

**RUSSIAN VIOLATIONS OF THE RULE OF  
LAW: HOW SHOULD THE U.S. RESPOND?  
THREE CASE STUDIES**

---

---

**HEARING**  
BEFORE THE  
**COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE**  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION

OCTOBER 20, 2015

Printed for the use of the  
Commission on Security and Cooperation in Europe

[CSCE 114-1-6]



Available via <http://www.csce.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

97-467 PDF

WASHINGTON : 2015

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

LEGISLATIVE BRANCH COMMISSIONERS

HOUSE

CHRISTOPHER H. SMITH, New Jersey,  
*Chairman*  
ALCEE L. HASTINGS, Florida  
ROBERT B. ADERHOLT, Alabama  
MICHAEL C. BURGESS, Texas  
STEVE COHEN, Tennessee  
ALAN GRAYSON, Florida  
RANDY HULTGREN, Illinois  
JOSEPH R. PITTS, Pennsylvania  
LOUISE McINTOSH SLAUGHTER,  
New York

SENATE

ROGER F. WICKER, Mississippi,  
*Co-Chairman*  
BENJAMIN L. CARDIN, Maryland  
JOHN BOOZMAN, Arkansas  
RICHARD BARR, North Carolina  
JEANNE SHAHEEN, New Hampshire  
TOM UDALL, New Mexico  
SHELDON WHITEHOUSE, Rhode Island

EXECUTIVE BRANCH COMMISSIONERS

*Vacant*, Department of State  
*Vacant*, Department of Commerce  
*Vacant*, Department of Defense

**RUSSIAN VIOLATIONS OF THE RULE OF LAW:  
HOW SHOULD THE U.S. RESPOND?  
THREE CASE STUDIES**

---

**COMMISSIONERS**

	Page
Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe .....	1
Hon. Roger F. Wicker, Co-Chairman, Commission on Security and Cooperation in Europe .....	3

**WITNESSES**

Stephen Rademaker, Principle with the Podesta Group, Former Assistant Secretary of State for the Bureau of Arms Control and the Bureau of International Security and Nonproliferation, Department of State .....	4
Tim Osborne, Executive Director of GML Ltd., Majority Owner of Now-Liquidated Yukos Oil Company .....	8
Alan Larson, Senior International Policy Advisor with Covington & Burling LLP, Former Under Secretary of State for Economics and Career Ambassador, Department of State .....	11
Vladimir Kara-Murza, Coordinator, Open Russia Movement .	13

**APPENDICES**

Prepared statement of Hon. Christopher H. Smith .....	26
Prepared statement of Hon. Roger F. Wicker .....	28
Prepared statement of Hon. Benjamin L. Cardin .....	29
Prepared statement of Stephen Rademaker .....	30
Prepared statement of Tim Osborne .....	34
Prepared statement of Alan Larson .....	40
Prepared statement of Vladimir Kara-Murza .....	45



**RUSSIAN VIOLATIONS OF THE RULE OF LAW:  
HOW SHOULD THE U.S. RESPOND?  
THREE CASE STUDIES**

---

**October 20, 2015**

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
WASHINGTON, DC

The hearing was held at 1:59 p.m. in room 2255, Rayburn House Office Building, Washington, DC, Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe, presiding.

*Commissioners present:* Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe; Hon. Roger F. Wicker, Co-Chairman, Commission on Security and Cooperation in Europe; and Hon. Robert B. Aderholt, Commissioner, Commission on Security and Cooperation in Europe.

*Witnesses present:* Stephen Rademaker, Principle with the Podesta Group, Former Assistant Secretary of State for the Bureau of Arms Control and the Bureau of International Security and Non-proliferation, Department of State; Tim Osborne, Executive Director of GML Ltd., Majority Owner of Now-Liquidated Yukos Oil Company; Alan Larson, Senior International Policy Advisor with Covington & Burling LLP, Former Under Secretary of State for Economics and Career Ambassador, Department of State; and Vladimir Kara-Murza, Coordinator, Open Russia Movement.

**HON. CHRISTOPHER H. SMITH, CHAIRMAN, COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE**

Mr. SMITH. [Sounds gavel.] Good afternoon and thank you for being here. It's great to be joined and to be working side by side with our very distinguished co-chair, Senator Wicker. On behalf of both of us, I welcome you to our hearing today.

We look forward to learning from our witnesses where the Russian Government is in respect to the rule of law, and what you recommend our government and the OSCE should do in response to serious breaches that they have made, particularly in recent years. In accord with the three dimensions of security provided by the OSCE, we will look at Russia's respect for the rule of law and in terms of its military security, commercial and human rights commitments.

To focus our scrutiny, we have chosen three case studies where the question is current in U.S.-Russian relations: arms control

agreements, the Yukos litigation and instances of abduction, unjust imprisonment and abuse of prisoners.

Forty years after the signing of the Helsinki Final Act, we face a set of challenges with Russia, a founding member of the organization, that mirror the concerns that gave rise to the Helsinki Final Act. At stake is the hard-won trust between members, now eroded to the point that armed conflict rages in the OSCE region. The question is open whether the Act's principles continue to bind the Russian Government with other states in a common understanding of what the rule of law actually entails.

In respect to military security under the 1994 Budapest Memorandum, Russia reaffirmed its commitment to respect Ukraine's independence, sovereignty at existing borders. Russia also committed to refrain from the threat or use of force or economic coercion against Ukraine. There was a quid pro quo here. Russia did this in return for transferring Soviet-made nuclear weapons on Ukrainian soil to Russia. Russia's annexation of Crimea and subsequent intervention in the Donbass region not only clearly violate this commitment, but also every guiding principle of the 1975 Helsinki Final Act.

It appears these are not isolated instances. In recent years, Russia appears to have violated, undermined, disregarded, or even disavowed fundamental and binding arms control agreements, such as the Vienna Document, and binding international agreements including the conventional forces in Europe, Intermediate Nuclear Forces and Open Skies Treaties.

In respect of commercial issues, the ongoing claims regarding the Russian Government's expropriation of the Yukos Oil Company are major tests facing the Russian Government. In July 2015, GML Limited and other shareholders were part of a \$52 billion arbitration claim awarded by The Hague Permanent Court of Arbitration and the European Court of Human Rights [ECHR]. In response, the Russian Government is threatening to withdraw from the ECHR and seize U.S. assets should American courts freeze Russian holdings on behalf of European claimants, while filing technical challenges that will occupy the courts for years to come.

All of this fundamentally calls into question Russia's OSCE commitments to develop free, competitive markets that respect international dispute arbitration mechanisms such as that of The Hague. I note that the U.S.-Yukos shareholders are not covered by The Hague ruling for their estimated \$6 billion in losses. This is due to the fact that the United States has not ratified the Energy Charter Treaty under which European claimants won their case.

So we look forward to learning more about the continued absence of a bilateral investment treaty with Russia and how that has handicapped U.S. investors in Russia's energy sector, and whether the State Department should espouse shareholder claims with the Russian Government.

Mr. Kara-Murza, we were all relieved and delighted to learn that you are recovering from the attempt that was made on your life by poisoning in Russia earlier this year. Your tireless work on behalf of democracy in Russia, and your personal integrity and your love of your native country, is an inspiration. It is true patriotism, a virtue sadly lacking among nationalistic demagogues.

Sadly, the attempt on your life is not an isolated instance. Others have been murdered, most recently Boris Nemstov, and both your case and his remain unresolved. In other cases, such as the abductions, unjust imprisonments and abuses of Nadia Savchenko, Oleg Sentzov, and Eston Kohver, we are plainly dealing with public actions by the Russian Government. Nadia, a Ukrainian pilot and elected parliamentarian, was abducted by Russian Government agents, imprisoned, subjected to a humiliating show trial, and now faces 25 years in prison for allegedly murdering Russian reporters who, in fact, were killed long after she was in Russian custody.

Meanwhile, the Russian court has sentenced Ukrainian film director Oleg Sentzov on charges of terrorism. Tortured during detention, Sentzov's only transgression appears to be his refusal to recognize Russia's annexation of the peninsula and his efforts to help deliver food to Ukrainian soldiers trapped on their Crimean bases by invading Russian soldiers. And the kidnapping and subsequent espionage trial against Estonian law enforcement officer Kohver demonstrates Russia's readiness to abuse its law and judicial system to limit individual freedom both within and beyond its borders.

I'd like to yield to my esteemed colleague, Co-Chairman of the Commission.

**HON. ROGER F. WICKER, CO-CHAIRMAN, COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE**

Mr. WICKER. Thank you, Mr. Chairman. Those making scheduling decisions have not cooperated with us today. It's not their fault but we have some unfortunate conflicts. Because of that I'll simply subscribe to your very fine opening statement, ask permission to insert into the record at this point a brief statement in lieu of making it verbally, and thank each one of these distinguished panelists for being with us today.

Mr. SMITH. Thank you so very much, Senator Wicker.

I'd like to now turn to our witnesses. We are fortunate to have with us four distinguished witnesses, some of whom have traveled from overseas to help us better understand what is happening in Russia and how Congress and our government can encourage rule of law in Russia.

We'll begin first with the Honorable Stephen Rademaker, who has had a long career in public service, working on national security issues in the White House, State Department and both houses of the U.S. Congress. He has worked directly on a number of arms control issues, including the Treaty of Non-Proliferation of Nuclear Weapons, and led U.S. strategic dialogues with Russia. He has testified on numerous occasions before the House Committee on Foreign Affairs, the House Armed Services, my subcommittee, and has spoken repeatedly about Russia's violations of arms control treaties.

We'll then hear from Mr. Tim Osborne, who is the Director of GML Limited, the majority owner of the now-liquidated Yukos Oil Company. On behalf of GML shareholders, Mr. Osborne has been at the forefront of the suit against Russian Federation for the discriminatory expropriation of Yukos Oil Company and its assets.

GML filed a claim under the terms of the 1994 Energy Charter Treaty based on the Russian Federation's failure to protect the company's investments in Russia. The Energy Charter Treaty arbitration and the subsequent \$50 billion award on behalf of the claimants—yet to be enforced—is the largest ever filed. Mr. Osborne has regularly given guidance to several government inquiries focused on the Yukos affair and the current situation in Russia. Welcome, Mr. Osborne.

We'll then hear from Ambassador Alan Larson, an economist and decorated diplomat, having served as secretary of state for economics, and assistant secretary of state for economic business affairs, as well as ambassador to the OECD. He has helped win approval of the U.S. Committee on Foreign Investments in the U.S. for some of the highest-profile foreign investments in the U.S., including several state-owned companies and sovereign wealth funds. He is currently with Covington & Burling, assisting U.S. Yukos shareholders, pursuing compensation for their illegally expropriated shares. He has also testified on multiple occasions for the House and Senate.

And finally we'll hear from Mr. Vladimir Kara-Murza, who is a coordinator of the Open Russia Movement, a platform for democracy. He was a longtime colleague and adviser to Russian opposition leader Boris Nemstov and deputy leader of the People's Freedom Party, established and led by Mr. Nemstov.

Mr. Kara-Murza has been a journalist, a candidate for the Russian parliament and a Russian presidential campaign manager. He has also testified on the human rights situation in Russia, both in the U.S. and in Europe, including speaking in support of the U.S. Magnitsky Act as well as calling for similar legislation in Europe.

We are joined by Mr. Aderholt. Any opening comments?

Mr. ADERHOLT. No, I'm good. Go ahead.

Mr. SMITH. OK. So I'd like to now yield to Mr. Rademaker for his opening statement.

**STEPHEN RADEMAKER, PRINCIPLE WITH THE PODESTA GROUP, FORMER ASSISTANT SECRETARY OF STATE FOR THE BUREAU OF ARMS CONTROL AND THE BUREAU OF INTERNATIONAL SECURITY AND NONPROLIFERATION, DEPARTMENT OF STATE**

Mr. RADEMAKER. Thank you very much, Chairman Smith and Co-Chairman Wicker, Mr. Aderholt. I very much appreciate the opportunity to speak to you today on this subject. I do need to begin with an apology. I have to leave at 3:00 to catch an airplane. I think that was understood when I agreed to do this, but I'll stay as long as I can and then, with apologies, leave.

As you indicated, Mr. Chairman, in your opening statement, this panel is to look at the three dimensions of the OSCE and Russia's compliance with the rule of law across those three dimensions. I've been asked to focus on the security dimension and particularly focus on Russia's compliance with five arms control-type agreements, the Budapest Memorandum of 1994, the Conventional Forces in Europe Treaty of 1990, the Intermediate Range Nuclear Forces Treaty of 1987, the Open Skies Treaty of 1992, and the Vi-



enna Document on confidence- and security-building measures first agreed in 1990 and most recently updated in 2011.

What I do in my prepared remarks is go through each one of these and sort of summarize what the agreement provides for. Then I look at how Russia has complied or failed to comply. And then at the end of my prepared remarks I draw some overall conclusions about what we can expect from Russia and why they're behaving as they are. Here I just intend to summarize, and briefly I'll run through those five agreements.

The first one is the Budapest Memorandum. And, Mr. Chairman, you spoke pretty clearly to that. It's worth recalling that in 1994 Ukraine was the proud owner of the world's third-largest nuclear arsenal. They had inherited it from the Soviet Union. And what the Budapest Memorandum was about was persuading Ukraine to give up the world's third-largest nuclear arsenal. As part of that they received some security assurances from, among others, Russia. And I'll just quote what the relevant assurance was because it's quite remarkable in the context of what's happened over the last year or so.

Russia, among others, pledged—and I'll just quote here—pledged to “reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine.” Obviously the Russians have made a mockery of that since last year. They've been called on that by the Obama administration and by everyone else. And it does raise questions about whether countries in Ukraine's situation in the future, who are being asked to make sacrifices in the nuclear proliferation area in exchange for security assurances, whether they will take those assurances seriously given what's happened with implementation of the Budapest Memorandum.

The CFE Treaty was the conventional arms control agreement applicable to Europe. It was a very important agreement. It helped bring about the end of Cold War tensions in Europe. But throughout the 1990s Russia became increasingly uncomfortable with it, and in 2007 President Putin simply announced that Russia would suspend—and that was the term he used—he would “suspend” Russia's implementation of the treaty.

There is no provision in the treaty for suspension of implementation so the reaction of the other parties has been to say that that's simply not a permissible option. But, by 2011, it was evident that Russia was not going to come back into compliance, so as of today the treaty remains in force among the other parties, but Russia does not submit to inspections and data exchanges under the treaty and we don't allow Russia to do inspections in other countries as a corresponding measure.

And I think the fundamental issue here is Russia simply concluded this treaty was not serving their interests as they were fighting wars in places like Chechnya. And there were issues about their deployments of forces in Georgia and in Abkhazia and South Ossetia, as well as in Moldova. So for them the treaty became an irritant and they simply disposed of it.

The INF Treaty is a commitment by the United States and four of the former Soviet states to not possess intermediate-range missiles; that is, missiles with ranges between 500 and 5,500 kilo-

meters. This is another treaty that Russia has become increasingly unhappy with over the years, and as of last July the Obama administration concluded that Russia was in violation of the treaty because they were testing a missile of INF range in violation of the treaty. It took the administration a while to come to that conclusion. I think they were—they appeared to be reluctant to come to that conclusion but the facts forced them to do so. Russia claims that it's still in compliance. It disputes the notion that it's violating that treaty, but the position of the United States Government is that Russia is in violation of the INF Treaty.

The Open Skies Treaty is a regime of aerial inspections using photography and other sensors. Flights from states' parties overfly the territory of other members. Russia complies with the Open Skies Treaty but they have adopted a number of measures that are inconsistent with the spirit of the Open Skies Treaty. There's an obligation under the treaty to make all of your national territory available for aerial observation and they have declared a number of zones to be off limits, including over Moscow, over Chechnya, near Abkhazia and South Ossetia. And most recently they adopted a new set of restrictions that makes it very hard to conduct observation in the Kaliningrad enclave.

Finally, the Vienna Document is not a treaty; it's a confidence- and security-building measure [CBSM], voluntary measures that the members have agreed to take. I'll just read what the Obama administration said about Russia's compliance with the Vienna Document in this year's Arms Control Compliance Report. The administration stated: "The United States assesses Russia's selective implementation of some provisions of the Vienna Document and the resultant loss of transparency about Russian military activities has limited the effectiveness of the CBSM regime."

So this term "selective implementation" is really the term that the Obama administration has come up with to describe what Russia is doing. I think the most vivid illustration is that, as they conduct military exercises along the border with Ukraine and conduct military operations along that border, it would appear that they need to report those under the Vienna Document transparency regime.

They've not been doing that, and they've been offering technical arguments about why they're not required to. They claim that the troops aren't under unitary command. And they have similar hair-splitting explanations of why they're not complying, which raise questions about either whether they're being truthful about the nature of the operations or whether they've—alternatively, perhaps, they structured the operations in a way to evade the compliance, the reporting obligation. But either way, they are not acting consistent with the spirit of the Vienna Document.

I'm probably running out of time, so I'll just quickly conclude by saying that I think the overall pattern that emerges here is clear. Russia will comply with arms control agreements to the extent it considers them to be in their interests, but the moment they conclude that they're no longer in their interest they will stop complying. And you can see the pattern with the Budapest Memorandum. They're simply ignoring it and acting inconsistently with it. In the case of the CFE Treaty, they've effectively terminated it.

In the case of the INF Treaty, they continue to pay lip service to the treaty but they are judged to be in violation of it. And then for Open Skies and the Vienna Document, they're selectively implementing them in a way that suits their interests.

What can we do about this? You know, I address that in my prepared remarks. The bottom line is I think it's a difficult problem. I don't think we're going to be able to reason with the Russians about this. The things they are doing are strengthening support for the NATO alliance in Central and Western Europe. They're reviving the interest of some of the countries that are not currently in NATO. Countries along Russia's borders are more interested in joining NATO after observing what the Russians are doing.

So, taking the Russians at their word about what they're most concerned about, the policies they're following seem to be backfiring. But explaining that to the Russians, in my personal experience, is not a very productive way to go. They don't like being lectured by foreigners about what's in their national interest. They think they're the best judge of their national interests. So I'm not optimistic that we can reason with them about what they're doing here.

We can try and sanction them. In fact, arguably that's what we're doing over Ukraine. We're sanctioning them to try and come back into compliance with the Budapest Memorandum. You know, I guess I'd say the sanctions so far obviously have not reversed their policy, and personally I have a hard time imagining some combination of additional economic sanctions that we could apply on Russia that would yield a different outcome. I'm interested to hear suggestions of what might work, but personally I'm skeptical that there is some formula out there of additional economic sanctions that would persuade Russia to change course.

So the final option is one that Fred Ikle, who was something of a scholar about arms control compliance, suggested in really kind of the seminal article in 1961 on what to do when arms control treaties are violated. He made the observation that, "political sanctions are likely to be less effective than an increased defense effort," in response to arms control violations. So I think that observation is true, but I guess the Russians seem to be calculating that there's not the will in the United States and among other NATO members to respond to what they're doing through an increased defense effort at this point.

So if we have no good options for persuading the Russians to change course, I think we're just going to have to be patient and deal with them as they are in the meantime. I'm confident that, in the long term, Russia will realize that it's not in their national interest to have a confrontational policy or policy of intimidation toward their neighbors in Europe, but they don't seem to have recognized that today, and I think we just need to wait until they come around.

Mr. ADERHOLT. Thank you for your—for your testimony.

As you can probably hear from the buzzer, we have been called for votes. So we're going to do a short recess here and allow Congressman Smith and myself to now go cast our votes. So we'll just take a short recess for a few minutes and pick back up probably after—I think there's three more votes.

Mr. SMITH. I expect members will be returning between 2:30 and 2:35.

[Recess.]

Mr. SMITH. The Commission will resume its hearing. And again, I want to apologize to all of you, including our witnesses, for that break. We don't expect another vote until about six o'clock. So unless we get a fire drill, we'll be OK.

So, had you finished or—

Mr. RADEMAKER. Yes, Mr. Chairman, I concluded my remarks.

Mr. SMITH. Thank you very much. Mr. Osborne?

**TIM OSBORNE, EXECUTIVE DIRECTOR OF GML LTD., MAJORITY OWNER OF NOW-LIQUIDATED YUKOS OIL COMPANY**

Mr. OSBORNE. Thank you. Mr. Chairman, thank you for inviting me to today to testify concerning the economic dimension of the Helsinki process, specifically the Russian Government's failure to uphold the rule of law in the Yukos case. My name is Tim Osborne. I'm a director of GML Limited, the indirect majority shareholder of the former Yukos Oil Company.

The Russian Federation's actions with regard to Yukos are a case study on Russia's behavior and a cautionary tale on the risks of investing in the Russian market. I've been involved in two separate legal processes surrounding the Yukos case in which Russia has clearly demonstrated its attitude to its international legal obligations and the rule of law. Today I will address the following key points: Russia's violations of its international legal obligations in the Yukos affair; the importance of rule-of-law mechanisms, specifically the Energy Charter Treaty and the New York Convention; and GML's ongoing enforcement and collection actions in the United States and globally.

GML Limited, through its wholly owned subsidiaries and Veteran Petroleum Limited, a pension fund for Yukos employees, owned approximately 70 percent of Yukos. When Yukos was nationalized in 2004, through spurious tax claims and rigged auctions, we tried very hard to talk to the Russian Federation to reach a reasonable compromise, and have tried many times since. These approaches are mainly ignored but otherwise completely rejected.

Consequently, in 2005, Hulley, Yukos Universal, and Veteran filed suit and began arbitrations under the Energy Charter Treaty at the Permanent Court of Arbitration in The Hague. The Energy Charter Treaty is a multilateral investment treaty reached in 1994 to promote investment in the energy sector of the former Eastern Bloc nations and included a dispute resolution mechanism for disputes between investors and host countries.

In July 2014, the independent arbitration panel concluded that the Russian Federation had, in violation of the Energy Charter Treaty, expropriated Yukos and without paying any compensation. The tribunal awarded damages to Hulley, Yukos Universal, and Veteran in excess of \$50 billion. This is the largest amount of damages ever awarded in a commercial arbitration and would not have been possible without the use of the Energy Charter Treaty.

Russia has applied to the court in The Hague to have the award set aside. This is not an appeal but a limited right to have certain aspects of the award reviewed by the court. In particular, Russia has the right to ask the court to consider in full whether there was, in fact, a binding arbitration agreement. In my view, the application to set the award aside has little chance of success and is nothing more than a further delaying tactic. The Russian Federation's strategy throughout the arbitration process was primarily to delay matters as much as possible.

Another important rule-of-law element to this case is that there is a mechanism to allow collection of the awards. The New York Convention is a multinational treaty signed by over 150 countries, including Russia. It provides a framework for the recognition and enforcement of arbitration awards. In order to enforce an award it must first be recognized or confirmed by the local court.

Once recognition is complete, then the award becomes a binding ruling of the local court and is enforceable as such. Enforcement is effected by identifying and claiming relevant assets belonging to the defendant's sovereign government. Enforcement usually is not possible against diplomatic, noncommercial assets of a sovereign state used for sovereign purposes, e.g., embassy buildings.

Enforcement and collection of the awards is not simply theoretical. It is happening as we speak. In the United States we commenced our recognition action, here called confirmation, by issuing proceedings in the district court in Washington. The court gave permission for the papers to be served on the Russian Federation. Russia has appointed a leading U.S. law firm to represent it, and the Russian Federation's deadline for filing its opposition brief was yesterday. They filed late last night, and it's a voluminous filing which we have not yet read, but it will give you some indication if I tell you it took six hours for them to upload the papers.

We've commenced similar processes in the United Kingdom, France, Belgium, and Germany. In France and in Belgium the awards have been recognized already. Exequaturs have been issued, and these permit immediate enforcement against Russian Federation assets in each jurisdiction. With regard to real estate, a notary has been appointed by the Belgian court to sell the properties, and in France the same should happen in December. In both France and Belgium we've frozen bank accounts where Russian Federation money is being held.

In due course we will also look at enforcement against assets of state-owned and/or state-controlled companies such as Gazprom and Rosneft. The Russian Federation will no doubt argue that such entities are separate and independent of the Russian State and thus do not hold Russian State assets. It will be for us to convince the court that they're agents of the state. The Hague tribunal specifically opined that Rosneft was an agent of the Russian Federation in the expropriation of Yukos.

Russia has threatened retaliation against nations who enforce the awards. The Russian Ministry of Foreign Affairs wrote to the U.S. Embassy claiming that the awards were an unjust and politically motivated act "incompatible with the ideas of the rule of law, independent, impartial and professional international justice." This is their position despite the fact that Russia had participated fully

in the ECT process and had indeed appointed one of the arbitrators.

The Russian Ministry of Foreign Affairs goes on to say that if the U.S. courts allow recognition and enforcement against Russian property in the USA, this will be considered by the Russian Federation as grounds—and I quote—“for taking adequate and proportionate retaliatory steps in relation to the USA, its citizens and legal entities.” This is set out in the State Department’s letter of July 17th, 2015, to the United States District Court, and a copy of that’s been provided to you.

I believe this letter succinctly sets out Russia’s general attitude to the rule of law and its attitude to international legal obligations. Russia has communicated that same message to the governments of France and Belgium. It hasn’t said the same to the U.K. We don’t know why the U.K. has been left out yet.

The second lawsuit that I would like to bring to your attention is a case brought before the European Court of Human Rights by Yukos itself. The case was brought by the Yukos management on behalf of all Yukos shareholders and complained about the expropriation of Yukos.

On July 31st, 2015, the European Court of Human Rights awarded damages of approximately 1.9 billion euros—roughly \$2.2 billion dollars—again the largest award ever made by the European Court of Human Rights. The Russian Federation was ordered to agree to a distribution plan for compensation payable to shareholders with the Committee of Ministers by June 15th, 2015. Despite prompts from the Committee of Ministers, Russia has stated that it is not developing any plans to compensate Yukos shareholders and that further actions in relation to the European Court of Human Rights’ decision will be based on, quote, “national interests.”

In closing, I’d like to leave you with these four thoughts: It is clear that the Russian Federation is not honoring its obligations and commitments under the rule of law or in a manner consistent with the Helsinki process. Russia’s tendency, more often than not, has been to ignore, delay, obstruct or retaliate when faced with its international law responsibilities. Russia’s general prevarication on all matters related to Yukos, its threats to the U.S., French, and Belgian Governments and the claims that it can ignore its international obligations if that best suits its national interest demonstrate unequivocally that Russia cannot be trusted in international matters, and that even when it has signed up to international obligations, it will ignore them if it is what it thinks serves it best.

I don’t have any solutions. We are very pleased we’re in a legal process that we can rely on courts where the judges follow the law and not the direction from their political masters. We will continue with that process, I suspect, for many years. I hope my testimony has shed more light on Russia’s behavior and demonstrated the need to encourage Russia to adhere fully to the rule of law. I appreciate the opportunity to share my views and thank you for your time. I’m happy to answer any questions.

Mr. SMITH. Thank you so very much, Mr. Osborne. I’d like to now yield the floor to Ambassador Larson.

Amb. LARSON. I'd like to submit my prepared statement for the record and summarize it briefly now. My name is Alan Larson.

Mr. SMITH. Without objection, so ordered.

**ALAN LARSON, SENIOR INTERNATIONAL POLICY ADVISOR  
WITH COVINGTON & BURLING LLP, FORMER UNDER SEC-  
RETARY OF STATE FOR ECONOMICS AND CAREER AMBAS-  
SADOR, DEPARTMENT OF STATE**

Amb. LARSON. Thank you. I'm senior international policy adviser at Covington & Burling LLP. I also serve as chairman of the board of directors of the U.S. chapter of Transparency International.

Earlier in my career I was a career foreign service officer and served as undersecretary of state for economic affairs during the administrations of Bill Clinton and George W. Bush. My testimony has been informed by those experiences but the views I'm expressing today are my own.

The Helsinki framework is grounded in the realization that lasting security, meaningful economic cooperation, and respect for human rights are interlocking goals. They all rest on a common foundation: respect for the rule of law and for international agreements.

In 2012, I testified before the Senate Finance Committee and urged Congress, immediately and unconditionally, to extend permanent normal trade relations [PNTR] to Russia. I said then, and believe now, that it was a good thing for Russia to join the World Trade Organization. By doing so, it began to apply the rule of law in its trading relationships with the United States and other WTO members.

At the same time, I noted that there was more work to do and that it was important for Russia to apply the rule of law to other aspects of the economy, notably investment protection and the control of corruption. I was very grateful that when Congress ultimately enacted PNTR, it included Section 202, which contained what I have referred to as the rule of law for business agenda.

In this section of the PNTR legislation, Congress called on the administration to take a number of steps and to report annually on the progress achieved, including engaging Russia on corruption and advocating for U.S. investors in Yukos Oil Company. My firm represents the American investors in Yukos Oil Company. We believe that they suffered a loss of some \$14 billion when Yukos was dismantled. As you said, the United States is not a member or signatory of the energy charter treaty; however, the United States did negotiate a bilateral investment treaty with Russia in 1992. Unfortunately, Russia did not ratify that treaty. And so the American investors do not have a direct means of investor-state dispute settlement.

Mr. Chairman, the reports of the administration on Section 202 in the last few years have not been encouraging. Russia has backtracked on its anticorruption efforts. There's no indication that Russia is ready to compensate American investors in Yukos Oil Company. This is especially disappointing since three separate investor-state dispute settlement panels have each ruled unani-

mously that Russia expropriated Yukos and owes compensation to foreign investors in the company.

More generally, the Russian federation has not adhered to the Helsinki framework. In 2014, Russia's occupation of Crimea was a clear violation of the commitments Russia made in the Budapest Agreement of 1994. Russia has continued to intervene in eastern Ukraine, in violation of the Minsk Agreement of 2014. Russia also has failed to comply with the human rights and humanitarian dimensions of the Helsinki framework. Russian authorities have cracked down on civil society and government critics, while curtailing freedom of expression.

The destruction of Malaysia Airlines Flight 17 is another very, very troubling example of Russia's failure to respect the rule of law. The United States and the European Union, among others, have responded to Russia's conduct in Ukraine by imposing sanctions.

It's important for the United States to hold Russia to account. But to be effective in calling other countries to account, we must maintain the highest standards of our own compliance with Helsinki.

In my written testimony, I've drawn attention to some recommendations of Transparency International USA in respect of increased transparency on the financing of election activities, as well as targeted provisions related to beneficial ownership and undisclosed self dealing. I believe that action on these recommendations would further strengthen the platform the United States is on when it seeks to hold Russia accountable.

In summary, Mr. Chairman, I recommend that Congress and the administration take the following steps: First, recognize that respect for the rule of law is a strategic objective that lies at the heart of the security, economic and commercial, and human rights dimensions of the Helsinki framework. Two, ensure that Russia is held accountable for its actions in Ukraine, including its occupation of Crimea and its interference in eastern Ukraine. Three, press Russia to implement the rule of law for business agenda that Congress included in Section 202 of the Russia PNTR legislation. Four, make clear that American shareholders in Yukos Oil Company must be fully compensated. Five, seriously engage Russia on the anticorruption agenda. Six, urge Russia strongly to open up more political space for civil society to operate in Russia. Seven, maintain a common line with the European Union and others on sanctions policy related to Ukraine. And eight, demonstrate that the United States itself is seriously committed to lead by example. And in this regard, give due consideration to the recommendations that Transparency International USA has called for and which are included in my testimony.

I wanted to conclude by thanking you for the opportunity to testify. I believe that Russia's non-compliance with the Helsinki framework is a very serious foreign policy challenge that demands a thoughtful, a firm, a bipartisan, and a sustained response. I would be pleased to address any questions or comments you may have.

Mr. SMITH. Thank you, Mr. Ambassador. And I'd like to now yield the floor to Mr. Kara-Murza.



**VLADIMIR KARA-MURZA, COORDINATOR, OPEN RUSSIA  
MOVEMENT**

Mr. KARA-MURZA. Thank you very much, Mr. Chairman. And thank you for holding this important and timely hearing and for your invitation to testify. It is an honor to appear before the Commission. This year marks the 40th anniversary of the Helsinki Final Act. And while many things have changed since its signing, one unfortunate fact remains the same. Just as the Soviet Union did in 1975, the Russian Federation today, after a brief democratic interlude of the 1990s, treats the human rights commitments undertaken under the Helsinki process as a dead letter.

Freedom of expression, which is guaranteed under the Copenhagen document and other OSCE statutes has been an early target of Vladimir Putin's regime. One after another, independent television networks were shut down or taken over by the state. Today, the Kremlin fully controls the national airwaves, which it has turned into transmitters for its propaganda, whether it is to rail against Ukraine and the United States, or to vilify Mr. Putin's opponents at home, denouncing them as, quote, "traitors," end of quote. One of the main targets of this campaign by the state media was opposition leader Boris Nemtsov, who was murdered in February of this year, 200 yards away from the Kremlin.

The right to free and fair elections is another OSCE principle that remains out of reach for Russian citizens today. In fact, the last Russian election that was recognized by the OSCE as conforming to basic democratic standards was held more than fifteen years ago, in March 2000. Every vote since then has fallen far short of the principles outlined in the Copenhagen document that requires member states to, and I quote, "enable political parties to compete with each other on a basis of equal treatment before the law and by the authorities," end of quote. This is from paragraph 7.6 of the Copenhagen document.

In reality, opponents of Mr. Putin's regime have received anything but equal treatment at the ballot—if, indeed, they were allowed on the ballot at all. In many cases, opposition candidates and parties are simply prevented from running, both at the national and at the local level, leaving Russian voters with no real choice. According to the OSCE monitoring mission, the last election for the state Duma, which was held in December 2011, was marred by, and I quote, "the lack of independence of the election administration, the partiality of most media, and the undue interference of state authorities at different levels," end of quote. It was evidence of widespread fraud in that vote that led to the largest pro-democracy protests under Mr. Putin's rule, when more than 100,000 people went to the streets of Moscow to demand free and fair elections.

Another disturbing feature of today's Russia is reminiscent of the Soviet era. According to Memorial, Russia's most respected human rights organization, there are currently fifty political prisoners in the Russian Federation. This is using the definition of the Council of Europe, that is, prisoners whose, and I quote, "detention is the result of proceedings which were clearly unfair, and this appears to be connected with political motives of the authorities," end of

quote. These prisoners include opposition activists jailed under the infamous Bolotnaya case for protesting against Mr. Putin's inauguration in May 2012, the brother of anticorruption campaigner Alexei Navalny, and Alexei Pichugin, the remaining hostage of the Yukos case.

This list is not limited to just Russian citizens. As you mentioned in your open statement, Mr. Chairman, last year, two foreigners—Ukrainian military pilot Nadiya Savchenko and Estonian security officer Eston Kohver—were abducted on the territories of their respective countries and put on trial in Russia. Kohver was released last month in a Cold War-style prisoner exchange across the bridge. Savchenko's trial is still underway. And as you also mentioned, another Ukrainian prisoner, the filmmaker Oleg Sentsov, was recently sentenced to 20 years in jail on the charges of, quote, "terrorism," end of quote, for protesting against the Kremlin's annexation of his native Crimea.

Needless to say, Mr. Chairman, it is a task for Russian citizens to improve the situation with rule of law in our country. But, contrary to the oft-rehearsed claims by Kremlin officials, human rights, and I quote, "are matters of direct and legitimate concern to all participating states and do not belong exclusively to the internal affair of the state concerned," end of quote, as is explicitly stated in the OSCE document adopted, of all places, in Moscow. It is important that fellow member states, including the U.S., remain focused on Russia's OSCE commitments, especially as we approach the parliamentary elections scheduled for September the 18 of this coming year. It is important that you speak out when you encounter violations of these commitments.

Above all, Mr. Chairman, it is important that you remain true to your values. Nearly three years ago, Congress overwhelmingly passed, and President Obama signed, the Sergei Magnitsky Rule of Law Accountability Act, of which I believe you were a co-sponsor. And in my view, this is one of the most principled and honorable pieces of legislation ever adopted. This law is designed to end the impunity for those who continue to abuse the rights of Russian citizens by denying these people the privilege of traveling to and owning assets in the United States—a privilege many of them so greatly enjoy. Unfortunately, implementation of this law remains timid, with only low-level abusers targeted so far. Implementing the Magnitsky Act to its full extent and going after high-profile violators would send a strong message to the Kremlin that the U.S. means what it says, and that human rights will not be treated as an afterthought but as an essential part of international relations.

Thank you very much, and I look forward any questions you may have.

Mr. SMITH. Thank you so very much for your testimony and for your bearing up under such incredible pressure. And again, we're so grateful to God that you have survived an attempt on your life.

Let me just ask you—my first trip to the Soviet Union at the time was in 1982 on behalf of Soviet Jewish refuseniks. A few years later got into Perm camp and, many of us thought that glasnost and perestroika would really yield to a robust democracy. How far down the pegs, in your opinion, has Russia descended? Remember when we were talking about a peace dividend after the

breakup of the Soviet Union, which never really happened? And we've seen that on a whole host of fronts—the old KGB went into a—many of those people went into trafficking and a whole bunch of nefarious affairs. But it is as if the old Soviet Union, especially with Russia as its core, is being reconstituted, and the same old means of repression are manifesting themselves. And your insight as to how bad has it gotten, compared to where it once was?

Mr. KARA-MURZA. Well, thank you for the question, Mr. Chairman. Well, we did have many problems in the 1990s, to be sure, but in the 1990s we had real competitive elections, we had a real parliament with a genuine opposition, and we had pluralism in the media with robust and independent television stations, for example. This is what Mr. Putin inherited when he assumed power almost 16 years ago.

Today, as I mentioned in my statement, we have none of that. We have a rubber-stamp parliament that approves every single repressive measure coming from the Kremlin. The opposition is being, in many cases, banned from running in elections. When it is allowed, it's harassed and not allowed to campaign. Most of the media—especially electronic media, television networks—have become propaganda outlets for the regime. We have no working judicial system. The courts have become obedient tools for the Kremlin in its political repressions. Among other things, I mentioned the number of political prisoners we have today.

So it really is very bad. But what gives me hope as I travel around Russia and the regions as we—you know, what we do at Open Russia is to try to build the widest possible platform for democracy and civil society activists. And I see many people outside of Moscow and St. Petersburg also, who want a normal, democratic, rule-of-law based, European future for our country.

And this is why, despite the fact that the last few months have been especially bad and especially dark, especially since Boris Nemtsov was murdered—the leader of the Russian opposition—I still remain optimistic in the long term that we have a future based on justice and freedom and the rule of law, that we're not destined to remain under the system we have now. And you know, Soviet dissidents used to have this saying, night is darkest before the dawn. And it's certainly very dark now, but I'm still hopeful for the future.

And actually, while there are very many things—and it's very important that you bring up this issue—very many things that are similar so the Soviet regime's practices—censorship, political prisoners, the absence of free elections and so forth—there is one important difference in the nature of the regimes. And that is that while they harassed and imprisoned dissidents, Brezhnev, Suslov, Andropov and the like did not hold bank accounts in the West. They did not send their kids to study in the West. They did not buy yachts and villas in the West.

The leaders of the current regime do all that. They want to rule over Russia in the manner of, you know, Zimbabwe or Belarus, but they themselves want to enjoy all the privileges and the perks that the free world has to offer. And this is why I think the Magnitsky Act and the Magnitsky-type sanctions are so important, because they strike at the very heart of this rotten system. And it ends this

double standard. It ends this impunity. And I think it's very important that you continue on this path of sanctioning—not sanctions against Russia as a country, but sanctions—personal, targeted sanctions against those human rights abusers and those corrupt officials who take advantage of our country and rob it of its future.

Mr. SMITH. And it is your testimony that the administration has been, quote, “timid,” in implementing Magnitsky?

Mr. KARA-MURZA. I believe so, because if you look at all the names they've added over the past three years, they've been mostly low level—not mostly, all of them have been low-level abusers—you know, fall guys, essentially. I'm not saying these people aren't responsible. Of course they should be targeted also. But there shouldn't be this glass ceiling, as it were, in the implementation of the Magnitsky Act. It should be applied to all the abusers, regardless of their rank, regardless of their position.

And there was actually a case in this country—outside of the Magnitsky Act—it was a separate case. In fact, the co-chairman of this Commission, Senator Wicker, last year requested that the FBI open an investigation under the anti-money laundering legislation, the Foreign Corrupt Practices Act, into a person called Mikhail Lesin, who was head of Gazprom-Media at the time, the largest state propaganda outlet of Mr. Putin in Russia today. And it was found that he purchased luxury real estate in California. And so Senator Wicker requested that the FBI open an investigation. They did open an investigation last December. And a few days after they opened the investigation, Mr. Lesin had to step down from his post.

This is just to illustrate that this process is effective. These personally targeted sanctions are effective. And it's my sincere hope that the U.S. administration is not timid, but is bold and committed about going forward with these sanctions against these abusers and human rights violators.

This is a pro-Russian measure. When the Kremlin says it's an anti-Russian measure, they're wrong, as they are on so many things. And these measures are actually popular with the Russian people, as several opinion polls have showed, because the Russian people understand this this is not against the country. This is against the bad guys. And I hope you'll continue with this work.

Mr. SMITH. Let me ask you, Mr. Osborne, are there other cases where Russia either lost their decision, as they lost in your case? And have they paid?

Mr. OSBORNE. There have been two other cases on the Yukos facts, brought—one under the U.K.-Russia bilateral investment treaty, and one by Spanish investors under the Spanish-Russia bilateral investment treaty. Both of those decisions were exactly the same as ours, that Russia had expropriated the assets illegally and should pay compensation. The RosInvestCo case collapsed because the award of damages was not sufficient to warrant the investors moving forward to the appeals in Sweden. The Spanish investors are currently litigating in Sweden on the appeal and the jurisdictional decision. So that's ongoing. So Russia hasn't paid anybody, anywhere, at the moment.

Mr. SMITH. You mentioned that they did a filing last night, and it's voluminous.

Mr. OSBORNE. It's voluminous, and in the United States. And they're arguing, basically, that there's no jurisdiction for the U.S. court, and that at any rate it holds sovereign immunity. So then New York convention does not apply because of certain specific arguments, which I haven't yet had a chance to look at.

Mr. SMITH. Again, what has been the timeline? How many years to date? And how many more years do you think, especially with their ability to try to run out the clock somehow?

Mr. OSBORNE. Well, we started this case in 2005. And we got the final arbitration award in July of 2014. So that was about nine years. We now have—because we're just assuming Russia is never going to pay—so we have to collect. That could easily last another nine or ten years, but it's incremental. We can go country to country, asset to asset. So we will start, I believe, collecting assets in France and Belgium next year. It'll take longer in the U.K. and the U.S. because under the common law regime you have to complete recognition before you move to enforcement.

But we will keep going. We are determined to enforce this award. We believe in the award. We believe in the rights of the shareholders to collect under this award. The expropriation was illegal. And as I said before, we are very pleased that we have access to courts where the rule of law does apply and there's a separation of power between the court and the politicians, so that we can rely on the judges to reach the right decisions, and they will just apply the law as they interpret it. That's all we've ever asked for.

Mr. SMITH. And Mr. Larson, in your testimony you said there is no indication that Russia is convinced that compensation for American investors is a priority. For the U.S. government, there is certainly more than the administration can and should do to advance the rule of law for the business agenda that Congress mandated in Section 202.

Could you elaborate on that? I mean, what haven't we done? Is it not part of—I mean, I know they were working on issues related to Iran, a flawed agreement from my point of view. But Lavrov and John Kerry saw each other frequently, or at least they were in the same floor—[laughs]—if not in the same room. Is it just that it's just out of sight, out of mind, they never raised this? Are there others that ought to be raising it?

Amb. LARSON. Thank you for the question, Mr. Chairman. I'd make two or three observations. First of all, as Mr. Osborne has just said, this is going to be a long-term effort under the best of circumstances, especially since the U.S. shareholders who accounted for, collectively, 12 percent of the company, and some 14 billion [dollars] in losses, you know, are very significant. I mean, this is one of the largest expropriations that Americans have been the victim of. It's just that it's been a very dispersed group of shareholders, rather than one large shareholder.

Second, I would put the focus personally on Russia's lack of response more than the administration's lack of effort. I think the administration has taken steps to bring this to the attention of the Russians. I think the Russian reaction, so far as I can understand it, has been similar to what Mr. Osborne has seen in the efforts that he's been making. It's just simple resistance.

But the third point I'd make is this: I don't think that Russia can hope to rejoin the world economy—cannot hope to be a normal country in the international sense. Russian citizens want to live in a normal country. Russian citizens, I think, want to live as a normal country within a global economic framework. When that time comes, it's very important that Americans and American shareholders have a seat at the table, and that's the effort that we're engaged in.

Mr. SMITH. Do you think that Russia's pivot towards China, both militarily as well as economically, accounts for their being less responsive to rule of law issues? Because certainly China has not shown itself to care all that much about human rights in general, and rule of law in particular. I mean, I can foresee—and I've chaired 55 hearings on human rights in China, can't even get a visa to go there anymore—and what has struck me is how gullible we in the West have seemed to be with China in thinking they'll follow the rule of law, and contract law, copyrights and the like. And I think at the day of their choosing, that can quickly go away. And so I'm just wondering what your thoughts are—all of you, if you would—this pivot to China by Moscow?

Amb. LARSON. I do—

Mr. SMITH. Certainly on the West for—

Amb. LARSON. —definitely. I agree with your basic orientation, which is that having stepped away from an international framework of rule of law and the global institutions, there has been a tendency to strike separate deals to try to recreate some of the economic relationships that were so important during the Soviet era. I think this is a losing proposition from the standpoint of an international economic strategy. And I don't think that the framework that might be created among the BRICS, the so-called BRICS, is a framework that is going to bring prosperity to Russia.

One of the things that the United States has done very well, in my opinion, since World War II has been to create on a bipartisan basis an international economic framework, the Bretton Woods institutions, World Bank and IMF, the World Trade Organization, and just a framework of international economic law that has permitted lots and lots of countries to become more prosperous. Russia looked as if, in the 1990s, it was on an effort, on a pathway designed to become a bigger part of that international economic framework. They've taken a detour. I think they need to get back on that path if they're going to be successful as an economic country.

Mr. SMITH. Yes, Mr. Osborne.

Mr. OSBORNE. I think it's interesting that they've turned to China, because one of the things that Mr. Putin fell out with Mr. Khodorkovsky about was his desire to build a pipeline to China to deliver oil and gas. I think on the whole—the whole thing with China is more a sort of paper threat than a real problem, because it doesn't have the ability to deliver its oil and gas, which are its principle exports, anywhere but to Europe, because that's where the pipelines are. So I think it's sort of trying to show it's got alternatives, but I don't think it has, realistically.

Mr. SMITH. Yes.

Mr. KARA-MURZA. I would just add, Mr. Chairman, that in my view—and I'm the only Russian on this panel—in my view this so-called pivot to China goes directly against our country's long-term national interests, because—frankly, the Chinese authorities, I think, see us as a potential source of territory in the future, quite frankly, and historically and civilizationally I think Russia is a European country where, in general terms, we're part of the Western world. And I think that's where our rightful place is in, too.

You know, this regime that we have in the Kremlin right now may try to, you know, pretend otherwise, and take some steps to show that it thinks otherwise, but I think, first of all, it's not going to work in the long term because our future is European, I'm convinced of that. And I think, frankly, it's against Russian national interest to try to even do that. But you know, they don't often think about Russian national interests, especially long-term ones.

Mr. SMITH. Let me ask you, has the Orthodox Church shown itself to be helpful to political dissidents? We know that during Soviet times it was the church itself, except for some collaborators, that was targeted for destruction and desecration, and many of its priest, the metropolitans were slaughtered. I remember visiting museums on atheism in Leningrad. One of them was in—

Mr. KARA-MURZA. It was in a cathedral, right.

Mr. SMITH. —Kazan Cathedral. I couldn't believe how—I mean, all the three major religions of the world were desecrated inside of that building, as jokes and folly and young people were being marched through. But the church now has regained a great deal of—particularly the Orthodox Church—a great deal of credibility and stature. And I'm wondering if it would be helpful on human right cases and also on rule of law issues?

Mr. KARA-MURZA. I think in this question it would be right to make a distinction between the church as a whole—including the believers, you know, the clergy—and the top hierarchy. Because I think if we take the top hierarchy, the metropolitans, the patriarch, they have been generally very loyal to this regime, and supporting it in many cases. Although, when we did have the mass protests, pro-democracy protests back in December 2011, the patriarch made a statement where he said that we have our parishioners on both sides of this, both in the protests and in the Kremlin, essentially. I think that would be the right position for the church hierarchy to take. Unfortunately, too often the top leadership of the church has taken a pro-regime position.

However, if you take clergy—I mean, there are several well-known clergymen who have been vocal on human rights issues. And one example that springs to mind is Father Georgy Edelstein, whose—actually, whose son is the speaker of the Knesset now, Yuli Edelstein in Israel. But he's a Russian Orthodox priest in the Kostroma region, it's a few hours' drive away from Moscow. He's actually a member of the Moscow Helsinki group. He's been vocal on human rights issues for many years. And of course, if you just take ordinary churchgoers—the patriarch was right in 2011. You have people on both sides of the divide. So I think we have to distinguish the bureaucracy, if I may be permitted that word—the top bureaucracy of the church structure, and the church generally as a whole. I think they show two different stories on this front.

Mr. SMITH. Great. We know that Russia is violating basic rules of Interpol, and often putting people on the list who are exposing—as in the Magnitsky case itself. What would be your advice as to how we can—our Parliamentary Assembly has, for at least the last five years, included language in our declaration that we do at the end of our Parliamentary Assembly in the summer months, in July, a strong exhortation not to abuse Interpol. And I worry about, Mr. Osborne, people like you—can you travel back to Moscow without fear? I know you're going back, Vladimir. And we are concerned, and the Commission will follow you very closely because we're very concerned about your welfare. So—

Mr. OSBORNE. Well, I wouldn't go to Moscow. I think I'd probably have no trouble getting in, but the return trip might be a little more complex. I think—my sense of Interpol is that they don't exercise their discretion to refuse red notices that are clearly political. They take Russia's word for it. And that's the ridiculous thing. You can't get anywhere with Interpol. Now, I gather they may have been moving a little bit more towards doing the right thing, but for years you couldn't get them to look at an individual case and say, yes, that's political, we're going to scrap the red notice. And that's where it's got to change, because I don't think we'll change Russia.

Mr. SMITH. Thank you.

Mr. KARA-MURZA. Mr. Chairman, first of all, I would just like to take this opportunity to express my gratitude for the concern and the statement you put out after what happened to me. I'm really grateful for it, and grateful to be here.

On your Interpol question, I think it's been a long-standing and, frankly, unacceptable practice that Interpol accepts at face value the politically motivated requests that the Kremlin regime puts in. Although Interpol's own constitution, in chapter three, specifically prohibits it from engaging in political cases, in practice it has been doing so. We've seen several people connected with the Yukos case put on Interpol notices. We've seen Interpol notices against Bill Browder, for instance, who is the chief campaigner for the Magnitsky Act. We've seen notices against the late Boris Berezovsky, who was clearly persecuted for political reasons by the Kremlin, and so on.

In some cases, it's possible to fight off these politically motivated notices. Like Mr. Browder has managed to fight it off. We actually have a member of the audience here today, Mr. Pavel Ivlev, a former legal advisor to Yukos. He was in there for 10 years. He just fought it off. He just took his name off the Interpol list. But it's a cumbersome and lengthy process. And it shouldn't, frankly, take 10 years to take off somebody from an international wanted list, to take off somebody who's been prosecuted for political reasons by an authoritarian regime in the Kremlin. And it's not like that's a secret, you know? Everybody understands it.

So I think those member states of Interpol that are democracies, that are based on rule of law, like the United States, could initiate, maybe internally, a process of reforming the organization to strengthen the transparency, to strengthen the overview, the oversight of these cases. And it's not just the Kremlin regime that abuses it. I think there have been cases from Belarus, from Iran, from other authoritarian states that have been using this inter-



national clout, frankly, that Interpol notice gives, and using it also for their domestic propaganda purposes.

You know, you would never hear on the state television news in Russia that somebody managed to remove their name from the list, but whenever there is a notice issued, that's front-page news. So they also use it for domestic propaganda. And I think, frankly, it's an unacceptable situation and it's high time democratic member states of Interpol did something about it.

Amb. LARSON. I have nothing really to add. I've seen the same problem that we've just heard described as well.

Mr. SMITH. Let me ask you, Mr. Osborne—are there sufficient numbers of assets, Russian assets that courts are able to seize to bring at least some closure, some coverage for those people who have lost so much? Do they have that much abroad?

Mr. OSBORNE. Absolutely. I mean, we might have trouble finding \$50 billion if we're unable to pierce the corporate veil of companies such as Rosneft and Gazprom. But we can certainly find double-digit billions of dollars in assets. We've got 150 countries to go to. We're only in five so far. We know where there are assets, and we have it—I wouldn't say well planned, but we have it planned. And we're quite confident that we can make sure that this is well-worthwhile.

Mr. SMITH. Has the U.S. Government shown support for that approach? Or are they fearful of—I'm talking about the administration—of a retaliatory action by the Russians?

Mr. OSBORNE. Well, I'm going to see the State Department tomorrow, and that will be the first time I've seen them since that letter arrived. But I think the fact that they immediately sent it on to the court and have it put on the court's docket indicates that they were less than impressed by it. I think the U.S. administration has been generally supportive in terms of listening to me and what it said over the years. We've never asked them for anything because, as I said before, we're comfortable with this being a legal process. We have faith in the court of this country in the same way that we have faith in the courts of the countries of the U.K. and Western Europe.

So we keep the administration informed, we keep people on the Hill informed, because we want people to know what's going and have the right facts at their disposal. And the only thing that we can really ask from the political side is for an assistance in trying to reach a settlement with the Russian Federation so we can stop all this process. But, as I said in my testimony, we've tried endlessly to talk to them. And usually we're just completely ignored. But if they do deign to give us any response, then it's just an outright refusal to discuss it.

Mr. SMITH. Ambassador Larson, is there—and please answer anything along those lines—is there anything besides espousal by the State Department that could be done?

Amb. LARSON. We have certainly made the case that American investors, the 20,000 of them that suffered losses from the expropriation of Yukos Oil Company, need their government to advocate on their behalf, need to press the case with the Russian authorities, that the U.S. investors simply cannot be left off. There is a legal process underway that other investors can benefit from. The

U.S. investors are in a very similar situation, except for the fact that Russia didn't ratify the bid and we cannot go to court to pursue it in that way.

So I think we have to have at the end of the day the U.S. Government prepared to basically say, this is an obligation that you owe to the United States. And the United States will take care of making the payments available to the 20,000-plus claimants. At this stage, I think it's more a case of just making that case very strongly, very effectively, and very politically. And I think that we have had a very good hearing, frankly, from the U.S. Government, including top officials responsible for Russia and top officials responsible for economics.

So I think that just as Mr. Osborne is confident that there are assets there and there are ways to play this legal process out, I'm confident that at the end of the day Russia will see the light and will realize that U.S. investors have to be compensated. It'll be a long, hard road, though, I predict.

Mr. SMITH. Can I just ask you, have other multinational corporations and U.S. corporations—has the Chamber of Commerce, have they learned the lesson from what has been done to Yukos, for example, and has it had a chilling effect on investments? Are they aware of it, the way they perhaps should be, doing due diligence about risks when one invests in Russia?

Mr. OSBORNE. I don't have the numbers, but my understanding is there's been a significant drop off in investment in Russia over the last years, and will continue to be so. And one of the things—our efforts are having an effect in Russia because there's been a refusal to loan works of art for exhibitions in non-Russian countries. Gazprom in its latest bond offering was required—

Mr. SMITH. Out of fear of possible—

Mr. OSBORNE. Yes. Their fear that I'll turn up with a trap and take them away.

Mr. SMITH. With a court order.

Mr. OSBORNE. Yeah. But more importantly, Gazprom in its latest bond offering has had to include a disclosure that the assets in Europe could be at risk because of our litigation efforts. And that's got to have not been popular to have to include that.

Mr. SMITH. And they should take notice that not only are you not going away, you're accelerating your efforts—I mean, I would ask all of you, is there need for additional legislation? Secondly, we will do within the Commission a second hearing. We will ask the administration to come—let me know how your meeting goes, if you would—and pose true questions to them about where they are in terms of advocating, where they think we should go. So that'll be our second hearing that we'll follow up on from this hearing.

But is there a need for legislation, executive orders, for example, that the administration could better implement Section 202? I'm just thinking out loud now. Or any other provision of law that if another step were taken, I think—and I know, Vladimir, your suggestion that more upper-level people be included on the list of—you know, I was the sponsor of the Belarus Democracy Act. And if you look at that list—and Lukashenko was easier because he is not as powerful, certainly, as Vladimir Putin—but that list is a really good list of people that are barred from coming here, visa denial,

and doing business here. And so that is room for followup as well, to take a good, long look at that list again.

Yes, Ambassador.

Amb. LARSON. Mr. Chairman, I would give the following response to your question. I think that there is a need for a persistent, sustained effort. And that was sort of my last point. I did give eight specific recommendations. I'm not going to read those, but I encourage you to look at them. I think really pushing on Section 202 is important. I'm not saying that the administration is not pursuing it, but I'm just saying that I think it's helpful to them to see that there's strong interest and strong pressure from the Congress coming to this. And I think Russia will notice the strong pressure from the Congress.

I think there are some of the things that I alluded to in terms of the Transparency International issues that actually play into some of the points that have just been brought up. We have been pushing for more clarity on beneficial ownership in terms of some of the property interests, because sometimes people do try to hide their assets in the United States. And I think there are ways where important tweaks in our law would bring greater clarity and ensure that there's no impunity.

I think that's part of what Transparency International USA has been pushing for, is ensuring that there's no impunity and that it's not easy for—and not just in Russia, but other high-level people to travel to the United States and to hide assets in the United States that they clearly have taken from their own people. So I think those are important things to do. But the overarching thing is to stay the course and be prepared to stick it out.

Mr. OSBORNE. Yes. In terms of what more can be done, I mean, I will report to you and let you know what happens at my meeting with State, because I would expect them to be thoroughly offended by that letter that they received from the Russian Federation. And I'd like to know what response they are making to it. And if they're not planning to make one, perhaps they should be encouraged to make one, because otherwise if you don't do anything about a bullying letter, it looks like you're accepting it.

Mr. SMITH. Yes, is there anything you'd like to add before we—I just want to note that Cliff Stearns and Don Bonker, two former colleagues, are here. Don Bonker, back in the 1980s when he chaired the Human Rights Committee for Foreign Affairs Committee, which I now chair, he marked up a resolution that I had on behalf of Yuli Kosharovskiy, the leading Hebrew teacher in Moscow, who was just totally mistreated by the KGB. And that goes back to the early 1980s. And Cliff Stearns—I served with Cliff on the Foreign Affairs Committee. And he wrote landmark legislation—the millennium health care legislation, that continues to provide benefits to our nation's veterans. And other things too that both of these gentlemen have done. But it's an honor to be with them as well today.

Is there anything you would like to add before we conclude? And we will do a second hearing. I look forward to hearing back from you, Mr. Osborne—and again, if there's any ideas—and thank you for these specific ones, Mr. Ambassador; your eight points are excellent and well laid out—that we need to do, we stand ready to

do it, and to try to mobilize other members of the House and Senate to do likewise, as well as the administration.

Anything? Thank you. The hearing's adjourned.

[Whereupon, at 3:44 p.m., the hearing was adjourned.]

# APPENDIX

---

## PREPARED STATEMENTS

## PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Good afternoon. I would like to start today's hearing by welcoming our witnesses, the Honorable Stephen Rademaker, Mr. Tim Osborne, the Honorable Alan Larson, and Mr. Vladimir Kara-Murza. I thank you all for your willingness to share your views on Russia and the Rule of Law. I am also very interested in hearing your thoughts on possible steps the United States and the Organization for Security and Cooperation in Europe (OSCE) might take to encourage Russia to abide by the military security, commercial, and human rights commitments that correspond to the three dimensions of security established by the OSCE.

To frame how important today's discussion is, it is important to note that 40 years after the signing of the Helsinki Final Act, we face a set of challenges with a founding member of the organization that not only mirror the concerns that gave rise to the Helsinki Final Act, but in many ways directly undermine the principles espoused therein. These include the territorial integrity of States, respect for fundamental freedoms, and fulfillment in good faith of obligations under international law. At stake are not only the intervening years of hard won trust between members—now eroded to the point that armed conflict rages in the OSCE region—but whether the principles themselves continue to resonate today and bind members to a common understanding of what the rule of law entails.

Mr. Rademaker, in 1994, in return for transferring Soviet-made nuclear weapons on Ukrainian soil to Russia, Russia reaffirmed through the Budapest Memorandum its commitments to respect Ukraine's independence, sovereignty, and existing borders. Russia also committed to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and from economic coercion against Ukraine. Twenty years later, Russia's annexation of Crimea and subsequent intervention in the Donbas region not only clearly violate this commitment, but also every guiding principle of the 1975 Helsinki Final Act. This is not an isolated instance of Russian contempt for its OSCE and international security obligations. Under the 1990 Vienna Document, Russia's buildup of an estimated 40,000 troops next to the Ukrainian border, along with associated combat vehicle movements, as well as ongoing military exercises, should be subject to advance notice and OSCE member state inspections. No such notice or observation access has been forthcoming. On the treaty front, in March of this year, Russia officially abandoned the Conventional Forces in Europe (CFE) Treaty, an agreement it openly flouted since 2007. Repeated cancellations of planned U.S. and European overflights of the same Russian-Ukrainian border regions run contrary to Russia's Open Skies commitments. Finally, according to the State Department's 2015 Arms Control Report, Russian testing of cruise missile technology over the past few years directly violates the bedrock 1987 Intermediate Nuclear Forces Treaty, posing a potentially strategic security threat to the United States.

Mr. Osborne, as the Executive Director of GML Ltd.—the majority owner of the now liquidated Yukos Oil Company, in July 2014, you and your shareholders are part of a \$52 billion arbitration claim awarded by the Hague Permanent Court of Arbitration and the European Court of Human Rights (ECHR). Both courts found that the Russian Federation had violated international law, specifically the Energy Charter Treaty, by abusing its system of taxation to force Yukos out of business and illegally expropriating your, as well as U.S. citizens', investments. Russia has since failed to make the January 15, 2015, payment deadline, forcing European claimants to apply to both U.S. and European national courts to seize Russian assets located in the territory of their respective states as part of payment of the award. In the meantime, Russia has not stood still, threatening to withdraw from the ECHR, seize U.S. assets should American courts freeze Russian holdings on behalf of European claimants, while filing technical challenges that will occupy the courts for years to come. All of this fundamentally calls into question Russia's OSCE commitment to develop free, competitive markets that respect international arbitration of disputes, such as that of the Hague.

Mr. Larson, it is important to note that neither the Hague nor the ECHR rulings directly support the interests of U.S. shareholders. Due to the U.S. decision not to ratify the Energy Charter Treaty in the unrealized hope that Russia would eventually ratify a bilateral investment treaty between our two countries, they are now

unable to seek similar restitution for an estimated \$6 billion in losses. You have personally testified that the absence of protections that such a treaty would have provided has been a serious shortcoming for U.S. investors in Russia's energy sector, and that Russia's actions on Yukos violated international law. Left now largely dependent on a petition to the U.S. Department of State to espouse shareholder claims with the Russian Government—a dubious proposition indeed considering the current state of the bilateral relationship—what lessons does the Yukos case hold for both U.S. foreign policy makers and U.S. investors when it comes to future commercial engagement with Russia? What can the OSCE offer in terms of seeking recourse for our constituents?

Mr. Kara-Murza, I am happy to see that you have recovered from your illness earlier this year. It troubles me greatly to think that its cause was both directly related to your tireless work on behalf of democracy in Russia as well as symptomatic of Russian Government lawlessness, or at a minimum failure to ensure equal access before the law for all people. I continue to follow with both great interest and great sadness the case of your colleague Boris Nemtsov, whose unsolved murder is impossible to comport with Russian Government claims of support for human rights and fundamental freedoms. In fact, what is more readily apparent to the Commission is that Russia's courts are more interested in maintaining the government's ability to rule by abuse of the law, rather than serving as guardian to the rule of law. How else to explain the case of Ukrainian pilot and Parliamentarian Nadiya Savchenko, who in 2014 was abducted in eastern Ukraine by Russia-backed separatists and smuggled to Russia against her will. Currently being tried on charges of illegally crossing the border and the murder of Russian reporters who in fact were killed after she was placed in Russian custody, Savchenko faces 25 years in prison. In August 2015, a Russian court sentenced Oleg Sentsov, a Ukrainian film director and political activist from Crimea to 20 years in prison over accusations that he planned terrorist acts in opposition of Russia's annexation of the peninsula. Tortured during detention, Sentsov's only transgressions appear to be his refusal to recognize Russia's annexation of the peninsula and his effort to help deliver food to Ukrainian soldiers trapped on their Crimean bases by invading Russian soldiers. Finally, the case of Estonian law enforcement officer Eston Kover, who was investigating organized crime smuggling with ties to Russian security services when he was abducted by the same security forces at gunpoint, taken across the border to Russia, and charged with espionage. Convicted in August 2015 and sentenced to 15 years in prison, only to be released in September as part of a spy exchange with Estonia, Kover's case bookends Russia's abuse of its own law enforcement and judicial system to limit individual freedoms both within and beyond its borders.

To all our witness, I thank you for your time today. I look forward to your testimony and the discussion that follows.

PREPARED STATEMENT OF HON. ROGER F. WICKER, CO-CHAIRMAN, COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE

Thank you, Mr. Chairman, for your leadership and for calling a hearing on this worrying trajectory in terms of Russia's commitment to the OSCE's core principles. I also want to welcome our witnesses, and I look forward to hearing their insights on how we can encourage Russia to respect the rule of law, both internationally and at home.

When it comes to the American people and our own national security, my first concern is Russia's increasingly dismissive attitude towards its international security obligations. I'm sure our NATO colleagues in Europe feel the same. As the saying goes, it takes much longer to build something than destroy it, and it appears to me that a European security structure hammered out over more than a quarter of a century is in danger of collapsing in a period of less than two years.

Russia's illegal annexation of Crimea and its ongoing military presence in eastern Ukraine is a direct assault on pretty much each of the ten Helsinki Final Act principles. While clearly foremost in our minds, this violation of the Budapest Memorandum is hardly an isolated instance of Russian disregard for its OSCE and international security obligations. Per the 1990 Vienna Document, Russia's ongoing buildup of an estimated 40,000 troops next to the Ukrainian border, along with associated combat vehicle movements and ongoing military exercises, should be subject to advance notice and OSCE member state inspections. No such notice or observation access has been forthcoming. On the treaty front, in March of this year, Russia officially abandoned the Conventional Forces in Europe (CFE) Treaty, an agreement it has openly flouted since 2007. Repeated cancellations of planned U.S. and European overflights of the same Russian-Ukrainian border regions run contrary to Russia's Open Skies commitments. Finally, according to the State Department's 2015 Arms Control Report, Russian testing of cruise missile technology over the past few years directly violates the bedrock 1987 Intermediate Nuclear Forces Treaty, which from where I sit poses a potentially strategic security threat to the United States.

Two weeks ago we held an Armed Services Committee hearing examining Russia's military actions in Syria. While that is not our focus today, I do think it is important to note that several of our witnesses then suggested that Russia decided to enter Syria militarily based in part on their perception of flagging U.S. leadership—that we no longer cared strongly enough to push back, whether it be in Afghanistan, the Middle East, or Europe. While one can argue national interests and legal obligations in a place like Syria, when it comes to our own security and that of our European allies, as well as the legal agreements we have signed our names upon, there can be no ambiguity. Instead of standing behind a line and waiting for it to be crossed, we need stand in front, so that Russia understands that when it comes to our collective security and our principles, we will not be pushed back.



PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN, RANKING MEMBER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE

I welcome today's Helsinki Commission hearing on the rule of law in Russia.

For understandable reasons, U.S. policymakers have been focused on Russia's aggression against Ukraine and its violation of key principles of the Helsinki Final Act, including the principles of sovereign equality, refraining from the threat or use of force, the inviolability of frontiers, and the territorial integrity of States. But as was so clear during the OSCE's annual human rights review meeting just a few weeks ago, Russia's external aggression is directly related to its internal oppression of its own citizens. One may rightly ask: would a Russia with a robust democracy, strong and healthy civil society, free and independent press threaten its neighbors as Vladimir Putin's authoritarian regime has? I don't think it would.

Five years ago, the Helsinki Commission heard from Boris Nemstov in the Capitol when we screened the film "Justice for Sergei." Our focus then was the tragic fate of anticorruption whistleblower Sergei Magnitsky. But as Boris Nemstov noted to us then, Sergei's case was not unique: more than 100 journalists had been killed in Russia in the previous decade. As Mr. Nemstov summed it up: "If you are for Putin and for his policy, you are OK, you are in the safe position. If you are against him, you are an enemy." Earlier this year Boris Nemstov, who valued truth and freedom more than his own personal safety, was gunned down just outside the Kremlin, silencing a brave advocate for the rule of law and accountability in Russia and an outspoken Russian critic of Putin's war against Ukraine.

Russia's increasingly repressive government has eroded the democratic institutions that ensure a government's accountability to its people. A free and independent media is virtually nonexistent and the remaining state-controlled media is used to propagandize disinformation, fear, bigotry and aggression. Genuine political pluralism remains elusive, evidenced most recently in the September 13 local and regional elections. Golos, an independent election monitoring organization, was raided before the elections and unreasonable barriers were created for the participation of parties and candidates in the elections. The Russian Federation continues the criminal prosecution of those who criticize the regime or run afoul of its ideology and Russia's political prisoners range from performance artists and to managers of tech companies.

Moscow has waged a war against civil society and built a template of repression that is being modeled around the globe. And it has done all this using the trappings of a law-based state. But it is a deception that is easily recognized. Twenty-five years ago, in the OSCE's transformative agreement on democracy, the rule of law, and human rights, OSCE participating States recognized that the rule of law "does not mean merely a formal legality . . . but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression."

So I really welcome this Helsinki Commission effort today to peel back the formal trappings of the legal framework put in place by Moscow and examine the real state of the rule of law in Russia.

PREPARED STATEMENT OF STEPHEN RADEMAKER, PRINCIPAL WITH THE PODESTA GROUP, FORMER ASSISTANT SECRETARY OF STATE FOR THE BUREAU OF ARMS CONTROL AND THE BUREAU OF INTERNATIONAL SECURITY AND NONPROLIFERATION, DEPARTMENT OF STATE

Chairman Smith, Co-Chairman Wicker, other members of the Commission, I thank you for inviting me to testify at your hearing this afternoon on Russian adherence to the rule of law across the three dimensions of the OSCE.

I understand that my co-panelists will speak to the economic and human rights dimensions, and you would like me to focus on the security dimension. I have been asked in particular to address Russia's adherence to its obligations under various arms control and confidence-building arrangements, including the Budapest Memorandum of 1994, the Conventional Armed Forces in Europe (CFE) Treaty of 1990, the Intermediate-Range Nuclear Forces (INF) Treaty of 1987, the Open Skies Treaty of 1992, and the Vienna Document on Confidence- and Security-Building Measures, originally adopted in 1990 and updated most recently in 2011.

I will briefly review the obligations arising under each of these agreements and discuss the degree to which Russia is currently living up to its obligations. I will then draw some overall conclusions about Russia's approach to these agreements, and the implications for U.S. policy.

#### *Budapest Memorandum*

The Budapest Memorandum was the agreement reached in 1994 between the United States, United Kingdom, Russia, and Ukraine, which persuaded Ukraine to (1) give up the nuclear weapons it inherited from the Soviet Union (which at that point gave Ukraine the third largest nuclear arsenal in the world) and (2) adhere to the Nuclear Nonproliferation Treaty as a non-nuclear weapon state. The memorandum did this by, among other things, providing security assurances to Ukraine. The memorandum specifically stated that Russia and the other signatories "reaffirm their obligation to refrain from the threat our use of force against the territorial integrity or political independence of Ukraine."

This guarantee was blatantly violated by Russia when it occupied and declared it was annexing the Crimea in March of 2014. That violation was compounded when Russian-backed separatists seized control of the Donetsk and Luhansk regions of Eastern Ukraine beginning in August 2014—a creeping occupation of Ukrainian territory that continues to play out today.

The Obama Administration has rightly characterized Russia's actions in the Crimea and in Eastern Ukraine as aggression and a violation of the most basic principles of international law set forth in the Charter of the United Nations. The Obama Administration has also made clear that Russia's actions violate the security assurances provided by Russia to Ukraine under the Budapest Memorandum. Many experts have pointed out that beyond the legal issues raised by Russia's violation of these assurances, it is likely that in the future, countries in the position of Ukraine in 1994 will be less willing to make nonproliferation commitments in exchange for security assurances.

#### *CFE Treaty*

The CFE Treaty was concluded in 1990, and included as states parties all members of NATO and the Warsaw Pact. For all of these states parties, it imposed strict limits on the amounts of specified military hardware (called "Treaty-Limited Equipment" or "TLE") that they could deploy in specified areas in the treaty's area of application, which stretches from the Atlantic Ocean to the Ural Mountains. Following the treaty's entry into force, over 52,000 pieces of TLE were destroyed or converted by the United States, Russia, and other parties to the treaty.

Underlying the treaty was the belief that the imbalance in conventional armed forces in Europe (which favored the Soviet Union and the Warsaw Pact during the Cold War) had created instability and fear on the Continent, and led NATO to rely increasingly on its nuclear deterrent. The concept of the treaty was that if this conventional imbalance could be eliminated, stability could be restored, and reliance on nuclear weapons diminished.

In July 2007, however, President Putin ordered a "suspension" of Russian implementation of the treaty. The other states parties have not recognized this suspension as a legally permissible step, and therefore all of the other parties have continued to observe the treaty as between them. In 2011, however, the United States and its NATO allies (plus Georgia and Moldova) bowed to reality and accepted that Russia was not going to permit verification inspections under the treaty to take place on Russian territory. Accordingly, they ceased requesting inspections on Russian territory, and declared that they would cease implementation of their obligations to Russia.

Russia's intervention in Ukraine has compounded its non-compliance with the CFE Treaty. It is today stationing military forces on the territory of another CFE state party (Ukraine) without that state party's consent, in violation of Article IV, paragraph 5 of the treaty.

The United States has tried hard since 2007 to persuade Russia to return to compliance with the treaty, but to no avail. The basic problem is that Russia concluded more than a decade ago that the CFE Treaty was no longer serving its interest. Among other things, Moscow chafed at the treaty's so-called Flank Limits, which they believed constrained their ability to carry out military operations on Russia's periphery, for example, in Chechnya. Moscow was also unhappy that Georgia and Moldova were using the treaty to pressure Russia to withdraw unwelcome Russian forces from their territory. Following Russia's intervention in Ukraine, it has become even more unlikely that Moscow will reconsider its view that the CFE treaty is contrary to its interest.

#### *INF Treaty*

The INF Treaty was concluded in 1987, and committed the United States and the Soviet Union to neither possess, produce, nor flight-test ground-launched missiles with maximum ranges between 500 and 5500 kilometers. Pursuant to the treaty, by May of 1991, the United States eliminated approximately 800 INF-range missiles and the Soviet Union eliminated approximately 1800 such missiles.

Negotiated at the height of the Cold War, the INF Treaty contributed to security in the European theater, and was profoundly reassuring to the populations of some of our key NATO allies. It was in many ways a vindication of President Reagan's policy of promoting "peace through strength."

The Obama Administration announced in July of 2014 that it had "determined that the Russian Federation is in violation of its obligations under the INF Treaty not to possess, produce, or flight-test a ground-launched cruise missile (GLCM) with a range capability of 500 km to 5,500 km, or to possess or produce launchers of such missiles." The Obama Administration reaffirmed in its annual arms control compliance report in May of this year that "the Russian Federation continued to be in violation of its obligations under the INF Treaty."

The Obama Administration has not clearly explained the nature of the Russian violation. However, press reporting indicates that it involves the flight-testing of a ground-launched missile to ranges that are prohibited under the treaty. Further, while the Administration only formally determined last year that Russia was violating the treaty, it appears that the Administration first came to suspect that Russia was violating the treaty in 2011, and the first test of this missile may have taken place several years earlier.

As with the CFE Treaty, Russia has long been unhappy living under the restrictions of the INF Treaty. The basic Russian complaint is that the treaty applies only to the United States and four successor states to the Soviet Union (including Russia), and therefore leaves every other country in the world free to produce and deploy INF-range missiles. Increasingly other countries are doing precisely that, including many countries located within striking distance of Russia, such as China, Iran, North Korea and Pakistan.

It is a sad irony, of course, that missile technology proliferation from Russia contributed significantly to the missile programs of Iran and North Korea, and that North Korea in turn contributed to Pakistan's missile program. So in fact, Russia's complaint is in significant part of its own making.

As early as 2005, Russian Defense Minister Sergei Ivanov raised with Secretary of Defense Donald Rumsfeld the possibility of Russian withdrawal from the treaty. President Putin has since complained publicly about the unfairness of the treaty to Russia, and I know from my own conversations with Russian officials during my time in government that they would like to get out from under it.

Certainly this underlying unhappiness with the treaty helps explain why Russia has been willing to violate it. But in discussing how to respond to this violation, we need to recognize that Moscow would welcome an outcome similar to the one they have come to on the CFE Treaty, and in fact it would simplify matters for them if we would terminate the treaty this time rather than obliging them to do so.

#### *Open Skies Treaty*

The Open Skies Treaty was signed in 1992, and created a regime for the conduct of observation flights over the territory of other states parties. These flights use photography and other sensors to collect information about activities on the ground in the countries being overflown. The collection of this information is intended as a confidence-building measure among the parties. There are today 34 states parties to the treaty, including the United States and Russia.

Russia has continued to implement the Open Skies Treaty, but there are a number of concerns about Russia's compliance with the treaty. For example, contrary to the treaty's requirement that states parties make their entire national territory available for observation, Russia has declared several portions of its territory to be off-limits to overflights, including areas over Chechnya, Moscow, and adjacent to Russia's borders with Abkhazia and South Ossetia. In addition, Russia last year imposed practical restrictions that prevent full observation of the Kaliningrad enclave. Further, since Malaysian Airlines flight 17 was shot down over Ukraine last July, Russia has said that it cannot guarantee the safety of observation aircraft flying near Russia's border with Eastern Ukraine—ostensibly, according to Russia, due to the threat from Ukrainian air defenses. As a consequence, it has been impossible to conduct observation flights near Russia's border with Eastern Ukraine since that time.

Despite these problems, it should be noted that observation flights have continued over Russia, including the first-ever "Extraordinary Observation Flight," requested by Ukraine pursuant to the treaty shortly after Russia's intervention in the Crimea, and carried out using a U.S. aircraft.

Overall, therefore, it has to be acknowledged that Russia continues to observe the Open Skies Treaty, though not always in the full spirit of transparency that the treaty was intended to promote.

#### *Vienna Document*

The Vienna Document on Confidence- and Security-Building Measures was first adopted under the auspices of the OSCE in 1990, and updated in 1992, 1994, 1999, and most recently in 2011. It is not a treaty, but rather an agreed set of transparency measures that all members of the OSCE have agreed to implement in order to increase confidence within the OSCE region. Among these measures are data exchanges, inspections, and notifications of certain military activities.

In this year's annual arms control compliance report, the Obama Administration drew the following conclusion about Russia's compliance with the Vienna Document:

The United States assesses Russia's selective implementation of some provisions of the Vienna Document and the resultant loss of transparency about Russian military activities has limited the effectiveness of the CSBM regime.

The report goes on to explain that Russia has not reported on its military deployments near Russia's border with Ukraine, which appear to exceed the personnel and/or equipment levels that require notification under the Vienna Document. Russia has asserted that a number of its military activities did not have to be notified because they were multiple activities under separate command, when to all appearances they were large-scale activities under unitary command. This has given rise to suspicions that, at best, Russia was structuring its activities to evade Vienna Document reporting requirements, or, at worst, misrepresenting those activities in order to justify not reporting them.

Further, Russia has defied efforts by other parties to the Vienna Document to invoke the agreement's mechanism for consultations in the event of unusual military activities. When this mechanism has been invoked with respect to Russia's activities involving Ukraine, Russia has either failed to provide responsive replies to requests for an explanation of the activities, or, in some cases, boycotted meetings called to discuss the activities.

Russia has also failed to report information on its military forces deployed in the Abkhazia and South Ossetia regions of Georgia.

To be sure, Russia continues to permit other Vienna Document inspections and evaluations to take place on its territory, and continues to participate in data exchanges. But its selective implementation of the Vienna Document is contrary to the spirit of the agreement, and has diminished rather than enhanced confidence among members of the OSCE.

#### *Concluding Observations*

A clear pattern emerges when one looks at Russia's implementation of its arms control obligations overall. Moscow will comply with such agreements so long as it judges them to be in Russia's interest. But should Moscow conclude such agreements have ceased to serve its interest, it will ignore them (Budapest Memorandum), effectively terminate them (CFE Treaty), violate them while continuing to pay them lip service (INF Treaty), or selectively implement them (Open Skies Treaty and Vienna Document).

Such actions are, of course, destructive to the sense of confidence and security that CSBMs are intended to promote. But Russia believes that this is how great

powers are entitled to act, and today Moscow insists on acting and being respected as a great power.

I do not see a simple solution to this problem. It is tempting to point out to the Russians that their actions are reviving enthusiasm for the NATO alliance in Central and Western Europe, and underscoring to Russia's immediate neighbors who are not already NATO members the advantages of joining the alliance. In other words, Russia's actions are provoking precisely the response that they say they most want to avoid.

I do not think, however, that this is a problem that can be resolved through dialogue and reason. In my experience, there is nothing that infuriates Russian officials more than to be lectured about what is in their national interest. They find such conversations condescending, and are firmly of the view that they are the best judges of Russia's true interests.

Another option is to try to pressure Russia to behave better. That is what we are doing today with our policy of applying economic sanctions in response to Russia's military intervention in Ukraine. One could describe that as a policy of pressuring Russia to begin respecting its obligations under the Budapest Memorandum. So far, however, that policy has not succeeded in persuading Russia to change course in Ukraine, and given our experience to this point, it is hard to imagine some combination of additional economic sanctions that could achieve a different outcome.

In 1961, Fred Ikle wrote what has become the definitive article about how to deal with arms control violations. He observed that in responding to such violations, "Political sanctions are likely to be less effective than an increased defense effort." I think this is true with respect to the cases outlined above, though I also suspect that Russia does not believe we and our allies are prepared to substantially increase our defense spending in the current environment.

In the long term, I am confident that Russia will discover that its true national interest lie in cooperating with the other members of the OSCE rather than seeking to intimidate them. Until that time comes, however, we must be clear-eyed about the challenges we face. We have to deal with Russia as it is, rather than how we wish it to be.

I thank you for holding this hearing, and I look forward to responding to your questions.

With wide-ranging experience working on national security issues in the White House, the State Department, and the US Senate and House of Representatives, Stephen Rademaker advises the Podesta Group's international clients. Among his accomplishments in public service, he had lead responsibility, as a House staffer, for drafting the legislation that created the US Department of Homeland Security.

Serving as an Assistant Secretary of State from 2002 through 2006, Stephen headed at various times three bureaus of the State Department, including the Bureau of Arms Control and the Bureau of International Security and Nonproliferation. He directed the Proliferation Security Initiative, as well as nonproliferation policy toward Iran and North Korea, and led strategic dialogues with Russia, China, India and Pakistan. He also headed US delegations to the 2005 Review Conference of the Parties to the Treaty on Nonproliferation of Nuclear Weapons, as well as many other international conferences.

Stephen concluded his career on Capitol Hill in 2007, serving as Senior Counsel and Policy Director for National Security Affairs for then-Senate Majority Leader Bill Frist (R-TN). In this role, Stephen helped manage all aspects of the legislative process relating to foreign policy, defense, intelligence and national security. He earlier served as Chief Counsel for the House Select Committee on Homeland Security of the US House of Representatives and as Deputy Staff Director and Chief Counsel of the House Committee on International Relations.

During President George H. W. Bush's administration, Stephen served as General Counsel of the Peace Corps, Associate Counsel to the President in the Office of White House Counsel, and as Deputy Legal Adviser to the National Security Council. After leaving government in 2007, Stephen continued to serve as the US representative on the United Nations Secretary-General's Advisory Board on Disarmament Matters, and he was subsequently appointed by House Republican Leader John Boehner (R-OH) to the US Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism. Stephen received the Officer's Cross of the Order of Merit from the government of Poland in 2009. He has a bachelor's, a Juris Doctor and a master's in foreign affairs from the University of Virginia.

PREPARED STATEMENT OF TIM OSBORNE, EXECUTIVE DIRECTOR OF GML LTD.,  
 MAJORITY OWNER OF NOW-LIQUIDATED YUKOS OIL COMPANY

Mr. Chairman, Commission Members, ladies and gentlemen, good afternoon.

My name is Tim Osborne, Director of GML Limited, a global holding corporation and the indirect majority shareholder of the former Yukos Oil Company (“Yukos”).

I have been asked to testify today concerning the economic dimension and commercial aspect of the Helsinki Process—specifically the Russian Government’s failure to uphold the rule of law in the Yukos case.

The Russian Federation’s actions with regards to Yukos and GML’s investment in Yukos have served as both a case study on Russia’s behaviour and a cautionary tale on the risks of investing in the Russian market. Today, I will address how the rule of law is central to exposing Russia’s violations, seeking legal remedies in response, and ultimately, obtaining fair treatment and justice. I have been involved in two separate legal processes surrounding the Yukos case in which Russia has clearly demonstrated its attitude to its international legal obligations and the rule of law.

#### GML AND THE YUKOS AFFAIR

I am a director of GML Limited, which through its wholly-owned subsidiaries Hulley Enterprises Limited (“Hulley”) and Yukos Universal Limited (“Yukos Universal”), together with Veteran Petroleum Limited (a pension fund for Yukos employees) (“Veteran”) owned approximately 70% of Yukos. When Yukos was “nationalised” in 2004 through a combination of spurious tax claims, government sponsored asset freezing and rigged auctions, we tried very hard to talk to the Russian Federation to obtain an understanding of their concerns and objectives and to attempt to reach a reasonable compromise. These approaches were completely rejected and consequently in 2005 Hulley, Yukos Universal and Veteran commenced arbitrations under the Energy Charter Treaty. The arbitrations were administered by the Permanent Court of Arbitration based in the Peace Palace in The Hague. The Energy Charter Treaty is a landmark multi-lateral investment treaty reached in 1994 in the aftermath of the Cold War to promote investment in the energy sector of the former eastern bloc and provide a dispute resolution mechanism to facilitate the resolution of disputes between investors and host countries.

#### *Rule of Law Mechanisms and the Energy Charter Treaty*

As a result of Hulley, Yukos Universal and Veteran’s recourse to protections provided by the Energy Charter Treaty and rule of law process, they were able to obtain justice and the right to compensation. The arbitrations initiated by Hulley, Yukos Universal and Veteran led over a 9 year period to Final Awards (which were unanimous decisions) issued in July 2014 by the independent Arbitral Tribunal in their favour which concluded that the Russian Federation had, in contravention of the Energy Charter Treaty, expropriated Yukos without compensation. The Tribunal awarded damages to Hulley, Yukos Universal and Veteran in a total amount exceeding \$50 billion plus costs (the “Awards”). The Tribunal gave Russia a six month interest free period during which the Awards could be paid. No payment was received and interest has been accruing on the Awards since mid-January 2015.

The arbitration award in excess of \$50 billion is the largest amount of damages ever awarded in a commercial arbitration and would not have been possible without recourse to the Energy Charter Treaty. Because the United States is not a signatory to the Energy Charter Treaty and does not have a Bilateral Investment Treaty with Russia, U.S. shareholders, who also collectively lost billions of dollars, are without a similar rule of law mechanism that can help them to obtain compensation in the Yukos case.

#### *Appeals, Enforcement and Collection*

Hulley, Yukos Universal and Veteran remain on solid footing due to the rule of law as they proceed to the next stage of their case, after winning the historic Awards. As the seat of the arbitration was The Netherlands, Russia has the right to apply to the courts in The Hague to have the Awards set aside. This is not an appeal but is a limited right to have certain aspects of the Awards reviewed by the court, although the bar to setting aside the Awards is high. They do however have the right to have the question as to whether or not there was a binding arbitration agreement reviewed de novo and this is part of their application. The exchange of pleadings in the application to set aside the Awards is almost complete and a hearing is scheduled for 9th February 2016.

It is fair to say that the Russian Federation has “thrown the kitchen sink” at the Awards finding, in its view, many instances where the Tribunal (comprising three

esteemed arbitrators, including one, an American citizen, appointed by the Russian Federation) found wrongly (although unanimously) in favour of Hulley, Yukos Universal and Veteran. In my view the application to set the Awards aside is nothing more than a further delaying tactic. The Russian Federation's strategy throughout the arbitration process was primarily to delay matters as much as possible.

*Enforcement—The New York Convention and Rule of Law*

Another important rule of law element to this case, as with any other international arbitration case, is that there is actually a mechanism to allow collection of the Awards. Hulley, Yukos Universal and Veteran are entitled to enforce the Awards pursuant to the New York Convention. The New York Convention is a multi-national treaty (signed by over 150 countries, including all major states) which provides a framework for the recognition and enforcement of foreign arbitral awards in member states whether awards are made against persons, corporate entities or sovereign states. The New York Convention is implemented by each member state in its own domestic legislation.

In order to enforce an award, it must first be recognised (in the US the term used is "confirmed") by the local court. Once the recognition process is complete, then that effectively converts the arbitral award into a binding ruling of the local court and is thus enforceable as such. The enforcing party is then at liberty to attach assets of the relevant debtor in the relevant country and, with the assistance of the court, such assets will be transferred or sold and the proceeds of sale transferred to the claimant in partial settlement of the debt. With respect to enforcement against a sovereign state the general rule is that usually enforcement is only possible against assets which are used by that state for commercial purposes. Enforcement is usually not possible against assets of a sovereign state which are used for sovereign purposes (i.e. diplomatic assets such as embassy buildings).

*U.S. Actions and Global Enforcement*

Enforcement and collection of the Awards is not simply theoretical—it is happening as we speak and there is a process for doing so.

All countries have slightly different processes for implementation of the New York Convention. For instance, in the United States, we commenced our recognition action by issuing proceedings in the District Court in Washington. The court gave permission for our recognition action to proceed and agreed for the papers to be served on the Russian Federation. The papers were then transferred to a section in the State Department which processes these types of actions. They transferred the papers to the United States Embassy in Moscow and the Embassy served the papers on the Russian Federation. Russia has appointed a leading firm of United States lawyers to represent it and the Russian Federation's deadline to file its detailed brief opposing confirmation was yesterday. I have not as yet seen their filing. We are assuming that it will be next year at the earliest before the case is in court and then there are rights of appeal etc. before we get to enforcement. We have commenced similar processes in the United Kingdom, France, Belgium and Germany. The proceedings in the United Kingdom are roughly at the same stage as in the United States and we expect a hearing at first instance next year.

Germany is slightly behind and we are awaiting confirmation that the papers have been served on the Russian Federation by the German Embassy in Moscow.

*Enforcement and Initial Success*

In France and in Belgium the Awards have been recognised. Exequaturs have been issued and these permit immediate enforcement against Russian Federation assets in each jurisdiction. With regard to real estate, notaries have been appointed by the courts to sell the properties. In both France and Belgium we have frozen bank accounts belonging to the Russian Federation (and have unfrozen accounts when it has been demonstrated to us that those accounts were used for diplomatic purposes). Russia has appealed against the Exequaturs and has commenced proceedings in both France and Belgium to suspend enforcement proceedings.

*Future Enforcement—Russian State Owned / Controlled Enterprises*

In due course, we will also look at enforcement against assets in the hands of state-owned and/or state-controlled entities such as Gazprom and Rosneft but that will require us to negotiate a further obstacle as the Russian Federation will, no doubt, argue that such entities are separate and independent of the Russian state and do not hold Russian state assets. It will be for us to convince the court otherwise. In the Awards the Tribunal expresses its view that Rosneft which was, and still is, a state-owned company, was a co-conspirator alongside the Russian Federation in the expropriation of Yukos by facilitating the bankruptcy of Yukos in the

Moscow courts and then taking over the majority of the strategic Yukos assets at the rigged bankruptcy auctions.

#### *Russian Retaliation*

One very interesting development is that on receipt of the papers from the US Embassy in Moscow, the Russian Ministry of Foreign Affairs wrote to the Embassy claiming that the Awards were “an unjust and politically motivated act ... incompatible with the ideas of the rule of law, independent, impartial and professional international justice”. This notwithstanding the fact that Russia had participated fully in the ECT process including in two very lengthy hearings, submitted voluminous pleadings and had appointed one of the arbitrators. Even more interesting, the Russian Ministry of Foreign Affairs goes on to say that if the US courts allow recognition and enforcement against Russian property in the USA, this will be considered by the Russian Federation as grounds “for taking adequate and proportionate retaliatory steps in relation to the USA, its citizens and legal entities”, i.e. that Russia will inter alia confiscate assets of the US, US companies and/or US citizens as a tit for tat measure, notwithstanding that the US government, and/or the US companies and/or the US citizens have no connection with the arbitrations or the Awards. This is set out in the State Department’s letter of July 17th 2015 to the United States District Court, which is on the court docket and is attached to this submission for your ease of reference. I believe this letter succinctly sets out Russia’s general attitude to the rule of law and its attitude to its international legal obligations.

Russia has communicated the same message to the governments of France and Belgium.

#### YUKOS AND THE EUROPEAN COURT OF HUMAN RIGHTS

The second law suit that I would like to bring to your attention is a case brought before the European Court of Human Rights (“ECtHR”) by Yukos itself. This case was brought by the Yukos management on behalf of all Yukos shareholders and complained about the expropriation without compensation of Yukos and the way the Russian Federation had treated Yukos generally. The ECtHR takes a much different approach to these types of questions than international arbitration tribunals. The tribunal which rendered our Awards (and two other arbitration tribunals which rendered awards in other Yukos related cases) concluded that Russia’s attack on Yukos was not a genuine attempt to collect taxes but looking at the total picture was clearly an expropriation under the guise of taxation.

The ECtHR, which starts from the premise that governments can be trusted and tell the truth (the so called “margin of appreciation”) and which hears no oral testimony, looked at each action of the Russian Government separately and whilst it concluded on that approach that Russia was entitled to take many of the actions that it did take, nevertheless, it did conclude that Russia had breached Yukos’ rights in a number of instances. On July 31st 2015, the ECtHR awarded damages of approximately €1.9 billion (which equates to roughly \$2.2 billion). Such damages are to be distributed to the former shareholders of Yukos. This is the largest award of damages ever made by the ECtHR. The Russian Federation was ordered to agree a distribution plan with the Committee of Ministers (which is responsible for the implementation of ECtHR decisions) within six months of the ECtHR’s decision becoming final. That decision became final on December 15th 2014 (when the Grand Chamber of the ECtHR declined to hear any appeal of the case) and consequently Russia was supposed to have agreed a distribution plan with the Committee of Ministers by June 15th 2015.

#### *Russia’s Failure to Meet Obligations*

Prior to their June 2015 meeting, Hulley and Yukos Universal (as shareholders of Yukos) reminded the Secretariat of the Committee of Ministers of Russia’s obligations under the ECtHR’s decision and even provided a draft distribution plan just to prove how simple this would be. Notwithstanding, Russia had not even discussed this with the Secretariat to the Council of Ministers by the next Committee of Ministers meetings after the June 15th 2015 deadline (i.e. the September meeting) the Committee of Ministers made it very clear that they expected the Russian Federation to have a distribution plan in place by their March 2016 meeting. Immediately after that “decision” by the Committee of Ministers, Russia stated that it was not developing any plans to compensate Yukos’ shareholders and that further actions in relation to the ECtHR’s decision would be based on “national interests”. I attach copies of press articles from 25th September 2015 which record the Russian Justice Ministry’s comments.



Russia is also reinterpreting its own laws to convince itself (if no-one else) that it is entitled to ignore decisions of the ECtHR. Article 15.4 of the Russian Constitution states:

*“Universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.”*

This effectively means that in a conflict of laws between Russian law and international law, international law prevails. However, the Russian Federation, with the help of its Constitutional Court, is using the phrase “those stipulated by law” to claim that there is a distinction between laws and the Constitution itself and that the Constitution is above the law (rather than forming part of it), thus enabling the Russian State to prioritise its national interests over international commitments.

#### CONCLUSION

Mr. Chairman and Members of the Commission, I believe it is clear that the Russian Federation is not honouring its obligations and commitments under the rule of law or in a manner consistent with the Helsinki process. Russia’s tendency, more often than not, has been to ignore, delay, obstruct or retaliate when faced with its international law responsibilities.

I think Russia’s general prevarication on all matters related to Yukos, its threats to the US, French and Belgian governments (including potential tit for tat confiscations) and the claims that it can ignore its international obligations if that best serves its national interests demonstrate unequivocally that Russia cannot be trusted in international matters and that even when it has signed up to international obligations, it will ignore them if that is what it thinks serves it best.

I hope that my testimony has shed more light on Russia’s behaviour and demonstrated the need to encourage Russia to respect and adhere to the rule of law. I encourage the Commission to do so.

I appreciate the opportunity to share my views and I thank you for your time.

Tim Osborne is the senior partner of Wiggin Osborne Fullerlove, an English law firm specialising in international tax issues. He gained his LLB in 1972 from University College, London and was articled at Lovell White & King (now Lovells) from 1974, qualifying as a solicitor in 1976 and practising with the same firm until 1978. Mr Osborne was made a partner at, then, Wiggin & Co in 1979, Managing Partner in 1984 and Senior Partner in 2001. He has been the Senior Partner at Wiggin Osborne Fullerlove since its demerger in 2003.

Mr Osborne is a member of the independent Board of Directors of GML Ltd. (formerly Group Menatep). He was appointed in March 2004, with two other independent directors, to conduct the day to day operations for Group Menatep following the detention of Director Platon Lebedev in July 2003 and the subsequent death, in a helicopter crash in February 2004, of Mr Lebedev’s successor, Mr Stephen Curtis.

GML Ltd. is a diversified financial holding company, established in 1997 by Mikhail Khodorkovsky, which owned strategic stakes in a number of Russian companies, including Yukos Oil Company, as well as a number of financial portfolio investments on stock markets in Russia and internationally. It is incorporated and existing in accordance with the laws of Gibraltar. GML Ltd. was the majority owner of the, now liquidated, Yukos Oil Company, holding approximately 60 percent of Yukos equity capital through wholly owned subsidiaries.

As a director of GML Ltd. Mr Osborne is responsible for stewardship of the company in keeping with internationally recognised standards of corporate governance and, more recently, in protecting the company’s remaining assets. Mr Osborne is primarily concerned with pursuing compensation for GML Ltd. for the discriminatory expropriation of Yukos Oil Company and that company’s assets by the Government of the Russian Federation.

To that end, GML has filed a claim against the Russian Federation under the terms of the 1994 Energy Charter Treaty, based on the Russian Federation’s failure to protect the company’s investments in Russia, and the expropriation of Yukos Oil Company and its assets, specifically Yuganskneftegaz, Yukos’ main production asset. The Energy Charter treaty arbitration is the largest arbitration ever filed.

Mr Osborne has been widely quoted in the international media and has given evidence to several governmental and parliamentary inquiries focused on “the Yukos Affair” and the current situation in Russia.

## STATE DEPARTMENT LETTER DATED JULY 17, 2015

Angela D. Caesar, Clerk of Court  
United States District Court for the District of Columbia  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

July 17, 2015

re: Hulley Enterprises Ltd., Yukos Universal Ltd., and Veteran Petroleum Ltd. v.  
Russian Federation, et al., Case No. 1:14-cv-01996-ABJ

Dear Ms. Caesar:

I am writing regarding the Court's request for transmittal of summons, notice of suit, petition to confirm arbitration awards and declaration to the Ministry of Foreign Affairs of the Russian Federation pursuant to 28 U.S.C. Section 1608(a)(4) as service upon the Russian Federation as a defendant in the above referenced case. I previously notified you on July 8, 2015 that service had been effected upon the Russian Federation by the U.S. Embassy in Moscow.

Subsequently, the U.S. Embassy in Moscow received a reply from the Russian Ministry of Foreign Affairs in the form of a diplomatic note dated July 15, 2015. I am including a copy of the original diplomatic note in Russian. The U.S. Embassy prepared an informal translation of the note:

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of the United States of America in the Russian Federation and, referring to Embassy's Note CON 2015-021 of June 18, 2015 has the honor of advising as follows.

The awards of the Hague International Court of Arbitration of July 18, 2014, regarding the claims of *Hulley Enterprises LTD*, *Yukos Universal LTD*, and *Veteran Petroleum LTD* against the Russian Federation constitute an unjust and politically motivated act rendered in overt violation of applicable legal provisions and are incompatible with the ideas of the rule of law, independent, impartial and professional international justice.

In this regard the Russian Federation initiated proceedings in the competent court of The Hague with a view to reverse the above awards.

The Hague arbitration tribunal had no jurisdiction to consider the dispute related to decisions taken on the basis of an international agreement to which the Russian Federation is not a party. Moreover, that international agreement does not apply to the above dispute.

Investigating the case, the arbitrators committed numerous gross violations, including denial of the fundamental right to appropriate legal procedure.

In view of the foregoing, the Ministry believes that recognition and enforcement of these awards in the United States would not comply with the letter and spirit of the New York *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* of 1958, and could seriously undermine the credibility of a reputable American court.

The Ministry also considers it appropriate to emphasize that if, in spite of the aspects outlined above, the legal proceedings initiated in the Federal Court for the District of Columbia over recognition and enforcement in the United States of The Hague arbitration awards are supported by U.S. government authorities, US-Russia bilateral relations will once again suffer a heavy blow.

Any attempt to use injunctive remedies or execution measures against Russian property in the USA will be considered by the Russian Federation as grounds for taking adequate and proportionate retaliatory steps in relation to the USA, its citizens, and legal entities.

The Ministry would be grateful if you would bring the contents of this note to the attention of the competent American court.

The Ministry avails itself of this opportunity to extend to the Embassy renewed assurances of its highest consideration.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 485-6224.

Sincerely,

Daniel Klimow  
Attorney Adviser  
Office of Legal Affairs

*Sputnik News*

Russian Justice Ministry Not Making Plans for Yukos Ex-Shareholders' Reimbursement  
25 September 2015

The Russian Justice Ministry is not developing any sort of plans to reimburse former Yukos shareholders and any action will be done taking into consideration Russia's national interests, the Justice Ministry's press service said Friday.

"The Russian Justice Ministry's further actions in regard to the case of 'Yukos vs Russia' will be done on the basis of Russian legislative demands, the legal positions of the Russian Constitutional Court, and taking into consideration the necessity of upholding national interests," the press service told RIA Novosti.

In July 2014, Europe's top human rights court ruled that Russia must pay about \$2 billion to shareholders of the country's now-defunct energy company Yukos, declared bankrupt in 2006 and absorbed into state-owned Rosneft.

On Thursday, the European Council Committee of Ministers called on Russia to provide a plan on reimbursing former Yukos oil company shareholders in line with the European Court of Human Rights' ruling.

The Russian Justice Ministry refused to follow ECHR ruling because compliance would put the ministry in breach of Russia's constitution. The ministry appealed against the ruling, arguing that it was neither fair nor impartial.

*Prime News*

Russian ministry says develops no plans to redeem Yukos shareholders  
25 September 2015

Russia's Justice Ministry is not developing any plans to compensate defunct Yukos oil company's owners, further actions under the case will be made basing on national interests, a representative for the ministry told PRIME on Friday.

The Permanent Court of Arbitration in Hague ruled in July 2014 that Russia must pay U.S. \$50 billion compensation to former owners of Yukos for the company's bankruptcy ruling and asset nationalization. Apart from the Hague trial, in 2014, the European Court of Human Rights ruled that the Russian government redeem 1.86 billion euros in losses of former owners of Yukos.

On Thursday, the Council of Europe urged Russia to present a plan of compensations under the European Court of Human Rights' decision.

PREPARED STATEMENT OF ALAN LARSON, SENIOR INTERNATIONAL POLICY ADVISOR WITH COVINGTON & BURLING LLP, FORMER UNDER SECRETARY OF STATE FOR ECONOMICS AND CAREER AMBASSADOR, DEPARTMENT OF STATE

Chairman Smith, Co-chairman Wicker, distinguished members of the Commission. Thank you for the opportunity to testify before the Commission on Security and Cooperation in Europe. Today we will be discussing a serious international problem, Russia's failure to respect the rule of law and the commitments it has made during the past twenty-five years.

My name is Alan Larson. I am Senior International Policy Advisor at Covington & Burling LLP. I also serve as the Chairman of the Board of Directors of Transparency International-USA, an anti-corruption NGO. Formerly I was a career Foreign Service Officer and served as Under Secretary of State for Economic Affairs during the administrations of Bill Clinton and George W. Bush. My testimony has been informed by experiences in each of these roles, but my testimony today reflects my own views and does not necessarily reflect the views of any of the organizations with which I am or have been affiliated.

### **The Coherence of the Helsinki Framework**

The Helsinki framework is an important and creative response to the end of the Cold War. I have been privileged to play a small role in implementing parts of the international economic dimension of the Helsinki framework during the past two and a half decades. During my assignment as the U.S. Ambassador to the Organization for Economic Cooperation and Development (OECD) from 1990–1993, I helped stimulate the creation of OECD technical assistance programs for the formerly Communist countries of Poland, Hungary and Czechoslovakia. As part of this effort, the OECD developed a pathway to the accession of these countries into membership in this club of market-oriented Western democracies. Today Poland, Hungary, the Czech Republic, the Slovak Republic, Estonia, and Slovenia are OECD members.

As Under Secretary of State and Assistant Secretary of State from 1996–2004, I worked with Russian economic policy leaders on a range of international economic policy issues, including trade, debt and finance. As a member of the U.S. team in charge of preparation for meetings of G-8 Leaders, I worked closely with representatives of Russia on issues of central importance to the international agendas of President Bill Clinton and George W. Bush. These efforts were part of a broader U.S. strategy of drawing Russia and other countries of the former East Bloc into international institutions that undergird security, prosperity and individual rights.

The Helsinki framework is grounded in the realization that lasting security, meaningful economic cooperation, and respect for human rights all rest on a common foundation—strong respect for the rule of law and international agreements. A stable security system in Europe depends on collective adherence to the 10 principles guiding relations between states: beginning with sovereign equality, refraining from the use of force and the inviolability of borders including with “the fulfillment in good faith of obligations under international law.” In short, when relations between governments in Europe are governed by the rule of law and respect to international agreements, security is enhanced. When these principles are trampled on, confidence, predictability and security are eroded.

Respect for human rights is equally important to the Helsinki framework. In democratic societies, the rule of law also must govern relationships between governments and their citizens. When governments violate their own peoples' legal and human rights, those same governments are far more likely to ignore the rule of law in their dealings with other countries and those countries' citizens.

The economic dimension of the Helsinki framework is the dimension to which I have devoted a great portion of my career. Strong economic cooperation among states can stimulate shared benefits and constructive interdependence that, in turn, foster security and political security; at the same time, governments' commitment to multilateral security arrangements is a necessary condition for economic cooperation to fully flower. In a similar fashion, when governments respect the rights of their people, enterprise and economic initiative flourishes; at the same time, strong economic performance can help generate resources that allow governments to fully carry out their human development obligations. The respect for the rule of law lies at the center of the relationships that make durable and meaningful economic development possible.

The three dimensions of the Helsinki framework form a coherent and interlocking whole. When all three dimensions are respected, the aspirations of the peoples of Europe for security, prosperity and freedom can be met. When one or more dimensions of the Helsinki framework are ignored, the entire framework becomes unstable.

### **A Closer Look at the Economic Dimension of the Helsinki Framework**

I would like to focus on the economic and business dimension of the Helsinki framework. In 2012 I testified before the Senate Finance Committee on the topic of Permanent Normal Trade Relations (PNTR) between the United States and Russia. I urged Congress immediately and unconditionally to extend PNTR to Russia. I said then and I continue to believe that it was a good thing for Russia to join the World Trade Organization. By doing so and by applying rule of law disciplines to its trading relationship with the United States and other WTO members, Russia could take an important step toward meeting the terms of the Helsinki framework.

At the same time, however, I noted that Russia needed to do more in the economic sector. Russia needed to apply the rule of law to other aspects of the economy. In this regard, I suggested that it was useful to think of a “rule of law triangle” for business. One side of the triangle was rule of law disciplines for trade, which would be strongly promoted by WTO accession. The rule of law triangle for business would not be complete or stable, however, unless Russia also took action to shore up the other two sides of the triangle—investment protection and action to combat corruption. Russia had failed to ratify a bilateral investment treaty between the United States and Russia. Worse yet, Russia had engaged in the uncompensated expropriation of billions of dollars of U.S. investments in Yukos Oil Company. American investors—who owned about 12 percent of Yukos at the time of the expropriation—have claims worth over \$14 billion, and they are entitled to compensation under international law even though they have no option for bringing claims directly against the Russian Federation.

In addition to the lack of investor protection, the rule of law environment for business was severely hampered by rampant corruption in the Russian customs administration, tax administration and judiciary. Corruption damaged the interests of U.S. and Russian business alike. Trade and investments rules will not supply a stable framework for business unless they are supported by strong rules to combat corruption.

I was grateful that when Congress ultimately enacted PNTR, it included Section 202, which contained what I have referred to as a rule of law for business agenda. In this section, Congress called on the Administration to take a number of steps and report annually on the progress achieved. The report is due this December. Congress required the State Department and the U.S. Trade Representative annually to submit a report:

- (1) on the measures taken by the Trade Representative and the Secretary and the results achieved during the year preceding the submission of the report with respect to promoting the rule of law in the Russian Federation, including with respect to—
  - (A) strengthening formal protections for United States investors in the Russian Federation, including through the negotiation of a new bilateral investment treaty;
  - (B) advocating for United States investors in the Russian Federation, including by promoting the claims of United States investors in Yukos Oil Company;
  - (C) encouraging all countries that are parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development, done at Paris December 17, 1997 (commonly referred to as the “OECD Anti-Bribery Convention”), including the Russian Federation, to fully implement their commitments under the Convention to prevent overseas business bribery by the nationals of those countries;
  - (D) promoting a customs administration, tax administration, and judiciary in the Russia Federation that are free of corruption; and
  - (E) increasing cooperation between the United States and the Russian Federation to expand the capacity for civil society organizations to monitor, investigate, and report on suspected instances of corruption; and
- (2) that discloses the status of any pending petition for espousal filed with the Secretary by a United States investor in the Russian Federation.

As one might expect, the Administration’s reports to date have not been encouraging. There appears to have been no progress on a new bilateral investment treaty. Russia has backtracked on its anti-corruption efforts. And, while the State Department reports that it has raised the Yukos matter with senior Russian officials, there is no indication that Russia is convinced that compensation for American investors is a priority for the U.S. government. There is certainly more that the Administration can and should do to advance the rule of law for business agenda that Congress mandated in Section 202.

### **Assessing Russia's Adherence to the Helsinki Framework**

I am concerned that the Russian Federation has not adhered to the Helsinki framework, especially in recent years.

In 2014, Russia's occupation of Crimea was a clear violation of commitments Russia made in the Budapest agreement of 1994. Russia has continued to intervene in Eastern Ukraine, in violation of the Minsk agreement of 2014. These actions follow after Russia's occupation in 2008 of the regions of Abkhazia and South Ossetia in Georgia.

In addition, Russia has failed to comply with the human rights and humanitarian dimensions of the Helsinki framework. Since the passage of the PNTR legislation in 2012, Russian authorities have cracked down on civil society and government critics while curtailing freedom of expression.

The destruction of Malaysia Airlines Flight 17 is yet another deeply troubling example of Russia's failure to respect the rule of law. Last week it was widely reported in the press that an international investigation determined that the civilian airliner was downed by a Russian-made surface-to-air missile, fired from territory controlled by Russian-backed separatists, killing 298 people. Russia's provision of such weapons to Ukrainian separatists is a clear violation of Russia's obligations to respect the sovereignty of Ukraine. It is also a violation of basic human rights principles, including those that are at the core of the Helsinki framework.

Let me focus most intensely on Russia's troubling failure to comply with the economic dimension of the Helsinki framework. I am very disappointed that Russia has so far refused to comply with the rulings of three separate investor-state dispute settlement panels that found that Russia expropriated Yukos Oil Company and owes compensation to foreign investors.

- A tribunal convened pursuant to the Energy Charter Treaty unanimously decided in July 2014 that Russia expropriated Yukos and awarded majority investors over \$50 billion in damages. That decision was joined by Stephen Schwebel, Russia's appointed arbitrator, who previously served as Deputy Legal Advisor at the State Department and as President of the International Court of Justice.
- In July 2012, an international tribunal established under the Spain-Russia bilateral investment treaty found unanimously that Russia expropriated Yukos and the Russian Government owed compensation to a group of minority Spanish investors. In *Quasar de Valores, et al. v. The Russian Federation*, the tribunal concluded that Russia's actions were deliberately calculated to nationalize Yukos's assets and amounted to an expropriation for which compensation is due.
- In yet another unanimous decision involving minority shareholders, the arbitrators in *RosInvestCo UK Ltd. v. The Russian Federation* likewise concluded that Russia had expropriated Yukos and that compensation was due.

The ruling in the Energy Charter Treaty case is especially instructive. The tribunal expressly rejected Russia's claim that its actions against Yukos were a legitimate use of the tax authority, instead concluding that "the primary objective of the Russian Federation was not to collect taxes but rather to bankrupt Yukos and appropriate its valuable assets." The tribunal was particularly critical of Russia's disregard for the rule of law, noting that ". . . Russian courts bent to the will of Russian executive authorities to bankrupt Yukos, assign its assets to a State-controlled company, and incarcerate a man who gave signs of becoming a political competitor." It ultimately concluded that "the measures that [Russia] has taken in respect of Yukos . . . have had an effect 'equivalent to nationalization or expropriation'" and valued Yukos at approximately \$95 billion.

Russia's actions against Yukos not only violated its obligations under a range of investment treaties, but also constituted a violation of Russia's human rights obligations. The European Court of Human Rights in July 2014 awarded Yukos over \$2.5 billion in compensation, concluding that Russia's enforcement actions and penalties against Yukos violated Russia's obligations under the European Convention on Human Rights. This award was in addition to the separate award to Yukos founder Mikhail Khordorkovsky for his treatment at the hands of the Russian authorities.

### **The Response to Russia's Disregard for the Rule of Law**

The United States and the European Union, among others, have responded to Russia's conduct toward Ukraine by imposing targeted sanctions. These sanctions focus on Russia's financial, energy, and defense sectors, and also include restrictions relating to Crimea's tourism, transport, telecommunications, and energy sectors. The United States and European Union have ratcheted up sanctions several times. Sanctions, together with low oil and gas prices, are imposing a heavy price on the Russian economy. The restoration of a normal economic relationship between Russia

and other OSCE members requires accountability and reversal of measures Russia has taken in respect of Crimea and Eastern Ukraine.

The United States and the European Union must press Russia at the highest level to implement the specific rule of law framework for business contained in Section 202 of the PNTR legislation, and to comply with all its commitments under the Helsinki framework.

The rule of law for business agenda contained in Section 202 correctly focused also on pressing Russia to tackle some of the most damaging forms of corruption. I see corruption as government officials' abuse of entrusted authority for the pursuit of private gain. Corruption is antithetical to the rule of law essential for business to flourish, and Russia's economy will not achieve its full potential so long as the problem remains unaddressed. Yet Russia has not made material progress to reduce corruption in its customs administration, tax administration, and judiciary, or to expand the capacity for civil society organizations to monitor, investigate, and report on suspected instances of corruption. Further, Russia had not taken concrete steps to outline a plan for the compensation of Yukos shareholders.

### **Practicing What We Preach**

To be effective in calling other countries to accountability, the United States must maintain the highest standards in complying with the Helsinki framework. I am proud of the high standards that the United States has maintained in each of the three dimensions.

We can always do better, however. As Chairman of the Board of Directors of Transparency International-USA, I devote considerable attention to ways the United States can do better in maintaining high standards of integrity, accountability, and transparency in our domestic processes, including our domestic political processes. The strong commitment of the United States to openness and integrity makes people in other countries very attentive to instances where they think we fall short of the standards we call on others to meet. In this regard, I would note in particular that other countries give considerable attention to U.S. elections. They are especially attentive to the 2016 elections, and many thoughtful international observers, and U.S. citizens express concern about a lack of transparency in which U.S. political campaigns and the independent organizations that engage in electoral advocacy are financed. It is important for the United States to demonstrate that we are committed to clean elections, without corruption or the perception of corruption. In this regard, I would urge the Commission to examine closely the TI-USA statement on Elections, Electoral Spending and Corruption. This statement is by no means the final word on the subject, but we believe it provides sensible and balanced recommendations that could be supported by citizens and officials across the political spectrum. By taking action in support of these recommendations, I believe Congress and the Commission would strengthen the hand of the United States in dealing with the violations of other countries of the Helsinki framework.

In my view, it is also important for the United States to show that there will be no impunity for corrupt officials, whether those officials are U.S. or foreign. In this regard, TI-USA has called on the Commission and Congress to address the recommendations of TI-USA with respect to beneficial ownership, including the High Level Principles of Beneficial Ownership Transparency, so we can help ensure that foreigners are not able to hide the fruits of corrupt activities in the United States. In addition, TI-USA has called on Congress to make a targeted amendment to U.S. law to prevent "undisclosed self-dealing," an issue that is described in a TI-USA paper titled "Undisclosed Self-Dealing by Public Officials and the Need for a Legislative Response to *Skilling v. United States*." Actions such as these would put Congress and the United States on the strongest possible platform when we point to the shortcomings of other nations in adhering to the Helsinki framework.

### **U.S. Response to Russia's Non-compliance with the Helsinki Framework**

In summary, Mr. Chairman, I recommend that the Congress and the Administration take the following steps:

1. Recognize that fostering respect for the rule of law in all areas—security, economic, human rights—is a strategic objective. The different facets of the problems we face in our relationship with Russia have a common root. The United States should continue to work with other OSCE countries to push Russia to respect the rule of law and meet its international obligations.
2. Ensure Russia is held accountable for its actions in Ukraine, including its occupation of Crimea and interference Eastern Ukraine.
3. Press Russia to implement the rule of law for business agenda contained in Section 202 of the Russia PNTR legislation.

4. Make absolutely clear to Moscow that American shareholders in Yukos must be fairly compensated.
5. Seriously engage Russia on the anti-corruption agenda, bilaterally and in the OECD and OSCE.
6. Urge Russia to open up political space for civil society to operate in Russia.
7. Maintain a common line with the EU and others on sanctions policy related to Ukraine.
8. Demonstrate by example that the United States is seriously committed to doing its very best to fully comply with and, as possible, go above and beyond the Helsinki standard. In this regard, take actions Transparency International-USA has called for in respect of (a) Elections, Electoral Spending and Corruption, (b) beneficial ownership and (c) undisclosed self-dealing.

Thank you for the opportunity to testify. I would be pleased to address any questions or comments from the Commission.

Alan Larson provides clients with strategic advice, counseling and representation at the intersection of international business and public policy. A Ph.D. economist, decorated diplomat and non-lawyer, Mr. Larson advises clients on high stakes international challenges. His troubleshooting takes him to all parts of the world. His practice encompasses international investment and acquisitions; sanctions and trade compliance; international energy transactions, international aviation and international trade. He has helped win approval of the U.S. Committee on Foreign Investment in the U.S. (CFIUS) for some of the highest profile foreign investments in the United States, including several by state-owned companies and sovereign wealth funds. Mr. Larson helps Covington's management team formulate and implement its international strategy. He is a member of the Board of Counselors of McLarty Associates. He is Chairman of Transparency International/USA and a Board Member of Helping Children Worldwide. He previously served in the State Department two top economic policy jobs, as Under Secretary of State for Economics and Assistant Secretary of State for Economic and Business Affairs, as well as Ambassador to OECD. He is a Career Ambassador, the State Department's highest honor.



PREPARED STATEMENT OF VLADIMIR KARA-MURZA, COORDINATOR, OPEN RUSSIA  
MOVEMENT

Chairman Smith, Co-Chairman Wicker, esteemed Members of the Commission, thank you for holding this important and timely hearing and for the invitation to testify.

This year marks the 40th anniversary of the Helsinki Final Act. Many things have changed since its signing, but one unfortunate fact remains the same: just as the Soviet Union in 1975, the Russian Federation today—after a brief democratic interlude in the 1990s—treats the human rights commitments undertaken under the Helsinki process as a dead letter.

The freedom of expression, guaranteed under the Copenhagen Document and other OSCE statutes, has been an early target of Vladimir Putin's regime. One after another, independent television networks were shut down or taken over by the state. Today, the Kremlin fully controls the national airwaves, which it has turned into transmitters for its propaganda—whether it is to rail against Ukraine and the United States or to vilify Mr. Putin's opponents at home, denouncing them as "traitors." One of the main targets of this campaign by the state media was opposition leader Boris Nemtsov, who was murdered in February two hundred yards away from the Kremlin.

The right to free and fair elections is another OSCE principle that remains out of reach for Russian citizens. In fact, the last Russian election recognized by the OSCE as conforming to basic democratic standards was held more than fifteen years ago, in March 2000. Every vote since then has fallen far short of the principles outlined in the Copenhagen Document that requires member states to "enable [political parties] to compete with each other on a basis of equal treatment before the law and by the authorities" (Paragraph 7.6). Opponents of Mr. Putin's regime have received anything but equal treatment at the ballot—if, indeed, they were allowed on the ballot at all. In many cases, opposition candidates and parties are simply prevented from running, both at the national and at the local level, leaving Russian voters with no real choice. According to the OSCE monitoring mission, the last election for the State Duma in December 2011 was marred by "the lack of independence of the election administration, the partiality of most media, and the undue interference of state authorities at different levels." Evidence of widespread fraud in that vote led to the largest pro-democracy protests under Mr. Putin's rule, when more than 100,000 people went to the streets of Moscow to demand free and fair elections.

Another disturbing feature of today's Russia is reminiscent of the Soviet era. According to Memorial, Russia's most respected human rights organization, there are currently fifty political prisoners in the Russian Federation, as defined by the Council of Europe—that is, prisoners whose "detention is the result of proceedings which were clearly unfair, and this appears to be connected with political motives of the authorities." These prisoners include opposition activists jailed under the infamous "Bolotnaya case" for protesting against Mr. Putin's inauguration in May 2012; the brother of anticorruption campaigner Alexei Navalny; and Alexei Pichugin, the remaining hostage of the "Yukos case."

This list is not limited to Russian citizens. Last year, two foreigners—Ukrainian military pilot Nadiya Savchenko and Estonian security officer Eston Kohver—were seized on the territories of their respective countries and put on trial in Russia. Kohver was released last month in a cold war-style prisoner exchange. Savchenko's trial is still underway. Another Ukrainian prisoner, the filmmaker Oleg Sentsov, was recently sentenced to twenty years on "terrorism" charges for protesting against the Kremlin's annexation of his native Crimea.

It is a task for Russian citizens to improve the situation with the rule of law in our country. But, contrary to the oft-rehearsed claims by Kremlin officials, human rights "are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned," as is explicitly stated in the OSCE document adopted, of all places, in Moscow. It is important that fellow member states, including the U.S., remain focused on Russia's OSCE commitments, especially as we approach the parliamentary elections scheduled for September 18, 2016. It is important that you speak out when you see violations of these commitments.

Above all, it is important that you remain true to your values. Nearly three years ago, Congress overwhelmingly passed, and President Obama signed the Sergei Magnitsky Rule of Law Accountability Act, one of the most principled and honorable pieces of legislation ever adopted. It is designed to end the impunity for those who abuse the rights of Russian citizens by denying these people the privilege of traveling to and owning assets in the United States—a privilege many of them so greatly enjoy. Unfortunately, implementation of this law remains timid, with only low-

level abusers targeted so far. Implementing the Magnitsky Act to its full extent and going after high-profile violators would send a strong message to the Kremlin that the U.S. means what it says, and that human rights will not be treated as an afterthought, but as an essential part of international relations.

Vladimir V. Kara-Murza is the coordinator of Open Russia, a platform for democracy activists founded by former political prisoner Mikhail Khodorkovsky. He was a longtime colleague and advisor to Russian opposition leader Boris Nemtsov, and is the deputy leader of the People's Freedom Party (PARNAS), established and led by Nemtsov. Kara-Murza was a candidate for the Russian parliament in 2003, and has served as campaign chairman for presidential candidate Vladimir Bukovsky (2007–08). He is a senior advisor at the Institute of Modern Russia, and was previously a correspondent for RTVi, *Novye Izvestia* and *Kommersant*, and editor-in-chief of the *Russian Investment Review*. Kara-Murza has testified on Russian affairs before several parliaments, and has published op-eds in the *Financial Times*, *The Washington Post*, *The Wall Street Journal*, the *National Post*, and *World Affairs*. He is the author of *Reform or Revolution* (Moscow 2011), and a contributor to *Russia's Choices: The Duma Elections and After* (London 2003), *Russian Liberalism: Ideas and People* (Moscow 2007), and *Why Europe Needs a Magnitsky Law* (London 2013). In 2005, he produced *They Chose Freedom*, a documentary film on Soviet dissidents. Vladimir Kara-Murza holds an M.A. (Cantab.) in History from Cambridge.





This is an official publication of the  
**Commission on Security and  
Cooperation in Europe.**

★ ★ ★

This publication is intended to document  
developments and trends in participating  
States of the Organization for Security  
and Cooperation in Europe (OSCE).

★ ★ ★

All Commission publications may be freely  
reproduced, in any form, with appropriate  
credit. The Commission encourages  
the widest possible dissemination  
of its publications.

★ ★ ★

**<http://www.csce.gov>      @HelsinkiComm**

The Commission's Web site provides  
access to the latest press releases  
and reports, as well as hearings and  
briefings. Using the Commission's electronic  
subscription service, readers are able  
to receive press releases, articles,  
and other materials by topic or countries  
of particular interest.

Please subscribe today.