiers' Mothers of Saint-Petersburg is a soldiers' rights organisation promoting alternative civilian service; Komi Memorial Human Rights Commission, like Ryazan' Memorial, is a branch of the nationwide Memorial organisation, working on improving legal literacy and monitoring public bodies (in particular the police force and penitentiary system); Civic Assistance Committee provides support for refugees; Committee Against Torture (now Committee for the Prevention of Torture) works primarily to defend victims' article 2 and 3 rights within the European Convention on Human Rights; Andrey Rylkov Foundation for Health and Social Justice is an organisation providing pro bono legal services for drug-users and advocating for policy changes. The six NGOs represent a geographical spread with three of the six being based in either Moscow or St Petersburg and the other three based in cities far from the capital.

By focusing on those groups affected by the "foreign agent" law, research was limited to those groups that may be easily identified as pro-democratic human rights defenders. As such they constitute a relatively homogeneous section of civil society, not merely because they are doing the same thing and are subject to the same regulation, but because they have often come together to work on the same thing. It should be emphasised this article does not represent a view of civil society in general, but merely a small part of it.

Limits of these methods

The limits of these methods must be borne in mind. The scope of this project constrains the research methods. As it was not possible to conduct interviews with HRDs, the article relies on publicly available interviews and statements. This skews the research in a number of ways. Firstly, since it was not possible to form specific questions, this article is reliant on the authors or publishers of the original material to have investigated relevant paths of enquiry. Efforts were made to minimise potential incongruity by focusing on an in-depth analysis of a very suitable set of data. Secondly, the availability of material has been decisive in the subjects of my research. The groups involved in the documentary project are well-connected and established enough to communicate on such a public platform. If data had been gathered on smaller organisations or

those who work in greater isolation, the article may have centred on different outcomes. Finally, while the statements and interviews relied on bare minimal editorialising, it must be appreciated that all material published online or broadcast is in some way edited, if only by its author. In particular, the self-publicising elements of the documentary project must be considered. The constraints mentioned above allow me to sidestep another potential limit: human rights work in Russia is not a comfortable task and talking openly about it requires calculation of risks.

Implementation of the law

On the passing of the 2012 law, two main fears were identified: the potential for arbitrary application of the law and the stigmatisation of NGOs to whom the label “foreign agent” would be applied.⁴⁶ From a human rights law perspective, the “foreign agents” law threatened to restrict the free exercise of the freedom of expression and freedom of association protected in the UN Declaration on Human Rights (articles 19 and 20), the European Convention on Human Rights (articles 10 and 11) as well as the 1993 Constitution of the Russian Federation (articles 29-31). The authorities, however, dismissed these claims, attempting to justify the law arguing it was merely the analogue of laws already in existence in other countries.⁴⁷ I argue that the authorities’ statements do not offer justification for the law, while fears expressed in the first two years of the law’s implementation were borne out in its implementation in 2014. Furthermore, I argue that the implementation of the law is an aggressive form of the Kremlin’s “co-optation” of civil society and an attempt to silence human rights discourse in the country.

The Russian authorities have repeatedly defended the law and its use of the term “foreign agent” with reference to the United States law, the Foreign Agent Registration Act (FARA).⁴⁸ This comparison has been roundly dismissed: the US law requires an agent-principal relationship, contains numerous exceptions to its application and does not specifically target civil society organisations. The majority of organisations listed as “foreign agents” for the purposes of FARA are law firms, lobbying firms

⁴⁶ Commissioner for Human Rights (n 7)

⁴⁷ Venice Commission (n 9) para 55

⁴⁸ Pitts and Ovsyannikova (n 19); Pushkarskaia (n 20)

and tourism agencies.⁴⁹ The implementation of the “foreign agents” law as described below demonstrates that the law specifically targets NGOs, human rights organisations and those expressing criticism of the regime and its policies.

Ambiguity in the law and fear of arbitrary implementation

Fears about the potential for arbitrary implementation of the “foreign agents” law were raised early on. In September 2012, Tanya Lokshina of Human Rights Watch warned that “those behind the law most likely meant it to be used selectively, against particularly bold critics of the government”.⁵⁰ The lack of definition of “political activity” in the law meant that the NGOs to which the regulation applied could not be certain of what activity would mean that they qualify as a “foreign agent”. As such, the law affords the authorities wide discretion to target particular organisations based on a wide variety of activities. The implementation of the law confirmed these fears and demonstrated the breadth of discretion with which the authorities were able and willing to apply the law.

In the initial period, the law required NGOs to register as “foreign agents” voluntarily. In response, the NGOs collectively commenced a boycott.⁵¹ In response, Putin ordered the enforcement of the law and an audit of potential “foreign agents”. A campaign of inspections and charges followed, and the fears of potential arbitrariness were confirmed. NGOs reported a lack of uniformity in the inspections: for some NGOs, the inspections were light-handed and brief, others involved teams of inspectors on days-long visits.⁵² Following the inspections, NGOs faced a range of warnings and sanctions: the election monitoring group, Golos,

⁴⁹ Samantha Laufer, ‘A Difference in Approach: Comparing the US Foreign Agents Registration Act with Other Laws Targeting Internationally Funded Civil Society’ (2017) 19:1 IJNL 5; Kara-Murza (n 19).

⁵⁰ Lokshina T, ‘Russia’s civil society crackdown continues’ (*Human Rights Watch*, 25 September 2012) <www.hrw.org/news/2012/09/25/russias-civil-society-crackdown-continues> accessed 8 August 2017.

⁵¹ Balmforth T, ‘Nyet: Rights Groups Vow to Break Russia’s “Foreign Agent” Law’ (*The Atlantic*, 21 November 2012) <www.theatlantic.com/international/archive/2012/11/nyet-rights-groups-vow-to-break-russias-foreign-agent-law/265543/> accessed 20 September 2016.

⁵² Daucé (n 8) 67.

was sentenced to heavy fines (as a result, the organisation self-liquidated and re-established under another name); eighteen NGOs (including Memorial, Public Verdict and Agora) received submissions from the prosecutor's office ordering them to register as "foreign agents"; forty-one groups (including Committee Against Torture, and the Levada Center) were given official warnings.⁵³ McAuley attributed the shambles of this campaign to the poorly-written law and the difficulty that the various public bodies had in interpreting it,⁵⁴ whereas Daucé highlighted the prevalence of such arbitrariness in the work of law enforcement agencies, noting that this puts NGOs in a position of 'permanent unpredictability'⁵⁵. This method of an individualised implementation of the law requires individualised responses, making it more difficult for NGOs to effect a successful mobilisation around the issue.⁵⁶

In May 2014, the Duma (the lower house of Russia's federal assembly) passed amendments to the "foreign agents" law, authorising the Ministry of Justice to register NGOs as "foreign agents" without their consent. Following these amendments, the number of NGOs on the register grew rapidly. With the expansion of powers, the scope for using wide discretion in defining "political activity" grew. It became clear that "political activity" had such a broad meaning as to encompass almost any activity, and in particular the 'classical activities exercised by NGOs.'⁵⁷ In the Venice Commission's Opinion of June 2013, as well as the Opinion of the Commissioner for Human Rights (July 2013), activities that had been deemed "political" were controversial. The examples cited included: 'providing information to the UN Committee Against Torture on Russia's compliance with the UN Convention Against Torture; bringing cases to and litigating before the European Court of Human Rights, advocating on environmental issues; monitoring human rights violations and raising public awareness on the results of the monitoring.' In yet more surprising examples, activities deemed to be "political activity" included donating books to a library and participating in a charity bike ride.⁵⁸ Furthermore, despite exemptions for, among other things, 'the protection of plant and animal life' from "political activity", the Commissioner for Human Rights

⁵³ Daucé (n 8) 71.

⁵⁴ McAuley (n 23) 300.

⁵⁵ Daucé (n 8) 65.

⁵⁶ Greene (n 26).

⁵⁷ Venice Commission (n 9) para 83.

⁵⁸ Amnesty International (n 15).

for the Council of Europe reported that fourteen environmental NGOs had received official warnings that they may be required to register and one environmental advocacy NGO was ordered to do so.⁵⁹ Both the Commissioner for Human Rights and the Venice Commission stated that, as a result of its ambiguity, the law failed to meet the criterion of legality, and on the occasions that “political activity” had been found, the law failed to adequately protect the work of HRDs.⁶⁰ In May 2016, the Duma amended the law further, this time to define the term “political activity” more extensively. While these amendments were allegedly intended to reduce arbitrariness, the changes do not appear to have reduced the scope for which activities can be called “political activity”. The new definition included any activity aimed at somehow influencing the government or public opinion as well as criticism of the law itself.⁶¹

In addition to the ambiguity of the term “political activity”, some NGOs found that the definition of ‘foreign funding’ was broad. In a Ministry of Justice submission to Dront, an environmental centre in Nizhnyi Novgorod, three sources of foreign funding were cited: 500 rubles⁶² from Bellona-Murmansk, itself a Russian environmental NGO that had been labelled a “foreign agent”; a loan from Zelenyi Mir, another environmental “foreign agent”; and, most surprisingly, a grant from the Russian Orthodox Church. The funding from Bellona-Murmansk was in fact a fee for a subscription to Dront’s newspaper, *Bereginja*, and the loan from Zelenyi Mir had been repaid before the inspection. The inclusion of a grant from the church was because the funds were paid through a foundation, *Sorabotnichestvo*, set up by the church, which had received funds from Cyprus.⁶³ Though he noted that this was in conformity, albeit very strict, with the letter of the law, Dront’s chairperson, Askhat Kaiumov had been bewildered by the label “foreign agent” as the organisation had not considered itself to be in receipt of foreign funds. The expansive conceptualisation of foreign funding is not just a deterrent from receiving

⁵⁹ Commissioner for Human Rights (n 7) para 46.

⁶⁰ Venice Commission (n 9) paras 71-87; Commissioner for Human Rights (n 7) paras 50-56

⁶¹ Mukhametshina E, O Churakova, ‘Kritika zakona ob inostrannykh agentakh stala povodom dlia priznaniia agentom’ [Criticism of the law on foreign agents has become a reason for recognition as an agent] (*Vedomosti*, 11 May 2016).

<www.vedomosti.ru/politics/articles/2016/05/11/640573-kritika-zakona-inostrannih-agentah-yavlyaetsya-povodom-priznaniya-organizatsii-agentom> accessed 12 August 2018.

⁶² £10 according to the 2013 exchange rate.

⁶³ Amnesty International (n 15).

even the smallest amount of foreign funding but it may discourage profile-raising activities since international recognition may garner a prize which then qualifies an NGO as a “foreign agent”.

Another organisation that had not received foreign funds, “Women of the Don” Union, was ordered to register as a “foreign agent”. In addition, the organisation was found to have exceeded its official remit, registering as a regional organisation in Rostov *oblast*’ (region) but working far beyond these borders. The NGO therefore created a separate foundation to work outside Rostov while “Women of the Don” Union continued its local work. “Women of the Don” Union was removed from the register because it was not in receipt of foreign funds, however the foundation was added to the register in 2015.⁶⁴ This turn of events led to the first criminal charge under the “foreign agents” law. In June 2017, Valentina Cherevatenko, chairperson of “Women of the Don” Union, was charged as a criminal defendant under Article 330.1 of the criminal code. This article, introduced by the 2012 “foreign agents” law, provided that ‘malicious evasion’ of duties to file the proper documents to register as a “foreign agent” was punishable by up to two years in prison. Cherevatenko’s charges allegedly relate to the creation of a second NGO that enabled “Women of the Don” Union members to work outside their district. However, in an interview shortly after the charges were announced, Cherevatenko noted: ‘the real reason is something else, most probably it is the peacekeeping work in which my organisation is engaged.’⁶⁵ “Women of the Don” Union is based in Novochoerkassk, near to the border of the Donbass region in Ukraine, the site of a Russian-Ukrainian conflict since 2014. Though it was closed in July 2017, the case shows that there is real potential to use the law selectively against particularly bold critics.

Foreign funding

The “foreign agents” law has been accompanied by a campaign to squeeze out foreign funding. In 2012, Russia expelled the United States Agency of International Development, one of Russian civil society’s key investors. In 2013, Pavel Chikov, chairperson of AGORA, noted that

⁶⁴ Skibo D, ‘Five years of Russia’s Foreign Agent law’ (*Open Democracy*, 14 August 2017) <www.opendemocracy.net/od-russia/daria-skibo/five-years-of-russia-s-foreign-agent-law> accessed 18 August 2017

⁶⁵ Egorova (n 16)

Russia's voluntary sector could expect to lose 13 billion rubles⁶⁶ in foreign funding.⁶⁷ Access to foreign funding was restricted further in 2015, when the Duma passed a law to declare certain foreign and international organisations "undesirable".⁶⁸ This law targeted other key civil society funders, including the National Endowment for Democracy, Open Society Foundation, and the Macarthur Foundation. Domestic funding is available through the government-organised Presidential Grants. However, the sums awarded are a fraction of the amount that was provided through international and foreign foundations: in 2013, 2.3 billion rubles⁶⁹ were awarded through Presidential Grants⁷⁰. Russia does not have a strong culture of "checkbook activism"⁷¹ and the capacities for NGOs to raise their own funds through commercial activities is very limited.⁷² NGOs in Russia are therefore threatened by an over-reliance on government funding. As indicated in Ljubownikow and Crotty's research into health and education NGOs, there is a danger of the HRDs being "sucked in" to the state's agenda. How human rights organisations maintain their independence while relying on government funds remains to be seen.

The funding of civil society through government grants is part of the "duality of coercion" that Daucé explored in her 2015 article. This dual tactic enables the government to take with one hand and give with the other. Since Daucé's article, NGOs have experienced another dimension to this approach: in February 2015, the Duma passed a law allowing NGOs to be removed from the list. The first NGO to be removed from the list was Soldiers' Mothers of Saint Petersburg, a human rights organisation defending soldiers' rights and advocating alternative civilian service, on 23 October 2015.⁷³ However, this apparently merciful behaviour represents the experience of only a minority of organisations on the register. As Vladimir Slivyak of Ecodefense, an environmental NGO and lead applicant

⁶⁶ £278 million according to the 2013 exchange rate.

⁶⁷ Pavel Chikov, 'Russian NGOs: the funding realities' (Open Democracy, 15 February 2013) <www.opendemocracy.net/od-russia/pavel-chikov/russian-ngos-funding-realities> accessed 10 August 2017.

⁶⁸ Federal Law 129-FZ "On amendments of some legislative acts of the Russian Federation" 23 May 2015.

⁶⁹ £45 million according to the 2013 exchange rate.

⁷⁰ Daucé (n 8) 72.

⁷¹ Henderson (n 23) 7.

⁷² Chikov (n 76).

⁷³ Human Rights Defenders (n 12) Soldiers' Mothers of Saint Petersburg

in the ECtHR case, noted ‘they just took them off to show that something good can happen with NGOs in Russia. But it doesn’t change anything. Many dozens of NGOs remain on the list and are in serious trouble because they did human rights and environmental activities.’⁷⁴ Officially, the Ministry of Justice removed certain NGOs from the register because they stopped receiving foreign funds. However, perhaps cynically, it could be argued that the reversal of its “foreign agent” label is a strategic (and selective) application of the law to ensure good public relations for the authorities. Soldiers’ Rights organisations had been more successful at attracting public support and civic engagement;⁷⁵ showing such an organisation mercy may be a good investment for the authorities.

The government continues to utilise a “duality of coercion”. However, developments since Daucé conducted her research have altered the environment and impact of the law. Giving the Ministry of Justice the authority to register NGOs as “foreign agents” without their consent has augmented and clarified the repressive nature of the law; funding opportunities have reduced drastically; NGOs may be successful in getting their names removed from the register, but this is true of only a minority of organisations. As discussed in this chapter, the “foreign agents” law gives law enforcement agencies and other public bodies very wide discretion to target particularly critical organisations. The public bodies implementing the law often do so in an arbitrary and individualised manner. Organisations that are added to the register may experience severe disruption to their core work defending human rights. The authorities have created an environment in which the only “easy” way to defend human rights appears to be as agents of the state. In the following section, I explore the strategies the NGOs are currently using to respond to the law. I argue that the NGOs who have been registered as “foreign agents” are employing a variety of strategies that both confront and engage with the law and its language.

Responses and strategies employed by NGOs

⁷⁴ Charles Digges ‘Russian Justice Ministry sinks NGO in new mire of “political activity” definitions’ (Bellona, 25 January 2016) < <http://bellona.org/news/russian-human-rights-issues/russian-ngo-law/2016-01-russian-justice-ministry-sinks-ngos-in-new-mire-of-political-activity-definitions>, accessed 2 August 2017

⁷⁵ Sundstrom (n 23)

My research demonstrates a variety of strategies embraced by NGOs. While doggedly pursuing traditional legal channels, the community has engaged in a counterstrike PR campaign. In the face of the regime's attempts to silence human rights discourse, NGOs have continued to embrace articles and standards of international treaties in a bid to "vernacularise" international human rights law for the public and emphasise its significance in the Russian court system. Strikingly, as part of this campaign, NGOs have engaged the language of the law, in particular the term "foreign agent" itself, in an attempt to combat co-optation of civil society discourse and mitigate the most pernicious elements of the law. I discuss these findings below, exploring what these strategies might tell us about human rights defence in the shadow of the "foreign agents" law.

Taking the law to court

NGOs affected, or under threat of being affected, have responded to the law by tenaciously pursuing their cases in both the Russian courts and the European Court of Human Rights. In the earliest stages of the "foreign agents" law, amidst a general boycott, a group of eleven NGOs were quick to make a complaint to the European Court of Human Rights on 6 February 2013.⁷⁶ The speed with which the complaint was made is indicative of one of the NGO community's greatest strengths: a network of lawyers, 'extremely adept at detecting violations and monitoring them for submission of ECtHR cases.'⁷⁷ Applications to the ECtHR have, for the NGO community, served to open up a channel of dialogue with the Russian state and force the state and authorities to comply with the ECHR.⁷⁸ However, members of the NGO community have expressed pessimism about the outcome of the ECtHR case. Aleksandr Nikitin, chairperson of the Environmental Rights Center Bellona, which closed down after being labelled a "foreign agent", said that the case would not have any effect: 'Russia today is a country isolated from all European institutions.'⁷⁹ Indeed,

⁷⁶ Memorial Human Rights Centre, 'My ne agenty!' [We are not agents!] (Memorial Human Rights Centre, 6 February 2013) <<https://memohrc.org/specials/my-ne-agenty>> accessed 4 August 2017

⁷⁷ Lisa McIntosh Sundstrom, 'Advocacy beyond litigation: Examining Russian NGO efforts on implementation of European Court of Human Rights Judgments' (2012) 43:3-4 *Communist and Post-communist Studies* 255, 267

⁷⁸ Van der Vet and Lyytikäinen (n 11) 989

⁷⁹ Digges (n 83).

following developments since 2014, the effectiveness of the ECtHR itself is in peril: relations between Russia and the Council of Europe have deteriorated since the start of the conflict in Ukraine, with the Council imposing sanctions and Russia threatening to leave. In June 2017, Russia announced that it would be reversing the payment of its contributions.⁸⁰

While the ECtHR has yet to deliver signs of hope, NGOs have had some success in Russian courts. The Ministry of Justice removed the “foreign agents” label from more than twenty groups, stating that they were no longer performing the function of a “foreign agent”, on the grounds that they stopped accepting foreign funds.⁸¹ Some organisations were successful in challenging the administrative fines: the Andrey Rylkov Foundation for Health and Social Justice defended itself against the fine at first instance, when the court found that the administrative offence charged had not been committed.⁸² The outcomes in the Russian courts have not been uniformly successful, however (the Andrey Rylkov Foundation, for example, was unsuccessful in its challenge of the label itself): by 2015, there had been 189 cases brought before first-instance and appellate courts. Some 28 judicial decisions were delivered in the NGO’s favour, while over 121 had found that the law was correctly applied.⁸³ In the case of domestic courts, NGOs are rehearsing the strategies they employ as part of their day-to-day work and promoting their image as tenacious and skilled advocates working within the Russian legal system.

The NGOs have taken their cases to court out of a practical urgency. However, the courtroom has provided a platform to engage in “philosophical” debates, enabling HRDs to make a larger point. When challenging the “foreign agent” label in court, Committee Against Torture argued that to be accused of undermining state policy by working towards the prohibition of torture suggested that ‘torture itself must be state

⁸⁰ Radio Free Europe, ‘Russia suspends payments to Council of Europe’ (Radio Free Europe/ Radio Liberty, 30 June 2017) <www.rferl.org/a/russia-suspends-council-europe-payments-lavrov-crimea/28588313.html> accessed 1 August 2017.

⁸¹ Human Rights Watch (n 4).

⁸² Andrey Rylkov Foundation, “‘Foreign Agent’ strikes back” (*Andrey Rylkov Foundation for Health and Social Justice*, 18 April 2017) <<http://en.rylkov-fond.org/blog/arf-advocacy/arg-advocacy-national/foreign-agent-strikes-back/>> accessed 15 August 2017.

⁸³ European Court of Human Rights, Communication to Russian Federation in the case of Ecodefence and others v Russia App no 9988/13 <<http://hudoc.echr.coe.int/eng?i=001-173049>> accessed 16 August 2017.

policy.⁸⁴ This technique of taking lawmakers' words literally in order to expose a paradox, was used by Soviet-era '*pravozashchitniki*' ("rights-defenders").⁸⁵ Employing '*radical civil obedience*,⁸⁶ the "rights-defenders" called for strict enforcement of the rights guaranteed by the constitution but ignored by the regime, including the freedom of assembly or right to transparent judicial proceedings. In employing a similar strategy, Kaliapin is able to point not only to the paradox within the "foreign agents" law but also the state's practice of individualised and arbitrary law enforcement. In contrast, NGOs are characterised as both legal experts and respectful of the rule of law.

Non-judicial methods

Beyond the courtroom, NGOs have used their legalistic strengths and knowledge of Russia's regulatory system in attempts to protect themselves against the law. With the support of the Human Rights Resource Center, several NGOs closed down, in order to create new legal entities, or chose to end certain projects. This again had mixed results: restructuring as a commercial entity may cut off channels of interaction with organisations that cannot work with commercial entities. Furthermore, it is not a certain protection against the "foreign agent" label. Nizhnyi-Novgorod-based NGO Committee Against Torture was labelled a foreign agent in 2015 and opted to liquidate.⁸⁷ Igor Kaliapin, CAT's former chairperson, announced the formation of a new NGO, Committee for the Prevention of Torture, which would not accept foreign funding. This new NGO was added to the register on 14 January 2016.⁸⁸ These strategies demonstrate the inventively pragmatic approach explored by Van der Vet and Lyytikäinen, as NGOs attempt to exploit the ambiguity of the law, creating legal escape routes.

⁸⁴ Elena Milashina, 'How one NGO exposed contradictions at the heart of Putin's foreign agent law' (The Guardian, 18 May 2015) <<https://www.theguardian.com/world/2015/may/18/russia-putin-foreign-agent-ngo-contradictions>> accessed 15 August 2017.

⁸⁵ McAuley (n 23) 5.

⁸⁶ Benjamin Nathans, 'The Dictatorship of Reason: Aleksandr Vol'pin and the Idea of Rights under "Developed Socialism"' (2007) 66 *Slavic Review* 630, 630.

⁸⁷ Human Rights Defenders (n 12), Committee Against Torture.

⁸⁸ 'Foreign agents register' (n 2).

Non-legal strategies

Alongside legal strategies, NGOs have employed communications strategies, embarking on a multi-limbed PR campaign to alleviate the reputation damage done by the law. Russian NGOs previously were not masters of public relations or positioning; however, they have demonstrated an ability and willingness to problem-solve creatively and responsively, developing a multifarious strategy over time. I argue that these non-legal methods are inspired by the need to manage the reputational damage of the law and that they support the HRDs' core work, particularly with regard to protection of ECHR rights, and the campaign to protect human rights defence in the face of state repression in various ways. From the beginning, NGOs were vocal about their intentions to boycott the "foreign agents" law. It was not initially clear what level of engagement with the law would be necessary but as the campaign of inspections and charges gained traction in 2013, "the human rights community showed a remarkable solidarity and despite minimal public support, stood its ground".⁸⁹ In 2015, this resulted in an online documentary project, masterminded by the Youth Human Rights Movement (YHRM), entitled "Human Rights Defenders". I use this project as a case study to highlight important strategies and narratives employed by the HRDs. The documentary project combines individual interviews with different members of the staff as well as "fly on the wall" footage of daily activity. The HRDs were invited to discuss the aims of their NGO, their motivations for working in human rights and the "foreign agents" law itself. The emerging narratives demonstrate a pluralist, but coherent, strategy.

Engaging critically with the law

Like the members of Ryazan' Memorial in the statement cited in the introduction to this article, the HRDs in the documentary project engage critically with the law, and with the term "foreign agent", drawing attention to their own labelling rather than avoiding it. Anna Dobrovolskaya, the YHRM activist who introduces the project, wrote that 'since we are labelled foreign agents, it is a reality which cannot be ignored,

⁸⁹ McAuley (n 23) 300.

it is a lot better to acknowledge it and try to convert it to [our] own use.⁹⁰ HRDs have highlighted the lack of choice they have in being labelled “foreign agents”; the imposition of a label is entirely within the authorities’ control. By attempting to “convert” the word, the HRDs attempt to challenge the stereotype (espionage, subversion) and provoke discourse about the “foreign agents” law. Engaging in dialogue with the state has become increasingly difficult, and creating such opportunities is an important part of NGO work.⁹¹ By provoking their own discussion about the law, NGOs are taking the rhetoric away from the domain of the state and into their own hands. In doing so, the NGOs are able to regain some control of their situation.

“Agenting”

While HRDs maintain that they cannot accept the “foreign agent” label, they have opted to adopt the word “agent” for analytical purposes. In her introduction to the documentary project, Dobrovolskaya reinterprets the word “agent”, as one who takes action, demonstrating the clear intention to palliate the stigmatising effect of the term.⁹² Rather than supporting the covert agenda of a foreign state, HRDs reconceive their agency as activism, mediating between the state and society. In this way, NGOs position their response to the “foreign agents” law as a demonstration of their strengths as advocates, rather than as subversive. Indeed, the various legal strategies have contributed to the professionalisation of a community of lawyers, expert in defence of NGOs, supported by St Petersburg-based organisation, the Human Rights Resource Center. In an article marking five years of the law, Daria Skibo suggested that the “foreign agents” label has acquired perhaps another meaning, as ‘a sign of quality, a marker of belonging to a consolidated, professional community that is actively fighting for human rights.’⁹³ Although the law still poses great danger to civil society in Russia, the combination of defensive and confrontational strategies employed by

⁹⁰ Anna Dobrovolskaya, cited in a press release: Committee for the Prevention of Torture, ‘Documentary online project hragents.org tells about the life of Russian human rights defenders’ (*Committee for the Prevention of Torture*, 20 November 2015), <www.pytkam.net/mass-media.new/1315> accessed 15 August 2017.

⁹¹ Human Rights Defenders (n 12), Civic Assistance Committee, Anastasia Denisova

⁹² Human Rights Defenders (n 12).

⁹³ Skibo (n 64).

NGOs has been moderately successful at tackling the reputational damage done by the law.

“Vernacularising”

When engaging with the public, the NGOs are performing their role as “interlocutors.”⁹⁴ Dmitrii Utukin of Committee Against Torture emphasises the importance of this role. He contrasts the language of aspiring HRDs, fresh from university, for whom ‘it is not about the relationship between a citizen and the authorities, it is not some narrow legal field, it is “everything which is good, against everything which is evil”’, with the reality of working with victims: ‘those who come to us cannot even formulate for themselves what human rights are, let alone utilize some common terminology.’⁹⁵ Utukin ascribes this disparity to a pervasive effort to silence human rights dialogue (‘the authorities present everything in such a way that human rights become associated with some liberal values that are alien to us’). In the context of the documentary project, human rights law is vernacularised. Vernacularising human rights law contextualises international norms within local political and legal realities. This is achieved on one level by humanising the HRDs themselves, presenting them on film, depicted as three-dimensional individuals. It is perhaps significant that while non-Russians are featured as clients or as activists (English-speakers can be heard in the videos of the offices of Civic Assistance Committee), all of the HRDs featured are Russian, mostly born during the Soviet era. The Russian identity of these HRDs is emphasised, in contrast to the foreign identity associated with the law.

Within the film, we see footage of human rights law vernacularisation in a local context. In one video, the Andrey Rylkov Foundation hosts an anti-“narcophobia” discussion in a café, open to the public. Maksim Malyshev notes that ‘it is precisely through the meetings with people outside of our environment that we can look at our work soberly and reflect upon it.’⁹⁶ Malyshev’s words suggest a deeper level of engagement: achieving vernacularisation through a discursive process. A more involved approach to this participatory approach to vernacularisation was explored by “Women of the Don” Union. The NGO

⁹⁴ Sundstrom (n 86) 267.

⁹⁵ Human Rights Defenders (n 12) Committee Against Torture, Dmitrii Utukin

⁹⁶ Human Rights Defenders (n 12) Andrey Rylkov Foundation, Maksim Malyshev.

worked with a local theatre company to produce a theatrical performance. Entitled “Zhanna and the Dragon”, the play was a fairy tale based on the experience of “foreign agents” NGOs.⁹⁷ The NGO invited citizens who were not familiar with their work to attend the dress rehearsal. This performance served both to inform people about the law (vernacularising), as well as to allow the NGO to participate in the narrative of the law. Engaging with the narrative in this way may enable the HRDs to destigmatise the term while expanding the NGOs reach both in terms of awareness and support.

Maintaining impartiality, retaining independence

When discussing the term “foreign agent”, HRDs challenge the idea that the antitype should be an agent of the regime. Aleksandr Peredruk of Soldiers’ Mothers of Saint Petersburg notes that on social media they are attacked from both sides, whether acting as “Putin’s agents” for the “murderous regime” or conducting subversive activities for the US. He suggests this is the appropriate position for HRDs: ‘when you’re solving problems in a conflict situation both sides should swear at you, for if you don’t, you aren’t working.’⁹⁸ With the threat of a state monopoly on civil society funding, the issue of independence has become more fraught for NGOs. As access to foreign funds continues to diminish and some NGOs have taken the decision to stop receiving foreign funding at all, the NGO sector is ever more dependent on domestic sources. Although HRDs have reported an increase in private donations from Russians,⁹⁹ the amount of funding is still not enough to sustain the organisations previously receiving foreign funds.¹⁰⁰ Although the authorities have shown a willingness to fund “foreign agents” (in August 2017, three “foreign agents” received a total of 12 million rubles), it is apparent that the funding is contingent on NGOs proposing the “right project”; Igor Sazhin of the Komi Memorial Human Rights Center reported that he had been advised that the proposal of a certain project would be welcomed by the decision panel granting

⁹⁷ Danila Gal’perovich, ‘Valentine Cherevatenko pred”iavili ugolovnoe obvinenie kak “inostrannomy agentu”’ [Valentina Cherevatenko presented with criminal charge as “foreign agent”] (Voice of America, 3 June 2017) <www.golos-ameriki.ru/a/cherevatenko-foreign-agent-russia/3884963.html> accessed 18 August 2017.

⁹⁸ Human Rights Defenders (n 12) Soldiers’ Mothers of Saint Petersburg, Aleksandr Peredruk.

⁹⁹ Human Rights Defenders (n 12) Civic Assistance Committee, Svetlana Gannushkina.

¹⁰⁰ Chikov (n 76).

Presidential Grants.¹⁰¹ None of the “foreign agent”-run projects that won Presidential Grants in August 2017 was in the field of human rights defence. NGOs interviewed for the documentary reported that they would continue to apply for Presidential Grants but that they would not stop working on their human rights projects.¹⁰² This approach to government grants demonstrates HRDs’ pragmatism when it comes to funding. It also highlights a willingness to engage, in moderation, with the government’s agenda. In doing so, HRDs indicate that there is an appropriate place for government funding in human rights work. HRDs thus assert their right to set their own agenda while avoiding a confrontational or oppositional rhetoric.

The legal and non-legal methods of responding to the “foreign agents” law evidence an ability to work flexibly and reactively, and to develop a coherent strategy to combat the authorities’ divide and rule tactics. While the initial stages of the law forced human rights organisations to assess their own situation and construct an individual response, the additional powers granted to the Ministry of Justice in 2014 and the extent of the reputational damage provoked a collaborative response. Together they have been able to present themselves at their most professional and effective. HRDs chose not to take a purely oppositional approach, instead opting to inspire critical discussion among the public. This may reflect careful calculation on the part of NGOs that are now almost entirely reliant on domestic funding, including from the state. In this way, we might see these strategies as a careful balancing act, negotiating their role between the state and society. Furthermore, it ensures that HRDs are at the centre of human rights discourse in Russia.

Rejecting the system

The apparent resilience of some NGOs should not distract from the fact that the law has meant the closure of many human rights organisations. Unlike the five other NGOs that took part in the documentary project, Komi Memorial Human Rights Commission decided to close the organisation entirely, stating that they could not accept the label “foreign agents” (the organisation remains on the register

¹⁰¹ Human Rights Defenders (n 12) Komi Memorial Human Rights Commission, Igor Sazhin.

¹⁰² *ibid*; Human Rights Defenders (n 12) Andrey Rylkov Foundation.

however).¹⁰³ Sazhin offers an insight into his motivations in a scene from the documentary: discussing the label, he likens the label to the yellow star used in Nazi Germany, 'of those Jews who didn't wear the star, some were saved. Of those who did, all were killed.'¹⁰⁴ The fate of Komi Memorial Human Rights Commission emphasises the threat posed by "foreign agents" law: the disbanding of NGOs and sending HRDs "underground." The possibility of effectively protecting human rights in such conditions appears meagre.

Conclusion

Confirming the earliest fears, the "foreign agents" law has borne out predictions that it would be used selectively to target critical organisations. This article has explored the unpredictable implementation of the law, the far-reaching social consequences and the variety of strategies developed by NGOs in response to the law. By exploring these effects and strategies beyond the purely legal, this study offers new perspectives on approaches to human rights from within the NGO community in Russia.

As set out in the discussion of its implementation, the enforcement of the "foreign agents" law has contributed to an environment of uncertainty for NGOs. In the five years since it was introduced, the "foreign agents" law has been subject to a series of further amendments. This was exacerbated by the ambiguity of the law and the variability of its implementation. Opinions of the Commissioner for Human Rights for the Council of Europe and the Venice Commission have denounced it as an impediment to freedom of association and freedom of expression. The law is characterised by its two-pronged attack on NGOs, the 'concrete' legal requirements and the more slippery social effects. The administrative burden and penalties, as well as the unpredictability of the law's application, has been deleterious for many organisations. It exacerbates existing financial difficulties faced by organisations, leading some of them to close down altogether. The expansion of the law's terms, through amendments since 2012, has empowered the Ministry of Justice and regional public authorities to use the law selectively to target the more boldly critical organisations, imperilling the ability of HRDs to hold public bodies accountable. The social consequences, reputational damage and

¹⁰³ Ibid.

¹⁰⁴ Ibid.

stigmatisation, have proved just as harmful. In line with a broader rhetoric of patriotic nationalism, the state has used the law to align human rights discourse with subversive activity and foreign enemies. This has threatened HRDs' ability to work effectively as they experience isolation from public and private bodies, as well as a lack of trust from their constituents. While the law permits removal from the register, this does not necessarily undo reputational damage.

This article highlights the way in which NGOs have responded to this two-pronged attack by waging a dualist campaign of their own, using both legal and non-legal methods, and how this created a space within which they can retain their independence and ownership of human rights discourse in Russia. The legal campaign represents an extension of HRDs' usual day-to-day operations. Adept at negotiating the Russian court system and using the ECHR to effect human rights protection at home, HRDs have reinforced their reputation as expert advocates. Tenaciously pursuing their cases through appeals, they draw attention to the relationship between human rights defence and the rule of law.

HRDs have demonstrated their expertise in engaging non-legal methods by prompting dialogue and engaging critically with the language of the law. Primarily a way of tackling the most harmful effects of reputational damage, this dialogue also serves as a framework within which HRDs can position themselves. Their reclaiming of the word "agent" forms an identity as mediator or one who takes action on behalf of Russian citizens. This "agent" identity is both at a remove from the general population and independent of the state. The dialogue emphasises the depth of engagement between HRDs and these two constituencies, through vernacularisation and advocacy. HRDs' responses to the "foreign agents" law represent a deepening of this engagement, as they foreground transparency, debate and self-reflection. Although it is too early to see if these strategies will fully reverse the stigmatising effects of the law, HRDs have found ways to work within the framework of the law, to retain some control over human rights discourse in Russia and raise awareness of the threats posed by the "foreign agents" law.

In spite of these positive signs, uncertainty remains. It is not clear for how long NGOs will be able to sustain their defensive strategies, or whether the authorities will make further amendments, and to what degree. The harmful impact of the law must not be underestimated; some

of the damage cannot be undone but it can get worse. The position of HRDs in Russia is in peril and ongoing research is vital.

This article has focused on a small group of organisations who, thanks to their profile, size and location, were able to work together, both in the courts and in the public sphere. It is possible that surveying a different group of organisations would provide a different set of results. It is certainly likely that a broader survey would report a higher rate of self-liquidation or submission to the state's agenda, particularly if including smaller organisations who are more vulnerable to local authorities. Study of the effectiveness of these HRDs' strategies should be continued but studies should also look at other groups, particularly in regions further from Moscow. The law poses a greater threat to these organisations and it is likely that worse is still to come for some of these organisations. However, it may be unwise to attempt to make extensive predictions; Russia is prone to defying expectations. This article has highlighted a case of defied expectations which shows signs of success. The 73 NGOs who remain on the "foreign agents" register in 2019 have, in a way, defied the authorities' expectations. Having survived five years of the "foreign agents" law and its expansive implementation, the organisations bearing the label have shown agility and resilience both internationally and locally.