



**“Russian Violations of the Rule of Law: How Should the U.S. Respond? 3 Case Studies”**

**Rep. Chris Smith**

**October 21, 2015**

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. citizen, 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 for 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.