

No Direction Home: Nationalism and Statelessness in the Baltics

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I. INTRODUCTION

Lithuania, Latvia, and Estonia, collectively known as the Baltic states, were among the first republics to gain independence from the Soviet Union in the early 1990s. With independence came a resurgence of interest in Baltic culture—a renewed dedication to Baltic traditions and language, both of which had long been relegated to secondary status.¹ As the people of the Baltics rediscovered and celebrated their own cultures, some began to push back against what they perceived as a century of repression by the Soviet Union. The obvious targets for this pushback were both the Russian government and the ethnic Russians living within Baltic borders.

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1. See generally Sonia Buchkov Green, *Language of Lullabies: The Russification and De-Russification of the Baltic States*, 19 MICH. J. INT'L L. 219 (1997) (arguing that the Baltic States have used language laws as a legitimate means to counteract the Soviet policy of Russification and to establish cultural independence from Russia and the USSR); Richard Visek, *Creating the Ethnic Electorate Through Legal Restorationism: Citizenship Rights in Estonia*, 38 HARV. INT'L L.J. 315 (1997) (describing the outpouring of Estonian nationalism as the Soviet Union declined); see also, MARK A. JUBULIS, NATIONALISM AND DEMOCRATIC TRANSITION: THE POLITICS OF CITIZENSHIP AND LANGUAGE IN POST-SOVIET LATVIA 38–56 (University Press of America 2001) (arguing that the Latvian nationalist movement was a response to Soviet policies that subordinated Latvians in their own homeland).

When Estonia, Latvia, and Lithuania were released from the Polish Commonwealth into the hands of the Russian Empire in the 18th century, their national traditions and languages were pushed into the background.² Russian became the language of public participation and Russian culture became the culture of the elite.³ The Bolshevik Revolution, with its calls for racial and gender equality and condemnations of colonialism, must have seemed like a blessing to the Baltic peoples, and in 1918 the three Baltic nations declared their independence from the fledgling USSR.⁴

For the first time in modern history, the Baltics were independent and had the freedom to bring their traditions out from the hearth and into the statehouse. Particularly symbolic of this new liberty was the resurgence of Lithuanian, Latvian, and Estonian as the languages of politics and economic transactions within their respective nations. During the early years of independence, non-native languages like German and Russian continued to flourish alongside the native languages.⁵ Later, however, as German Fascism spread to the Baltics, new laws, particularly laws related to language, were enacted to restrict the rights of non-native ethnic groups.⁶ No longer relegated to second-class status, Estonian, Lithuanian and Latvian were heard on the streets of Riga, Tallinn, and Vilnius, and their use on official documents was required by law.

This cultural ascendancy was short-lived. In 1939 the Molotov-Ribbentrop Pact brought the Baltics within the expanse of the Soviet Union and repression of a new sort began.⁷ Even as Stalin spoke out against “great Russian chauvinism,”⁸ his policies toward the hundreds of ethnic groups that peopled the USSR were policies of assimilation.⁹ Stalin saw regional and ethnic languages as one of the chief obstacles to the development of a strong Soviet identity in the population at large.¹⁰ Thus, Stalinist policy strongly encouraged the use of Russian as the language of politics and economics.¹¹ In addition to subjugating native languages, Stalin attempted to homogenize the country and weaken ethnic ties by relocating Russians as well as persons of other ethnicities throughout the Soviet Union.¹² In the process, the Baltic states, particularly Estonia and Latvia, underwent significant cultural transformation throughout the period of Soviet rule.¹³

Khrushchev’s policies sought to quash ethnic diversity even further, officially establishing Russian as the sole language for communication in the USSR and increasing the number of educational and employment opportunities that were restricted to those proficient in Russian.¹⁴ The native languages of the Baltics, as well as those of the Balkans, the Caucasus, and the Central Asian republics, were relegated to the home—their preservation or loss depending on the energy with which parents and grandparents passed the traditional tongues to their children.

2. Green, *supra* note 1, at 239 (describing limitations on the public use of native languages).

3. See Green, *supra* note 1, at 239; JUBULIS, *supra* note 1, at 51.

4. See Green, *supra* note 1, at 239; Visek, *supra* note 1, at 318 (discussing the Bolshevik belief in self-determinism); see also JUBULIS, *supra* note 1, at 38–39.

5. Green, *supra* note 1, at 240.

6. See *id.* at 240.

7. MODERN HISTORY SOURCEBOOK, *The Molotov-Ribbentrop Pact, 1939* (1997), <http://www.fordham.edu/halsall/mod/1939pact.html> (last visited Mar. 30, 2008).

8. See Green, *supra* note 1, at 243.

9. See *id.* at 243–47.

10. See Green, *supra* note 1, at 245; JUBULIS, *supra* note 1, at 46–48.

11. See Green, *supra* note 1, at 235.

12. See *id.* at 245; Visek, *supra* note 1, at 321.

13. Visek, *supra* note 1, at 321; see also JUBULIS, *supra* note 1, at 46–48.

14. See Green, *supra* note 1, at 247–57; see also Visek, *supra* note 1, at 322.

In 1990, Lithuania led the breakup of the Soviet Union by formally declaring its independence—Latvia and Estonia quickly followed. All three states asserted that, rather than becoming newly independent nations, they were simply restoring their sovereignty which had been held in suspension during the previous fifty years of Soviet rule.¹⁵ Arguing the principal of *ex injuria ius non oritur*,¹⁶ and the fact that the West never recognized the Union of Soviet Baltic States, the three states claimed that they had merely been occupied territories for the entire span of Soviet control.¹⁷ They posited that this period of “interrupted sovereignty” should not preclude them from returning to the sovereign status that they had enjoyed prior to 1940 or from returning to the laws that had been in force at that time.¹⁸

Given the important political role that language has played in Baltic history, it comes as little surprise that questions of language and culture were of great concern to the new governments. Though Lithuania was the first to break away from the Soviet Union, it had a relatively small number of non-Baltic people living within its borders, and thus took a more tolerant approach in deciding who should receive citizenship rights in the new state.¹⁹ On the other hand, hundreds of thousands of immigrants arrived in Latvia and Estonia during the Soviet period, most of whom did not speak the native languages or have knowledge of the local history and culture. Thus, the perceived threat from the large population of non-Baltic people living in Latvia and Estonia was a significant factor in the policies adopted post-independence.²⁰

For some Baltic nationals these immigrants represent decades of Russian-led Soviet occupation. Thus, such transplants have experienced not only casual resentment, but also institutionalized discrimination under citizenship and naturalization laws that place much importance on a person’s pre-1940s legal status.²¹ Yet these attitudes and policies have not rid the Baltics of Russians, Ukrainians, and Georgians who came either by choice or by force. Rather, they created a large population of stateless persons within the Baltic countries, many of whom were born in the Baltics and know no other home.

The Russian government and the international community have taken steps to encourage the Baltic states to loosen the strict limitations upon citizenship. Russia has tended to take a more forceful approach, strongly criticizing policies of Estonia and Latvia in the media and in international fora. International development organizations have become involved to varying degrees with some, such as the Organization for Security and Co-operation in Europe (“OSCE”)—even setting up offices in the region to monitor allegations of discriminatory policy. International courts have also addressed the question of the rights of stateless persons in the Baltics, but even when a complainant is successful, the remedies available are limited to damages.²² Indeed, it is unlikely that any international court would challenge state sovereignty by ordering a state to grant citizenship.

15. See Visek, *supra* note 1, at 316, 325–27.

16. See *id.* at 316. Illegal acts do not create law.

17. See *id.* at 325–27.

18. See *id.*

19. See Visek *supra* note 1, at 349; see also Green, *supra* note 1, at 225.

20. See generally Green, *supra* note 1.

21. Latvia Citizenship Law §2, (1994) available in English at http://www.np.gov.lv/en/faili_en/Pils_likums.rtf (last visited Mar. 30, 2008) [hereinafter Citizenship Law (Lat)].

22. See, e.g., Constitutional Court, 2001, Case No. 2001-02-0106 (Latvia) 26 June 2001, available in English at <http://www.satv.tiesa.gov.lv/upload/2001-02-0106E.rtf> [hereinafter Case No. 2001-02-0106]; Constitutional Court, 2002, Case No. 2001-11-0106 (Latvia) 25 Feb. 2002, available in English at <http://www.satv.tiesa.gov.lv/upload/2001-11-0106E.rtf> [hereinafter Case No. 2001-11-0106].

While international pressure²³ has led to some loosening of the strict naturalization requirements in Latvia and Estonia, the reforms have done little to diminish the reactionary nationalism that inspired many of the policies shaping the political landscape of the Baltics. The principle of *ex injuria ius non oritur* offers nation-states a legal and political starting point for independence as they emerge from larger federated unions.²⁴ But in the Baltics the application of that principle has resulted in a large population of stateless persons who live as subordinates to rather than participants in the governments of the nation they call home.

II. THE RE-ACTIVATION OF PRE-SOVIET CITIZENSHIP LAWS

Upon declaring independence from the Soviet Union, Lithuania, Latvia, and Estonia all asserted that the fifty-year Soviet occupation had been illegal.²⁵ Accordingly, the Baltic states did not become newly independent, but rather, reinstated the independence originally achieved in 1918 that had been suspended since 1940.²⁶ Though each of the three states approached their “re-independence” somewhat differently, none of them dissolved as some international observers had feared they would, and as actually did occur in the former Yugoslavia.²⁷ This section looks first at the legislative schemes that each Baltic state adopted to address questions of citizenship and nationality during restoration, and also takes note of the role of language in these schemes. After considering the legal requirements to become naturalized, the Note then turns to the factors that many ethnic Russians likely weighed in determining whether to take on the challenging process.

A. *Latvia and Estonia: Using an Old Model to Address New Challenges*

By 1989, the flow of immigrants into Latvia coupled with the deportation of Latvian citizens reduced the percentage of ethnic Latvians living within the country’s borders from seventy-seven percent to fifty-two percent of the total population.²⁸ At the time of independence, many non-Latvian residents were second or third generation immigrants who had been born in the Baltics.²⁹

Nonetheless, the new Latvian government created a legal framework that deliberately excluded many residents from becoming citizens. Individuals who had been citizens, or were descended from citizens, of Latvia as of 1940 were given the opportunity to accept Latvian citizenship.³⁰ The 1991 *Resolution on the Renewal of the Republic of Latvia Nationals’ Rights and Fundamental Principles of Naturalisation* was one of the first laws to explicitly state that “the aggregate body of the Republic of Latvia nationals, as identified by

23. The international community has observed this situation for some time, but pressure for reform was particularly evident from the European Union when the Baltics were lobbying for membership. See Audrey Macklin, *Who Is the Citizen’s Other? Considering the Theft of Citizenship*, 8 THEORETICAL INQUIRIES L. 333, 346 n.38 (2007) (stating that “since the Baltic states aspire to membership in the European Union . . . the Council of Europe and the Organization for security and co-operation in Europe (OSCE) were able to apply pressure to Latvia and Estonia to ease the requirements for naturalization.”).

24. See INETA ZIEMELE, *STATE CONTINUITY AND NATIONALITY: THE BALTIC STATES AND RUSSIA* 43 (Martinus Nijhoff Publishers 2005).

25. Visek, *supra* note 1, at 316, 325–27.

26. *Id.*

27. See JUBULIS, *supra* note 1, at 103.

28. Christiaan W.S. Monden & Jeroen Smits, *Ethnic Inter-marriage in Times of Social Change: The Case of Latvia*, 42 DEMOGRAPHY 323, 325 tbl. 1 (2005).

29. See ZIEMELE, *supra* note 24, at 43.

30. *Id.* at 154–55.

the 1919 *Law on Citizenship*, continues to exist irrespective of the loss of the state's sovereign power in consequence of the 1940 occupation.³¹

The reference to occupation is an example of the *ex injuria ius non oritur* principle noted earlier. Latvia was attempting to rebuild its populace in the image of the independent Latvia of 1919–1940. To facilitate this goal, the country created a simple process by which citizens of pre-Soviet Latvia could reclaim their status. They needed only to register by July of 1992 with proof of their former citizenship.³² The law extended beyond Latvia's borders, inviting Latvians who had moved or had been sent elsewhere during Soviet rule to return and claim their citizenship as well.³³ Similarly, there were many people who, though not ethnically Latvian, had been permanent residents of Latvia as of 1940 and likely would have attained full citizenship at some point had it not been for the Soviet occupation. In a further effort to minimize the effect of the fifty interceding years, these permanent residents were also extended the opportunity to apply for citizenship.³⁴

While extending this open welcome to its former citizens and pre-1940 permanent residents, Latvian policy toward those who had entered its borders during Soviet rule was less accommodating. *Jus sanguinis*—basing citizenship on blood relation to a citizen rather than on place of birth—was the prevailing philosophy. Unlike residents in the United States, which follows the competing principle of *jus soli*—granting citizenship based on place of birth—Latvian-born children of non-citizens must undergo a naturalization process to receive full citizenship rights.³⁵

However, some credit was given to residents who demonstrated a commitment to Latvian culture and society. Indeed, the extent of the rights enjoyed by residents who had immigrated during Soviet occupation shows some correlation with the level of their integration into Latvian society. For example, under the 1994 *Law on Citizenship* (and later amendments) orphans and children of unknown parentage, as well as permanent residents who had completed their schooling in the Latvian language, could register as citizens without undergoing the rigorous examinations that were part of the naturalization process.³⁶

Estonia's laws closely resemble the restrictive policies of Latvia. Like Latvia, Estonia drew from its pre-Soviet *Law on Citizenship* when first defining who would receive automatic Estonian citizenship: namely those who were Estonian nationals as of June 16, 1940, and their direct descendants.³⁷ The requirements for naturalization of those not automatically granted citizenship were delineated on January 19, 1995, in the *New Law on Citizenship*.³⁸ Unsurprisingly, these requirements and restrictions are almost identical to those in the Latvian *Law on Citizenship*. Because of the striking similarities between the laws of each country the discussion of Latvian law above is unnecessary here.

31. *Id.* at 155.

32. *See* ZIEMELE, *supra* note 24, at 155.

33. *Id.*

34. *Id.* at 155–56.

35. Citizenship Law (Lat.) § 2.

36. *See* ZIEMELE, *supra* note 24, at 156–58.

37. *See* ZIEMELE, *supra* note 24, at 146.

38. Estonia Law on Citizenship, art. 6, available in English at <http://www.uta.edu/cpsees/estoncit.htm> (last visited Mar. 30, 2008) [hereinafter Citizenship Law (Est.)].

1. Granting Status to the Stateless

As the 1990s progressed and the international community began to realize that independence would be long-term, fewer and fewer countries recognized the Soviet passports of non-naturalized Baltic residents. The result was a real danger that hundreds of thousands of individuals who were not eligible for automatic Latvian and Estonian citizenship, and who had not accepted citizenship in another country would be restricted from international travel. Both Latvia and Estonia were quick to recognize this as a potential problem.

In 1992, Estonia first offered a stopgap solution: issuing passport-like “temporary travel documents” to non-citizen residents. These documents had to be requested thirty days in advance, expired after two years, and were only good for one trip abroad. The document itself disavowed any Estonian diplomatic protection for the holder abroad. Even so, nearly twenty thousand of these documents had been requested as of 1995.³⁹ The Estonian government soon realized that a less cumbersome solution was required, and over the course of 1995–1996 it joined Latvia in offering “alien passports” to non-citizen residents and even to individuals residing in the country without any form of valid identification.⁴⁰ The alien passport provided greater mobility to non-citizens within Estonia as well as increased diplomatic protections abroad.⁴¹

The Latvian Parliament also began to address the issue in 1995 with the *Law on the Status of Former USSR Citizens Who are Not Citizens of Latvia or Any Other State*.⁴² The law established that citizens of the USSR who were nationals of no country, but held an unlimited *propyska*⁴³ in their passports as of July 1, 1992, would be treated as permanent residents of Latvia.⁴⁴ As amended in 1998, this law allowed permanent residents to travel outside of Latvia’s borders without having to apply for an individual permit for each trip.⁴⁵ Moreover, these changes afforded non-citizens protection by the state for the purposes of foreign travel.⁴⁶ This has been one of the most substantial moves by Latvia to extend rights to some of the resident non-citizens living there.

2. Potential and Actual Problems for the Stateless

Apart from those recognized as permanent residents, a large minority of long-term residents do not meet the official requirements for permanent resident status, and are not officially recognized by the state. This group—the truly stateless—consists mostly of former soldiers from the Soviet-turned-Russian military (now considered to be a hostile occupying force), as well as individuals known or believed to have worked against Latvian and Estonian independence, and the families of both.⁴⁷ With no ability to attain even permanent resident status and the benefits that go along with it, these individuals have no

39. Larissa Semjonova, *On Statelessness in Estonia*, LEGAL INFORMATION CENTRE FOR HUMAN RIGHTS, (2001), <http://www.lichr.ee/eng/articles/kiiev.htm> (last visited Mar. 30, 2008).

40. *Id.*

41. *Id.*

42. *See* Law on the Status of Former USSR Citizens Who are Not Citizens of Latvia or Any Other State, art. 3 (Lat.) (1995), <http://www.humanrights.lv/doc/latlik/noncit.htm> (last visited Mar. 30, 2008).

43. A combination visa and residence permit.

44. *See* ZIEMELE, *supra* note 24, at 162.

45. *See id.*

46. *See id.* at 164–65.

47. *See* ZIEMELE, *supra* note 24, at 163; *see also* Nida M. Gelazis, *The European Union and the Statelessness Problem in the Baltic States*, 6 EUR. J. MIGRATION & L. 225, 229 (2004).

prospect of obtaining citizenship unless they emigrate to Russia, which continues to accept Russian-speakers through a relatively open repatriation policy.⁴⁸ But many of these people have family, history, and homes in Latvia and Estonia, and prefer to remain there. A comprehensive citizenship and naturalization policy has never been developed to address the needs of this population, and many people continue to live in Latvia and Estonia with neither citizenship nor permanent resident status.

B. Lithuania: A More Open Model

In many ways, Lithuania's citizenship laws appear analogous to those of Latvia, reaching back to pre-Soviet law to determine who will have their nationality "reinstated" and who will be eligible to apply for naturalization. However, in practice, the policy is much less burdensome, particularly under the original *Law on Citizenship* which required only that residents wishing to become citizens (1) had been residents of Lithuania for ten years, and (2) swore an oath of loyalty to Lithuania.⁴⁹ It was such a simple process that it has been referred to as an "extension of nationality" rather than naturalization.⁵⁰ Scholars have attributed the relative simplicity of Lithuania's process to the fact that when Lithuania gained its independence in 1991, its language and culture were not threatened by large immigrant populations such as those encountered in Latvia and Estonia.⁵¹ Just nine percent of Lithuania's post-independence population was ethnically Russian, so allowing these long-term residents to naturalize posed no significant danger to the reinvigoration of Lithuanian culture, language, and traditions.⁵² This is not to suggest that there exists no anti-Russian sentiment in Lithuania, but rather that the government had fewer reasons to restrict the rights of ethnic Russians through a strict application of citizenship and naturalization laws.

About ninety percent of those to whom Lithuania's extension of nationality applied took advantage of this option and gained citizenship before the law changed in December of 1991.⁵³ Under the 1991 law, residents who had at first hesitated to part with their Soviet passports could still naturalize, but first had to pass a language and civics test, and meet other employment and residence requirements.⁵⁴ While these requirements were similar to those of Estonia and Latvia on paper, in practice they have been less stringently interpreted and have affected a much smaller percentage of the population.⁵⁵ Lithuania has distinguished itself further from Latvia and Estonia by providing the limited possibility for the naturalization of Soviet military veterans.⁵⁶ The door to citizenship is much easier to enter for long-time residents of Lithuania. For this reason, the remainder of this paper will focus on responses to the problem of statelessness in Latvia and Estonia only.

48. Raimundus Lopata, *Repatriation: Outlines of the Russian Model*, LITH. FOREIGN POL'Y REV. (2006), available at <http://www.lfpr.lt/uploads/File/Current/Lopata.pdf>.

49. See ZIEMELE, *supra* note 24, at 169–72.

50. *Id.* at 172.

51. See, e.g., JUBULIS, *supra* note 1, at 110–11; Gelazis, *supra* note 47, at 228; Green, *supra* note 1, at 270.

52. See Green, *supra* note 1, at 270.

53. Gelazis, *supra* note 47, at 227.

54. *Id.*

55. See Green, *supra* note 1, at 270.

56. See generally Gelazis, *supra* at note 47, at 227.

C. *Russians in the Baltics Weigh the Option of Naturalization*

Non-citizen permanent residents in Estonia have the right to vote for elected officials, though no right to run for office.⁵⁷ Thus, there is some opportunity for civic participation, but full engagement in the political life of the country is not permitted. Latvia's policy is even more restrictive, and non-citizen permanent residents are not permitted to vote.⁵⁸ Though it may have a minimal impact on the daily lives of non-citizens, this restriction goes to the heart of the problem of statelessness. Since non-citizens cannot run for office, the value of the voting right is diminished because non-citizens may not find adequate representatives for their interests among the electable citizenry. To stay in the country that they consider home, non-citizens face partial disenfranchisement on the one hand or the prospect of a costly and time-consuming naturalization exam process on the other. The short-term costs of the exam may seem small compared to the long-term benefit of full participation. However, there are legitimate reasons that this might not be an easy choice for permanent residents in the Baltics.

The naturalization process in Latvia and Estonia is challenging, particularly for ethnic Russians, who often live in segregated communities where Russian is the language of daily business and communication. The requirements for naturalization, as laid out in Article 12 of the Latvian *Law on Citizenship*, are: (1) residence in Latvia for a minimum of five years beginning May 4, 1990; (2) knowledge of the Latvian language, Constitution, national anthem, and history; (3) swearing a loyalty oath to the republic; and (4) having a legitimate source of income.⁵⁹ To appreciate the significance of these requirements, one must remember the context in which they were promulgated.

At the beginning of the 1990s, members of the former Soviet Union were in a very uncertain position. They had suffered through a decade of *perestroika*,⁶⁰ likely had seen their savings decimated as the result of economic turmoil, and with the passage of Article 12, their legal relationship to the state became highly uncertain. When the USSR dissolved, it was impossible to know whether the dissolution would be permanent. Thus, the decision of whether to establish legal ties to Russia or to a breakaway republic could not have been an easy one. Moreover, many people likely hesitated to declare their intentions because after fifty years of political repression they feared doing so might mean being called to account for it later, if and when the political climate changed. In addition, there was widespread speculation that the Baltics would be unable to sustain themselves independently and would implode or "Balkanize." Faced with the 1992 registration deadline, many Baltic residents essentially punted, opting to remain stateless rather than enter the new bureaucracies' systems and risk possible political reprisal.

However, by the late 1990s it was becoming clear that the Baltics would remain independent and relatively stable for the foreseeable future. As the Baltics stabilized over the decade following independence, it appears likely that many individuals who had initially

57. See, e.g., Green, *supra* note 1, at 228.

58. See *Constitution Watch: Latvia*, 6 E. EUR. CONST. REV. 3 (1997), available at <http://www.law.nyu.edu/eecr/vol6num2/constitutionwatch/latvia.html>, (stating that Latvian non-citizen residents are denied the right to vote); see also *Country Reports on Human Rights Practices—2001: Latvia*, U.S. Dep't of State, Mar. 4, 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8279.htm> (stating that non-citizens in Latvia cannot vote).

59. See ZIEMELE, *supra* note 24, at 158 (paraphrasing the requirements laid out in Republic of Latvia Citizenship Law, *supra* note 21, art. 12).

60. "Perestroika" literally means "rebuilding" or "restructuring." It was used by Mikhail Gorbachev as the name for the overhaul of the government and economy of the Soviet Union in the mid 1980s. See Merriam Webster Online, <http://www.merriam-webster.com/dictionary/perestroika> (last visited Mar. 30, 2008).

hesitated then chose to seek citizenship in their place of residence. When it was evident that Latvia and the other Baltic states were likely to join the European Union, the nations became an even more attractive alternative to the struggling Russian Federation in the eyes of non-native residents. In Latvia, as of March 8, 2001, 40,000 of approximately 588,000 individuals seeking citizenship had been naturalized.⁶¹ However, nearly 548,000 permanent residents, many of whom had never lived outside of the Baltics, remained shut out of the citizenry, facing stringent language and cultural knowledge requirements if they wished to naturalize.⁶²

Even individuals eligible for naturalization sometimes opted out of taking what they perceived to be an unfairly burdensome language and history examination. For example, as the Baltic nation with the closest ties to Russia, large areas of Estonia are almost exclusively Russian in ethnicity and language.⁶³ Non-citizens living in those regions have few opportunities to speak Estonian in their daily lives, and most cannot afford language classes.⁶⁴ Many of these ethnic Russians immigrated to, or were born in, Estonia during Soviet rule.⁶⁵ Facing a language requirement for naturalization in addition to the potential loss of certain property rights, restrictions on their freedom of movement, and limited political enfranchisement, many Russians living in Estonia felt that the new citizenship laws discriminatorily excluded them on the basis of ethnicity.⁶⁶

To ensure that younger generations would be able to meet this requirement, the Estonian government made proficiency in the Estonian language a requirement for graduation from secondary school.⁶⁷ However, in areas where Estonian is taught as a second language by non-native speakers, a “pass” in school is no guarantee of sufficient proficiency for naturalization purposes.⁶⁸ It would thus seem counterintuitive that pass rates for the language portion of the naturalization exam are reasonably high (seventy-five to ninety percent in 1996).⁶⁹ But because the test requires so much preparation, test-takers likely self-select on the basis of their language ability. Widespread rumors of arbitrary questions on the civics and history portions of the test (such as the dimensions of the Estonian flag or the first Estonian actor to play Hamlet) also limit the number of people taking the test.⁷⁰

61. See ZIEMELE, *supra* note 24, at 159.

62. *Id.*

63. See Visek, *supra* note 4, at 340–41.

64. As of 2002, language classes were not offered free of charge to those preparing for naturalization. See Visek, *supra* note 4, at 340–41; see also Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, Estonia Country Report on Human Rights Practices for 1998 (Feb. 26, 1999), § 5, available at <http://estonia.usembassy.gov/hrrep99.php>.

65. See generally Aksel Kirch, Marika Kirch, & Tarmo Tuisk, *Russians in the Baltic States: To Be or Not to Be?*, 24 J. BALTIC STUD. 173 (1993).

66. *Id.*

67. See generally Secretariat of the Framework Convention for the Protection of National Minorities, *Second Report Submitted by Estonia Pursuant to Art. 25, Para. 1 of the Framework Convention for the Protection of National Minorities*, art. 14, Doc. No. ACFC/SR/II(2004)009, available at [http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_\(monitoring\)/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2_SR_Estonia_eng](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_(monitoring)/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2_SR_Estonia_eng). (discussing provisions of the Basic and Upper Secondary Schools Act); see also Estonian Institute, *System of Education*, http://www.einst.ee/factsheets/factsheets_uus_kuju/system_of_education.htm (last visited Mar. 30, 2008) (describing Estonia’s education system).

68. See Refugees International, *Left Behind: Stateless Russians Search for Equality in Estonia*, Dec. 9, 2004, <http://www.refugeesinternational.org/content/article/detail/4635> (last visited Mar. 30, 2008).

69. See Visek, *supra* note 1, at 340.

70. *Id.* at 341.

Other factors also contribute to the difficulty that non-citizens face when deciding whether to go through the naturalization process. One of the foremost of these considerations is economic. The Russian populations in Latvia and Estonia have a strong economic incentive to remain in the Baltics rather than to return to Russia. With close ties to Germany and Sweden the Baltic economies performed well, even in the first years of independence, compared to the bulky and fragmented Russian Federation as it attempted to adjust to market economics.⁷¹ Yet many Russians in the Baltics have not enjoyed the benefits of these successes. While the Estonian majority in the south has prospered economically, Russian communities like Narva in the far northeast have struggled with a reported unemployment rate of twenty percent as recently as 2004.⁷² This disparity complicates the question of whether a non-citizen should stay in the Baltics or leave for Russia or another more welcoming nation.

The improving economic situation in the Baltics is cause for optimism and is likely to encourage people to remain. However, the apparent exclusion of Russian-populated areas from the most dynamic development may cause those same non-citizens to question whether the economic position of the Russian minority will ever equal that of the Estonian majority. For many, balancing the hope of economic improvement with the fear of continued marginalization can be achieved by remaining in Estonia without permanently renouncing the option of Russian citizenship.

Some ethnic Russians prefer to remain non-citizens, believing that in light of the strained relationship between the countries, Estonian citizenship would hamper their ability to visit relatives in Russia.⁷³ Having lived much (or all) of their lives in the Baltics, they have strong personal ties on both sides of the border. Considering the present animosity between Russia and Estonia, it is likely that citizens of both states will have a more difficult time crossing the border than those individuals who have not declared allegiance to either neighbor. Thus, maintaining non-citizen status may be the best way to preserve the family and cultural ties that developed over the five decades of Soviet rule when state borders were not a concern. The value of those ties did not diminish even though the borders have reappeared, and some are merely doing what they can to preserve continuity, if only in their personal lives, despite regime changes.

1. The Truly Stateless

Soviet Army veterans, revered as heroes in Russia, hold a particularly complex position in the Baltic states. The Soviet Army not only protected the Baltics from fascist control during World War II, but it also took away the region's independence after the war. For many, this paradox is an emotionally divisive issue. As described above, the naturalization schemes of both Latvia and Estonia exclude those individuals whom the governments have determined will not contribute to the state. Notably, members of the foreign military and employees of foreign security or intelligence organizations are among those who are excluded.⁷⁴

Because the Soviet Union lost authority over Latvia and Estonia, the Soviet military and intelligence service transformed from domestic to "foreign" agencies when the

71. See Fred Hiatt, *Narva, Estonia: Spark in an Ethnic Tinderbox*, WASH. POST, Oct. 9, 1993 at A23 (reporting that the firings occurred in positions as diverse as cashiers in bakeries, waitresses and postal clerks).

72. John W. Miller, *Estonia Is Confronting Great Russian Divide; Leaders Turn to EU for Aid in Diluting the Influence of Their Powerful Neighbor*, WALL ST. J., Dec. 2, 2004, at A2.

73. Refugees International, *supra* note 68.

74. See Law on Citizenship (Est.), *supra* note 38, art. 21; Law on Citizenship (Lat.), *supra* note 21 art. 11.

naturalization laws took effect.⁷⁵ Some veterans and active members of these bodies returned to homes and families elsewhere, but others had lived in the Baltics for years having made homes there. Among those who stayed, many would have met the requirements for permanent resident status but for the exclusion of foreign armed forces in the naturalization schemes. As the laws stand now, only marriage to a native born citizen can overcome the obstacle to citizenship created by a previous career in the military.⁷⁶

The persistence of a military exclusion in the naturalization laws sheds light on the attitudes and prejudices of the governments of Estonia and Latvia and has contributed to the problems of statelessness in the Baltics. Rather than assessing the loyalty and desire of the newly foreign service members to remain in the Baltics on a case by case basis, army veterans are excluded on the basis of career choice. This approach is justified by the oft-touted principle of *ex injuria ius non oritur*—the soldiers were members of an occupying force. Once sovereignty was restored to the Baltic states, the occupying army had to be expelled to protect independence.

It would seem, however, that after fifteen years of independence, and the breakup of the USSR, the danger of Soviet re-occupation has passed. Perhaps Estonia and Latvia should reevaluate the status of former members of the foreign military, particularly those who have shown their attachment to the state by remaining, albeit without rights or political privileges for so many years. It is not an easy question, but it is one that the Baltic states will have to address if they hope to resolve the status of stateless residents within their borders.

III. EXTERNAL RESPONSES

A. *Russia: Reaching Across Borders to Protect the Diaspora*

Russia has protested through the media and inter-governmental organizations against what it sees as a policy of discrimination towards its nationals by the Baltic states. Russian officials have accused Estonia of instituting “a system of social apartheid” by using language laws to exact retribution on ethnic Russian residents for the USSR’s long occupation.⁷⁷ During the 1990s, Russian political commentators even went so far as to characterize Estonia as “Russia’s Number One Enemy” because of the discriminatory laws.⁷⁸ In the late 1990s, the Russian Duma even attempted (unsuccessfully) to impose economic sanctions on Estonia for its treatment of ethnic Russians, invoking the concept of “diplomatic protection” to rally international and domestic support for such action.⁷⁹ Similarly, in 1997, the Kremlin issued an official statement condemning the failure of the Baltics to normalize the situation of non-citizens: “[t]here can’t be military security when hundreds of thousands of people who make up an ethnic minority in some countries of the region feel insecure and uncomfortable.”⁸⁰

By bringing the question of military security into what is according to international law a domestic policy matter, Russia revealed its willingness to consider the use of force against

75. See Law on Citizenship (Est.), *supra* note 38, art. 21; Law on Citizenship (Lat.), *supra* note 21 art. 11.

76. See, e.g., Law on Citizenship (Est.), *supra* note 38, art. 21.

77. Visek, *supra* note 1, at 324.

78. *Id.* at 325; Green, *supra* note 1, at 230.

79. See Visek, *supra* note 1, at 366.

80. Foreign Ministry Press Briefing, Official Kremlin Int’l News Broadcast (Feb. 13, 1997).

its former territories that do not wish to cooperate with the Federation's international policies. Russia has explained its continued interest in individuals, who even after fifteen years of marginalization in the former republics have chosen not to repatriate as a commitment to protecting the Russian Diaspora that emerged when the Soviet Union collapsed.⁸¹ However, its critics, have accused Russia of using the Diaspora as an excuse for continued involvement in the internal affairs of former Soviet republics.⁸²

Estonia has defended its citizenship and immigration laws. It claimed that the Soviet policies of repression and assimilation reduced the ethnic Estonian population to just sixty-one percent of the total population by 1991.⁸³ The successful resurrection of Estonian language and culture required restricting citizenship in the state to those who chose to learn its language and adopt its history and culture as their own.⁸⁴ Thus, Estonia asserted its power as a sovereign state to determine the official language of the state and impose restrictions upon citizenship.

Though Estonia has not opened its doors any wider to former Soviet citizens, it has maintained a steady, if slow, rate of naturalization. In November 2005, Estonia's naturalized population surpassed the number of residents with undetermined citizenship for the first time since independence.⁸⁵ All told, Estonia has naturalized more than 138,000 residents since 1992.⁸⁶ However, a large population of non-citizens, both with and without permanent resident status, continues to face an uncertain future.

B. *The International Community: Turning a Blind Eye?*

The Russian government has been concerned that Latvia and Estonia's restrictive citizenship laws could create discrimination and repression against ethnic Russians.⁸⁷ The international community has expressed similar concern, finding that the language laws in these countries have unfairly discriminated against ethnic minorities.⁸⁸ The OSCE sent a mission to Latvia and Estonia in the early 1990s specifically to determine and address the political and social needs of the large numbers of primarily Russian-speaking non-citizens.⁸⁹ In December 2001, amid protests from Russia, the OSCE mission in the Baltics was closed.⁹⁰ It was declared a success by international monitoring organizations like the United States Helsinki Commission, which stated that "any fine tuning that need[ed] to be done [could] be accomplished through appropriate consultations and monitoring."⁹¹

81. See, e.g., Charles E. Ziegler, *The Russian Diaspora in Central Asia: Russian Compatriots and Moscow's Foreign Policy*, *Demokratizatsiya*, Winter 2006, available at http://findarticles.com/p/articles/mi_qa3996/is_200601/ai_n16537301/pg_1.

82. See Visek, *supra* note 1, at 365–66.

83. See Green, *supra* note 1, at 267.

84. See Visek, *supra* note 1, at 316; JUBULIS, *supra* note 1.

85. Press Release, Estonian Ministry of Foreign Affairs, *263 Residents Naturalized as Citizens*, (Apr. 27, 2006), http://www.vm.ee/eng/kat_137/7489.html?arhiiv_kuup=kuup_2006 (last visited Apr. 1, 2008).

86. *Id.*

87. See Green, *supra* note 1, at 230.

88. See e.g., ZIEMELE, *supra* note 24, at 333 (finding the required level of language proficiency the most troubling aspect of the law).

89. See generally, ROB ZAAGMAN, *CONFLICT PREVENTION IN THE BALTIC STATES: THE OSCE HIGH COMMISSIONER ON NATIONAL MINORITIES IN ESTONIA, LATVIA, AND LITHUANIA (ECMI 1999)* (describing the OSCE mandate generally and its missions to the Baltics specifically).

90. *Russia Protests OSCE Decision to Close Missions in the Baltics*, AP WORLDSTREAM, (Dec. 22, 2001), available at <http://www.highbeam.com/doc/1P1-49093755.html>.

91. *Id.*

The Latvian and Estonian governments have maintained that their citizenship laws do not discriminate on the basis of ethnicity. Rather, aim at preserving cultural heritage and undoing the forced cultural transformation that occurred under the Soviet Union.⁹² The governments have argued that most permanent residents could naturalize if they demonstrated the necessary commitment to being a part of Estonian or Latvian society.⁹³ Similar to the requirements of many other nations, Estonia and Latvia maintain that it is reasonable to evaluate this commitment based on an individual's performance on a language and civics test.

While the international community has overwhelmingly affirmed the discretion of sovereign states to establish language requirements in their citizenship laws, the high level of proficiency required by Estonia and Latvia has been called into question as potentially discriminatory.⁹⁴ Despite concern that ethnic tensions in the Baltics could create a situation similar to that which ended in the dissolution of the Balkans, the international community has continued to support the discretion of the Baltic states to establish their own laws of citizenship.⁹⁵

As long as Russia does not violate international law, the kind of pressure it has put on the Baltics with regard to the ethnic Russians living there may be an effective way to encourage its desired changes in policy. Yet at the same time, Russia's continued interference in their domestic affairs cannot help its overall relations with Latvia and Estonia, and very likely fuels the nationalism that already has a strong hold in the region. Because all three Baltic states are members of the European Union, it seems that EU member states could exert more economic and political pressure on the countries to change their policies. However, since the EU has already granted membership to the Baltic states it is unclear whether such pressure would be effective. International courts are open to individuals who believe they have suffered discrimination under the Baltic policies, but, as set forth below, remedies are limited, and successes are few.

IV. ELUSIVE REMEDIES AT LAW

As mentioned above, non-citizens in Estonia with permanent resident status have the right to vote in local and national elections while all non-citizens, including permanent residents, in Latvia are denied that right.⁹⁶ In Estonia, then, even otherwise marginalized individuals can express their dissatisfaction with the naturalization process by voting. However, this option is minimized by the fact that those most likely to share their concerns—non-citizens—cannot run for office.⁹⁷ Therefore, in order for their voices to be heard, these minorities must largely depend on citizen groups to run candidates who would represent their interests regarding citizenship. Ethnic Russians do, in fact, have political parties in both Latvia and Estonia, but their power is limited in the parliamentary system, and the parties appear to serve more for lobbying and social agitation than as conduits for meaningful political strength.⁹⁸ At best, political channels are a limited avenue for non-

92. See Green, *supra* note 1, at 232.

93. ZIEMELE, *supra* note 24, at 158.

94. See *id.* at 333.

95. See *id.* at 333; Hiatt, *supra* note 71, at A21 (describing the volatility of ethnic tensions in Estonia).

96. See Green, *supra* note 1, at 228; see also Constitution Watch *supra* note 58.

97. See Visek, *supra* note 1, at 335.

98. See, e.g., Latvia: Party for Human Rights in Latvia, <http://www.pctvl.lv/?lang=en> (last visited Mar. 30, 2008); Estonia: Constitution Party, <http://www.kpartei.ee> (last visited Mar. 30, 2008).

citizens, and are not an option at all for individuals without permanent resident status who have no voting rights in either nation.

A second potential avenue lies in the domestic courts of Lithuania, Latvia, and Estonia. In Estonia, for example, judicial review is available if an application for naturalization is denied.⁹⁹ However, this option has rarely been used. In addition to the ingrained distrust of courts as organs for justice under the former Soviet system, concerns about the cost of litigation have kept non-citizen petitioners out of the courts.¹⁰⁰ Even more discouraging to potential litigants is the fact that the only remedy available upon successful review is remand of the case to the Citizenship and Immigration Department for reconsideration; neither damages nor injunctive relief are available in the Latvian or Estonian administrative framework.¹⁰¹

Two Latvian Constitutional Court opinions from 2001 illustrate the difficulties that non-citizens have in asserting their rights domestically.¹⁰² In the first case, the Court addressed the legality of refusing employment pension benefits to non-citizens who worked for years outside of Latvia (such benefits are afforded citizens).¹⁰³ The Court acknowledged that both international and domestic laws maintain the equality of all persons under the law, but asserted that “equality allows a differentiated approach.” Further, the Court found that absent a specific treaty agreement to the contrary, Latvia was under no obligation to include extra-territorial employment of non-citizens in pension calculations.¹⁰⁴

Later that same year, the Latvian Court held as unconstitutional a provision denying unemployment benefits to the spouses of Latvian citizens who had not yet obtained permanent resident or citizenship status.¹⁰⁵ At the same time, the Court upheld the denial of unemployment benefits to other non-permanent residents of Latvia who held temporary residence permits.¹⁰⁶ The Court reasoned that a temporary residence permit was evidence that an individual does not intend to remain in Latvia.¹⁰⁷ Accordingly, it distinguished spouses of citizens from other non-permanent residents on this basis.¹⁰⁸ This ruling may be a harbinger of future reforms, but unfortunately it does little for the thousands of residents who are not married to Latvian citizens and who have not been able to obtain permanent resident status.

Nevertheless, there have been instances of domestic courts finding in favor of non-citizen and stateless petitioners. For example, in June 2004 the Constitutional Review Chamber of the Supreme Court of Estonia ruled that Articles 12(4)(1) and 12(5) of Estonia’s *Aliens Act* were unconstitutional because they denied state authorities the ability to exercise discretion where residence permits were denied based on falsification of application information.¹⁰⁹ Instead, it reasoned, courts should have the discretion to balance factors against each other—here, the constitutional mandate to protect the family unit weighed

99. See Visek, *supra* note 1, at 341.

100. See *id.*

101. See *id.* at 341–42.

102. See Case No. 2001-02-0106; Case No. 2001-11-0106.

103. See Case No. 2001-02-0106.

104. *Id.* at 249.

105. See Case No. 2001-11-0106 at 5.

106. See *id.* at 4.

107. *Id.*

108. *Id.* at 5.

109. The Constitutional Review Chamber of the Supreme Court of Estonia, Case No. 3-4-1-9-04, 21 June 2004, Petition of Tallinn Administrative Court to Review the Constitutionality of § 12(4)(1) and § 12(5) of Aliens Act, para. 10, available at <http://www.nc.ee/?id=404> [hereinafter Petition of Tallinn Administrative Court].

against the national security interest of not falsifying documents.¹¹⁰ This balancing test gives the courts some discretion in deviating from the rigid requirements of citizenship laws when state interests or fundamental rights enter the analysis. Though the articles were declared unconstitutional, the only remedy for the petitioner—an ethnic Russian who had retired from service in the Soviet military in 1989 (the very facts that he falsified on his application)—was to file for reconsideration under the new balancing test.¹¹¹

A third avenue utilized in recent years has been to resort to international courts like the European Court of Human Rights (“ECHR”). Courts such as the ECHR are established by treaty and therefore, receive their authority from the signatory nations to such documents. In joining the treaty, signatories agree to be bound by the decisions of such courts. *Slivenko v. Latvia*¹¹² is representative of the type of action that international courts are sometimes willing to hear. In this case, the *application* of the law, rather than the *law itself*, was determined to be problematic.

The applicants in *Slivenko* were ethnic Russians, the wife and daughter of a former Russian military officer who had become a Russian citizen in the early 1990s and served in the Russian Army until 1994.¹¹³ In March 1993, mother and daughter, both of whom were born in the Baltics (the mother in Estonia and the daughter in Latvia) registered as Latvian permanent residents with no mention of the husband.¹¹⁴ After retiring from military service, the husband applied for a temporary resident permit, but was denied based on the treaty requiring the withdrawal of Russian troops from Latvia by April 1994.¹¹⁵ His subsequent appeals alerted the authorities that his wife and daughter were family members of Russian military, and an order was subsequently entered to deport the entire family.¹¹⁶ The husband moved to Russia, but his wife and daughter remained, arguing that as permanent residents they could not be deported.¹¹⁷ Their claim was denied by the Latvian Constitutional Court, they were deported to Russia on March 17, 1999. Further, they were prohibited from returning to Latvia for any reason.¹¹⁸ They received Russian citizenship soon after.¹¹⁹

The EHCR, applying Latvian law and the European Convention on Human Rights, ruled that “Latvian authorities . . . failed to strike a fair balance between . . . the protection of national security and . . . the protection of the applicants’ rights under Article 8 [of the European Convention].”¹²⁰ Thus, as in the Estonian Supreme Court’s opinion on that country’s *Aliens Act*,¹²¹ the EHCR found that the Latvian authorities failed to properly balance under both Latvian law and the European Convention, the security threat of this mother and daughter with the strong interest in protecting privacy and home.¹²² Though the ECHR’s decisions are binding on a member state, the Court did not in this case go so far as

110. *Id.* para. 16.

111. *Id.* paras. 2–3.

112. *Slivenko v. Latvia*, 2002-II Eur. Ct. H.R. 467 (Grand Chamber), *available at* <http://www.echr.coe.int/Eng/Press/2003/oct/JudgmentSlivenkoeng.htm>.

113. *Id.* para. 21.

114. *Id.* paras. 16, 18.

115. *Id.* para. 25.

116. *See id.* paras. 25–31.

117. *Id.* paras. 33–34.

118. *See Slivenko*, 2002-II Eur. Ct. H.R., paras. 35–45.

119. *Id.* para. 46.

120. *Id.* para. 128.

121. *See* Petition of Tallinn Administrative Court, *supra* note 128, para. 19 and accompanying text.

122. *Slivenko*, 2002-II Eur. Ct. H.R., para. 117.

to enjoin Latvia's decision to deport the applicants.¹²³ Accordingly, the EHCR awarded money damages to the mother and daughter of 10,000 Euros each.¹²⁴

V. RECENT DEVELOPMENTS AND PROJECTIONS FOR THE FUTURE

The legal status of non-citizen minority groups in the Baltic states is far from settled. In Estonia—the Baltic state with the largest and least-integrated population of ethnic Russians—anti-Russian sentiment is strong and the nationalist movement is thought to have broad support in the government. Recent incidents in Estonia illustrate the remaining tensions. In September 2006, following repeated vandalization of a monument to Soviet WWII veterans, Estonia's Constitutional Party, the main ethnic Russian political party in the country, called for an end to “attempts to picture fascists and their collaborators as heroes.”¹²⁵ The statement released by the Constitutional Party accused the Estonian government of minimizing the contribution made by the Soviet Army toward liberating of the Baltics.¹²⁶ This followed the actions of the Constitutional Party in June 2006, accusing the Estonian media and public of sympathizing with the widespread vandalism of Soviet monuments throughout the country.¹²⁷

A bronze statue in the Estonian capital Tallinn has been a particular point of contention. Estonian nationalist groups have demanded its removal or demolition against vehement protests by both the Constitutional Party and the Russian Federation.¹²⁸ In the early morning hours of Friday, April 27, 2007, amid violent demonstrations that left one person dead and scores injured, the Estonian government relocated the controversial statue from the center of Tallinn to a cemetery on the outskirts of the city.¹²⁹ The Russian government responded with sharp words, calling the removal “blasphemous.”¹³⁰ Estonian officials responded that the monument was an undesirable reminder of Soviet occupation.¹³¹ There are allegations that Russia's response went beyond media protests. In early May, Estonia experienced a “cyber-attack.”¹³² Many government websites were overloaded and disabled by hundreds of thousands of simultaneous spam e-mails and requests for information that the Estonian government claims to have traced to Russia, and even to Russian government offices.¹³³ Though Russia denies involvement, it has also refused to assist in the NATO and EU investigation.¹³⁴ That investigation has not yet yielded definitive results, but investigators agree that the attack was deliberate and well

123. Bonnie H. Weinstein, *Recent Decisions from the European Court of Human Rights*, American Society of International Law Insights, (May 2000) available at <http://www.asil.org/insights/insigh45.htm>.

124. Slivenko, 2002-II Eur. Ct. H.R., para. 170.

125. *Monument to Soviet Soldiers Vandalized in Estonia*, INTERFAX RUSS. AND FSU GEN. NEWS BULL., Sept. 11, 2006, available at 2006 WLNR 15886635.

126. *See id.*

127. *See Russian Associations Demand Removal of Cordon Around Red Army Monument in Estonian Capitol*, BALTIC DAILY NEWS, June 13, 2006.

128. *See id.*; Lyudmila Alexandrovna, *Monument to WWII Soldier in Tallinn Makes Nationalists See Red*, Itar-Tass World Serv. (May 23, 2006).

129. Stephen Lee Myers, *After Violent Night Estonia Removes a Soviet-Era War Memorial*, N.Y. TIMES, Apr. 28, 2007, at A8.

130. *Id.*

131. *See id.*; *see also*, Karl Ritter, *Estonian President at Odds with Russia*, THE BOSTON GLOBE, Mar. 2, 2007, http://www.boston.com/news/world/europe/articles/2007/03/02/estonian_president_at_odds_with_russia (last visited Mar. 30, 2008).

132. *See Estonia Hit by 'Moscow Cyber War'*, BBC NEWS, May 17, 2007, <http://news.bbc.co.uk/2/hi/europe/6665145.stm> (last visited Mar. 30, 2008).

133. *Id.*

134. *See id.*

coordinated.¹³⁵ These recent events are yet another blow to the uneasy relationship between the Baltics and the Russian Federation.

Throughout the last century marginalized groups all over the world have gained rights and privileges within their societies through bottom-up organization, protest, and civil disobedience. The non-citizens of the Baltics are in a uniquely difficult position with regard to this type of social movement. While agitation and protest by a citizen might be met with official anger or even imprisonment, it might result in deportation for permanent residents and resident aliens. Latvian and Estonian law specifically refuse resident status to individuals who have “acted against the state,” a vague category that could easily be interpreted to include non-citizens questioning legislation and government decisions.¹³⁶ The states could shut down a civil rights movement by simply exiling the protesters. Though such action might also catalyze international pressure to force the Baltics to change their policies, the initial costs to potential deportees are so high that such a movement seems unlikely.

Despite aspirational statements like the Universal Declaration of Human Rights, current international law continues to recognize that each sovereign state is the primary source of civil and legal rights within its own domain. Moreover, it does not offend international legal principals for a nation to deny citizenship to resident aliens, or to those born within its borders. In the case of the Baltics, it is merely a function of *jus sanguinis*.

However, for those ethnic Russians who were born in the Baltics, or who have spent numerous years making their home there, their status literally changed from citizen to non-citizen when independence occurred. Indeed, it seems likely that individuals who feel the effects of restrictive Latvian and Estonian citizenship policies most keenly are not high-level Soviet functionaries who might seek to undermine state independence. Those most affected are working people like the residents of Narva and families like Mrs. Slivenko and her daughter, who have lived in the Baltics all their lives, and now must choose between their rights and their home.

Because *jus sanguinis* continues to undergird the citizenship policies of the Baltics, the legal limbo of stateless persons residing in Latvia and Estonia seems likely to persist. While little international recourse is available, an internal movement to change the laws is also unlikely because of the threat that “agitators” will be declared enemies of the state and deported. Consistent pressure by the international community has the potential to influence domestic policy, but because the Baltic states are already members of the EU and NATO, it is unclear what incentive the nations will have to change policies. Russia, in its efforts to protect its Diaspora, may be somewhat effective, but its actions could also create further ethnic tension within the Baltics. The best hope for the hundreds of thousands of individuals still living in the Baltics without full citizenship rights might be for Latvia and Estonia to do away with their technically legal, but practically discriminatory, citizenship laws. Easing restrictions on naturalization could quell at least some of the unrest in resident Russian communities and eliminate Russia’s excuse for exerting pressure on the domestic policies of the two nations. Such a change would also clear the way for a new legal framework that meets the needs of all those who have chosen to remain residents of the independent Baltics.

135. *See id.*

136. Law on Citizenship (Lat.), *supra* note 21, art. 11 para. 1; Law on Citizenship (Est.), *supra* note 38, art. 21 para. 3.