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# PROTECTING THE TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS OF RUSSIA'S "NUMERICALLY-SMALL" INDIGENOUS PEOPLES: WHAT HAS BEEN DONE, WHAT REMAINS TO BE DONE

*Michael Newcity\**

## I. RUSSIA'S "NUMERICALLY-SMALL" PEOPLES

### A. *The Ethnic Diversity of the Russian Federation*

On the most recent Russian census, conducted during the fall of 2002, respondents were asked to identify their citizenship as well as "your national identity."<sup>1</sup> To an English speaker, the use of the term "national identity" in a census questionnaire—as distinct from citizenship—might be confusing. In English, the term "nationality" has a dual meaning—it can mean membership in a particular nation state (i.e., citizenship) or membership in an ethnic group that forms part of one or more nation states.<sup>2</sup> This duality of meaning can create confusion, as exemplified by a British case in which the U.K. House of Lords was called on to decide whether a prohibition against discrimination on the basis of national origins barred discrimination on the basis of nationality. They concluded that while "national origins" refers to race or ethnicity, in this context "nationality" meant citizenship and discrimination on the basis of citizenship was not prohibited.<sup>3</sup>

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1. Question 7 of the standard census questionnaires (Forms K and D) asked respondents to specify their nationality in their own words. See ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI, 4 ITOGI VSEROSSIISKOI PEREPISI NASELENNIA GODA. TOM 4 NATSIONAL'NII SOSTAV I VLADENIE IAZYKAMI, GRAZH DANSTVO 940–42 (2004).

2. "Nationality" means "the status of belonging to a particular nation, whether by birth or naturalization" as well as "a nation or people." RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 1279 (2d ed. 2001). The *Oxford English Dictionary* defines nationality as "The fact of belonging to a particular nation; *spec.* a legal relationship between a state and an individual involving reciprocal rights and duties," but also defines it as "A nation; freq., a people potentially but not actually a nation. Also occas., a racial or ethnic group." 10 OXFORD ENGLISH DICTIONARY 235 (2d ed. 1989). "'Nationality' in the sense of citizenship of a certain state, must not be confused with 'nationality' as meaning membership of a certain nation in the sense of race. Thus, according to International Law, Englishmen and Scotsmen are, despite their different nationality as regards race, all of British nationality as regards their citizenship. Thus further, although all Polish individuals are of Polish nationality *qua* race, for many generations there were no Poles *qua* citizenship." 1 L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 645 (H. Lauterpacht ed., 8th ed. 1955) (1905–1906).

3. *Ealing L.B.C. v. Race Relations Bd.*, [1972] A.C. 342, 343 (H.L.) (appeal taken from Q.B.D.).

In Russian usage, however, the term “nationality” (*natsional’nost’*—национальность) does not have the dual meaning that it has in English. In Russian, “nationality” refers to an individual’s ethnic identification as distinct from citizenship (*grazhdanstvo*—гражданство).<sup>4</sup> Thus, the preamble to the current Russian constitution, adopted in 1993—“We, the *multinational* people of the Russian Federation . . . adopt the Constitution of the Russian Federation [emphasis added]”<sup>5</sup>—makes sense only if nationality is understood as synonymous with ethnicity rather than citizenship. This distinction between nationality or ethnicity on the one hand and citizenship in a state on the other is embedded in the Russian language itself. Russian has two words that translate as “Russian”—*rossiiskii* (российский) and *ruskii* (русский). The former term refers to the multi-ethnic state of Russia<sup>6</sup> and the latter refers to the specific nationality/ethnicity.<sup>7</sup>

There is a long history in Russia of requiring that citizens formally and officially identify their ethnicity. In 1932, the Soviet government introduced a requirement that all citizens sixteen years and older carry an internal passport that constituted the individual’s principal form of identification.<sup>8</sup> One of the entries on this passport was the individual’s nationality and Soviet citizens were not free to choose their nationality. If a person’s parents were of the same nationality, he or she was required to declare that nationality. If the parents were of different nationalities, their children were required to choose one

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4. “[T]he Russian/Soviet understanding of ‘nationality’ [is] an ethnonational sense of belonging, rather than the fact of citizenship.” Dominique Arel, *Interpreting “Nationality” and “Language” in the 2001 Ukrainian Census*, 18 *POST-SOVIET AFF.* 213, 218 (2002).

5. *Konstitutsiia Rossiskoi Federatsii* [Konst. RF] [Constitution] pmb., available in English at <http://www.departments.bucknell.edu/russian/const/constit.html>.

6. This is the term that is used to designate the Russian Federation. *Id.* art. 1.

7. Both forms are used in the provision of the Russian constitution that designates the Russian language as the state language: “The Russian [*ruskii*] language shall be the state language of the Russian [*Rossiiskaia*] Federation throughout its entire territory.” *Id.* art. 68(1).

8. See USSR Central Executive Committee and the Council of People’s Commissars, *Ob ustanovlenii edinoi pasportnoi sistemy po Soizu SSR i obiazatel’noi propiski pasportov* [On the establishment of a unified passport system for the USSR and compulsory registration of passports], Res. No. 74 (Dec. 19, 1932), *Sobranie Zakonov I Rasporiazhenii Raboche-Krest’ianskogo Pravitel’sтва SSSR* 1932 No. 84, item 516, at 821–22; *Polozhenie o pasportakh* [Regulations on passports], *id.* item 517, at 822–23. For a discussion of the genesis of the Stalin-era internal passport, see Marc Garcelon, *Colonizing the Subject: The Genealogy and Legacy of the Soviet Internal Passport*, in *DOCUMENTING INDIVIDUAL IDENTITY: THE DEVELOPMENT OF STATE PRACTICES IN THE MODERN WORLD* 83–100 (esp. 90–98) (Jane Caplan & John Torpey eds., 2001). See also Gijs Kessler, *The Passport System and State Control over Population Flows in the Soviet Union, 1932–1940*, 42 *CAHIERS DU MONDE RUSSE* 478–504 (2001). For a detailed study of the Soviet internal passport system, see generally MERVYN MATTHEWS, *THE PASSPORT SOCIETY: CONTROLLING MOVEMENT IN RUSSIA AND THE USSR* 27–37 (1993).

of their nationalities when they received their first passport at age sixteen.<sup>9</sup>

The use of the Soviet-era internal passport survived the 1991 break-up of the USSR. Russian citizens are still required to carry an internal passport, but under the 1993 Russian constitution “[e]veryone has the right to determine and specify their national identity. No one may be compelled to determine and specify their national identity.”<sup>10</sup> In keeping with this provision, in 1997 the Russian government adopted a new internal passport that abandoned the entry for nationality,<sup>11</sup> though elimination of the nationality entry was controversial.<sup>12</sup>

The legislation governing the 2002 Russian census required that information regarding respondents’ nationality be obtained,<sup>13</sup> but due to Article 26(1) of the Russian constitution respondents in the census were free to identify their national identity however they pleased.<sup>14</sup> According to the Russian census officials, this question elicited more than 800 different responses.<sup>15</sup> These responses were analyzed, consolidated, and the official census data reported that members of more than 180 nationality groups and ethnic sub-groups live in Russia<sup>16</sup> and more than 150 languages are spoken there.<sup>17</sup> While both of these

9. Sven Gunnar Simonsen, *Between Minority Rights and Civil Liberties: Russia's Discourse over "Nationality" Registration and the Internal Passport*, 33 NATIONALITIES PAPERS 211, 211 (2005). During the 1930s and 1940s, Stalin's government used the nationality identification to monitor, repress, and deport suspect ethnic groups. David Shearer, *Elements Near and Alien: Passportization, Policing, and Identity in the Stalinist State, 1932-1952*, 76 J. MOD. HIST. 835, 876 (2004).

10. Konstitutsiia Rossiiskoi Federatsii [Konst. RF] art. 26. For background on the inclusion and significance of this provision, see Simonsen, *supra* note 9, at 212-14.

11. President of the Russian Federation, *Ob osnovnom dokumente, udostoveriaushchem lichnost' grazhdanina Rossiiskoi Federatsii na territorii Rossiiskoi Federatsii* [On the basic document identifying a citizen of the Russian Federation within the territory of the Russian Federation], Decree No. 232 (Mar. 13, 1997), *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federation Collection of Legislation] 1997 No. 11, item 1301, at 2268-69. The information required to be included in the new internal passport was specified in Government of the Russian Federation, *Ob utverzhdenii Polozheniia o pasporte grazhdanina Rossiiskoi Federatsii, obraztsa blanka i opisaniia pasporta grazhdanina Rossiiskoi Federatsii* [On confirmation of the Regulations on the passport of a citizen of the Russian Federation, sample form and description of the passport of a citizen of the Russian Federation], Res. No. 828 (July 8, 1997) ¶4, SZ RF 1997, No. 28, item 3444, at 5616-21.

12. Simonsen, *supra* note 9, at 214-17.

13. *O Vserossiiskoi perepisi naseleniia* [On the All-Russian census of the population], Fed. Law No. 8-FZ, art. 6 (Jan. 25, 2002), SZ RF 2002, No. 4, item 252, at 1236.

14. ROSSIISKAIA FEDERATSHIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2004), *supra* note 1, at 929.

15. The list of the various answers given to Question 7 (“your national identity”) on the 2002 census is listed in *id.* at 932-37.

16. *Id.* at 929. The nationality groupings used in the 2002 census data consist of a list of 142 nationalities and 40 ethnic sub-groups within those nationalities that was formulated by the Institute of Ethnology and Anthropology of the Russian Academy of Sciences.

17. The census data on the number of individuals who speak languages other than Russian appears in *id.* at 123-24. This data includes individuals who speak second,

numbers are inflated somewhat by foreign-origin nationalities and languages of immigrants and foreign citizens resident in Russia, the vast bulk of these nationality groups and languages are native to Russia.

Of these various nationalities, Russians account for eighty percent of the total (116 million) and six other groups—Tatars, Ukrainians, Bashkirs, Chuvash, Chechens, and Armenians—number more than one million individuals. At the opposite end of the spectrum, five groups—the Kaitag, Botlik, Chamalint,<sup>18</sup> Kerek,<sup>19</sup> and Yug<sup>20</sup>—number fewer than twenty members each and 133 of the nationality groups listed in the census results number fewer than 50,000 members.<sup>21</sup> The nationalities listed in the Russian census belong to a diverse array of broad ethnolinguistic groupings,<sup>22</sup> which include:

- *Slavic*: The Russians, Ukrainians, and Belarusians, who collectively account for 82.4 percent of the population, are Eastern Slavs—traditionally Orthodox Christians who speak closely related Indo-European languages belonging to the eastern branch

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foreign languages. Thus, nearly 700,000 individuals who speak English are listed, *id.* at 123, though the census data reports only 529 persons of English nationality and 1,275 Americans. *Id.* at 8.

18. The Botlik and Chamalint are two groups in Dagestan that speak Ibero-Caucasian languages and are two of the fourteen distinct nationalities that are included in the broader ethnolinguistic group of Avars, which is the largest ethnic group in Dagestan. The second largest ethnic group in Dagestan is the Dargin, which includes two smaller sub-groups, one of which is the Kaitag. Robert Bruce Ware & Enver Kisriev, *Ethnic Parity and Democratic Pluralism in Dagestan: A Consociational Approach*, 53 EUR.-ASIA STUD. 105, 107–08 (2001).

19. The Kerek are a group of hunters and fishers who live in two villages in far northeastern Russia on the Bering Sea coast. Nikolai Vakhtin, *Endangered Languages in Northeast Siberia: Siberian Yupik and other Languages of Chukotka*, in BICULTURAL EDUCATION IN THE NORTH: WAYS OF PRESERVING AND ENHANCING INDIGENOUS PEOPLES' LANGUAGES AND TRADITIONAL KNOWLEDGE 159, 166 (Erich Kasten ed., 1998).

20. The Yug speak a language related to Ket and live above the Arctic Circle along the Yenisei River in Krasnoyarsk Krai. Piotr Skorik, *Languages of the Soviet Northern Peoples*, in ARCTIC LANGUAGES: AN AWAKENING 49, 55 (Dirmid R. F. Collis ed., 1990).

21. The numbers of individuals for each nationality reported in the 2002 census appears in ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2004), *supra* note 1, at 7–19. It should be noted that many of these numerically-small nationalities listed in the census represent foreigners (or immigrants) living in Russia, e.g., Americans (1,275), English (529), Bulgarians (31,965), Hungarians (3,768), Vietnamese (26,206), etc. *Id.* at 8–9.

22. For this brief discussion of ethnic groups in the Russian Federation, I have used groupings that emphasize linguistic similarities in the various nationalities. This method of ethnic grouping was widely used in Soviet ethnography, but is not free from criticism. See James D. Fearon, *Ethnic and Cultural Diversity by Country*, 8 J. ECON. GROWTH 195, 196–200 (2003). See also TATIANA MASTYUGINA & LEV PEREPEL'KIN, AN ETHNIC HISTORY OF RUSSIA: PRE-REVOLUTIONARY TIMES TO THE PRESENT 43 (Vitaly Naumkin & Irina Zviagelskaia eds., 1996) (“Our basic criterion is language: ethnolinguistic classification. Language reflects kinship ties between different peoples, their common ethnogenetic roots.”)

of the Slavic family of languages.<sup>23</sup> The origin of the Slavs in general, and the Eastern Slavs in particular, is controversial.<sup>24</sup> Recent genetic analysis suggests that the Eastern Slavs originated to the west and southwest in central Europe and the Balkans.<sup>25</sup>

- *Altaic*: The second most numerous ethnolinguistic group in Russia—the Altaic group—includes a large number of distinct, geographically dispersed nationalities who traditionally spoke languages belonging to several subgroups of the Altaic family of languages.<sup>26</sup> The Turkic-speaking nationalities include numerically significant groups such as the Tatars, Bashkir, and Chuvash, each of whom number more than one million individuals, and many of whom are Muslim. Other Altaic linguistic subgroups include the less numerous Buryat and Kalmyk, who traditionally spoke languages from the Mongolian subgroup and were predominantly Buddhist, and Tungusic speakers such as the Evenk. These Altaic nationalities are distributed throughout Russia, from the North Caucasus region, along the Volga River, above the Arctic Circle, and throughout the Siberian taiga. The Altaic group also includes Turkic-speaking people of the former Soviet republics of Central Asia—Azerbaijan, Kazakhstan, Kyrgyzstan, and Uzbekistan—who are also present in significant numbers throughout Russia.<sup>27</sup>
- *Uralic*: The Uralic ethnolinguistic group consists of eighteen nationalities numbering almost three million individuals.<sup>28</sup> There are two subgroups: Finno-Ugric and Samoyedic.<sup>29</sup> Languages belonging to the former group are spoken by several nationalities who live in the northwest of Russia (Karelian, Komi, Saami,

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23. The other branches of the Slavic language family are the Western Slavic languages (Czech, Polish, Slovak) and Southern Slavic languages (Bulgarian, Macedonian, Bosnian/Croatian/Serbian, Slovenian). KENNETH KATZNER, *THE LANGUAGES OF THE WORLD* 2 (2002).

24. See FLORIN CURTA, *THE MAKING OF THE SLAVS: HISTORY AND ARCHAEOLOGY OF THE LOWER DANUBE REGION, C. 500–700*, at 6–14 (2001).

25. B. A. Malyarchuk, *Differentiation and Genetic Position of Slavs Among Eurasian Ethnic Groups as Inferred from Variation in Mitochondrial DNA*, 37 *RUSSIAN J. GENETICS* 1437, 1442 (2001).

26. KATZNER, *supra* note 23, at 3. “The name Altaic is derived from the Altaic Mountains of western Mongolia, where the languages are believed to have originated.” *Id.* at 19.

27. According to the 2002 census data, these ethnic groups accounted for 1.4 million individuals: Azerbaijani (621,840), Kazakhs (653,962), Kyrgyz (31,808), and Uzbeks (122,916). ROSSIISKAIA FEDERATSIIA FEDERAL’NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI, *ITOGI VSEROSSIISKOI PEREPISI NASELENNIIA 2002 GODA. TOM 14 SVODNYE ITOGI VSEROSSIISKOI PEREPISI NASELENNIIA 2002 GODA* 272–75 (2005).

28. For a discussion of the languages and ethnic groups that belong to the Uralic group, see MASTYUGINA & PEREPOLKIN, *supra* note 22, 44–45. The statistics for each of these nationalities can be found in ROSSIISKAIA FEDERATSIIA FEDERAL’NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27.

29. KATZNER, *supra* note 23, at 3.

Vep), along the Volga River (Mari, Mordvin), and in central Russia (Udmurt). Samoyedic languages are spoken by several numerically-small nationalities in the far north of Russia.<sup>30</sup> The name “Uralic” stems from the theory that “the ancient habitat of the proto-Uralic community was located in the Urals region.”<sup>31</sup> There is evidence to suggest that in the distant past Uralic people were the predominant population occupying the forested lands between the Ural Mountains and the Baltic Sea, but today the Uralic peoples are dispersed in pockets across northern Russia from the northwestern border area to the Taymyr Peninsula in the Arctic region of northern Siberia.<sup>32</sup> Moreover, though the Uralic peoples may speak languages that are related (if somewhat distantly), there are significant racial, religious, and cultural differences among these peoples. One unfortunate commonality across this group is the prospect of the extinction of several of the Uralic languages and the disappearance of distinct cultural communities.<sup>33</sup>

- *Caucasian*: If the Uralic nationalities have little in common other than linguistic connections, the Caucasian nationalities are united by geographic propinquity as well as linguistic kinship. The region of the Caucasus Mountains between the Black Sea and the Caspian Sea “is characterized by extreme cultural and linguistic differentiation, with more than fifty autochthonous ethnic groups

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30. ANGELA MARCANTONIO, *THE URALIC LANGUAGE FAMILY: FACTS, MYTHS AND STATISTICS* 2 (2002).

31. Seppo Lallukka, *Finno-Ugrians of Russia: Vanishing Cultural Communities?*, 29 *NATIONALITIES PAPERS* 9, 11 (2001). For evidence of a genetic link between the Saami of northwestern Russia and Scandanavia and the peoples of the Ural region, see Max Ingman & Ulf Gyllensten, *A Recent Genetic Link Between Sami and the Volga-Ural Region of Russia*, 15 *EUR. J. HUM. GENETICS* 115, 115–20 (2007).

32. Lallukka, *supra* note 31, at 11–12.

33. “According to a classification adopted in a recent Council of Europe document, the languages of most of those Finno-Ugrian groups that have titular republics in the Russian Federation are considered potentially endangered, and the rest of these languages in Russia are ranked as either endangered or highly endangered.” *Id.* at 10. The 2002 Russian census data included figures for eighteen nationalities and corresponding languages that belong to the Uralic ethnolinguistic group. Of these eighteen nationalities, three (Estonian, Finnish, and Hungarian) have independent nation states and one—the Saami—extends across Norway, Sweden, Finland, and Russia. Of the fifteen Uralic nationalities native to Russia (i.e., including the Saamis, but excluding Estonians, Finns, and Hungarians), the number of individuals identifying themselves as belonging to one of these groups exceeded the number of individuals who claimed to be able to speak the corresponding language in 14 cases. The only exception was the Izhorian people, who number 327. In the other fourteen groups, the number of people who could speak the language ranged from 24.0 percent of the number identifying themselves as belonging to the nationality (Mansi) to 75.8 percent (Nenets). For all fourteen nationalities, the percentage who spoke the corresponding language was 66.8 percent. The data used to make these calculations are at *ROSSIISKAIA FEDERATSIIA FEDERAL’NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI* (2004), *supra* note 1, at 123–24, and *ROSSIISKAIA FEDERATSIIA FEDERAL’NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI* (2005), *supra* note 27, at 272–75.

in a small geographic area."<sup>34</sup> Of these fifty ethnic groups, approximately forty speak languages belonging to the Caucasian family of languages.<sup>35</sup> In Russia, the Caucasian ethnolinguistic group includes various nationalities that traditionally have lived in the northern Caucasus Mountains region. They include the Chechen, the largest of the north Caucasian nationalities, the Ingush, Adyghe, Cherkess, and Kabardin, as well as dozens of smaller ethnolinguistic groups that inhabit the Russian republic of Dagestan.<sup>36</sup> Religious diversity in this region is nearly as great as the region's ethnic and linguistic diversity. While the nationalities belonging to the Caucasian ethnolinguistic group who live in the North Caucasus region of Russia are predominantly Muslim, other nationalities from other ethnolinguistic groups living in the region are Christian (Ossetians, an Iranian people)<sup>37</sup> and Jewish (the Tat or Mountain Jews of Dagestan),<sup>38</sup> and the Kalmyk of neighboring Kalmykia are Buddhist.<sup>39</sup>

The Russian federal system reflects this extraordinary ethnic diversity. Russia inherited from the USSR a complex federal structure in which ethnic nationalities were institutionalized through the creation of designated ethnic homelands.<sup>40</sup> The Union of Soviet Socialist Republics consisted of fifteen union republics that nominally represented homelands for the largest ethnic groups in the country. Within each union republic, less numerous ethnic groups were given their own "homelands" in the form of autonomous republics, autonomous oblasts, and autonomous okrugs. The largest of these union republics was the Russian Soviet Federative Socialist Republic, which at the time of the break-up of the USSR in 1991 consisted of eighty-eight

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34. K.B. Bulayeva et al., *Ethnogenomic Diversity of Caucasus, Daghestan*, 18 AM. J. HUM. BIOLOGY 610 (2006).

35. KATZNER, *supra* note 23, at 21.

36. "With more than 34 ethno-linguistic groups, Dagestan is by far the most ethnically heterogeneous of Russia's republics." Ware & Kisriev, *supra* note 18, at 105.

37. See Sergei Arutiunov, *Linguistic Minorities in the Caucasus*, in LINGUISTIC MINORITIES IN CENTRAL & EASTERN EUROPE 99–100 (Christina Bratt Paulston & Donald Peckham eds., 1998).

38. Mark Tolts, *The Post-Soviet Jewish Population in Russia and the World*, 52 JEWS IN RUSS. & E. EUR. 37, 40–42 (2004).

39. SVANTE E. CORNELL, *SMALL NATIONS AND GREAT POWERS: A STUDY OF ETHNOPOLITICAL CONFLICT IN THE CAUCASUS* 21–22 (2001).

40. The establishment and incorporation of ethnic homelands in the Soviet federal structure was a product of the policy of "indigenization," an attempt "to tie the minorities to the Soviet regime by drawing national cadres into the political and administrative posts of party and state . . ." Philip G. Roeder, *Soviet Federalism and Ethnic Mobilization*, 43 WORLD POL. 196, 204 (1991). See also O. I. Chistiakov, *Korenizatsiia gosudarstvennogo apparata natsional'nykh raionov v pervye gody sovetskoi vlasti: Po materialam natsional'nykh raionov Srednego Povolzh'ia*, PRAVOVEDENIE 164–68 (1965); Yuri Slezkine, *The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism*, 53 SLAVIC REV. 414, 415 (1994). For a good history of the pre-Revolutionary Russian and Soviet construction of a federal system based, in part, on nationality, see MASTYUGINA & PEREPEL'KIN, *supra* note 22, at 27–42.



constituent units, of which “thirty-one were ethnically-defined ‘avtonomii’ (autonomous formations). These avtonomii were ranked in a three-tier hierarchy with varying rights and privileges—sixteen autonomous republics, five autonomous oblasts, and ten autonomous okrugs—each of which had its own eponymous ethnic group, or ‘titular nationality.’”<sup>41</sup>

With the break-up of the USSR in 1991, all fifteen of the union republics became independent nations, but the federal structure within the newly-independent nations remained. The Russian Federation currently consists of a total of eighty-three constituent units consisting of six different kinds of districts, three based on geography (forty-six regions (oblasts), nine territories (krais), two cities of federal importance), and three based on nationality (twenty-one republics, one autonomous oblast, and four autonomous areas (okrug)),<sup>42</sup> each of which has two representatives in the upper house of the national legislature, the Council of Federation.<sup>43</sup> The krais, oblasts, and cities of federal significance are organized along geographic lines and include the bulk of the Russian population.<sup>44</sup> Though the geographic-based districts are more numerous and populous, and the titular nationalities do not constitute majorities in each of the ethnic-based districts,<sup>45</sup> these ethnic-based districts—especially the twenty-one republics—are extremely important. They tend to occupy sensitive, strategic regions in Russia’s borderlands or regions that enjoy valuable natural resources.<sup>46</sup> The most well-known of the ethnic republics is Chechnya, located in the volatile North Caucasus region along Rus-

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41. Edward W. Walker, *The Dog that Didn’t Bark: Tatarstan and Asymmetrical Federalism in Russia*, HARRIMAN REV., Winter 2006, at 1.

42. Konstitutsiia Rossiskoi Federatsii [Konst. RF] arts. 5(1), 65(1).

43. *Id.* art. 95(2).

44. At the time of the 2002 census, the Russian Federation consisted of forty-nine oblasts, six krais, two cities of federal significance, twenty-one republics, one autonomous oblast, and ten autonomous okrugs. The total population of the fifty-seven oblasts, krais, and cities was 118.5 million (81.6 percent of the total). The total population of the thirty-two ethnic-based districts was 26.7 million (18.4 percent of the total). See ROSSIISKAIA FEDERATSIIA FEDERAL’NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 276–335.

45. According to statistics gathered in the 2002 census, in eight of the twenty-one ethnic republics and in two of ten autonomous okrugs the titular nationality/ies constituted a majority of the population. *Id.*

46. The sparsely-populated Republic of Sakha “produces an estimated 98% of Russia’s diamonds and Russia is the world’s single largest producer by value.” Daniel R. Kempton, *The Republic of Sakha (Yakutia): The Evolution of Centre-Periphery Relations in the Russian Federation*, 48 EUR.-ASIA STUD. 587, 591 (1996). Similarly, the republics of Tatarstan and Bashkortostan are two of the most significant oil-producing regions in Russia. DMITRY P. GORENBURG, MINORITY ETHNIC MOBILIZATION IN THE RUSSIAN FEDERATION 20–22 (2003). Interestingly, though Tatarstan has been one of the most assertive republics in the Russian Federation since 1991, the republic’s titular nationality—the Tatars—constitutes only barely more than half of the republic’s population (52.9 percent). ROSSIISKAIA FEDERATSIIA FEDERAL’NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 282, 318.

sia's border with Georgia, which has been the scene of two wars since the fall of the USSR as Chechen separatists have fought the Russians unsuccessfully for independence.<sup>47</sup> But Chechnya is not the only republic that has asserted itself since the break-up of the Soviet Union:

Since 1990 Russia has experienced an unexpected "ethnic revival." From Sakha in Eastern Siberia to Adygeia on the slopes of the Caucasus Mountains, many of the country's more than one hundred minority nationalities have asserted claims for greater rights, privileges, and constitutional recognition. Leaders of ethnic regions have demanded everything from greater economic autonomy to complete independence.<sup>48</sup>

In the ethnic revival that has occurred in Russia since 1990, it has been the nationalities with the highest educational, economic, and political attainment that generally have been most assertive.<sup>49</sup> Nevertheless, more marginal groups, including those who are few in number and follow traditional lifestyles, have begun to assert their rights and claims.

### B. *The Numerically-Small Indigenous Peoples of Russia*

The ethnic revival in Russia has included the emergence of an advocacy movement on behalf of the rights and interests of Russia's indigenous peoples. The principal organization for this movement is the Russian Association of Indigenous Peoples of the North (RAIPON), which was founded in 1990.<sup>50</sup> RAIPON is an umbrella organization for dozens of regional and ethnic organizations representing Russia's various indigenous peoples and regions. Every four years RAIPON convenes the Congress of Indigenous Peoples of Russia's North, Siberia and Far East, which elects a president and other officers. RAIPON consults with the Russian legislature and government ministries on legislation relevant to the indigenous peoples and also participates in the activities of various international organizations such as the United Nations, the Arctic Council, and the World Intellectual Property Organization. The issues of greatest concern to RAIPON and its constituent organizations and branches have been human rights, envi-

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47. See JAMES HUGHES, *CHECHNYA: FROM NATIONALISM TO JIHAD* (2007); *CHECHNYA: FROM PAST TO FUTURE* (Richard Sakwa ed., 2005); ALEKSEI VSEVOLODOVICH MALASHENKO, *VREMIA IUGA—ROSSIJA V CHECHNE, CHECHNIA V ROSSII* (2002).

48. Daniel S. Treisman, *Russia's "Ethnic Revival": The Separatist Activism of Regional Leaders in a Postcommunist Order*, 49 *WORLD POL.* 212, 212 (1997).

49. *Id.* at 218.

50. See Thomas K hler & Kathrin Wessendorf, *Preface to the English Edition of TOWARDS A NEW MILLENNIUM: TEN YEARS OF THE INDIGENOUS MOVEMENT IN RUSSIA* 10, 10 (Thomas K hler & Kathrin Wessendorf eds., 2002).

ronmental protection, and the preservation of traditional ways of life, culture, and native homelands.<sup>51</sup>

But who are the indigenous peoples of Russia? Defining the indigenous peoples of any territory is often a confusing, contentious, and fluid issue.<sup>52</sup> In defining indigenous peoples, a variety of factors has been considered including:

- “historical continuity with pre-invasion and pre-colonial societies,” which may consist of occupation of ancestral lands, common ancestry with the original occupants of the land, as well as cultural and linguistic connections with those earlier societies;
- whether the people in question “consider themselves distinct from other sectors of the societies now prevailing in those territories”;
- whether a particular group is a tribal society that has retained its traditional institutions and way of life; and
- self-identification as indigenous or tribal.<sup>53</sup>

Article 1 of the 1989 International Labor Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries defines indigenous and tribal peoples as:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment

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51. Official website of the Russian Association of Indigenous Peoples of the North, <http://www.raipon.org/Default.aspx?alias=www.raipon.org/english> (last visited Aug. 27, 2008). See also Petra Rethmann, *A Dream of Democracy in the Russian Far East, in IN THE WAY OF DEVELOPMENT: INDIGENOUS PEOPLES, LIFE PROJECTS, AND DEVELOPMENT* 256, 258–59 (Mario Blaser, Harvey A. Feit & Glenn McRae eds., 2004); PATTY A. GRAY, *THE PREDICAMENT OF CHUKOTKA’S INDIGENOUS MOVEMENT: POST-SOVIET ACTIVISM IN THE RUSSIAN FAR NORTH* 213–16 (2005).

52. “The development of ‘indigenous peoples’ as a significant concept in international practice has not been accompanied by any general agreement as to its meaning, nor even by agreement on a process by which its meaning might be established.” Benedict Kingsbury, *“Indigenous Peoples” in International Law: A Constructivist Approach to the Asian Controversy*, 92 *Am. J. Int’l L.* 414, 414 (1998). See also DAVID MAYBURY-LEWIS, *INDIGENOUS PEOPLES, ETHNIC GROUPS, AND THE STATE* 6–7 (2d ed. 2002); BRUCE GRANVILLE MILLER, *INVISIBLE INDIGENES: THE POLITICS OF NON-RECOGNITION* 36–38 (2003).

53. U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on Prevention of Discrimination & Prot. of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations: Conclusions, Proposals and Recommendations*, ¶¶ 379–80, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (1987) (prepared by José R. Martínez Cobo) available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N87/121/00/pdf/N8712100.pdf?OpenElement>.

of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.<sup>54</sup>

The criterion of self-identification has become very important in recent years. In the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, for example, no definition of “indigenous peoples” is included, though Article 33 states that “[i]ndigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.”<sup>55</sup> Other international organizations have similarly declined to define who are indigenous peoples. The World Bank’s Operational Policy on Indigenous Peoples states that:

Because of the varied and changing contexts in which Indigenous Peoples live and because there is no universally accepted definition of “Indigenous Peoples,” this policy does not define the term. Indigenous Peoples may be referred to in different countries by such terms as “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” or “tribal groups.”<sup>56</sup>

The Inter-American Development Bank, on the other hand, specifies three criteria in defining indigenous peoples:

Indigenous peoples, for the purposes of this policy, is a term that refers to peoples who meet the following three criteria: (i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization; (ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and (iii) they recognize themselves as belonging to indigenous or precolonial cultures or peoples.<sup>57</sup>

The USSR did not ratify the 1957 ILO Convention No. 107 on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries<sup>58</sup> nor did it ratify ILO

54. International Labor Organization [ILO], Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, art. 1, June 27, 1989, 1650 U.N.T.S. 384 (entered into force Sept. 5, 1991) [hereinafter Convention No. 169].

55. U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 33, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

56. WORLD BANK, OPERATIONAL MANUAL: INDIGENOUS PEOPLES OP 4.10, ¶ 3, (July 2005).

57. INTER-AMERICAN DEVELOPMENT BANK, OPERATIONAL POLICY ON INDIGENOUS PEOPLES ¶ 1.1 (Feb. 22, 2006).

58. The list of countries that have ratified ILO Convention No. 107 appears on the official web site of the ILO. International Labour Organization, [www.ilo.org/ilolex/english/newratframeE.htm](http://www.ilo.org/ilolex/english/newratframeE.htm) (last visited Apr. 4, 2009). For a discussion of ILO Convention No. 107 and the decision to replace it with ILO Convention No. 169, see Lee

Convention No. 169,<sup>59</sup> though it did sign the convention in 1989 when it was originally promulgated.<sup>60</sup> In the months prior to the dissolution of the USSR, the foreign minister of the Soviet Union expressed support for ratification of ILO Convention No. 169, but acknowledged that ratification would require specific modification of Soviet legislation. In particular, Foreign Minister Bessmertnykh commented on the convention's provisions on rights to land and natural resources.<sup>61</sup> The USSR did not ratify the convention prior to its dissolution in December 1991 and in the early months of 1992 President Boris Yeltsin sought a recommendation from the Russian government about ratification of ILO Convention No. 169.<sup>62</sup> In 1994, the State Duma held a hearing on ratification of the convention,<sup>63</sup> but to date no action has been taken, reportedly due to continuing concerns over the convention's provisions on the rights of indigenous peoples to land and natural resources, among other issues.<sup>64</sup> These concerns also informed Russia's decision in 2007 to abstain from voting on the Declaration on the Rights of Indigenous Peoples in the U.N. General Assembly.<sup>65</sup> During the debate on the Declaration in the General Assembly, the Russian representative to the United Nations explained his country's decision to abstain from voting on it by stating that "we cannot agree with the document's provisions relating in particular to the rights of indigenous peoples to land and natural resources, and to the procedure for compensation and redress."<sup>66</sup>

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Swepston, *Indigenous and Tribal Populations: A Return to Centre Stage*, 126 INT'L LABOUR REV. 447, 447-55 (1987).

59. Nor have Australia, Canada, New Zealand, and the United States. The list of countries that have ratified ILO Convention No. 169 appears on the official web site of the ILO, *supra* note 58.

60. N.A. LOPULENKO, NARODY KRAINEGO SEVERA ROSSII VO VTOROI POLOVINE 90-X GODOV XX B.: EKONOMIKA, KUL'TURA, POLITIKA 70 (2000).

61. Letter from N. N. Bessmertnykh to G.S. Tarazevich (May 28, 1991), in ANXIOUS NORTH: INDIGENOUS PEOPLES IN SOVIET AND POST-SOVIET RUSSIA 63-64 (Alexander Pika, Jens Dahl & Inge Larsen eds., 1996).

62. President of the Russian Federation, *Ob Assotsiatsii avtonomnykh okrugov Rossiiskoi Federatsii* [On the Association of autonomous okrugs of the Russian Federation], Decree No. 118 (Feb. 5 1992), available at the Official Website of the President of the Russian Fed'n, <http://document.kremlin.ru/doc.asp?ID=093007>.

63. LOPULENKO, *supra* note 60, at 71.

64. The transcript of the hearing in the State Duma was published in K. D. ARAKCHAA & V. I. IONOV, O RATIFIKATSII KONVENTSII NO. 169 MEZHDUNARODNOI ORGANIZATSII TRUDA "O KORENNYKH NARODAKH I NARODAKH, VEDUSHCHIKH PLEMENNOI OBRAZ SHIZNI V NEZAVISIMYKH STRANAKH": MATERIALY PARLAMENT-SKIKH SLUSHANII, 22 NOIABRIA 1994 GODA (1995).

65. Russia was one of only two states that voted against the Declaration when it was approved by the U.N. Human Rights Council. Press Release, United Nations Human Rights Council, Human Rights Council Adopts Texts for Protection from Enforced Disappearance, Rights of Indigenous Peoples (June 29, 2006), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/B20EBDAF668EA646C125719C006E90E8>.

66. U.N. GAOR, 61st Sess., 107th plen. mtg. at 16, U.N. Doc. A/61/PV.107 (Sept. 13, 2007) [hereinafter U.N. DEBATE]. Russia, however, was not alone in its opposition

Russia has formulated a unique standard for determining who the indigenous people of Russia are. In Russian, “indigenous peoples” is translated as *korennye narody* (коренные народы), but this phrase by itself has no legal significance.<sup>67</sup> Russian law extends special status and protections only to those groups that are defined as *korennye malochislennyye narody* (коренные малочисленные народы), which translates as “numerically-small indigenous peoples.”<sup>68</sup> Under Russian legislation, numerically-small indigenous peoples are: “[P]eoples living in the territories traditionally inhabited by their ancestors, retaining traditional ways of life, occupations, and trades, numbering fewer than fifty thousand individuals in the Russian Federation, and maintaining their own independent ethnic communities.”<sup>69</sup>

Three of the four criteria included in this definition are consistent with the definition in ILO Convention No. 169 and other international instruments by referring to peoples that live in their traditional territory, engaging in traditional activities, and who identify themselves as a separate ethnic community. Where the Russian statutory definition differs radically from other definitions of indigenous peoples is by placing a numerical test in the definition. As Aleksandr Shapovalov has pointed out:

The issue of numbers and criteria for qualifying as indigenous peoples is highly controversial. The approach taken by the Russian Federation in defining its indigenous peoples is one of the obstacles precluding Russian from ratifying ILO Convention No. 169. This Convention does not contain any quantitative criteria, and states in Article 1 that “[s]elf-determination as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.” If the ILO’s approach were taken in Russia and the words “numerically small” were dropped from the official definition, the number of ethnic groups that qualify as indigenous would automatically increase.<sup>70</sup>

The effect of Russia’s numerical criterion is to exclude several significant groups that might otherwise be considered as indigenous peo-

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to the Declaration—Australia, Canada, New Zealand, and the U.S. all voted against the Declaration. *Id.* at 19.

67. For an interesting historical discussion of the various terms that have been used to identify Russia’s indigenous peoples, see S. V. Sokolovski, *The Construction of “Indigenosity” in Russian Science, Politics and Law*, 45 J. LEGAL PLURALISM & UNOFFICIAL L. 91 (2000).

68. *O garantiakh prav korennykh malochislennykh narodov Rossiiskoi Federatsii* [On the guarantees of the rights of the numerically-small peoples of the Russian Federation], Fed. Law No. 82-FZ (Apr. 30, 1999), SZ RF 1999, No. 18, item 2208, at 4183–91.

69. *Id.* art. 1(1), at 4183.

70. Aleksandr Shapovalov, *Straightening Out the Backward Legal Regulation of “Backward” Peoples’ Claims to Land in the Russian North: The Concept of Indigenous Neomodernism*, 17 GEO. INT’L ENVTL. L. REV. 435, 441 (2005). See also LOPULENKO, *supra* note 60, at 71.

ples. The Komi, Buryat, and Yakut, for example, might satisfy the non-numerical criterion in the Russian statutory definition of indigenous people, but each group numbers more than 50,000 individuals.<sup>71</sup> Shapovalov has suggested that there are dozens of other nationalities in the Russian Federation that might qualify as indigenous peoples if not for the numerical criterion.<sup>72</sup>

The inclusion of a numerical criterion in determining which groups are to receive special benefits, protection, or consideration as indigenous peoples is long-standing in Russia.<sup>73</sup> This numerical criterion was first used by the Soviet government during the 1920s and was an integral part of Soviet nationalities policy.<sup>74</sup> After the Bolshevik victory in the Civil War, Soviet policy was designed to accommodate and co-opt the most numerous and politically self-assertive non-Russian nationalities by establishing territorial units—titular homelands for these groups.<sup>75</sup> Thus, in addition to the large groups that were recognized with the establishment of union republics, nationalities such as the Komi, Buryat, and Yakut were granted administrative autonomy in their own territorial units. The numerically-small tribal peoples of the North, Siberia, and Far East, at least initially, were considered so “primitive and classless” that they were not true nationalities, but were deserving of assistance and protection.<sup>76</sup> In 1929 and 1930, several autonomous okrugs—the least autonomous of the Soviet territorial formations—were created as titular homelands for some of the tribal peoples of the North.<sup>77</sup>

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71. See Gail Osherenko, *Indigenous Rights in Russia: Is Title to Land Essential for Cultural Survival?*, 13 GEO. INT'L ENVTL. L. REV. 695, 698 (2001). See also NIKOLAI VAKHTIN, *NATIVE PEOPLES OF THE RUSSIAN FAR NORTH* 9 (1992).

72. Shapovalov, *supra* note 70, at 441–42.

73. The 1822 law “Rules on the administration of the natives” used the phrase “*malochislennye rody*” (numerically-small clans) in defining categories of indigenous groups that were subject to the law. §2, *Ustav ob upravlenii inorodtsev* [Rules on the administration of the natives], 38 POLNII SVOD ZAKONOV ROSSHSKOI IMPERII 394 (1830). “It must be noted that the numbers of a nation were an inalienable attribute of thinking about indigenous population groups of Siberia and the North, but not about others. Certain small-numbered peoples of European Russia. . . were officially denoted as ‘small-numbered’ only during *perestroika*. As far as Caucasian peoples are concerned, the term *malochislennyi* (small-numbered) was never applied to them in legislative practice until recently.” Sokolovski, *supra* note 67, at 107.

74. YURI SLEZKINE, *ARCTIC MIRRORS: RUSSIA AND THE SMALL PEOPLES OF THE NORTH* 1 (1994).

75. Allan Kagedan, *Territorial Units as Nationality Policy, in SOVIET NATIONALITY POLICIES: RULING ETHNIC GROUPS IN THE USSR* 163–65 (Henry R. Huttenbach ed., 1990). See *supra* note 40 and accompanying text.

76. Slezkine, *supra* note 74, at 152–54. See also TERRY MARTIN, *THE AFFIRMATIVE ACTION EMPIRE: NATIONS AND NATIONALISM IN THE SOVIET UNION, 1923–1939*, at 6, 127, 155, 200 (2001).

77. E. P. Batyanova, T. V. Loukiantchenko & A. N. Kalabanov, *The Impact of Russian National Policies on the Indigenous Peoples of the North, Siberia and the Far East from the 17th through the 20th Centuries*, in DMITRIY A. FUNK & LENNARD SILANPÄÄ, *THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA: A GUIDE FOR RESEARCHERS* 7–8 (1999).

Under current Russian law, the government has the power to issue a unified list of the numerically-small indigenous peoples. Article 1(1) of Federal Law No. 82-FZ (“On the guarantees of the rights of the numerically-small peoples of the Russian Federation”) charges the Russian government with the responsibility to issue a unified list of Russia’s numerically-small indigenous peoples based on information provided by the governments of the regions in which the indigenous peoples live.<sup>78</sup>

TABLE 1: LIST OF NUMERICALLY-SMALL INDIGENOUS PEOPLES

Aleut	Ket	Shor
Aliutor	Khanty	Soyot
Chelkan	Koriak	Taz
Chukchi	Kumandin	Telengit
Chulym	Mansi	Teleut
Chuvan	Nanai	Tofalar
Dolgan	Negidal	Tubalar
Enets	Nenets	Tuva-Todzhin
Eskimo	Nganasan	Udeghe
Even	Nivkh	Ulchi
Evenk	Oroch	Vep
Itel'men	Orok (Ul'ta)	Yukagir
Kamchadal	Saami	
Kerek	Sel'kup	

In the mid-1920s, the Soviet government adopted its first list of indigenous peoples—referred to as “the small peoples of the North”—that included twenty-six groups.<sup>79</sup> This list remained in effect throughout the Soviet era, but after the collapse of the Soviet Union, six groups “previously not listed as separate peoples sought to be identified as distinct groups, and the list grew to thirty-two.”<sup>80</sup> In 2000, a new list of the numerically-small indigenous peoples of Russia

78. Fed. Law No. 82-FZ, Apr. 30, 1999, art. 1(1), *supra* note 68, at 4183.

79. All-Russian Central Executive Committee and the Soviet of People’s Commissars of the RSFSR, *Ob utverzhenii vremennogo polozenia ob upravlenii tuzemnykh narodnostei i plemen severnykh okrain R.S.F.S.R.* [On the confirmation of the temporary regulation on the administration of native peoples and tribes of the northern regions of the R.S.F.S.R.], Decree No. 575, ¶1 (Oct. 25, 1926), *Sobranie Uzakoneni I Rasporiazhenii Rabocheho I Krest’ianskogo Pravitel’sstva 1926*, No. 73, 861, at 862.

80. Osherenko, *supra* note 71, at 698 n.6. In 1993, the Shors, Teleuts, and Kumandins were granted the status of numerically-small peoples of the North. Council of Nationalities of the Supreme Soviet of the Russian Federation, *Ob otnesenii Shortsev, Teleutov, Kumandintsev k malochislennym narodam Severa* [On the classification of Shors, Teleuts, and Kumandins as numerically-small peoples of the North], Decree No. 4538-I (Feb. 24, 1993), *Vedomosti S’ezda Narodnykh Deputatov Rossiiskoi Federatsii i Verkhovnogo Soveta Rossiiskoi Federatsii* [Ved. RSFSR] [Bulletin of the Congress of People’s Deputies of the Russian Federation and Supreme Council of the Russian Federation] 1993, No. 13, item 465, at 767.



was adopted that included forty-five groups,<sup>81</sup> and then in 2006 the Russian government issued a list of the numerically-small indigenous peoples that includes the forty nationalities listed on Table 1.<sup>82</sup>

Article 1(1) of Federal Law No. 82-FZ (“On the guarantees of the rights of the numerically-small peoples of the Russian Federation”) also authorizes the State Council of the Republic of Dagestan to establish its own quantitative and other criteria for determining its numerically-small indigenous peoples and to apply those criteria in preparing a list of those peoples. This list is then automatically included in the unified list issued by the Russian government.<sup>83</sup> In the words of Federal Law No. 82-FZ, Dagestan is granted this extraordinary authority in recognition of “the unique ethnic composition of the population of the Republic of Dagestan relating to the number of peoples living in its territory.”<sup>84</sup>

How Dagestan has exercised this authority is perplexing. In 2000, the State Council of the Republic Dagestan adopted a resolution specifying the numerically-small indigenous peoples of Dagestan.<sup>85</sup> It did not identify quantitative or other criteria for determining which groups constitute numerically-small indigenous peoples, but merely listed fourteen ethnic groups—the Avar, Agul, Azerbaijani, Dargin, Kumyk, Lak, Lezgin, Tat, Tabasaran, Nogay, Rutul, Russians, Tsakhur, and Chechen-Akin.<sup>86</sup>

The list adopted by the Dagestan State Council is clearly inconsistent with the criteria specified in the Russian Federation legislation. The Russian Federation legislation establishes 50,000 people in the Russian Federation as the criterion for constituting a numerically-small people.<sup>87</sup> The Dagestan legislation does not establish a numerical criterion and of the fourteen groups listed as numerically-small indigenous peoples in Dagestan, nine groups number in excess of 90,000

81. Government of the Russian Federation, *O edinom perechne korennikh malochislennykh narodov Rossiiskoi Federatsii* [On the unified list of numerically-small indigenous peoples of the Russian Federation], Decree No. 255 (Mar. 24, 2000), SZ RF 2000, No. 14, item 1493, at 3204–06.

82. Government of the Russian Federation, *O utverzhdenii perechnia korennikh malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii* [On the confirmation of the list of numerically-small indigenous peoples of the North, Siberia, and the Far East of the Russian Federation], Order No. 536-r (Apr. 17, 2006), SZ RF 2006, No. 17, item 1905, at 555. The 2006 list dropped five groups—the Abazin, Besermyan, Izhor, Nağaybäk, and Shapsug—that had been included on the 2000 list.

83. Fed. Law No. 82-FZ, Apr. 30, 1999 art. 1(1), *supra* note 68, at 4183.

84. *Id.* See also KATZNER, *supra* note 36.

85. State Council of the Republic of Dagestan, *O korennikh narodakh Respubliki Dagestan* [On the numerically-small peoples of the Republic of Dagestan], Res. No. 191 (Oct. 18, 2000), *Sobranie Zakonodatel'stva Respubliki Dagestan* [Republic of Dagestan Collection of Legislation] 2000, No. 10, item 922, unofficial text at <http://www.bestpravo.ru/dagest/data02/tex12538.htm>.

86. *Id.* at ¶1.

87. See text accompanying *supra* note 69.

total in the Russian Federation and eight groups number in excess of 100,000 in the Republic of Dagestan itself.<sup>88</sup> Moreover, by naming Russians as one of the numerically-small indigenous peoples in Dagestan, Russians automatically are included in the unified list of numerically-small indigenous peoples for the Russian Federation, a patently absurd result when there are more than 115 million Russians in the Russian Federation.<sup>89</sup> In the discussion that follows, I will discuss only the forty nationalities that the government of the Russian Federation included on its 2006 list.

The forty peoples listed as numerically-small indigenous peoples are people of the tundra and the taiga. Tundra is a Russian word<sup>90</sup> referring to the frozen, treeless land along the coast of the Arctic Ocean.<sup>91</sup> Taiga is also a Russian word referring to “the circumpolar coniferous forest zone which borders the tundra on the south.”<sup>92</sup> The peoples that are included on the unified list of numerically-small indigenous peoples live in their traditional homelands in the Russian North, Siberia, and the Far East and follow traditional lifestyles, primarily animal husbandry, hunting, and fishing. Some of these groups are semi-nomadic.<sup>93</sup> The traditional homelands of these peoples stretch across the entire map of Russia, from the far northwest adjacent to Finland and Norway, along the Arctic Circle in northern Siberia, throughout much of the Siberian tundra and taiga, into the remote Far East.<sup>94</sup>

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88. Data on the number of individuals in each of these groups living in Dagestan and in the Russian Federation can be found in ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 276–335.

89. *Id.* at 312.

90. “The word’s origin is clouded: the Lapp *tundra* means a marshy plain; the Finnish *tunturi* indicates an arctic or barren hill; the Russian *tundra* means a land of no trees and may derive from either.” ANN ZWINGER & BEATRICE E. WILLARD, *LAND ABOVE THE TREES: A GUIDE TO AMERICAN ALPINE TUNDRA*, at xv (1996).

91. YU. I. CHERNOV, *THE LIVING TUNDRA* 3 (Doris Love trans., Cambridge Univ. Press 1988) (1980).

92. Robert S. Hoffmann, Note, *The Meaning of the Word “Taiga”*, 39 *ECOLOGY* 540, 540 (1958).

93. “Today, large-scale reindeer breeding is the backbone of the Nenets’ economy and culture in the Yamal-Nenets Autonomous Okrug. More than 4,500 Nenets (and a few Khanty) lead a nomadic or semi-nomadic life in the Yamal district. . . encompassing most of the Yamal Peninsula. The Nenets live in canvas and reindeer-hide tents and move with their families and hers to designated pastures through Yamal and the mainland in a six-season rotational cycle. The traditional economic activities of the native peoples—hunting, fishing, and reindeer herding—all have important seasonal aspects.” ANDREI VLADIMIROVICH GOLOVNEV & GAIL OSHERENKO, *SIBERIAN SURVIVAL: THE NENETS AND THEIR STORY* 8 (1999).

94. Prior to 2006, two groups that lived in the Caucasus region in the southwest of Russia—the Abazins and Shapsugs—had been included on the list of numerically-small indigenous peoples. The 2006 changes to the list also dropped the Besermyan, who live in Udmurtia in central Russia, the Izhorians, who live in Leningrad Oblast near St. Petersburg, and the Nağaybäk, who live in Chelyabinsk Oblast in south central Russia. See *supra* note 82. For the locations of these peoples, see ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI, *ITOGI VSER-*

Because most American readers may be unfamiliar with these peoples, their languages, cultures, and lifestyles, and because some understanding of these cultures is necessary to analyze the issues relating to the legal protection of their traditional cultural knowledge and traditional cultural expression, I will devote the following portion of this article to an ethnographic, demographic, and cultural overview of the numerically-small peoples of Russia.

## 1. An ethnographic overview of Russia's numerically-small peoples

### a) Uralic peoples

Eight of the numerically-small peoples belong to the Uralic ethnolinguistic group discussed above.<sup>95</sup> They are the Saami, Vep, Khanty, Mansi, Nenets, Enets, Nganasan, and Sel'kup. Linguistically, the languages spoken by these peoples belong to the Finno-Ugric (Saami, Vep, Mansi, Khanty) and Samoyedic subgroups (Enets, Nenets, Nganasan, Sel'kup) of the Uralic languages. These peoples live in the extreme north of Russia, in the Arctic Circle, in a band stretching from the Murmansk Oblast on the Kola Peninsula in the northwest, along Russia's border with Finland and Norway, to the Taimyr Peninsula in northwestern Siberia. Three groups—the Khanty, Mansi, and Sel'kup—live somewhat farther south in Tyumen Oblast and the two autonomous okrugs located within Tyumen Oblast—the Khanty-Mansi AO and the Yamalo-Nenets AO.<sup>96</sup> These two ethnic-based autonomous okrugs were created as homelands for the three largest of these Uralic peoples (Nenets, Khanty, Mansi).<sup>97</sup>

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OSSIISKOI PEREPISI NASELENIIA 2002 GODA. TOM 13 KORENNYE MALOCHISLENNYE NARODY ROSSIISKOI FEDERATSII 7–12 (2005). Thus, after the 2006 list was issued all of the listed numerically-small indigenous peoples were located in the extreme north and Far East of Russia and Siberia.

95. See *supra* note 28 and accompanying text.

96. In 2003, legislation was adopted to change the name of the Khanty-Mansi AO to Khanty-Mansi Autonomous Okrug—Yugra. President of the Russian Federation, *O vkluchanii novogo naimenovaniia sub"ekta Rossiiskoi Federatsii v stat'iu 65 Konstitutsii Rossiiskoi Federatsii* [On the inclusion of the new name for a subject of the Russian Federation in Article 65 of the Constitution of the Russian Federation], Decree No. 841 (July 25, 2003), SZ RF 2003, No. 30, item 3051, at 7468. The addition of Yugra to the region's name was a symbolic gesture in support of the indigenous people. Marjorie Mandelstam Balzer, *Whose Homeland Is It? Shifting Boundaries and Multiple Identities in the Russian Federation North*, in PROPERTIES OF CULTURE-CULTURE AS PROPERTY: PATHWAYS TO REFORM IN POST-SOVIET SIBERIA 233, 236 (Erich Kasten ed., 2004). Yugra is an ancient name for the Khanty and Mansi peoples. PETER JORDAN, MATERIAL CULTURE AND SACRED LANDSCAPE: THE ANTHROPOLOGY OF THE SIBERIAN KHANTY 34 (2003).

97. At the time of the 2002 census there was another ethnic-based district—the Taimyr (Dolgan-Nenets) Autonomous Okrug—that had been created as a homeland for the Nenets and another indigenous people, the Dolgan, living in Krasnoyarsk Krai. In 2005, legislation was adopted that consolidated this autonomous okrug and another ethnic-based district, the Evenk AO, into Krasnoyarsk Krai. Russian Federation, *Ob obrazovanii v sostave Rossiiskoi Federatsii novogo sub"ekta Rossiiskoi Federatsii v rezul'tate ob"edineniia Krasnoiarskogo kraia, Taimyrskogo (Dolgan-*

The Khanty and Mansi have the (mis)fortune to live in one of the most oil-rich areas of Russia—Tyuman Oblast, the center of the Russian petroleum industry, “home to the largest oil and gas deposits in the world in terms of area and volume.”<sup>98</sup> Since the 1960s, oil exploration and production activities in Tyuman Oblast have been the cause of extensive environmental degradation in the region<sup>99</sup> and have disrupted the traditional economic way of life—hunting, fishing, and reindeer herding—followed by the Khanty, Mansi, Nenets, and other indigenous peoples in the region.<sup>100</sup> Disputes with the national and regional governments over environmental regulation and land rights have characterized the indigenous rights movement in the region.<sup>101</sup>

The Saami people—formerly known as Lapps—live on the Kola Peninsula in Murmansk Oblast; both geographically and culturally they “are the most Western of all the indigenous minorities of the Russian Far North.”<sup>102</sup> Though they number slightly less than two thousand in Russia, the total number of Saamis living in the adjacent areas of northern Finland, Sweden, and Norway is approximately 65,000.<sup>103</sup> The traditional economy of the Saamis also consists primarily of reindeer herding, fishing, and hunting. Though Murmansk Oblast is not the site of significant oil extraction activities, the traditional economy and way of life of the Saami there is threatened nevertheless. Tradi-

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*Nenetskogo) avtonomnogo okruga i Evenkiiskogo avtonomnogo okruga* [On the formation in the Russian Federation of a new subject of the Russian Federation as a result of the consolidation of Kranoyarsk Krai, the Taimyr (Dolgano-Nenets) Autonomous Okrug, and the Evenk Autonomous Okrug], Fed. Constitutional Law No. 6-FZ (Oct. 14, 2005), SZ RF 2005, No. 42, item 4212, at 11801–13.

98. Matthew H. Pelkki, Natalia V. Kirillova & Vladimir N. Sedykh, *The Forests of Western Siberia: New Century, New Role*, J. FORESTRY, July 2001, at 21, 23.

99. Gregory E. Vilchek & Olga Yu. Bykova, *The Origin of Regional Ecological Problems Within the Northern Tyumen Oblast, Russia*, 24 ARCTIC & ALPINE RES. 99, 103–05 (1992). See also Craig ZumBrunnen, *A Survey of Pollution Problems in the Soviet and Post-Soviet Russian North*, in CONTESTED ARCTIC: INDIGENOUS PEOPLES, INDUSTRIAL STATES, AND THE CIRCUMPOLAR ENVIRONMENT 88–117 (Eric Alden Smith & Joan McCarter eds., 1997).

100. “[T]he degradation of Khanty, Mansi, Yamalo-Nenets and Lubicon [an Indian band in Alberta, Canada] territories because of industrial development, particularly oil and gas exploration and extraction, and forestry, has led to the social and cultural deterioration of the Khanty, Mansi and Yamalo-Nenets and the Lubicon Cree.” Aileen A. Expiritu, “Aboriginal Nations”: *Natives in Northwest Siberia and Northern Alberta*, in CONTESTED ARCTIC, *supra* note 99, at 41, 42. See also Vilchek & Bykova, *supra* note 99, at 105; Joachim Otto Habeck, *How to Turn a Reindeer Pasture into an Oil Well, and Vice Versa: Transfer of Land, Compensation and Reclamation in the Komi Republic*, in PEOPLE AND THE LAND: PATHWAYS TO REFORM IN POST-SOVIET SIBERIA, 125, 126–36 (Erich Kasten ed., 2002).

101. See Shapovalov, *supra* note 70, at 456–67 (2005).

102. T. V. Loukjantchenko, *The Sami*, in THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA, *supra* note 77, at 16.

103. Anna Moyers, Note, *Linguistic Protection of the Indigenous Sami in Norway, Sweden, and Finland*, 15 TRANSNAT’L L. & CONTEMP. PROBS. 363, 364 (2005). For a description of life among the Saami of Russia, see ROGER TOOK, *RUNNING WITH REINDEER: ENCOUNTERS IN RUSSIAN LAPLAND* (2004).

tional activities—fishing and hunting—have suffered as a result of government policies designed to encourage tourism in the area.<sup>104</sup>

The Vep (also referred to as the Vepsians) live in the northwest of Russia, in the Republic of Karelia, which borders Finland, and Leningrad Oblast, the district surrounding the city of St. Petersburg. The Vep are more thoroughly urbanized than the other peoples in this group, with over two-thirds of them living in cities.<sup>105</sup>

The Nenets are the largest of the Uralic numerically-small peoples, numbering in excess of 40,000. They live overwhelmingly in their traditional homelands in Tyumen Oblast and Krasnoyarsk Krai, and are predominantly rural. Significant numbers of the Nenets continue to engage in traditional economic activities including reindeer herding and some still follow a nomadic lifestyle.<sup>106</sup> The Enets are the smallest of these Uralic peoples, numbering just over 200 according to the 2002 Russian census. Most of the Enets live in their traditional homeland in Krasnoyarsk Krai in the Taimyr Peninsula region. Like the Nenets, the Enets are divided into a northern (tundra) group and a southern (forest) group. The traditional way of life for the northern or tundra Enets is reindeer herding, while the southern or forest Enets are more fully engaged in hunting and fishing.<sup>107</sup> Also living on the Taimyr Peninsula are the Nganasans, who number less than one thousand, most of whom live in their traditional homeland. Traditionally, the Nganasans were nomadic hunters, but in the past century, as a result of contact with other indigenous peoples, they have taken up reindeer herding.<sup>108</sup> Though other Siberian tribal peoples are also known for their shamanistic spiritual culture, the Nganasans are renowned for the strength of their shamanistic tradition.<sup>109</sup>

The last of the Uralic numerically-small peoples of Russia are the Sel'kups, numbering just over 4,200 individuals and living in Tyumen and Tomsk Oblasts, with a few hundred in Krasnoyarsk Krai. Like most of the indigenous peoples of the Russian North, the Sel'kups

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104. Nina Afanasjeva, *The Socio-Economic and Legal Situation of the Saami in the Murmanskaya Oblast—An Appeal to Take Urgent Measures*, in *TOWARDS A NEW MILLENNIUM*, *supra* note 50, at 139–40 (2002).

105. ROSSIJSKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 94, at 7.

106. For a detailed description of the Nenets, see ANDREI VLADIMIROVICH GOLOVNEV & OSHERENKO, *SIBERIAN SURVIVAL: THE NENETS AND THEIR STORY* (1999).

107. A. Yu. Karpukhin, *The Entsy*, in *THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA*, *supra* note 77, at 45.

108. N. Pluzhnikov, *The Nganasans*, in *THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA*, *supra* note 77, at 49.

109. "The Nganasan shaman, more than any other in Siberia, performs his duties to their maximum extent: the shaman here is a figure of authority; simultaneously wise-man, priest, augur, physician, tutor, musician, singer, guardian of folklore, and improvisatory poet." Evgeny A. Helimsky & Nadezhda T. Kosterkina, *Small Seances with a Great Nganasan Shaman*, in *SHAMANISM: CRITICAL CONCEPTS IN SOCIOLOGY* 212 (Andrei A. Znamenski ed., 2004).

traditionally engaged in reindeer herding, hunting, and fishing, and were believers in animistic shamanism.<sup>110</sup> Their traditional spiritual and cultural identity has been substantially eroded over time through contact with Russians, while their traditional ways of life have been adversely affected by the industrial development that has occurred in their homelands, especially by the timber and petroleum industries.<sup>111</sup>

b) *Altaic peoples*

Twenty of the forty numerically-small peoples of Russia belong to the Altaic ethnolinguistic group,<sup>112</sup> whose native languages are drawn from the Tungusic and Turkic language subgroups.

The most numerous of the Altaic peoples on the list of numerically-small peoples are the Evenks,<sup>113</sup> a Tungusic-speaking people who are widely distributed throughout Siberia. Groups of Evenks live in the north of Russia, along the Arctic Sea coast from the Ob River in western Siberia to the Sea of Okhotsk in the east, and as far south as Lake Baikal, the Amur River, and into Manchuria.<sup>114</sup> Of all the nationalities within Russia, only the Russians themselves inhabit a larger territory.<sup>115</sup> Reflecting its status as one of the largest of the numerically-small peoples, an Evenk autonomous region—the Evenk Autonomous Okrug—was established in 1930,<sup>116</sup> though it was consolidated into Krasnoyarsk Krai in 2005.<sup>117</sup> The language of the Evenks—formerly known as the Tungus—is the largest of the northern group of the Tungusic languages.<sup>118</sup> The Evenks are closely related to the second-largest of the Altaic groups, the Evens, who number just over 19,000.<sup>119</sup> The Even language was previously considered a dialect of Evenk, but more recently has been considered a separate language.<sup>120</sup>

110. Florian Sobanski, *The Southern Selkups of Tomsk Province Before and After 1991*, 29 NATIONALITIES PAPERS 171, 172 (2001).

111. SH. K. AKHMETOVA ET AL., NARODY ZAPADNOI I SREDNEI SIBIRI: KUL'TURA I ETNICHESKIE PROTSESSY 155 (2002).

112. See Katzner, *supra* note 26 and accompanying text. The Altaic peoples are the Chelkan, Chulym, Chuvan, Dolgan, Even, Evenk, Kumandin, Nanai, Negidal, Oroch, Orok, Shor, Soyot, Telengit, Teleut, Tofalar, Tubalar, Tuva-Todzhin, Udege, and Ulchi.

113. The 2002 census reported 35,527 Evenks. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 275.

114. A. A. Sirina, *The Evenks*, in THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA, *supra* note 77, at 62.

115. MARGUS KOLGA ET AL., THE RED BOOK OF THE PEOPLES OF THE RUSSIAN EMPIRE 121 (Andrew Humphreys & Krista Mits eds., 2001).

116. EASTWEST INST., THE REPUBLICS AND REGIONS OF THE RUSSIAN FEDERATION: A GUIDE TO POLITICS, POLICIES, AND LEADERS, 118 (Robert W. Orttung, Danielle N. Lussier & Anna Paretskaya, eds., 2000).

117. See *supra* note 97.

118. KOLGA ET AL., *supra* note 115, at 122.

119. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 275.

120. KOLGA ET AL., *supra* note 115, at 117–18.

The traditional way of life for both groups consisted of hunting and reindeer herding, and groups located near the ocean have also engaged in fishing and hunting marine mammals. The traditional spiritual life of the Evenk and the Even centered on animism and shamanism,<sup>121</sup> though in modern times many of them converted to Russian Orthodoxy.<sup>122</sup>

In stark contrast to the Evenk and Even, who inhabit a huge territory scattered across most of Siberia, the other Tungusic-speaking groups on the list inhabit compact territories in the maritime regions along Russia's Pacific coast. These peoples include the Orok (346 people on Sakhalin Island), the Oroch (686 people in Khabarovsk Krai), the Ulchi (2,913 people in Khabarovsk Krai), the Negidal (567 people in Khabarovsk Krai), the Nanai (12,160 people located primarily in Khabarovsk Krai), the Taz (276 people in Primorskii Krai), and the Udege (1,657 people in Primorskii Krai and Khabarovsk Krai).<sup>123</sup> Except for Negidal, which belongs to the northern Tungusic linguistic subgroup, the languages of all of these peoples belong to the southern Tungusic group.<sup>124</sup> Their traditional occupations have been hunting and fishing.

The Turkic-speaking numerically-small indigenous peoples consist of eleven groups, most of whom traditionally have lived in southwestern Siberia in an area from the western end of Lake Baikal and the Sayan Mountains to the region near the headwaters of the Ob' River in the Altai Mountains. This is an area of mountainous taiga where Russia, Kazakhstan, China, and Mongolia come together and was once thought to have been the original homeland of all the Turkic tribes.<sup>125</sup> During the Soviet period most of the Turkic-speaking

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121. A. I. MAZIN & A. P. DEREVIANKO, *TRADITSIONNYE VEROVANIIA I OBRIADY EVENKOV-OROHONOV: KONETS XIX-NACHALO XX v.* 66–101 (1984). See also V. A. Tugolukov, *Some Aspects of the Beliefs of the Tungus (Evenki and Evens)*, in *SHAMANISM IN SIBERIA* 419–28 (V. Diószegi & M. Hoppál eds., 1978).

122. *AN ETHNOHISTORICAL DICTIONARY OF THE RUSSIAN AND SOVIET EMPIRES* 227 (James Stuart Olson, Lee Brigance Pappas & Nicholas Charles Pappas, eds., 1994). "Russian Orthodox missionaries moved into Evenk land in the late seventeenth century, and, over the years, they made thousands of converts; these conversions were superficial at best, and, even today, the Evenks are only nominally Christians. The animistic tribal religion still exerts a strong pull on their spiritual and cultural loyalties. Christianity mingled with that shamanistic faith, producing such religious fusions as a local version of St. Nicholas, the Russian Orthodox saint who functions in the Evenk pantheon as the deputy to the master-spirit of the upper world." *Id.*

123. The population numbers and locations for these groups are taken from the 2002 Russian census, *ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI* (2005), *supra* note 27, at 276–335. The Orok were listed in the 2002 census under the name "Ul'ta (oroki)."

124. Tapani Salminen, *Europe and North Asia*, in *ENCYCLOPEDIA OF THE WORLD'S ENDANGERED LANGUAGES* 211, 222 (Christopher Moseley ed., 2007).

125. KOLGA ET AL., *supra* note 115, at 29. See also 1 DAVID CHRISTIAN, *A HISTORY OF RUSSIA, CENTRAL ASIA AND MONGOLIA: INNER EURASIA FROM PREHISTORY TO THE MONGOL EMPIRE* 247–48 (1998).

groups were not listed as numerically-small indigenous peoples because they were not recognized as distinct nationalities. Of these groups, only the Dolgan and the Tofalar were included on the Soviet-era list.<sup>126</sup> In Soviet ethnography, nine of these Turkic-speaking peoples were grouped together as a single nationality, the Altaics, which numbered almost 70,000 people in Russia at the time of the 1989 census.<sup>127</sup> Only after the collapse of the Soviet Union were these nine groups included in the national census as separate nationalities and recognized individually as numerically-small peoples.<sup>128</sup>

The largest of these groups is the Shor, who numbered 13,975 in the 2002 census, most of whom live in Kemerovo Oblast.<sup>129</sup> The other Turkic-speaking groups living in this region are the Chelkan (855 people, most of whom live in the Altai Republic), Chulym (656 people living in Tomsk Oblast and Krasnoyarsk Krai), Kumandin (3,114 people living in Altai Krai, the Altai Republic, and Kemerovo Oblast), Soyot (2,769 people living in the Buryat Republic), Telengit (2,399 people living in the Altai Republic), Teleut (2,655 people living in Kemerovo Oblast), Tofalar (837 people living in Irkutsk Oblast), Tubalar (1,565 people living in the Altai Republic), and the Tuva-Todzhin (4,442 people living in the Republic of Tyva).<sup>130</sup> The traditional occupations for these groups were hunting, fishing, nomadic pastoralism (cattle as well as reindeer), and agriculture; their spiritual beliefs, like most of the numerically-small peoples, involved animism and shamanism,<sup>131</sup> though Buddhism and a unique messianic religion that arose in the Altai region in the early twentieth century, Burkhanism, are also significant.<sup>132</sup>

In many respects, the Dolgan people are an outlier of the other Turkic-speaking numerically-small peoples of Russia. The Dolgan do not live near the other Turkic-speaking peoples who are clustered in the vicinity of the Altai Mountains. The Dolgan are the northernmost

126. The Tofalar were included in the original 1926 list of native peoples under the ethnonym "Karegassy." Decree No. 575, Oct. 25, 1926, *supra* note 79, at ¶1.

127. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 272. See also KOLGA ET AL., *supra* note 115, at 28–32; NARODY ROSSII ENTSIKLOPEDIIA 82–85 (V. A. Tishkov ed., 1994); AN ETHNOHISTORICAL DICTIONARY OF THE RUSSIAN AND SOVIET EMPIRES, *supra* note 122, at 31–34.

128. See *supra* notes 80 and 81 and accompanying text.

129. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 332–33.

130. The population numbers and locations for these groups are taken from the 2002 Russian census. Id. at 276–335.

131. Nikolai A. Alekseev, *Shamans and Their Religious Practices*, in SHAMANIC WORLDS: RITUALS AND LORE OF SIBERIA AND CENTRAL ASIA 49, 83–95 (Marjorie Mandelstam Balzer ed., 1997).

132. See Agnieszka Halemba, *Contemporary Religious Life in the Republic of Altai: The Interaction of Buddhism and Shamanism*, 3 SIBIRICA 165, 165–182 (2003).



Turkic-speaking people,<sup>133</sup> with most Dolgan living above the Arctic Circle on the Taimyr Peninsula.<sup>134</sup> Though Uralic peoples—the Nenets and Nganasans—also live on the Taimyr Peninsula, the Dolgans are the largest indigenous ethnic group living on the Taimyr Peninsula.<sup>135</sup> The Dolgan nationality is of relatively recent origin<sup>136</sup> and is a *mélange* of ethnic and cultural elements. Yakut, Evenk, Russian, and Samoyedic-speaking people moved into the Taimyr Peninsula region and began intermarrying at the beginning of the eighteenth century and adopted Yakut, a Turkic language, with the addition of Russian and Evenk words, as a *lingua franca*.<sup>137</sup> In the early years of the nineteenth century these people adopted the name of an Evenk clan—the Dolgan—as their self-designation.<sup>138</sup> Though the Dolgan are not the most numerous of the Turkic-speaking numerically-small peoples, they are one of only two such groups to have been included on the list of Russia's indigenous peoples since the first Soviet-era list in 1926<sup>139</sup> and they are the only Turkic-speaking numerically-small people for whom an autonomous region—the Taimyr (Dolgano-Nenets) Autonomous Okrug—was created.<sup>140</sup>

c) *Paleosiberian group*

The Paleosiberian ethnolinguistic group is a catch-all for several peoples who speak languages that do not fall into the Uralic, Altaic, or Eskimo-Aleut family of languages, but who, in general, live in

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133. A. I. SAVVINOV, *PROBLEMY ETNOKUL'TURNOI IDENTIFIKATSII DOLGAN: NA MATERIALAKH TRADITSIONNOGO ISKUSSTVA* 7 (2005).

134. According to the 2002 census, seventy-six percent of all Dolgans living in Russia live in the Taimyr (Dolgano-Nenets) Autonomous Okrug. Another four percent live elsewhere in Krasnoyarsk Krai, and 17.5 percent live in the Republic of Sakha. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 297–98.

135. KOLGA ET AL., *supra* note 115, at 109.

136. “The Dolgans are one of the young ethnic groups of Siberia, the formation of which began after the inclusion of their territory in the Russian state, and concluded several decades ago.” V. I. D'iachenko, *Formirovanie dolgan v protsesse istoricheskikh svyazei tungusov, iakutov i russkikh*, in L. R. PAVLINSKAIA, *NARODY SIBIRI V SOSTAVE GOSUDARSTVA ROSSIISKOGO* 272 (1999).

137. JOHN P. ZIKER, *PEOPLES OF THE TUNDRA: NORTHERN SIBERIANS IN THE POST-COMMUNIST TRANSITION* 69–70 (2002).

138. JAMES FORSYTH, *A HISTORY OF THE PEOPLES OF SIBERIA: RUSSIA'S NORTH ASIAN COLONY, 1581–1990*, at 176–77 (1992).

139. See *supra* note 126 and accompanying text.

140. Created in 1932, consolidated into Krasnoyarsk Krai in 2005. See *supra* note 97. It should also be mentioned that an autonomous region for the Altaic people (the combined category for nine of the Turkic-speaking numerically-small peoples) was created in 1922 and continues to this day as the Altai Republic. Originally named the Oiroi Autonomous Oblast, this region was renamed Gorno-Altai Autonomous Oblast in 1948, was reorganized as the Gorno-Altai Autonomous Soviet Socialist Republic in 1991, and renamed the Altai Republic in 1992. Altai Republic: Official Portal, History of the Altai Republic, <http://eng.altai-republic.ru/modules.php?op=modload&name=sections&file=index&req=viewarticle&artid=19&page=1> (last visited Nov. 4, 2008).

those regions of northern Siberia between the Uralic and Altaic speakers in the west and the Eskimo-Aleut peoples in the far northeast.<sup>141</sup> Several of the Paleosiberian languages are related to each other, but other languages included in this group are isolates, unrelated to any other language. The Paleosiberian languages provide a linguistic link to the Native American languages in that “[c]ertain traits which do not occur anywhere else outside the languages of America appear also among the Paleosiberian tribes.”<sup>142</sup> There are cultural and physical anthropological similarities as well that connect the Paleosiberian tribes with Native Americans.<sup>143</sup>

These Paleosiberian peoples consist of ten groups, most of whom live in the far northeast in the Chukotka Autonomous Okrug, the easternmost region of Russia, which is separated from the United States only by the Bering Strait; Magadan Oblast, which is adjacent and south of the Chukotka Autonomous Okrug along the coast of the Sea of Okhotsk; and Kamchatka Krai, which consists of the entire Kamchatka Peninsula south of Chukotka and is the most populous of these districts. Though most of the Paleosiberian peoples live near Russia’s Bering Sea and Sea of Okhotsk coastline, several smaller groups live inland.

The Chukotka Autonomous Okrug was founded in 1930 as an autonomous national region for the indigenous peoples of the area.<sup>144</sup> During the late Soviet period, the Chukotka Autonomous Okrug was part of Magadan Oblast, but in 1990 Chukotka unilaterally announced its independence and re-christened itself the Chukotka Soviet Autonomous Republic.<sup>145</sup> The authorities in Magadan Oblast objected to this action, but in 1992 the post-Soviet Russian government adopted legislation confirming Chukotka’s independence from Magadan Oblast.<sup>146</sup> The Magadan Oblast authorities challenged the constitutionality of this law before the Russian Constitutional Court, but the Court upheld its constitutionality in a 1993 decision.<sup>147</sup>

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141. Roman Jakobson, *The Paleosiberian Languages*, 44 AM. ANTHROPOLOGIST 602, 602 (1942).

142. *Id.* at 603.

143. See, e.g., I. S. Gurvich, *K voprosy o paralleliakh v traditsionnoi kul'ture aborigennykh narodov Severnoi Azii i Severnoi Ameriki*, in TRADITSIONNYE KUL'TURY SEVERNOI SIBIRI I SEVERNOI AMERIKI: TRUDY SOVETSKO-AMERIKANSKOI GRUPPY PO SOTRUDNICHESTVU V OBLASTI IZUCHENIIA VZAIMODEISTVIA ABORIGENNYKH NARODOV I KUL'TUR SEVERNOI SIBIRI I SEVERNOI AMERIKI. 119–28 (V. P. Alekseev & I. S. Gurvich eds., 1981).

144. See GRAY, *supra* note 51, at 91–92 (2005).

145. *Id.* at 162.

146. Russian Federation, *O neposredstvennom vkhozhdenii Chukotskogo avtonomnogo okruga v sostav Rossiiskoi Federatsii* [On the direct inclusion of the Chukotka Autonomous Okrug in the Russian Federation], Law No. 3056-I (June 17, 1992), Ved. RSFSR 1992, No. 28, item 1618, at 1999.

147. Constitutional Court of the Russian Federation, *Po delu o proverke konstitutsionnosti Zakona Rossiiskoi Federatsii ot 17 iunia 1992 goda “O neposredstvennom vkhozhdenii Chukotskogo avtonomnogo okruga v sostav Rossiiskoi Federatsii”* [In the

While Chukotka obtained its independence from Magadan Oblast in the early 1990s, more recently another ethnic-based autonomous region was merged out of existence. In reaction to the decentralization of power in Russia that occurred during the presidency of Boris Yeltsin, his successor, Vladimir Putin, sought to simplify Russia's federal structure and bolster federal authority in the regions. This has resulted in the reduction of the number of constituent units in the Russian federal system by merging several of the autonomous okrugs into larger regions.<sup>148</sup> As noted above, the Taimyr (Dolgano-Nenets) Autonomous Okrug and the Evenk Autonomous Okrug were merged into Krasnoyarsk Krai in 2005,<sup>149</sup> and in 2006 legislation was adopted to merge the Koriak Autonomous Okrug—established in 1930, occupying the northern half of the Kamchatka Peninsula, and the titular home to the Koriak, the second most-numerous Paleosiberian people—with Kamchatka Oblast to form Kamchatka Krai.<sup>150</sup> This change took effect on July 1, 2007.

The Eastern Paleosiberian peoples—those groups that live along or near Russia's coastline in the Chukotka Autonomous Okrug, Magadan Oblast, and Kamchatka Krai—consist of six groups who speak related languages.<sup>151</sup> The largest of these peoples is the Chukchi (15,767 people living predominantly in the Chukotka Autonomous Okrug), followed by the Koriak and Aliutor (8,743 people living primarily in Kamchatka Krai),<sup>152</sup> Itel'men (3,180 people living primarily in the southern half of the Kamchatka), Kamchadal (2,293 people who also live primarily in the southern part of the Kamchatka Peninsula), and the Kerek, a very small group consisting of a total of eight individuals according to the 2002 census.

Though the Itel'men and Kamchadal are listed separately on both the 2000 and 2006 lists of numerically-small peoples,<sup>153</sup> these two groups speak the same language, reflecting their common origins.

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matter of the verification of the constitutionality of the Law of the Russian Federation dated June 17, 1992 "On the direct inclusion of the Chukotka Autonomous Okrug in the Russian Federation", (May 11, 1993), Ved. RSFSR 1993, No. 28, item 1083, at 1697-701.

148. Gary N. Wilson, *Abandoning the Nest: Regional Mergers and Their Impact on the Russian North*, 27 POLAR GEOGRAPHY 240, 240-41 (2003).

149. *Supra* note 97.

150. Russian Federation, *Ob obrazovanii v sostave Rossiiskoi Federatsii novogo sub"ekta Rossiiskoi Federatsii v rezul'tate ob"edineniia Kamchatskoi oblast i Koriakskogo avtonomnogo okruga* [On the formation in the Russian Federation of a new subject of the Russian Federation as a result of the consolidation of Kamchatka Oblast and the Koriak Autonomous Okrug], Law No. 2-FKZ (July 12, 2006), SZ RF 2006, No. 29, item 3119, at 8077-88.

151. As to the familial relationship among these languages, see MICHAEL D. FORTESCUE, LANGUAGE RELATIONS ACROSS BERING STRAIT: REAPPRAISING THE ARCHAEOLOGICAL AND LINGUISTIC EVIDENCE 37-44 (1998).

152. The Aliutor were not listed as a separate nationality in the 2002 census, but were included with the Koriak.

153. *See supra* notes 81 and 82.

Previously, these two groups were regarded as a single group, called the Kamchadal.<sup>154</sup> The fact that they are currently listed separately on official government lists speaks more to the politics of ethnic identity in the Soviet Union and Russia than to any basic ethnic, linguistic, or cultural differences between the two groups. As A. A. Sirina explained:

The two ethnonyms can be explained by the national policy features of the Soviet state which officially introduced the term "Itel'men." Despite this, a considerable number of the Kamchadaly have not wanted to abandon their earlier name. Thus, two peoples have emerged over the past 70 years with common ethnic roots but different names for encapsulating their self-identity.<sup>155</sup>

The traditional occupations of the eastern Paleosiberian peoples have revolved around fishing and marine mammal hunting for those who live along the coast and reindeer herding and hunting for those who live inland. The coastal residents tended to live in fixed settlements, while those inland followed a nomadic lifestyle; their traditional spirituality centered on animism and shamanism.<sup>156</sup>

The Yukagir and the Chuvan peoples speak closely-related languages<sup>157</sup> that are generally regarded as isolates, though it has been suggested that these may be related to the Uralic languages.<sup>158</sup> The Chuvan, numbering 1,087 people, live primarily in the inland regions of Chukotka, while the Yukagir, who number 1,509 people, live in both the tundra and the taiga. The Yukagir live further west than the Chuvan, primarily along the Kolyma River in the Republic of Sakha, though some also live in Magadan Oblast and Chukotka. While some of the members of both groups live in fixed settlements, others continue to follow the traditional semi-nomadic lifestyle that revolved around hunting elk and other wild animals.<sup>159</sup> And as befits a tradi-

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154. See WALDEMAR JOCHELSON, PEOPLES OF ASIATIC RUSSIA 49–53 (reprint 1970) (1928).

155. A. A. Sirina, *The Itel'mens, in THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA*, *supra* note 77, at 158. See also A. A. Sirina, *Kto takie Kamchadaly i pochemu ty—odin iz nikh? Gosudarstvennaia politika i problemy formirovaniia etnicheskoi identichnosti kamchadalov Magadanskoi oblasti*, in E. A. PIVNENA & D. A. FUNK, *V POISKAKH CEBIA: NARODY SEVERA I SIBIRI V POSTSOVESKIKH TRANSFORMATSIIA* 85–107 (2005).

156. See generally, WALDEMAR BOGORAS, THE CHUKCHEE 277 (1904–1909); JOCHELSON, *supra* note 154, at 42–54; V. G. Bogoras, *K psikhologii shamanstva u narodov Severovostochnoi Azii [Toward Psychology of Shamanism Among the Tribes of Northeastern Asia]*, in ANDREI A. ZNAMENSKI, SHAMANISM IN SIBERIA: RUSSIAN RECORDS OF INDIGENOUS SPIRITUALITY 72–76 (2003); Iu.B. Simchenko, *Obychnaia shamanskaia zhizn': etnograficheskie ocherki [Ordinary Shamanic Life: Ethnographical Essays]*, in SHAMANISM IN SIBERIA, *id.* at 330–34.

157. Jakobson, *supra* note 141, at 605.

158. FORTESCUE, *supra* note 151, at 44–47.

159. RANE WILLERSLEV, SOUL HUNTERS: HUNTING, ANIMISM, AND PERSONHOOD AMONG THE SIBERIAN YUKAGHIRS 29–35 (2007).

tional culture that revolves around hunting, Yukagir spirituality traditionally involved animistic beliefs and practices.<sup>160</sup>

The final two Paleosiberian peoples are isolates both geographically and linguistically; they speak unrelated languages and live in regions far removed from the other Paleosiberian peoples. Like many of the Paleosiberian people, the Nivkh, who number 5,162 people, are coastal dwellers. They are almost evenly divided between those who live in Khabarovsk Krai along the lower reaches of the Amur River where it empties into the Sea of Okhotsk and those who live across the Tatar Strait at the northern end of Sakhalin Island. Hunting and especially fishing were the principal traditional activities of the Nivkh, with fish and marine mammals playing a large part in traditional mythology, folklore, and art as well.<sup>161</sup> Soviet resettlement of many of the Nivkh in the 1950s and 1960s undermined this traditional way of life,<sup>162</sup> and current oil and gas drilling operations in the Sea of Okhotsk and off Sakhalin Island represent an ongoing challenge to the traditional culture of the Nivkh and other indigenous peoples living along the shores of the Sea of Okhotsk.<sup>163</sup>

The Ket number 1,494 people and live far inland from the other Paleosiberian peoples, in central Siberia primarily in the taiga region along the middle reaches of the Yenisei River in Krasnoyarsk Krai. The Ket language is an isolate, the sole remaining language of the Western Paleosiberian or Yeniseian family of languages; the other languages in this family became extinct during the 18th century.<sup>164</sup> It has been suggested, however, that Ket is related to the Na-Dene family of American Indian languages,<sup>165</sup> and more recently evidence of a genetic link between the Ket and Native Americans has been discov-

160. *Id.* at 1–3.

161. NARODY ROSSII ENTSIKLOPEDIJA, *supra* note 127, at 253–54; FORSYTH, *supra* note 138, at 207–09.

162. FORSYTH, *supra* note 138, at 370–71.

163. Pavel Sulyandziga & Olga Murashko, *The Sea of Okhotsk: People and Oil—Different Points of View*, in TOWARDS A NEW MILLENIUM, *supra* note 50, at 196–210. See also Emma Wilson, *Est' zakon, est' i svoi zakony: Legal and Moral Entitlements to the Fish Resources of Nyski Bay, North-Eastern Sakhalin*, in PEOPLE AND THE LAND, *supra* note 100, at 149–68.

164. See Jakobson, *supra* note 141, at 606.

165. “The Na-Dene family has four branches, three of which are single languages spoken along the coastline of western Canada and southern Alaska (Haida, Tlingit, Eyak). The fourth branch is the Athabaskan family, spread over interior Alaska and western Canada, with outliers along the Pacific coast of Oregon and California and in the American Southwest (Navajo, Apache) . . . On the basis of the evidence presented in this paper, it would seem that Na-Dene and Yeniseian [the language family of which Ket is the only remaining living example] must have once formed a single population in Eurasia. Part of this population migrated to the New World, giving rise to the Na-Dene languages, while the portion of the population that remained in Asia gave rise to the Yeniseian languages.” Merritt Ruhlen, *The Origin of the Na-Dene*, 95 PROC. NAT'L ACAD. SCI. U.S.A. 13994–95 (1998).

ered.<sup>166</sup> The traditional occupations of the Ket are hunting, fishing, and reindeer herding, and their traditional spiritual beliefs involve animism and shamanism. Soviet policies of collectivization and the resettlement of semi-nomadic peoples into larger, fixed communities, not surprisingly, undermined this traditional Ket way of life and culture.<sup>167</sup>

d) *Eskimo-Aleut group*

Of all the numerically-small indigenous peoples of Russia, the groups most familiar and recognizable to Americans are the Eskimo and Aleut. Of the forty numerically-small peoples, these are the only groups found in both Russia and the United States. The Eskimo of Russia (also referred to as the Asiatic or Siberian Eskimo, Yuit, or Yupik) number 1,750 individuals who live along the east coast of Chukotka, on offshore islands in the Bering Sea, and on Wrangel Island. Eskimos were the original inhabitants of Chukotka and the Kamchatka Peninsula. Then, as the Chukchi moved into this region, the Eskimo migrated to the east into northern America. Eskimo settlements in northeast Asia became intermingled with coastal settlements of the Chukchi.<sup>168</sup> When Russians first encountered the Eskimo in the 17th century in far northeastern Siberia, "their culture was more or less uniform over the whole vast territory of northern America and Asia, although they spoke several different languages."<sup>169</sup> The traditional culture of the Eskimo revolved around hunting marine mammals, and their spiritual beliefs and practices reflected this way of life.<sup>170</sup>

The Aleut people of Russia consist of 540 individuals who live on the Komandorskii (Commander) Islands in the Bering Sea east of the Kamchatka Peninsula. The Komandorskii Islands are a group of small, treeless islands that are the westernmost members of the Aleutian Islands. Though most of the Aleutian Islands are part of the United States, the Komandorskii Islands are under Russian jurisdiction. The Komandorskii Islands were uninhabited when first discovered by Russian explorers,<sup>171</sup> but the ancestors of the Aleuts who live there now are descended from Aleuts forcibly resettled from Atka

166. Fabrício R. Santos et al., *The Central Siberian Origin for Native American Y Chromosomes*, 64 AM. J. HUM. GENETICS 619, 619–28 (1999).

167. A. Yu. Karpukhin, *The Kety*, in THE SMALL INDIGENOUS NATIONS OF NORTHERN RUSSIA, *supra* note 77, at 126.

168. KOLGA ET AL., *supra* note 115, at 49.

169. FORSYTH, *supra* note 138, at 70.

170. Tassan S. Tein, *Traditions, Rituals, and Beliefs of the Asiatic Eskimos*, in CULTURE INCARNATE: NATIVE ANTHROPOLOGY FROM RUSSIA 209–14 (Marjorie Mandelstam Balzer ed., 1995).

171. The great Arctic explorer Vitus Bering died in the Komandorskii Islands in 1741. See ORCUTT FROST, *BERING: THE RUSSIAN DISCOVERY OF AMERICA* at xxi, 266 (2003).

and Attu Islands in the nineteenth century (when Alaska was a Russian possession) to work in the seal trade.<sup>172</sup>

The Aleut are the native inhabitants of the Aleutian Islands and speak a language that is closely related to the Eskimo languages. Like the Eskimo, Aleut material, cultural, and spiritual life is profoundly tied up with the hunting of marine mammals and fishing.<sup>173</sup>

## 2. A demographic overview of Russia's numerically-small peoples

Using the statistics generated by the 2002 Russian census, it is possible to paint a demographic picture of Russia's numerically-small peoples taken as a group.

According to the 2002 census, the total population of the forty numerically-small peoples of Russia discussed above was 252,222.<sup>174</sup> The total population of these groups in the last Soviet census in 1989 was 209,404,<sup>175</sup> though these two numbers are not fully comparable. As noted above, the 1989 census was conducted applying Soviet principles for determining nationality based on the nationality of the individual's parents,<sup>176</sup> but in the 2002 Russian census nationality was determined by self-identification.<sup>177</sup> Of the four broad ethnolinguistic groups used above, the twenty Altaic peoples total 113,726, the eight Uralic peoples total 96,963, the ten Paleosiberian peoples total 39,243, and the Eskimos and Aleuts total 2,290.

Not surprisingly, the majority of Russia's numerically-small peoples live in rural areas. For the group as a whole, 68.8 percent live in rural areas, while 31.2 percent live in urban areas.<sup>178</sup> The least urbanized groups are Turkic-speaking peoples who, during Soviet times, were classified as the Altaic people:<sup>179</sup> Telengit (95.2 percent), Soyot (90.9 percent), Chulym (90.4 percent), and Tuva-Todzhin (99.8 percent). The most urbanized groups are the Shor (71.1 percent), Orok (58.1 percent), Kamchadal (56.6 percent), and Vep (56.1 percent). Rural or urban, the vast majority of the numerically-small peoples of Russia live in their traditional homelands. Of the 252,222 people in these 40

172. See FORSYTH, *supra* note 138, at 152.

173. NARODY ROSSII ENTSIKLOPEDIJA, *supra* note 127, at 81–82.

174. ROSSIISKAIA FEDERATSIJA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 27, at 272–75. The 2006 list dropped five groups that had been included on the official list of numerically-small peoples in the 2002 census. See *supra* notes 81 and 82 and accompanying text. These five groups are not included in the census data discussed in this section; the statistical analysis in this section only includes data for the 40 peoples included on the current list of numerically-small peoples.

175. ROSSIISKAIA FEDERATSIJA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 174.

176. See Simonsen, *supra* note 9 and accompanying text.

177. See *supra* note 14 and accompanying text.

178. ROSSIISKAIA FEDERATSIJA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 94, at 7–12.

179. See *supra* notes 127–132 and accompanying text.

groups, 237,311 (94.1 percent) live in their traditional territories.<sup>180</sup> However, in most of the regions where they live these groups do not represent a substantial portion of the total population. Only in the autonomous okrugs that were established as titular homelands for the smaller nationalities does the indigenous population represent more than four percent of the total population. According to the 2002 census data, the indigenous peoples of the far northeast constituted 40.5 percent of the population of the Koriak Autonomous Okrug (Aleut, Chukchi, Eskimo, Even, Itel'men, Kamchadal, Koriak) and 30.8 percent of the population of the Chukotka Autonomous Okrug (Chukchi, Chuvan, Eskimo, Even, Kerek, Koriak).<sup>181</sup> In north central Siberia, the indigenous peoples of the Taimyr (Dolgano-Nenets) Autonomous Okrug (Dolgan, Enets, Nenets, Nganasan) totaled 24.0 percent of the region's total population, in the Evenk Autonomous Okrug the Evenk represented 21.5 percent of the population, and in the Nenets Autonomous Okrug the Nenets constituted 18.7 percent of the total population, though they represent less than one percent of the total population of Arkangel'sk Oblast in which the Nenets Autonomous Okrug is located.

Since the 2002 census was taken Russia's federal structure has changed. Of these five autonomous okrugs only the Chukotka and Nenets Autonomous Okrugs remain; the other three were merged into much larger regions.<sup>182</sup> These regional consolidations have severely diluted the indigenous people as a percentage of the population in the regions in which they live. Using the 2002 census figures for the new Kamchatka Krai, which came into existence in 2007, the indigenous population of the two constituent parts of Kamchatka Krai—the Koriak Autonomous Okrug and Kamchatka Oblast—represent 6.2 percent of the total population for this region. In the Khanty-Mansi Autonomous Okrug, the Khanty and Mansi account for less than two percent of the total population of the region.<sup>183</sup> In this case, however, the dilution of the indigenous population as a percentage of the region's total population is attributable to an influx of Russians and others to work in the burgeoning Russian oil industry.<sup>184</sup> But as Gary N. Wilson has written, the consolidation of the autonomous okrugs

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180. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 94, at 7–12.

181. *Id.*

182. *See supra* notes 97, 149, and 150 and accompanying text.

183. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 94, at 7–12.

184. "The [Khanty-Mansi Autonomous] Okrug is among the most urbanized regions of Russia. The share of the urban population in 2005 made up 90.8% (against Russia's average figure of 73%). During the years of oil and gas development (1970-2006), the urban population size increased by a factor of 8.5." A. M. Vykhodtsev, *Some Aspects of the Development of Urbanization on the Territory of Yugra*, 29 GEOGRAPHY & NAT. RESOURCES 263, 263 (2008).



into their host regions will also dilute the political influence, autonomy, and privileges exercised by these indigenous peoples:

[S]hould the autonomous okrugs be merged with their host regions, they will be controlled by distant southern governments and will lose most of their representative institutions, including the executive and legislation organs of power and representation in national level bodies such as the Federation Council. In a number of okrugs, the indigenous populations currently have special, albeit limited, political and cultural privileges, such as guaranteed representation in the regional legislatures and language protection.<sup>185</sup>

If the political autonomy of Russia's indigenous peoples has been under attack in recent years, the centerpiece of their cultural identity—their unique languages—has been imperiled for much longer. Much has been written about the endangered languages of Russia's North.<sup>186</sup> The data compiled in the 2002 census confirmed that the number of people speaking these languages is declining and that several of them are either extinct or on the verge of extinction. The 2002 census revealed that among the Kerek, Taz, Orok, Oroch, Aleut, and Negidal, there were fewer than forty individuals living in their traditional territories who were fluent in their native language. Another sixteen of these languages had fewer than 1,000 fluent speakers. On the other end of the spectrum, there are over 28,000 Nenets living in their traditional homeland who are fluent in their native language, and five other groups (Shor, Even, Chukchi, Evenk, Khanty) have more than 5,000 native speakers.<sup>187</sup>

The total number of people who speak a language is evidence of how close that language may be to extinction. There is another issue, however, which is what percentage of the members of a particular

185. Wilson, *supra* note 148, at 249–50.

186. The Institute of Ethnology and Anthropology of the Russian Academy of Sciences sponsored a Roundtable on Endangered Languages of Indigenous Peoples of Siberia in October 2005. Many of the papers presented at that program are available online on the excellent website maintained by the Institute and cosponsored by UNESCO at Endangered Languages of Siberia – Round Table Presentations, [http://lingsib.unesco.ru/en/round\\_table/papers/index.htm](http://lingsib.unesco.ru/en/round_table/papers/index.htm) (last visited on Feb. 22, 2009). See also D. M. NASILOV, MALOCHISLENNYE NARODY SEVERA, SIBIRI I DAL'NEGO VOSTOKA: PROBLEMY SOKHRANENIIA I RAZVITIIA IAZYKOV (1997); Toshiro Tsumagari, Megumi Kurebito & Fubito Endo, *Siberia: Tungusic and Palaeosiberian*, in THE VANISHING LANGUAGES OF THE PACIFIC RIM 387–400 (Osahito Miyaoka, Osamu Sakiyama & Michael E. Krauss eds., 2007); Olga Kazakevich & Aleksandr Kibrik, *Language Endangerment in the CIS*, in LANGUAGE DIVERSITY ENDANGERED 233–55 (Matthias Brenzinger ed., 2007); NORTHERN MINORITY LANGUAGES: PROBLEMS OF SURVIVAL (Hiroshi Shoji & Juha Janhunen eds., 1997); Lenore A. Grenoble & Lindsay J. Whaley, *Language Policy and the Loss of Tungusic Languages*, 19 LANGUAGE & COMM. 373–86 (1999); Juha Janhunen, *Tungusic: An Endangered Language Family in Northeast Asia*, 2005 INT'L J. SOC. LANGUAGE 37–54; Salminen, *supra* note 124; Vakhtin, *supra* note 19.

187. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 94, at 13–25.

group is fluent in their native language. This is evidence of the continuing vitality of that group's traditional culture. Taken as a whole, according to the 2002 census, 41.5 percent of Russia's numerically-small peoples are fluent in their native languages. Again, there is a range: in nine of the groups (Taz, Itel'men, Orok, Oroch, Negidal, Aleut, Chuvan, Udeghe, Nivkh) fewer than ten percent of the members of that group who live in their traditional homeland are fluent in their native languages.<sup>188</sup> Some of these groups were also on the list of groups in which there were few native speakers: The Taz, Orok, Oroch, Aleut, and Negidal are doubly troubled; there are few speakers of those languages and few of the members of those groups are fluent in their native languages. Among the Turkic-speaking people of southwestern Siberia, however, there is a very high percentage of the members of these groups who speak their native languages. Among the Tuva-Todzhin, Telengit, Soyot, and Teleut, over ninety percent of the members of the group living in their traditional territory are fluent in their native languages.<sup>189</sup>

Another measure of the on-going vitality of a language is how extensively a national lingua franca has penetrated the speakers of that language. Among all of the numerically-small peoples who live in their traditional territory, 94.85 percent are fluent in Russian. In five groups (Taz, Negidal, Tofalar, Chulym, Kerek), one hundred percent of the individuals are fluent in Russian. At the opposite end of the spectrum, in five other groups (Teleut, Tuva-Todzhin, Telengit, Nenets, Soyot) the percentages of members living in their traditional territories who are fluent in Russian are lower than ninety percent.<sup>190</sup>

The 2002 census statistics provide another measure of the vitality of the traditional lifestyles and culture of the numerically-small peoples by measuring the occupations and other economic activities of indigenous people. As the ethnographic discussion above made clear, the traditional lifestyles of these peoples, depending on location, revolved around nomadic and semi-nomadic maritime hunting and fishing, tundra reindeer hunting, taiga hunting and fishing, and reindeer herding.<sup>191</sup> Soviet policies of collectivization and resettlement in fixed locations undermined these traditional lifestyles.<sup>192</sup> Nevertheless, the 2002 census revealed that nearly one-fourth of the indigenous people between the ages of fifteen and sixty-four who live in their traditional

188. *Id.*

189. *Id.*

190. *Id.*

191. Andrew Kozlov & Dmitry Lisitsyn, *Arctic Russia, in* HEALTH TRANSITIONS IN ARCTIC POPULATIONS 71, 79–80 (T. Kue Young & Peter Bjerregaard eds., 2008).

192. See MARJORIE MANDELSTAM BALZER, THE TENACITY OF ETHNICITY: A SIBERIAN SAGA IN GLOBAL PERSPECTIVE 124–28, 130–37 (1999); FORSYTH, *supra* note 138, at 293–99, 362–92; and I. S. GURVICH, ETNICHESKOE RAZVITIE NARODNOSTEI SEVERA V SOVETSKII PERIOD 91–108 (1987).

territories are engaged in agriculture, forestry, or hunting; another 8.3 percent are engaged in fishing or fish breeding.<sup>193</sup>

### 3. The cultural expression of Russia's numerically-small peoples

A detailed, comprehensive analysis of the traditional cultural knowledge and traditional cultural expression of the numerically-small indigenous people of Russia is beyond the scope of this article and far beyond the expertise of its author. However, in order to discuss the legal protection accorded such cultural knowledge and expression, it is important to have at least a general understanding of the cultures of these peoples and the forms in which those cultures are manifested.

The cultures of the numerically-small peoples of Russia are expressed in unique traditional folklore,<sup>194</sup> songs and styles of singing,<sup>195</sup> dances,<sup>196</sup> decorative and applied arts,<sup>197</sup> and other forms. These rich and varied cultural expressions are invariably and inextricably intertwined with the animistic and shamanistic beliefs prevalent in these cultures.<sup>198</sup>

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193. ROSSIISKAIA FEDERATSIIA FEDERAL'NAIA SLUZHBA GOSUDARSTVENNOI STATISTIKI (2005), *supra* note 94, at 397–445. These statistics, however, did not include data for the Chulym, Kamchadal, Kerek, Soyot, Taz, and Vep.

194. *See, e.g.*, V. M. GATSAK, *ALTAISKIE GEROICHESKIE SKAZANIIA: OCHI-BALA, KAN-ALTYN* (1997); N. B. KILE, *NANAISKII FOL'KLOR: NINGMAN, SIOKHOR, TELUNGU* (1996); E. P. LEBEDEVA ET AL., *FOL'KLOR UDEGEITSEV: NIMANKU, TELUNGU, EKHE* (1998); G. N. KURILOV, *FOL'KLOR IUKAGIROV* (2005). These volumes are part of a publication project that has been characterized as “[o]ne of the most important publication projects in the history of Russian and Soviet scholarship, *Pamiatniki fol'klora narodov Sibiri i Dal'nego Vostoka*,” produced by the Institute of Philology of the Siberian Division of the Russian Academy of Sciences. Sixty-three volumes in this series are planned to publish classics of folklore from all of the languages of Siberia. Richard L. Dauenhauer, *The Unveiling of Siberian Folklore*, 39 *SLAVIC & E. EUR. J.* 601, 601–05 (1995).

195. *See, for example*, Myrdene Anderson, *The Saami Yoik: Translating Hum, Chant, or/and Song, in SONG AND SIGNIFICANCE: VIRTUES AND VICES OF VOCAL TRANSLATION* 213–34 (Dinda L. Gorlée ed., 2005); Marilyn Walker, *Music as Knowledge in Shamanism and Other Healing Traditions of Siberia*, 40 *ARCTIC ANTHROPOLOGY* 40–48 (2003).

196. JOCHELSON, *supra* note 154, at 218–22.

197. *See, e.g.*, M. I. POPOVA, *DOLGANI* 76–85 (2002); A. I. SAVVINOV & N. A. ALEKSEEV, *PROBLEMY ETNOKUL'TURNOI IDENTIFIKATSII DOLGAN: NA MATERIALAKH TRADITSIONNOGO ISKUSSTVA* 134 (2005).

198. *See, e.g.*, M. A. Chlenov, *Kit v fol'klore i mifologii aziatskikh eskimosov*, in *TRADITSIONNYE KUL'TURY SEVERNOI SIBIRI I SEVERNOI AMERIKI*, *supra* note 143, at 228–43. *See also* JOCHELSON, *supra* note 154, at 215–16; Elena S. Novik, *The Archaic Epic and Its Relationship to Ritual*, in *SHAMANIC WORLDS*, *supra* note 131, at 185, 185–234.

Their traditional knowledge relates to places;<sup>199</sup> ritual;<sup>200</sup> music, sacred dances, costumes, and musical instruments;<sup>201</sup> the spirit world,<sup>202</sup> cosmology;<sup>203</sup> and traditional healing techniques that involve extensive use of herbal remedies. Typically, if these traditional folk remedies fail, a shaman might be called in.<sup>204</sup> In recent years, the plants used in traditional folk remedies in Siberia have been the subject of interest by international medical and pharmacological researchers:

In many parts of Russia, particularly in Siberia, there is a rich tradition in the use of herbal medicine for the treatment of various infectious diseases, inflammations and injuries. . . . Plant based antimicrobials represent a vast untapped source for medicines and further exploration of plant antimicrobials needs to occur.<sup>205</sup>

Frequently, the sacred traditional knowledge of these peoples is secret, not only from outsiders, but also from many members of the group. In discussing the folklore of the Mansi people, for example, E. I. Rombandeeva described the secrecy surrounding the recitation of sacred stories:

Non-sacred stories (i.e., stories in general) could be told by old or young people of either sex. . . . Sacred stories or mythic stories, on the other hand, were known by very few people. They were told only rarely and only by men. These stories were performed in accordance with a set ritual and in the absence of outsiders, and particularly members of other ethnic groups. . . . Women were allowed to listen to the first half of the sacred myth about the origin of the Earth, after which they were politely asked to leave . . . Without fuss they quietly would get up and go out, taking any younger girls with them. . . . Small children were not allowed into such evening performances. . . .<sup>206</sup>

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199. See, e.g., AGNIESZKA E. HALEMBA, *THE TELENGITS OF SOUTHERN SIBERIA: LANDSCAPE, RELIGION AND KNOWLEDGE IN MOTION* 39–61 (2006).

200. *Id.* at 166–86.

201. See, e.g., B. O. Dolgikh, *Nganasan Shaman Drums and Costumes*, in *SHAMANISM IN SIBERIA*, *supra* note 121, at 341–51.

202. See, e.g., Roberte N. Hamayon, *Shamanism in Siberia: From Partnership in Supernature to Counter-power in Society*, in *SHAMANISM, HISTORY, AND THE STATE* 76, 78–85 (Nicholas Thomas & Caroline Humphrey eds., 1996).

203. See, e.g., MAZIN & DEREVIANKO, *supra* note 121, at 7–25 (1984).

204. Anatoly Alekseev, *Healing Techniques Among Even Shamans*, in *SHAMANIC WORLDS*, *supra* note 131, at 153–54.

205. L. Kokoska et al., *Screening of Some Siberian Medicinal Plants for Antimicrobial Activity*, 51 *J. ETHNOPHARMACOLOGY* 82 (2002). See also Maret Saar, *Fungi in Khanty Folk Medicine*, 31 *J. ETHNOPHARMACOLOGY* 175 (1991); S.A. Moskalenko, *Preliminary Screening of Far-Eastern Ethnomedicinal Plants for Antibacterial Activity*, 15 *J. ETHNOPHARMACOLOGY* 231 (1986).

206. MIFY, SKAZKI, PREDANIIA MANSI (VOGULOV) 466 (E. I. Rombandeeva compiler, 2005).

## II. DOES CURRENT RUSSIAN LAW PROTECT THE TRADITIONAL CULTURAL KNOWLEDGE AND CULTURAL EXPRESSION OF RUSSIA'S NUMERICALLY-SMALL PEOPLES?

Beginning in the 1970s, the United Nations launched a series of initiatives aimed at protecting the world's indigenous peoples from discrimination. In 1971, it began work on a study of discrimination against indigenous populations that resulted in publication in the 1980s of a multivolume study on the subject.<sup>207</sup> Also during the 1980s, the United Nations established a Working Group on Indigenous Populations,<sup>208</sup> and in 1989 International Labor Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries was opened for signatures.<sup>209</sup>

One of these antidiscrimination initiatives has been to protect the cultural and intellectual property of indigenous peoples. This initiative grows out of the conviction that protection of the cultural and intellectual property of indigenous people is an indispensable element in any effort to preserve these groups and to protect them from discrimination. As stated by Erica-Irene Daes, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Chairperson of the United Nations Working Group on Indigenous Populations,

For indigenous peoples the world over, the protection of cultural and intellectual property has taken on growing importance and urgency. The very concept of "indigenous" embraces the notion of a distinct and separate culture and way of life, based upon long-held traditions and knowledge which are connected, fundamentally, to a specific territory. Indigenous peoples cannot survive, or exercise their fundamental human rights as distinct nations, societies and peoples, without the ability to conserve, revive, develop and teach the wisdom they have inherited from their ancestors.<sup>210</sup>

Concerns over the protection of these traditions and knowledge have taken various forms including protection and regulation of the use of sacred sites; return and reburial of human remains; recovery of sacred and ceremonial objects; ensuring the authenticity of artworks;

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207. U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/476 (July 30, 1981); U.N. Doc. E/CN.4/Sub.2/1982/2 (Aug. 10, 1982); U.N. Doc. E/CN.4/Sub.2/1983/21 (Aug. 5, 1983); and U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (Jan. 1, 1987) (prepared by José R. Martínez Cobo).

208. Douglas Sanders, *The UN Working Group on Indigenous Populations*, 11 HUM. RTS. Q. 406, 406 (1989).

209. Convention No. 169, *supra* note 54.

210. ECOSOC, Sub-Comm'n of Prevention and Prot. of Minorities, *Discrimination Against Indigenous Peoples: Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, ¶1, U.N. Doc. E/CN.4/Sub.2/1993/28 (July 28, 1993) (prepared by Erica Irene Daes).

protecting communal rights to traditional designs; controlling access to sacred knowledge; protection of traditional medical and other scientific knowledge; and other similar issues.<sup>211</sup> In addition to concerns about protecting and preserving the integrity of indigenous societies, some of the sense of urgency surrounding these issues at both the national and international levels is fueled by recognition that the international trade in indigenous heritage has become a lucrative business.<sup>212</sup>

With specific respect to the protection of traditional knowledge, folklore and other traditional cultural expressions, a variety of national and multinational efforts have been undertaken. During the 1960s several nations began to modify their copyright laws to protect folklore.<sup>213</sup> The World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific, and Cultural Organization (UNESCO) have also been active in this field, sponsoring an expert working group that prepared the 1976 Tunis Model Law on Copyright for Developing Countries,<sup>214</sup> which sought to provide a model for protecting folklore through copyright. WIPO and UNESCO also published in 1985 model legislative provisions for the protection of traditional cultural expressions,<sup>215</sup> and in 1989 UNESCO adopted a “Recommendation on the Safeguarding of Traditional Culture and Folklore” that made several suggestions for legislative enactments to protect and preserve folklore.<sup>216</sup> One other noteworthy initiative occurred in 2000 when WIPO established the Intergovernmental Committee on Intellectual Property and Genetic Resources,

211. *Id.* at ¶¶ 36–114.

212. Joseph Githaiga, *Intellectual Property Law and the Protection of indigenous Folklore and Knowledge*, 5 MURDOCH U. ELECTRONIC L.J. 2 (1998), <http://www.murdoch.edu.au/elaw/issues/v5n2/githaiga52nf.html>.

213. Daniel Wüger, *Prevention of Misappropriation of Intangible Cultural Heritage through Intellectual Property Law*, in POOR PEOPLE’S KNOWLEDGE: PROMOTING INTELLECTUAL PROPERTY IN DEVELOPING COUNTRIES 183, 184 (J. Michael Finger & Philip Schuler eds., 2004). See also U.N. Educ., Sci., & Cultural Org. [UNESCO] & World Int’l Prop. Org. [WIPO], *Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions*, ¶¶ 5–14 (1985), available at [http://www.wipo.int/export/sites/www/tk/en/laws/pdf/unesco\\_wipo.pdf](http://www.wipo.int/export/sites/www/tk/en/laws/pdf/unesco_wipo.pdf) [hereinafter UNESCO, *Model Provisions*].

214. WIPO, TUNIS MODEL LAW ON COPYRIGHT FOR DEVELOPING COUNTRIES (1976).

215. UNESCO, *Model Provisions*, *supra* note 213.

216. UNESCO General Conference, Oct. 17–Nov. 16, 1989, *Recommendation on the Safeguarding of Traditional Culture and Folklore*, at 238–43, available at <http://unesdoc.unesco.org/images/0008/000846/084696e.pdf#page=242>. For a history of the processes that led up to the adoption of the Recommendation on the Safeguarding of Traditional Culture and Folklore, see Samantha Sherkin, Consultant, Div. of Cultural Heritage, UNESCO, Address at the conference A Global Assesment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Cooperation (June 27–30, 1999), <http://www.folklife.si.edu/resources/Unesco/sherkin.htm>.

Traditional Knowledge and Folklore, which recently issued its own revised model legislative provisions.<sup>217</sup>

Reviewing and summarizing the actions of WIPO and UNESCO in this area is far beyond the scope of this article. However, I do intend to use some of the key terminology that has emerged from these debates—specifically, the phrases “traditional knowledge” and “traditional cultural expressions.” Until the mid-1980s, the prevalent term used in reference to “the products of the intellectual labor of indigenous peoples” was “folklore,” but use of that term was criticized as being demeaning to the indigenous peoples.<sup>218</sup> This debate continued into the mid- and late 1990s and, ultimately, “traditional knowledge” has replaced “folklore” in these discussions.<sup>219</sup> In this context, traditional knowledge is an extremely broad term encompassing types of knowledge and expression that are covered by different aspects of intellectual property law. As Megan Carpenter defined the term,

Traditional Knowledge encompasses the broad range of indigenous peoples’ cultural heritage, including not only artistic, literary, performing, and associated works, but also the traditional knowledge derived from plants and animals in medical treatment and food-stuffs. Traditional Knowledge, therefore, falls under patent law and biodiversity rights, as well as copyright law.<sup>220</sup>

A subset of traditional knowledge is “traditional cultural expressions” (also, sometimes simultaneously, referred to as “expressions of folklore”),<sup>221</sup> which encompasses traditional knowledge expressed in literary, artistic, and performing forms, defined by WIPO as follows:

In general, it may be said that TCEs/folklore (i) are handed down from one generation to another, either orally or by imitation, (ii) reflect a community’s cultural and social identity, (iii) consist of characteristic elements of a community’s heritage, (iv) are made by ‘authors unknown’ and/or by communities and/or by individuals communally recognized as having the right, responsibility or permission to do so, (v) are often not created for commercial purposes, but as vehicles for religious and cultural expression, and (vi) are con-

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217. World Intellectual Prop. Org. [WIPO], Intergovernmental Comm. on Intellectual Prop. & Genetic Res., *Traditional Knowledge & Folklore, Revised Provisions for the Protection of Traditional Cultural Expressions/Expressions of Folklore*, WIPO Doc. WIPO/GTRKF/IC/9/4 (Jan. 9, 2006).

218. Megan M. Carpenter, *Intellectual Property Law and Indigenous Peoples: Adapting Copyright Law to the Needs of a Global Community*, 7 *YALE HUM. RTS. & DEV. L.J.* 51, 55 (2004).

219. *Id.* at 56.

220. *Id.*

221. Perhaps because these phrases are somewhat cumbersome, acronyms seem popular in this field. Traditional knowledge is frequently referred to as TK and traditional cultural expressions are TCEs.

stantly evolving, developing and being recreated within the community.<sup>222</sup>

WIPO also provided a few concrete examples of traditional cultural expressions:

- verbal expressions, such as folk tales, folk poetry and riddles, signs, words, symbols and indications;
- musical expressions, such as folk songs and instrumental music;
- expressions by actions, such as folk dances, plays and artistic forms or rituals, whether or not reduced to a material form; and
- tangible expressions, such as:
  - productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes;
  - crafts;
  - musical instruments;
  - architectural forms.

‘Expressions of’ traditional culture (or ‘expressions of’ folklore) may be either intangible, tangible or, most usually, combinations of the two—an example of such a ‘mixed expression of folklore’ would be a woven rug (a tangible expression) that expresses elements of a traditional story (an intangible expression).<sup>223</sup>

There are several different categories or bodies of Russian law that may have implications for the traditional knowledge of Russia’s indigenous peoples. The most obvious of these is Russia’s intellectual property laws, which have recently been substantially overhauled.

#### A. *Russia’s intellectual property laws*

On January 1, 2008, Part IV of the Russian Federation Civil Code<sup>224</sup> took effect.<sup>225</sup> This legislation replaced a series of separate statutes on various aspects of intellectual law that had been adopted in 1992 and

222. WIPO, INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE 5, (2005), available at [http://wipo.int/freepublications/en/tk/913/wip\\_pub\\_913.pdf](http://wipo.int/freepublications/en/tk/913/wip_pub_913.pdf).

223. *Id.* at 6.

224. *Grazhdanskii Kodeks RF [GK], Chast’ Chetvertaia [Civil Code, Fourth Part]*, Fed. Law No. 230-FZ (Dec. 18, 2006); SZ RF 2006, No. 52 (Part I), item 5496, at 14803–949. Unless otherwise indicated, the English translations of Part IV of the Russian Federation Civil Code used in this article are taken from CIVIL CODE OF THE RUSSIAN FEDERATION, FOURTH PART: PARALLEL RUSSIAN AND ENGLISH TEXTS (Peter B. Maggs & Alexei N. Zhiltsov eds. & trans., 2008) [hereinafter CIV. CODE RF PT. 4].

225. *O vvedenii v deistvie chasti chetvertoi Grazhdanskogo Kodeksa Rossiiskoi Federatsii* [On the entry into force of the Fourth Part of the Civil Code of the Russian Federation], Fed. Law No. 231-FZ, art. 1 (Dec. 18, 2006), SZ RF 2006, No. 52 (Part I), item 5497, at 14950–66; SZ RF 2007, No. 31, item 3999, at 8365.



1993,<sup>226</sup> Part IV of the Civil Code aims to consolidate and codify the legal principles applicable to intellectual property.

Like most other modern intellectual property regimes, there are several features of Russian intellectual property law that are at odds with the protection of traditional knowledge.<sup>227</sup> One of the features of contemporary intellectual property regimes that is often criticized as inappropriate for the protection of traditional knowledge and cultural expressions is the emphasis on individual ownership of intellectual property.<sup>228</sup> Part IV of the Civil Code is no exception and typically requires that in order for a work to be protected it must have an author, i.e., an identifiable person who has created a specific, original work. This militates against the protection of traditional knowledge because it does not countenance communal ownership of rights in a work, and by definition traditional works can be attributed to no identifiable author or group of coauthors. These works were created long ago by people now long dead.

Part IV of the Russian Civil Code begins with a chapter of general provisions applicable to all categories of intellectual property. Among these general provisions is Article 1228, titled "Author of a Result of Intellectual Activity," which provides as follows:<sup>229</sup>

1. The author of a result of intellectual activity is the citizen by whose creative labor that result was made.

Citizens who have not made a personal creative contribution in the making of such a result . . . are not considered authors of the result of intellectual activity. . . .

3. The exclusive right to a result of intellectual activity made by creative labor shall initially arise in its author. This right may be transferred by the author to another person by contract and also may pass to other persons on other bases established by a statute.<sup>230</sup>

The provisions in Part IV of the Civil Code relating to the various specific categories of intellectual property protection replicate this insistence on an identifiable individual as author as a condition of pro-

226. For a summary of the 1992 and 1993 Russian intellectual property reform, see Michael Newcity, *Russian Intellectual Property Reform: Toward a Market Paradigm*, 36 GERMAN Y.B. INT'L L. 328-69 (1993).

227. For a discussion of the conflicts between standard intellectual property regimes and the protection of traditional knowledge, see Paul Kuruk, *Protecting Folklore Under Modern Intellectual Property Regimes: A Reappraisal of the Tensions Between Individual and Communal Rights in Africa and the United States*, 48 AM. U. L. REV. 769 (1999); Graham Dutfield, *TRIPS-Related Aspects of Traditional Knowledge*, 33 CASE W. J. INT'L L. 233, 248-60 (2001); and Erica-Irene Daes, *Intellectual Property and Indigenous Peoples*, 95 AM. SOC'Y FOR INT'L L. PROC. 143, 143 (2001).

228. Coenraad J. Visser, *Making Intellectual Property Laws Work for Traditional Knowledge, in POOR PEOPLE'S KNOWLEDGE*, *supra* note 213, at 207, 209-10.

229. CIV. CODE RF PT. 4, *supra* note 224.

230. *Id.* art. 1228.

tection. In the chapter devoted to copyright, Article 1255(2) specifies the list of rights that belong “to the author of a work,”<sup>231</sup> and Article 1257 defines the author of a work of scholarship, literature, or art as “the citizen by whose creative labor the work was made.”<sup>232</sup> To close the circle (or noose) on traditional cultural expressions, in defining the works that can be objects of scholarship, Article 1259(6)(3) specifically excludes “works of folk creativity (folklore) which do not have specific authors.”<sup>233</sup> Though the statutory language is not precise as to what is included within the rubric of folklore, commentators have suggested that it includes stories, legends, folk songs, folk tales, epics, dances, proverbs and folk sayings, anecdotes, folk art, folk costumes, and traditional architecture that reflect the world view, attitudes and ideals of the peoples that created them.<sup>234</sup> The justification for the exclusion of folklore from the list of works eligible for protection is simply that, though they would satisfy other criteria—e.g., creativity—these works are not created by a single author or group of coauthors, but are created by an entire ethnic group on the basis of its myths, legends, and beliefs.<sup>235</sup>

The same pattern is repeated in patent law, where the rights to an invention belong to the author,<sup>236</sup> and *author* is defined as “[t]he author of an invention, utility model, or industrial design is the citizen by whose creative labor the corresponding result of intellectual activity has been created.”<sup>237</sup>

One final example can be found in the chapter of Part IV dealing with plant and animal varietal rights. As mentioned above, the traditional occupations and ways of life of many of the numerically-small peoples revolve around animal husbandry, especially reindeer, and much of their traditional medicine involves herbs and other plants.<sup>238</sup> Are these aspects of traditional knowledge eligible for legal protection under the new Civil Code provisions? As with copyright and patent law, ownership of legal rights in plant or animal varieties requires the existence of an identifiable individual-author. Article 1408(1) of the

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231. These rights include the exclusive right to the work, the right of authorship, the right to the inviolability of the work, and the right to making the work public. *Id.* art. 1255.

232. *Id.* art. 1257.

233. *Id.* art. 1259. The previous copyright law, the 1993 Law on Copyright and Neighboring Rights, also excluded “works of folk creativity” from protection. Russian Federation, *Ob avtorskom prave i smezhnykh pravakh* [On copyright and neighboring rights], Law No. 5351-I, art. 1 (July 9, 1993), Ved. RSFSR 1993, No. 32, item 1242, at 2122, 2127.

234. 1 Iu. A. DMITRIEV & A. A. MOLCHANOV, *POSTATEINYI NAUCHO-PRAKTICHESKII KOMMENTARIJ K CHASTI CHERVERTOI GRAZHDANSKOGO KODEKSA ROSSIJSKOI FEDERATSII* 237, 319–20 (2008).

235. *Id.* at 320.

236. *Grazhdanskii Kodeks RF [GK] [Civil Code]* art. 1345(2) (Russ.); *Civ Code RF* pt. 4, *supra* note 229, art. 1345.

237. *CIV. CODE RF* PT. 4, *supra* note 224, art. 1347.

238. See Alekseev, *supra* note 204, at 154.

Civil Code specifies the rights that belong to the author of "an achievement of breeding," and Article 1410 defines such an author as "[t]he breeder, the citizen by whose creative labor an achievement of breeding has been created, derived, or discovered shall be recognized as an author of an achievement of breeding."<sup>239</sup>

Another related feature of Russian copyright law that precludes protection of traditional knowledge is the method by which the duration of protection is calculated. Under Russian copyright law (just as in most conventional copyright laws), the length of time that a work is protected is a discrete period dating from the death of the author. For most works and most authors, the duration of copyright in Russia is the life of the author plus seventy years.<sup>240</sup> In some instances, the duration of copyright may also be a function of when it was published.<sup>241</sup> But such an approach is incompatible with works created long ago for which there are no identifiable authors.

A more significant problem, however, is that under Russian law most intellectual property is subject to a finite duration. Because of the centrality of traditional knowledge to indigenous peoples' identity and culture, permitting legal protection of this traditional knowledge to lapse and enter the public domain would do serious damage to these cultures. As Graham Dutfield noted:

Copyrights have time limits and most people would probably agree that it is a good thing they do. But for many traditional peoples and groups certain expressions and works are central to their cultural identity and should therefore never be fully released into the public domain, at least not to the extent that others would be free to do whatever they like with them. This is not to say that copyright protection should be permanent for culturally significant expressions and works, but that copyright law is simply not the appropriate approach.<sup>242</sup>

There are other aspects of Russian intellectual property law that serve as serious impediments to the legal protection of traditional knowledge. For example, the conditions of patentability under Russian law (as virtually everywhere) are that an invention must be novel, inventive, and have an industrial applicability.<sup>243</sup> In some countries, these criteria for patentability have proved to be a double-edged sword, cutting against the interests of the indigenous peoples. On one hand, these criteria make it very difficult for traditional medical and other knowledge to receive patent protection. A study of the applica-

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239. CIV. CODE RF PT. 4, *supra* note 224, arts. 1408, 1410.

240. Grazhdanskii Kodeks RF [GK] [Civil Code] art. 1281(1) (Russ.).

241. For example, previously unpublished works that are only published after the death of the author are protected by copyright for a term of 70 years from January 1 of the year following the year in which the work is first published. *Id.* art. 1281(3).

242. Dutfield, *supra* note 227, at 251.

243. Grazhdanskii Kodeks RK [GK] [Civil Code] art. 1350(1) (Russ.).

tion of these criteria for patentability in the Chinese patent system to traditional medicine, for example, concluded that the inventiveness and industrial applicability standards constituted a barrier to protecting traditional knowledge.<sup>244</sup> Other scholars have reached similar conclusions about the inapplicability of patent laws and concepts to traditional knowledge, making it difficult for indigenous peoples to protect their traditional knowledge under patent law.<sup>245</sup>

On the other hand, there are aspects of patent law that make it difficult for indigenous peoples to protect their traditional knowledge from appropriation by outsiders—so-called biopiracy.<sup>246</sup> One way for indigenous peoples to prevent outsiders from patenting inventions derived from their traditional knowledge is to challenge any such patent applications on the grounds that such inventions are not novel.<sup>247</sup> In evaluating a patent application and any challenges to it, the patent agencies would search the “prior art” to determine whether the invention was already known to the public at the time the patent application was submitted. If such information was available, then by definition, the invention could not be considered novel and would not be patentable. One criticism of some patent law systems is that they define “prior art” so as to exclude traditional knowledge that has not been published in conventional formats, e.g., information available to the public only through oral traditions.<sup>248</sup> While some patent systems do not include unpublished or oral information as prior art, Russia has followed the pattern of the European Patent Convention<sup>249</sup> and includes oral information as prior art.<sup>250</sup> However, according to A. P.

244. Xuan Li & Weiwei Li, *Inadequacy of Patent Regime on Traditional Medicinal Knowledge—A Diagnosis of 13-Year Traditional Medicinal Knowledge Patent Experience in China*, 10 J. WORLD INTELL. PROP. 125, 145 (2007).

245. See, e.g., Daniela Soleri & David Cleveland, *Gifts from the Creator: Intellectual Property Rights and Folk Crop Varieties*, in INTELLECTUAL PROPERTY RIGHTS FOR INDIGENOUS PEOPLES: A SOURCEBOOK 21, 25 (Tom Greaves ed., 1994) (“Seeking protection of these [plant] varieties by applying the criteria of patents to them would be nearly impossible as it is doubtful that the historic and cultural complexities involved could be unraveled.”).

246. Peter Drahos, *Indigenous Knowledge, Intellectual Property and Biopiracy: Is a Global Bio-collecting Society the Answer?*, in INTELLECTUAL PROPERTY RIGHTS: CRITICAL CONCEPTS IN LAW 546 (D. Vaver ed., 2006).

247. DARRELL A. POSEY & GRAHAM DUTFIELD, *BEYOND INTELLECTUAL PROPERTY: TOWARD TRADITIONAL RESOURCE RIGHTS FOR INDIGENOUS PEOPLES AND LOCAL COMMUNITIES* 80 (1996).

248. Council for Trade-Related Aspects of Intellectual Property Rights, *Note by the Secretariat: The Protection of Traditional Knowledge and Folklore: Summary of Issues Raised and Points Made*, ¶20, IP/C/W/370/Rev.1 (Mar. 9, 2006).

249. See Convention on the Grant of European Patents (European Patent Convention), art. 54(2), Oct. 5, 1973, 1065 U.N.T.S. 255.

250. Article 1350(2) of the R.F. Civil Code defines prior art as “any information that became generally accessible in the world before the priority date of the invention.” CIV. CODE RF PT. 4, *supra* note <CITE \_Ref215303595>, art. 1350. With specific respect to oral information being included as prior art, see A. P. SERGEEV, *PRAVO INTELLEKTUAL’NOI SOBSTVENNOSTI V ROSSISKOI FEDERATSII* 417 (2d ed.

Sergeev, oral information will only be regarded as prior art if it is fixed either by recording or publication of a stenographic transcript.<sup>251</sup> A further problem with applying traditional knowledge as prior art is that “establishing a clear date of public disclosure of written or oral knowledge, and determining whether the TK was disclosed in such a way as to enable the reader to put the technology into effect” is difficult.<sup>252</sup> For these and other reasons, it remains doubtful whether the traditional knowledge of Russia’s numerically-small peoples would be considered as prior art for purposes of defensive protection of their traditional knowledge.<sup>253</sup>

The discussion above identifies some, but far from all, of the ways in which Russian intellectual property law is incompatible with protection of the traditional knowledge, traditional cultural expression, and folklore of Russia’s numerically-small peoples. However, there are other features of Russian intellectual property law that may be useful in protecting traditional knowledge. The one aspect of folklore that is expressly protected by Russian intellectual property law is the right to performances. Chapter 71 of the Russian Civil Code contains provisions relating to neighboring rights, which include the exclusive rights of performers to their performances.<sup>254</sup> However, only performances that “are expressed in a form allowing their reproduction and distribution with the aid of technical means” are considered to be objects of neighboring rights and eligible for protection.<sup>255</sup>

Under Article 1313 of the Civil Code, a performer—the author of the performance—is defined as “the citizen by whose creative labor a performance has been created, the performing artist (actor, singer, musician, dancer, or other person who plays a role, reads, declaims, sings, plays a musical instrument or in another way participates in the performance of a work of literature, art, or folk creativity . . . .”<sup>256</sup> The performer (or performers of a joint performance)<sup>257</sup> owns the exclusive right to the performance, as well as the right to be acknowledged as the author of the performance and other non-property rights

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2000) (discussing patent law in effect prior to adoption of Part IV of the R.F. Civil Code).

251. *Id.*

252. WIPO, Intergovernmental Comm. on Intell. Prop. & Genetic Res., *Traditional Knowledge & Folklore, Consultation Paper: Recommendations on the Recognition of Traditional Knowledge in the Patent System*, ¶13, WIPO/GRTKF/IC/13/7 Annex (Sept. 18, 2008).

253. Ctr. for Int’l Env’tl. Law, *The International Debate on Traditional Knowledge as Prior Art in the Patent System: Issues and Options for Developing Countries* (Oct. 2002) (prepared by Manuel Ruiz), available at [http://www.southcentre.org/index2.php?option=com\\_docman&task=doc\\_view&gid=11&Itemid=69](http://www.southcentre.org/index2.php?option=com_docman&task=doc_view&gid=11&Itemid=69).

254. Grazhanskii Kodeks RF [GK] [Civil Code] art. 1303 (Russ).

255. *Id.* art. 1304(1)(1).

256. *Id.* art. 1313.

257. *Id.* art. 1314.

in the performance.<sup>258</sup> Thus, only the performer can grant permission to broadcast or record a performance, as well as reproduce, distribute, publicly perform, or rent a recording of a performance.<sup>259</sup> The rights of the performer extend for the performer's lifetime, but in no case for less than fifty years.<sup>260</sup>

The neighboring rights granted to a performer have implications for the protection of traditional cultural expressions, but they are limited. What is protected is the performance rather than the underlying work, and only if the performance has been recorded in some fashion. However, these neighboring rights do provide limited protection for some of the traditional cultural expressions of Russia's indigenous peoples.

Another aspect of Russian intellectual property law that may offer protection for indigenous peoples is found in trademark law, specifically the provisions for collective marks and geographic indicators. One of the concerns often expressed by indigenous peoples around the world is that their traditional arts and crafts are counterfeited. The trade in such handicrafts is enormous—there is an estimated \$30 billion world market in artisan handicrafts—and there is an increasing incidence of theft of traditional designs, symbols, and motifs.<sup>261</sup> A related concern is that unlicensed copies of indigenous arts and crafts will result in poorly-made, inauthentic artifacts that confuse the purchasers and show little respect for the borrowed traditional cultural expressions.<sup>262</sup> In some countries, indigenous peoples have registered trademarks to insure the authenticity and quality of arts and crafts sold using their names and designs. In Australia, the National Indigenous Arts Advocacy Association has registered certification marks on behalf of Aboriginals and Torres Strait Islanders,<sup>263</sup> and in New Zealand the Maori Arts Board has registered *toi iho*<sup>TM</sup> “to promote and sell authentic, quality Maori arts and crafts[.] *toi iho*<sup>TM</sup> has also been designed to authenticate exhibitions and performances of Maori arts by Maori artists.”<sup>264</sup>

Russian trademark law provides two devices that could be used by indigenous peoples in a similar manner to protect their arts and crafts from counterfeiting and that could also be used defensively to protect their traditional signs and symbols from unauthorized use by outsiders. The first of these devices is a collective mark, which may be regis-

258. *Id.* art. 1315.

259. *Id.* art. 1317.

260. *Id.* art. 1318(1).

261. Betsy J. Fowler, *Preventing Counterfeit Craft Designs, in POOR PEOPLE'S KNOWLEDGE: PROMOTING INTELLECTUAL PROPERTY IN DEVELOPING COUNTRIES* 113, 114 (J.M. Finger & P. Schuler eds., 2004).

262. *Id.* at 118.

263. For more information about marks registered by the NIAA, see the NIAA website at <http://www.culture.com.au/exhibition/niaaa/labelqa.htm> (last visited Feb. 23, 2009).

264. See *Toiho.com*, <http://www.toiho.com/> (last visited Feb. 23, 2009).

tered by “an amalgamation of persons.”<sup>265</sup> The Russian Civil Code defines a collective mark as “a trademark meant for the indication of goods produced or sold by persons included in the given amalgamation and which goods possess uniform characteristics of their quality or other common characteristics . . . A collective mark may be used by each of the persons included in the amalgamation.”<sup>266</sup>

In order to register a collective mark the registration application must include:

- the name of the amalgamation in whose name the mark will be registered,
- a list of the persons who have the right to use the collective mark,
- the purpose of registration of the collective mark,
- a list of the uniform characteristics of the goods to be designated by the collective mark,
- the conditions for the use of the collective mark,
- provisions concerning the procedure for control of the use of the collective mark, and
- provisions concerning liability for violation of the charter of the collective mark.<sup>267</sup>

Applying for a collective mark on behalf of a Russian indigenous group is made somewhat cumbersome by the requirement that the application for registration include a list of names of the individuals who are authorized to use the collective mark. The collective mark cannot be registered simply in the name of the group itself without specification of the individuals. However, there is a provision under which the amalgamation is responsible for informing the federal intellectual property agency (Federal Service for Intellectual Property, Patents and Trademarks—Rospatent) of any changes in the charter of the collective mark,<sup>268</sup> which presumably would allow the amalgamation to add new persons to the list of persons who have the right to use the mark. One other feature of collective marks that should be noted that makes them suitable for use by indigenous groups is that a collective mark “may not be alienated and may not be the subject of a license contract.”<sup>269</sup>

Russian trademark law also provides for the registration of indications of geographic origin, which can be useful to indigenous groups

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265. *Grazhdanskii Kodeks RF [GK] [Civil Code] art. 1510(1) (Russ.)*. The Russian word used in this provision (*ob"edinenie*—объединение that Maggs and Zhiltsov have translated as “amalgamation” (MAGGS & ZHILTSOV, *supra* note 229, at 396) can also be translated as “association,” “corporation,” or “union.” T. RENKVIST, *RUSSKO-ANGLISKII IURIDICHESKII SLOVAR' PO GRAZHDANSKOMU I MEZHDUNARODNOMU CHASTNOMU PRAVU* 228 (2002).

266. *Grazhdanskii Kodeks RF [GK] [Civil Code] art. 1510(1) (Russ.)*.

267. *Id.* art. 1511(1).

268. *Id.* art. 1511(2).

269. *Id.* art. 1510(3).

seeking to protect their traditional arts, crafts, and other traditional cultural expressions. As David R. Downes has written:

Indicators of geographic origin are especially suitable for use by indigenous and local communities since they are based upon collective traditions and a collective decision-making process; they protect and reward traditions while allowing evolution; they emphasize the relationships between human cultures and their local land and environment; they are not freely transferable from one owner to another; and they can be maintained as long as the collective tradition is maintained.<sup>270</sup>

The Russian Civil Code establishes a “right to a designation of the place of origin of goods,” which is defined as:

an indication that is or contains a modern or historical, official or unofficial, full or abbreviated designation of the country, city or rural settlement, locality, or other geographic locale and also an indication from such a designation and having become known as the results of its use with respect to the goods the special qualities of which are exclusively or mainly determined by the natural conditions and/or human factors characteristic for the given geographic locale.<sup>271</sup>

In order to be protected, a geographic indication must be registered and can be registered by one or more individuals or juridical persons.<sup>272</sup> Upon registration, the persons who have registered the geographical indication are entitled to the exclusive use of this geographic indication for goods that meet the specified criteria. They may also grant the right to use the indication to any person who produces such goods within the specified geographic locale.<sup>273</sup>

Indigenous peoples in various countries have sought both “positive” and “negative” protection from trademark law. Positive protection refers to using collective marks, geographic indications, and other similar devices to protect the identity and quality of arts and crafts and other goods. Negative protection refers to the use of trademark law to deny registration of a trademark that is considered culturally offensive to an indigenous group. The New Zealand Trade Marks Act, for example, provides that “[t]he Commissioner must not register a trade mark or part of a trade mark if the Commissioner considers its use or registration would be likely to offend a significant section of the community, including Maori.”<sup>274</sup>

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270. David R. Downes, *How Intellectual Property Could Be a Tool to Protect Traditional Knowledge*, 25 COLUM. J. ENVTL. L. 253, 269 (2000).

271. *Grazhdanskii Kodeks RF [GK] [Civil Code]* art. 1516(1) (Russ.).

272. *Id.* art. 1518(1).

273. *Id.* art. 1518(2).

274. Trade Marks Act 2002, 2002 Public Act No. 49 §17(b)(ii) (N.Z.). For further discussion of this provisions, see Susy Frankel, *Third-Party Trade Marks as a Violation of Indigenous Cultural Property: A New Statutory Safeguard*, 8 J. WORLD INTELL. PROP. 83 (2005).



In the United States, Native Americans have sought to use Section 2(a) of the Lanham Act to cancel registration of trademarks that are deemed disparaging or otherwise offensive to them. This provision states that:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it (a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute. . . .<sup>275</sup>

The most famous example of this use of the U.S. trademark legislation by indigenous peoples is the still unresolved attempt to cancel the trademarks of the Washington Redskins football team.<sup>276</sup>

Russian trademark law provides that marks “that are identical or similar to the point of confusion to the official names and images of particularly valuable objects of the peoples of the Russian Federation” may not be registered,<sup>277</sup> but it does not specifically prohibit the registration of marks that are culturally offensive or disparaging to individuals or groups of people. However, Article 1483(3)(2) of the Russian Civil Code does prohibit the registration of marks “that are contradictory to societal interests, or to principles of humanity or morality,”<sup>278</sup> which commentators have interpreted to include insulting, abusive, or racist slogans.<sup>279</sup> One commentator has suggested that the category of societal interests in this provision includes the interests of society as a whole, as well as “individual sections or groups,” but that the primary purpose of this provision is to prevent the registration of anti-state, anti-religious, anti-democratic, and nationalistic symbols and slogans.<sup>280</sup> While this provision is less explicit than the New Zealand and U.S. legislation referred to above, it could provide a legal basis for challenging the registration of trademarks that are offensive to Russia’s indigenous peoples.

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275. 15 U.S.C. §1052(a) (2006).

276. See Mark S. Nagel & Daniel A. Rascher, *Washington “Redskins”—Disparaging Term or Valuable Tradition?: Legal and Economic Issues Concerning Harjo v. Pro-Football, Inc.*, 17 FORDHAM INTELL. PROP., MEDIA & ENT. L. J. 789, 789 (2006); Justin G. Blankenship, *The Cancellation of Redskins as a Disparaging Trademark: Is Federal Trademark Law an Appropriate Solution for Words that Offend?*, 72 U. COLO. L. REV. 415 (2001). See also *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705 (T.T.A.B. 1999).

277. Graždanskii Kodeks RF [GK] [Civil Code] art. 1483(4) (Russ.).

278. *Id.* art. 1483(3)(2).

279. See, e.g., DMITRIEV & MOLCHANOV, *supra* note 234, at 683.

280. I. A. ZENIN, KOMMENTARIJ K GRAZHDANSKOMU KODEKSU ROSSIJSKOI FEDERATSII, CHASTI CHERVERTOI 474–75 (2008). With respect to the similar provision in the 1992 Russian Federation law on trademarks, see SERGEEV, *supra* note 250, at 621.

B. *International treaties*

Intellectual property laws are not the only legal norms in force in the Russian Federation that may apply to the traditional knowledge of Russia's numerically-small peoples. International treaties and international law are also applicable. Article 69 of the Russian Federation constitution states:

The Russian Federation shall guarantee the rights of the indigenous numerically-small peoples in accordance with the generally recognized principles and norms of international law and the international treaties of the Russian Federation.<sup>281</sup>

This position is reiterated in the preamble to the Federal Law "On the guarantees of the rights of the numerically-small peoples of the Russian Federation," which states:

In accordance with the constitution of the Russian Federation, the generally recognized principles and norms of international law and the international treaties of the Russian Federation shall establish the legal foundations of the guarantees of the distinctive social-economic and cultural development of the numerically-small indigenous peoples of the Russian Federation, the protection of their native habitat, traditional ways of life, occupations and crafts.<sup>282</sup>

The role of international law and international treaties in the Russian legal system is radically different from what it was in the Soviet legal system.<sup>283</sup> Article 15(4) of the Russian constitution provides that international treaties and "the generally recognized principles and norms of international law" are directly assimilated as a part of the legal system. In the event that a treaty to which the Russian Federation is a party conflicts with ordinary Russian laws, the treaty provisions prevail.<sup>284</sup> While the Russian constitution draws no distinctions between the effect of self-executing and non-self-executing treaties, the Russian Law on the International Treaties of the Russian Federation, adopted in 1995, provides that while treaties that do not require the promulgation of acts by the domestic government in order to be implemented shall be in force directly, other treaty provisions shall take effect only upon the adoption of the necessary laws.<sup>285</sup>

The Russian Constitutional Court as well as ordinary courts have applied treaties as well as "the generally recognized principles and norms of international law" in their decisions in labor, human rights,

281. Konstitutsiia Rossiskoi Federatsii [Konst. RF] art. 69.

282. Fed. Law No. 82-FZ, Apr. 30, 1999, pmb, *supra* note 68.

283. See Gennady M. Danilenko, *International Law in the Russian Legal System*, 91 AM. SOC'Y INT'L L. PROC. 295 (1997).

284. Konstitutsiia Rossiskoi Federatsii [Konst. RF] art. 15(4). See also *O mezhdunarodnykh dogovorakh Rossiiskoi Federatsii* [On the international treaties of the Russian Federation], Fed. Law No. 101-FZ, art. 5 (July 15, 1995), SZ RF 1995, No. 29, item 2757, at 5208, 5210.

285. *Id.* art. 5(3).

and other cases.<sup>286</sup> However, what do Russia's international treaties and "the universally recognized norms of international law" say on the subject of the protection of the traditional knowledge of the numerically-small peoples?

With respect to treaties, Russia is not a party to the major international treaties that relate specifically to indigenous peoples. The USSR did not ratify the 1957 ILO Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries,<sup>287</sup> nor did it or its successor, the Russian Federation, ratify ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries.<sup>288</sup> In 2007, Russia abstained from voting on the Declaration on the Rights of Indigenous Peoples in the U.N. General Assembly.<sup>289</sup> On the other hand, the Russian Federation is a signatory to the Convention on Biological Diversity,<sup>290</sup> which includes several important provisions regarding the protection of traditional knowledge. The Preamble to the Convention recognizes:

[T]he close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

Article 8(j) obligates each Contracting Party, "as far as possible and as appropriate," to:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders

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286. Danilenko, *supra* note 283, at 297–99. See also WILLIAM BURNHAM, PETER B. MAGGS, & GENNADY M. DANILENKO, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 30–40 (3d ed. 2004); B. L. ZIMNENKO, *INTERNATIONAL LAW AND THE RUSSIAN LEGAL SYSTEM* 100–02 (William E. Butler ed. & trans., 2007).

287. ILO, Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957, 328 U.N.T.S. 248 (entered into force June 2, 1959). The nations that ratified Convention Nos. 107 and 169 are listed on the ILO website; see *supra* notes 58 and 59.

288. Convention No. 169, *supra* note 54. With respect to the debates in the Soviet and the Russian Federation governments over ratification of Convention No. 169, see *supra* notes 60–64 and accompanying text.

289. See *supra* notes 65–66 and accompanying text.

290. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 (entered into force Dec. 29, 1993). Russia signed the Convention on June 13, 1992, and ratified it on April 5, 1995. Information concerning the ratifications of this convention is available on the United Nations Treaty Collection web site. United Nations Treaty Collection, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=525&chapter=27&lang=en> (last visited Feb. 24, 2008).

of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

And Article 10(c) of the Convention on Biological Diversity states that:

Each Contracting Party shall, as far as possible and as appropriate: . . . Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements[.]

While the Convention on Biological Diversity emphasizes the significant role played by traditional knowledge, and is the only such international convention to which Russia is a party, its scope is limited. The Convention only applies to traditional knowledge relating to genetic materials, and it is a “framework convention, setting out general principles that the parties agree to be guided by and work towards in a long-term process.”<sup>291</sup> In other words, for the most part the Convention establishes aspirational targets for each of the signatory states.

In determining whether a treaty establishes self-executing norms that will be directly enforced by Russian courts, Russian commentators have stressed “the possibility of the direct operation of norms of international law” as the critical criterion.<sup>292</sup> In other words, a treaty provision will be considered self-executing if it establishes norms that are sufficiently precise and clear that they can be directly applied without requiring clarification or amplification through domestic legislation. With specific respect to the Convention on Biological Diversity, the Spanish government has taken the position that Spanish courts would consider at least some provisions of the convention self-executing under a provision of the Spanish constitution similar to Russia’s Article 15(4).<sup>293</sup> However, most commentators have characterized the Convention as non-self-executing<sup>294</sup> and the provisions of the

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291. Surinder Kaur Verma, *Protecting Traditional Knowledge: Is a Sui Generis System an Answer?*, 7 J. WORLD INTELL. PROP. 765, 774 (2004).

292. ZIMNENKO, *supra* note 286, at 154.

293. See CBD, *Analysis of Measures to Ensure Compliance with Prior Informed Consent of the Contracting Party Providing Genetic Resources and Mutually Agreed Terms on which Access was Granted, and of Other Approaches, Including an International Certificate of Origin/Source/Legal Provenance*, ¶ 61, UNEP/CBD/WG-ABS/3/5 12 (Dec. 10, 2004), available at <http://www.cbd.int/doc/meetings/abs/abswg-03/official/abswg-03-05-en.doc>.

294. Edgar J. Asebey & Jill D. Kempenaar, *Biodiversity Prospecting: Fulfilling the Mandate of the Biodiversity Convention*, 28 VAND. J. TRANSNAT’L L. 703, 713 (1995); Gudrun Henne & Saliem Fakir, *The Regime Building of the Convention on Biological Diversity on the Road to Nairobi*, 3 MAX PLANCK Y.B UN L. 315, 325 (1999); Jorge Rojas, *Traditional Knowledge and Access to Genetic Resources: Critical Elements Towards a National Policy and Legislation for Chile*, 2 J. TECHNOL. MGMT. & INNOVATION 134, 142 (2007); and REMIGIUS N. NWABUEZE, BIOTECHNOLOGY AND THE CHALLENGE OF PROPERTY: PROPERTY RIGHTS IN DEAD BODIES, BODY PARTS, AND GENETIC INFORMATION 283 (2007).

Convention quoted above are made conditional by the use of phrases such as "subject to its national legislation" and "as far as possible and as appropriate." Under these circumstances, it seems unlikely that a Russian court would consider that these provisions of the Convention establish self-executing norms that could be enforced directly under Article 15(4) of the Russian constitution.

If Russia's treaty obligations do not give rise to any enforceable legal norms protecting traditional knowledge and traditional cultural expression, do the "generally recognized principles and norms of international law," also referenced in Article 15(4) of the Constitution, create any such enforceable rights? Russian courts have applied these customary principles of international law in deciding cases. For instance, in one case the Constitutional Court relied both on treaties and generally recognized principles and norms of international law in ruling that a requirement that residents of Moscow be issued residence permits was unconstitutional.<sup>295</sup> Russian commentators have argued that generally recognized principles and norms of international law are characterized by their universality (they are "fixed . . . in international custom recognized by all or the majority of States of the world community")<sup>296</sup> and their imperative nature (they are the most important norms of international law that serve as the basis for the entire international legal system).<sup>297</sup> Examples of generally recognized principles and norms of international law include universal respect for human rights, sovereign equality of states, nonuse of force or threat of force, territorial integrity of states, peaceful settlement of international disputes, noninterference in internal affairs, self-determination of peoples, the equality of peoples, and the impermissibility of discrimination.<sup>298</sup> Some of these generally recognized principles and norms of international law—especially the principles of self-determination of peoples and the impermissibility of discrimination—have great significance for the legal protection of indigenous peoples in general, but do not relate specifically to the protection of traditional knowledge and traditional cultural expression. In time, international treaties and other international instruments such as the recent U.N. Declaration on the Rights of Indigenous Peoples may form the basis for other generally recognized principles and norms that do relate spe-

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295. *Po delu o proverke konstitucionnosti riada normativnykh aktov goroda Moskvy i Moskovskoi oblasti, Stavropol'skogo kraia, Voronezhskoi oblast ii goroda Voronezha, reglamentiruiushchikh poriadok registratsii grazhdan, pribyvaiushchikh na postoiannoe zhitel'stvo v nazvannye regiony* [On the case concerning the verification of the constitutionality of a series of normative acts of the city of Moscow and Moscow Oblast, Stavropol Krai, Voronezh Oblast and the city of Voronezh regulating the procedure for the registration of citizens permanently resident in those regions], Decision No. 9-P (Apr. 4, 1996), SZ RF 1996, No. 16, item 1909, at 4195. See also Danilenko, *supra* note 283, at 297.

296. ZIMNENKO, *supra* note 286, at 171.

297. *Id.* at 186.

298. *Id.* at 188-89.

cifically to the legal protection of traditional knowledge and traditional cultural expression. Of particular interest for these purposes are Articles 11-13 of the Declaration on the Rights of Indigenous Peoples, which provide as follows:

**Article 11**

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts [sic], designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

**Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceed.<sup>299</sup>

However, at this time, because Russia and other leading nations have not signed the Declaration, it is difficult to imagine that a Russian court would consider these provisions to represent generally recognized principles and norms of international law and apply them directly under Article 15(4) of the Russian constitution.

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299. Declaration on the Rights of Indigenous Peoples, *supra* note 55.

### C. *Other legislation of the Russian Federation*

The cornerstone of the current Russian legal regime on indigenous peoples is the 1999 Law "On the guarantees of the rights of the numerically-small peoples of the Russian Federation."<sup>300</sup> This law includes provisions on the protection of traditional ways of life, the formation of tribal associations, and local self-government. Article 10 of this law discusses the rights of the numerically-small peoples to the protection and development of their distinctive cultures, but this relates to the protection of their languages, establishment of cultural centers, associations, and foundations, and to communicate with representatives of indigenous peoples in other parts of the country and abroad. Article 10(5) grants the numerically-small indigenous peoples the right "to observe their traditions and perform religious ceremonies that do not contradict federal laws or the laws of the subjects of the Russian Federation, and to maintain and protect places of worship."<sup>301</sup> However, nothing in the law specifically addresses the issues of ownership of rights in traditional knowledge or traditional cultural expression.

### D. *Legislation of the Russian regions*

Several of the regional governments in Russia have adopted legislation relating to the numerically-small peoples. Under the Russian constitution, law-making powers are divided between the federal government and the eighty-three constituent units that make up the Russian Federation.<sup>302</sup> In some areas, the federal government has exclusive law-making power; in some areas, the regional governments have exclusive authority; and in still other areas, law-making power is shared between the federal government and the regional governments. In areas of shared jurisdiction, regions may enact their own laws, but those laws may not contradict laws adopted by the federal government.<sup>303</sup> Under Article 71 of the constitution, the federal government has exclusive authority to make laws respecting the legal regulation of intellectual property,<sup>304</sup> but the federal government and the regional governments share joint law-making authority with respect to the "protection of the rights of national minorities."<sup>305</sup>

Several of the autonomous ethnic regions have asserted their law-making authority to extend broader protections to the indigenous

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300. Fed. Law No. 82-FZ, Apr. 30, 1992, *supra* note 68.

301. *Id.* art. 10(5).

302. *See supra* note 42 and accompanying text.

303. Konstitutsiia Rossiiskoi Federatsii [Konst. RF] art. 76(4).

304. *Id.* art. 71(n).

305. Under Article 71(c) of the Constitution, the federal government has law-making power over "the regulation and protection of the rights of national minorities," but under Article 72 (1)(b) the federal government and the regional governments have joint jurisdiction over the protection of the rights of national minorities.

peoples than is granted by federal legislation. The Constitution of the Republic of Sakha, for example, states that the Republic shall protect and safeguard the “collective rights of the numerically-small indigenous peoples of the North to natural resources,”<sup>306</sup> and acknowledges the inherent right of the indigenous peoples to protection from any form of violent assimilation and genocide, as well as from encroachment upon ethnic self-identification, historic and sacred places, and monuments of spiritual and material culture.<sup>307</sup>

For purposes of the current analysis, the most significant legislation adopted at the regional level is Law No. 37-OZ, adopted in 2003 by the Duma of the Khanty-Mansi Autonomous Okrug. Titled “On the folklore of the numerically-small indigenous peoples of the North living in the territory of the Khanty-Mansi Autonomous Okrug,” Law No. 37-OZ is unique in Russia since it is the only law that purports to regulate the use of the traditional knowledge of Russia’s indigenous peoples and, as such, it represents a *sui generis* approach to resolving some of the issues relating to the protection of traditional knowledge and traditional cultural expression.<sup>308</sup>

Law No. 37-OZ defines folklore of the numerically-small indigenous peoples as the “non-material cultural heritage presented in various forms based on traditional knowledge, transmitted from generation to generation orally or by imitation, without individual authorship, which reflects the ethnic identity and cultural uniqueness of the given peoples.”<sup>309</sup> The law also provides that numerically-small indigenous peoples living in the Khanty-Mansi Autonomous Okrug are guaranteed “in the manner established by legislation several items including: (i) the preservation, use, and development of the folkloric heritage of their people; and (ii) the creation of folklore archives for collection, documentation, and preservation of materials connected with the folkloric traditions of their people.”<sup>310</sup> Law No. 37-OZ also contains provisions designed to promote the preservation, practice,

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306. Constitution (Fundamental Law) of the Republic of Sakha (Yakutia) art. 5(5), available in Russian at the official website of the Government of Sakha, <http://www.sakha.gov.ru/main.asp?c=1636>.

307. *Id.* art. 42(3).

308. *O fol'klore korenykh malochislennykh narodov Severa, prozhivaiushchikh na territorii Khanty-Mansiiskogo avtonomnogo okruga* [On the folklore of the numerically-small indigenous peoples of the North living in the territory of the Khanty-Mansi Autonomous Okrug] Law No. 37-OZ, June 18, 2003 (Khanty-Mansi). The Russian text is available from the KODEKS online database, <http://kodeks.mosinfo.ru/> (subscription required). For a discussion of the circumstances under which this law was drafted and adopted as well as an English translation of the law, see Andrew Wiget & Olga Balalaeva, *Culture, Commodity and Community: Developing the Khanty-Mansi Okrug Law on Protecting Native Folklore*, in *PROPERTIES OF CULTURE—CULTURE AS PROPERTY: PATHWAYS TO REFORM IN POST-SOVIET SIBERIA* 129 (Erich Kasten ed., 2004). Unless otherwise noted, English translations of the provisions of Law No. 37-OZ are taken from Wiget & Balalaeva, *id.*

309. *Id.* art. 3.

310. *Id.* arts. 5(2)(1) and 5(5).



teaching, and study of folkloric traditions by the indigenous peoples of that region. What this law does not do, however, is contain any provisions that purport to regulate ownership or access to folklore. It does not create any right on the part of the indigenous peoples to deny access or use of their folklore to outsiders, nor does it provide any mechanism by which the indigenous peoples can control or share in the profits earned from the exploitation of their folklore.

Legislation adopted by Russia's regions is unlikely to provide adequate protection for the traditional knowledge and traditional cultural expression of Russia's indigenous peoples for two basic reasons. First, as a purely political matter the regional governments most likely to exhibit sufficient concern on these issues and adopt such legislation are in those regions where the indigenous peoples constitute a significant percentage of the population. But as noted above, in most of the regions where the indigenous peoples live they do not represent a significant percentage of the population<sup>311</sup> and the political influence (and presumably concern about) the indigenous peoples has been diluted by the recent movement to consolidate several of the autonomous okrugs into their host regions.<sup>312</sup>

The second reason why legislation by the regions is unlikely to provide a solution for the protection of the traditional knowledge of Russia's indigenous peoples is because of the division of legislative jurisdiction between the federal government and the regions. Under Article 71 of the Russian constitution, the federal government has exclusive competence and law-making authority with respect to the "legal regulation of intellectual property."<sup>313</sup> As a result, the regional governments have very limited authority to act in this area. They have the authority to adopt legislation to preserve and promote traditional knowledge, but any issue falling into the area of intellectual property is within the exclusive legislative competence of the federal government. As noted by the Russian Supreme Court in an interpretive instruction for lower courts, "acts of the subjects of the Russian Federation and organs of local self-administration that regulate relations arising from copyright and neighboring rights cannot be applied from the moment of adoption of the Constitution of the Russian Federation (1993)."<sup>314</sup>

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311. See *supra* notes 180–181 and accompanying text.

312. See *supra* notes 183–185 and accompanying text.

313. Konstitutsiia Rossiskoi Federatsii [Konst. RF] art. 71(n). See also M. V. BAGLAI, KONSTITUTIONNOE PRAVO ROSSIJSKOI FEDERATSII 300–01 (1998).

314. Plenum of the Supreme Court of the Russian Federation, *O voprosakh, vznikshikh u sudov pri rassmotrenii razhdanskikh del, svyazannykh s primeneniem zakonodatel'stva ob avtorskom prave i smezhnykh pravakh* [On questions arising from courts reviewing civil cases connected with the application of legislation on copyright and neighboring rights], Resolution No. 15, at ¶3 (June 19, 2006), ROSSIJSKAIA GAZETA [ROS. GAZ.], June 28, 2006, at 18.

### III. Что делать? (WHAT IS TO BE DONE?)

Article 31 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples reads as follows:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

If the right “to maintain, control, protect and develop” the traditional knowledge and traditional cultural expressions of Russia’s numerically-small peoples is the goal, Russian law has a long way to go before it meets that goal. Russian intellectual property law as currently drafted ignores the unique issues concerning the traditional knowledge and traditional cultural expressions of its numerically-small peoples as objects of legal protection. Nothing in Russian intellectual property or other law (with the limited exception offered by trademark law) grants to Russia’s indigenous peoples the right to: authorize the use (reproduction, adaptation, dissemination, performance, etc.) of traditional knowledge and traditional cultural expressions and prevent the unauthorized use of traditional knowledge and traditional cultural expressions. Trademark law—through the use of collective marks and geographic indications—does offer the possibility of extending legal protection to the arts and crafts (especially the style) of these indigenous peoples, to protect the use of traditional signs and symbols from unauthorized use, and to prevent misleading claims to authenticity and origin. Trademark law also may offer the numerically-small peoples negative protection by permitting them to prevent insulting, derogatory, or otherwise offensive uses of traditional knowledge and traditional cultural expressions.

While Russian law as a whole provides only limited protection for traditional knowledge and traditional cultural expressions, some of the rudiments for more complete protection can be found in existing legislation. For example, collective ownership of intellectual property is already recognized in trademark law and Russian copyright law permits the collective administration of copyrights, a concept that could be applied to rights in traditional knowledge and traditional cultural expressions.

The fundamental question is how much interest exists in Russia to extend legal protection to traditional knowledge and traditional cultural expressions. There has been virtually no public, scholarly discussion of this issue in Russia. As far as my research reveals, this article is the first scholarly analysis in Russian or English of the protection of traditional knowledge and traditional cultural expressions under Russian law. At a technical governmental level, there is some interest in these issues. Specialists from the government of the Russian Federation participate in the work of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, for example. But the interest of specialists in a government ministry does not necessarily translate into the political momentum necessary to make a major change in existing intellectual property legislation, and the political influence of Russia's numerically-small peoples is slight and in recent years has been made even slighter by the elimination of several autonomous okrugs in which the indigenous population represented a significant percentage of the total population.

Changes in intellectual property law in the Soviet Union and post-Soviet Russia have usually occurred in response to international pressure. The Soviet Union acceded to the Universal Copyright Convention in 1973 and modified its copyright law, granting copyright protection to foreign authors for the first time, as part of trade negotiations with the United States.<sup>315</sup> The adoption of new intellectual property statutes in 1992 and 1993 and the accession of Russia to the Berne Convention in 1995<sup>316</sup> are largely explained as a response to demands by the U.S. and other foreign governments and technology owners.<sup>317</sup> Based on this track record, international pressure may represent the best strategy for encouraging the Russian government to expand the protection of the traditional knowledge and traditional cultural expressions of Russia's numerically-small peoples. But in the absence of such international pressure, the prospects for such a major revision of Russian intellectual property law seem remote.

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315. See MICHAEL A. NEWCITY, *COPYRIGHT LAW IN THE SOVIET UNION* 41-45 (1978).

316. Berne Convention for the Protection of Literary and Artistic Works, Berne Notification No. 162, Accession by the Russian Federation, Dec. 9, 1994, available at [http://www.wipo.int/edocs/notdocs/en/berne/treaty\\_berne\\_162.html](http://www.wipo.int/edocs/notdocs/en/berne/treaty_berne_162.html).

317. See Newcity, *supra* note 226, at 333-40.