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**TESTIMONY BEFORE THE COMMISSION
ON SECURITY & COOPERATION IN EUROPE
U.S. HELSINKI COMMISSION**

“THE MEDVEDEV THAW: IS IT REAL? WILL IT LAST?”

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INTRODUCTION

As someone directly involved in rule of law matters with the Russian Government, I write to share my experiences and perspectives with the Members of the U.S. Helsinki Commission. I am grateful for the opportunity to provide my views for inclusion into the record of the June 23, 2009 hearing entitled, "The Medvedev Thaw: Is it real? Will it Last?"

My name is Tim Osborne, and I am Director of GML, Ltd ("GML"), formerly known as Group Menatep, Ltd. GML is a diversified financial holding company, established in 1997, which, at one time owned strategic stakes in a number of Russian companies, including Yukos Oil Company ("Yukos"), as well as several financial portfolio investments on stock markets in Russia and internationally. GML is incorporated and exists in accordance with the laws of Gibraltar. GML, through wholly owned subsidiaries incorporated in Cyprus and the Isle of Man was the majority shareholder in Yukos. The directors of GML are responsible for stewardship of the company in keeping with recognized standards of corporate governance, and for protecting the company's remaining assets.

Yukos was once a leader in the field of emerging Russian companies, driving new standards of corporate governance and transparency, and became the largest privately owned energy company in Russia. However, following huge manufactured tax claims and the imprisonment of Yukos' key executives, on charges widely regarded as politically motivated, Yukos' core asset, the oil production facility Yuganskneftegaz ("Yugansk"), was seized by the Russian state and sold at far below market-value to an unknown company acting on behalf of Rosneft.

Yukos' shareholders have received no compensation for the loss in value of their shareholding, from the expropriation of Yukos and that company's assets. It is GML's belief that the "Yukos affair" was a major strand in the Russian Government's strategy to bring Russia's natural resources under direct Kremlin control and to use those resources as a tool to reassert control over Russia's former sphere of influence. It marked a turning point in the Russian Federation's commitment to the rule of law, property rights, and energy security.

With this experience, GML is in a unique position to comment on the deterioration of property rights, market principles, and rule of law in Russia. The following are my thoughts on these issues.

HISTORY OF YUKOS / GML

Yukos Oil Company was the largest oil company in Russia and fourth largest oil company in the world, before its destruction. Beginning in 2003, the Russian Government instigated a campaign of expropriation against Yukos by prosecuting senior management, issuing bogus crippling tax demands whilst freezing its assets so the tax claims could not be paid and seizing its major operating subsidiary, Yuganskneftegaz. As a result of this campaign Yukos was forced into bankruptcy in August 2006 despite evidence which clearly showed that its assets exceeded its liabilities and that it could survive. Through 2007, the Russian court-appointed receiver sold Yukos' assets at a series of, what were widely perceived as rigged, auctions at below market-value. There was, however, despite the discount applied to the assets' valuations, little competition for the assets. Most were won by Rosneft and Gazprom.

The expropriation, as opposed to nationalization (which implies compensation), of Yukos has raised grave concerns worldwide about Russia's commitment to fundamental principles of property and human rights, free markets, the rule of law, and respect for foreign investor rights.

A few numbers provide context for the absurdity of the Russian authorities' tax claims, which were the excuse given for the action against Yukos and its executives. Yukos had already paid \$15 billion in taxes for the period of 2000 through 2003, on total gross income for that period of \$29 billion. Beyond that amount, the Russian authorities alleged that Yukos owed an additional \$27 billion for that period, bringing Yukos' total tax liability for the period to over \$42 billion, greater than 100% of the company's gross income. This is not taxation, it is expropriation.

The decline in respect for human rights in Russia is best evidenced by the impact of the "Yukos affair" on anyone associated with the company. Most notably, former CEO, Mikhail Khodorkovsky, and his business partner, Platon Lebedev, are currently on trial for the second time, on charges of theft and embezzlement. They could receive up to 22 years in prison. I myself am the subject of an investigation by the Russian Prosecutor General; I have received no formal notice of the investigation and my repeated offers to be interviewed in London have been ignored. Needless to say, I have committed no crimes but this investigation, undoubtedly as intended, has severely hampered my ability to discharge my fiduciary duties as a GML Director.

Rule of law in Russia is a principle in jeopardy, the legal system has become infected with political interference and corruption. Every time the Russian authorities' allegations have come before an independent court outside of Russia, the court has found the allegations to be substantively deficient, or politically motivated.

Since the conclusion of Yukos' bankruptcy, several western courts have issued rulings on various aspects of the case. Most notably, the District Court of Amsterdam, on October 31, 2007, ruled that Yukos was denied a fair trial by the Russian authorities, with regard to the massive back-tax claims leveled against the company, was discriminated against and was unlawfully declared bankrupt. In August 2007, the Swiss Supreme Court denied Russian Mutual Legal Assistance requests in the Yukos case on the basis that the prosecution of Messrs Khodorkovsky and Lebedev was politically motivated and that their legal and human rights have been violated. Following this ruling, the European Court of Human Rights ("ECHR") ruled, on October 25, 2007, in the case of *Lebedev vs. Russia*, that Mr Lebedev's human rights had been systematically violated (under Article 5 ECHR).

Courts in London and Vilnius, Lithuania have reached the same conclusion and denied extradition requests for ex-Yukos executives who fled Russia. More recently, in May 2009, the ECHR ruled admissible several aspects of a claim submitted by Mr. Khodorkovsky; notably, that his arrest, detention, and prosecution were politically motivated.

These rulings are further indication of the illegality of the Russian Federation's actions against Yukos, its shareholders and its managers.

American investors, just as all Yukos investors worldwide, have suffered as a result of the Russian Government's assault on the company. The Russian Government's actions in the

“Yukos affair” give rise to a crucial question: From an American investor perspective, how can you have confidence in your ability to enforce your property rights in a Russian enterprise without an independent legal system, free from corruption and political interference, to enforce those rights and an independent judiciary to serve as arbiter of any dispute?

In early 2005, GML's wholly-owned Yukos shareholder subsidiaries, Yukos Universal Limited (“Yukos Universal”) and Hulley Enterprises Limited (“Hulley”), commenced arbitral proceedings before an independent Tribunal, in the Permanent Court of Arbitration in The Hague. GML is claiming a minimum of \$28.3 billion in damages against the Russian Federation pursuant to the terms of the Energy Charter Treaty (“ECT” or “the Treaty”), which Russia signed in 1994 and by which Russia is legally bound.

THE ENERGY CHARTER TREATY AND ARBITRATION CLAIM

The Russian Federation signed the ECT on December 17, 1994. Even though the Duma has not yet ratified the Treaty, Russia was eager to receive the benefits of the Treaty so declined to opt out of applying the ECT provisionally, pending its ratification. Therefore, under Article 45(1) of the Treaty it is legally bound.

The roots of ECT date back to political initiatives in Europe following the end of the Cold War. The fundamental aim of the ECT is to strengthen the rule of law on energy issues by creating a level playing field of rules to be observed by all governments who are signatories to the Treaty, thus minimising the risks associated with energy related investments and trade.

GML’s claim is based on the Russian Federation’s violation of the investor protection provisions of the ECT, which protect investors’ rights in cases where they are subject to discrimination measures by which their investments are expropriated without payment of prompt, adequate, and effective compensation.

GML’s claim is the largest commercial arbitration ever filed and is being heard under UNCITRAL rules in the Permanent Court of Arbitration in The Hague. Initial hearings, looking solely at jurisdiction and admissibility issues (i.e. the extent to which Russia is bound by the ECT) took place in November 2008; the Tribunal will determine, once and for all, whether Russia is bound by the ECT.

The Russian Government has in recent years denigrated the ECT, at times describing it as a “dead instrument”. Most recently, in April 2009, President Medvedev launched his “Conceptual Approach to the New Legal Framework for Energy Cooperation (Goals and Principles)”. The following week, Prime Minister Putin stated: *“We have said before that we do not consider ourselves bound by the charter, and now we can say that we see no point in remaining a signatory to the document”*.

However, the Russian Government cannot unilaterally cancel the ECT; a fact acknowledged by European Energy Commissioner Andris Piebalgs who responded to the Russian proposal on behalf of the European Union, saying: *“The Energy Charter Treaty will continue to live its life until the countries that established it decide differently”*. Withdrawal from the Treaty is a formal

process and, even following withdrawal, according to Article 45(3) ECT, investments remain protected for 20 years after withdrawal.

The expropriation of Yukos and its assets breached Russia's legal obligations under the ECT. The Russian Government selectively discriminated against Yukos by singling it out from other energy companies that operated in an identical legal fashion. It then fabricated back-tax claims and illegally prevented Yukos from restructuring in order to settle these tax claims. Importantly, Yukos' assets were expropriated without payment of compensation to shareholders, which included American individuals and institutional shareholders. The U.S. did not sign the ECT and consequently ECT protection is not available to U.S. Yukos investors.

The Tribunal in GML's case is due to issue its ruling on jurisdiction imminently. If the Tribunal rules Russia is bound by the ECT, the claim will move onto the merits stage. In this scenario, the Russian Federation will have to appear before an independent panel of arbitrators and justify its actions in the "Yukos affair". This has never happened before.

If GML is successful in proving to its right to compensation pursuant to the ECT, the Tribunal will determine the full value of the claim, which is for a minimum of \$28.3 billion but could ultimately reach \$100 billion. The Russian Federation has played a full role in the Tribunal's proceedings so far and has abided by all decisions of the panel; in the event that the Russian Federation does not meet an award, such can be enforced in the national courts of any state signatory to the New York Convention.

It is worth noting however that a positive ruling for GML on jurisdiction should be seen as a positive decision for Russia, which desperately needs to attract foreign investment into its energy sector. Russia can also rely on the ECT's transit provisions to prevent disputes over transit of its energy supplies to Europe.

In all possible forums, the international community, including the U.S., should insist Russia abide by its international commitments in the field of energy, to give comfort to western investors in its energy sector that they will be treated in accordance with the rule of law.

CONGRESSIONAL HISTORY WITH GML

Over the years, I have been an active participant in discussions by the U.S. Congress to highlight the poor and deteriorating state of foreign investor protection and the rule of law in Russia. For instance in 2007, I was invited by the House Financial Services Subcommittee on Domestic and International Monetary Policy, Trade, and Technology to present a testimony on U.S.-Russia economic relations with regards to the "Yukos affair". My statement focused on the impact on American investors of Russian Government's illegal prosecution and seizure of legitimate individual corporate and private assets. It illustrated ways by which the Russian Government has violated the four universal principles of free and open markets – transparency in capital markets; maximizing shareholder value; protecting investors; and adherence to the rule of law.

Members of the U.S. Congress, including members of the Helsinki Commission, are well familiar with the GML case. Listed here is a selection of statements and testimonies expressing

their concern about Russian Government's continuous disregard for the widely accepted foreign investor rights and the rule of law.

In 2007, Representative Luis Gutierrez (D-IL) chaired a hearing in the Domestic and International Monetary Policy, Trade and Technology Subcommittee on the U.S.-Russia economic relationship. In his opening remarks, Gutierrez expressed concerns about Russia as a reliable economic partner: "...*U.S. and other would-be foreign investors need to know whether the rule of law will be upheld in Russia. And the Bush Administration needs to be motivated to start asking the Kremlin some tough questions when it comes to protecting the interests of U.S. investors.*"

Senator Roger Wicker (R-MS), at the time Representative, member of the Helsinki Commission, contributed a statement during the hearing on the U.S.-Russia economic relationship that called attention to problems with application of the rule of law and free market economics. He asserted that "...*Russia's legal and political system has regressed, threatening the development of a diverse economy based on market principles and the rule of law.*" Wicker added that the expropriation of Yukos is questionable for the stability of the economy and safety of investment in Russia. Additionally, in the case of Yukos Russian courts failed to protect private property rights and ensure independent judges, due process and equal application of law.

During the 2008 hearing entitled *The Business Climate in Russia and the States of the Former Soviet Union*, Alcee Hastings (D-FL) Co-Chairman of the Helsinki Commission reiterated the Commission's opinion that Russia presents a risky market environment without the protections guaranteed by the rule of law principles. He underlined that the Russian Government practices selective prosecution through extralegal means of prominent business leaders and other individuals, adding that such cases proceed "...*through a manipulated court system, thus denying its citizens and foreign investors the impartial application of the rule of law and equal justice.*"

CONCLUSION

I urge the Helsinki Commission and other members of Congress to continue expressing concerns about the deterioration of the rule of law in Russia. Indeed, despite leadership change in Moscow, we continue to see signs that the rule of law and investor protection practices have not improved. Despite President Medvedev's promised judicial reforms, the Russian authorities' concerted efforts against Yukos, its former executives and GML highlight that nothing has changed as well as the potential dangers faced by foreign investors in Russia. American investors should be wary of doing business in Russia until there is certainty that their rights and interests will be protected according to internationally recognized standards.

My hope is that a determined effort will eventually lead to a change of course in Russia where American and other investors can have confidence that their rights and interests will be protected according to internationally recognized standards of the rule of law, corporate governance and business transparency.

Thank you again for convening this important hearing.