

THE YUKOS AFFAIR AND ITS IMPLICATIONS FOR POLITICS AND BUSINESS IN RUSSIA



July 13, 2005

Briefing of the
Commission on Security and Cooperation in Europe

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Commission on Security and Cooperation in Europe
234 Ford House Office Building
Washington, DC 20515
202-225-1901
csce@mail.house.gov
http://www.csce.gov

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ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 55 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 2 p.m. in room 192, Dirksen Senate Office Building, Washington, DC, Hon. Christopher H. Smith, Co-Chairman, Commission on Security and Cooperation in Europe, moderating.

Panelists present: Hon. Christopher H. Smith, Co-Chairman, Commission on Security and Cooperation in Europe; Hon. Tom Lantos, Member of Congress (CA-12); Leonid Nevzlin, Former Executive, Yukos Oil; and Peter Roudik, Senior Foreign Legal Specialist, Library of Congress.

Mr. SMITH. Good afternoon to everybody. My name is Chris Smith. I am the Co-Chairman of the Commission on Security and Cooperation in Europe.

Joining me today is the Ranking Democrat on the International Relations Committee, Tom Lantos, who will make opening comments. We are so grateful to have him here at this briefing.

I then will welcome our other guests as well.

It is a pleasure to welcome everyone to this briefing today on the Yukos case and its impact on business and politics in Russia today. With Russia assuming the chairmanship of the G-8 at the end of this year, the subject of the rule of law in Russia and its relationship to business and politics becomes especially important.

The Yukos case seems to have been characterized by selective prosecution and blatant legal arbitrariness. For instance, I was surprised to hear that much of the verdict in the trial of Mikhail Khodorkovsky was merely the judge's restatement of the indictment filed by the prosecution. This is reminiscent of the dissident trials of the Soviet era.

I think the New York Times said it correctly when it wrote, and I quote, "We criticize this trial not necessarily because we believe that Mr. Khodorkovsky is innocent or that the oligarchs should be immune from law, but because it was not a fair trial, and a fair trial would have been so valuable to the development of Russia."

The editorial also points out that President Vladimir Putin is Russia's image and the standing of President Vladimir Putin has taken a major beating because of the trial, had the air of politically motivated vengeance and looting.

Indifference or hostility to the rule of law will ultimately wreak havoc on a nation's democratic development and its economic future. I say this as someone who does not intend to be needlessly critical of Russia. I want to see the Russian Federation as a prosperous and stable member of the international community and a partner in the war against international terror. For Russia to transform in this way, there must be certain reliable legal standards that are respected and enforced.

I would note that former Prime Minister of Russia, Mikhail Kasyanov, recently announced that he was considering running for President in 2008. He, too, is now being investigated for corruption. Just a coincidence, perhaps?

With this in mind, we look forward to hearing from our very special guest today from Russia, via Israel, who has extensive knowledge of the Yukos case and the Russian Government's pursuit of Mr. Khodorkovsky.

Mr. Leonid Nevzlin is a core shareholder in the Yukos Oil Company and a friend and business partner of Mr. Khodorkovsky. He has been a member of the Russian Federation Council, the upper house of the Russian Parliament, and Deputy Chairman of the International Relations Committee of the Federation Council. From 2000 to 2001, Mr. Nevzlin was President of the Russian Jewish Congress, and he has supported several major Jewish cultural initiatives. In June 2003, Mr. Nevzlin was elected President of the Russian National Humanities University. Since October 2003, he has resided in Israel.

If President Putin cares about Russia's future, he needs to look long and hard at the legal system that has emerged under his administration. Joining us today is an expert who looks at the Russian legal system long and hard every day.

Peter Roudik is Senior Foreign Legal Specialist for the Russian Federation, the former Soviet states, and Eastern Europe at the Law Library of the Library of Congress. Among other scholarly works, he is author of *The Legal System of the Russian Federation, Modern Legal Systems Cyclopedia*, 2004. Mr. Roudik received his legal education at the Central European University, Budapest, Hungary; the Institute of State and Law, Moscow; and Moscow State University.

I note parenthetically that Mr. Roudik's assistance to the Commission over the years has been invaluable, and we look forward to his commentary today as well.

I would like to yield whatever time he would like to consume, again, to my good friend and colleague, a hero of the human rights movement, Tom Lantos.

Mr. LANTOS. Thank you very much, Chairman Smith.

I would just like to say a few words to put this hearing in a historical context that is meaningful, I trust, to all of us.

My first visit to the Soviet Union was in 1956, and I have been going back there on a regular basis for almost 50 years now, most recently a couple of months ago, when I happened to arrive on the day that Mr. Khodorkovsky was sentenced to 9 years in prison.

I went to the courthouse. I was not allowed in, but there was a huge press gathering in front of the courthouse waiting for the proceedings to end, so I held a press conference. I expressed my views of what, from an American point of view, I believe is unfolding in Mr. Putin's Russia.

We were all thrilled when Mr. Yeltsin was elected for the first time in Russia's 1,000-year history as a president in an open and fundamentally fair election. I remember the first congressional delegation which went to Moscow after Russia became a free and inde-

pendent republic. We were all filled with hope and enthusiasm and optimism as to Russia's future.

The Russians are clearly among the most talented, extraordinary people on the face of this planet, as their achievements from mathematics to ballet so clearly indicate.

But unfortunately in the last 5 years, we have seen first a slow and then an increasingly accelerating retrograde movement to the point where today the Russian Parliament is merely a rubber stamp for the Kremlin.

Russian Governors are no longer elected; they are appointed. Imagine what the reaction would be if Governor Pataki or Schwarzenegger would be advised tomorrow that their term is up and the next Governor of New York or California would be appointed by the President here in Washington.

There is no independent judiciary. The absurd trials that take place are reminiscent of the Stalinist trials of the 1930s. Perhaps the consequences are not as extreme, but the respect for the rule of law is similarly absent.

And most significantly the guarantee of a free and open society, the independent media, has ceased to exist.

It is in this climate that a respected and successful industrialist who was in the vanguard of creating an open civil society of Russia is now behind bars for 9 years. There will be additional phony charges filed so the 9-years can be extended ad nauseum and ad infinitum. And to see another respected Russian industrialist and philanthropist who shares this panel with Co-Chairman Smith and the rest of us, was forced to flee his native country and is fighting extradition by what is clearly a totalitarian regime.

I happen to view myself as one of Russia's strongest friends in the Congress of the United States. Chris Cox and I founded the Free Russia Caucus. We are hoping that the current trend toward centralization, authoritarianism, lack of respect for law, can be reversed.

This trend needs to be reversed because the Russians ought to be our natural allies in the global struggle against violent Islamic fanaticism. A Russian school was one of the sites of one of the most horrendous terrorist acts, and there is every reason for us to work together.

But for us to be able to work together, the Russian Government must reverse course and move again in the direction that Mr. Yeltsin set a course, a direction of recognizing that, in the 21st century, open, democratic, free civil society ought to be the order of the day for a singularly educated and qualified people.

Thank you, Mr. Chairman.

Mr. SMITH. Mr. Lantos, thank you for that very eloquent statement.

I would like to yield to Mr. Nevzlin whatever time he would like to utilize.

The floor is yours.

Mr. NEVZLIN [through interpreter]. Mr. Chairman, ladies and gentlemen, Mr. Congressman Lantos, I am grateful for the opportunity to speak here in front of the Helsinki Commission as this Commission monitors and oversees the fact that the rights as well as the liberties in this world are adhered to. This Commission, such as we ourselves, expresses concern over what is happening in Russia, and it also informs the public on what is happening.

I am also grateful to the Co-Chairman for the statement that the Commission and the Co-Chairman issued after Mr. Khodorkovsky's verdict. In this statement, the Co-Chairman expressed mistrust for the Russian justice and for the interference of the government in the Khodorkovsky trial.

Mr. Khodorkovsky is my friend, and it is therefore very important for me to have the opportunity to speak about him here in America.

However, I believe that for him, as well as for me, the preservation of rights and liberties of people regardless of what countries they may be involved in, this is a much more important issue, as this issue is something that is important to the world as a whole. What happened to him, to myself, to us in Russia, we believe harms everybody in the world, including America.

Chairman Smith, with your permission I would like to give my official written statement for your Commission, as well as to distribute to anybody in the audience in order to utilize the time most effectively and keeping in mind the time restrictions and the fact that I am working through an interpreter. I certainly would like to use the time at hand to maximally answer any questions that the present audience may have.

I would like to say that myself, as well as Mr. Khodorkovsky, would like to see a non-corrupted, free and well-to-do flourishing Russia. And I believe that all of our last years in business as well as in politics were devoted to this particular goal. Only after there was a power change in Russia did our efforts start being viewed as something black, as opposed to something that used to be white.

As far as myself, I am proud to have found a place to live in Israel. I am proud that this country has protected me.

I am also grateful to the United States for giving me the opportunity for me to come here freely without barriers and to speak with people and to meet with them. It is especially important for me at this time after the prosecutor who is involved in a witch hunt falsely accused me of crimes which will never be substantiated and of which I have been falsely accused.

I am once again very grateful and would like to express my gratitude to the Helsinki Commission for its commitment to democracy as a whole value, as a value in its own right, and for the Commission's stand on expressing its displeasure and concern anytime that the rights and freedoms of people are breached wherever those breaches may be taking place.

Thank you. I am now prepared to answer any questions.

Mr. SMITH. Let's go to Mr. Roudik, and then we will go to questions.

Mr. ROUDI. Chairman Smith, Congressman Lantos, ladies and gentlemen, it is an honor for me to appear before you today to address the issue of law reform in Russia.

This briefing comes at a pivotal time when high Russian officials, including President Putin, have recognized the country's legal system is corrupt and ineffective. Your statements have a special meaning because during the last 15 years law reform was continuously used as a sign of positive transition from the nation's post-Soviet legacy.

Just a few months ago, the government reported the completion of law reform, offering its citizens newly adopted courts for arbitration, civil and criminal procedures, as well as new laws regarding police activities, prosecution and judicial appointments.

However, the quality of these laws is extremely deficient and all novelties introduced just as a showcase, without affecting the essence of the legal process.

Among the more positive changes observers have mentioned was the districting of court circuits, at one point the expansion of juries to 87 regional courts. Overall, however, the changes have created a refined legal system that still suffers from corruption. The new criminal procedural court was in force only 23 days before more than 300 amendments to the court were added. Nevertheless, it still has many legal mistakes.

The court was supposed to establish an independent judiciary, increase the rights of the accused, and instill firm rules of procedure and evidence for police and prosecutors. However, the current system continues the old practice of automatically convicting almost everyone who appears in court.

Criminal justice reform was praised highly for promoting the presumption of innocence and democratic legal norms. Among its provisions, defendants were entitled to request a lawyer while detained and were supposed to appear before a judge within 48 hours after they were originally brought into custody. Judges, not prosecutors, were to issue an arrest warrant and order that the accused be held in a pretrial jail or be freed pending trial. However, amendments that followed that option of the court allowed the judge to extend detentions for 72 hours, and now most recent amendment extended this time to 120 hours of jail time.

Under the new legislation, the powers of defense attorneys became greater. Nevertheless, soon after the last adoption they established norms which once allowed detainees to meet with their attorneys without restriction was changed to permit only one 2-hour attorney-client conference before an interrogation.

To avoid the direct interference of regional authorities through financing, which meant bribing the courts, boundaries of judiciary districts were expanded. Now, arbitration court circuits encompass several components of the Russian Federation. However, the dependence of these courts on higher government authorities increased because all aspects of financial regulation are concentrated in the president's administration.

Just recently, the New York court for the Eastern District of Manhattan refused to recognize the rulings of the Russian Supreme Court of Arbitration, which is the highest court for commercial disputes, because of its dependence on the Federal Government. The reason was the government resolution, as signed by the deputy prime minister, requested the court resolve a particular case in favor of one of the parties. So this then would demonstrate that impartiality in Russian courts exists only when the state has no interest in the resolution of a particular case.

The independence of judges is an empty concept, as influence on judges can be indirect. Judges understand what decisions are expected from them and behave accordingly. They know what consequences may follow a decision that does not satisfy higher authorities.

They can be removed for a simple violation, and several notorious cases involving the recent dismissal of judges from the Moscow city court for their disagreement with the court's chairwoman confirms this assertion.

The procedure for judicial appointments was substantially amended during President Putin's term. All initial appointments are made for a 3-year term. After expiration of this 3-year term, judges are not appointed for permanent service if their superior judges find their performance unsatisfactory.

The Constitutional Court of Russia confirmed the constitutionality of this 3-year probation. This practice may become an issue because the government intends to hire

twice as many judges before the end of 2006, meaning more than half of the judiciary corps will consist of judges on probation.

One positive development is the expanded role of juries. They are now utilized in all 87 constituent components of the Russian Federation. However, juries may participate only in trials originated in 87 state-level courts of the second level. Meanwhile, there are more than 2,500 courts of general jurisdiction.

Moreover, even in the 87 courts, jurors do not hear all cases. The accused must request a trial by jury, and there is a complicated procedure for the submission of such a request. As a rule, police and investigators attempt to discourage detainees from submitting such requests because there is a greater acquittal rate with jury trials.

Despite the fact that the law requires the random selection of jurors, the appointment of individuals to juries by Russian special services has been reported. It is not unusual that in the middle of a trial a judge is removed and the newly appointed judge dismisses the entire jury and selects a new one before the trial continues. The European Court of Justice has cited Russia for such manipulations.

Until now, the government was unable to build a unified legal space that would accommodate the regional legal specifics. Russian legal space is being corroded due to an imbalance between Federal and state powers, and the supremacy of Federal legislation is accepted regularly against constituent components whose laws deviate from federally established norms.

The present administration cites these problems as justification for its ongoing attempts to remove judicial institutions from the sphere of influence of local and regional leaders, to increase the control of Federal executive authorities over the judicial branch.

The Khodorkovsky case illustrates the failures of Russian legal policy. Even without focusing on the political elements of Khodorkovsky's prosecution, the case reflects weaknesses of the legal system and the inability of the court to resolve a case without procedural violations.

This case started with procedural violations and unfair political shuffling. Knowing that Mr. Khodorkovsky was on a business trip outside of Moscow, he was called to the prosecutor's office for interrogation. He did not appear and was accused of refusing to cooperate with the investigation, and his arrest was initiated.

Given that Russian law prohibits an attorney from meeting with his client on weekends, the arrest was organized on a Saturday afternoon to give him almost 2 days without any legal defense.

Another attempt of the prosecution to destroy his defense, the interrogation of Mr. Khodorkovsky's attorney as witnesses. When the attorney's office is searched and his documents are seized without a court order, he can be interrogated as a witness and will not be allowed under Russian law to participate further in the trial.

The original charges brought against Mr. Khodorkovsky by the prosecution office show that the prosecution did not prepare well for the trial. Initially as an individual, Mr. Khodorkovsky was accused of avoiding the payment of his taxes in the form established by the Russian state. However, in May 2003, the Constitutional Court of Russia ruled that Russian citizens have the right to choose an independent but legal way of paying their taxes when it is more adequate for them and their businesses. The prosecution's actions were determined by the approaching expiration of the statute of limitations, which forced it to rush the submission of its case.

The exact legal grounds for its case remain unclear also. All of the alleged facts that happened in the Sverdlovsk region in 1994 are indistinguishable from acts committed by other companies that inflated their figures. Previous Russian legislation did not regulate such actions and the lack of a prohibition allowed so-called agreement on credit compensations agreement on credit compensations, which in this case was the payment of taxes through Yukos letters of exchange. The prosecution was aware of this fact, which also explains its failure to investigate the facts of the crime while it interfered with the disputes of legal entities.

The prosecution's action also are a sign of the selectivity of Russian justice. Other illegal methods have been applied to almost all 20 Yukos executives and their attorneys who are in prison or forced into exile. Families of the accused are also prosecuted.

The absence of legal reasons for the prosecution's accusations was confirmed by courts in Israel and Great Britain, which denied the Russian extradition requests. Also, discrepancies, violations and legal mistakes allow one to conclude that the verdict against Mr. Khodorkovsky is simultaneously a verdict on the entire Russian legal system.

Thank you.

Mr. SMITH. Thank you very much, Mr. Roudik.

I would like to proceed. I will ask a couple of opening questions and yield to my friend and colleague Mr. Lantos. And then if you would, those of you who have questions, make your way to the microphone, identify yourself and then fire away.

Let me just, if I could, Mr. Nevzlin, ask you the first question, but just preface it.

Last week, the Organization for Security and Cooperation in Europe's Parliamentary Assembly was held here in Washington. We had about 360 Members of Parliament from the 55 countries that make up the OSCE. The Russians sent a very high-powered delegation.

And one of the resolutions that they offered was a resolution that, after we read it and read it carefully, was designed to seriously undermine and weaken the ability of the OSCE PA and the OSCE itself to monitor elections to determine whether or not they are free and fair. It called into question the methodology that is employed by the OSCE, which is really the gold standard when it comes to observing elections. And many of us suspected that there was an eye toward 2008 Presidential elections in Russia and a hope to try to come up with a free and fair win when it might fall far short of that.

During the course of the consideration of that resolution, I offered 11 amendments to change, really radically change, that resolution, and we won each and every one of those. And the resolution that we emerged with was something that basically reinforced and reiterated the OSCE's current way of doing this.

So my first question is, it might be somewhat obvious, but with an eye toward the 2008 elections, is this all part of an effort to try to stifle those who are supporting opposition candidates, particularly those who have resources that could have an impact?

Second, let me ask, the United States, in granting you a visa, I think has sent a very loud and clear message—it is not ambiguous—having looked into the charges. And it is hard to get a visa if someone has a credible charge lodged against them. You know, our laws are pretty clear on that, and yet you have been able to come here unfettered and to make your presentations, first of all, to get the visa.

Israel, in like manner, has been asked through Interpol to detain you and I guess extradite you back to Russia, and they, too, have laid aside that Interpol request. Russia

itself has repeatedly asked our State Department and our Justice Department to extradite you. We have no extradition treaty with Russia, so it seems to be a moot point on that as well.

But the 2008 elections, the fact that at least two bodies, the United States and Israel, have looked into this and are seriously questioning what the Russians are doing here. And finally the Parliamentary Assembly for the Council of Europe, after a year-long look by the German minister, has come out with a very strong resolution that said basically that the prosecution of Yukos executives was sought to weaken an outspoken political opponent, intimidate other wealthy individuals and regain control of strategic economic assets, which is quite an indictment of the Putin regime.

And I would just like to ask you how you respond to that, Mr. Nevzlin.

Mr. NEVZLIN [through interpreter]. I am going to answer the questions in the order in which they were asked. I am going to start with the OSCE resolution and the elections question.

I was lucky enough to come to Washington, DC, about 10 days ago and actually to stay at the very same hotel as the Russian delegation that attended the OSCE meetings. None of the representatives of the Russian or the Georgian contingent discussed this resolution. What they did discuss was an incident that took place between Sliska from the Russian side and Burjanadze from the Georgian side. Ms. Sliska is deputy chairman of the Duma.

The conflict was over the fact that the statement was made by Sliska that nobody should listen to Burjanadze as Burjanadze represents a country that is smaller than even the smallest Russian region. This was probably the core of the difference of opinion that we have.

I did not know about this resolution that was discussed at the OSCE meeting. However, I spend much of my time here trying to convince institutions that work to support and spread democracy in Russia and in the world as a whole to be involved in election monitoring. Because I believe the only thing that is possible to do is to evaluate the Presidential elections of 2007 and 2008, and the evaluation should include how fairly and freely these elections were held.

I believe that now America, as well as Europe, should make sure that there is everything in place both legally as well as physical access to election monitoring. It is especially important to start monitoring elections and the preparation to elections now, because when the elections themselves are held, it will be quite easy to ensure that they are held in a completely free way. However, it is the preparatory period that is important to monitor.

What kind of a free election could there be in a country where the government has the power over the media, where the legal system in its entirety is subordinate to the Kremlin, where the political opponents are in jail and people are simply afraid to express their views?

Today, there is no financial basis or foundation for an opposition in Russia. No one in Russia today is going to donate one kopek or penny, or certainly to say nothing of large amounts of money, to any political candidate without first consulting with the Kremlin.

A free media is a cornerstone of a free democracy. And what happened was the free media was the first one to go, and unfortunately this is the situation we have today.

There are people in Russia today who could be political opponents. However, they have no parliamentary support, no financial support and no media. So I believe there will be an attempt made to hold these elections with a pre-selected, pre-approved group of candidates in both 2007 and 2008 and that the outcome of these elections will be predetermined and that these will be more or less selected by the Kremlin.

As far as the American visa and Israel's position, Israel for over a year now has been receiving a large number of accusatory documents which I allegedly committed in Russia. In Israel, as in many other democratic countries, the extradition process is done through the courts, and so far not a single document was deemed valid enough to even initiate such a court proceeding in Israel.

I believe that the American legal system has evaluated these documents in the same way, because I have a hard time believing that America would be interested in admitting such a horrible criminal to this country. However, I believe that if I had to go through the U.S. legal system here, I would have no problem doing it, because I trust the U.S. legal system.

And as my colleague has said, the British courts have also called the Yukos affair a political affair, so Britain also has no problem with this position. Those people who associated with Yukos in Israel got political asylum in Britain. The only difference that the U.S. visa grants me is that I can come and go as I please, whereas if I were going to go to Britain, I would first need to go through a lengthy court process. But this way, I can travel to America and go back home to Israel.

Mr. SMITH. Let me just, before I yield to Mr. Lantos, point out to our friends who are here in the room, it is so clear that if you starve the opposition and you do it so far in advance and intimidate everyone else and criminalize opponents, put them into jail, you are absolutely going to get a pre-selected outcome, and that could not be clearer.

And this is somewhat reminiscent of, you know, I remember Nicolae Ceausescu, the dictator from Romania, when he finally decided that political prisoners were a burden and a dishonor that he could bear no longer, decided to say everyone who now is being arrested is a criminal who committed some theft or some other action against the state, they were still political prisoners with trumped-up charges lodged against them, and it was a distinction without a difference.

I would also point out that one of the things we are going to try to do with the OSCE observation effort is to inject this much more forcefully, because obviously they are starting, not months or a year, but years in advance. And there is also the theft issue, that people have lost their assets to what clearly looks like a theft. I think that has to be raised as well.

And you have also raised the issue of anti-Semitism, which you might want to touch on as well. Our Commission has been dogged, and we are joined by a man who is a Holocaust survivor himself, in Tom Lantos, who knows where anti-Semitism and hatred of Jews inevitably leads. You just might want to touch on that as well, but you might do that in answer to some questions from Mr. Lantos as we move forward.

Mr. LANTOS. I just would like to add a footnote to this extremely interesting discussion. But before doing so, let me pay tribute to you, Mr. Chairman, for your indefatigable fight for human rights globally. You and I have been comrades-in-arms for many years. And it is very good to have you chair this very important body.

I think it is important for us to realize that the United States historically has made alliances with totalitarian countries. During the Second World War, Stalin's Soviet Union was an ally. It was a very useful ally in winning the Second World War. But no one in that period claimed that the Soviet Union was a democracy.

We now have this absurd and anomalous situation of the Group of Seven industrial democracies—the United States, Canada, Japan, France, Germany, Italy, and the United Kingdom—meeting year after year and, as a matter of courtesy at one point, chose to invite Mr. Yeltsin during a period of tremendous optimism and hope that Russia will move in the direction of a political democracy.

And after some informal attendance by the Russian President, as a gracious gesture predicated on a future development of a full-fledged democracy, Russia was made part of this club, which was no longer called the G-7; it is now called the G-8.

In point of fact, Russia moved in the opposite direction. And whatever else you can say about Russia today, you cannot label it a democracy.

That is why Senator McCain and Senator Lieberman on this side of the Capitol, and my Republican colleague Christopher Cox, who will soon be Chairman of the Securities and Exchange Commission, and I introduced identical resolutions suspending Russia's participation in the G-8 until Russia moves in the direction of political democracy.

We do not expect Jeffersonian principles to be full-blown instantaneously, but we are able to distinguish between moving in an authoritarian direction, which is what Russia is doing today, or moving in a somewhat more open, democratic, civil society direction.

The summit in Scotland witnessed the handing over of the gavel to Putin because the next G-8 meeting is scheduled to take place next year in Moscow.

Mr. SMITH. St. Petersburg.

Mr. LANTOS. St. Petersburg, thank you. It is a more pleasant place.

The next year will be a fascinating year to watch, as those of us who take the concept of political democracy seriously will insist that Russia, in its present form, is as unqualified to be a member of a group of democratic nations as China would be.

There is no reason to exclude China from the G-8. It is big, it is industrializing, its economic growth rate is unprecedented, but it is a police state. And we have not included it in the group of democratic industrial nations.

Putin has an option of either moving in a new direction, which I earnestly hope he will, or of exposing himself and Russia to an unending drumbeat of legitimate criticism that Russia has turned back toward an authoritarian past.

Now, one of the reasons for Putin's arrogance is the price of oil, because, with oil at \$60, the windfall that the Russian treasury is enjoying is enabling this corrupt and inefficient government to maintain itself because the oil revenues are pouring in. This is not unlike Venezuela; this is not unlike Saudi Arabia or Kuwait or others.

The notion that two of the most democratically oriented and civil society-minded philanthropists attempting to build free and open institutions should be in prison or in exile is a condemnation of this Russian Government of unprecedented severity.

When I last saw Mr. Khodorkovsky, I strongly urged him not to return to Russia because I predicted he will be arrested, falsely accused and imprisoned. He is a passionate patriot, and he chose to return. And his reward now is to sit in a rotten prison after a

phony trial, with 9 years of prison sentence looming over him, which can easily be doubled or tripled because it is an utterly arbitrary sentence.

The one thing that the Putin regime is not counting on is that, in an age of 24-hour, nonstop media, the media of the free world will point this out time and time again. Just a couple of days ago, an editorial in the London Financial Times basically outlined what I am outlining here today.

One can expect all of the free world's media to occasionally deal with this issue. This will be a very heavy price for Russia to pay, and the Russian people deserve better.

I hope that Putin will see that this course will end in a disaster for Russia, because, as we move along in the 21st century, the pretense of democracy, which he is desperately clinging to, simply will not wash.

Just as other authoritarian/totalitarian societies have been revealed to be such, so there will be again recognition by the media and by the public that we are living with a lie we call the G-8, a group of democratic, industrial nations, among which one is palpably non-democratic.

This is not a pressing issue for most people. Who cares whether it is called the G-7 or the G-8? But there will be, in time, a gradually growing demand that this organization cleanse itself, just as a club must cleanse itself of members who for some reason do not qualify.

Russia does not qualify. It is now an oil-producing giant with a basically unproductive economy, a health system which is collapsing, a military which is a disgrace in terms of its treatment of its recruits, a justice system which is corrupt, and a parliament which, in a functioning sense, does not exist. A society which used to have elected provincial Governors, these have all been abolished. And the degree of centralization that Moscow used to exercise in Stalinist times has now returned.

I would like to ask a question, if I may, of Mr. Nevzlin.

Could you give us an indication of the steps you and Mr. Khodorkovsky took while you both were in Russia to build democratic institutions in the media, in universities, in civil society?

Because my impression was that the two of you have sort of led the way in attempting to create alternative foci of influence in Russian society, similar to the ones that we have in a democratic system.

Mr. NEVZLIN [through interpreter]. Mr. Khodorkovsky, a long time ago, became very concerned with the creation of a civil society and a civic mindset in Russia. He decided that, aside from paying taxes, we should also pay an additional fund into creating a social—or, rather, to invest, perhaps, in the social structure of the country.

He believed, however, that it is the government's responsibility to do what it can as far as charity goes, and to help the weak and the indigent in a country, and that it is the job of business, especially big business, to invest in the future and to invest in the young people.

And as a large businessman, a very, very large businessman in fact, he always also invested large funds in large projects, in projects that have a regional infrastructure.

The first project was the Federation of Internet Education. It was a structure that prepared teachers of Internet in all Russian regions. He believed that this was a very important lever to use. He wanted to make sure that the Internet is used in education and that the Internet makes its way to every home.

Unfortunately, in a poor country, what happens a lot is that the first thing that is purchased is equipment, because by buying equipment, the officials and the intermediaries make a lot of money very quickly.

However, what happens then is the equipment just sits there doing nothing. That is why if you just buy computers and give it to a school out on the outskirts somewhere in a rural area, it is not enough to just give the school the computer. It is very important to make sure this computer is used.

Khodorkovsky also set up an organization called Open Russia. This is the largest grant-making organization. It gives grants in projects involving education and human rights. It is involved literally in dozens of projects that seek to strengthen media, strengthen human rights and education.

This organization also—rather, Mr. Khodorkovsky also gave grants and scholarships to dozens of universities in Russia. He also began a program of international cooperation. American donors, including the USAID, which is a government organization, started cooperating with Open Russia.

Mr. Khodorkovsky also founded similar organizations in the West in order to work with the Russian children in the United States, as well as in England. In fact, Mr. Khodorkovsky started working with the Library of Congress by being one of the first to invest money in the Open World program. Actually, the time of Mr. Khodorkovsky's activity was just right, because he came on the scene exactly at the time when the Soros Foundation was pretty much shut down in Russia.

And one of the other projects that I will mention—I cannot mention all of them; there simply is not enough time—but one of the projects that he undertook and that he entrusted to me was creating a humanities university in Russia. This project ended up with me being elected as rector of this university. Unfortunately, then attacks on me started and I was forced to resign because the administration demanded it and this was a state university. Two years later, the university still has no rector.

Mr. Khodorkovsky also funded a number of youth programs similar to your Scouts program all over Russia. There were also international cooperation programs within this particular framework, including camps, summer camps and so on.

He also had a very personal project. This was an orphanage in Koralavo, where orphans or other children without parents would get a complete education and would feel what it is like to have a family. Right now it is a large lyceum. Khodorkovsky's parents work there now, and quite a few people help us with this project, as well as friends.

I certainly cannot list everything here. One thing I will mention is, in addition to the responsibilities that I was entrusted with by Mr. Khodorkovsky, I was always also involved in Jewish issues, but that is a separate topic that I have.

Thank you.

Mr. SMITH. Again, if anyone would like to ask questions, please make your way to the microphone.

I would like to just ask Mr. Nevzlin and Mr. Roudik if you would—there is an editorial in the Moscow Times today, and it is very intriguing. It is, “The Risk of Eliminating All Opponents,” and it points out that this effort to suppress all political opposition could backfire, could easily backfire, in the words that they have penned today.

What is your sense of that? And how can we in the West, especially this Commission and hopefully our president and others, encourage it to backfire? Because it seems to me

when you take away the tools, that is to say the political opposition and the resources they need to mount a serious opposition, you just silence all dissent.

Second, if you could, if President Bush were sitting in this audience today, what would you tell him? And what would you tell the other G-8 leaders?

And, Mr. Roudik, you might want to touch on this as well, because I am not sure if this was raised and, if it was raised, if it was raised robustly when the meeting in the U.K. occurred, in Scotland.

And finally, you, in the New York Times, Mr. Nevzlin, made the point that anti-Semitism seems to be an issue here as well. And while Putin has made statements—recently was in Auschwitz and seemed to be pushing all of the right buttons to express his horror and disgust over anti-Semitism, at the Berlin conference that was sponsored by the OSCE a year ago and in Cordoba just a few weeks ago and in Vienna 2 years ago, the Russian delegation was very keen on denouncing anti-Semitism.

As a matter of fact, when Sharansky gave his speech in Berlin, I looked over at the Russian ambassador and his delegation and they seemed to be cheering the loudest. So I am not sure if we are getting mixed signals, if we are getting some stagecraft, or if it is real. So if you could speak to the issue.

And again, Mr. Roudik, you might want to touch on those two questions as well.

Mr. ROUDIK. Well, if you will enter the State Hermitage in St. Petersburg, the Salzburg Chamber, you will see there the sculpture of the justice goddess. She stares with very wide open eyes, so it shows that since many centuries ago, Russian justice had its own way. And current amendments to the electoral legislation which eliminates all opposition, which makes the opposition parties very difficult to enter the parliament or just participate in the elections, shows that the government tries to do anything to preserve its own power.

The problem is also that still in Russia the essence of the legal system, the essence of all politics is to preserve the state interest and to preserve the prevalence of the state interest over individual rights.

So I think one of the major problems is to encourage the human rights movement, to encourage developments in this field, and emphasize that elections—or democracy is not just elections, and all general symbols of elections which are shown to us by the Putin administration do not express the essence of the system.

Mr. SMITH. If President Bush were sitting right here, what would you say to him?

Mr. ROUDIK. I think President Bush was persistent in pushing President Putin in the direction of democracy, and he mentioned during all his previous meetings the values of democratic developments that remain in the focus of his attention. And I think if he continues his efforts, it will be very useful.

Mr. NEVZLIN [through interpreter]. It is hard for me to give advice or counsel to President Bush. We have a different relationship with Mr. Putin. However, I think that this is one issue I am very objective on because I have a history there, as well as knowing what it means nationally.

I never saw any soul in those eyes.

But seriously, anti-Semitism was not a reason for this case and actually things were not all that bad, perhaps they were better than they were in Europe.

I warned Mr. Putin, I thought, at the time when it was possible to appeal to him that the fact that he is surrounded by anti-Semites is a dangerous thing, especially if these anti-Semites are within the law enforcement structures.

Right now, anti-Semitism in Russia is a reality. Perhaps it is not as visible in America, but Israel is boiling over with indignation. In the recent months, investigations were forbidden into absolutely horrible anti-Semitic letters. However, what was allowed was the investigation into the so-called "Shuhan-Arouch". Actually, this last case actually ended up being voted on in the Parliament and about 140 or 150 members supported this investigation.

Anti-Semitism in Russia has a serious base which is a nationalistic movement that is picking up force. It is not opposition today yet, but it could become opposition, and these people could play a key role in 2007 and 2008, first of all, because they will always find funding and also because they have support not only among the people, but among the elite too, and when I say "elite" in this instance, I mean the FSB and law enforcement. And I do not see how the Kremlin will be stopping this, even if it wants to, especially today when the rating of Mr. Putin, as well as the rating of Yedinaya Rossiya, Unified Russia, is falling, and the nationalists are enjoying stronger ratings all over Russia.

To answer your question regarding basically Mr. Kasyanov, what he needs right now is bravery. I told him that he will need it because I use myself as an example, and I said that when he first announced he was going to run for office. This criminal case against him is a warning to him, but it is a serious warning. And he can overcome this only by bravery and steadfastness, but also by public activity.

Here is what they want from him. They want him to come to the Kremlin to make a deal. In most cases, they win. Everybody who has blood running through their veins is afraid and is therefore ready to negotiate.

We will see how Kasyanov handles himself in this situation, so we will see what the answer to the question is, whether they are harming themselves or him with this particular action. Time will tell.

Mr. SMITH. Could you give us how many people have been subjected to criminal proceedings or investigations, not just with your company, but other people who might be part of the opposition?

Mr. NEVZLIN [through interpreter]. A couple of words about our company. It is pretty unusual. I have a bad joke. The year 1933 in Russia is the year 1937 for Yukos because in Russia we are perhaps preparing for repressions, but within Yukos the repressions are taking on a massive scope. At least 10 people from Yukos are in jail, I think. About 50, I believe, are in hiding abroad. And I believe that many people lost their jobs, and other people got serious personal, financial, and other problems.

The most serious problem was with our partner Platon Lebedev, who was never once allowed medical attention despite his very serious liver condition, and now he has been sentenced to 9 years.

There is a very cruel approach that was taken to Svetlana Bahkmina. She is a lawyer, a mother of two. Her children are 3 and 7 years old. She has been kept in jail for 6 months already. There is no explanation for it. There has never been such cruelty after Stalin, ever. And it is pointless cruelty. They tried to negotiate with her by saying that if her boss comes back, Mr. Gololobov, then she will be released.

Alexei Pichugin, who is a security department staffer, was subjected to even more cruel treatment. We documented the fact that he was treated with drugs. They tried to get him to testify against me.

Aside from investigators and prosecutors working on every case, there are FSB staffers specifically assigned to the Yukos cases. This entire case has the Federal Security Service, or the FSB, running through it. In fact, this is where the case got started. It was a task from Mr. Putin.

And the legal structure, the prosecutor's office and the courts, all they do is they create a legal basis for the FSB's action. In addition to the Yukos case, which is a case I know well, there are now literally dozens of people who are being politically persecuted.

There are ridiculous espionage charges under way. Espionage charges and cases are always initiated by the FSB, and these particular charges are truly ridiculous because they talk about secrets which simply do not exist. Everybody knows about these cases; I am not going to list them now.

When the FSB wants to work against its enemies, it practices very widely planting evidence, planting drugs, planting weapons. This has become a very widespread way to work in Russia today.

I can talk about this for a very long time. It is better to stop me now.

Mr. SMITH. Let me just ask you on that, with the FSB, do they follow people like yourself when you are in other countries and try to cause problems there, like with the planting of evidence?

And to Mr. Roudik, if I could ask you—and, again, if anyone has a question, please make your way to the microphone.

You talked about the consequences to judges. Now, I am not sure if you are kind of like indicting the entire judiciary in Russia, or do these cases get handled by a select group of judges who are proven commodities when it comes to Putin, that you know what the outcome is going to be before they even utter a word?

Mr. ROUDIK. Yes, the government has the opportunity to handpick judges that they want. As I explained in my testimony, there were cases when judges were changed during the trial. And the same happened during the Pichugin trial, one of the employees of the Yukos Company, when the judge did not satisfy requirements of the prosecution and he can say, in quotation marks, because the FSB was standing behind the prosecution, the judge was removed, the jury was dismissed, and a fresh jury was called.

Mr. SMITH. What happened to that judge? Do you know?

Mr. ROUDIK. The judge was just removed from the case, but Moscow City courts are especially notorious for removing the judges.

And now, according to the new law on the status of the judges, the procedure for dismissal of judges is much simpler. It is simplified and is much easier than before. The removal of judges is made just by their superiors, and there are no formal requirements for removal.

Mr. NEVZLIN [through interpreter]. Thank God, I do not think the FSB staffers can do any more abroad than they can in Russia. In Russia, what is happening is witnesses, judges, and members of the jury are under constant surveillance by the FSB, including witnesses in commercial cases, noncriminal cases. What happens is they are isolated in FSB-guarded dachas to, quote, "protect them."

The FSB does not really work abroad these days that much. It is not actually what they do. It is not even foreign intelligence's job, but rather it is the investigative arm of the ministry of defense. And what they did to Yandarbies is a testament to that.

I feel their presence the most when I talk or write to people who are in Russia today. Our telephone calls are monitored and listened to. Our Internet messages are also read, and we feel it. But I cannot say that I am that concerned about it.

Mr. SMITH. Just, again, if there are no other questions, before my first trip to the Soviet Union in 1982—and I see Mark Levin here, and I actually went with Mark and the National Conference on Soviet Jewry—I read a book by Hedrick Smith called “The Russians,” and he talked about how he was trailed by his minder.

So I think it is something we need to be on the lookout for as to whether or not they do follow, clandestinely or not, the people like yourself abroad. We know that the People's Republic of China increasingly are sending their security apparatus to hound Falun Gong and other people in the United States and elsewhere, so it is something I think we need to be vigilant to, because it is not that hard for them to get a plane ticket and to harass or to even plant evidence on somebody like yourself.

I do have one final question, and it would be to the issue of suspension of G-8 membership of Russia. I was wondering what both of you gentlemen thought of that suggestion that is emanating out of Congress, because of your egregious case and others like it. What is your sense?

Mr. Roudik?

Mr. ROUDI. It is up to the Congress to decide.

Mr. NEVZLIN [through interpreter]. I think that my position on the Putin regime is perhaps the harshest of anybody in this room today. It is not a personal position. It is a well thought-out position.

I think that helping Putin today is interfering with Russia, yet interfering with Putin will be helping Russia today. And if President Bush were in this room today, I would ask him to perhaps think, if he needed to negotiate with Putin about something, does he have these levers for negotiation?

However, it needs to be understood that Putin and people like Putin, people from the FSB, only understand the position of power or force. Therefore, I believe that they do not deserve to be in the G-8. This is not a democratic country, to say nothing of the economic standards of being in the G-8.

Congressman Lantos already mentioned China. Well, why not India? India has a developing economy and it is a democratic country. Why not give India this advanced payment of admitting it into the G-8?

I do not think that Putin has a place in the G-8 because I do not see how he is paying the democratic world back for this gesture of good will, for this advanced payment of admittance to the G-8, which is why I do not think he has a right to be there.

Mr. SMITH. Thank you.

I would like to thank you, Mr. Nevzlin and Mr. Roudik, for your very incisive commentary and for all of you for being here today.

If there are no further questions, briefing is adjourned.

Thank you so much.

[Whereupon the briefing ended at 3:32 p.m.]

APPENDICES

PREPARED STATEMENT OF LEONID NEVZLIN, FORMER EXECUTIVE, YUKOS OIL

Mr. Chairman, I welcome the opportunity to appear before the Helsinki Commission to discuss the current situation in Russia and the concerns of all of us about the Putin government and the future of Russia.

First, I wish to emphasize the value of the Commission's mandate and stated criteria to promote compliance with the fundamental standards of civil society in Russia and the other former Soviet republics.

Second, those of us who have witnessed first-hand the travesty of justice in Russia much appreciate the concerns expressed by the co-chairmen about the improper handling of the Yukos trial and the sentencing of Mikhail Khodorkovsky and his colleagues by Russian authorities. Your formal statement to the world's press that the "case appears to the world to be justice directed by politics" and that the "selective prosecution such as appears to be the case here will wreak havoc on Russia's legal system" reflects that the chairmen of this commission have an accurate view of the Khodorkovsky trial and the weakened state of the legal system in Russia.

Third, it is vitally important that the Helsinki Commission continue monitoring the implementation of the provisions of the 1975 Helsinki Accords as they relate to Russia and report its findings to the public. While the U.S. Administration and Congressional leaders must necessarily balance many variables in the bilateral relationship, the Helsinki Commission has a clear mandate to insure that human rights and basic freedoms are maintained in the countries under its jurisdiction.

Mr. Chairman, it is my opinion that the rule of law is the cornerstone of civil society because it serves to protect the rights and freedoms of all citizens. What we have witnessed this past year in Russia is a legal system that differs very little from the Soviet days. The state prosecutor is an instrument of the Kremlin and the judiciary is not truly independent. When the finest lawyers in Russia cannot get a fair and just trial for their clients when the whole world is watching, no one in Russia can expect to obtain justice.

The lives of many hundreds or even thousands of people have been harmed forever as a result of the abuses of the Russian government, which has violated basic human rights and its own laws again and again. Many of those cases do not receive wide attention, but some do, and human rights groups have begun to document them. They are worthy of your attention and your future labors.

I am most familiar with the cases involving Yukos. Beyond Mr. Khodorkovsky and myself, Alexei Pichugin, a mid-level Yukos executive, has been sentenced to 20 years in prison in a secret murder trial conducted entirely behind closed doors. Mr. Pichugin has been drugged, interrogated without his lawyers present, kept from his wife and denied independent medical treatment—even after he lost nearly 70 pounds while in the custody of the FSB. My colleague, Platon Lebedev, who is suffering from liver ailments and who was arrested in his hospital bed, has also subsequently been denied independent medical care. He was tried in the same cage with Mr. Khodorkovsky in a show trial in which Russian and international legal norms were repeatedly violated. He, like Mr. Khodorkovsky, has now been sentenced to 9 years in prison.

The scope of the attack on those associated with Yukos has been broad in scope and terrible in its tactics. For example, Svetlana Bahkmina, a young Yukos lawyer, was arrested in December. She has been interrogated by FSB or other Russian officials to the point where her lawyers report that she has lost consciousness. She has been isolated from her children, ages 3 and 7. In the meantime, Russian government officials have said that Ms. Bahkmina will be released when her boss, Yukos' chief in-house lawyer, returns to Russia from England, where he is effectively a political refugee.

Other Yukos employees have had to flee Russia, too, and have found refuge in the democracies of the world. In a stark example of how the world now recognizes Russian "justice" for what it is, the Bow Street Magistrate's Court in London rejected a Russian extradition request for two such Yukos employees charged in the anti-Yukos campaign. Having heard all of the evidence, and noting President Putin's personal involvement in the cases, the judge concluded that no Russian court could be expected to withstand the Kremlin's political pressure such that it could provide a fair trial to these men. Subsequently, the British Home Office has given political asylum to a half dozen additional Yukos "refugees".

Beyond Yukos, just recently, it was reported that Russian prosecutors have opened a criminal case against former Russian Prime Minister Mikhail Kasyanov. Mr. Kasyanov was dismissed by Mr. Putin last year and has been critical of the administration since then. He has specifically criticized the handling of the Yukos case and has expressed his own higher political aspirations. The Kasyanov case has all the earmarks of another Yukos-style campaign, in which the powers of the FSB and Russian federal prosecutors are misused by the Kremlin to destroy a political opponent.

The West, and particularly America, is rightfully concerned by the Kremlin's co-opting of Russia's criminal justice system as a tool to crush political opposition. The West is further properly concerned because, in the Yukos case, the Kremlin's campaign attacked what had become a model for corporate governance and transparency.

No one should doubt for a minute President Putin's motive in the dismemberment of the Yukos Oil Company and the state take-over of its major production unit. Energy is both very profitable and, given that major industrial companies depend on imports for their energy needs, inherently political. It is the Kremlin's aim to control Russia's energy sector to insure its dominant role in the world energy market. This will most certainly enhance President Putin's standing given that Europe and other countries become more dependent on Russia as a major supplier. The respected Count Lambsdorff of Germany warned last week that his country was on a perilous course by increasing its dependence on natural gas imports from Russia.

On civil society, whatever progress was made in developing democratic institutions during the Yeltsin years have all but disappeared under the current regime. The major tenets of democracy, as we know them, barely exist in Russia today. While there may be a degree of freedom and liberty, the institutions that protect those rights have been usurped by forces within the Kremlin. The government now owns or controls all media outlets, the courts are not truly independent, there is no viable political opposition, and the list goes on. It is increasingly apparent that former KGB and FSB officers are now dominant in the Kremlin and whatever transparency existed a few years ago is not in evidence today. The result is an emerging form of corruption at the highest levels in the Russian government. This corruption threatens to corrode the foundation of the Russian government to a degree that could put at risk Russian security and stability as well as

the long-term economic well-being of the Russian people. I fear this will be Vladimir Putin's legacy.

This current view of Russian authorities is not confined to me or to opponents of the Kremlin. Valentin Gefter, the Director of the Human Rights Institute in Moscow said to your committee just a few short weeks ago that "very often, political, corporate and even personal reasons prevail over the rule of law [in Russia]." I absolutely agree. Michael McFaul, a senior fellow at the Council on Foreign Relations and executive director of the Council's Task Force on Russian American Relations, headed by former U.S. Vice Presidential nominees Jack Kemp and John Edwards, said that "Four or five years ago, there was a debate about whether Putin was a democrat. The debate is now over. The question today concerns the nature and extent of Putin's authoritarianism." Finally, Secretary of State Condoleezza Rice said that the Russian government's handling of the Yukos case "shook people's confidence," and that Russian officials must demonstrate that laws and regulations are fair and applied "consistently over time, applied over various cases."

It is not just Yukos that is under persecution by Russian authorities. As reported by Irina Yasina, the head of the Open Russia Foundation, a non-profit organization established by Mr. Khodorkovsky, myself and our colleagues to promote a democratic Russia, non-governmental organizations have been under "direct pressure and threats from the Ministry of Interior Affairs, Public Prosecutor's Office and Federal Security Services." This year, the Ministry of Justice has suspended the activity of the Nijny Novgorod Society of Human Rights and frozen the accounts of the Society of Russian-Chechen Friendship. The Kremlin has also thought to dismantle and put pressure a number on of international civil society organizations, including the Soros Foundation, the National Democratic Institute & British Council.

Mr. Chairman, I regret that Russia is moving in a direction that is contrary to Western values and traditions. This must be troubling to America as well. The question is what can America and other Western democracies do about it. Obviously, what does not work are casual refrains and diplomatic overtures. Given that the hardened and cynical forces in the Kremlin understand and respond only to sanctions that threaten their own interests, I offer two thoughts:

- I applaud Senators McCain and Lieberman and Congressmen Lantos and Cox for their sponsorship of the G-8 Resolution. In examining the criteria for membership, it is clear Russia meets neither the economic nor democratic requirements for a seat at the G-8 table. Making clear that Russia's continued membership depends on its adherence to democratic principles and the rule of law will gain the attention of a leader who clearly relishes his position in the G-8 Club. At least America and other G-8 members should not allow Vladimir Putin to head the group given the circumstances in Russia today.

- Russia aspires to be in the World Trade Organization for understandable reasons. But is it possible that a major country that uses extralegal means to seize control of private assets, selective prosecution, businessmen, re-nationalizes private enterprises, harasses companies with bogus tax charges and fails to erect a legal system that protects investments, shareholders and commercial contracts, deserves membership in the WTO? Capital outflows and the decline in investments are clearly due to perceptions inside and outside Russia that it is not safe for investment. If responsible nations ignore these trends and do not take effective action to combat them, it will only encourage Russian authorities to continue down the path of authoritarianism.

Finally, Mr. Chairman, I wish to make it clear I want to see an open, uncorrupted, prosperous and free Russia. On my last visit to Washington in June 2002, I was Deputy Chairman of the Russia Federation's International Relations Committee, president of the Russia Jewish Congress, a major shareholder in Group Menatep, the holding company of YUKOS oil, and heavily involved in education and philanthropic causes.

Today I am a proud citizen of Israel, the country whose democracy protects me from false accusations of undocumented crimes by a prosecutor who is on a political witch hunt. My sins, as viewed by the Kremlin, were to work with Mikhail Khodorkovsky and Yukos to promote greater freedom, an open civil society, business transparency and democratic values in Russia to help the Russian people. This is a dark time for those of us who cherish freedom and embrace democracy. If the Russian people had a greater faith in democracy and recognition of their power to demand it, there would be an uprising in the country. But their experience is too limited. Our only hope is that America, the author and inspiration of democracy, will use its prestige to convince Mr. Putin to change his ways.

Again, I thank the Helsinki Commission for maintaining its commitment to democratic values and willingness to confront Russia and other nations whenever those values are put into jeopardy.

PREPARED STATEMENT OF PETER ROUDIK, SENIOR FOREIGN LAW SPECIALIST, LAW LIBRARY OF CONGRESS

Mr. Chairman and distinguished members of the Commission, my name is Dr. Peter Roudik. I am a Senior Foreign Law Specialist in the Law Library of Congress.

It is an honor to appear before you today to address the subject of law reform in Russia. This briefing comes at a pivotal time when high Russian officials, including President Putin, have recognized the country's legal system is corrupt and ineffective. Their statements have a special meaning because during the last fifteen years law reform was continuously used as a sign of positive transition from the nation's post-Soviet legacy. Just a few months ago, the government reported the conclusion of law reform; offering to its citizens newly adopted codes for arbitration, civil and criminal procedures, and new laws regarding police activities, prosecutions, and judicial appointments. However, the quality of these laws is extremely deficient, and the new concepts introduced serve as a showcase without affecting the essence of the legal process. Among the more positive changes, observers have mentioned the redistricting of court circuits to diminish their dependence on the regional authorities that finance them, and the expansion of the use of juries to the eighty-seven regional courts, instead of the previous nine experimental courts. Overall, however, the changes have created a refined legal system that still suffers from corruption.

The new Criminal Procedural Code was in force only twenty-three days, before more than three hundred amendments to the Code were added. Nevertheless, it still has many legal mistakes. For example, the Code begins with a statement (art. 6.2) that its purpose is to free innocents from a punishment. However, even a first year law student knows that the innocent must be acquitted, and punishments are disseminated through convictions. The Code was supposed to establish an independent judiciary, increase the rights of the accused, and instill firm rules of procedure and evidence for police and prosecutors. However, the current system continues the old Soviet practice of automatically convicting almost everyone who appears in court.

Criminal justice reform was praised highly for promoting the presumption of innocence and democratic legal norms. Among its provisions, defendants were entitled to request a lawyer, once detained, and were supposed to appear before a judge within forty-eight hours after they are initially brought into custody. Judges, not prosecutors, were to issue an arrest warrant and order that the accused be held in a pre-trial jail or be freed pending trial. However, the amendments that followed the adoption of the Code allowed the judge to extend detentions for seventy-two hours to give police time to discover missing evidence, which, in Russia, often means to extract confessions through tortures. These unscrupulous measures seem to be occurring in a large majority of the cases. To exacerbate the situation, the new Code of Administrative Violations permits an extra forty-eight hours of administrative detention without a judge's approval, meaning detainees face an excess of 120 hours of jail time.

The registration of crimes is a police function and is often used to adjust statistics. Because the evaluation of police work is based on the clearance rate, police are interested in registering crimes that are easily solved (petty crimes and misdemeanors) or those that cannot be avoided (most grave crimes). Police officers often decide not to initiate criminal proceedings when the case seems difficult to prove. Their superiors condone and, perhaps, even encourage this practice because it enhances the department's record by increasing the percentage of successful investigations. Despite the fact that almost all Ministers of

Internal Affairs since the mid-90s have called, on many occasions, for an end to “deception” over crime statistics, nothing has changed.

Under the new legislation, the powers of defense attorneys became greater; nevertheless, soon after the law’s adoption, the established norm, which once allowed detainees to meet with their attorneys without restriction, was changed to permit only one two hour attorney-client conference before an interrogation. The Supreme Court issued an instruction to lower court judges that recommended hiding materials submitted by the prosecution in support detention from the suspect and his attorney, and proposed the resolution of claims, surrounding the legality of a detention, in absence of a detainee.

To avoid the direct interference into the functioning of the courts by the regional authorities who formerly financed, which meant bribing, the courts, boundaries of the judiciary districts were expanded. Now, arbitration court circuits encompass several constituent components of the Russian Federation. However, the dependence of these courts on higher government authorities increased because all aspects of financial regulation are concentrated in the president’s administration. Just recently, the New York court for the Eastern District of Manhattan refused to recognize rulings of the Russian Supreme Court of Arbitration, which is the highest court for commercial disputes, because of its dependence on the federal government. The reason was the government’s resolution, as signed by the Deputy Prime Minister, requested the court to resolve a particular case in favor of one of the parties. This example demonstrates that impartiality in Russian courts exists only when the state has no interest in the resolution of a particular case. It is only in these cases that real equality of the parties can be secured.

The independence of judges is an empty concept, as influence on judges can be indirect. Judges understand what decisions are expected from them and behave accordingly. They know what consequences may follow a decision that does not satisfy higher authorities. They can be removed for a simple violation, and several notorious cases involving recent dismissal of judges from the Moscow city court for their disagreement with the court’s chairwoman confirm this assertion. The procedure of judicial appointments was substantially amended during President Putin’s term. All judges may serve only until they reach the mandatory retirement age of sixty-five. They are appointed by the President, upon recommendations of regional qualification commissions formed by the President and chairmen of the regional courts. All initial appointments are made for a three-year term. After expiration of this three-year term, judges are not appointed for permanent service if the qualification commission, i.e., their superior judges, find their performance unsatisfactory. There are no formal requirements for the termination of a judge’s appointment. The Constitutional Court of Russia confirmed the constitutionality of this three-year probation. The problem is worsened because this probation applies both to new judges and those who are promoted and transferred to higher courts or other positions within the judiciary. For persons falling within the latter category, each new appointment starts another three-year probation. This practice may become an issue because the Government intends to hire twice as many judges before the end of 2006, meaning more than a half of the judiciary corps will consist of judges on probation. There is no need to speculate whether the independence of these judges will be more than questionable. The problem is aggravated by the lack of preparation judges have for their role. Most of the judges graduated correspondence law schools during the Soviet time and still have a Soviet mentality, along with Soviet habits of interpreting laws in favor of the government. There is no nation wide system that prepares lawyers for judicial careers.

The recent appointment of a Chairman of the Supreme Court of Arbitration, which occurred with numerous procedural violations, illustrates all the defects of the existing system.

In general, Russian judges do not respect the principles of due process for the accused; they condone torture as a device to extract confessions, and are not mindful of Russia's international obligations in this respect. In essence, trials are a pro forma mechanism of sentencing defendants and basically all the players—including the judges, prosecutors, police, and, often, the defense lawyers—are on the same side. In this regard, attempts to prove guilt beyond a reasonable doubt are not common practice.

One positive development is the expanded role of juries. They are now utilized in all eighty-seven constituent components of the Russian Federation. However, jurors may participate only in trials originating in the eighty-seven state level courts of the second instance. Meanwhile, there are more than 2,500 courts of general jurisdiction. Statistics released by the Supreme Court of Russia reveal that cases in the 87 out of 2,500 courts constitute no more than 0.5 percent of all criminal cases, and jury trials represent about eight percent of all criminal trials. Moreover, even in the eighty-seven courts, jurors do not hear all cases. The accused must request a trial by jury and there is a complicated procedure for the submission of such a request. As a rule, police and investigators attempt to discourage detainees from submitting such requests because there is a greater acquittal rate with jury trials.

In Russia, the conviction rate in criminal cases heard by judges is ninety-nine percent. The rate has persisted since the early 1950s, the last years of the Soviet dictator Joseph Stalin, when the work of judges and prosecutors was automatically reviewed if a defendant was acquitted. According to a study conducted by Peter Solomon in his book, *SOVIET CRIMINAL JUSTICE UNDER STALIN*, before 1951, about ten percent of defendants were acquitted in non-political trials. In some courts there are simply no acquittals. In 2003 and 2004, two district courts in Moscow that heard a total of almost five thousand criminal cases had no acquittals, according to court records. In the regional court in the southern city of Krasnodar, no one has been acquitted in the last ten years in any case heard by a judge. In jury trials, a defendant is more likely to be found not guilty, with acquittal rates averaging around fifteen percent, according to an article carried in *THE WASHINGTON POST*. However, acquittals are often appealed, overturned by the Supreme Court, and sent back for retrial with a fresh jury. Last month, the Russian Constitutional Court confirmed the legality of this practice.

Despite the fact that the law requires the random selection of jurors, the appointment of individuals to juries, by Russian special services, has been reported. It is not unusual that, in the middle of a trial, a judge is removed and a newly appointed judge dismisses the entire jury and selects a new one, before the trial continues. The European Court of Justice has cited Russia for manipulations with jury selection, especially in sensitive cases.

A continuing issue for the Russian federal government is that it has been unable to build a unified legal system throughout the country that would accommodate regional legal specifics but still recognize the supremacy of the federal laws. The Russian legal system is being eroded due to an imbalance between federal and state powers, as the supremacy of federal legislation is accepted rarely by constituent components whose laws deviate from federally established norms. The insufficient involvement of constituent components in the federal legislative process, the incompatibility of regional and federal legislation,

and the inability of the federal government to accommodate regional, legal and customary practices, force President Putin to build a vertical system of power, as a synchronized, nation-wide legal policy does not exist.

Reform in legal institutions is not accompanied by reform in the interpretation of law. Indeed, Russia's legal system is statutory-based and, hence, judicial precedent holds a lower priority. There is no case law and, even if there were, it could hardly flourish without the attachment of opinions to verdicts, especially in cases where courts interpret international treaties or the Russian Constitution. Several court decisions often contradict the interpretation given by the Constitutional Court of Russia. Interpretations of the Constitutional Court are not binding on other courts, contributing to the imbalance between federal and regional centers of power.

The Office of the President cites these problems as justification for its ongoing attempts to remove judicial institutions from the sphere of influence of local and regional leaders and to increase the control of federal, executive authorities over the judicial branch. Regrettably, the current ombudsperson's actions suggest that he is dependent on the ruling elite, ineffective in promoting the rule of law, and is an extension of the Presidential administration.

The Khodorkovsky case illustrates the failures of Russian legal policy. Even without focusing on the political elements of Khodorkovsky's persecution, the case reflects weaknesses of the legal system and the inability of the court to resolve a case without procedural violations and strong support from the executive branch.

The case started with procedural violations and unfair manipulation of the process. Knowing that Mr. Khodorkovsky was on a business trip outside of Moscow, he was called to the Prosecutor's Office for interrogation. When he did not appear due to being out of town, he was accused of refusing to cooperate with the investigation and his arrest was initiated. Given that Russian law prohibits an attorney from meeting with his client on weekends, the arrest was organized on a Saturday afternoon to keep him, for almost two days, from obtaining the assistance of any legal defense. Another attempt of the prosecution to destroy his defense was its interrogation of Mr. Khodorkovsky's attorneys as witnesses. When an attorney's office is searched and his documents are seized, without a court order, he can be interrogated as a witness and will not be allowed, under Russian law, to participate further in the trial. Original charges brought against Mr. Khodorkovsky by the Prosecution Office show that the prosecution did not prepare well for the trial. Initially, as an individual, Mr. Khodorkovsky was accused in avoiding the payment of his taxes in a form established by the Russian state. However, in May 2003, the Constitutional Court of Russia ruled that Russian citizens have the right to choose an independent, but legal method of paying their taxes when it is more adequate for them and their businesses. For example, the taxing authority could agree to receive services or infrastructure improvements from a company in lieu of cash payments. This arrangement often worked to the advantage of both the local taxing authority and the company as inflation was so rampant, the taxing authority received the benefit of a completed project or service while the company did not have to produce all of the cash at one time. In some instances, due to the inflationary impact, some taxing authorities refused to accept cash payments.

The prosecution's actions were driven by the approaching expiration of the statute of limitations, which forced it to rush the submission of its case. The exact legal grounds for its case remain unclear. All the alleged facts that happened in the Sverdlovsk region

in 1994 are indistinguishable from the actions of other companies in this timeframe due to the spiraling inflation and allowable bartering system to meet their tax obligations. Previous Russian legislation did not regulate these actions and, the lack of a prohibition allowed so-called “agreements on credit compensations,” which in this case was the payment of taxes through Yukos’ letters of exchange. The prosecution was aware of this fact, which also explains its failure to investigate the facts of the crime, while it interfered in the dispute over legal entities. The prosecution’s action is also a sign of the selectivity of Russian justice.

Other illegal methods have been applied to almost all twenty Yukos’ executives, and their attorneys, who were imprisoned or forced into exile. It does not appear that all accusations were collaborated by evidence and the prosecution continues its attempts to obtain self-accusatory statements from detainees. Families of the accused also have been persecuted. The absence of legal reasons for the prosecution’s accusations was confirmed by courts in Israel and Great Britain, which denied Russian extradition requests.

There are several other signs that point at the political, rather than the legal nature of this trial. At the beginning, a member of the Russian Parliament who initiated the request to the Prosecutor’s Office demanded the return of Yukos’ funds to the state. The court did not investigate any evidence provided by the defense. The verdict repeats the accusatory statement prepared by the Prosecutor’s Office. The court was not interested in monetary compensation through damages. A bail, which could have exceeded the supposed damage inflicted by Mr. Khodorkovsky, was not considered. The political context of this trial was indirectly emphasized by President Putin, who on the eve of the announcing the sentence, promised executives of the country’s largest companies that he would limit legal review of past privatizations and minimize arbitrary tax claims, in exchange for their politically correct behavior.

All these discrepancies, violations, and legal mistakes allow one to conclude that the verdict against Mr. Khodorkovsky is simultaneously a verdict to the entire Russian legal system.



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