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# The Legacy and Consequences of Jackson-Vanik: Reassessing Human Rights in 21st Century Russia Conference Proceedings

Edited by F. Joseph Dresen and William E. Pomeranz



OCCASIONAL PAPER # 305

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The Legacy and Consequences of Jackson-Vanik:  
Reassessing Human Rights in  
21st Century Russia

*Conference Proceedings*

Edited by F. Joseph Dresen and William E. Pomeranz  
Washington, D.C.

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# Preface

During the Cold War, the United States and the West used the issue of human rights as a platform to question the policies and ultimately the legitimacy of the Soviet Union. One of the lasting legislative landmarks of that period was the Jackson-Vanik amendment, which linked U.S.-Soviet trade to the right of emigration. The Soviet Union dissolved some two decades ago, but the Jackson-Vanik amendment has remained on the books even though many believe that Russia is in compliance with its two main conditions. Specifically, Russia is now broadly recognized as an (imperfect) market economy, and it no longer restricts emigration. The staying power of the Jackson-Vanik amendment impinges on current U.S.-Russian trade relations. At the same time, human rights remains an area of contention in Russia, thus raising the question regarding how can the United States contribute to improving the human rights atmosphere in Russia without reverting to the dynamics of the Cold War.

The Kennan Institute and the Henry M. Jackson Foundation cosponsored a one-day conference and a briefing on Capitol Hill to explore the legacy of the Jackson-Vanik amendment and to address a new agenda for human rights in Russia today. This publication represents an edited transcript of the conference held at the Woodrow Wilson Center.

The first panel introduces us to the historical circumstances that led to the creation of the Jackson-Vanik amendment linking the Soviet Union's policy on allowing Jewish emigration to U.S.-Soviet trade. It features two of the amendment's original drafters: Richard Perle, who served at the time on the staff of Senator Jackson, and Mark Talisman, who served at the

time on Congressman Vanik's staff. Ludmila Alexeeva, the long-serving chair of the Moscow Helsinki Group, provided her own perspective of the legislation's impact.

Following the collapse of the Soviet Union, the United States continued to report on and base policy on its judgment of Russia's human rights record. Sam Kliger and Blake Marshall discussed the Jackson-Vanik amendment during the second panel within the broader context of U.S. policy towards Russia, from current conditions in Russia to the bilateral economic relationship. Sarah Mendelson identified various tools now available to U.S. policy makers to promote human rights in Russia.

A frequent criticism of Russian NGOs, especially in the field of human rights, is that they are highly dependent on Western funding, thereby reducing their overall standing in Russian society. Speakers on the conference's third panel (Alexander Verkhovsky, Arseny Roginsky, and Maria Chertok) explored the evolution of the human rights movement from Soviet-era dissidents to the present day. Some groups continue to seek and receive foreign funding; some collaborate with the Russian state's Public Chamber; some are small, genuine grassroots organizations. What is their role in Russian society? How are they perceived by the public and by the government? What role can Western organizations play in supporting human rights in Russia today?

Finally, the fourth panel looks at how the human rights issue is viewed in Russia today. As Russian society develops, is there an emerging social demand for human rights in the Russian public consciousness? How is this demand expressed and ultimately met? What issues draw the concern of Russians, and what is-

sues are less important to them? Three Russians presented their views based on their different experiences: Karinna Moskalenko is an advocate for many Russian clients in the European Court for Human Rights, Ivan Pavlov is a lawyer who participated in the effort to pass the Russian version of the United States' Freedom of Information Act, and Ivan Ninenko is a leader in the next generation of human rights advocates in Russia.

Video from both the conference and briefing on Capitol Hill are available on the Woodrow Wilson Center's website:

**Wilson Center on the Hill briefing:**

[http://www.wilsoncenter.org/index.cfm?topic\\_id=470582&fuseaction=topics.event\\_summary&event\\_id=590749](http://www.wilsoncenter.org/index.cfm?topic_id=470582&fuseaction=topics.event_summary&event_id=590749)

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# The Legacy and Consequences of Jackson-Vanik: Reassessing Human Rights in 21st Century Russia

Cosponsored by the **Henry M. Jackson Foundation**  
and the **Kennan Institute, Woodrow Wilson Center**

February 4, 2010  
Woodrow Wilson International  
Center for Scholars  
1300 Pennsylvania Avenue, NW  
Washington, DC

## **WELCOMING REMARKS**

**Blair A. Ruble**, Kennan Institute  
**John W. Hempelmann**, Henry M. Jackson  
Foundation

## **PANEL 1: THE HISTORICAL ORIGINS OF JACKSON-VANIK**

**Chair: Lara Iglitzin**, Henry M. Jackson  
Foundation  
**Richard Perle**, American Enterprise Institute  
**Mark Talisman**, Project Judaica Foundation  
**Ludmila Alexeeva**, Moscow Helsinki Group

## **PANEL 2: RETHINKING THE HUMAN RIGHTS ISSUE AND U.S.-RUSSIAN RELATIONS**

**Chair: Stephen E. Hanson**, University of  
Washington  
**Blake Marshall**, The PBN Company  
**Sarah Mendelson**, Center for Strategic and  
International Studies  
**Sam Kliger**, American Jewish Committee

## **PANEL 3: DEVELOPMENT OF THE HUMAN RIGHTS COMMUNITY IN POST-SOVIET RUSSIA**

**Chair: Lara Iglitzin**, Henry M. Jackson  
Foundation  
**Alexander Verkhovsky**, SOVA Center,  
Moscow  
**Arseny Roginsky**, Memorial  
**Maria Chertok**, Charities Aid  
Foundation–Russia

## **PANEL 4: EMERGING SOCIAL DEMAND FOR HUMAN RIGHTS IN RUSSIA**

**Chair: William Pomeranz**, Kennan  
Institute  
**Karina Moskalenko**, International  
Protection Center  
**Ivan Pavlov**, Institute for Information  
Freedom Development, St. Petersburg  
**Ivan Ninenko**, Transparency International,  
Moscow

# Panelist Biographies

## **LUDMILA ALEXEEVA**

Ludmila Alexeeva was born in 1927. In 1950 she graduated from the History Department of Moscow University and worked as an editor for the publication, *Nauka*, but was fired in 1968 for participating in protests against legal reprisals directed at people who spoke their convictions. She actively participated in the human rights movement from its inception in the USSR in the mid-1960s. In 1976, she became one of the founding members of the Moscow Helsinki Group (MHG). In 1977 she emigrated to the United States intending to become a representative of the Moscow Helsinki Group abroad. In 1978 Ms. Alexeeva became a consultant for the American Helsinki Watch Group, a non-governmental association, which had adopted the platform of MHG and also served as a consultant for the AFL-CIO on the working movement in USSR. She is the author of *Soviet Dissent* (Wesleyan University Press, 1985), as well as numerous articles on independent social movements in the USSR. In 1987 she was a scholar in residence at the Woodrow Wilson Center.

Ms. Alexeeva returned to Russia in 1993 and three years later was elected the chair of the Moscow Helsinki Group – the oldest existing human rights organization in the Russian Federation. In 1999 she was elected the President of the International Helsinki Federation for Human Rights, and served in that capacity until November 2004. Human rights organizations from 38 countries have joined the International Helsinki Federation.

Since 2002 she has been a member of the Human Rights Commission under the President of the Russian Federation, and since

2003 she has been a member of the Penitentiary System Commission under the Russian Federation Minister of Justice. She has also served since January 2005 as a member of the Human Rights Commission under the Mayor of Moscow.

In June 2004 Ms. Alexeeva was awarded by the National Endowment for Democracy with the Democracy Award, which is given annually by the NED's Board of Directors to recognize the courageous and creative work of individuals and organizations that have advanced the cause of human rights and democracy around the world.

## **MARIA CHERTOK**

Maria Chertok has been working with Charities Aid Foundation Russia (CAF-Russia) since 1997, holding positions of increasing responsibility—from Program Manager of Partnerships in the Non-Profit Sector grants program funded by the British Government, to Director of Grants Department, to Deputy Director. Since May 2005, Ms. Chertok has been Director of CAF Russia. She has been involved in a number of exciting innovations in the Russian NGO sector, including the promotion of a community foundation model, and corporate and private philanthropy. Before joining CAF Russia, Ms. Chertok worked at the Ford Foundation in Moscow as a consultant in the areas of human rights, legal reform and community development. Ms. Chertok is a Council Member of the Russian Donors Forum, Board member of the NGO School Foundation and Trustee of Philanthropy Bridge Foundation (UK).

## **STEPHEN E. HANSON**

Stephen E. Hanson (Ph.D., University of California, Berkeley, 1991) is Vice Provost of Global Affairs and the Herbert J. Ellison Professor in the Department of Political Science at the University of Washington. He is the author of *Time and Revolution: Marxism and the Design of Soviet Institutions* (University of North Carolina Press, 1997), winner of the 1998 Wayne S. Vucinich book award from the American Association for the Advancement of Slavic Studies. He is also a co-editor of *Capitalism and Democracy in Central and Eastern Europe: Assessing the Legacy of Communist Rule*, (Cambridge University Press, 2003), a co-author of *Postcommunism and the Theory of Democracy* (Princeton University Press, 2001), and the author of numerous journal articles examining postcommunist politics in comparative perspective.

## **LARA IGLITZIN**

Lara Iglitzin has been Executive Director of the Henry M. Jackson Foundation since 1995. Arriving at the Foundation in 1992 as a Program Officer, she developed the Foundation's human rights program in Russia. Ms. Iglitzin did her undergraduate work at the University of Washington in Russian and East European studies, and received master's degrees in Russian history and Russian studies, from the University of Pennsylvania and Georgetown University respectively. She specialized in U.S.-Soviet relations and early 20th century political history. Her master's thesis was dedicated to the impact of the Jackson-Vanik Amendment on Soviet foreign policy. Prior to her work at the Foundation, Ms. Iglitzin managed the Congressional Roundtable on U.S.-Soviet Relations in Washington, D.C. Active in the national grantmaking community; she helped to establish the group Philanthropy for Active Civic Engagement and served as board president for three years. She was also integral to the creation of the International Human Rights Funders Group. Ms. Iglitzin has pub-

lished widely in national and regional publications on Russian politics and human rights.

## **SAM KLIGER**

Sam Kliger is the Director of Russian Affairs at the American Jewish Committee (AJC). His responsibilities include preparing a new generation of leaders from the Russian Jewish community, creating programs with a goal to successfully integrate Russian Jews into American society. Dr. Kliger is extensively involved in AJC public diplomacy with the countries of the former Soviet Union and he serves as a liaison between AJC and Russian Jewish communities and organizations in other countries.

In 1990 Dr. Kliger emigrated to the United States from Moscow, Russia after being a *refusenik* for many years in the 1980s. In the United States, he worked to acculturate and to integrate Soviet immigrants to this country into American culture and society.

Dr. Kliger is the founder and President of the Research Institute for New Americans (RINA) – a research organization for the Russian-speaking community in America. He served as principal investigator in a number of surveys on Russian Jews. He received his Ph.D. degree in sociology from the USSR Academy of Sciences in Moscow. He has published a number of works on Russian immigrants in America.

## **BLAKE MARSHALL**

Blake Marshall is Senior Vice President and Managing Director of The PBN Company. He directs the firm's Washington office, where he provides strategic guidance to client initiatives across the markets of the former Soviet Union. Mr. Marshall specializes in government relations, crisis management, business strategy, and market entry. He provides strategic advice to Western companies on their investment strategies in Russia and the former Soviet Union, and assists Russian/CIS firms in expanding their businesses into global enterprises. He currently manages clients including BP, International Paper, Sony Pictures Entertainment, and Xerox.

Prior to joining The PBN Company, Mr. Marshall was Executive Vice President of the U.S.-Russia Business Council, in which capacity he authored numerous policy statements on trade and investment concerns faced by member companies and managed the Council's policy agenda and lobbying initiatives with both the U.S. and Russian governments. The author of various articles and book chapters on political and economic developments in Russia, Mr. Marshall has testified before the U.S. Congress and in Executive Branch hearings related to Russia and U.S.-Russian relations, and advised U.S. presidential candidates on Russian affairs and U.S.-Russian relations.

Mr. Marshall received his undergraduate degree in political science from Swarthmore College, and he did his graduate work in Soviet politics and international affairs at the University of Essex (England), as well as Columbia University's School of International and Public Affairs and Harriman Institute. His professional affiliations include the Council on Foreign Relations and The Atlantic Council of the United States.

#### **SARAH E. MENDELSON**

Sarah E. Mendelson is Director of the Human Rights and Security Initiative at the Center for Strategic and International Studies (CSIS). She has worked since the early 1990s on a wide variety of issues related to human rights and democracy in the Euro-Atlantic region. Since coming to CSIS in 2001, she has conducted over a dozen public opinion surveys in Russia, tracking views on Chechnya, military and police abuse, religious identity in the North Caucasus, as well as knowledge and experiences with human trafficking. Her current research involves comparative survey research on the political views of youth in Estonia and Russia, and a survey on historical memory in Russia. She has written on the links between human trafficking and peacekeeping operations in the Balkans and her research helped shape U.S. legislation and policies at NATO on this issue. In 2007-2008, she led a working group

on closing Guantánamo, the recommendations from which were reflected in the Executive Orders signed January 22, 2009. In summer 2009, she helped convene the Parallel Civil Society Summit in Moscow during President Obama's trip to Russia. She received her B.A. in history from Yale University and her Ph.D. in political science from Columbia University. A frequent contributor to the media, she is the author of numerous peer-reviewed and public policy articles and books, including most recently *From Assistance to Engagement: A Model for a New Era in U.S.-Russian Civil Society Relations* (CSIS Press, 2009). For more on her work, visit <http://www.csis.org/hrs>.

#### **KARINNA MOSKALENKO**

Karina Moskalkenko is recognized internationally as one of Russia's most effective and courageous human rights lawyers. In awarding her its "2006 IHF Recognition Award," the International Helsinki Federation said "Karinna Moskalkenko is among the most outstanding human rights lawyers in the world, who has helped scores of victims in Russia fight for their rights in court..."

Moskalkenko currently represents Garry Kasparov and the family of Anna Politkovskaya. Her caseload before the European Court for Human Rights (ECHR) includes a wide variety of Russian human rights issues, ranging from torture and disappearances in Chechnya to victims of the Nordost Theatre siege in Moscow to the arrest and imprisonment of Mikhail Khodorkovsky, the embattled former head of Russia's Yukos Oil Co.

Moskalkenko founded the International Protection Center in 1995 to protect the human rights of defendants in Russia. Since then, the Center has filed hundreds of cases before the ECHR and won important legal victories on behalf of Russian citizens whose rights have been found to have been violated by the Russian state.

In addition to her work with the International Protection Center in Moscow, Moskalkenko is a Commissioner of the International Commission of Jurists. She has been a mem-

ber of the Moscow Bar Association since 1977. She also is a member of the Expert Council for the Plenipotentiary on Human Rights for the Russian Federation and the Moscow Helsinki Group.

#### **IVAN NINENKO**

Ivan Ninenko is Deputy Director of Transparency International-Russia, where he coordinates the Anti-Corruption Online Office ([www.askjournal.ru](http://www.askjournal.ru)). His previous work experience includes the Heinrich Boell Foundation, the Moscow School of Political Studies, and the “Citizen and Army” NGO. Mr. Ninenko is active in the youth human rights movement in Russia. He is currently pursuing his doctorate at the Higher School of Economics in Moscow, where he also completed his undergraduate and master’s degrees.

#### **IVAN PAVLOV**

Ivan Pavlov is the founder and chairman of the Institute for Information Freedom Development (IIFD), Russia’s largest non-governmental organization dedicated to monitoring government agencies and litigating on behalf of citizens and organizations on issues concerning access to government information and other freedom of information issues. Mr. Pavlov was counsel on the high profile ‘environmental espionage’ cases, defending journalist Grigory Pasko and nuclear submarine captain Alexander Nikitin. Recently, Mr. Pavlov successfully defended the St. Petersburg office of the Memorial Historical Society concerning the government’s search of Memorial’s office and seizure of historical files and electronic databases. Mr. Pavlov currently represents Mikhail Suprun, a historian from Archangelsk who has been accused of collecting historical archives on World War II victims of oppression. Mr. Pavlov’s legal work now revolves primarily around cases regarding access to governmental information in Russia, including a number of precedent-setting cases such as a case that compelled federal government agencies to create publicly accessible websites. Because of his active work in freedom of infor-

mation and government openness, Mr. Pavlov serves as an expert on administrative reform and electronic government for the Government of the Russian Federation. He is one of the authors of Russia’s first-ever law on freedom of information, which went into force on January 1, 2010.

Mr. Pavlov holds a law degree from the St. Petersburg State University and a Ph.D. from the Russian Academy of Sciences’ Institute of State and Law. Mr. Pavlov is a member of St. Petersburg City Bar, and serves as expert to the Organization for Security and Cooperation in Europe (OSCE) on Russian human rights issues. He was a Galina Starovoitova Fellow on Human Rights and Conflict Resolution at the Kennan Institute of the Woodrow Wilson International Center for Scholars in Washington, DC in 2003.

#### **RICHARD PERLE**

Richard Perle is Resident Fellow at the American Enterprise Institute for Public Policy Research in Washington, DC (1987-present), where he has co-directed its Commission on Future Defenses. He is a leading authority on national security, military requirements, arms proliferation and defense, and regional conflicts.

Previously he served as Chairman of the Defense Policy Board (2001-2003); Member of the Defense Policy Board (1987-2004); Assistant Secretary of Defense for International Security Policy (1981-87); and served on the U.S. Senate Staff (1960-1980). He has a B.A. in International Politics from the University of Southern California (1964); an M.A in Politics from Princeton University (1967); and Honours Examinations from the London School of Economics (1962-63). In addition, he has held Fellowships at Princeton University, the Ford Foundation, and the American Council of Learned Societies.

Mr. Perle writes frequently for the op-ed pages of the *New York Times*, *Washington Post*, *Wall Street Journal*, *The Daily Telegraph (London)*, *Jerusalem Post* and other publications. He appears on radio and television on matters of se-

curity and foreign policy. He is the co-author of *An End to Evil* and author of *Hard Line*, a political novel.

### **WILLIAM POMERANZ**

William Pomeranz is the Deputy Director of the Kennan Institute, a part of the Woodrow Wilson International Center for Scholars located in Washington, D.C. In addition, he teaches Russian law at the Center for Eurasian, Russian, and East European Studies (CERES), Georgetown University. Prior to joining the Kennan Institute, he practiced international law in the United States and Moscow, Russia. He also served as Program Officer for Russia, Ukraine, and Belarus at the National Endowment for Democracy from 1992-1999. Dr. Pomeranz holds a B.A. from Haverford College, a M.Sc. from the University of Edinburgh, a J.D. *cum laude* from American University, and a Ph.D. in Russian history from the School of Slavonic and East European Studies, University of London. His research interests include Russian legal history as well as current Russian commercial and constitutional law.

### **ARSENY ROGINSKY**

Arseny Roginsky was born in 1946 and graduated from the University of Tartu (Estonia) in 1968. He is a historian and the author of studies, publisher of documents, and academic editor of books on the history of public movement in Russia in the 19th and 20th centuries, mass-scale repression, and human rights violations in the USSR. A participant in the dissident movement in the USSR, Dr. Roginsky was a political prisoner from 1981-85. In 1989 he co-founded the Historical, Educational and Human Rights Society “Memorial,” and has served as Chairman of its board since 1996.

### **BLAIR A. RUBLE**

Blair A. Ruble is currently Director of the Kennan Institute of the Woodrow Wilson Center in Washington, D.C., where he also serves as Program Director for Comparative

Urban Studies. He received his MA and Ph.D. degrees in Political Science from the University of Toronto (1973, 1977), and an AB degree with Highest Honors in Political Science from the University of North Carolina at Chapel Hill (1971). He has edited a dozen volumes, and is the author of five monographic studies. His book-length works include a trilogy examining the fate of Russian provincial cities during the twentieth century: *Leningrad. Shaping a Soviet City* (1990); *Money Sings! The Changing Politics of Urban Space in Post-Soviet Yaroslavl* (1995); and *Second Metropolis: Pragmatic Pluralism in Gilded Age Chicago, Silver Age Moscow, and Meiji Osaka* (2001). Dr. Ruble most recent monographic study – *Creating Diversity Capital* (2005) – examines the changes in such cities as Montreal, Washington, D.C., and Kyiv brought about by the recent arrival of large transnational communities.

A native of New York, Dr. Ruble worked previously at the Social Science Research Council in New York City and the National Council for Soviet and East European Research.

### **MARK TALISMAN**

Mark Talisman was born and raised in Cleveland Ohio, graduated from Harvard University with honors in European History, and came to Washington to begin his 14-year tenure on Congressman Charles Vanik’s staff in 1963. The youngest person ever appointed as chief of staff to a member of Congress, Mr. Talisman also chaired the Association of Chiefs of Staff on the House side for ten years. Mr. Talisman was deeply involved with shepherding the Jackson-Vanik Amendment through the House of Representatives for Congressman Vanik, in addition to many other major bills in many fields of law.

Upon leaving the Hill, Mr. Talisman led the Council of Jewish Federations, which assisted Jewish federations in their contacts with government agencies, Congress and the diplomatic corps. During his tenure, he created the Matching Grant Program to resettle Soviet Jews in the United States and Israel, the National



Emergency Food and Shelter Program, the National Fuel Assistance Program, the National Creative Arts Program, and many other initiatives.

In 1979 he was appointed by President Carter to a commission to determine the efficacy of building a museum/memorial to the victims of the Holocaust. Upon approval of the commission's report by the Congress and the White House, he was appointed by the President as the Founding Vice Chairman of the U.S. Holocaust Memorial Council of the United States Holocaust Memorial Museum.

Together with his wife, Jill, Mr. Talisman founded the Project Judaica Foundation to create world class exhibitions on Jewish themes and to create and preserve all forms of Judaic culture. His most extensive service has been in Prague with the Jewish Museums, the Jewish and general communities, and at the Terezin camp. During his service as the President of Project Judaica Foundation, he has not only created world class exhibitions but has also opened centers devoted to Jewish history and culture in Cracow and Prague, helping to conserve, exhibit, and protect the unique collections there as well as unearth hidden collections of rare Judaica stolen by the Nazis and held secretly by the Communists, in cooperation with the Center for Jewish Art at Hebrew University and the Legacy Program of the U.S. Government.

Mr. Talisman is now a private consultant with a varied portfolio of interests including the implementation of disaster preparedness programs around the world, distance learning projects through satellite transmissions to developing countries, and the recovery of Holocaust era stolen assets.

### **ALEXANDER VERKHOVSKY**

Alexander Verkhovsky, born in 1962, graduated from the Moscow Oil and Gas Institute with a degree in applied mathematics in 1984. In 1989, he became editor-in-chief of the *samizdat* independent newspaper *Panorama* in Moscow. From 1991-2002, he was Vice President of the Panorama Information and Research Center.

Since 2002, he has served as Director of the SOVA Center for Information and Analysis. Since 1994, Mr. Verkhovsky's main area of research has been political extremism, nationalism and xenophobia in contemporary Russia, and religion and politics in contemporary Russia.

He is the author or co-author of a number of books on these issues, including: *Political Extremism in Russia* (1996), *National-Patriotic Organizations in Russia. History, Ideology, Extremist Tendencies* (1996), *Political Xenophobia* (1999), *National-Patriots, Church and Putin* (2000), *State Policy Toward Ultra-Nationalist Organizations* (2002), *The State against Ultra-Nationalism. What's To Be Done and What's Not To Be Done?* (2002), *Political Orthodoxy: Russian Orthodox Nationalists and Fundamentalists, 1995-2001* (2003), and many articles.

SOVA Center conducts monitoring on ultra-nationalist activities, hate crime, hate speech, public actions and legal regulations and legal measures against them, misuse of anti-extremism legislation, and also on various issues related to religion in contemporary Russian society (see <http://sova-center.ru/>). SOVA Center publishes current news on these issues on its website on a daily basis and also publishes quarterly and annual reports and collections of articles. The last book published by SOVA Center, co-edited by A. Verkhovsky, is the reference book *Radical Russian Nationalism* (2009).



# Welcoming Remarks

## **BLAIR RUBLE**

My name is Blair Ruble and I am director of the Kennan Institute here at the Woodrow Wilson Center. On behalf of the Center and its president and director Lee Hamilton I would like to welcome all of you to what is going to be a very stimulating day. I want to acknowledge the sponsor of this event and our partner in this venture, the Henry M. Jackson Foundation. This is the third major conference we have held here in Washington with the Foundation and it is really a treat to work with them. They are thoughtful, professional, wise and pleasant to work with. They are really perfect partners. I especially want to thank Lara Iglitzin; not only for her work with us, but also for her important work over the years at the Jackson Foundation on issues of human rights in Russia and elsewhere. I also want to mention two Kennan Institute staff people who have been instrumental in this project—Joe Dresen and Will Pomeranz.

I should note that we are joined by many members of both the Jackson Foundation Board and the Kennan Institute Advisory Council and I would like to welcome all of them. I want to thank especially anyone who climbed on an airplane to get here, and I hope that you will be able to get out of town before the snow arrives tomorrow.

We are gathered here to examine the history and legacy of the Jackson-Vanik amendment to the Trade Act of 1974. We are joined by individuals who were instrumental in the passage of the legislation and by individuals whose lives were directly affected by the legislation. We want to use a discussion of this history as a way of opening a conversation about the human rights situation in Russia today, and to look to the future. We have been able

to assemble a really extraordinary group of speakers. Many of them are known for being provocative and not shy. So I am about to step away and turn the floor over to the speaker, but first I am going to turn the podium over to John Hempelmann who is president of the Henry Jackson Foundation. John worked with Senator Jackson in the Senate and on his presidential campaign. He is a Seattle lawyer. John, welcome.

## **JOHN HEMPELMANN**

Thank you, Blair. On behalf of the Henry M. Jackson Foundation I would like to add my welcome to that of Blair's and I am delighted to be with you all here today to discuss this important topic. The Henry M. Jackson Foundation was founded 25 years ago after the death of Senator Jackson, and we have sought to focus our work on his unfinished legacy. One of the most important pieces of our work, which we embarked on as early as 1989, was to establish ties with human rights organizations in what was then the Soviet Union. Since that time we have granted more than \$3 million to human rights organizations in Russia, and we have worked with dozens of NGOs. The goal of our Foundation is to be a useful partner and supporter of the vibrant community in Russia that is seeking to shed light on the painful Soviet past, but also to ensure that the Russia of today and tomorrow preserves and protects the hard fought gains made during the Yeltsin era. That has not always been easy. But the senator never backed away from a challenge. And thus, the Jackson Foundation has stayed the course of participation with our friends in Russia when other foundations have been forced or chosen to pull their resources out of the region.

There is another point I would like to stress. Senator Jackson believed that there should be a close relationship between academic institutions and those in the policy world who help shape our foreign policy. Thus his views were informed by his close contact with many scholars.

The senator studied the facts and, as he said many times, the facts will lead you to the right conclusion. He was also a man of great integrity and had the ability to change his views when the facts and circumstances demanded that his views be changed. He was not afraid to hear opposition and to take other opinions into account.

It is for all of these reasons and because of the Foundation's deep commitment to the cause of a free and just Russian society that we wanted to work with the Kennan Institute on today's conference. The Jackson-Vanik amendment was passed 35 years ago. In fact, it was signed 35 years ago last month by President Ford. It affected the lives of millions of Russian citizens who obtained the freedom to emigrate. Some of you are with us here today and we are proud to stand with you. It is remarkable that the Jackson-Vanik amendment has lasted all these years, and we will hear some interesting discussion about whether it should last any more years. But what we heard yesterday during the briefing at the luncheon was, in the very passionate opinion of many people, that the Jackson-Vanik amendment is one of the most important symbols of freedom.

While we are going to look back a little bit today, it is equally important—maybe even more important—that we look forward. The Foundation wants to be a participant in the future of U.S. and Russian relations so that we hope we can be as effective in the twenty-first century as the senator was in the last century in helping to advance human rights in Russia. And so we will be listening closely and working with all those in Russia who are participating in the protection and advancement of human rights. It is our hope that this conference today will explore new opportunities and grapple

with new challenges, so that we can help ensure that human rights is a constant focus in the Russia of today and tomorrow. Thank you for being with us.

# Panel 1: The Historical Origins of Jackson-Vanik

## **JOHN HEMPELMANN**

I would like to introduce the moderator of our first panel. My good friend Lara Iglitzin is the executive director of the Jackson Foundation and I can assure you that is the reason we are a success. Lara has studied and been active in Russian–U.S. relations for many years. In fact, she knows this topic very well because her master’s thesis was on the impact of the Jackson–Vanik amendment.

## **LARA IGLITZIN**

Thank you, John. I was also reflecting on yesterday’s standing-room only event on Capitol Hill discussing human rights in Russia and the Jackson–Vanik amendment, where I was quite stunned to recognize the continuing power and, to a certain degree, controversy of the amendment and some of the same arguments being made about how the amendment irritates the Russians. Yet the amendment remains a symbol of America’s dissatisfaction with some of the issues of human rights in Russia even today. So I look forward to a discussion of all these issues. This panel starts by looking back and we have, as I said, two very distinguished guests. Richard Perle is a resident fellow at the American Enterprise Institute. He needs no introduction to many of you, but he was chairman of the Defense Policy Board and he also served as Assistant Secretary of Defense for International Security Policy in 1981–87, during the Reagan administration. He, as well as Mark Talisman, is one of the original authors of the amendment. Richard, we are delighted to have you join us today.

## **RICHARD PERLE**

Lara, thank you very much, and thanks to the Wilson Center and to the Henry Jackson Foundation for putting this program together. I would like to make a couple of points to begin this discussion. The first is that the Jackson–Vanik amendment, I believe, had an impact far greater than the immediate technical and legal imposition of a burden on the Soviet leadership. And that burden was laid out in the legislation—that is very clear. The legislation denies both most favored nation status (now called ‘permanent normal trade’) and access to credits, direct or indirect, to any non–market economy that denies its citizens the right and the opportunity to emigrate. It is pretty much the exact words of the legislation. And the reason why I begin with this is that there is a great deal of confusion in the contemporary discussion of Jackson–Vanik and indeed that confusion has been present for many years. People talk about the amendment who have never read it, some people get it wrong even after they read it. The amendment is very clear: it applies only to non–market economies that deny their citizens the right to leave and the opportunity to emigrate. If it is a market economy, Jackson–Vanik does not apply legally. If a non–market economy allows its citizens the right and the opportunity to emigrate, Jackson–Vanik does not apply legally. It must be obvious that Jackson–Vanik does not apply to Russia, which is both a market economy of a sort and which allows its citizens the right and the opportunity to emigrate. Which is why it astonishes me that there is a debate with passion on both sides about repealing Jackson–Vanik and indeed the demand for repeal is lead by Russians who either do not

understand the amendment, have not read the amendment, or have been lead to believe that somehow they will continue to be burdened by the amendment until it is repealed, as opposed to what is really required in this case, which is simply a presidential determination that Russia is in compliance. It is a one-time determination, not an annual statement, and I do not understand why that determination was not made long ago.

The advantage of making the determination is that it would relieve the debate about repeal of Jackson-Vanik while leaving Jackson-Vanik as what arguably was the single most important piece of human rights legislation of the last century. It has not been surpassed in this century and may never be surpassed. It was an extraordinary effort in which both houses of Congress have by overwhelming majorities, though after rather long debate, tied benefits received by the Soviet Union from the United States – both favorable tariff access to Soviet products and potentially access to U.S. government credits – to free emigration.

Completely free emigration from the totalitarian Soviet Union was out of the question. But it was clear to the authors of the amendment that the Soviet authorities could in fact agree to a much more liberal emigration scheme without bringing down the entire totalitarian state. Scoop and Charlie Vanik understood that with this legislation in place many more people would be permitted to emigrate than would be the case without the legislation. And this was certainly true in the cauldron that created the legislation, which was the sudden imposition by the Soviet authorities of what was known as an education tax, a tax imposed on people wishing to emigrate who had an education. The Soviet claim was that before being permitted to emigrate they should reimburse the Soviet state for the cost of their education. Unfortunately, the amount demanded for reimbursement was prohibitive; it simply could not be paid by any Russian. For a while, Westerners purchased visas on behalf of the applicants. It seemed

pretty likely – and this was certainly the feeling of those Soviets seeking to emigrate – that the education tax was the first step in what was likely to be a series of measures to curtail emigration entirely. In any case, it had the effect of burdening, in particular, those Soviet citizens who had some skill and could probably make their way in life outside the Soviet Union, and therefore those who were most eager to emigrate. So there was a sudden announcement that people wishing to emigrate, in addition to having to go through all the other hurdles, would have to pay an emigration tax. I remember very well when this was announced. Scoop believed fervently in the right to emigrate. He believed that it was the seminal human right, because if you have the right to leave a country, the pressure on the authorities in that country to make life tolerable would, in fact, affect the whole range of human rights. He was passionate about enabling people to emigrate. He observed that the Soviets, who had signed the Universal Declaration of Human Rights, which provides for the right of the citizen to leave and return to his country, were not in compliance.

He believed that it was essential to move quickly in response to the education tax. And so a meeting was hastily convened with Senate staffers with a mandate to see what might be done. At that moment, a piece of trade legislation was making its way through Congress. The Nixon administration wanted to extend most favored nation status and they wanted the authority to extend credits to the Soviet Union; this was part and parcel of the administration's détente strategy, and in the course of a meeting of Senate staff, some of whom were following very closely the progress of that trade legislation, the idea emerged of conditioning the Nixon-proposed relaxations on trade restrictions on free emigration. That was the beginning of what two and a half years later would be passed as the Jackson-Vanik amendment, Representative Vanik in the House having picked up the mantle there. That is the history.

To repeal Jackson-Vanik today, with all of the human rights concerns in Russia and with some countries like North Korea that are subject to Jackson-Vanik denying their citizens the right and the opportunity to emigrate, would seem to me to repeal an iconic piece of legislation that is not a burden to anyone except in those few places remaining that deny their citizens the right and the opportunity to emigrate and happen to be non-market economies. The two often go together, whether the absence of the market is communist or fascist.

So I puzzle at the desire to repeal it, except to the degree to which it is wrongly believed that it is necessary for freeing up the trade relationship between the United States and Russia to repeal Jackson-Vanik, which as I said at the outset simply does not apply. I would hope that this administration unlike its predecessors would read the law, which is very clear, and simply declare that Jackson-Vanik, because Russia allows its citizens the right to emigrate, because it is a market economy, does not come under the strictures of the Jackson amendment, does not require an annual review. That, it seems to me, should take the issue of repeal of Jackson-Vanik off the table.

Let me just conclude by sharing with you an amusing document. Shortly after the Soviet Union collapsed, there was a brief period when it was possible to examine documents, including Politburo documents that have never been seen before. The Politburo documents were discovered by a very brave Russian dissident Vladimir Bukovsky, whose name may be known to some of you, during that brief time when these archives were accessible. He had with him, when he was in the archives, a strange device that has not been seen around the Kremlin, called a pocket scanner and he scanned some thousands of documents before they figured out what he was doing and then that was the end of that. But one of the documents he got out was a Politburo conversation about the Jackson-Vanik amendment. For those of us (including me) who may have wondered

what the Soviet side was thinking and how they were making their decisions as we were making ours, this document was marvelously instructive. I will read you a paragraph or two that will give you the flavor.

This is Brezhnev speaking. He says, "There is a serious obstacle to the official visit to the U.S. It is caused by Zionism. For a couple of months now there has been hysteria in America about the so-called education tax on people who are emigrating. I had ordered that we stop collecting this tax without getting rid of the law, just letting out about 500 Jews with no connections to sensitive work or to the Party. Even if some of them are middle aged, for example, let them go. They will talk about this and everyone will know. But when I checked on that I got upset: the tax is still being collected (taxes are pretty persistent in all societies, I guess). In 1973, 349 people left and they paid 1.5 million rubles. I have a report on this." And Andropov, who was then head of the KGB says, "That was before your directive." (Does this sound like any government meeting any of you ever participated in?) Brezhnev says, "We have been talking about this since last year. Orders are not being followed. This bothers me. I am not talking about removing this law, but if you want to, we can discuss that as well. We have to make up our minds: do we want to make money on this or do we want to have a coherent policy toward the U.S. Using their constitution, Jackson managed to introduce this amendment even before Nixon submitted the proposal to give us most favored nation status. So what is the use of all our work, all our efforts, if this is the result? Nothing."

It carries on like that. Clearly they are trying to come to terms with the amendment, which is exactly what those of us on this side of the water thought would happen. So to those who say that it had no influence, that it had no bearing, it had a pretty immediate influence in the Politburo. Far larger than that was the galvanizing effect it had on millions of Soviet citizens—Jews and non-Jews alike—who understood,

perhaps for the first time, that there were people in the West, including a majority of the elected representatives of Congress, who were prepared to stand with people who wanted their freedom and prepared to do something about it. When you think of it in its historic terms, the idea of repealing it now seems to me would be tragic.

### **LARA IGLITZIN**

As a Russianist, I have not thought too much about how the Jackson-Vanik has or has not applied to other countries, other than those in Eastern Europe during and immediately after the Cold War. Can you expand on how you believe the amendment might apply or has been applied to other countries? You mentioned North Korea; is that relevant?

### **RICHARD PERLE**

Well, no one is proposing Most Favored Nation status for North Korea, though I have no doubt there is a lobbyist somewhere in town who has been employed to do that, nor is anyone proposing government credits. I would not exclude an administration – and forgive me for a brief criticism – that has made a fetish of the notion of engagement from coming up with some inventive ideas to confer favors on the North Koreans. If they attempted to choose among those possible favors – either most favored nation status or U.S. government credits – they would be prevented from doing that by Jackson-Vanik. So in the past it applied to other countries, of course; for a long time it applied to a number of countries in Eastern Europe. And there, the provision within the amendment for annual waivers was used to very great effect.

I will give you one example. In Room 135 of the Old Senate Office Building, a woman on Scoop's staff at that time by the name of Kathryn spent most of her time pouring over information that came to us about individuals in the Soviet empire who wished to emigrate and who had been denied an opportunity to do so. And many of them came from Romania, from Hungary, from other countries. Those

countries applied for and sometimes received a waiver, which was provided for under the terms of the amendment. And it is an amazing footnote to the history, but every year Scoop would sit down with various Eastern European ambassadors and negotiate freedom for people whose names had become known to us. So he would say to the ambassador, "If you want a waiver this year, here is the list of people who is going to have to be granted freedom to leave."

Most of them probably never knew that this process was taking place. Scoop was a tough negotiator— he invariably came back with promises of visas for everyone on the list, in some cases hundreds of people. Only when those promises were fulfilled would a waiver be granted. So the amendment was used to very good effect with respect to a number of countries to obtain visas, and that process could still work today in those countries to which legally the amendment applies. There are not many left.

One last point that I forgot to note. We do not know what the future is going to look like. I doubt, given the great currents of history that Russia will once again become a non-market economy that denies its citizens the right and the opportunity to emigrate, but there are other countries that could slide into recidivism in this regard, in which case the amendment is there to protect the right to emigrate for citizens of those countries.

### **LARA IGLITZIN**

Thank you. We have been joined by the very distinguished Ludmila Alexeeva, and we will call on her in a moment, but first I would like to introduce Mark Talisman, who as you have heard, worked for Congressman Vanik approximately in the same period shepherding the Jackson-Vanik amendment through Congress. Mr. Talisman has an impressive resume; he led the Council of Jewish Federations, which worked on the policies of Jewish federations in their contacts with the U.S. government, and he also was the founding vice chairman of the



U.S. Holocaust Memorial Council, which as you know then led to the creation of the U.S. Holocaust Museum. Mr. Talisman, we are delighted that you could join us.

### **MARK TALISMAN**

Thank you very much. This conference has been a long in coming. I have been surprised over the years at the lack of interest in talking about this as opposed to repealing it specifically. Before [former Congressman] Tom Lantos died, I had a long talk with him about repeal. He was a friend of many years. I was trying to puzzle out why it was that he felt that repeal was necessary, because from the beginning, Congressman Vanik (who died last year at the age of 95) believed that this amendment was a permanent fixture in American law. He believed that firmly because, I can assure you, using today's methodology in the House of Representatives, it would not pass if it were to be needed and brought up again. There were many attempts to change Jackson-Vanik in many different ways, by extending it and so on, but I do believe that it is an organic piece of legislation, and to lose it is to never have it again.

I do not believe that the world is static. I do not think that anyone does. I think Richard is absolutely right in what he said that there can be times that will be ugly for so many nations, some of which we do not even know the names of. I must add also that it was not in our view, in the House, a "Jewish amendment." It was an amendment that had broad coverage. We had the largest Hungarian population outside of Budapest living in our district, and I can tell you that the Hungarians wanted most favored nation status because, after all, Representative Vanik was a Slav. He had a long history in ethnic politics, and that, for them, was enough reason to give the Slavic nations and Hungary Most Favored Nation status *per se*. And yet, there were still very strong reasons not to do that. And they did not.

There were many, many non-Jews involved who were beneficiaries of Jackson-Vanik. I meet them all the time, I see them all the time, I am introduced now to their grandchildren. It applied to so many different people whom we met in the basements of various clandestine venues while praying. All believers, not only the Jews, were in strife. The Jews were the earliest who were willing to come to the Kremlin wall. I do not know how many of you remember that extraordinary CNN live broadcast showing the truncheon-bearing, black leather-coated KGB agents beating the hell out of them on live television that showed what they endured. This obviously helped us get more votes quickly on the House floor.

I want to just give you a little note on Representative Vanik himself. He graduated from law school at age 16 in Cleveland. Under Ohio law, he had to be 18 to practice law, and so he was in a settlement house in Cleveland during the beginnings of the Holocaust. His assignment under the director of that settlement house was placing babies who were sent to Cleveland and other cities by their parents who were still alive in Germany and elsewhere, but wanted their babies in safety. As a Catholic kid, it gave him nightmares for the rest of his life that such a thing would be allowed to happen, ever.

In 1971, he happened to be on a special congressional delegation. He was not one to obey the rules of the House, so he went with his black leather jacket on a motorcycle around the Soviet Union, which is an interesting way to do it, since most people in his position would have been followed closely by a fleet of KGB in unmarked cars. It was hard to do that to him, so he got to go to a lot of places. The anger that he felt on the imposition not only of the tax that Richard mentioned on reimbursement for education, which was unpayable because it was so huge, but also a travel tax in addition, drove him crazy. After he got back, I was on bread and water for three or four days in the congressional reading room trying to find some rem-

edy that would do. Those who served in both the Lincoln and Wilson administrations knew that trade with tsarist Russia was as difficult a proposition then as it was later. They were very smart about the fact that, yes, the United States needed raw materials, but not as much as Russia had to offer, and suspensions of trade took place during those two administrations unilaterally.

During the 1970s, the brightness of the staff on the Senate side was beyond belief; it mirrored the brightness of their principals. It was like participating in a kind of heady seminar one would pay a lot of money in an Ivy League school to attend, to be able to come up with this brilliant solution. The problem was that we in the House stood in the way. That is to say, the House comes first according to the U.S. Constitution on matters of tax. So we had to pass it. The House is not a normal body, you might have noticed recently. It never has been. It is actually called, as you might remember, the House of Representatives, for better or for worse, I add. And this kind of issue gives third degree burns to a lot of people.

I want to tell you, because I have not had an opportunity to talk much about this in public—this is iconic legislation in many different ways, one of which is the strategy to actually keep it alive to get it to the Senate. It is a huge problem, as you see with legislation going on right now, to get it to a form that might actually pass and be signed by a president. The percentage of members who had ultimately signed first (i.e. became co-signatories), literally, personally signing on the one copy available to have their name printed as a co-sponsor above the level of simply voting for it, was 25–30 percent, maybe even 35 percent. For George Meany (he was anti-communist) and his friends in the labor movement, it was a no brainer. They quickly understood the issues and they signed it. Representative Vanik and I had the two copies that were going around. In case he missed somebody, I was able to get him.

A key issue was to garner a sufficient number of votes that was not simply a majority-

plus-one (218). Members can forget that they had signed as co-sponsors and when it came time to vote two years later they might vote against their legislation. I had bills in the House defeated after an enormous amount of labor by millions of people because of some peripatetic issues, some last minute lobbying. So my objective in legislation is always to make sure that there is a majority plus 97 or so, so that there is plenty of cushion.

One-third of the members literally were talked into it. The phenomenon that arose here, which must be paid due deference, was that there was a public movement that seemed to have grown out of nowhere: however, in fact, it had grown out of somewhere. The largest single lobbying activity that went on in Washington during the Holocaust on behalf of saving Jews, after it was clearly known what was happening, was an attempt by 25,000 Orthodox rabbis from New York in January, 1944. They had at least that many seats on that many Penn Central trains to come to Washington. They had a firm appointment with the president of the United States. They came here, and presidential aide Harry Hopkins came out and said the president was busy. The meeting never happened. There were so many examples of that, in everybody's family, including my own, where official things did not happen, and people, as they say, went up the chimney in smoke. There is a lot more material coming out now to demonstrate that and there is a book being written to get the history down once and for all. That failure to act has infected and affected the Jewish community forever. They were told essentially, "Shut up, do not become a fifth column. You will ruin the war effort." They were told by the president of the United States, "We shall win the war early, and that will take care of the problem," none of which was true.

The next step was when the Jews in our family, who lived in the Soviet Union, all over the Soviet Union, received brown paper-wrapped packages of goods to live on in the late 1940s and 50s and into the 60s. That was the best ef-

fort we could get together as a community and as individuals to escape the horror of not acting properly, not doing something.

So when Jackson-Vanik came along, out came these organizational efforts to try everything people could think of individually and collectively. Levi Strauss jeans became an economic tool in the political field. Jeans were taken into the USSR as a trading device to leave with dissidents, *refuseniks*, and others, to use as currency, when they lost their houses, their apartments, and their food. A pack of Marlboro cigarettes was pure gold. For us to look at people who were like us, who had our names, who were relatives in some cases, and understand that they were willing to sustain the bright white-hot light of open publicity if only you could keep it going in the West on their behalf. That was the test for a lot of us. How could we do less? And they would say, “If you stop, we are dead.” So we all proceeded. The machine that developed, which still exists, is mighty and reversed history.

Still, I am troubled personally. It is an odd situation to be in for somebody like me, who eats and lives the legislative process, has helped 19 countries democratize and organize their parliaments over this period—a generation and half—to come to a point now, where people act on something important without even reading the basic legislation. This was a hard-fought battle for an organic piece of legislation and, as Richard rightly said in regard to reading and interpreting Jackson-Vanik for its meaning: Russia does not have a problem. If they keep talking about it in the wrong way and they are pressed, they are going to end up having a problem.

I had a sad situation in Miami in the beginning of an exhibit I did on the Jewish Community in the 20th Century in Posters. My wife and I loved to hide in the exhibit space and listen to what people were saying. There was a group of 8<sup>th</sup> graders, half of which were Russian-Jewish kids at this day school. They were asking horrid questions of their American

friends about why those posters, 37 of them about moving Soviet Jews out, were in Russian. They had no idea. None. That is how easy the mind forgets. And it seems to me that the larger body politic is in even worse condition.

In Jewish life we have in our life cycle Passover with a Haggadah (Haggadah is a story). The story is told over and over so that people do not forget. Representative Vanik believed that this was an arrow in the basic quiver of legislative opportunities in the United States. And he did not feel it was hyperbole for him to say that, because it worked. And let me say a little bit about that. I have to tell you, in the beginning of all of this I was so skeptical—one of the legislative prayers one says in the morning is for the day to go all right and that you will still be upright by the end of the day, hoping you do right when serious choices are made. This was the ideal thing to do to meet the problem, which is exactly why signals go off in the place called the House of Representatives that it will not work. There is a tussle, everybody gets up and bellows, and in the end nothing happens. And worse, it could pass and then not work.

I remember early on, [Georgi] Arbatov, of the Soviet-American Trade Council, and Donald Kendall, the head of the American Trade Council, were seen in their tennis togs on Kendall’s estate on Long Island after they had finished a splendid trade deal. This was their method of PR in the midst of all this. What was the trade deal? One bottle of Pepsi for one bottle of Stoli [Stolichnaya]. It did not sit well across the United States when we were trying to pass something to demonstrate that is the nature of trade. Those were the kinds of vagaries that this kind of proposition would run into, we felt. Then there were the vagaries of dealing with the Soviets. We had a lot of experience, all of us, particularly on the Ways and Means Committee. This was never one of those handshakes one could trust, because they were dealing with their own problems, where their bureaucracy was... a bureaucracy.

So as a consequence, when it began to develop that it was actually going to work, you do not take a treasure like that and trash it. You just do not do that. It actually has been proven to work, which is rare for a lot of legislation, and became a model—at least in the conversation about human rights. This is precious to me, because there were so few opportunities that actually have made a difference in my lifetime on the Hill. To have this legislative gem available is a tribute to all who suffered to help make it happen. Thank you.

### **LARA IGLITZIN**

Thank you, Mark. I think one of the remarkable things about this amendment is how it is quite naturally tied in many people's minds to the emigration of Jews since they were by far the largest majority of people who emigrated. Neither Senator Jackson nor Representative Vanik were Jewish, although I think many assumed they were, because why would either of them be fighting so hard for these rights? I think both of them simply believed very strongly in a universal interpretation of human rights.

Ludmila Alexeeva is someone who has fought for human rights without respect to religion or origin and also believes in it more universally. We are very honored to have her with us. I think you all know that Ludmila Alexeeva is really the soul of the human rights community in Russia, if not internationally. We all look to her for guidance and wisdom. She serves as the leader to so many of the groups, activists, and politicians with whom we work. She is a founding member of the Moscow Helsinki Group. I think both her stature and her role within the community cannot be exaggerated. We wanted to bring in her perspective on the role of the Jackson-Vanik amendment and how it relates to the struggle for human rights today

### **LUDMILA ALEXEEVA**

The Jackson-Vanik amendment adopted by the U.S. Congress in 1974 became a significant event in our country. It is not a secret

that this amendment was a reaction to those in the movement of Soviet Jewry who wanted to move back to their historical homeland, Israel. The movement was born out of anti-Semitism, which became the USSR state policy after the end of World War II. I remember very well the campaign of 1949 against the “cosmopolitans.” It was the official name for this anti-Semitic campaign. I was a student of Moscow State University at that time. In our History Department, as well as across the whole university, the whole country, Jewish teachers were dismissed and Jewish students were turned out of the university. Jews lost jobs in all spheres. In 1953, shortly before the death of Stalin, the doctors who treated him were arrested and most of them were Jews. It was the peak of the anti-Semitic campaign in the USSR. Anti-Semitism remained a state policy following Stalin's death until perestroika.

Those long years of policy resulted in grass-roots anti-Semitism in the Soviet Union. Jews in the Soviet Union did not feel comfortable. They understood that neither they nor their children would have any prospects in this country. So it is quite understandable that they would want to leave.

In 1949, Israel became an independent state and many Jews dreamed of living there, but they could only dream. The Soviet Union after Stalin's rule and after his death was isolated from the rest of the world, and emigrating for the majority of the population was not possible. Meanwhile, during the 1960s, during the political thaw, a Zionist movement appeared in the Soviet Union. From the mid-1960s, the most courageous Zionists began to appeal with requests for emigration to Israel. After several such permissions were given, the number of requests increased. The movement became more active after the Six Day War in 1967. Israel's victory in this war encouraged Soviet Jews to remember that they were Jews and proud of it. Despite the large number of those who applied for permission to depart, only a few lucky people received it.

Meanwhile, the movement of Soviet Jews aroused a response among Jews in the countries of Western Europe and especially in the United States. In 1964, in New York, Jacob Birnbaum created the organization Students Fighting to Support Soviet Jews. And very soon numerous organizations to support Soviet Jews were created throughout the United States. The Union of Councils of Soviet Jewry was created in 1976. The Conference of Soviet Jews was developed. Permanent links were established with activists of the Soviet Jewish movement in Moscow and other cities. The flow of Jewish tourists from the United States to the USSR promoted the establishment of personal contacts with activists of the Jewish movement and with families of those who were refused emigration visas. These people needed moral support as well as financial help. Such contacts brought interest in the culture and history of the Jewish people and promoted the revival of traditions nearly forgotten in the USSR. Soviet Jews began to celebrate Jewish holidays and learn Hebrew.

Such activities from both sides were effective. By the end of the 1960s, receiving permission for an exit visa was no longer a rarity. The number of those who appealed for permission was increasing. Yet the number of applications caused an increase in the number of those who were refused. These people were in a desperate situation – without jobs or any resources for living. They had to stay in impossible conditions for an indefinite time and many of them for many, many years. This desperation forced desperate actions – open declarations, demonstrations, and hunger strikes.

Jewish organizations in the U.S. and European countries intensified their activity in helping people, gathering forms, tourist travels, pickets next to the Soviet consulates and departments, mass marches for the protection of Soviet Jews, declarations in mass media, and lobbying. This pressure from two sides influenced American and Western diplomats. Parliamentarians from different countries came to the USSR to meet with those who were re-

fused and with activists of the Jewry movement in the USSR. The subject of the closed nature of the Soviet Union and the impossibility of leaving the country for its citizens became a popular subject in Western mass media in Europe and in the United States. If you looked through the periodicals of these years, one might think that only the Jewish movement was known in the West. But, at the same time in the 1960s, the human rights movement appeared in the Soviet Union and since its beginning played a very important role.

In some republics, such as Ukraine, Lithuania, Estonia, Armenia, and Georgia, independent national movements and independent religious movements developed. They were much older than the human rights and Jewish movements. The human rights movement was smaller, but it was concentrated in Moscow and had the maximum resonance inside the country. It attracted other movements because its periodical, the *Chronicle of Current Events*, became the source of information about all independent movements in the Soviet Union.

The Moscow Helsinki Group, which was created in 1976, promoted information about all of these movements based on the humanitarian articles of the Helsinki Agreement. It was also true of the Jewish movement for emigration. The most prominent activists of the Jewish movement, Vitaly Rubin and Anatoly Sharansky, were among the founders of the Moscow Helsinki Group. Vladimir Slepak and Natan Meiman joined the Moscow Helsinki Group soon after the beginning of group activity. Of course human rights activists from the beginning of Jewish movement sympathized with this struggle because they considered the right to leave the country and return to be one of the most important rights.

The human rights activists' position was sounded many times by academician Andrei Sakharov. He stated that the legal right to be free to leave the country and return to it heavily influences the realization of all other civil and

economic rights. If both the authorities and the people know that any citizen can freely leave the country when he or she is dissatisfied with the situation in the country, it will positively influence the relationship between the powers-that-be and citizens and will weaken the pressure of the authorities to society. In his letter to the U.S. Congress about the Jackson-Vanik amendment, Sakharov stressed the importance of the right to leave the country and return not only for Jews, but for all Soviet citizens. He drew the attention of the Congress to the fact that there were thousands of other citizens in the country—Germans, Russians, Ukrainians, Lithuanians, Armenians, Estonians, Latvians, Turks, and other ethnic groups—who wanted to leave the country and had struggled for that for years, facing endless difficulties and indignities.

The initiator and the leader of the Moscow Helsinki Group, Yuri Orlov, wrote in 1973 in his open letter to Leonid Brezhnev about the necessity to repeal a ban for free travel abroad, explaining that this right is essential for equalization of intellectual potentials between countries and would prevent the retardation of Soviet science from world science. He insisted on the ability to travel abroad when needed, and for the time needed, for scientists, engineers, students, writers, painters, or any other citizen. He proved that this prohibition was not beneficial for citizens or for the state.

The Jackson-Vanik amendment was created as a reaction to obstacles built by Soviet power for Jewish emigration to Israel. Charles Vanik introduced the bill into the House of Representatives in February 1973. Several congressmen supported the bill. The bill was a direct reaction to the decision of the Council of Ministers of the USSR published in August 1972. According to this decision, those who wanted to emigrate had to pay all governmental expenses spent for their education in the USSR. The amount was so large that only a few could pay it and leave the USSR. Jewish activists considered this decision as a document

that turned all people who were educated in the country into slaves.

This decision also drew indignation abroad. Twenty-one Nobel Prize laureates from different countries staged a collective protest. All Jewish organizations in the United States and Western European countries likewise protested. The reaction of the Kremlin to the indignation was quick. The Kremlin was especially worried about the prospective adoption of the bill introduced by Representative Vanik. The legislation was authored in February and in March the Soviets declared that those who emigrate would not pay any tax. Georgi Arbatov issued at that time a statement that said that the sanctions that limit the trade between the USSR and the United States were imposed because of existing problems with the Jewish people who wanted to leave could lead to a new wave of anti-Semitism in the USSR.

In April, 1973, Senator Henry Jackson introduced the bill into the Senate and the majority of senators supported it. On December 20, 1974, both chambers adopted the Jackson-Vanik amendment and President Gerald Ford signed it. On January 3, 1975, the amendment became law. Jewish movement participants received the news enthusiastically and disproved skeptics' fears that adoption of this amendment could damage the whole movement or endanger some of its participants. Human rights activists welcomed this amendment as a measure that eased the situation of Jewish people who were refused departure. The Jackson-Vanik amendment was for us evidence that U.S. legislative power not only reflected *Realpolitik*, but also struggles for human values such as freedom of individuals and rights for all, regardless of where one lives.

It is not by chance that Senator Henry Jackson, using the Universal Declaration of Human Rights, tied his amendment to the law of commerce. I think that the address of Andrei Sakharov to the U.S. Congress promoted the adoption of the Jackson-Vanik amendment. Sakharov wrote in his address, "If any na-

tion has the right to choose a political system under which the nation wants to live, it is particularly true for the individual. The country where citizens are deprived of these elementary rights is not free, even if nobody wants to realize this right.” Sakharov ended this address with the following words: “I express my hope that the U.S. Congress, which reflects the wish and traditional love of the American people, would realize its historical responsibility before humanity and find forces to be moved from the immediate group interests of profit and prestige.”

The U.S. Congress satisfied the expectations of our prominent compatriot. The Jackson-Vanik amendment played an important role in removing or lessening obstacles for Jews to emigrate from the USSR in the 1970s and 1980s. And I am sure that it was not by chance that the very first civil right obtained by Soviet citizens in the perestroika period was the right to emigrate. This right was asserted for dozens of years by Jewish movement activists and human rights activists and by all Soviet citizens. All of these efforts were actively supported by the U.S. Congress and the U.S. and European societies also played a role.

I state that now, after eight years of Vladimir Putin’s presidency, we have lost almost all civil rights. The only right that we still have is the right to freely leave and return to our country. This right is widely used by millions of Russian citizens for tourist trips, vacations, education, and work. I came here to make this report to this institute also due to this right. Thank you very much.

#### **LARA IGLITZIN**

You do not have any concerns about giving the Putin presidency or the Putin regime a free pass if we were to consider repealing Jackson-Vanik, aside from the other issues that were raised today?

#### **LUDMILA ALEXEEVA**

Indeed, we were discussing it yesterday. It was

a serious discussion, where we tried to figure out the best way to repeal the Jackson-Vanik amendment. Those who know the situation in the United States well insisted that the amendment should be repealed unconditionally, simply because the relevant conditions have been met. However, I know our politicians and I know that if this amendment is repealed unconditionally or without asking for anything in return, they will interpret it as if the West agrees that everything is all right with human rights in Russia and they should not be concerned about it or talk about it.

I am not the one to propose how to do it—I am far from familiar with your congressional process or with the intricacies of the U.S. political life. But I am convinced that it should be done in such a way—you will have to think, specifically, which way—that makes this repeal equivalent to a statement, saying that the right to leave the country and come back is the only civil right that remains in Russia today. No other civil rights are observed. All elections have been taken away—from governors to local and municipal governments. There is no freedom in political life. There is no freedom for nonpolitical public organizations. Those whose actions or statements are not acceptable to the government are killed and the killers walk unpunished. If you repeal the Jackson-Vanik amendment ignoring all this, you are *de facto* agreeing with the political and social environment that exists in Russia today. I would very much hope that this conference, assembled by this esteemed institution, could find a way to do it.

#### **RICHARD PERLE**

I think, at the risk of repetition, it is a good opportunity to make the point that Jackson-Vanik ceased applying to the Soviet Union when the right to emigrate was available. Therefore, it is not necessary to repeal it in order to end its application to Russia. It does not apply to Russia today.

And I think you are quite right in observing that a repeal of the amendment would be interpreted as a seal of approval for the current state of human rights in Russia. Happily, there is no need to repeal it. It is not interfering with trade in any way. It has no bearing on commercial relations between the United States and Russia. We could, if we wish, extend credits without any limitation to Russia. Russia now receives the effects of most favored nation status. There is confusion about the status of the law. The law is clear: it simply does not apply to Russia. If 20 years from now Russia were to be transformed backward and once again deny its citizens the right to emigrate, then it would once again take effect. But now it has no effect, so there is no compelling argument to repeal it.

#### **MARK TALISMAN**

What was the reaction to this discussion on the Hill? Is there any understanding on the Hill about the meaning of repeal as Richard has indicated?

#### **LARA IGLITZIN**

I think it is fair to say that a number of Hill staffers seemed to understand the symbolism of Jackson-Vanik and why repeal, at a time of increasing political stagnancy in Russia, could be problematic. I think there was an understanding that it was irrelevant for Russia in terms of emigration and irrelevant because it is not a non-market economy, but discussion at our forum on the Hill did not get into those aspects too deeply.

#### **MARK TALISMAN**

I just want to make the point that it is good that you are able to report what went on the Hill and how serious it is now, because it also defines what Jackson-Vanik is not. The human rights movement is alive and well and a lot of work needs to be done independent of Jackson-Vanik in regard to the long list of things going on in Russia under the prime minister.

## **DISCUSSION**

### **QUESTION**

I have two questions: one, I was curious as to what other groups—lobby groups, advocacy groups, etc., other than Jewish groups—helped support the Jackson-Vanik amendment and the fight to get it passed. And my second question is for all of you: what legacy do you think the amendment has had on other legislation, particularly, the International Religious Freedom Act?

### **MARK TALISMAN**

The interwoven relationships were extensive and daily, including organized meetings. There were the believers that I talked about, many of whom were suffering for their practice in basements and otherwise being hassled, if not worse, all over the Soviet Union. The Bahá'í, for example, who had small numbers but still were there, had, and still have, a habit of not lobbying and being in public about their needs like this. So some of us had to do their work on the Hill; it has happened later on in Iran and other places. So support for the amendment was very broad.

### **RICHARD PERLE**

It was a very diverse coalition—human rights groups of all descriptions, the trade unions under the AFL-CIO, for example. It was a galvanizing proposal—and Ludmila Alexeeva might wish to say more about this. It had the same effect on Soviet human rights activists and dissidents and it cheered them enormously. Sakharov is not Jewish, of course. There is no reference to Jews in the amendment, but as the history shows, the Jews were most activist in the Soviet Union, not exclusively, but they were the most activist and they enlisted most of their support outside of the Soviet Union. Many people believe today that this amendment affects only Jews, but, of course, it does not.



## QUESTION

I want to follow up on a technicality concerning the congressional annual waivers. Apparently, two presidents, Clinton and Bush have said, “We now call on Congress to act to move beyond the amendment, because it does not apply to Russia.” But then this annual process does still take place. So what form of presidential waiver would go past that and would make clear that actually Congress is out of the loop from this point on?

## RICHARD PERLE

No waiver is necessary. The waiver has persisted in part—this gets long and complicated—because there had been trade disputes. Unfortunately, what was intended as a very narrow proposition—if you do not allow people to emigrate, you do not get these benefits—has now acquired hangers on in the poultry industry and elsewhere. But the amendment is very clear and administrations that have requested waivers have done so, I think, either without legal advice or ignoring the law for political reasons, because the amendment takes effect until the president declares that a country is in compliance and at that point it ceases to have effect. It has been obvious that Russia has been in compliance for many years.

## QUESTION

The presidential statements so far have not actually said officially that Russia is in compliance. They have just said, “We call on Congress to do waivers.” Is that right?

## RICHARD PERLE

That is correct. And they have done that under political pressure largely from economic interests. But President Obama could tomorrow declare that he finds that Russia is in compliance with Jackson-Vanik and it therefore no longer applies. And if he were to do that, no annual waiver would be required and presumably Putin would stop complaining.

## QUESTION

I would like some clarification on two parts of the amendment. One applies to non-market economies, and the second to those economies that prohibit emigration. There are mixed economies—clearly Russia is one of those. So if one part is met and not another, does that still mean that the country is not subject to this amendment?

## RICHARD PERLE

No, both are necessary. So, a non-market economy that allows its citizens to emigrate is unaffected by Jackson-Vanik. A market economy that denies its citizens is not affected by Jackson-Vanik. They are the two conditions; it was very clear in the legislation. So, it does not apply to Russia, because Russia allows emigration even if one were to conclude that it is a non-market economy—but, of course, it is essentially now a market economy.

## QUESTION

I want to follow up on the previous question. Does the Trade Act define a non-market or, rather, a market economy? Because it seems that there has been a lot of talk over this issue of Russia having a mixed economy, and people debate whether it is truly a market economy at this point.

## RICHARD PERLE

With respect to the law, even if it were still a non-market economy, the fact that it allows citizens the right and opportunity to emigrate would remove it from application of Jackson-Vanik.

## LARA IGLITZIN

Yesterday, Karinna Moskalenko suggested that we all begin to start drafting a new law that might impact human rights in Russia a different way. Do you think that there is anything the U.S. should be doing in the realm of legislation? Or should we limit ourselves to what

Sarah Mendelson was saying yesterday about hearings and maybe a better use of aid money. Is there a role for a new Jackson-Vanik amendment that might have an impact on current issues in Russia?

### **MARK TALISMAN**

That is what I was beginning to say before, after the previous presentation. This is an opportunity for the human rights movement in 2010 to determine the answer to that question. Expanding, twisting, doing things to Jackson-Vanik is not going to be fruitful, on the floor of the House particularly. Because everyone has something they want to tack on to Jackson-Vanik. Poultry dominates, if you can imagine. The question needs to be examined now, in this modern age, whatever the economics are, because it is a new paradigm and it is a new world, and so much has happened since then. We need new tools created by a mature human rights community today. There have been attempts in the past to expand Jackson-Vanik legislatively, and they went down in flames.

### **RICHARD PERLE**

Jackson-Vanik succeeded in my view because there was proportionality between what was being demanded and what was being withheld. And even Brezhnev could worry in a Politburo meeting about whether they could manipulate allowing some people to leave in order to gain the economic benefits. There is a limit to how much could have been demanded. If we had asked for free speech in a totalitarian state, obviously, we were never going to get that. Could we get visas for tens of thousands of people? Yes, that was manageable. So it seems to me, Jackson-Vanik has had its place in history and it should be left there as a symbol. There are things that can be done to promote human rights in Russia, and I would hope we would do them. But I do not think a repetition of a Jackson-Vanik model would be very effective in today's environment.

### **QUESTION**

What is the precise mechanism within the language of the amendment itself that would allow a perpetual presidential waiver? Because it is not clear how you would sustain such a waiver. As a corollary, if you keep it in place, would there be a political willingness to apply it to the Central Asian countries, which do not have market economies and there are also many instances where they keep a block on emigration and immigration?

### **RICHARD PERLE**

Look, the amendment does not apply to Russia. The annual waiver makes no sense under the terms of the law. There are things we could and should be doing, and I think hearings are very important. But you do not need Jackson-Vanik to have a hearing on political murders in Russia when they take place. If you had leadership in Congress that wanted to put the spotlight on human rights abuses in Russia, it could do that, and it does not take Jackson-Vanik to do it. And it should do it. And in my view, the administration should be doing it as well. Silence is a form of quiescence and we ought to be saying a great deal more when people go to jail wrongly, or when people are murdered for their political views in Russia. Russia today is potentially sensitive to that kind of open criticism. We should be doing much more of it in my view.

### **MARK TALISMAN**

Given the membership that Russia seeks in multi-national organizations in Europe, and given the fact that they are allowed to attend these meetings, it offers an opportunity to set up a counterforce of an annual public review in each of the countries involved. And it can be done in a way that does not simply draw the ire of Putin, but says if you live in a normalized modern economy in a modern world, these are the ways modern nations behave and do not behave. It is the model that I find in the work that I do with the Court of the European Union. There are standards there now. So much has

happened since Jackson-Vanik in regard to these issues that I would think it would not take too long for bright minds to create a new institutional framework in which the world stands up and says: this is not working—and behaviors need to be changed.

### **QUESTION**

You just mentioned multi-national organizations. Given that there is still a slight possibility that Russia will enter the World Trade Organization (WTO), which requires that members receive unconditional most favored nation treatment, will the consent of the United States to Russia's accession actually mean de facto repeal of the Jackson-Vanik amendment? Would Russia forever enjoy most favored nation treatment, and would the United States, if the circumstances dictate, later try to impose Jackson-Vanik on Russia again, if it means violation of WTO obligations?

### **RICHARD PERLE**

It is an interesting legal question. Jackson-Vanik applied to non-market economies that denied their citizens the right and the opportunity to emigrate as of the date on which the legislation was passed. So, as I have said several times, it no longer applies, because the two criteria are no longer met. If we now extend it, but go through this unnecessary waiver, if Russian accession to the WTO obliges the United States to extend most favored nation status, then Jackson-Vanik would continue to be inapplicable to Russia.

But no one is proposing that it be applied to Russia anyway. I believe that Vladimir Putin wants it repealed as a triumphal rejection of what he regards as an unwarranted interference in the internal affairs of his beloved "Soviet Union." This is about rejecting what was done. It is not about trade, it is not about normal relations. It is all about the symbolism of rejecting this piece of legislation and rejecting its history.

### **MARK TALISMAN**

I would like to turn it around and ask the question of you: Have we lost our appetite for protests in public if a person is wrongfully murdered? There was precious little commentary anywhere on this. When we add all of it up can we put the question of what is right and what is wrong in a new context? You know, putting it all on Jackson-Vanik is more than Jackson-Vanik could stand. It has been confusing over the years, because in their minds people apply to Jackson-Vanik what is not in the law.

### **LARA IGLITZIN**

I would like to thank three very passionate and experienced panelists for their participation in our discussion today.

# Panel 2: Rethinking the Human Rights Issue and U.S.-Russian Relations

## **STEPHEN HANSON**

It is my distinct honor and privilege to be here today to chair the second panel on the topic of “Rethinking the Human Rights Issue and U.S.-Russian Relations.” I also want to say that it is been a pleasure over the last 20 years of my career to work very closely with the Jackson Foundation in Seattle and with Lara Iglitzin in particular, as well as with the Kennan Institute and with Blair Ruble and his amazing team. It is really a joy to work with everybody in this outfit and you can see the kind of high quality events that the Kennan Institute and the Jackson Foundation put together.

The second topic for today is going to take the themes from the morning and broaden them a bit. There are three axes to the conversation that we are going to try to bring into play together, and it turns out all three of them are integral and inextricable. On the one hand, we have the historical legacy of the Jackson-Vanik amendment and its universal significance for human rights activists around the world and its potential continuing relevance for countries like North Korea, which deny the right to free emigration and are non-market economies. Thus, we have the legacy of Jackson-Vanik and the issue of how to honor that amazing achievement. On a second axis we have the question of U.S.-Russian relations. There are misunderstandings about the Jackson-Vanik amendment on both sides that complicate the question of how to improve relations with Russia, but in such a way as to achieve other goals that those of us in the room hold dear, including those concerning democracy and human rights. Then there is a third axis, which is the question of human rights in Russia itself and the rather

negative trajectory human rights has taken, particularly in the last decade, which cries out for some kind of U.S. policy response and the response of concerned citizens.

Getting all three of these triangular relationships into one conversation is very tricky, because it turns out there is really no way to act on the legacy of Jackson-Vanik in a way that is faithful to it without talking about the human rights situation in Russia today. Likewise, there is no way to talk about human rights in Russia today without talking about U.S.-Russian relations and how to make them better.

We have a distinguished panel that is going to start tackling these broader themes. It is really the perfect group to do that. We have Sam Kliger, who is the director of Russian affairs at the American Jewish Committee; we have Blake Marshall, senior vice president and managing director of The PBN Company; and we have Sarah Mendelson, director of the Human Rights and Security Initiative at the Center for Strategic and International Studies. We are going to begin with Blake.

## **BLAKE MARSHALL**

Thank you, Steve. And thank you to the Kennan Institute, Wilson Center, and the Jackson Foundation for the invitation to be here with you this morning. I have been asked to offer some comments that represent the business community or the private sector’s perspective on the question of Jackson-Vanik and its application to Russia. I will offer these remarks in, basically, three areas: what the business community tends to think about the ongoing issue of Jackson-Vanik and the annual review process as it applies to Russia; the implications

for the trade relationship between the United States and Russia and where we are in our bilateral commercial relationship; and then third and finally, what if any impact it has on Russia's plans to join the World Trade Organization.

Let me begin by saying that over the years I have become pretty well acquainted with the views of the private sector in broad brush strokes and I am happy to make a few generalized comments along those lines, but any concrete opinions I express are purely my personal views. I think it is safe to say that the views of the business community on the continuing application of Jackson-Vanik to Russia are heavily influenced by the concept of linkage—that is to say, the tying of Jackson-Vanik and the extension of PNTR (permanent normal trade relations...or unconditional most favored nation status, MFN, what it used to be called), to Russia's WTO accession package.

Personally I think there are conceptual problems with this sort of linkage. But the reality, just in purely practical terms based on where we are today, is that this is one of the many ways in which Russia has the misfortune of following the Chinese PNTR debate and China's WTO accession. After China failed to fulfill many of the terms of its package in IPR [intellectual property rights] and other realms, Congress has taken the approach that it effectively reserves the right to review the deal on WTO that is ultimately struck with Russia before granting it PNTR. Key congressional committees and certain industry groups are less inclined now to take it on good faith this time around with the only remaining large economy outside the WTO. So the implied leverage on these WTO negotiations, then, is that only a rock-solid, airtight accession package will pass congressional scrutiny in the PNTR debate. And then, and only then, on that basis, will the vast majority of American companies actively support Russia's removal from the Jackson-Vanik provisions when that time comes.

So this is an odd set of circumstances that we find ourselves in. But I want to back up for just

a minute to convey on my own personal beliefs about Jackson-Vanik's merits. In my view, this is a policy issue in our bilateral relationship that should have been dealt with a long time ago and in the right way, not in this sort of confused fashion that we find ourselves discussing these days. The amendment, and its application to Russia, has unquestionably fulfilled its original legislative intent and served its policy purpose. It was of truly historic significance, so any conversation about where we go from here does not in any way diminish that legacy.

That said, I do believe that the continuing application of Jackson-Vanik to Russia is anachronistic and puts us in a position where periodic distortions of the original legislative intent can be harmful to the bilateral relationship. We have had a tendency to move the goalposts, so to speak, implicitly redefining the statute with objections that are raised on Capitol Hill and elsewhere on a range of issues far outside its scope. That may be partly because Congress has relatively few tools at its disposal to assert itself and try to influence U.S.-Russia policy, particularly when it comes to action-oriented votes in Congress. But nonetheless it troubles me conceptually to have Jackson-Vanik continually associated with important but unrelated foreign policy questions ranging from Georgia to Iran to a variety of arms sales, for example. Notwithstanding the practical politics that I clearly recognize in each of those important cases, I would prefer to keep those issues in their own channels and not to continually attempt to redefine in the public domain what this amendment was in fact intended to do and to prescribe.

As I move into the impact on our trading relationship, I would like to provide briefly some context for how U.S. companies view the Russian market these days. Our bilateral trade relationship has been growing steadily prior to the crisis onset last year. In 2008, the trade turnover between our two countries reached \$36 billion. Our trade relationship is not as robust as we would like it to be, but it has been

growing steadily, and the 2008 figure is easily triple and quadruple what it had been in recent years. It is nevertheless a primary market for American exporters across the industry spectrum: from aerospace and agriculture and automobiles, to chemicals and information technology, to machinery and manufacturing. And the market continues to grow in its importance. Just as we have become very familiar with the BRIC moniker over the past decade to describe the dynamism of leading emerging markets, PricewaterhouseCoopers (PwC) has recently come out with a new forecast looking ahead over the next couple of decades that places Russia squarely within an “E” of the emerging economies that will match the economic output of the G7 in the next decade, by 2019.

So in terms of the implications for our trade and overall relationship with Russia, I would divide these effects into the symbolic (which I think is a very large, substantial category), and the practical (which is a practically empty category). There is no question in my mind as to the huge symbolism associated with Jackson-Vanik; and because it is symbolically important in the relationship, it is an irritant and I think we have to face that. And ultimately, it is a limiting constraint on the extent of the reset that is currently underway in U.S.-Russian relations, and the reestablishment of the mutual trust and confidence that has been sorely depleted in recent years.

While we have made some positive pronouncements on Jackson-Vanik and what we intend to do at some point in the future, we really do need to get serious about backing this up by demonstrating good faith in fulfilling these promises. Oddly enough, it has no concrete practical effect on our current trade relationship, since Russian goods have enjoyed conditional MFN (NTR without the “P”) since 1992, I think, first on the basis of the presidential waiver in the first two years after Soviet breakup, and then since 1994 after receiving the annual certification that Russia is in fact in compliance with the freedom of emigra-

tion provisions in the bill. It would only have an impact if that certification was not made, but that has become routine practice in recent years. It could, potentially, have a dramatic impact in the future, though, when Russia accedes to the WTO. I will come back to this point in a couple of minutes.

So while there is no practical impact on the terms of our trade, conversely our trading relationship has an impact on our ability to remove Russia from the scope of Jackson-Vanik. Here I am thinking primarily about the export of certain agricultural products from the United States. I readily understand why no one is inclined to grant any “favours” to Russia when inspections and certification quotas are being tinkered with and various protectionist games are being played. But I think we also have to honestly and candidly recognize pretty clearly that neither is Jackson-Vanik acting as a deterrent in this regard, on this question or any other economic or foreign policy issue, in my view. And more to the point, I think it is simply wrong to construe this as a favor to Russia, as giving them something that they want. That may have been the case many years ago, but I believe that we are well past that point now, and I think the notion of a trade or trade-offs involving Jackson-Vanik has lost whatever logic it may once have had. In fact, the Russians firmly believe—and they say so publicly at senior levels—that this is our problem to solve and it is our anachronistic legacy that is on the books as it applies to Russia. It is one that has been caught up in our own bureaucratic politics.

Third and finally, I will conclude with a few observations about WTO, which leads us to the important bottom-line takeaway for today. Jackson-Vanik does not have any impact on Russia’s plans to accede to the World Trade Organization. There are any number of other obstacles that are impeding that progress, but this is not one of them. It only becomes a problem when Russia does join, at the point of gaining membership in the organization. At that time the pressure is really on for the United

States to deal with what I have just described as our problem: to remove Russia from that grouping subject to the provisions of Jackson-Vanik and extend PNTR—or to invoke Article 13 on non-application of unconditional MFN/PNTR. The latter option, which is really not an option, would be an unmitigated disaster for American companies with far-reaching ramifications, and, I would say, for our overall bilateral relationship as well.

U.S. firms in this scenario would not be able to take advantage of all the hard-fought concessions achieved during Russia's accession process, most of which were, ironically, arrived at through intense U.S. negotiations. These include large reductions, 10 percent or more in some cases, in import duties for new cars and civil aircraft, and average tariff rates on industrial goods that would be reduced from roughly 12.5 percent down to around 8 percent, and greater market access for a variety of industries ranging from financial services to telecommunications. Nor would the U.S. then have access to WTO dispute resolution procedures if and when Russia might violate some of those new rules of the game.

So it is a very, very bad scenario that we need to contemplate going forward as Russia continues its WTO discussion process in Geneva. All in all, the result for us would be severe erosion in U.S. market share in one of the most dynamic emerging markets, one that is fueled by consumer demand and ever-rising disposable incomes. That same PwC study that I referred to earlier, by the way, also projects Russia to be the top European economy and the fifth largest economy in the world by 2030, one more decade beyond the "E7" data point. Russia is thus in a group that matches G7 output by the end of this next decade, and in another decade, by 2030, is a top five economy globally. So you can see then that American firms are heavily invested in positioning themselves for the long term in Russia for all the right reasons, and that is the message that needs to be understood more broadly in Washington—in the executive

branch and on Capitol Hill—so that officials are prepared to act at the appropriate time.

#### **SARAH MENDELSON**

Thanks to my colleagues at the Kennan Institute and the Jackson Foundation. This is one overdue conversation. I cannot recall the last daylong meeting on human rights in Russia that I have attended in Washington, so it is terrific. And I want to at the outset associate myself with those who praised the role that Jackson-Vanik played in the 1970s and 80s, but also acknowledge that as a tool today it is a combination of not useful and not relevant, as one of the architects, or several of the architects, of the amendment suggested.

What I want to do is tough: I want to talk about the current human rights situation in Russia and the tools we have in the United States and Europe, both in government and in civil society, to support and advance human rights in Russia. In short, the situation in Russia is serious and by some accounts the culture of impunity is worsening despite, I would say, some encouraging rhetoric by President Medvedev. There is a limited amount that we on the outside can do to change the situation on the ground and we need to recognize that. But we also need to recognize that we are not doing all that we can do, and I want to focus my comments on what that could look like, what more we can do.

In brief, 2009 was a very bad year for human rights in Russia. By our account at CSIS, there were ten human rights defendants and journalists who were killed with impunity; their killers still at large. Another way of measuring the situation, a delayed way, is to consider the voluminous number of cases for the European Court of Human Rights. In 2009, the number was 13,666 cases—that was up from 10,146 the year before. For some countries that is 15 times the number of cases that are going to the court; for other countries, certainly from Eastern-Central Europe, it is three or four times as many. The court is flooded with these cases, and we have

lawyers in the room who present at the court. The court is functioning as a substitute for a domestic judiciary; and that is not what the European Court of Human Rights was meant to do. Now, part of what is going on is an extreme violence in the Northern Caucasus; it has spread to other parts of Russia, but also the cases are spreading to Europe. We also chart incidence of violence in the North Caucasus in 2009 and we found 1,100 violent incidents that was up from 795 the year before and they were increasingly lethal, over 900 individuals killed; we also registered 15 suicide bombings in the North Caucasus, most of which were in Chechnya, and that was up from four the year before. I am sure there are other metrics we can use to talk about the situation in Russia. Given this picture, if Jackson-Vanik is not an effective tool, what tools do we have? And I want to suggest that this is not only the situation trying to advance human rights in Russia, it is a challenge for the human rights community more generally. I want to suggest five tools, and I am sure that people in the audience can suggest some more.

One is effectively using information, two is increasing awareness and attention – and this conference is a great step in that direction, three is raising and spending funds wisely, four is increased coordination with friends and allies including, possibly, targeted sanctions, and five—and this may strike some as controversial, I know, because I have had conversations with you before about it—five is increasing our own compliance and accountability in human rights issues. I want to take a minute to go through each of these and suggest where we on the outside could do more, but also remind ourselves to be humble and that it is ultimately our colleagues who fight the fight every day in Russia, who are on frontline. Russia's fate is up to Russians, we can help support, we can do more than we are doing, but ultimately it is not for the Americans to come in and fix.

So how can we do a better job of supporting? Number one: information. We need to

support the gathering of information on abuse and the monitoring of events on the ground. This has been critical for decades and it continues to be. One way that we do this at CSIS is through public opinion surveys with the Levada Analytic Center. Looking at how Russians think about human rights and abuses, how they experience abuse, we have done over a half dozen large random sample surveys. We think this is an important way to help activists on the ground because, as in any country, it enables the activists to understand how their local populations are thinking about these issues and it gives them the potential to grow a constituency for greater demand for compliance. We currently have a survey in the field with the Levada Center that is looking at how 20- to 59-year-olds in Russia are thinking about history—Stalin, Sakharov, human rights—and we think that the data just might be useful in challenging what some of us call “absent memory” in Russia. We hope to be sharing that later in the year with colleagues.

Another tool is attention. Obviously, naming and shaming have been in the toolbox a long time, but specifically naming and shaming those who tolerate a climate of impunity is important and I feel that in 2009 we missed several opportunities. The White House and the Department of State issued statements in 2009 and just last month. Every time an activist has been killed or activists are detained and this is extremely important, some say it is not enough, but it is important to recognize that it has been going on. The president and the Secretary of State and other senior Obama administration officials have met with human rights defenders during visits to Moscow. But we have missed an opportunity to shift the burden from activists on the ground to diplomats, and policy makers in United States, and European capitals, and I will speak more about that in a moment. One thing we really missed in terms of attention is hearings. How many hearings did Congress hold in 2009 on the human rights situation in Russia? There was a hearing—or it might



have been an issue forum—that the Helsinki Commission held before the Moscow Summit. But by and large, despite our best efforts, the Senate Foreign Relations Committee has not held a hearing on impunity in the North Caucasus; the same is true in the House. We talked in the previous panel about whether or not Jackson-Vanik needs to be amended. There have been some ideas floating around during the break that possibly there could be a set of coordinated speeches, by President Obama, House Speaker Pelosi and Senator Reed that, on the one hand, acknowledge that Jackson-Vanik is irrelevant for Russia in that the one right that Russian do enjoy freely is travel and emigration, but that also lay out the number of rights that are under threat. That is something we can explore.

Another tool is funds. The U.S. support for democracy and human rights is extremely important and a number of private and public donors have decreased their funding precisely as human rights abuses increased in Russia: the Ford Foundation, unfortunately, closed its offices in September. That means \$10 million that goes to the support of civil society in Russia is no longer available. And the USG and others need to be thinking about ways to make up that gap. I think the way funds are delivered needs to be rethought and revisited. I have written about this following the experience I had helping to convene the parallel Civil Society Summit. It is a piece that CSIS published called, *From Assistance to Engagement: A Model for a New Era in U.S.-Russian Civil Society Relations*. And the argument is pretty simple: that we need to listen and respond to local needs and work with NGO colleagues to help them listen and respond, we can do this through survey data, but the point is that whenever we are spending money that we are doing it in a way that shows that we are actually listening and responding to people. But I also think we need to shift how we engage civil society in Russia. Instead of sending Americans, and I was one of them, to Russia to teach, talk, and train (I worked for

NDI in the early 90s), I think that Congress and the administration need to shift support to regular peer-to-peer dialogue and engaging in projects—even supporting—projects that bring Americans together with Russians who work on Russia. It may well be that the era of having Americans go to Russia to teach and train was a good idea at some point, but I think that this era has passed and it is certainly an idea that I heard loud and clear when we were in Moscow in July. We can talk about the merits of this as well as the difficulties. There are two more tools. One is coordination, and I alluded to it in the beginning of my comments. Congress and the administration need to do a better job working with our allies to speak with one voice on the issue of impunity in Russia. We need to shift the burden from those who are on the ground every day documenting the impunity to parliamentarians, diplomats, and policy makers.

The murder of Natasha Estemirova was, I thought, possibly a tipping point. Amid a flurry of emails, with a Swedish EU president I wondered if we could possibly convene a brain storming session bringing Americans and Europeans, government and non-government people together to think about a new and different policy on challenging impunity in Russia. Could we do that? Well, the answer is no—either no, or people were not that interested. But after a lot of pushing it did not happen. It is my hope that the murder of Natasha Estemirova was not in vain and that we can get that momentum back in 2010 to get people to the table. But I think that we need to acknowledge what the situation demands and use strategy: the cost that the Russian government bears for these murders is virtually nil. We can do several things. We can call on the Russian government to fully investigate the murders and to leave no possibility uncovered; the suggestion that President Medvedev had that locals could not be involved in this needs to be challenged. The investigation needs to stay at the highest level in Russia. We could also talk about the

merits of possibly having targeted sanctions. As Chechnya opens six foreign offices in Europe (Germany, Austria, Belgium, Poland, France, and Denmark) we might talk with those governments about what those offices are and whether or not there is money and financing that is linked to authorities in the region.

The last point is about compliance and accountability. The fact that Russia belongs to international organizations (the OSCE, the Council of Europe, the G8—just to name a few), and has signed on to numerous human rights-related treaties means that those are potential pressure points, but I would say that they have not been the most promising. I think if you went back 30 years and you thought getting Russia into those international organizations and signing on to those norms was going to be powerful, we now find ourselves in 2010 with the problem of how you get from commitment to compliance. Well, here is one way not to get to compliance, and that is for the United States to be non-compliant. Whether or not the U.S. is compliant has an effect on our ability to advance human rights and democracies elsewhere. There are lots of arguments that you can make in terms of national security, in terms of counter-terrorism policies, about why we should not engage in various types of conduct. I am making an argument at the moment that addresses our ability to advance democracy and human rights. This is not to make in any way, shape, or form an argument about moral relativism. The fact that the Bush administration acknowledged that torture was committed at Guantanamo does not mean that we should turn a blind eye to torture and disappearance in Russia or anywhere else. The point is simply a pragmatic one that as long as this is the case—and I have interviewed lots of American diplomats and policy makers—it made it almost impossible for them to advance pushback on issues in the North Caucasus. The Obama administration gets this, in every major foreign policy address the president raises the need to get our own house in order and close Guantanamo. It

is critical to our friends and allies around the world. I have spoken with many of you who are working in Russia who want to see this happen; it is not going very well, if you spent any time in the United States, there are lots of challenges and perhaps a gentle message to the Obama administration officials would be: do not waiver in your commitment to do this. It is a message that was delivered to the president himself by Yuri Dzhibladze when the president came to the Civil Society Summit in Moscow.

I want to end with a point that it is not just about compliance but is also about accountability for past crimes. One of the most important and, I think, underreported positive events in 2009 in Russia was the video blog that President Medvedev made on October 30th, the Day of Political Prisoners. If I may, Arseny, he was speaking the words of Arseny Roginsky, and while Arseny may be cynical about this or skeptical—and he may be rightly skeptical—we cannot deny how unusual it is to hear a Russian government official articulate essentially the message of [the Russian NGO] Memorial. It was particularly powerful for a lot of us to see President Medvedev actually at a memorial in Magadan. I think it is fundamental because if we want to see human rights cultures develop in Russia, it depends in part on reconciliation with the past and accountability for the past and for victims of Stalin, and not glorifying Stalin. This is not only for Russia. Countries around the world do a poor job in accounting for past crimes; the United States has done a poor job of it. I would say that policy makers around the world find looking back distinctly unfriendly, and the burden that a lot of us have is trying to raise awareness on how not accounting for the past has very specific effects on political and social development in countries around the world. So, to conclude, maybe it is possible that the United States and Russia can spawn an effort to examine specific periods of the past and encourage policy makers not to be afraid of such activities. I think it might have a positive effect on our own compliance and per-

haps support human rights activists in Russia. Thank you.

### **STEPHEN HANSON**

Thank you so much, Sarah, for those thoughtful comments, and finally we have Sam Kliger.

### **SAM KLIGER**

Thank you. First of all, I would like to thank the Jackson Foundation for organizing and sponsoring this conference and the Kennan Institute for inviting me. Thank you very much. It is not the first time I am invited to Kennan, and I hope you will invite me again despite the fact that I may be a little bit aggressive today. I will concentrate on the triangle that Steve mentioned.

Basically, we are talking about two angles of the human rights situation in Russia: U.S.-Russian relations and the Jackson-Vanik amendment legacy. The chain of events leading to the Jackson-Vanik amendment is well known; I would like to mention a couple of turning points. When, in 1972, the Soviet regime imposed a heavy tax on education on those individuals who wished to emigrate, protests from the free world immediately followed. By the end of 1972, it became clear that the Kremlin would not get any favorable trade deals as long as the education tax was in place.

The minutes of the notorious Politburo meeting that Richard Perle quoted this morning became available only a few years ago, but I was living in Moscow and I remember that time very well. I do not remember the Politburo meeting, because it was a secret meeting—*sovershenno secretno*—and I was not invited to the meeting, but some smart people created a joke, which was kind of an expression of what was really going on in the Politburo. The general mood within the ruling elite was fear. They said, “Well, if we allow these Jews to go, what is going to happen?” And the joke goes, that Brezhnev and Kosygin are discussing the issue of emigration, and Kosygin (who, allegedly,

was pro-emigration—we do not know exactly, but that was the rumor at that time) says, “So what is the point? We need good relations with the United States, we need to buy grain from them, we need this and that, and this is an obstacle. Let them go!” And Brezhnev goes, “Well, what do you want? If we allow them to go then other people will follow. And do you know what will eventually happen? Only the two of us will stay!” And Kosygin said, “No, only you will stay.” That was the fear that the Soviet authorities had about Jackson-Vanik and the entire idea of emigration.

I would argue Ludmila Alexeeva’s point that this is the only right which remains in Russia. Probably there are some, a few more, but the right to emigrate is something basic, because if you allow people to escape from a totalitarian regime, that de-legitimizes the whole regime.

Like many other Jews who lived in Moscow, I started considering emigration exactly at that time, and I was very enthusiastic about Jackson-Vanik, because I thought that now the process of emigration will be simplified and some people, some Jews who have relatives in Israel and received the *vizov* (an invitation from relatives abroad) will be able to go, and I was one of them.

It would be fair to say that, in the short run, the Jackson-Vanik amendment became an obstacle to emigration, because the Soviets reacted very tough to Jackson-Vanik and even stopped lend-lease payments to the United States—the lend-lease that remained after WWII. Emigration fell dramatically in 1975 to only 13,000 a year from 35,000 in 1973. Many people became *refuzniks* with all the consequences of that status. After the adoption of the Helsinki Accord in 1975, emigration numbers went up again a little, but thousands of Soviet Jews remained *refuzniks*. Among many others, I applied for an exit visa in the beginning of 1980 with the hope that a window of opportunity would be opened in preparation for the Moscow Olympics and with the fear that it would be closed afterward. The worst scenario,

of course, was realized after the Soviets invaded Afghanistan on Christmas of 1979 and I, along with thousands of other Soviet Jews, turned into a *refuznik*, in my case for ten years, with all the miserable consequences and stigmas related to this status.

Of course the amendment played a great role, and I would even trace it to one of the factors that contributed to the collapse of the Soviet Union. As I said, in the short run, Jackson-Vanik led to more restrictions on emigration, in the long run it was a big, big victory for human rights. I will quote Anatoly Dobrynin, a former ambassador of the Soviet Union to the United States. In his book he writes, I quote: “Our biggest mistake was to stand on pride and not let as many Jews go as wanted to leave. Instead, our leadership turned it into a test of wills that we eventually lost.” So, as a matter of fact, he admits the impact of Jackson-Vanik on losing the Cold War.

Let’s look now at Russia today. I would confess that I am not a big admirer of the Putin/Medvedev regime; nevertheless, to be fair, I would like to mention eight points related to human rights and civil society in Russia.

To begin with, acknowledging the fact that there are serious violations of human rights in contemporary Russia, there is also a need to acknowledge Russia as a new state—a new player on the international arena, a state that is not identical or even similar to the Soviet Union. It would be inaccurate to equate today’s Russia with the Soviet Union and to apply approaches similar to those used in dealing with the Soviet Union. Similarities between Russia and the Soviet Union that some scholars, journalists, and human rights activists emphasize are rather superficial. Let’s look at the bigger picture.

**One:** state-sponsored anti-Semitism in Russia simply does not exist; it is an established fact.

**Two:** the freedom of emigration has not been an issue for the last 20 years.

**Three:** with some minor restrictions and the state’s support for the Russian Orthodox Church, religion in Russia can be freely exercised. Ludmila Alexeeva did not mention that.

**Four:** while it is true that most of the media and especially national TV channels are under state control, some basic elements of freedom of press exist. *Novaya Gazeta*, an independent newspaper, is often critical of the government; *Vremya Novostei*, a liberal small circulation paper; *Nezavisimaya Gazeta*, a privately owned newspaper, and to a certain extent maybe *Kommersant* also; radio station *Ekho Moskvyi*, owned by Gazprom, is a totally independent station; *gazeta.ru* is a privately owned website. Many or even most of the book publishing houses are also independent and, most importantly, the Internet. These are just a few examples. As a matter of fact, it was reported in *Bigotry Monitor* recently, that chief editors of leading Russian mass media wrote a sharply worded letter to Interior Minister Rashid Nurgaliev regarding the story of Andrey Stenin, you know that. This letter could not be imaginable in the Soviet Union.

**Five:** while many of the big corporations are also controlled by the government, small and medium-size enterprises are privately owned and operated. Although corruption is an imminent factor in Russia, people use their right of ownership and exercise entrepreneurship.

**Six:** with all the negativities of the authoritarian regime of Putin and Medvedev, the majority of people in Russia support the sense of “stability and order” associated with this regime. Putin’s approval rating fluctuated between 70 and 85 percent during all eight years of his two-term rule, and Medvedev enjoyed a similar rating during 2009, according to the independent Levada Polling Center, whom I trust.

**Seven:** despite notorious restrictions and pressure that the Russian government applies

to NGOs, many domestic and international human rights groups successfully operate, though in a sometimes hostile environment.

**Eight:** in the international arena, though Russia is still nourishing its imperial ambitions—Georgia is the recent example—and playing tricky games on some issues like Iran’s nuclear aspirations, it is willing to cooperate on some important problems such as arms control, space explorations, and nuclear non-proliferation. Russia, and this is now widely recognized, is not a strategic threat to the United States. It is rather, I would call it, an underestimated and even underappreciated natural ally, especially in the war against terrorism.

To summarize and put it into historical perspective, Russia today is less anti-Semitic, more open and West-oriented, less oppressive, more supported by its people and freer than probably any time in its 1,000-year history. There may be some exceptions, like the short period between February and October of 1917 and probably a short period during Yeltsin’s first term in 1994–95.

To put it in geographical perspective, Russia is still a gravitational political and economic center to its Western and South-Eastern neighbors. If we look around, east and south of Russia, we will see Central Asian republics that have problems with human rights; and to the west we will see Belarus and to a certain extent Ukraine.

I would like to mention a couple of moral and pragmatic issues that have to do specifically with the Jackson-Vanik amendment. The United States needs Russian cooperation in many important areas, most urgently in the Iranian uranium enrichment program and in the broader issue of nuclear nonproliferation and energy security. There is a need to cooperate in the global fight against terrorism, from which Russia suffers along with the United States. The United States needs Russia’s assistance in its efforts in Afghanistan and Iraq. And

the list goes on. The Jackson-Vanik amendment is seen by the Russians as a constant irritant and as a Cold War relic that undermines Russia’s prestige as a permanent member of the UN Security Council, as a Middle East Quartet Member and in the broader international arena.

Some Communist countries, including China and Hungary, were granted the Most Favored Nation status by the Congress as early as 1979. Even within the first year of President Carter’s administration, officials of his administration asked Congress to alter Jackson-Vanik, and attempts were made in the late 1970s to exempt the Soviet Union from the Jackson-Vanik restrictions, as emigration from the USSR increased in 1978 and 1979. The first six-month waiver was granted to the Soviets in December of 1990 by President George H.W. Bush, when emigration reached the rate of 12,000 per month. After the Soviet Union collapsed in 1991, Russia and other successor states of the former Soviet Union were granted the Most Favored Nation status on an annual basis. In 1994, President Clinton formally recognized Russia’s “full compliance” with the Jackson-Vanik provisions. And in 2002 President George W. Bush asked Congress to legislate the exemption of Russia from Jackson-Vanik.

Thus, for almost 30 years, Jackson-Vanik was interpreted and widely recognized by U.S. officials, NGOs, and Jewish groups as directly related to the right of emigration from the Soviet Union. Since the early 1990s, it became obvious that free emigration from Russia and the republics of the Former Soviet Union is an established fact and that Jackson-Vanik is irrelevant as a tool invented to ensure the basic right of emigration.

In recent years, many other countries of the former Soviet Union (7 out of 15) were graduated from Jackson-Vanik: the three Baltic States, Georgia, Armenia, Kyrgyzstan (we do not know why), and most recently, Ukraine, which the American Jewish Committee advocated Congress strongly for. When we are talking about repealing Jackson-Vanik, we are not

talking about taking it off the books, it should stay on the books forever, but there should be a special congressional act to graduate Russia from Jackson-Vanik as was done for Ukraine and other countries.

I will conclude with this: the dilemma of choosing between what is morally right and the pragmatism of real politics has been always in the U.S. agenda vis-à-vis the Soviet Union. Jackson-Vanik is a good example of this moral stand, as was Ronald Reagan's calling the Soviet Union "an evil empire." It is part of the political and public discourse now. As for the Jackson-Vanik amendment, in evaluating and reevaluating Jackson-Vanik today, the dilemma does not exist, since repealing the amendment would be both fair and pragmatic. Thank you.

## ***DISCUSSION***

### **QUESTION**

My students were born after the break up of the Soviet Union. How do we reinterpret this whole idea of linkage to show that it actually has an important role to play in promoting human rights today? It used to be easy: the Soviet Union was big and we had divestment movements against South Africa. Then the Soviet Union fell apart and Nelson Mandela became president. It is not as easy to define now. How do I sell my students on this whole idea that linkage is still important?

### **SARAH MENDELSON**

That is a hard question. You can show your students that it was important in very specific cases. I think it is an open question for us to discuss, particularly in the case of the North Caucasus, whether or not we should be exploring targeted sanctions or travel bans. Is there a way of addressing linkage for very specific aspects of impunity in Russia? I have heard some people make the argument pretty persuasively that yes, there are voluminous amounts of information on abuses that have occurred there. In fact, the day that Natasha was murdered,

there was a group in Moscow that released a two-volume book that I think that the National Endowment for Democracy supported, which was advocating for an international tribunal on Chechnya. There may be one journalist who wrote about it in the West, I mean, it has really just gone unnoticed. I think it is an open question about whether or not there are specific ways that we can explore developing packages that would be helpful.

### **QUESTION**

Regarding the idea of peer-to-peer programming, the problem with that, it seems to me, is that it introduces a kind of false symmetry between the two sides, because the tools that the U.S. movement can use are things like impact litigation, the Freedom of Information Act, and so on, and our counterparts do not have that at all and face death threats. So it really does seem like a test of wills that we will lose if we repeal the amendment, and my specific question to Blake Marshall, vis-à-vis what Richard Perle said this morning, is: if you would have an executive waiver saying that it does not apply to Russia, could you make that permanent? What is the language within the amendment itself or other practices that you can invoke to have a permanent waiver for Russia that would leave the amendment in place for countries like Turkmenistan and avoid having the test of wills lost by the United States?

### **BLAKE MARSHALL**

My impression is that while some congressional action is required to authorize the president to make a determination that the provisions of the amendment no longer apply to a particular country—in this case Russia, and I am happy to concede to people who are more expert on the technicalities than I am—that by definition leaves the framework on the books. From a personal standpoint, I think insofar as we are talking about other countries such as North Korea or Cuba, there may be very good reasons for leaving the entire package in force and

doing what we have done for countries ranging from Mongolia to China—that is, bringing up to date the application to other market economies, which Russia obviously is, and proceed that way. So I think the human rights community needs to come to a judgment about the overall impact of the framework and its applicability and usefulness. My cut at this is the very specific application to Russia, which I do think is anachronistic.

### **SARAH MENDELSON**

Thank you, for the question. The peer-to-peer approach, or the idea of the peer-to-peer approach, came about after a lot of interviews with different activists. It turned out that when I went to Moscow in April 2009, Ludmila Mikhailovna was in Washington on the very same days talking to people about essentially the same model of the peer-to-peer dialogue. So the first thing to acknowledge is that among the human rights community there is an interest and the desire, despite the fact that clearly there are very important asymmetries experienced by the two communities. There is a desire to move toward a peer-to-peer dialogue and we need to figure out how to address the asymmetries. I am particularly interested in human rights as a part of civil society, but civil society in Russia and in the United States are much broader than just human rights. What we had in July and what I hope will go forward in some kind of regular meeting would involve peer-to-peer addressing public health issues, addressing education, community economic development, new media. I mean there is really an endless list, and again, there is going to be some aspects, such as extremism, that lend themselves to peer-to-peer dialogue and other issues that do not. It depends on how much demand there is in Russian civil society and U.S. civil society. The market will support it if there is that demand. The market will not support it, I think, if there is not that demand. But what was striking to me was that even in the most difficult part of civil society, in the human rights com-

munity, there was *zhelanie* [desire] for it.

### **QUESTION**

I wonder if you could give us some sense of how we balance human rights as a high priority in our relationship with Russia against other high-priority, foreign policy objectives such as Iran. And secondly, do you see any prospect for reform of the UN Human Rights Council to turn it into a useful instrument?

### **SAM KLIGER**

I can only try to answer the first part of the question, because U.S. human rights are a separate story. It is always a problem to determine how you balance the human rights situation with Russia. Pragmatically, we need Russia. As a matter of fact, Russia is a permanent member of the UN Security Council, and Russia is a member of Quartet, which deals with Middle East problems. Russia is now the only member of the Security Council that is under the Jackson-Vanik amendment.

It is always a balance, but again, we have to help Russian civil society to develop. There is a social demand for human right organizations, there is support. We discussed it yesterday; about 15 percent of Russian people trust human right organizations in Russia, which is a huge number. As Sarah said today, the future of Russia and Russian civil society is in Russian hands, we can only help. But there are some very pressing issues like Afghanistan, like Iran...the list of issues goes on and on, in which we have to cooperate.

### **SARAH MENDELSON**

Whenever I hear the word balance it makes me nervous because I think that it usually is a cover for imbalance. I think that the whole idea of reset is often misunderstood and there are certainly others in the audience who have written and spoken about it and who can chime in. But I think people tend to think about it as either/or. We are used to a kind of dichotomy that

either the U.S. government talks only about human rights and nothing else or the U.S. government does not care about human rights. The spirit behind reset is actually that you can do both. It is a kind of “walk and talk at the same time” that does not actually force us to choose. On the UN Human Rights Council, unfortunately, I am very pessimistic. I was in a meeting in Ditchley Park in December on human rights and there was a huge divide in the meeting of people who were from the UN system and who spoke almost a different language. I mean, every time somebody would speak I would think they were speaking English, but it is like this ‘Geneva speak’...I have no idea what they were saying. The rest of the human rights community also needed translation. So I think there is a much larger problem, it is not just who is populating the Council. There has been an effort to reform the commission; we may need other tools or international organizations. One very good idea that came out of the Ditchely Park meeting that we might want to consider—and I think it was sort of alluded to in the first panel—is an annual index of leaders, naming public leaders of different countries and their attitudes and actions on human rights. If there could be an agreed upon list of criteria, we could give leaders grades in these areas each year. That is one tiny example of a whole menu of actions to try and bolster what is, I think, a big weakness in the international system.

### **QUESTION**

My question is primarily for Sam and also Blake. We heard that the Jackson-Vanik amendment does not apply to Russia; it does not name Russia, Russia is a market economy, there is freedom of emigration, so the two critical aspects of the amendment are satisfied. We also heard that it is a very important symbol. If it does not apply to Russia in the first place, don't you worry that taking specific action to say it does not apply to Russia in Congress will hand the Russian government and Putin an acknowledgement that everything is OK? Do not

you worry about the symbolic effect of taking some action to lift the Jackson-Vanik amendment when it is not necessary?

### **SAM KLIGER**

As was mentioned in the morning panel, it is a bit confusing. All countries of the former Soviet Union, who graduated from Jackson-Vanik—and I would prefer to use this word ‘graduating’ than removing, repealing, or abolishing—did so through a special congressional act. So my question is why was there a need for a special congressional piece of legislation to graduate Ukraine, signed by President Bush, by the way, from Jackson-Vanik, if a presidential executive order would have been good enough? Why should we be unfair to Russia? If they completed the provisions of Jackson-Vanik, we have to graduate them the same way as the other graduating countries. How Russia will interpret that, or how you will interpret that, or how the human rights community will interpret that is another story. Are we fair?

I believe that we discussed the image of America. For us, for the former Soviet people, who lived in Russia in miserable conditions, America was a symbol of fairness and the symbol of human rights, and the shining city on the hill. Let's remain this way. Why should we be thinking, double thinking, and second-guessing what Russians will think? They graduated from Jackson-Vanik, let's put the record straight, let's give them what they deserve. Let's finish with that and then talk about human rights, and separate *mukhi* from *kotlety*.

### **COMMENT**

If it is the case that only an executive action is required to cease the applicability of the amendment to Russia, then I will be very happy for it to proceed along that channel. That is not my operating assumption or impression. And if that were the case, I cannot image why it has not been done to date, because there has been an awful lot of presidential talk about it



over the years, so surely someone could have put pen to paper. So if that is the case I would be very happy for us to proceed along that path. My impression is that at the time of the amendment to the Trade Act of 1974 that cluster of countries was defined, and that is why we have gone through this country-by-country graduation process, which was, in fact, congressional action in every instance that I can recall. Either way, if and when the action is taken, I am not concerned about sending the wrong signal to Russia, as long as the conversation about new tools and new frameworks proceeds along its appropriate path—and I have no doubt that it will. Then we can think creatively about the future and where we go from here. The positive power of removing the application as a gesture of good will in resetting the relationship puts us on a much more even keel, and I think those arguments far outweigh any risk that it might be misinterpreted or misplayed.

## **QUESTION**

The idea of tying human rights commitments and human rights requirements to trade agreements is up in the air in many other places. The European Union is in the middle of discussing a new partnership and cooperation agreement with the Russian Federation and they are also undergoing the same type of debate. Perhaps one of the best examples of such a tie is the Helsinki Act, which laid the groundwork for the OSCE. Do you see multilateral fora like the OSCE as one way to address those concerns without falling into political debates, which will inevitably come when you have two equal nations discussing various issues? Whether we talk about the OSCE or whether we talk about Council of Europe, those are multilateral fora that have obligations that apply to all member states, and the discussions in those places give it a whole different dimension.

## **SARAH MENDELSON**

I think maybe we need a revisit of Helsinki. There needs to be a recommitment to Helsinki

and the effort to try and get the U.S. and European capitals to meet and have a conversation about impunity was an effort toward that. Clearly, one person sitting in Washington emailing is not going to do it. I think we have to have a community of people organized to try and advance this. I am somewhat skeptical about the multilateral approach just because it has been so freighted and so disappointing in so many ways over the last 30 years. Ultimately this is about leadership. You need to have a cohort of leaders in many countries who really care about these issues, and who are going to advance them. Trying to identify who they are, and bringing them together I think is important.

There is something about your comment that is interesting and reminded me that 30 years ago it really was much more about tying human rights to economic concerns. So much of what we have been doing over the last five or ten years has really focused on security. A lot of us think that this is a better hook in which to argue or explain to populations and governments why what goes on inside Russia is actually a Euro-Atlantic security concern, particularly if there are suicide bombings and impunity. That is more powerful to people at this point, though obviously we have more work to do.

## **STEPHEN HANSON**

I would also differentiate between the OSCE and the Council of Europe. The OSCE got tied up with elections debates in such a way now that it is almost impossible to get Russian participation. The Council of Europe still has a certain internal moral quality to it.

## **SARAH MENDELSON**

But we are not as critical to the Council of Europe.

## **RICHARD PERLE**

Just to take one last shot at trying to clarify the question of the legal status of the amendment.

The amendment applies to countries that deny their citizens the right and the opportunity to emigrate, if they are also non-market economies. The president need only find that a country is in compliance. That is the only obligation under the law. I believe that Congress has acted in other cases for two reasons: the first is, there is another statute that has not been referred to today, passed in 1951, a classic piece of Cold War legislation, that denied most favored nation status to a list of countries. If you were on that list you could not get most favored nation status. And that had nothing to do with Jackson-Vanik, it preceded it, and it survives to this day, because it has never been repealed. That legislation in 1951 requires Congress to agree to grant most favored nation status. I believe that is the reason why a congressional approval was sought. But there is another reason, and that is political. When Congress believed the time was ripe to confer the benefits on this country or that, they wanted to express themselves. So the other statute—the 1951 statute—would require congressional action. But that congressional approval would take place without any reference to Jackson-Vanik. It only needs a presidential determination to establish the fact that Jackson-Vanik does not apply.

### **SAM KLIGER**

I saw the piece of legislation signed by President George W. Bush regarding Ukraine. The legislation passed both chambers with an overwhelming majority, and there is a reference to the Trade Act, and compliance with the Act. There was no reference to the 1951 legislation you mentioned. The Congress decided that Ukraine should be graduated from the Jackson-Vanik restrictions and that was the law signed by President Bush in January of 2006.

### **STEPHEN HANSON**

So one question will be what happens if Congress misinterprets a law long enough?

### **QUESTION**

You mentioned that Congress became passive on human rights in Russia last year. Why, and what can be done to push Congress to become more active?

### **MARK TALISMAN**

On the House side things become custom in legislative history. Unfortunately, there is nothing in the law. Congress is being lobbied very heavily over the application of Jackson-Vanik on this country or that country, for and against. And you can see the progress before the fall of communism and afterward, and what happened internally. There ought to be a strong statement made that would allow the president to express disapproval with, for example, Russia on issue A, B, and C, while still calling its removal from Jackson-Vanik.

That would do a lot. It would cause a lot of the members of the Congress and staff to think about the issue, and maybe even spur lot of letters urging members to have hearings. Because I must say, the human rights issue is not on a lot of plates otherwise.

### **BLAKE MARSHALL**

The procedural discussion that we have had here this morning is enlightening for me and one that I will take away and think about. I do think that on that basis, on the practical and technical basis of how we deal with these policy questions, it puts it in a slightly different channel in the bilateral relationship and in executive-legislative relations in terms of the impact on the U.S.–Russian relationship.

### **QUESTION**

There is Representative Smith's amendment, which asks that the Jackson-Vanik amendment not be repealed as long as there is discrimination, official discrimination, against religious minority communities in Russia, which does exist. Also, there is a unit attached to the U.S. Embassy that monitors compliance or non-

compliance with Jackson-Vanik, which does have some useful activities, though they would like to see this issue addressed. And finally, in response to what Sarah was talking about in the North Caucasus, I believe Oksana Chelysheva was also involved in compiling two volumes of information about specific members of the security forces who were involved in violations of international law in Chechnya, and that documentation, I know, is at the U.S. Embassy in Moscow.

### **SARAH MENDELSON**

I think someone should pay to have those two volumes translated into English—that would really be tremendously helpful. Your question demands, I think, another conference and I wonder whether it is really more general? Part of it is that I think Americans have become increasingly insular and that is reflected, in part, in Congress. I think the place that a lot of us go to speak about these issues, the CSCE (Commission on Security and Cooperation in Europe), does not have a lot of teeth. Yesterday I was telling a story about a meeting in Berlin on how to improve reporting in the North Caucasus, and we had a former staffer of Senator Edwards at the Berlin meeting, who was at the time a fairly important senator, in the room, and he asked the Russian colleagues, “When

you come to Washington, where do you go when you go to Congress?” And they said, “We go to the Helsinki Commission.” And the former staffer said, “What is that? I have never heard of it.” So there is a complete mismatch when the activists come to town and not always meeting the right people.

### **SAM KLIGER**

Once again, I would like to thank the Jackson Foundation and the Kennan Institute for organizing this long overdue conference and I hope we will meet again soon, to celebrate the 40<sup>th</sup> anniversary of Jackson-Vanik, maybe the 50<sup>th</sup> anniversary of Jackson-Vanik. But at the same time, I would like also to call upon all of us to have a fresh look on Russia today and the post-Soviet Union space. There are many developments going on there, many interesting challenges, and the entire field, in my humble opinion, is understudied. So on this optimistic note I would like to thank you.

### **STEPHEN HANSON**

I would like to thank all three panelists for a very rich and exciting discussion.

# Panel 3: Development of the Human Rights Community in post-Soviet Russia

## LARA IGLITZIN

The three panelists from whom you are about to hear happen to be grantees of the Henry Jackson Foundation, and I am proud of that. It is not the reason they were invited and actually I was told by my colleague John Squire at National Endowment for Democracy that many of his Russian grantees are also represented today, so we are glad that we are continuing to support some of the good work that is going on in Russia. I think you will see just how important some of these people are today. We have Alexander Verkhovsky from the SOVA Center; one of the foremost experts on extremism and xenophobia, and one of the people who is doing much of the important monitoring of the current situation in Russia today.

We have Arseny Roginsky, one of the founders and the director of Memorial, the human rights research center. I think for most of you that center needs no introduction. We have worked with Arseny and his group a lot on issues related to ensuring that the Russian people do not forget about the repressions of the Soviet era. I always find Arseny to be one of the most perceptive interpreters of what is going on in Russia.

And we have Maria Chertok from Charities Aid Foundation (CAF) in Russia. We have worked closely with Maria on some joint efforts to help encourage indigenous Russian resources to be developed in Russia. CAF has worked extensively to generate new sources of funding other than U.S. and Western funding sources within Russia. We also worked together on corporate social responsibility. So we should have an interesting contrast of views. I am going to ask Alex to start.

## ALEXANDER VERKHOVSKY

Thank you, Lara. Before I begin I would like to comment on what was said on the previous panel about the difference between the Soviet Union and Putin's Russia. Of course, the difference exists. What we are discussing here is the situation in our country and to compare it to some kind of a norm to which we want to enter. It is not to re-enter our Soviet past—it is in the past already and that is it.

I will not talk today about problems with human rights—we have a lot of them, only a few of which were mentioned, but I think you are more or less aware of general situation in Russia. I would prefer to talk more about the situation in which the human rights movement now exists in our country. I would begin by making a couple of short preliminary points. First is commonplace: we live in an authoritarian society. It is not only an authoritarian state, but also an authoritarian society, in which people are oriented more to the government than to any horizontal relationships.

The second not so obvious: when we talk about the human rights movement, we usually have in mind the classical human rights movement like in Soviet era, and we still have such a movement, we call it *traditional*. But we also have a wide range of organizations that use the term human rights to describe their activity, while in most cases they are not dealing with human rights, but promoting the interests of certain groups. Of course, it is impossible to make a clear distinction between the two categories, but the difference is visible. With few exceptions, we can say that the first type, traditional human rights groups, traditionally oppose the government and since the 1990s

describe themselves as the human rights movement, the human rights community.

In contrast, a great many groups of the second type find the classical understanding of human rights outdated or even wrong. Groups of the second type may treat those in the traditional human rights movement as allies or opponents and their relations with the government may vary across a broad spectrum. Some of these organizations distort the concept of human rights by opposing the basic principles of a free civil society and these groups may be described as the so-called un-civil society – you know the term, I believe. An extreme example may be the organization that systematically advocates on behalf of persecuted perpetrators of violent hate crimes.

I find it positive, in general, that the term human rights is so widely used in Russia by groups you would least expect it from, but organizations of the first type, which I would include the SOVA Center, must understand that they no longer have a monopoly over this sphere, as it was in 1990s. It appears now, that we operate in a highly competitive environment. Some of our competitors combine their activity for public benefit with fierce criticism of traditional human rights defenders. Some others cause more harm than good, like the organization mentioned above, but they, too, are part of the growing grass-roots activism.

We can often hear that the government's pressure against the human rights movement is made possible by a lack of acceptance of this movement among the general public, but this is not as true. We need to make a more accurate judgment when we talk about this relationship between the movement and the general public; we need more serious sociological research. It may be easier to talk about relationships with the government and I will turn to that.

The strong pressure on the human rights movement and NGOs in general in the years of Putin's presidency was motivated, as I understand, by the desire to eradicate any politically significant pockets of independent activism of

any kind. Strictly speaking, the authorities did not set out to eradicate all dissent, but only political opposition. But the interpretation of the latter has always been extremely broad. This broad interpretation is associated with the high priority attached to national security. It follows the global trend of the securitization of politics, emphasizing the dominant roles of security agencies in the Russian government. The activity of independent NGOs is seen as part of an enemy strategy (the main enemy is the West, and sometimes, radical Islamism); the perception was particularly strong after a series of "color revolutions."

Another reason why independent NGOs, in general, are perceived as part of the political opposition is that at some point many who were part of the Russian human rights movement really positioned themselves as partners or sometimes, as members of the political opposition. When the "orange" scenario disappointed almost everyone who used to admire it, very few human rights groups remained so clearly politicized, but Russian authorities, however, continue to see politics where there are none. Conspiracy theories are very popular among our authorities. In recent years, when all these color revolutions expired or subsided, the Russian authorities relaxed some of their suspicions and their pressure. However, they still considered it crucial to maintain control over everything they perceived as related to politics, including Western funding; this is clear from the last amendments to the law of NGOs.

During Putin's second term, when pressure against all independent civil groups was increasing, many activists faced a difficult choice: to carry on as before and be prepared for even stronger pressure and total denial of cooperation with any government agency; a threat of forced marginalization. An alternative strategy was to enter into a kind of bargain with the authorities in order to leave open the possibility of cooperation with them, and thus, become more effective. However, bargaining required compromise, and in the period following the

color revolutions the Russian government insisted, above all, that organizations and individuals should pay a political fee in exchange for cooperation with authorities, for example, in the form of criticizing the Ukrainian government. There is no Soviet Union anymore, but many citizens responded to this typical Soviet dilemma with a typically Soviet choice. They preferred to pay this political fee in exchange for being allowed to preserve or expand their activity. And just as in Soviet times, those who embarked on this path inevitably went further astray. Some formerly independent NGOs were set up as the government's political agents; they began to behave like GONGOs (government organized non-government organization), and our prominent human rights activist Svetlana Gannushkina invented a new term for that: "gongoization."

By the way, Gannushkina herself is remarkable example, and not the only one, who has proven that even in this environment one can work effectively and cooperate with authorities without paying such a political fee. We have, of course, other examples of people who are very visible in the Presidential Council for Human Rights, which now include several very effective and good human rights activists. But apparently, Soviet mentality dies hard and the "gongoization" was a very noticeable phenomenon during the Putin years.

In the last year, the authorities agreed to step up their cooperation with civil society. Just a little bit, of course. This cooperation extends not only to the traditional human rights movement. For example, the Council of Study on Religion was established as an advisory body to the Ministry of Justice last year; this council is chaired by a notorious anti-cultist, Alexander Dvorkin. Dvorkin, who is a genuine post-Soviet civil society activist, but his goals and ideals make him part of a more un-civil society, which is growing stronger and stronger in Russia.

The example of our organization is somewhat illustrative. Formerly, our cooperation

with authorities was limited to a few individual officials, maybe because of a general suspicion from authorities of cooperating with any NGOs that are Western-related. But we are dealing with such things as hate crime and radical groups, and they need us. Last spring some cooperation began with the Department Against Extremism in the Ministry of Internal Affairs, a rather controversial body, and even with the Presidential Administration. What was surprising for us was that last fall, very soon after that, we were awarded a so-called Presidential Grant. So we now have official Russian financing, not only funding from the United States or European Union. The value of this grant is not only about extra money, it is about being perceived as a more legitimate partner to governmental and even non-governmental agencies.

There was much discussion inside our organization about if we should choose to take this money or not, but we decided that it is better to take the money. One of the things we have to take into account is that the general situation with funding in Russia is completely different from that in the United States or Western Europe, so this grant is more a signal to some other bureaucrats than an issue of money. It will be a positive thing if an organization takes this official money, and it does not change its mission to show that the source of funding an organization receives does not play a crucial role in its programming. There is general belief in our society that whoever pays gives the orders. Under this line of thinking, if we work on a Jackson Foundation grant it means that Lara sends me orders on what to do with it.

We are certainly aware that our experience is not applicable to all; we can engage because we deal with this specific sphere, where authorities are interested in cooperation with us, they are not interested in cooperation with any organization that deals with freedom of speech. And I am far from thinking that such a partnership could change the system. I think, moreover, that the authoritarian regime in Russia is here to stay and that it cannot be changed

quickly from the inside or, especially, from the outside, and we need to bear that in mind in our day-to-day work.

As a researcher of Russian nationalism, I also believe that nationalism is also on the rise in Russia—not only in radical forms. Of course, I am not the only one who thinks so; many people here at the Wilson Center know Marlene Laruelle and she also shares the same view. As modern Russian nationalism is anti-Western, any groups supported from the West will be viewed with suspicion for a long time. Suspicion does not rule out cooperation, as we see it, but it makes some bureaucrats likely to choose less suspicious and more acceptable partners. It means that the government and those non-governmental groups that engage in political cooperation already with the government will continue to set up new civil society structures to replace those associated with the West. While we may make fun of their poor performance and may be shocked by some of their views, these organizations will grow unless the authorities choose to crush any activity, independent or dependent.

Besides this, there is un-civil society, which is growing, and they are also our competitors. It means that we should perform the best we can to avoid being marginalized. It is not so much about maintaining our partnerships with authorities, but about preserving our place in Russian society. Today our opponents may call us marginal, but we are not. Yes, the issues we address are not very popular in our society, but they are part of the public consciousness. We are experts in these spheres and as such, we are irreplaceable. For example, our center is currently difficult to ignore simply because we do not have enough competitors knowledgeable enough about racism and extremism. However, such competitors will emerge if we fail to evolve.

I believe that it is in the best interest of the American public to preserve and support the development of those Russian NGOs that can be described as human rights NGOs in the tra-

ditional sense. In the circumstances described above it is important to monitor the processes taking place in Russian society to have a better idea about whom to cooperate with and in what manner. I also believe that optimism about Russia's transition is a thing of the past and we should not expect the human rights movement to be able to reverse the current trends in civil society or in the society in general in Russia. On the other hand, the potential of the Russian human rights movement is not limited to survival in this difficult situation and we face a longer and, above all, a more challenging effort than we expected.

#### **LARA IGLITZIN**

You know this question of whether or not to cooperate with the government seems to be a perennial one in Russia. Was it very controversial among your peers that you took money from the Russian government?

#### **ALEXANDER VERKHOVSKY**

Nobody told me it was a bad thing, but I suppose somebody thinks so. Perhaps they are just too shy to tell me.

#### **LARA IGLITZIN**

I understand that, for example, Elena Topoleva, a member of the human rights media community who is just getting into the public chamber, felt that she got a lot of criticism for joining, so maybe Arseny also will address this issue of human rights activists, political opposition, and the role you are playing in society against government, and with government, in addition to some of the things you are going to reflect on.

#### **ARSENY ROGINSKY**

First, I would like to apologize for speaking in Russian. Due to interpretation, my comments will take a little longer, but I will try to stay within my time limit. I would like to comment on two statements that I heard from my friends – one yesterday and one today.

Yesterday, Ludmila Alexeeva said that the modern human rights movement in Russia increasingly reminds her of the human rights movement in the Soviet Union. Today, Alexander Verkhovsky said that the current Putin regime views the human rights movement as political opposition and, although in principle the authorities are wrong in thinking that, it is their nature to look for politics where there are none. I fully agree with Ludmila Alexeeva, but I somewhat disagree with Alexander. I will explain why, and I will try to do it as a historian does, because I *am* a historian. I will compare the past with today.

The human rights movement in the Soviet Union appeared in the mid-60s. This was a movement against political persecution. It was called the human *rights* movement, because, indeed, it introduced an extraordinary thing: it offered the Soviet society a new discourse – the language of statutory rights. This language could be used by different branches of the dissident movement – national, religious, and others – in their dialogue, and, most importantly, it could be used as a common language in the dialogue between society and the authorities. The majority, although not all, of the human rights activists sincerely believed and directly declared that they were positioned outside politics. But the authorities did not share this belief. The authorities viewed the human rights movement as political opposition. And the most dangerous thing about this opposition, as the authorities saw it, was that it had done away with the traditional Russian discourse – an ideological confrontation. Not the ideological confrontation, but the language of statutory rights – this was the standard of human rights activists back then. So who was right – the politicians or the human rights activists? The human rights activists or the authorities? I believe, the authorities were closer to the truth in that case. The activists took a very narrow definition of politics, which they interpreted solely as a power struggle. In this sense, their movement, indeed, was not political. However, the human rights

activists threatened something far more important than power – they threatened the conceptual foundation of the Soviet regime, the Soviet model of the society/government interaction. There are two fundamental principles behind this Soviet model, which is, of course, Stalin's model. Firstly, it is complete control over all aspects of social life, and secondly, relativization of legal norms that define boundaries for government actions vis-à-vis the society. The human rights activists encroached on both these principles. First, they acted independent of the government, which, as far as the government was concerned, was the same as acting against the government. And second, they demanded strict adherence to written law, which is the constitution and the legal code.

Forty-five years passed. While our country and our government were changing, the attitudes of the human rights movement were always determined by the government's attitude toward society's independence and democratic principles. The government that denied these principles naturally treated the human rights movement as political opposition. The Putin regime, from the very beginning, quickly evolved into the Soviet model of government/society interaction. It strived to control society, to replace the democratic institutions with their imitation, and to instill, in mass consciousness, Stalinist stereotypes. These stereotypes are that Europe, the United States, Estonia, Latvia, Ukraine, Georgia, and others are our enemies. The West is the archenemy. The fifth column, acting as agents for the enemy, operates inside the country. From time to time, human rights activists are appointed to be the fifth column. And just like the Soviet human rights activists encroached on the conceptual foundation of the Soviet regime, the human rights activists of today are encroaching on the conceptual foundation of Putinism.

We coined the term Putinism, because it is not quite the same as Putin's regime. It is... Putinism, that is what it is. Recently we held a conference called *The Khodorkovsky Lectures*,



whose central theme was "What is Putinism?" The modern human rights movement infringes on the conceptual foundation of the regime, so the regime naturally treats it as political opposition. Moreover, not only the authorities, but partially the public sees a political opposition in the human rights movement. Why? The Putin regime burned down and wiped out the entire political field. There is no political competition in the country. Political and democratic parties as well as the opposition first were thrown out of the parliament and now have effectively ceased to exist. In this environment, the critical views of the human right activists, no matter how traditional, come across as sharply political. In the public's view, the human rights activists, largely against their will, are gradually occupying the niche formerly held by the political opposition. This burden was laid on our shoulders against our will.

Of course, today's human rights activists continue to claim that they are not involved in politics, but they are trusted less and less in this sense. They do not convince anybody. Their ties to the Soviet human rights movement are becoming increasingly evident. Perhaps you know from the news that recently Ludmila Alexeeva came out several times to demonstrate in support of the 31<sup>st</sup> article of the constitution "Freedom to peacefully meet and assemble." Last time she was supported by the Memorial Organization; several hundred people, almost 1,000 people, which is quite a number. So what would you call it when Ludmila Alexeeva comes out in the open holding a sign "Honor the 31<sup>st</sup> Article!"? It is nothing but a direct quote from the Soviet human rights movement. It is the language of statutory rights, it is an appeal to the constitution, and it is a complete stylistic match of the dissident principle "We are the free people in a non-free country." In today's Russia, this principle acquires clear political overtones regardless of what Ludmila Alexeeva thinks or says about it.

One other point, there was one more distinctive feature of the old human rights move-

ment. It was the symbolic and existential nature of a dissident's protest. Take our protests against arrests. No doubt we understood that we could write hundreds of letters, but they will not help release anyone. So it was a symbolic gesture. Take our protest against Soviet tanks in Prague. No doubt we knew that the government would not pull the tanks out of Prague when eight dissident heroes came out protesting in the Red Square. But these were very important symbolic acts. Then came the 1990s and some of our symbolic acts turned into reality. Not many, but some. Driven by this change, our movement began to depoliticize. However, that time gave way to the Putin era, and our hope to be heard has waned once more, while the dissident outlook on life has been slowly returning. This outlook bears two traits: the first is the poetics of a hopeless act, and the second is the appeal to the international community in the faint hope (there is very little of it left) that it can somehow try and positively impact the situation in our country.

There are two conclusions. Firstly, the modern human rights movement is steadily sliding into a dissent that is turning into a dissident movement of the Soviet past. And secondly, the human rights movement has always contained a certain degree of political motivation. Today this degree increases, and this is a normal process. We should not be afraid of it. Subjectively, however, we can keep on saying, "Politics? No, we have nothing to do with it." Thank you.

#### **LARA IGLITZIN**

Thank you, Arseny. For a slightly different take on the role of human rights within society and a perspective on how society is reacting to some of the human rights groups and the extent to which they might be supportive of them, we have asked Maria to comment.

#### **MARIA CHERTOK**

Thank you, Lara. I find it quite difficult to speak after such a passionate presentation by Arseny Borisovich. I should start with a dis-

claimer: everything I say, it is not a criticism of the human rights movement, that is the last thing I intend to do here and I am full of admiration for what the human rights activists do in Russia. I am saying this because I am not part of the human rights movement; I am rather part of a larger civil society/community, which is a lot more diverse and it is not limited to human rights organizations. So I am making observations from a little outside the immediate human rights community, yet still from the position of someone who is a citizen and an NGO person and one who is very interested and compassionate about what my fellow human rights activists and NGOs are doing. I represent an organization whose main mission is to develop philanthropy and charitable giving in Russia and to facilitate the development of an environment for giving and the participation of different donors in NGO activities. Basically, I look at the topic of today's panel from the position of discussing resources, discussing the money, which may not be the sexiest part of the whole arrangement, but still without money it is hard to achieve much. Although having a commitment to these kinds of values can take you quite far without any money.

As Lara mentioned at the beginning of the session, about five years ago we were engaged in a small project, which was funded by the Jackson Foundation, to investigate how feasible it would be for human rights organizations to start relying on or to start approaching domestic sources of funding. And at that point of time we were focused mostly on the emerging private foundation sector and trying to find out if these private foundations would consider ever funding human rights activities. It was quite a disappointing result, actually. Not only on the side of the private foundations, which were clearly not that excited and rather frightened about the prospect of being engaged with human rights organizations, but also on the side of the human rights organizations, which were actually not very willing to consider Russian private foundations as a feasible funding source

for many reasons. So at that point of time we discovered that the disconnect between these two sectors is far greater than we expected, though maybe we were too idealistic in the beginning. I still do not believe the readiness is there and the only private foundation that supported human rights is not in existence anymore: the Open Russia Foundation founded by Mikhail Khodorkovsky.

At this juncture, I would rather speak about a different angle of the issue, which we heard today and we heard yesterday at the roundtable at the State Department: that the public demand, the public interest in human rights is growing and the trust in human rights organizations is growing in Russia. For me, coming from a philanthropic perspective, it means maybe it is time to start converting this public interest and trust into financial support. This would be quite a logical step, not going after big chunks of funding from corporations or wealthy individuals, which is I understand the most difficult and controversial part of fundraising within the country, but maybe starting to try out very targeted and limited campaigns to mobilize some funding from normal ordinary people. I do think it is possible.

Philanthropic behavior is not unknown to Russia anymore and there are public charities that operate in some of the thematic areas that are a lot more acceptable to the public. These public charities manage to mobilize considerable resources for their activities. Actually, the interesting thing here is that starting with purely humanitarian purposes, such as mobilizing funding so that kids can get their anti-cancer treatment, which is not provided by the state, these charities have evolved quite quickly into organizations that not only work professionally on their issues, but also start addressing the root causes. This forces them to migrate into advocacy activities very quickly and very effectively, because they have significant public support to back them. This support is generated through volunteers, through their fundraising appeals, which are quite broadly commu-

nicated; they have a shortcut to the authorities to resolve not just issues of one particular individual, but group issues. Mostly these charities operate in the area of healthcare and access to treatment, because this is something the state is supposed to provide, but does not provide, or provides badly, or too late for people to take advantage of the treatment.

The public is already quite familiar with this kind of activity. They understand how to contribute, they know how to volunteer. It is a fraction, a very tiny fraction of the population, but still the consensus about these activities is already there. So my point is that these activities happen slowly with very limited kinds of causes. I would not argue for mobilizing public resources for political rights or civil rights issues, but there are economic and cultural rights issues that I think would be more appealing and there are ways to structure them in a way that would be acceptable and interesting and could take their place in people's hearts and open people's pockets. It would not only be significant from the financial point of view, as Alexander put it in his earlier presentation. This has a symbolic meaning because it would show that human rights activities are supported by the public and I think that is very important, a lot more important than generating this and that grant from a particular foundation.

What else about money? In terms of the relationship between the human rights community and this broader community of public charities, it is simply not there, there is no link, there is no connection, there is no communication between these two sectors, which are effectively one sector, and I think they both could benefit from each other quite significantly. The human rights community has a lot to offer in terms of expertise on how to advocate for particular causes and particular issues, while the broader public charity community could probably share their practices of engaging with the public, public fundraising, and working with volunteers. So there could be a mutually beneficial linkage, which is not happening, unfortunately.

There is another thing that distinguishes this new generation of public charities, and I argue that this is a new generation, because these are the organizations which came about quite recently, in the last five years maybe, and they never enjoyed access to any kind of grant funding. When they appeared, they never relied on money from foundations, they never wrote any grant proposals; they never got their projects funded. They operate because they feel that they should do it. While, on the other hand, the human rights organizations are organized completely differently: they are working strictly on a project basis, they are used to having project funding, and this is a generational problem in terms of different stages of development of the sector. So I think the interaction would be really mutually beneficial and interesting.

I wanted to make another point on a completely different aspect of the money issue, which is about international funding. It is widely known, that the human rights movement and human rights organizations are largely funded by international donors, which is fine with me, because it is better to be funded than not be funded at all. Private foundations and governments should continue doing it as long as they can afford to. But I think there is another role, for example, for the U.S. government and European governments and the European Union. Those who receive international funding and work with international organizations operating in the country experience significant barriers and significant difficulties—and this is done on purpose. We know when it happened, we know why it happened and this may be the case for a long time.

So I think, apart from giving money to Russian NGOs and human rights organizations, the Western governments should actually leverage their diplomatic relationships with the Russian government to influence this regime for the better. I think it is a very significant issue, which is not very much talked about in recent years after the first shocks came and went. I think this is something that should

probably be addressed by the Commission on Civil Society, which was created during the Obama visit to Moscow this summer. Since then we have not heard much about this commission. It is another way to help. It is not just money; it is removing the administrative pressure, administrative barriers, and removing organizations from the risk of being closed because they do not comply with some silly reporting and planning procedures.

I think that talking about money and asking for money are both all right because if we do not ask, nobody will give. I do not think human rights organizations have really tried, and it is worth trying to see what kind of reaction they would get.

#### **LARA IGLITZIN**

I think one of the challenges and one of the things we have learned from working with different NGOs in Russia is expanding the definition of human rights or perhaps casting it in slightly more politically palatable ways that can provide some advantage or connection to society that you might not have otherwise. Alex, I believe that what you were saying about non-traditional human rights is that maybe there is some danger of diluting the definition of human rights. Maybe you can expand on what is meant by non-traditional human rights?

#### **ALEXANDER VERKHOVSKY**

When I used this very unclear term, I meant many different individuals and groups. Some may be related to some social issues. But sometimes it is completely different, for example, bureaucratic structures that represent some ethnic groups. They interpret their activity as fighting for the rights of this ethnic group. I would say they are working for themselves in practice, but they use the same rhetoric. It is not only about Russia, of course, it happens everywhere. There are many people who use human rights language and, in my opinion, they misuse it. For example, the Russian Orthodox Church has its own doctrine of what human rights are

and it is very interesting that they have it.

### **DISCUSSION**

#### **QUESTION**

I have a few questions. First, for Ms. Chertok, I wonder if there is any role for the church in the groups that you are talking about, because I have some friends who are Orthodox and they are very involved within their church by volunteering and giving money. I am just wondering if what you are talking about involves that. And, secondly, I wonder if there is virtue in being small because if it were to get larger, could the authorities potentially see it as a threat? And the other question I wanted to pose more broadly that I think has come up marginally today on a couple of different panels—what is the role of the media in making known to people in the West what is happening? Does the Russian human rights community still hope for or think there is a chance for that kind of pressure to have an effect within Russia?

#### **MARIA CHERTOK**

I can talk on the first two questions, but not on the third, sorry. About the church: actually most of the public charities I mentioned, and there are quite a number of them, are non-sectarian, but some of them are connected. For example, there is this very well known group called *Miloserdniye* (Mercy)—this may be the one your friends are involved with—which is related to the Orthodox church. The Orthodox Church is not homogeneous; there are nicer parts and not so nice parts. This is definitely the nicer part of it. There are groups that were founded by Alexander Men and there is nothing religious in their work apart from their personal motivation. So I do not think it matters much that there is linkage with the church.

On the second issue, if this philanthropic and volunteering phenomenon becomes bigger, what the authorities would say, actually, is quite an interesting phenomenon. While the authorities are very hostile to NGOs and civil society,

at the same time they are quite welcoming to what is called philanthropy or charity. So there is a whole plan of legislation development to make philanthropy easier or even introduce some tax breaks. There is new legislation about to be adopted about so-called socially oriented organizations, which is equivalent to public benefit, but not really. I am not suggesting that civil society groups should pretend that they are on this philanthropic, sunny side of the road, but there is definitely an opportunity to leverage this positive attitude and this willingness to develop this face of civil society, because civil society can be looked at from different perspectives.

### **LUDMILA ALEXEEVA**

First I would like to respond to Maria Chertok. The popularity of the human rights movement is steadily growing; it finds sympathy among the Russian rich as well. Maria is hoping that sometime in the future our human rights movement will begin to get domestic financial support, including from the rich. However, whether the rich help us or not does not depend on how popular the human rights movement is or how sympathetic the rich people feel (indeed, there are people who feel that way about the movement). They will not help until their businesses become independent from the government. Remember the fate of Khodorkovsky; they will simply be afraid to help us. So it looks like we human rights defenders or perhaps someone else must first free Russian business from its dependence on the government, and only then we can count on the financial support.

Now, regarding the brilliant comments by Arseny Roginsky. I would like to point out just one other way in which the modern human rights movement is similar to the one of the Soviet era. Today, we have the same situation. Just like in the 1970s, the human rights movement attracts very different factions. I spoke about it in my presentation. As a human rights activist, it was natural for me to stand up for Article 31, the constitutional “Right to peace-

ful assembly.” But once I started doing it, I realized that all political factions, as well as all non-government organizations, are interested in it. It also interests ordinary people, because they do not have any other way to voice their dissatisfaction with the government, they do not have access to mass media, and for all practical purposes we have no elections. Almost physically, on my skin, I can feel this unification happening the same way as it did in 1970. This feeling comes around the second time in my life.

Finally, here is one more comment, also addressed to Roginsky, regarding our views on what is going on, specifically, our timid hopes for support from the West. I would say this is one thing that has changed compared to the Soviet period. Over time, many of us learned more about what the West is like and have begun to rely less on the West and more on ourselves. Still, I hope that both in the United States and in Europe, there are many of those –politicians and ordinary people – who understand that Putinism is dangerous, not only for the Russians, but for the West as well. This understanding might serve as some basis for coordinated activities.

### **STEPHEN HANSON**

I thought I would take the opportunity to go ahead and mention the commission, because it is a really interesting question. From a policy point of view, if we think about that generation of Russians now who are used to the Putin media presentation of the West and maybe you think of the West as an enemy, is this kind of the commission, which Surkov and McFaul possibly open a door toward a different image of the West? Here is an opening where people are talking about real issues of human rights, or civil society, or cooperation, which gradually sort of breaks down the monopoly of state media imagery or, on the contrary, does this just look like another success story for the kind of Kremlin strategy for framing the relationship with the West, such that real issues of oppo-

sition and human rights cannot be addressed? Because I think, really, the whole strategy that the Obama administration is adopting here depends on the first being true.

#### **ALEXANDER VERKHOVSKY**

I think there may be different views here at the table on this question. My opinion is that this commission will be a success on the part of our civil society that is most pro-official. They will benefit from such relationships. For the human rights movement, it will have no effect.

#### **QUESTION**

This is a question to Arseny and Shura (Alexander). You have done excellent analyses of the current and previous status and composition of civil society in Russia, but I was wondering whether you could talk a little bit more about what kinds of methods – specific methods – the Russian government is using to counteract what they view as your political opposition activities—specifically, the Law on Extremism.

#### **ALEXANDER VERKHOVSKY**

It would take a long time to answer, to give several examples of how such measures are taken. But for many organizations that were involved in some collaboration with political groups, the Law on Extremism was only one of tools used. They maybe also search for illegal software, or conduct tax inspections or something like that. There are a lot of instruments; even the fire department may cite violations, for example. So it is very easy. The problem is always—I return to the first question—when we talk about the future, we may never understand what will be perceived in the midterm by authorities as political activity. It depends more on them, on their consciousness, than on us. It is always unclear. Even if somebody is directly cooperating with political groups, like Ludmila Alexeeva goes with National Bolshevik Party to the meeting, the party is prohibited, but nothing happens with Moscow Helsinki Group about that. There is no clear tradition here about who

will be punished and who will not. It is always unclear.

#### **ARSENY ROGINSKY**

I will voice a statement that might seem made up to you, but I can feel this slight change in the air in Russia recently. It is indeed very slight. But, you see, here is Medvedev; he said many good words; and he showed many intentions – all of them very interesting. We, however, tend to look at it skeptically and write them off as empty promises, thinking there is nothing behind his words. True, on the surface there is nothing behind them, beyond the familiar game of good cop/bad cop. But I simply feel this change in the air. Rhetoric – yes, rhetoric – does not simply vanish without a trace if it comes from, if not the first, then the second man in the country.

There is this subtle regrouping in the elite: some are starting to position themselves as “Medvedev’s men”— and everyone understands what it means. It means that if we are Medvedev’s men, then we are against Putin’s men. You cannot simply write it off. The entire country is vibrantly discussing – yes, discussing! – a possible reform of the Ministry of Internal Affairs. Should we write it off? Or, perhaps, the mere existence of this discussion indicates something? Next, all of a sudden, the First Channel runs, albeit not in prime time, a show where a bunch of young people, for the first time in many years, dare speak jokingly of the government. For many years we have not heard any jokes – it was disallowed. And all of a sudden it begins – slightly. Do you understand? What does it all mean? Here, I keep thinking about this Jackson-Vanik amendment that we have been discussing. If I could hope that there is some real rivalry within this twosome; if I could only fancy that these two, Putin and Medvedev, have some real disagreement between them; if I could only, no matter how faintly, anticipate that Medvedev has a tiny chance and that some liberalization is possible,

no doubt I would have handed this amendment to him on a silver plate – but only to him.

Believe me, I am no supporter of Medvedev, I never said a good word about him in public, except once when I said that I am ready to support one of his statements. But, you see, we need hope. Just like in Soviet times, we need to relearn an old skill of reading between the lines. And so, we are relearning it.

### **ALEXANDER VERKHOVSKY**

Just a couple of words. You provoked me; I have to make a kind of political prognosis. I usually do not. What Arseny described, it all looks like early perestroika years, very early. And if we understand it, they also understand it. And they do not want to lose control over the processes of change as Gorbachev did. So it means that they try to stay in control every moment, and if they planned, for example, to give us 3 percent of freedom, maybe they will give us 4 percent, but not 5 percent. And I think this is really their plan to make this situation not as tight as it was during Putin's second term, when they practically lost connection with the society. I do not know if this will be 3 percent or 10 percent of freedom, but I am sure that they will not permit, in the near future, any more real democratization like in late 1980s. I hope I am wrong.

### **ARSENY ROGINSKY**

In Russia, skeptics are always right. On the other hand, in Russia, you only have to live long enough and you will always see a change for the better – that is the rule.

### **QUESTION**

Two short quick questions. One is when you get a thousand people out in support of freedom of assembly, who are these people? Are there new people who represent a new generation, who were not politically active, let's say, before the year 2000? The second question, I am a little surprised, when talking about raising

money and getting popular support, that there has not been a mention of social trust, which seems to be a huge issue. At least everyone I have dealt with in Russia would never give any money to any organization, they would always say they would only give money to somebody they know and trust a great deal, or directly to somebody who needs it. And then they will say, "Well, big companies give money, because it is PR," which is true here, too. But I am kind of wondering about some of these barriers to philanthropy and to building any kind of a social organization, human rights or otherwise, that has to do with this lack of civic trust. Is this dissipating at all? I mean, how does one overcome that?

### **ARSENY ROGINSKY**

No, I propose that the young people here respond to the demonstration question; they took part in the demonstration, and they know more than we do. Just respond to the question. They speak English well and will share with you what they know.

### **MARIA CHERTOK**

Yes, I will try to be very quick and I will also take this opportunity to respond to what Ludmila Mikhailovna said earlier about business. Actually, my point is not about business and it is not about rich people, it is about normal people like you and me. You are quite right about the trust issue, but in recent years things changed quite significantly, and organizations that are actively seeking funding from the public actually manage to get quite decent results fundraising.

The situation with trust is changing. It is not a blanket approach, it does not mean that every member of the public will trust every single NGO, but those who are visible and who show results and advocate for their cause, they are trusted. Given the statistics that were mentioned earlier about the trust of human rights organizations that is quite high, in Russian terms—15 percent is a lot. It means that human

rights organizations are largely trusted and my point was that this trust could and should be converted into funding from the public, not from oligarchs, because I understand the difficulty about oligarchs. I think it is possible. It is worth trying at least.

### **QUESTION**

I represent International Youth Human Rights Movement, which was created with an ambitious mission to create a new generation of human rights defenders and civil rights activists in the post-Soviet period. Specifically, right from the beginning we are trying to recreate this international approach. In that sense we proudly carry the name of *Molodezhnoe Pravozaschitnoe Dvizhenie* (International Youth Human Rights Movement). Because *pravozaschitnik* is not the same as human rights defender, it has different connotations in the Russian language. So we proudly carry that name and pose it out as also a response to the apathy of our generation, the Putin generation. But at the same time, responding to some of the things that Arseny was saying about the two traits that the modern human rights movement carries over from the Soviet times – the first one, as far as I understood, is the poetics of a hopeless act. I would say that we still need hope, I agree in that sense, but we also need change. And in this sense the human rights movement has to move beyond the hopeless acts and the

appeals to the benevolent West or the appeals to the state. It has to move toward demanding something, standing for it, and actually getting it. There are some prerequisites for that also. And then the second part of what the Soviet era human rights movement carries over, which, once more, our generation has some criticism of, is that appeal to the international society, to international powers. In this sense, our generation, which had seen bombings of Yugoslavia, which has seen Iraq, which has seen Guantanamo, has a different perspective. In that sense, there needs to be not a civil society/state approach, but a civil society to civil society approach. With our American counterparts and our European counterparts we put forward demands, and then we fight for them together. So my question goes to you. Do you think that there is a readiness for this paradigm shift or are we trying to go before our time?

### **ARSENY ROGINSKY**

Sure, you go before our time.

### **LARA IGLITZIN**

This has been a terrific panel. Thank you, Arseny Roginsky, Alex Verkhovsky, and Maria Chertok for an excellent discussion, and thank you all for participating in this panel.



# Panel 4: Emerging Social Demand for Human Rights in Russia

## **WILLIAM POMERANZ**

How do people begin to exercise their rights? I think we heard some interesting examples of how in light of Putinism, people are returning to traditional methods of asserting their rights, but we also caught a glimpse of kind of alternative approaches, for example, through non-governmental organizations. We are going to continue to explore this theme in this panel on “Emerging Social Demand for Human Rights” and how people, Russian citizens, exercise these rights under various conditions. In order to do so we have three leading experts and activists in the area of human rights: we have Karinna Moskalenko, who is a leading human rights attorney in Russia and also the founder of the International Protection Center; she will be followed by Ivan Pavlov, who is the founder and chairman of the Institute for Information Freedom Development, Russia’s largest non-governmental organization dealing with the freedom of information; and finally, we will have Ivan Ninenko, who is the deputy director of Transparency International, Russia. We will begin with Karinna.

## **KARINNA MOSKALENKO**

Today I am speaking on behalf of an organization of professional lawyers who defend the rights of our clients in the courts. We would like to defend them in domestic courts, but unfortunately we mostly defend them in the European Court of Human Rights. At the domestic level we almost always lose our cases. In the European court the picture is completely different; we can help people even without the political means to work. So we are a purely legal group using mostly legal grants for our work. I am here because I am looking for some

effective mechanisms to push my authorities to follow the rules and follow the laws.

Previously, the Jackson-Vanik amendment was very effective, and it had a remarkable effect and result. I am not a business person or economist. Here in this country I am not even a lawyer because I am practicing only Russian law and European law. But what I know for sure is that people here and their Congress sometimes produce very important ideas in their work, they will probably find some kind of measures to push the governments—not only the Russian government, but also those governments who do not fulfill their international and national obligations—to do correct things. I agree with Sarah Mendelson that first of all, the authorities of your country have to set a better example, because we always use the American system as a standard to strive for. When you have clear violations of human rights here, we are very sad because our authorities immediately refer to this country saying, “If they can do that, why shouldn’t we do that?” And there is also the question of the moral responsibility to other nations if you do not follow the rules.

In my view, the fact that Mr. Obama recognized the violations is improving the image of the United States. If our authorities had recognized our own violations 40 years ago, I would be happy. But they are not supposed to do that. And that is why I am looking for another amendment or mechanism that would influence the authorities of those countries that do not follow their commitments to push them to do the right thing. Because of this we have to explain to other people, to other nations, to other authorities that something is wrong.

We have today different views. My friend Sam, for example, feels that everything is

going if not absolutely perfect at least satisfactorily in my country. Of course we now have a free market, but is it a free market after the Khodorkovsky case? And why did they choose this company, Yukos? Because they are the best, I would say. They paid the biggest amount of the taxes, bigger than anybody else, they were the most transparent. And as soon as they felt that they are transparent and doing well, they started to express their own views on who should be financed before the elections—whether we should finance civil society, whom should we assist—and they expressed their preferences. After that we found not only Mikhail Khodorkovsky, but also those who did not flee to the West, in prison. And they are now political prisoners together with my other clients.

So, of course it is a free market—but what an ugly form of the free market. And is it a free market actually? Of course we also have freedom of movement. It was the same for Khodorkovsky, who had full rights to move from the Russian Federation and even remain in the United States. He also had the right to move back to the Russian Federation, saying that “I would prefer to be a political prisoner than a political emigrant.” And he was arrested. The same applies to Anna Politkovskaya. She could leave the country, but she preferred to stay there, and not to close her eyes to what happened in Chechnya. She could not tolerate it because she was very honest. And we cannot replace her with somebody else, even though our president said that she was such an unremarkable person that even her death created more difficulties than her work and that no one cared about her publications. By the way, he explained to somebody that it was a pity that you killed her on my birthday; this was a bad present on my birthday. She is nobody; we could easily manage without even killing her. You can manage ideas without killing her, but her death created more problems than her work. I do not know if these people have ears to hear what they are saying, but it was said.

So there is freedom of movement. Nobody would push you to remain in your country, and sometimes they would be happy to see you leave your country. But if you remain in the country, you will be arrested, or killed, or something else. And the responsibility of this lies completely and solely with the authorities. Why? Nobody has proven that somebody gave the order to kill or to arrest, though we know that there was an initiative from the highest authorities to arrest almost all people in Yukos who do the company’s policy. Although we know that some of the orders on some of the information before Anna Politkovskaya’s killing came from Lubyanka—and this is from the case materials in both cases. It is of course freedom of movement and free market, but as we say *po russkii*: it is freedom of movement “Russian style” and free market Russian style. And of course this amendment would never work again if the situation remains like this and, especially in the United States, nobody is obliged to care about these things.

Getting back to our main notion, to use only legal mechanisms in human rights protection, we use mathematical methods trying to prove that all these freedoms and all these rights in essence do not in reality exist. And what are we doing? We are assisting the United Nations’ meetings and committees with our reports and if you were of the opinion of my learned friend Sam Kliger that everything is going more or less satisfactorily, you would completely contradict the findings of the Human Rights Committee Russian Federation report and our very modest shadow report. You will completely contradict all the findings of the special reporters of the Council of Europe appointed to go to Russia to learn about the situation, which they did (and you cannot deny that they were honest to do that). You would completely contradict those 800 judgments of the European Court of Human Rights on Russian cases, which are not just a view or somebody’s opinion—these are binding judgments, which the Russian authorities have to recognize and follow and fully

implement and not only pay the compensation, but also take general measures. That is what we are doing. We do not go to the demonstrations: it does not mean that we do not sympathize with those people who go to the demonstration. We do not use political measures: it does not mean that our lawyers do not have their own political views and opinions. But when I ask my lawyers to come to the demonstrations and be nearby, somebody has to be out of the demonstration to defend people.

So we are very practical and, I am afraid, very pragmatic. But we must not pronounce political slogans, or support, or defend political ideas. If we are professionals we have to stay apart. When Stas Dmitrievsky published his fantastic book, two volumes of which Sarah Mendelson has already mentioned, there is a description of all of the crimes against the Chechen population. This is serious research, but if you read the second volume word by word then you would have the whole picture. And this is not his subjective view; he used only well established and well-checked facts. He used Memorial cases and many other cases. But what we did, meaning our Center, was to publish a *retsenzia* (critique) of his book, explaining that this is research, this is scientific work, huge work. So what we are doing is we keep separate from the politics, because we have, I think and hope, a stronger weapon. And we want to use it to support our people in their very difficult task to defend their rights.

## **IVAN PAVLOV**

I have to apologize for the level of my English. It is growing very slowly, but much faster than social demand for human rights is growing in Russia. So I am going to speak about the new Freedom of Information Act (FOIA) that is just appearing in Russia. It has been in effect since January 2010, just one month. By the way, it is a strange and very interesting coincidence that the Russian parliament passed this act the same day that President Obama signed his first presidential decree on transparency and open

government in the United States. I just want to say a couple of words about this law. First of all, a very broad category of information is covered by the Russian FOIA. Actually, it covers all information held by governmental agencies and subordinate organizations. I think that this broad coverage is the most positive feature of the law. Second is a presumption of openness. All information is open except some secrets that must be defined under a special federal law. Not another normative legal act, but only federal law can restrict access to information. This is also a very important and progressive thing. Massive amounts of information, which are listed in this law, must be available online.

There is also very good and modern contemporary language that is contained in this federal law. And I think that Russia's path to freedom of information goes through e-government. It is absolutely opposite than the way it developed in the United States or in Europe. Countries in Europe and the United States moved from the freedom of information act toward e-government; we go the opposite way. So our freedom of information arises from the e-government development. Another issue is that there is a limited amount of time to respond to a freedom of information request. I know that in the United States this is a huge problem. There are constant delays. In Russia the maximum time for a reply is 30 days, which can in some cases be extended to 45 days. So within 45 days you have the right to receive a response from the government.

Another positive thing I can say is that access to information is almost free for Russians. The government must define the maximum volume of information that is provided for free; if the requested volume exceeds this amount then the requester has to cover expenses for copying and posting. Of course there are some shortcomings in our FOIA. There is an absence of responsibility of officials for the violation of this law. Unfortunately, amendments to the administrative code did not come through our parliament, and these amendments included norms that

changed the responsibilities of officials for violations of freedom of information.

In spite of these shortcomings, the adoption of the law itself is a huge step in the right direction in the history of democratic development in Russia. I think that this law is maybe the first in the last 50 years to create for Russians a truly new right. You know that Russia did not recognize the right to freedom of information to access governmental information before, and now Russia has this right. There is now a chance that we can change our deep tradition of secrecy and legacy of a closed society. Of course FOIA is a completely new concept for the Russian government and I would call it a legal democratic revolution, because it has created a special atmosphere for an infrastructure for human rights NGOs to work and to make people free, because information makes people free. It also makes the government more responsible. Freedom of information gives people the possibility to implement other rights, because it is a key right of democracy. If you have access to government information, including legal information, you have more possibility to implement other human rights.

Corruption is a huge social disease in Russia. It absolutely exceeds all reasonable limits, and the government has finally started to understand this. Maybe this was one reason this law eventually passed. I think that the Russian government before thought: "How will we fight corruption? Perhaps through more government control or increase the punishment for bribery from eight years to ten years imprisonment. What else? Increase the quantity of prosecutors...not 100 prosecutors, but 200 prosecutors." But they do not understand that public control is much more effective. When millions of the citizens watch how its government is acting, what they are doing with the taxpayers' money, and what decisions each official makes and can read these decisions, of course officials will be more careful with what they are doing and how they decide some questions.

Of course, I have to say that the economic and financial crisis helped in this matter a lot. I will try to explain why. You know that the Russian stock market fell and almost crashed in 2008. When we started to discuss the promotion of the Freedom of Information Act with the Ministry of Economic Development, I used one argument: I told them, do you know why it crashed so low? There is anecdote about it: "What does Russia do after it reaches the bottom of a crisis? It starts to dig." Why did this happen? We started to make options because there were a lot of speculators in the market. Why were there a lot of speculators in the market? Because speculators like huge profits. Where is this possible? Where the market is black. I mean black as in the opposite of transparent, where there is no access to information, where there is no access to governmental information, where there is no access to regulations. It is only in such conditions that when the market is down, all speculators take their money and leave. I know that this was one of the main arguments for why Medvedev decided to go to the Duma with a draft of a federal law on freedom of information.

Of course now we have a very important resource for the development of democracy and promotion of human rights. But now it is very important that we implement this law and this is about social demand. Unfortunately, I do not feel it. I do not feel any social demand in this sphere. I am not talking now about Transparency International, because it is huge international organization, but only one local organization in all of Russia works in the sphere of access to information. I know at least 20 organizations working in European countries and the same quantity in the United States, but Russia has only one. It is absolutely not enough. Not many people know about this law, and not many officials read this law. It is fortunate, because if they would have read it, maybe this law would never have passed. I would say that about social demand, because our panel has the title

“Social Demand for Human Rights in Russia,” and I think it is a really big problem in Russia.

There is a reason, from my point of view, that between the human rights movement and government there is a very aggressive war. It is a war. We should call things by their names. It is very aggressive conflict. And in such conditions, the human rights movement has to aim for the government. Government is our target audience. It is very important for the human rights movement, I think, to try to move toward the people and to start to educate them, to explain to them the values we are trying to defend. So I think that is the way to increase social demand for human rights in Russia. Thank you.

### **IVAN NINENKO**

Hello. I am probably the youngest speaker here, so I will be probably talking from a young person’s perspective. The topic for our panel was “Emerging Social Demand for Human Rights.” If you would directly ask the question: do you need human rights in Russia? From most people, the answer you would probably get is no because, well, people do not put their trust in human rights. Most of them will probably not understand what you are asking them and they would be mostly thinking it is an American myth. But if you really look deep into those rights and see how the younger generation interacts, then you can see that something has changed.

In the year 2008, in September, there was a process to close a TV channel, which was showing cartoons like South Park, and some church groups decided that it violated their rights, but nevertheless, the main thing that was happening was this popular TV channel, especially among young people, was going to be closed. And those young people, who never go on demonstrations for other reasons, went on the streets. These were the most creative demonstrations you have ever seen in Moscow, it was like “Putin kills Kenny” and this kind of stuff. So talking from a human rights perspective we can say that they were defending their

freedom of speech, but they would not think about it this way, they would say they were protecting their Kenny, and Cartman, and all the characters they love.

So, on one hand, yes, they would not stand up for human rights as you call them, but on the other hand, they are ready to stand up for the right for freedom of speech for them to get this information. If tomorrow’s government decides for some stupid reason to forbid Internet access or to censor like China, well, you will have lots of young people in the streets, because for them this is a basic value because they get everything on the Internet. For them TV is not even that big of a reason. Maybe that is why they do not have such a big problem with all the stupid news on TV. Lots of people in my generation do not even watch TV. I have not had a TV for the last five years, and that is the same for lots of young people in Russia. They do not even have a TV when they start renting an apartment. They watch videos on YouTube and that is it.

That is not only about young people. You can see that some other basic values become really core values for people. Thirty years ago we did not have private property. Now, I will give you examples from Moscow, but this is also the case in some other regions as well. We had a case in the Butovo region where the government wanted to tear down buildings and people were standing on the barricades until the end to stop it. Now we have a case in Rechnik that is quite controversial because it violates ecological laws and it is built near the river, but nevertheless people believe in their right to own this property and they are protecting their houses—some of them are ready to protect them with a gun and say that they are ready to sacrifice their life for their houses. So property is a core value for them. And 30 years ago I remember as a child we were told we are moving you from this flat to this dormitory or communal flat and you just moved there. You would never think you could have a word in this—you lived where the government told you to live. Nowadays it is quite different. Those people were demanding,

and the president answered their demands and ordered the prosecutor's office to figure out if this tearing down of their village was according to the law or not. So this is also quite a change, actually. The current president, Medvedev, has started to react to some calls from civil society, which is really different from what it used to be under Putin. I would not say that they are really different; they are kind of from the same group. This is a really big difference I see and our organization is also feeling.

Putin was strongly against the idea of responding to any kind of proposition from civil groups. He thought that this showed weakness, so if they asked him for something, he must not react, because then he put himself on the same level as those stupid people going on the streets. And he was trying to avoid this as much as he could. Medvedev is kind of different, in this perspective only, I would say. He is ready to react, and if there is any kind of social demand, which he notices, for example, on the Internet or if there is any big demonstration on the street, he will react somehow. He will not say that this is nothing to react to. There are lots of examples like this, starting with some small issues, like a house in one region where some older people lived the news got on the Internet how people were badly treated there and several weeks later it was dealt with. He is trying to react to those civil society requests, so that is new.

Now it is a difficult situation for NGOs in Russia, because we are not ready for this. We are generally still in the same mindset as during the Putin era. We have not changed our rhetoric and that is the problem with Transparency International as well. We are still uncomfortable with this situation. As Alexander Verkhovsky said, they accepted money from the government. Last year we decided that Transparency International–Russia would not accept that money. We are still trying to find our position in this new situation. For example, the head of Transparency International–Russia is a member of the Presidential Council of Human Rights, but at the same time we still try to criticize

them. On the other hand, this position means that some people think you are together with them, so you are not fighting corruption obviously because they are so corrupt.

The problem is that NGOs now are talking more with the government and less with the people. The Freedom of Information Act is a great step forward, but people do not know about it. I could say the same also about other transparency issues like the Declaration of Property, which came into effect on January 1. And people do not know about it. They would say that nothing has been done in fighting the corruption. But this is a big step forward. At least all government officials now declare their property. Actually you can get some of this information now and check what they have, what they really have, what they declare. That is a big step forward. Maybe it will not work this year, but in the long term that is a basic brick on which you can build anti-corruption legislation and anti-corruption mechanisms. It is a big problem for NGOs. It is hard to go to people and explain about the Freedom of Information Act and that they now have this right and they should use it. With this declaration, they should check on their officials, the property they declare, and all other issues. That is quite a surprising situation for us, because we would not believe five years ago that we would have a Declaration of Property or some other pieces of legislation that are there. And we were fighting with them. For example, that Russia would actually accept the 14<sup>th</sup> Protocol for the European Court of Human Rights, which was also considered several years ago during Putin's rule and now it has passed, so we also have to change our perspective of what we are doing.

Transparency International is trying to find our new position in this current situation. We are talking also about measuring social demand; there was already mention of the topic of police reform. There was also quite a clear social demand for it with different kinds of groups and experts demanding changes in different ways. Young activists blocked the main roads of

Moscow several years ago to demand changes in police—police were beating young people and that is not how it should be done. On one hand, they may not be ready to support demonstrations for human rights, but they are ready to risk their security and block the main street to protest against this violation of human rights. So it depends also on how you define it. If we stick to the term “human rights,” some core values of human rights are already core values for many people. That may not be emerging demand, but they are ready to protect them when the government steps in to deprive them of these rights.

## **DISCUSSION**

### **WILLIAM POMERANZ**

Thank you very much, Ivan. I just want to first touch upon a common theme that you have all talked about in one way or another, and that is to what extent one can work today within the Russian legal system. You talked about defending property rights, FOIA requests, and even how the European Court works to a certain degree within the Russian legal system. So I am just curious if each of you can comment briefly on to what extent you feel you can work within the present Russian legal system and to what extent you feel, as was discussed earlier, that you need to potentially take a more dissident approach to defend these types of human rights.

### **IVAN PAVLOV**

I think there are many approaches to this. It is up to us. Each human rights defender or human rights activist acts according to their experience and knowledge, and they try to use it as effectively as possible. I am a lawyer; I like to use the courts to defend people and issues. It is more comfortable for me to say some thing in a courtroom than to go to a demonstration, for example. And most important, it is more effective for somebody we are going to defend. I hope that all of us will do our best to do what people expect of us.

### **KARINNA MOSKALENKO**

There are some things that give us some optimism. The Russian judicial system is lacking everything: independence of judiciary, legal representation, finance, everything. And that is why so many cases are tried in the European Court of Human Rights. But it is still a judicial system. It is still not what we had during the Stalin’s regime. That would probably be convenient for the authorities, but they cannot change the constitution and how the Russian judicial system works. The problem with it is that with this lack of independence, all the principal issues cannot be properly defined before the court. Having the courts’ judgments, we can appeal them, we can go, again, to the European Court of Human Rights, and demonstrate that these arguments of the court are not logical or contradict the law. This is an opportunity.

We still have a constitution and we have still a Constitutional Court. And although the majority of the really smart people leave the court, and the last was Mr. Kononov, who could not tolerate what happened in the Constitutional Court any more, still some of the submissions to the Constitutional Court make it impossible to answer in a wrong way and it still is a court. Sometimes we have really interesting decisions from the Constitutional Court that help people and we still use this remedy. It might be a less effective remedy that in the 1990s, but it is still a really helpful remedy. We have access to the international courts, like the European Court of Human Rights and the decisions are binding. And thank you for reminding me about Protocol 14, because that represented the biggest problem that we had. For two years the Russian authorities blocked this protocol. But still, at the end of the day, the Russian authorities could not be the only one out of 47 countries refraining from signing the Protocol. There was a point at which they had to decide: should we stay in the Council of Europe, or should we withdraw from all international commitments. This court gives the Russian people some hope!

If you push me to work in our judicial system without the possibility to rise to the standards established by the European Court, I would perhaps give up. Maybe not...maybe I couldn't leave my clients, but I would give up in a sense. I would say that my people would become really, really hopeless. But with these standards, we still can work and assist people. There are some other positive things.

### **IVAN NINENKO**

I have probably the only non-lawyer point of view. I would say that, well, we have some kind of law system, but being active on the streets or any kind of other social activism is really important today in Russia. There is just a different approach on how to deal with the case and since it was said that our court system is really not independent, actions on the street sometimes help court decisions as well, because they can decide that they do not need any more of this uprising, and ask the court to decide the way that would improve the situation. So this actually goes hand in hand together.

### **QUESTION**

Thank you. I have to say, this has been just a great day. So thank you so much to Kennan and the Jackson Foundation. I have a question about FOIA and then a comment taking us a little bit back to the Surkov-McFaul Commission that we were talking about, but this has to do with Transparency International. On the FOIA question, as an American, I have sent a lot of requests in to my government, and it takes typically two years to get a response. Can you tell me, Ivan, can you make a FOIA request for something that happened in the 1930s—does it pertain to actions of the Soviet government or is it only for the Russian government? The reason I ask is, would there be a way, for example, for let's say my great-grandfather disappeared in the Terror, could I approach the FOIA to get any information about what happened to him, because this would be an interesting possibility of generating some sort of social demand.

And for the other Ivan, there is at least one other person in the room who was in the McFaul-Surkov meeting, the afternoon part, when "civil society" was there. I mean some of us were from civil society, but a lot of us were not, and as somebody who has worked really hard on the civil society summit in July, I was disappointed that we still do not have a civil society to civil society forum set up. We have requested many times to the State Department. I think we need to collectively express our social demand for this from all sorts of donors, otherwise it is not going to happen, but I think if the McFaul-Surkov thing is the only civil society thing going on, it will be seen as a failure.

To be fair to at least the Obama administration, they have very low expectations for this. I mean, people, I know, have been much exercised about it, but they do not think that this is a miracle or a silver bullet. There were couple interesting moments though, I would say, in the meeting. One of them with Transparency International (TI), where there was an exchange between TI-USA and Surkov with TI making the argument that they use very specific ways in judging these things, and they are willing to be completely transparent with him and sit down and show him how they come to their deliberations on corruption. Surkov seemed sort of interested in that. If you can chip away at that kind of suspicion and stereotypes, that seems like an interesting possibility.

I agree with you, there has been a lot of conversation about whether there is a difference between Putin and Medvedev or not. I do not think we could have organized what we did in July two years ago, even. There is a difference between them, and there are certainly people who I think are freer in Russia or live freer in Russia, and people who are still looking over their shoulder and want to please the Kremlin. But if we can rush into whatever space exists and try and have that civil society to civil society conversation, it would be helpful, and I think what you have done today has facilitated it, so thank you very much.



## **IVAN PAVLOV**

Part of your question is easy. You can ask for any information, any time; it does not matter when this document was produced, in any form. The law does not have restrictions in this matter. Of course we will look at how government implements this law. It is a good law, but we know that in Russia there is law and there is the practice of implementation. And between these two there is a huge gap. But we will try to reduce this gap. As for the terminology of this law, the concept of this law is very clear. We worked very hard to make it clear without any double meanings so that government would just implement it literally as it is written. Write your first FOIA request—you have a right.

## **WILLIAM POMERANZ**

We will see if it gets answered in 45 days. Ivan.

## **IVAN NINENKO**

About the Surkov-McFaul Commission, I was not there. What I can say about our main outcome is that tomorrow I am going to TTI-USA (Technology Talent Innovation) and we are starting this communication of our joint work. That is how we see it; we see it as an opportunity that will work for us because we do not really like this idea of Surkov-McFaul overseeing civil organizations and even with Elena Panfilova from Transparency International-Russia who was invited not by Surkov, but by McFaul. And Surkov actually openly said that he does not like the idea that Americans are inviting representatives of Russian society and only he should choose who will represent the Russian society. There is lots of controversy about it, because he sees it a different way. But, at least it is a step forward, and we all have the opportunity to cooperate on the NGO level. We will be leading it, but not only TTI, not only Transparency International, but probably cooperating with some other NGOs who work in this field. And our idea is also to come up with joint reports that can be presented on this

commission and this will be of some use to this commission. We are not that optimistic, but at least we should use the opportunity.

## **QUESTION**

Given that we have these terms that run the risk of being translator's false friends, such as transparency and FOIA: they mean very different things in different contexts. What are your benchmarks for judging how authentic these developments are? What are your standards for judging what would be real? In other words, not process, but product. In other words, what would be a case, a test case for transparency, for FOIA, for litigation that you would accept as saying that it is really authentic and not just talk?

## **IVAN NINENKO**

Well, concerning some transparency issues, there was some benchmark that has already come closer to this legislation. These precise pieces of legislation that the State Duma passed (they were not really eager to do so, but they have finally done it) and now we will be checking on how this legislation is implemented. For example, is property being registered, as it should be according to law? Another very important thing is conflict of interest—when a government official is also involved in a business or his husband or wife, as it is in the case of Mr. Luzhkov—they file these conflict of interest reports. So that is the step that we are going to take now. We will see if this law is being obeyed or not.

## **IVAN PAVLOV**

Before FOIA was passed, it was not on an empty space. Our organization was very active in litigation and legal practice, to push government to be more open, more transparent. So transparency is a term that we tried to pass through the Russian court system. For example, in 2005–2006 we initiated a case, a trial against seven Russian federal agencies and pushed them to create their own websites and post informa-

tion about their activities. A Russian district court ruled in favor of us, actually of society, and ruled that these agencies had to create their own websites and post information about their activities. But on the list of these agencies were, for example, the Federal Security Service, the Russian Federal Security Service, the Federal Bailiff Service, and other agencies. There were other cases also. There was a huge amount of litigation before the Russian government decided they would pass this law.

### **KARINNA MOSKALENKO**

I love your approach with the test cases. One of the test cases is Mr. Zaitsev, an investigator, who was involved with the investigation of one very high-ranking corruption case, Tri Kita. When he was very serious to investigate that, he suddenly found that he was accused himself. When the judge tried to look into the substance of the questions and was close to acquitting him, she was dismissed from the case. This is already a very well known fact, and even the European Court, for the first time in history, said that the judge's dismissal was a violation of her rights. Never before had they touched these questions. And the second test case was Yuri Schekochihin, who used to be Chief of the State Duma Anticorruption Committee. Only five years after his death, under very strange circumstances, a very famous journalist started the investigation on this case and of course they failed. I call for American interest in this case, because (and I represent the interests of his family) he was going to the United States in five days to bring information on the three most important corruption cases and until now nobody was interested in that. Thank you.

### **QUESTION**

To the lawyers: are you able to actually enforce the judgments of the European Court of Human Rights in the Russian courts? In other words, if you had a client who was unlawfully jailed and you went to the European Court and the European Court agreed with you that your

client was unlawfully jailed, are you able to take that judgment back and have it enforced through the Russian system and get your client released? Or do you obtain more or less a symbolic victory in the European Court that does not really have a practical effect with respect to your client?

### **KARINNA MOSKALENKO**

Thank you for your question, a very interesting question, because there are measures of individual character and measures of general character. Concerning measures of individual character, it is a recognition of the violation, it is a compensation and sometimes not very symbolic. If the person was a victim of an unfair trial, he has to be retired. And it costs a lot. If the person was unlawfully jailed, this is much more difficult. Imagine just recently—and this new precedent is very positive—the Supreme Court of the Russian Federation decided concerning the Lebedev-Khodorkovsky case that if Lebedev's case (and Khodorkovsky's, I guess, would be included in the decision) went before the European Court and it decided that Lebedev was on several occasions jailed unlawfully or without legal grounds, they would have to quash those decisions. It means that he already spent time in jail and it is too late to compensate him, but the moral compensation...I mean, Lebedev made a statement that for him this is a very, very important step. And additionally it means internal compensation, because the European Convention's Article 5 says when any of the rights, any paragraph, have been violated, it should be redressed—the time has already been served, but still it is important.

With measures of general character it is much worse. They need to change the law; it's not really a bad law but really bad administrative practices. They need to start a mass investigation of Chechen cases, for example. More than 100 cases have been decided—horrible facts of killings, disappearance, torture, everything has been proven. What has been done by the Russian authorities? Until the last minute they

never recognized that they violated somebody's rights. Of course they paid compensation, all the compensation. But people, victims, those survivors, those relatives...what they need is to receive the truth and conduct a proper investigation, if it is possible after five years. In some cases it is still possible, but the Russian authorities mostly deny that they are effective.

That is a problem. That is why Protocol 14 will bring a result because if the authorities—not only of the Russian Federation, but Italy, Spain, it does not matter who—do not fully implement the judgment, this issue can be redressed back to the court with a new decision and with new consequences—legal and political consequences.

#### **QUESTION**

I have a question for Ivan who mentioned that a lot of people in Russia by default have social demand for greater human rights, but I am wondering if there is mainstream education for human rights in Russia or is this something that is also suppressed?

#### **IVAN NINENKO**

My position was not that there is an emerging demand, but that there are some core values of human rights becoming core values of most of the population, for example, freedom of speech and the Internet.

#### **QUESTION**

I think what I am trying to say is that you said that people do not necessarily recognize those as human rights—their needs for access to the Internet, access to information—but as far as understanding what human rights are in general, is there education in the mainstream universities about human rights?

#### **IVAN NINENKO**

Sometimes there is education about human rights, but there is a lack of understanding of the concept of human rights. It could be taught,

but this Declaration of Human Rights is just learned and is not really giving them an understanding of human rights. Even for young law students, when we talk with them about human rights they are ready only to answer these really basic things about what is written on the paper, but not the ideas of human rights, not the values or the ideas, but only how it is on paper.

#### **IVAN PAVLOV**

I would add that government when they look at an NGO and make inspections—you know, the Ministry of Justice now inspects NGOs—if they discover that an NGO has some sort of educational activity, the Ministry of Justice punishes the NGO until it stops because NGOs have to have a special license for educational activities, according to Russian legislation. You know, it is very dangerous for Russian NGOs to be involved in such activities.

#### **QUESTION**

Quick question: how do you see the generations playing into this whole interpretation of the human rights movement in Russia? I have been given a real sense that there is this generational divide. Indeed, it is wonderful that the younger generation feels they have to protect Kenny from Putin, but here is an interesting question: what role do the young people play in shaping the human rights movement in Russia in terms of methods they use? I was there during perestroika and I remember that it was a youth movement of sort. What role do they play now? What is the difference between the generations and the methods they prefer?

#### **QUESTION**

I am a retired Foreign Service officer. I was on the Soviet desk in the State Department in the 1970s when the human rights issue was coming up. I would like to come at this from a different angle, a sort of an indirect angle. Recognizing that the panels refer to social demand, I would like to know about business demand. Supposedly, there is a dynamic small- and me-

dium-size business community developing in Russia and I was wondering if any of you on the panel are seeing business demands for a kind of functional approach, a process approach. For example, the way in which the courts act and perform adjudicating commercial disputes arising.

#### **IVAN NINENKO**

I would say it is not like the young people are changing something or it is any kind of generational demand. Generally, it is movements that are uniting different people of different ages. Also the young generation, more or less my age and younger, they are enjoying the freedom they have. Sometimes they do interact with the government, like when the police come and beat them, but generally, the rights that are really important for this generation, for example, are that right now they can listen to the music they want to listen to, even the bands that play songs against the government. They can still organize concerts and play their songs and people can listen to them. As I said, you can watch the cartoons you want to watch, have the Internet, where you can generally see movies that are even banned from cinemas—you can go online and watch them. That is probably why they are not really demanding more, because right now their demands are met by what is there.

#### **IVAN PAVLOV**

I would add to this discussion of the human rights generation that I think we have a little bit more pragmatism in the human rights movement. We brought scientific research, we brought courtroom skills, and so it is getting more professional. Professionalism is very good, but does not give you a connection with the community. The past generation and the future generation have the same problem – they do not have a very tight connection with the community. About the business demand for human rights, I think Karinna can respond better, because she knows businessmen and she defends them.

#### **KARINNA MOSKALENKO**

I never ever dealt with a businessman until businessman Mikhail Khodorkovsky became the most hopeless person in our country. The lack of legal representation is a big problem, systemic problem. This man has proper representation and they really effectively oppose the prosecution's strange and sometimes absurd ideas and points, but still there is no way for him to be released in the current condition. The business community now feels very low after this test case because after this test case everybody realized that they are not free to act. As I started to explain previously, it is a strange form of free market where everybody is free until and unless the authorities want them to act in a way they are not prepared to act. And so now they are more or less prepared, because you have very simple choices: you follow or you go out of business or you go to prison. That is all. Those are very poor choices, I would say. The business community is led by the authorities in a situation where we have no division of powers, separation of powers, legislative power, executive power, or judicial power, as demonstrated on several occasions. We also have no force of power as a community of free journalists on many occasions. Even the existence of *Ekho Moskvyyi* and *Novaya Gazeta* demonstrates that the exception proves the rule. The rule is that everybody is under the executive and will be for quite some time. The business community could play a remarkable role in a normal civil society, but the problem is that everybody is mobilized in a society where authoritarianism or something like this exists. Business is one of the victims of this regime, because business is invisibly oppressed by the authorities. Of course, they appeal their human rights issues when they are in trouble.

#### **IVAN NINENKO**

If I may add, we at Transparency International sometimes work with regional entrepreneurs associations when they have big problems with a corruption case. When corruption gets out of hand, they do come and ask for help. There is a level of corruption that is tolerated, but sometimes the regional government can do

something really out of hand, something that is really much more than a tolerated level of corruption. In this case, sometimes they unite and even do civil campaigns. Sometimes they even organize their actions in the street to protect their business.

#### **KARINNA MOSKALENKO**

You say that in some moments the government starts to understand that this level of corruption should be prevented?

#### **IVAN NINENKO**

This was not my point. I was saying that the business starts to understand that this is an intolerable level of corruption ...

#### **KARINNA MOSKALENKO**

From what part of society do your researchers show the corruption is coming from? Who is corrupt? Who is struggling with corruption?

#### **WILLIAM POMERANZ**

I think we have another conference coming...

#### **COMMENT**

We need a lawyer!

#### **WILLIAM POMERANZ**

We have plenty of lawyers in the room as well.

#### **IVAN NINENKO**

According to surveys, every third person has been given a bribe during the last year. That is the lowest estimate— it is probably more. If you're talking about numbers, the biggest corruption is in tenders and government spending and procurement. Also, petty corruption is a big issue. This is spread among people and actually influences a lot of attitudes. That is quite a big area and we are trying to work on these petty corruption issues. Because even though people are paying small bribes for small things, they are starting to accept corruption as something that is normal. So that is why we work a

lot on the ground level trying to help people not to give a bribe when they get their passport.

#### **KARINNA MOSKALENKO**

That is great activity! Do you think the government and the authorities are serious in their efforts to eliminate corruption?

#### **IVAN NINENKO**

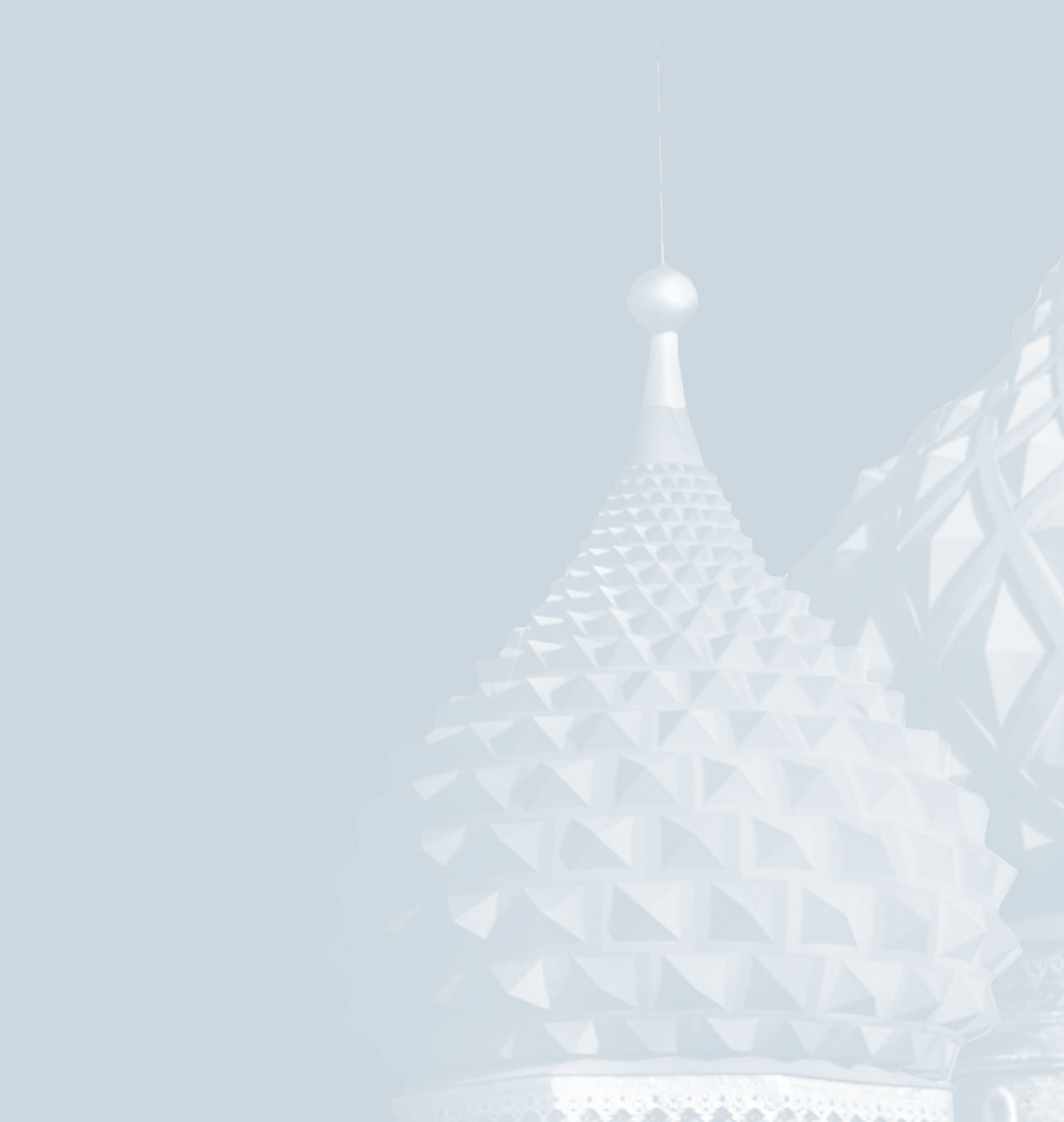
I would say that on one level, yes, it is quite serious, because, that money is not going to them. Even this e-government system, if we will have it, and I am pretty sure that Medvedev is putting it at the top of his priorities, he wants it to be there, he wants people actually to see the results of his rule. According to his plans, by the time his first term ends we will be able to get almost everything through the Internet, so this will eliminate most of the field for petty corruption: You do not need to actually see the government official to pass your documents for a passport, to obtain your data, or to obtain a permission to do some kind of work in your house. Almost everything will be done through the Internet and that will really help petty corruption cases.

#### **WILLIAM POMERANZ**

I am afraid I am going to have to bring our proceedings to an end. I would like to thank our panelists, I would like to thank all of you for staying the whole day here, which really testifies to the resonance of this issue, and there is a lot to discuss going forward. And finally, I would like to thank the Jackson Foundation and our staff for all their hard work in making this such a success.







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