

LAW AS POLITICS: THE RUSSIAN PROCURACY AND ITS INVESTIGATIVE COMMITTEE

ETHAN S. BURGER AND MARY HOLLAND¹

“Закон есть мера политическая, есть политика.”²

[Law is politics.]

V. I. Lenin

“The past is the present, isn’t it? It’s the future too.”

*Mary Tyrone from Eugene O’Neill’s Play “Long Day’s
Journey into Night”*

This article examines how the Russian Presidential Administration under former President Vladimir Putin misused the Procuracy for political purposes in high profile cases having great economic or political significance. Whether Mr. Putin will continue to exercise the same influence as Prime Minister remains to be seen. If one were compelled to venture a guess, the answer would almost certainly be yes—at least in the near term. His designated successor Dmitri Medvedev may obtain the desire, opportunity and resources at some point to implement his stated highest priorities: establishing the rule of law and combatting corruption. Until then, however, President Medvedev will be little more than a titular president. Prime Minister Putin continues to determine policy in the “law enforcement” area in major cases.

After examining the general context in which the Procuracy operates, this Article examines the Procuracy’s history, the

1. Ethan S. Burger is an Adjunct Professor at the Georgetown University Law Center and a Scholar-in-Residence at the American University’s School of International Service. Mary Holland is the Director of the Graduate Legal Skills Program at New York University Law School. The authors would like to thank Alexandra Logvin, LL.M. (2003, Ottawa), LL.B. Candidate 2009, University of Ottawa, Ottawa, Canada for her valuable research assistance.

2. Ekaterina Kudashkina & Boris Grovosky, *Nationalization Isn’t Over Yet*, VEDOMOSTI, Nov. 8, 2006, at A3.

country's constitutional structure and Russia's obligations to the Council of Europe. This article contends that the Russian Presidential Administration created the Procuracy's Investigative Committee for corrupt political purposes. Giving specific examples, the article explores the Investigative Committee's record during its initial period of operation that corresponds to the final months of Mr. Putin's tenure as President and the beginning months of Mr. Medvedev's term. Our analysis reaches the conclusion that under President Putin, Russian law enforcement became increasingly politicized and degraded.

I. Introduction.....	144
II. Background	145
A. The Yeltsin Years.....	146
B. The Putin Years.....	148
III. Part One: The Russian Procuracy	153
A. History and Structure.....	153
B. Oversight	156
C. Investigation and Prosecution.....	157
D. International Standards that Apply to the Procuracy	159
IV. Part Two: Political Abuse of the Procuracy	162
A. Criminal Investigations.....	163
B. Instrument to Punish Critics and Protect Allies	169
C. The Three Whales Corruption Scandal.....	171
D. Role in Government Expropriations	173
E. Illusory Anti-Corruption Campaigns.....	177
V. Part Three: The Investigative Committee under the Auspices of the Procuracy	181
A. Creation of the Investigative Committee	181
B. The Bulbov Arrest and Prosecution.....	184
C. Cherkesov's Response to Bulbov's Arrest.....	185
D. The Arrest and Detention of Deputy Finance Minister Sergei Storchak.....	186

E. The Detention and Inhumane Treatment of Vasilii Aleksanian.....	189
F. What the Investigative Committee Means.....	192
VI. Conclusion.....	193

I. INTRODUCTION

Simply put, what happens in Russia matters. Russia is a member of the Group of 8 industrialized countries; its economy is one of the world's ten largest; its territory is the largest of any country in the world; it is armed with nuclear weapons; and it is among the five permanent members of the United Nations Security Council. Major developments in Russia—economic, political, and legal—have global consequences.

While governmental officials, journalists, and scholars have focused on Russia's economic and political activities in recent years, they have paid limited attention to changes in the country's legal framework. The purpose of this article is to explore how the Russian political leadership has degraded one of Russia's key legal institutions, the Procuracy, for political objectives. Since assuming power in 2000, Russian President Vladimir V. Putin has carried out a gradual *coup d'etat*, recentralizing power in the Presidential Administration and the federal government.³ He paid lip service to the democratic process,⁴ while flouting its essence.⁵ The Procuracy played an indispensable role in this *de facto* coup.

3. Seizing on the concept of federal supremacy, President Putin obtained the authority to appoint and remove regional executives and legislators serving in the Russian Federal Assembly. Federal Law, No. 184-FZ, "On the General Principles of the Organization of the Legislative (Representative) and Executive Organs of State Power of the Subjects of the Russian Federation," October 6, 1999 (as amended). In many respects, the Presidential Administration now operates in a manner analogous to the Communist Party of the Soviet Union's Politburo in the post-Stalin era; the country's legislature primarily ratifies the decisions of the political leadership, playing a minimal role in the policy-making process.

4. President Putin's public persona, political acumen and penchant for surprises and secrets may stem in part from his legal education, career in the KGB and rapid rise from Chairman of St. Petersburg's Foreign Economic Relations Committee, to which he was appointed by mentor Anatoly Sobchak, former law professor and Mayor of St. Petersburg in the early 1990s.

5. See generally ANDREW WILSON, VIRTUAL POLITICS: FAKING DEMOCRACY IN THE POST-SOVIET WORLD (2005). Dr. Wilson perceptively explores why the political elites

On March 2, 2008, Dmitri Medvedev became President and appointed Vladimir Putin as Prime Minister. Although many individuals took on new policy positions in the government, continuity outweighed change. Subsequently, United Russia made Mr. Putin its Chairman, ensuring him a leading role in the dominant political party in the State Duma. This may provide an additional method for Mr. Putin to maintain his influence even if he gives up the position of Prime Minister in the future.⁶

This article examines how the Presidential Administration has misused the Procuracy for political purposes. The background section provides historical context. Part One looks at the Procuracy's antecedents, current structure and relevant international standards. Part Two discusses some major instances where the Presidential Administration has used the Procuracy to reward friends and punish opponents through selective investigation and prosecution. Part Three looks at the creation of the Investigative Committee and its early high profile cases.

II. BACKGROUND

Upon the collapse of the Soviet Union in late 1991, the newly-independent Russian state, formed from the Russian Soviet Federative Socialist Republic, entered a period of great turmoil and uncertainty. The Constitution of the Russian Federation⁷ entered into force in December 1993, pursuant to a national referendum.⁸ Al-

that control most of the Soviet Union's successor states feel compelled to go through the motions of holding elections and complying with aspects of their countries' constitutions while refusing to allow the development of forces that could jeopardize their grips on power.

6. See Anna Smolchenko, *United Russia creates Post for Putin*, MOSCOW TIMES, Apr. 15, 2008.

7. Article 1 of the Russian Constitution provides that the country is a federal, democratic state that can properly be referred to as either "Russia" or the "Russian Federation." For consistency, we refer to the country as "Russia," except as otherwise appropriate.

8. See GORDON B. SMITH, REFORMING THE RUSSIAN LEGAL SYSTEM 79-103 (1996) (describing the complex political environment in which the Constitution was prepared and the role of competing factions in the process). It remains a subject of contention whether the organizers of the referendum complied with applicable legal requirements when the Russian Constitution was "adopted" in December 1993. On October 15, 1993, Russian President Yeltsin issued Edict No 1633, "On the Conduct of an All Peoples' Vote on the Draft Constitution of the Russian Federation" that approved regulations providing that such referendum would be legally binding if approved by 50% + 1 vote of

though the Presidential Administration largely drafted the document, it considered the concerns of key interest groups in the country in the hope of producing greater political stability. Most of the key political actors and institutions sought to preserve their economic and political power. Since 1991, many individuals who were not previously part of the ruling elite gained access to influence and wealth, yet there was only a limited replacement of former political elites. Thus an ongoing struggle for power and influence ensued between those in control of society under the old system and individuals with the acumen, ambition and talent to thrive in the new dynamic environment.

A. The Yeltsin Years

Unfortunately, President Boris Yeltsin seemed incapable of implementing sound economic, political and social policies. While his Prime Ministers did not enjoy long tenures in office, his administration nonetheless managed to achieve some important legal reforms, including fundamental changes in the Procuracy's role. Although seemingly on the verge of civil war, Russia managed to adopt a new constitution, along with other legislation, to create the foundation for the rule of law and a market economy.

In contrast to its Soviet predecessors, the 1993 Russian Constitution explicitly protects private property. Article 8(2) states that "[p]rivate state municipal and other forms of property ownership

those casting their votes rather than 50% + 1 of the total electorate that had been established pursuant to the Law "On a Referendum in the Russian Federation." Under the heavily-amended Soviet era Constitution then in force, a presidential edict could not establish rules that contradicted the constitution or federal law. At the time, however, political actors' ability to impose their wills superseded law; written law was the veneer of power politics. See Steven Erlanger, *Ballot May Deny What Yeltsin Seeks*, N.Y. TIMES, Dec. 12, 1993, at 18. Some observers have suggested that less than 50% of the voters favored the Constitution's adoption. See PETER REDDAWAY & DMITRII GLINSKI, *THE TRAGEDY OF RUSSIA'S REFORMS: MARKET BOLSHEVISM AGAINST DEMOCRACY* 432 (2001); See also Tony Barber, *Yeltsin Referendum Rigged*, INDEPENDENT, Apr. 9, 1994, at 1. Whether voters legally approved the Russian Constitution remains an unsettled question. Nonetheless, key Russian political figures, foreign governments and international organizations preferred to treat the "official" outcome as valid. *Id.* Even though the Russian legal system may be tainted by "original sin," over time the document has earned a measure of legitimacy: many of President Boris Yeltsin's political opponents seemed willing to participate in the system set forth in the Constitution. Absent the adoption of a new constitution, most judges and arbitrators would be reluctant to take on this issue, treating it as a non-justiciable political question.

shall be recognized and enjoy equal protection in the Russian Federation.” Article 35 formalized the principle that the state could only seize private property for public purpose, and even if such a purpose existed, the state had to obtain advance judicial approval and pay reasonable compensation.

For the vast majority of Russian citizens, the post-Soviet transition proved to be traumatic both financially and psychologically. The predictability of everyday life was a thing of the past. The purchasing power of the ruble plummeted while currency and banking “reforms” reduced or even wiped out people’s savings.

Both violent and economic crime increased. Numerous organized crime groups infiltrated the retail sector and made their presence felt in everyday life. Furthermore, when many enterprises went bankrupt, people accustomed to lifetime employment often lost not only jobs, but also housing, medical care and access to affordable goods. Not surprisingly, the euphoria that followed the collapse of the Soviet system dissipated quickly. Rapid privatization caused significant economic stratification and only made the situation worse.

During President Yeltsin’s term of office, many of the so-called “oligarchs” became extraordinarily wealthy as a result of their understanding of how to benefit from the privatization program, aggressive business practices (such as taking advantage of certain tax treaties and the absence of rules in the area of transfer pricing),⁹ the exploitation of contacts with the political elite and access to financing abroad.¹⁰

9. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE INVESTMENT ENVIRONMENT IN THE RUSSIAN FEDERATION: LAWS, POLICIES AND INSTITUTIONS 128 (Eva Thiele ed. 2001).

10. See Anton Severov, *The Fate of the Oligarchs*, ROSSIISKIE VESTI [RUSSIAN NEWS], No. 42, November 17, 2006, at 12-13 (discussing the rise and, in some cases, fall of particular oligarchs); see also *The End of the Oligarchs’ Era*, ROSSIISKIE VESTI [RUSSIAN NEWS], November 17, 2006. For detailed analyses of those oligarchs who managed to assemble considerable wealth and influence during the Yeltsin era, see CHRYSTIA FREELAND, *SALE OF THE CENTURY: RUSSIA’S WILD RIDE FROM COMMUNISM TO CAPITALISM* (2000); see also DAVID E. HOFFMAN, *THE OLIGARCHS: WEALTH AND POWER IN THE NEW RUSSIA* (2002). For a description of President Putin’s attempt to control the oligarchs and their relationship with him and the *siloviki*, see LILIA SHEVTSOVA, *PUTIN’S RUSSIA* 99-101, 104-9, 158, 279-80, 367-70 (2006); see also ANDERS ASLUND, *RUSSIA’S CAPITALIST REVOLUTION: WHY MARKET REFORM SUCCEEDED AND DEMOCRACY FAILED* 226-30, 244-45, 257-58 (2007).

The Procuracy had four different Procurator Generals during President Yeltsin's tumultuous tenure. It became engaged in the power struggles during these years between the Federal Assembly and the President and pursued corruption investigations that led to President Yeltsin's two daughters and to President Yeltsin himself. Procurator General Yuri Skuratov was forced out of office in February 1999 after being implicated in a sex scandal. Mr. Skuratov asserted that the incriminating videotape shown on a major television station did not depict him and that its purpose was to force him to resign.¹¹

B. The Putin Years

When Vladimir Putin assumed the Presidency in January 2000, a majority of the Russian population understandably was relieved to have a vigorous leader at the helm. President Putin keenly appreciated that many Russians were nostalgic for aspects of their past lives. He declared that the establishment of a "dictatorship of law," as distinguished from the "rule of law," was an essential objective for normalizing life in the country.¹² A "dictatorship of law" would end the arbitrary nature of governmental and judicial decision-making, end favoritism toward particular elites and improve state administration, including the timely payment of pensions and salaries.¹³

President Putin divided the country into federal districts and appointed "plenipotentiaries" who reported to him directly.¹⁴ These individuals were to serve as supposed 'mediators' between federal and regional authorities, although their real objective was to ex-

11. Gordon B. Smith, *The Procuracy, Putin, and the Rule of Law in Russia, in RUSSIA, EUROPE, AND THE RULE OF LAW 3-6* (Ferdinand Feldbrugge ed., 2007).

12. See Leon Aron, *Russia Reinvents the Rule of Law*, AEI RUSSIA OUTLOOK (Spring 2002), available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/aronRussiaJudicialReform.pdf>.

13. See Ethan S. Burger & Evgenia Sorokina, *Vladimir Putin's Dictatorship of Law: Its Potential Implications for the Business and Legal Communities*, 13 E. EUR. REP., No. 12, at 1-5 (Dec. 2003).

14. Presidential Edict, *O Polnomochnom Predstavitele Prezidenta Rossiiskoi Federatsii v Federal'nom Okruge*, [On the Authority of the Representative of the President of the Russian Federation in a Federal District], No. 839, May 13, 2000, approving *Polozhenie o polnomochmon predstavitele prezidenta Rossiiskoi Federatsii v Federal'nom okrug*, [Regulations on the Authority of the Representative of the President of the Russian Federation in a Federal District], available at <http://www.gfi-udm.ru-ru/sverkhu/dokument/uzak.htm>.

pand federal (and Presidential) power. Arguably, the Russian President had the authority to structure the Presidential Administration and to appoint and remove representatives pursuant to the Russian Constitution's Article 83(i)(k). It is not clear that under Article 83, President Putin had the legal right to limit the prerogatives of the subjects of the Russian Federation and their leaders, although subsequent laws and other normative acts were enacted under this assumption.¹⁵

Two of President Putin's principal objectives have been to reduce the power of Russian political subdivisions, *i.e.* to lessen the federal structure of the country, and to unify the operation of federal agencies.¹⁶ The official reasons for these actions were to prevent the disintegration of the country and to preserve and strengthen the Russian state, particularly in light of the conflict in Chechnya.¹⁷ The President and the Russian national security community apparently concluded that they could achieve national unity only by increasing Moscow's power in the regions. These policy initiatives in fact elevated presumably "reliable" ethnic Russians (or "Russified" non-ethnic Russians) over ethnic minorities in the political sphere.¹⁸

As part of this process, President Putin obtained power from the Federal Assembly to remove regional governors and dismiss regional legislatures.¹⁹ President Putin's efforts to establish a more "vertical" power structure took other forms as well: the state taking over independent media; silencing investigative journalism; deci-

15. See C. Ross, *Putin's Federal Reforms and the Consolidation of Federalism in Russia: One Step Forward, Two Steps Back*, COMMUNIST & POST-COMMUNIST STUD. 29-47 (2003), available at http://www.clas.ufl.edu/users/bmoraski/Russia/Ross03_CPCS.pdf (contending that President Putin's policies "make a mockery" of federalism and consequently the Russian Constitution's creation of a state as a federal entity).

16. *Id.*

17. See generally DIMITRII TRENIN, ALEKSEI A. MALASHENKO & ANATOL LIEVEN, *RUSSIA'S RESTLESS FRONTIER: THE CHECHNYA FACTOR IN POST-SOVIET RUSSIA* (2004) (discussing Russian policy in Chechnya and the dominant role it had in the Russian leadership's perception of the need to strengthen national security and control over the regions); see also MATTHEW EVANGELISTA, *THE CHECHEN WARS: WILL RUSSIA GO THE WAY OF THE SOVIET UNION?* (2003).

18. See Paul Goble, *Window on Eurasia: Putin's Regional Policies Seen Threatening Moscow's Control*, JOHNSON'S RUSSIA LIST, Apr. 26, 2005, <http://www.cdi.org/russia/johnson/9131-19.cfm>.

19. Andrei Serenko & Zoya Mozaleva, *Redistributing Mayors: Increasingly Frequent Prosecutions of City Mayors Are Mostly Motivated by Economic Considerations*, NEZAVISIMAYA GAZETA, May 21, 2007, at 13-14.

mating political opposition; further controlling the courts; politicizing the Procuracy; subverting free elections; creating a *de facto* one-party political system; restricting non-governmental organizations; and creating a mild cult of personality around Putin.²⁰

President Putin increasingly placed direct or indirect control over the country's natural resources under the Presidential Administration, federal bodies or "loyal" oligarchs,²¹ stripping regional leaders of their financial resources and power. At the same time, President Putin placed greater authority in the Presidential Administration and those who run the so-called "power ministries" or *siloviki*, principally officials in the Federal Security Bureau (FSB), the KGB's principal successor, and the Ministry for Internal Affairs (MVD), rather than other federal bodies.²²

President Putin sought to control the oligarchs who, independently or with the assistance of state officials, had succeeded in gaining control of the most valuable state assets that had been subject to privatization. Recognizing that past activities would not withstand scrutiny, the oligarchs were eager to reach an accommodation with the new President.²³ Initially, President Putin sought to make offers the oligarchs could not refuse, and most obliged. A

20. See generally HUMAN RIGHTS WATCH, RUSSIA: WORLD REPORT 2008, <http://hrw.org/englishwr2k8/docs/2008/01/31/russia17710.htm>; see also FREEDOM HOUSE, RUSSIA (2007), COUNTRY REPORT, <http://www.freedomhouse.org/template.cfm?page=22&country=7258&year=2007>; see also Steve Rosenberg, *Putin Hits 50*, BBC NEWS, Oct. 7, 2002, <http://news.bbc.co.uk/2/hi/europe/2305071.stm>.

21. *Russia's Largest Raw Material Companies May Be Nationalized*, VEDOMOSTI, Nov. 8, 2006.

22. See Lilia SHEVTSOVA, *supra* note 10, at 101 ("in the struggle for property, some law enforcement agencies are openly fighting others; the MVD has been pitched against the FSB, the FSB against the Tax Department, the latter against the [Procurator]'s office, and so on. Federal and regional security officers confront each other in battle for the ownership of enterprises, the right to extract tribute from entrepreneurs, and for control of the banks. This battle, particularly in the regions, is conducted openly and is violent."). For an excellent analysis of the situation in Russia with respect to corruption and criminalization, see Mark Galeotti, *The Criminalization of Russian State Security*, 7 GLOBAL CRIME, No. 3-4 (Aug.—Nov. 2006); see also TAYLOR, *infra* note 27.

23. The current "oligarchs" are eager to reach accommodations with the Russian ruling elite. Perhaps it is a sign of pragmatism—if someone has been permitted to "earn" several hundred million dollars from owning a particular company, why not sell the company to an individual enjoying support from the authorities for half of what it is indeed worth? See Graham Stack, *Equally Distanced Oligarchs: Although the Kremlin Still Consults the Oligarchs, They Seem to No Longer Dictate Policy or Appointments*, RUSSIA PROFILE, May 22, 2008.

few, notably Boris Berezovsky, Vladimir Gusinsky, and Mikhail Khodorkovsky, did not. These individuals refused to stay outside of politics. Berezovsky's and Gusinsky's media empires jeopardized state control over the principal media outlets. Mr. Khodorkovsky recognized that unless there were legal protections for private property, the State could always take away what it had disposed of. Consequently, he contributed to political figures that opposed Mr. Putin and made no secret of his own political ambitions. Under President Putin, the Procuracy brought much publicized criminal cases against these oligarchs and convicted Khodorkovsky, who remains in a Siberian prison today.²⁴

During Russian Procurator General Vladimir Ustinov's tenure from 2000 until June 2006, the Procuracy was notably stable. In contrast to President Yeltsin, President Putin enhanced the power of the Procuracy and used it effectively to reestablish a "vertical" of power in the regions and to enforce criminal sanctions against those oligarchs who refused to play by Putin's rules.²⁵

By many measures, the population supported President Putin, seeing his policies as restoring order and prosperity.²⁶ Despite this appearance of law and order, however, real social stability was more elusive. Evidence suggests that ordinary law enforcement against street crime stayed about the same in the Putin administration as in the Yeltsin period, with Russia continuing to have the highest murder rate in Europe.²⁷ Corruption skyrocketed without

24. *Id.* See also PAUL KLEBNIKOV, *GODFATHER OF THE KREMLIN: THE DECLINE OF CAPITALISM IN THE AGE OF GANGSTER CAPITALISM* (2001) (describing how Mr. Putin enjoyed Mr. Berezovsky's patronage, which proved critical to his rapid rise first to FSB Head, Prime Minister, and ultimately the Presidency; Mr. Berezovsky now lives in exile in London). Mr. Klebnikov was later murdered in a case never solved. At the time of his murder, he was investigating corruption in Russia. See also Michael Freedman (with Nikolay Borov), *Dark Forces*, 179 *FORBES*, No. 11, May 21, 2007 (discussing, *inter alia*, Berezovsky's attempts to destroy President Putin's image in revenge).

25. See Gordon Smith, *supra* note 11, at 6-7; see also Gordon Smith, *The Procuracy: Constitutional Questions Deferred*, in Gordon Smith & Robert Sharlet, *RUSSIA AND ITS CONSTITUTION: PROMISE AND POLITICAL REALITY* (Martinus Nijhoff Publ. 2008).

26. See Sergei Kovalev, *Why Putin Wins*, *THE NEW YORK REVIEW OF BOOKS* 64-66 (Nov. 22, 2007) (reflecting on why Putin wins despite severe human rights violations); see also Lilia Shevtsova, *Think Again: Vladimir Putin*, *FOREIGN POL'Y*, January/February 2008 (explaining that behind the current façade is instability).

27. BRIAN D. TAYLOR, *RUSSIA'S POWER MINISTRIES: COERCION AND COMMERCE 40* (2007), http://insct.syr.edu/Research%20and%20Events/Taylor_Russia%20Power%20Ministries.

the independent oversight of law enforcement, the legislature, media or civil society. Transparency International, a global corruption monitor, ranked Russia 143rd out of 179 countries on its corruption perceptions index in 2007, putting it between Indonesia and Nigeria. It also indicated that Russia's ranking had fallen steadily since 2001.²⁸ The Procuracy played a key role in recentralizing power, curbing independent media, thwarting political opposition, expropriating property and restricting non-governmental organizations.

Putin, for his part, has moved quickly to shift some powers currently residing in the presidency over to the prime minister's post he has agreed to fill, amending a decree he signed in 2007 in such a way as to transfer an important lever over regional governors from the Kremlin to the Russian White House. The decree originally gave a commission headed by Kremlin administration chief Sergei Sobyenin the authority to develop and approve a list of indicators of the effectiveness of the work of Russia's regional administrations. Putin has now transferred that authority to the cabinet, meaning regional leaders will now be giving reports on what they have accomplished to the cabinet headed by Putin, not to the Kremlin chief-of-staff. In addition, Putin signed a decree obliging municipal authorities to give similar reports on their activities to the governors of their regions, thereby, as the newspaper *Tvoi Den* wrote on April 30, extending a new "power vertical" headed by Putin down to the municipal level.²⁹ How this new power arrangement will evolve remains uncertain and undoubtedly will change over time.³⁰

pdf ("the law enforcement and security structures still have considerable difficulty coping with some of their core tasks").

28. Transparency International's Corruption Perceptions Index Table, http://www.transparency.org/policy_research/surveys_indices/cpi/2007 (last visited July 11, 2008); See also Michael McFaul & Kathryn Stoner-Weiss, *The Myth of Putin's Success*, FOREIGN AFF., Jan./Feb. 2008, at 68-85.

29. Jonas Bernstein, *Russia's Role as Putin Builds a Powerful Premiership*, 5 EURASIA DAILY MONITOR, Apr. 30, 2008, available at http://www.jamestown.org/edm/article.php?article_id=2373016.

30. See Quentin Peel, *The Power Games are Just Beginning*, FIN. TIMES, March 4, 2008, at 2.

III. PART ONE: THE RUSSIAN PROCURACY

A. History and Structure

Today's Procuracy, employing approximately 54,000 people, traces its origins to a 1772 edict of Peter the Great.³¹ Peter the Great wanted the Procuracy to be the "eye of the Tsar," free from local influence. While Russia has undergone dramatic changes, the Procuracy's legal mission has remained remarkably constant: (i) to ensure that the government operates in conformity with the law; (ii) to investigate and prosecute crimes; and (iii) to participate in civil proceedings where the state has an interest.³² The Procuracy has always differed from analogous institutions in Western countries, and it has been a linchpin of the Russian law enforcement system. It has also been highly politicized.³³

Traditionally, procurators have been regarded as the elite of the Russian legal profession and were (and still are) comparatively well-paid.³⁴ For example, the Procurator General's salary is by law 98% of that of the Chairman of the Russian Supreme Court, and other procurators' salaries are a percentage of the Procurator General's.³⁵

31. Procurator General web site, <http://www.genproc.gov.ru/ru/structure/history>. For a good critique of the role and performance of the Procuracy in recent years, see Sergei Mirozev, *Mneniya eksperta: Prokuratura I Rezhim Zakonnosti: Gork'kii Opit Shesti Let [Opinion of Experts: The Procuracy and the Regime of Legality: Bitter Experience of Six Years]*, KREML.ORG, June 5, 2006, <http://kreml.org/opinions/120022255?mode=print> (discussing how the Procuracy took on a political character to further President Putin's agenda, regardless of its legal merits); See also Sergei Marinin, *Prokuratura Bol'she Ne Vsesil'na [The Procurator is No Longer All Powerful]*, EKSPERT ON-LINE, May 31, 2007, http://www.expert.ruprintissues/russian_reporter/2007/02/prokuratura_ne_vsesilna/print (discussing the role of the Investigative Committee within the Procuracy).

32. See WILLIAM BURNHAM ET AL., *LAW AND THE LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 99-100 (2d ed. 2000) and WILLIAM E. BUTLER, *SOVIET LAW* 107-116 (2d ed. 1988) (providing a short summary of the Tsarist and Soviet legacy on the contemporary Procuracy).

33. See SMITH, *supra* note 8, at 1.

34. See BUTLER, *supra* note 32, at 350-366 (providing a good overview of the Soviet Procuracy's elite status within the Soviet legal system and its role in Soviet criminal procedure).

35. See Federal'nyi Zakon Rossiiskoi Federasii "O Prokurature Rossiiskoi Federasii" [Federal Law of the Russian Federation, "On the Procuracy of the Russian Federation"], art. 44, Logistical Backup and Social Welfare of the Officials of Procuracy (hereinafter "Procuracy Law").

The Procuracy is one of several institutions having responsibility for law enforcement and legal compliance. The other organizations that play prominent roles include the courts, FSB, the MVD, the Ministry of Justice, the Office of the Ombudsman and the State Tax Ministry. Despite overlap in some areas of investigation and oversight, only the Procuracy may prosecute criminal cases and represent the Russian government in civil matters.

In Soviet times, the Procuracy functioned as both a prosecutor and monitor of court operations. In effect, the Procuracy was more powerful than the judiciary. When the Soviet Union collapsed, reform of the Procuracy was a high priority. Many political figures and scholars sought to remove the Procuracy's powers of "general oversight" entirely and to make it solely a public prosecutor. The Procuracy retains broad powers of oversight of executive bodies but lost oversight authority over the courts, which was transferred formally to the Ministry of Justice.³⁶

The Constitution and several federal statutes set forth the essential powers of the Procuracy.³⁷ The Constitution states that the Procuracy is "a single centralized system" under the direction of the Procurator General. The President nominates the Procurator General, but the Federation Council appoints or dismisses him. The Procurator General, who is appointed to a five-year term, appoints and dismisses all lower ranking procurators. The Procurator General takes an oath of office pledging to uphold the country's Constitution and laws, as well as "to protect human and citizen's rights and freedoms as well as the interests of the society and the state protected under law."³⁸

By statute, procurators must be free of all potential conflicts of interests: they cannot hold elected office, work for regional or local governments or engage in entrepreneurial activity, although they are permitted to teach and engage in research.³⁹ In addition, procurators may not inform regional and local officials of their activity,

36. See BURNHAM ET AL., *supra* note 32, at 137.

37. This provision seems to suggest that the Council of the Federation may act as a deliberative body and need not automatically confirm the President's nominee. Article 129 on the Procuracy is located within the Constitution's Section 7 on judicial power, even though the Procuracy is neither a judicial body nor a mechanism of local self-government, which is the topic of the subsequent article.

38. Procuracy Law, art. 12.

39. Procuracy Law, arts. 1, 4.

except as required by law.⁴⁰ The Procurator General directs procurators in the regions and cities, specialized procurators for environmental protection and transport, and military procurators.⁴¹

Procurators generally enjoy a fair amount of discretion in deciding what matters to investigate and how to prosecute them. While the Law on the Procuracy offers some guidance on prosecutorial discretion, it is vague.⁴² At times, the Procurator General has reined in this discretion through orders and decrees.

The Procuracy tries to recruit lawyers with practical experience and governmental experience. All procurators must be at least 25 and eligible to enter state service (for example, a procurator cannot have been convicted of a crime). The Procuracy also has certain rules aimed at preventing nepotism.

The Procuracy encourages its procurators and investigators to enter training programs that it provides to enhance their skills, acquaint them with new technologies and help develop *esprit de corps*. Professional education likely encourages promotion from within and retention.

For all its independence, professionalism and concern with human rights on paper, the reality has always been different. Professor Boim's observations about the Procuracy from the 1970's remain largely true today:

The *Prokuratura* [eds.: Procuracy] is neither prepared nor designed—by law, by Party decisions or its own principles or structure of responsibility—to defend the citizens against the State and the Government, even in cases of clear violation of explicit laws or civil rights. As a part of the state apparatus, it constitutes an instrument of the regime, not of justice. Like the other state and public institutions, the *Prokuratura* depends upon the Party in all its actions, acts

40. Procuracy Law, art. 5 (stating that “procurators and [their] investigators are not bound to provide any explanations on the merits of the cases and materials on which they are conducting proceedings or to present them to anybody to familiarize himself with them, except as in cases and in accordance with the procedure provided by federal legislation”).

41. The Investigatory Committee has been organizing “working groups” across organizations in what some have characterized as a purge of corrupt civilian and military officials. See Victor Akhmedzjanov, *Strife*, NOVAYA GAZETA, July, 2008, at 10. (noting the importance of working with other organizations to combat corruption).

42. Certain substantive and territorial jurisdictional matters are covered by CPC Articles 31, 32, and 37(6). CPC Articles 37(3), (4) and (5) discuss how investigators and inquiry officers properly perform their duties as required by law.

under the Party's oversight,⁴³ and is accountable to the Party for its day-to-day activities.⁴³

As we explore in Part Two, the Procuracy increasingly answered to the President rather than to the Constitution and the law, just as the Soviet Procuracy obeyed the Communist Party.

B. Oversight

As an institution, the Russian Procuracy is supposed to function like an "inspector general" for federal ministries, agencies, criminal investigations and prosecutions.⁴⁴ The Procuracy may initiate an examination (*proverka*) of governmental bodies and may take formal legal actions, such as making an oral warning (*predosterezhenie*), or issuing a written complaint (*predstavlenie*), protest, or decree (*postanovlenie* or *protest*).⁴⁵ In carrying out this oversight function, the Procuracy enjoys the power of subpoena for witnesses, documents, medical records and other evidence. The Procuracy may hold individuals criminally liable if they fail to comply with its complaints. While other agencies may conduct preliminary criminal investigations, the Procuracy is responsible for overseeing all criminal investigations, and only the Procuracy may bring criminal cases to court.

As in Soviet times, some Russian citizens look to procurators to defend their rights with governmental authorities. Matters where individuals approach the Procuracy as an ombudsman typically involve complaints about employment conditions, housing, pensions or the failure of low-level officials to perform required actions without a bribe. Thus, the Procuracy serves a kind of "legal aid" function.

43. LEON BOIM & GLENN R. MORGAN, *THE SOVIET PROCURACY PROTESTS: 1937-1973* (1978).

44. Procuracy Law, art. 1(2). *See also* Procurator General Home Page, <http://www.genproc.gov.ru>. The principal responsibility of the Procuracy is to ensure that state personnel, including judges, follow applicable law.

45. Procuracy Law, arts. 21(2), 22(4) and 27(2). The Procuracy Law replaced an outdated law on the Procuracy. The new Procuracy Law deals with a range of subjects including the Procuracy's structure, investigative and trial functions, cadres and other relevant topics. *See also* a Russian language version of the current law at <http://www.consultant.ru/popular/prosec>.

In 2000, the Procuracy handled over 300,000 citizen complaints.⁴⁶ The scope of Procuracy investigations may be broader, such as investigating the failure of certain state agencies in the Chernobyl' disaster,⁴⁷ but such investigations are infrequent. Usually citizen complaints receive little attention from senior governmental authorities, so long as the complaints are not of a political nature or mass character, *e.g.* a large number of workers seeking to negotiate with their employers collectively. If supervisors need additional instructions, they contact superiors in Moscow or other regional offices.⁴⁸

C. Investigation and Prosecution

Historically, the Procuracy played a far more dominant role than the judiciary or defense counsel in criminal cases. This dominance was due in part to the Procuracy's unique supervisory role,⁴⁹ but more importantly to the Procuracy's almost complete control over the preliminary investigation before trial, to the exclusion of the judiciary or defense counsel. As in other civil law countries, Russia followed an inquisitorial or investigative model, rather than the adversarial or accusatorial model of the common law tradition.

46. BURNHAM ET AL., *supra* note 32, at 140 (citing Peter H. Solomon, Jr., *Judicial Power: Through the Prism of Administrative Justice*, 38 *LAW & SOCIETY REV.* 1 (2004)).

47. *See, e.g., Chernobyl-Related Bureaucrats Summoned by Procurator*, *IZVESTIYA*, May 8, 1991, at 1 (discussing USSR Procurator General's initiation of a criminal investigation into neglect of duties by government officials in charge of efforts to deal with the after-effects of the catastrophe); O. Yegorova, *Where has the Chernobyl Money Gone?*, *KOMSOMOLSKAYA PRAVDA*, June 13, 1991, at 2 (discussing criminal investigation led by the USSR Procurator General into alleged improper use of funds earmarked for Chernobyl-related purposes); and Olga Solodova, *Russia to Prosecute Those Guilty of Breaking Law on Chernobyl*, *ITAR-TASS*, November 28, 1996 (discussing actions taken by the Procuracy in Bryansk Oblast to ensure that compensation funds went to the persons entitled to them).

48. The central authorities are unlikely to intervene on matters that are neither financially significant nor politically sensitive. For a list of the Procuracy's regional offices, *see* <http://www.genproc.gov.ru/ru/structure/subjects/> and http://www.genproc.gov.ru/ru/structure/subjects/index.shtml?district_id=6&subject_id=&image.x=47&image.y=12.

49. Many scholars translate the word *nadzor* as "supervision," but in most cases "supervision" implies a higher level of involvement than what actually occurs. "Oversight" or "monitoring" more accurately describes the Procuracy's role over other state bodies. Nonetheless, if the Procuracy determines that another state body is not performing properly and does not get cooperation to remedy the problems, it may take a more active role, including proposing possible personnel changes or the reassignment of duties.

But because of systemic problems in the Soviet inquisitorial model, the 1993 Constitution and the 2001 Criminal Procedure Code pronounced an entirely new premise: that criminal cases should reflect “adversarial principles” and “equality of the parties.”⁵⁰ Tellingly, the Criminal Procedure Code states, “a court is not an organ of criminal prosecution.”⁵¹

When a crime occurs, an investigator (*sledovatel'*) begins a preliminary investigation. The police within the MVD carry out the overwhelming majority of preliminary criminal investigations (*sledstviie*) or inquiries (*doznaniiie*) on minor matters. Other security agencies, such as the FSB, also conduct preliminary criminal investigations. The Procuracy has also exercised oversight over the investigations of other law enforcement agencies, including those of the MVD and FSB. A criminal investigator is required to be a lawyer; this person can subpoena witnesses and issue orders for some searches, seizures and documents. In theory, these criminal investigators collect both incriminating and exculpatory evidence and behave in an objective and impartial way.

The reality is more sobering. Not all criminal investigators are lawyers, and they often fail to look for exculpatory evidence.⁵² While the Criminal Procedure Code invests the courts and defense counsel with more rights than they had in the Soviet era, the criminal investigators still have wide-ranging powers to conduct interrogations, searches and seizures and to detain suspects for up to forty eight hours without a judicial order.⁵³

Courts may largely rely on the criminal investigators' case files or dossiers as evidence of guilt. While in common law courts, the trial is the central event in a criminal case, in the investigative or inquisitorial model, the courts may base their judgments mainly on the case files.⁵⁴ Under Criminal Procedure Code Article 240(1), judges must subject documents in the dossier to “first hand exami-

50. Konstititsiia Rossiiskoi Federastii [Russian Constitution] art. 123(3) and Ugolovno-Protssessual'nyi Kodeks RF [Criminal Procedure Code] art.15.

51. Criminal Procedure Code art. 15(3). See BURNHAM ET AL., *supra* note 32, at 467-547; See also William Burnham & Jeffery Kahn, *Russia's Criminal Procedure Code Five Years Out*, 33 REV. OF CENT. AND E. EUR. L., 2008, pp. 1-93, available at <http://ssrn.com/abstract=1011821> (pointing out that pronouncement of adversarial norms has not changed inquisitorial norms much, with the procurators still wielding great power both at the investigatory and trial stages).

52. BURNHAM ET AL., *supra* note 51, at 469.

53. *Id.* at 470-71.

54. *Id.* at 479-84.

nation,” but the case file documents are presumptively correct. In fact, the case files were so authoritative that procurators in the past would often not appear in court at all, simply letting the case file “speak for itself.”

While the basic timeframe for preliminary investigations is two months, an investigator may request extensions, and there is no stated limit.⁵⁵ At the end of a preliminary investigation, the investigator must either present charges or drop them. A crime victim may appeal a failure to bring charges.

Once investigators complete preliminary investigations, they turn the case files over to procurators and the investigators may no longer be involved in the cases. The Procuracy is required to review case files carefully and file cases within five days.⁵⁶ As this description makes clear, the power of the criminal investigator rivals, or even overshadows, that of the procurator who appears in court with a presumptively correct case file.

D. International Standards that Apply to the Procuracy

The Russian Constitution recognizes universally-recognized international law norms and treaties as binding. Article 15(4) states that in the event of a conflict between domestic law and an international treaty to which Russia is a party, the international treaty applies.⁵⁷ Russia became the thirty ninth member of the Council of Europe (COE) on February 28, 1996 and ratified the European Convention on Human Rights in 1998.⁵⁸ To date, Russia has ratified or acceded to forty nine Council of Europe treaties and con-

55. Criminal Procedure Code art. 133.

56. Criminal Procedure Code art. 221.

57. Some legal scholars, such as George Ginsburgs, have noted that while Russia has participated in the Council of Europe’s International Court of Human Rights, the extent to which Russian authorities will allow international law obligations to override domestic law remains uncertain. *See* GEORGE GINSBURGS, FROM SOVIET TO RUSSIAN INTERNATIONAL LAW STUDIES IN CONTINUITY AND CHANGE (LAW IN EASTERN EUROPE) 1-146 (1998).

58. Council of Europe, The Russian Federation and the Council of Europe, http://www.coe.int/T/E/Com/About_Coe/Member_states/e_ru.asp#TopOfPage (last visited Jul. 29, 2007).

ventions.⁵⁹ Thus, Russian law incorporates many COE standards and agreements.

In 2000, the COE's Committee of Ministers adopted Recommendation 19 on public prosecutions in the criminal justice system,⁶⁰ which sets forth universal standards for member countries.⁶¹ Subsequently, the COE sent a fact-finding team to Russia to ascertain whether the Procuracy conformed to COE standards.

Using its Recommendation 19 as a benchmark, the COE issued a formal Opinion⁶² whose conclusions deserve considerable weight. While the 2005 Opinion notes that there have been reforms, it states:

[T]he overwhelming impression remains of an organization which is still too big, too powerful, not transparent at all, exercises too many functions which actually and potentially cuts across the sphere of other State institutions . . . but which nevertheless, despite its powers, remains vulnerable to presidential and other political power *As it stands, the system does not seem to comply with Recommendation (2000) 19 and raises serious concerns of compatibility with democratic principles and the rule of law. [Eds.: italics added]*

The Opinion recommends that the courts and the national ombudsman should take over the Procuracy's general oversight role.⁶³

59. Council of Europe, Statistics on Signatures and Ratifications, <http://conventions.coe.int/Treaty/Commun/ListeStats.asp?PO=RUS&MA=999&CM=17&CL=ENG> (last visited Jul. 29, 2007).

60. Council of Europe, Recommendation (2000) 19, <http://www.legislationline.org/legislation.php?tid=105&lid=5248>. (last visited Aug. 15, 2007).

61. *Id.*

62. European Commission for Democracy Through Law, Opinion on the Federal Law on the Prokuratura (Prosecutor's Office) of the Russian Federation, Opinion No. 340-2005, CDL-AD(2005)014, available at [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)014-e.pdf](http://www.venice.coe.int/docs/2005/CDL-AD(2005)014-e.pdf) (last visited Aug. 22, 2007).

63. Ombudsman of the Russian Federation Home Page, <http://ombudsman.gov.ru/> (last visited Aug. 3, 2007). See also Editorial, *Russia Needs a Bolder Ombudsman*, MOSCOW TIMES, Nov. 29, 2000, at 8, available at <http://www.moscowtimes.ru/stories/2000/11> (noting that then-Russian Ombudsman Oleg Mironov indicated that his office would not accept complaints directed at President Vladimir Putin). Mr. Vladimir Lukin seems to have adopted a similar policy, choosing to focus on issues such as prison and labor conditions, subjects that the Russian President will consider. See *President Vladimir Putin meets with Russian Human Rights Ombuds-*

It emphasized that the Procuracy should prosecute criminal offenses and defend the public interest in the criminal justice system, and that is all. It urges that all other functions should be in separate institutions.⁶⁴

Furthermore, since many NGOs have institutional relationships with these entities, their views are also important.⁶⁵ Human Rights Watch joined with other human rights groups to criticize Russia for failing to uphold COE standards when Russia assumed the Chairmanship of the Council of Europe. The human rights organizations observed:

...the procurator's office routinely fails to promptly, thoroughly, impartially and effectively investigate allegations of human rights abuses We believe that the Russian government should swiftly undertake a comprehensive process leading to a thorough overhaul of the office of the procuracy, in line with European standards and thereby allowing for access to effective redress and accountability for human rights violations.⁶⁶

man Vladimir Lukin, JOHNSON'S RUSSIA LIST, Apr. 3, 2007 (citing from www.kremlin.ru). <http://www.cdi.org/russia/johnson/2007-80-14.cfm>.

64. European Commission for Democracy Through Law, *supra* note 62, at art. 75.

65. See Council of Europe's Commission for Human Rights, http://www.coe.int/t/commissioner/default_EN.asp (last visited Nov. 5, 2007) (containing materials describing the state of the rule of law in Russia); OSCE and the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights' Home Pages, respectively, <http://www.osce.org/odihr/> (last visited Nov. 5, 2007) (containing materials describing the state of the rule of law in Russia). In addition, various non-governmental organizations and the U.S. Department of State monitor the degree to which governments, including Russia, observe international and domestic norms and standards in the human rights and rule of law areas. See generally AMNESTY INTERNATIONAL REPORT 2008: THE STATE OF THE WORLD'S HUMAN RIGHTS, RUSSIAN FEDERATION (2007), <http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Russian-Federation>; FREEDOM HOUSE, COUNTRY REPORT: RUSSIA (2006), <http://www.freedomhouse.org/template.cfm?page=22&country=7044&year=2006>; HUMAN RIGHTS WATCH, WORLD REPORT FOR 2007 405-410 (2007), <http://www.hrw.org/wr2k7/wr2007master.pdf>; HUMAN RIGHTS WATCH, COUNTRY SUMMARY: RUSSIA (2007), <http://hrw.org/wr2k7/pdfs/russia.pdf>. See also DEPARTMENT OF STATE'S BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES IN RUSSIA (2007), <http://www.state.gov/g/drl/rls/hrrpt/2006/78835.htm>.

66. Press Release, Human Rights Watch, As Russia Takes Over the Chair of the Council of Europe It Must Show Respect for Human Rights (May 19, 2006), available at <http://hrw.org/english/docs/2006/05/19/russia13423.htm>.

Important institutional changes in the Procuracy in the early 1990's diminished its power over the courts and defense counsel and made it accountable to the Council of Europe. As Part Two explores, however, the Procuracy has not become more accountable to law.

IV. PART TWO: POLITICAL ABUSE OF THE PROCURACY

The Procuracy functions today much as it did in the Soviet past. In cases of street crime and crimes not touching the elite's economic and political interests, the Procuracy functions appropriately, as scholars Peter H. Solomon, Jr. and Kathryn Hendley discuss.⁶⁷ But in cases treading on government interests and those of high-level officials, who reportedly control the "commanding heights" of the Russian economy,⁶⁸ the Procuracy reflects the interests of the Presidential Administration and the elites within it. In high stakes cases of political and economic importance, the Procuracy (1) selectively fails to investigate; (2) selectively prosecutes; (3) facilitates expropriation of private property; and (4) leads illusory anti-corruption efforts.

While we provide "hard" evidence for some of these propositions, we must rely on "soft" data as well. The Russian government, including the Procuracy, is not transparent; in many instances, we can only surmise official abuse. Indeed, information on corruption is limited in scope and reliability, in part because

67. Peter H. Solomon, Jr. finds that the Russian judicial system has had greater accountability of judges and other personnel to the central authorities in recent years. The important question that remains is to the nature of the cases, and ultimately, to whom is the system most accountable? See Peter H. Solomon, Jr., *Threats of Judicial Counterreform in Putin's Russia*, in REMAKING THE ROLE OF LAW: COMMERCIAL LAW IN RUSSIA AND THE CIS 1 (Kathryn Hendley ed., 2007); See also Kathryn Hendley, *Assessing the Rule of Law in Russia*, 14 CARDOZO J. INT'L & COMP. L. 347 (2006); Kathryn Hendley, *Business Litigation in the Transition: A Portrait of Debt Collection in Russia*, 38 LAW & SOC'Y REV. 305 (2004).

68. See ASLUND, *supra* note 10, at 250–63 and 277–88 (contrasting the tendency of some to focus primarily on the role of state officials and their allies of dominating the economy with data suggesting that thirty oligarchic groups control nearly 25% of the country's economy). Dr. Aslund and Michael Spector contend that many of the officials who control the Russian economy are old KGB friends of President Putin. See Michael Spector, *Kremlin Inc.: Why are Vladimir Putin's Opponents Dying?*, NEW YORKER, Jan. 29, 2007, at 50.

journalists investigating it have been killed.⁶⁹ But bearing these limitations in mind, we review plausible information reflecting the Procuracy's activity and inactivity.

A. Criminal Investigations

In many high profile cases, the Procuracy fails to investigate effectively. It has not solved any of the politically-motivated contract murders of recent years, such as that of journalist Anna Politkovskaya in 2007 or of Duma member Yuri Shchekochikhin in 2003.⁷⁰ It has also failed to seriously investigate the murder of Aleksandr Litvinenko in London in 2006. Mr. Litvinenko, a former FSB agent and harsh critic of President Putin, was apparently poisoned with radioactive polonium.⁷¹ The British government has charged Russian citizen, Andrey Lugovoi, who met with Mr. Litvinenko in London shortly before his death, and requested his extradition. It seems extremely likely that the polonium came from Russia and that at least some state officials played a part, as Russia is the world's largest polonium producer and the value of the polonium used was worth \$10-\$40 million. The Procuracy does not appear to have investigated the crime, which "only strengthens the suspicion that Lugovoi is deeply entangled in the Litvinenko murder and that the Russian authorities are covering up for him."⁷² That Lugovoi is now an elected member of the Russian Duma, enjoying legal immunity from criminal prosecution, further suggests government collusion.⁷³

69. For a web site on journalists in Russia, see Committee to Protect Journalists, Europe and Central Asia (2007), http://www.cpj.org/regions_07/europe_07/europe_07.html#russia (last visited August 13, 2007).

70. See *Russia: High-Profile Killings, Attempted Killings in the Post-Soviet Period*, RADIO FREE EUROPE/RADIO LIBERTY, Oct. 19, 2006, <http://www.rferl.org/featuresarticle/2006/10/d08564ab-85e6-4375-94ac-921638eab299.html>. Among many unsolved cases are those of Andrei Kozlov, Central Bank Deputy Chairman; Paul Klebnikov, American journalist covering corruption; Sergei Yushenkov, leader of an anti-Kremlin party; Galina Staravoitova, State Duma member; Vladislav Listyev, Russian Public Television head; and Dmitry Kholodov, a journalist who covered corruption in the military.

71. See TAYLOR, *supra* note 27, at 28–30 (discussing the Litvinenko murder).

72. TAYLOR, *supra* note 27, at 29 (citing Yevgeny Kiselyov, *Russophobia, Anglophobia and Lugovoi*, MOSCOW TIMES, July 13, 2007).

73. Matthew Moore & Adrian Blomfield, *Murder Suspect Lugovoi Elected Russian MP*, TELEGRAPH, Dec. 6, 2007, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/12/03/wrussia403.xml>.

The Procuracy has similarly never uncovered a single major financial crime of a high-level government official or oligarch in favor with the Kremlin. As Andrei Illarionov, President Putin's former economic adviser, has said:

[A] guiding principle of Russia's new economic [and legal] model is selectivity Politically, the corporate ideology may seem unclear: it does not look communist, or liberal, or nationalistic, or imperial. Instead, it is an ideology of "nash-ism," or in English, "ours-ism," in which subsidies, credits and powers are handed out to those who are "nashy" The point of the new model is to redistribute resources to "our own."⁷⁴

This failure to successfully investigate politically-motivated murders and serious economic crimes demonstrates that the Procuracy lacks the ability or motivation to solve criminal cases that touch on the interests of members of the ruling elite.

Aleksandr Anikin, the General Procuracy's Head of the Anti-Corruption Administration, noted that during Soviet times there were "sensational" prosecutions of high-level government officials but that this has not occurred in contemporary Russia. Instead the most prominent cases seem to be against regional officials who do not enjoy support within the Kremlin.⁷⁵

Many of the largest Russian enterprises are in the natural resources sector and generate profits from foreign export. It seems likely that money is being skimmed off and placed in foreign bank accounts by fraudulent means in some of these enterprises. There is a large and growing literature on international economic crime that implicates Russian criminal groups in corrupt enterprises and money laundering in and outside of Russia.⁷⁶ Lilia Shevtsova writes, "[t]he West has allowed itself to be used as a huge laundry

74. Andrei Illarionov, Op-Ed., *Russia Inc.*, N.Y. TIMES, Feb. 4, 2006.

75. Tatyana Natreba & Tatyana Kuznetsova, *Officials Under a Glass Roof! Deep Inside the Kremlin the Draft National Plan for Combating Corruption Is Almost Ready*, ARGUMENTY I FAKTY, Aug. 1, 2008 (interviewing Aleksandr Anikin, head of the Anti-Corruption Administration at the Russian Federation General Prosecutor's Office).

76. See, e.g., RAYMOND W. BAKER, CAPITALISM'S ACHILLES HEEL (Wiley 2005); CRITICAL REFLECTIONS ON TRANSNATIONAL ORGANIZED CRIME, MONEY LAUNDERING AND CORRUPTION (Margaret E. Beare ed., Toronto Press 2003), PETER REUTER & EDWIN M. TRUMAN, CHASING DIRTY MONEY: THE FIGHT AGAINST MONEY LAUNDERING (Institute for International Economics 2004); See generally ROMAN KUPCHINSKY, CRIME, CORRUPTION & TERRORISM WATCH (formerly a regular report of Radio Free Europe/Radio Liberty).

machine for Russian capital.”⁷⁷ If it is true that some government-owned entities in the natural resources sector do not operate lawfully, then either the Procuracy is failing to investigate through incompetence, willful blindness, corruption or several of these factors.

Forbes magazine’s annual list of billionaires for 2008 included 87 Russian citizens, 7 of whom apparently live abroad.⁷⁸ According to *Forbes*, Russia has more billionaires than any other country except the United States. In 2008, *Forbes* identified 33 more Russian billionaires than in 2007,⁷⁹ which was 19 more than in 2006.⁸⁰ The worldwide price of energy and the appreciation of the ruble against the dollar partially explain this rise.⁸¹

Notably, until 1997, there were no Russian billionaires on the list.⁸² For context, *Forbes* 2008 report provided details on 1,062 billionaires, with a range from \$1 billion to \$62 billion in personal holdings. At the top of the Russian list is Russian aluminum magnate Oleg Deripaska, with more than \$28 billion;⁸³ last year, Roman Abramovich had the highest net worth, with \$18.7 billion (and

77. SHEVTSOVA, *supra* note 26.

78. *Special Report: The World’s Billionaires*, FORBES, Mar. 5, 2008, available at http://www.forbes.com/lists/2008/10/billionaires08_The-Worlds-Billionaires_CountryOfCitizen.html.

79. *Id.*; See also Maria Rozhkova & Mikhail Overchenko, *87 Russians Made It To The Forbes List*, VEDOMOSTI, Mar. 7, 2008, at B1; Max Delany, *Record 87 Russians on Forbes Rich List*, MOSCOW TIMES, Mar. 7, 2008.

80. *Number of Russian Billionaires Grows Ten-Fold in Decade—Official*, ITAR-TASS, Mar. 26, 2008. See also *Too Many Billionaires in Russia—Stepashin*, INTERFAX, Mar. 26, 2008 (discussing how Accounting Chamber Chairman Sergei Stepashin considered the rise of Russian billionaires as evidence of destabilizing economic inequities).

81. See WORLD BANK RUSSIAN COUNTRY OFFICE, RUSSIAN ECONOMIC REPORT—NOVEMBER 2007 (2007), available at http://siteresources.worldbank.org/INTRUSSIANFEDERATION/Resources/RER15_Eng.pdf.

82. Nikola Krastsev, *Russia: Youthful Billionaires Storm “Forbes” List*, RADIO FREE EUROPE/RADIO LIBERTY, Mar. 9, 2007, <http://www.rferl.org/content/Article/1075155.html>. www.rferl.org.

83. In April 2007, Mr. Deripaska was stripped of his U.S. visa—apparently in connection with his alleged ties to the Russian criminal world. Jeffrey H. Birnbaum & John Solomon, *Aide Helped Controversial Russian Meet McCain; Davis, Then a Lobbyist, Has Spurred Debate in Reform-Focused Campaign*, WASH. POST, Jan. 25, 2008, at A1; Andrew E. Kramer, *Out of Siberia, A Russian Way To Wealth*, N.Y. TIMES, Aug. 20, 2006, at 1; See also *Oleg Deripaska Stripped Off [sic] U.S. Visa*, KOMMERSANT, Apr. 20, 2007, http://www.kommersant.com/p-10583/r_500/Deripaska_U.S._visa; Catherine Belton & John Reed, *Russian “Rockefeller” Eyes Foreign Expertise*, FIN. TIMES, Aug. 10, 2007, at 23.

\$23.5 billion in this year's ranking). While it is unclear how accurate *Forbes'* tally is, there is unquestionably a group of exceptionally wealthy individuals in Russia.

In 2007, Luisa Kroll, one of the list's authors, noted that the Russian billionaires did not fit the typical categories of "inherited" or "self-made" wealth,⁸⁴ although the report characterizes their fortunes as "self-made."⁸⁵ While *Forbes* identifies no federal governmental officials as "billionaires," it does name several legislators and local officials. According to the Russian newspaper *Vedomosti*, Russia's billionaires are the youngest from any major country, having an average age of 46, in contrast with an average global age of 64.⁸⁶ On the one hand, it is indeed possible that only more youthful individuals possessing greater market knowledge would excel in an economy undergoing rapid privatization—but there are other explanations as well.⁸⁷

The *Forbes* data indicate that the majority of these young billionaires started in the natural resources sector and accumulated their wealth in a very short time, a significant feat given how difficult the economic conditions were in Russia in the 1990's. It seems extremely unlikely that these individuals could have made these sums in such a short time without the right connections in government. Agreements to act as undisclosed agents for corrupt officials probably played a role for several.⁸⁸ While government

84. Marina Pustilnik, *A New Way to Beat the Summer Doldrums*, MOSCOW TIMES, July 13, 2007 and data taken from Special Report, *supra* note 78. *But see* Vaid Samodurov, Bill Gates from Kamenshchina, July 17, 2008. <http://www.argumenti.ru/publications/7296>. Not surprisingly, there are exceptions to all rules: Vladimir Yevtushenkov is believed to have in excess of a billion dollars. His wealth is a result of activities in communications and other high-technology areas. He may be the only Russian billionaire who did not become wealthy as a result of his gaining control over natural resources or due to political connections—over time more are almost certain to join him.

85. *Id.*

86. Maria Rozhkova & Mikhail Overchenko, *87 Russians Made it to the Forbes List*, VEDOMOSTI, Mar. 7, 2008, at B1.

87. *See* SHEVTSOVA, *supra* note 10 at 10-11 and 154-59.

88. According to an Itar-Tass report, in 2006 the MVD and the Russian Tax Service prevented approximately 8,000 "fly by night" companies from being registered. *Creation of Over 8,000 Fly-by-Night Companies Averted in Moscow*, ITAR-TASS, Feb. 21, 2007. There is no way to estimate the number of such entities that were successfully registered in Russia or abroad. Indeed, it is possible to purchase a pre-formed legal entity in many jurisdictions merely by calling a company that offers such services, providing the infor-

officials are required by law to disclose their income, it is likely that some officials use their state positions for corrupt purposes and misrepresent their assets.⁸⁹ Indeed, Procurator General Chaika asserted that about 100,000 Russian government officials have been implicated in unlawful conduct, including failure to submit tax declarations or submission of false ones. He said in early 2008 that these officials “had to put their affairs in order” or face legal consequences.⁹⁰

A recent *Time* magazine article, naming President Putin “Person of the Year,” gave another description of how official corruption works. The unnamed source told the magazine that a prospective regional governor must make illicit payments to political bagmen in Moscow to get Kremlin approval for the job. For wealthy regions, the prospective governor must raise \$20 million from corporate “sponsors” who will expect preferential treatment in return for their contributions. According to the article, “[t]he amount of money flowing to kingmakers in the Kremlin...is staggering.”⁹¹

Stanislav Belkovsky, a Russian political analyst with close Kremlin ties, gave sensational interviews in November 2007 to *Die Welt* and *The Guardian* stating that President Putin is worth approximately \$40 billion, as the beneficial owner of 37% of Surgutneftegaz (\$18 billion), 4.5% of Gazprom (\$13 billion) and half of a Swiss-based oil trading company, Gunvor (\$10 billion), run by a former St. Petersburg KGB agent.⁹² If these allegations are true, this fortune would make him the richest person in Europe and one of the ten wealthiest in the world. They would also make him one of the most corrupt.⁹³

While it is impossible to know whether these claims about President Putin are true or false, there is increasing evidence that some

mation requested, and paying fees and registration costs. Companies offering these services often provide nominee directors at an additional charge.

89. See SHEVTSOVA, *supra* note 10 at 10-11 and 154-59.

90. *Some 100,000 Russian Govt Officials Unlawfully Involved in Business Activities—Prosecutor*, INTERFAX, Feb. 19, 2008.

91. Adi Ignatius, *Person of the Year: Vladimir Putin, Tsar of the New Russia*, TIME, Dec. 31, 2007, at 60.

92. Luke Harding, *Putin, the Kremlin Power Struggle and the \$40bn Fortune*, GUARDIAN, Dec. 21, 2007, available at www.guardian.co.uk.

93. Anders Aslund, *Unmasking President Putin's Grandiose Myth*, ST. PETERSBURG TIMES, Jan. 2, 2008 (“If these numbers contain any truth, Putin would be the most corrupt political leader in world history, easily surpassing Ferdinand Marcos of the Philippines and Zaire’s Mobutu.”)

Russian government officials close to President Putin have offshore holdings worth billions of dollars.⁹⁴ In November 2007, *The Wall Street Journal* reported that Russian Minister of Telecommunications Leonid Reiman, formerly of the St. Petersburg KGB, allegedly owns billions in Russian telecommunications assets through sham corporations in the British Virgin Islands. In a letter from the BVI Director of Public Prosecutions to the U.S. Department of Justice, the Public Prosecutor stated that there is “overwhelming evidence” that Minister Reiman secretly owns a large share of Russia’s telecommunications industry through IPOC International Growth Fund Ltd., a suspected BVI money laundering vehicle. BVI prosecutors requested help from the U.S. Department of Justice because shell corporations are registered in Delaware, Kentucky and other states.⁹⁵ An earlier Swiss arbitration panel found that Mr. Reiman held beneficial ownership worth billions of dollars in Russian telecommunications assets.⁹⁶ IPOC apparently cited the results of an investigation by the Russian Procuracy last year that cleared it of money laundering and found no evidence that Mr. Reiman had abused his position.⁹⁷

It is impossible that any billionaires’ club could exist in Russia without official blessing. Given what we know about Russia’s economic and political culture, it is reasonable to think that at least a few of the billionaires made their fortunes corruptly. It is striking that the Procuracy has not publicly investigated or prosecuted

94. Pursuant to Section 312 of the U.S.A. Patriot Act of 2001, if proceeds from foreign corruption enter the U.S. banking system, they may be regarded as “laundered funds” by U.S. law enforcement and regulatory authorities, thereby giving rise to criminal prosecutions of individuals, including foreign nationals who do not enjoy immunity from prosecution in the U.S., as incorporated at 31 U.S.C. § 5318(i). See Financial Crimes Enforcement Network, U.S. Dept. of Treasury, Fact Sheet, Dec. 2005, <http://www.fincen.gov/312factsheet.html>.

95. Glenn R. Simpson, *Russian Regulator Under Fire, Virgin Islands Says Evidence Points to Telecom Holdings*, WALL ST. J., Nov. 14, 2008, at A8.

96. Stephen Fidler, *Bermuda Seeks to Liquidate Russian-Linked Companies*, FIN. TIMES, Feb. 12, 2007, available at http://www.ft.com/cms/s/0/99a9d07c-bae1-11db-bbf3-0000779e2340.html?nclick_check=1.

97. Catherine Belton & Stephen Fidler, *US Told of “Evidence” on Russian Minister*, FIN. TIMES, Nov. 15, 2007; see Anders Aslund, Op-Ed., *Unmasking President Putin’s Grandiose Myth*, ST. PETERSBURG TIMES, Jan. 2, 2008; see also Robert Amsterdam, Russia’s Offshore Telecom Corruption Case, Nov. 15, 2007, http://www.robertamsterdam.com/2007/11/russias_offshore_telecom_corru.htm. Robert Amsterdam, an attorney representing Mikhail Khodorkovsky, maintains this website.

any of these billionaires.⁹⁸ This suggests that while the Procuracy is free to investigate and prosecute routine criminal matters, it is strictly controlled regarding investigation of criminal activity among the ruling elite.

B. Instrument to Punish Critics and Protect Allies

The Procuracy has brought selective prosecutions against regional political opponents and noncompliant oligarchs who owned natural resources and media outlets. Putin's allies do not receive similar scrutiny.⁹⁹ According to Lilia Shevtsova of the Carnegie Endowment for International Peace, President Putin's drive to reduce the power of regional officials started shortly after taking office:

Outwardly, the clean-up of regional governments could resemble a return to legality because many of the governors Putin's people went after were corrupt or guilty of other serious misconduct. But the Kremlin's "cleanup policy" in the regions had nothing to do with the rule of law. Moscow was using the courts [*eds:* and procurators] in the name of political expediency to support Kremlin loyalists and weaken independent politicians and the Kremlin's foes. The Kremlin even had a list of leaders to be discredited, details of timing and method and names of the courts responsible for passing sentence on them. In other cases, the courts did clear away corrupt politicians. But in other cases they moved, under pressure from Moscow, against the political opponents of the center. The court system was turning into an appendage of the executive branch, as it had been in the Soviet era.¹⁰⁰

98. Stanislav Belkovsky argues that President Putin chose Mr. Medvedev as his successor precisely "because one of the most important problems for the Putin government has not yet been solved—namely the legalization of the Russian politico-economic elite, its capital, in the West. Precisely for that reason Putin was forced to stake on a candidate with the image of a liberal, who will have a certain *carte-blanche* from and credit of trust with the West." Jonas Bernstein, *Stanislav Belkovsky: Putin Will Leave Power Completely*, EURASIA DAILY MONITOR, Nov. 19, 2007.

99. Lyudmila Alexandrova, *Russian Government Heads May Roll, but Not Earlier than March 2007*, ITAR-TASS, Nov. 27, 2006. The Russian state-controlled GAZPROM can rely on the Russian government to look out for its interests. *See also* Lyudmila Alexandrova, *Gazprom Takes Over Sakhalin-2, While Sakhalin-1 is Under Scrutiny*, ITAR-TASS, Apr. 19, 2007.

100. SHEVTSOVA, *supra* note 10, at 125.

The Procuracy selectively prosecuted corrupt officials whom the government disfavored. Vladivostok's former mayor fits this description,¹⁰¹ as does the mayor of Volgograd.¹⁰² By contrast, Moscow Mayor Yuri Luzhkov is well placed enough that he has engaged in extremely questionable activities for more than ten years without legal challenge.¹⁰³

A key element of President Putin's strategy to "clean-up" regional government was to deprive governors of their seats in the Federation Council.¹⁰⁴ Under the Russian Constitution, a seat in Parliament carries with it immunity from criminal prosecution.¹⁰⁵ Once governors lost their immunity, they were vulnerable to the threats of investigation and prosecution, and then more likely to comply with the Kremlin's wishes. The Procuracy also threatened disobedient oligarchs with expropriation and criminal prosecution. "The highly charged prosecution of Mikhail Khodorkovsky and government's renationalization of Yukos and legal maneuvers to squeeze Western oil and gas companies out of business deals...signal a plan for the reassertion of state control over Russia's premier economic assets."¹⁰⁶

Just as the Procuracy wields the prosecutorial sword, it holds the prosecutorial shield: the ability to stop undesirable investigations and prosecutions. The apparent decision not to investigate Russia's many disclosed billionaires is one way the Procuracy protects the powerful. Another more specific example involves the long-

101. *Court Turns Down Prosecution Appeal in Ex-Vladivostok Mayor Case*, ITAR-TASS, July 17, 2007. *See New Case Opened Against Ex-Mayor of Vladivostok*, ITAR-TASS, July 31, 2007.

102. Igor Kalenich, *Volgograd Regional Court Upholds Mayor's Extended Custody*, ITAR-TASS, Aug. 15, 2006.

103. Anna Rudnitskaya, *Moscow Mayor Through the Eyes of a Historian*, MOSCOW NEWS, Jan. 19, 2005. Of course, when there are anti-corruption efforts, they are seldom directed against a figure as powerful as Mayor Luzhkov. *See 500 Facts of Corruption Exposed in Moscow This Year*, ITAR-TASS, Aug. 8, 2007.

104. Federal Law, "O Poryadke Formirovaniya Soveta Federatsiya Federal'nogo Sobrahanie Rossiiskoi Federatsii," [On the Process for the Formation of the Council of the Federation of the Russian Federation], No. 113-F3, August 5, 2000, available at <http://law.edu.ru/norm/norm.asp?normID=1179162>. *See also*, C. Ross, *supra* note 15 at 38-41 (describing the reduction of the power of the governors of the Russian Federation).

105. Konstitutsiia Rossiiskoi Federatsii [Russian Constitution] art. 98.

106. Smith, *supra* note 25, at 10.

running corruption saga of the *Tri Kita*, or Three Whales, furniture store.¹⁰⁷

C. The Three Whales Corruption Scandal

The Three Whales corruption case started in August 2000 when customs inspectors seized a consignment of furniture. The customs inspectors alleged that the owners of the furniture store had evaded \$5 million in customs duties by falsifying the price and weight of imported goods. In October, an MVD inspector, Captain Zaitsev, filed a criminal case. It then became apparent that one of the owners of Three Whales was Yevgeny Zaostrovstev, a former FSB boss of the current FSB Director, Nikolai Patrushev, and the father of a current FSB Deputy Director, Yury Zaostrovstev. It further became apparent that Three Whales was not only smuggling furniture – it was smuggling weapons, oil and engaging in money laundering in the hundreds of thousands of dollars.

In retaliation for the inspection, the Procuracy charged MVD Captain Zaitsev with abuse of office, alleging that he had conducted searches without proper warrants, and then took over the investigation itself. On May 7, 2001, a Deputy Procurator closed the criminal investigation, citing lack of evidence. In September 2002, after a Moscow City Court found Captain Zaitsev not guilty, the Russian Supreme Court reversed, and sentenced him to two years' probation for abuse of office.

A leading investigative reporter and Duma member, Yury Shchekochikhin, launched a parliamentary inquiry into the case and published an article in *Novaya Gazeta* in June 2003, accusing the Procuracy of corruption. Captain Zaitsev had tapped the phones of the furniture store owners before his arrest and reportedly learned that the Three Whales owners had paid the Procuracy \$2 million to stop the investigation. Shortly after the article, Yury Shchekochikhin died of an "unknown allergen," a key witness was murdered in the hospital, and a third witness was severely injured in an assassination attempt.

In June 2006, Procurator General Vladimir Ustinov resigned. The press reported his resignation as punishment for the scandal's publicity. His penalty was not harsh, however. He became Minister of Justice, a less powerful but still prestigious post, later that

107. See Victor Yasmann, *Russia: Corruption Scandal Could Shake Kremlin*, RADIO FREE EUROPE/RADIO LIBERTY, Sept. 26, 2006.

month.¹⁰⁸ His successor, then acting Procurator General Chaika, reopened the Three Whales investigation and arrested nine businesspeople—and no government officials. (The trial of the businesspeople began in February 2008.) In July 2006, the Deputy Procurator General who had closed the Three Whales investigation resigned. When the FSB Director was on vacation, Procurator General Chaika dismissed nineteen employees from the FSB, Procuracy and Federal Customs Service who had been associated with the investigation. Analysts explain that the Three Whales case was resumed only because foreign intelligence agencies were involved.¹⁰⁹ According to media reports, of the initial two hundred volumes of evidence Captain Zaitsev collected, only twenty remain.¹¹⁰

In short, individuals at the Procuracy appear to have accepted bribes to close investigations; brought retaliatory charges against whistleblowers at the MVD; destroyed evidence to shield FSB allies; failed to investigate murders connected to this scandal, or worse; and now are prosecuting only the low-level actors. Despite high officials' apparent criminal activity, none have been prosecuted although several lost their jobs. In this high profile corruption case, the Procuracy appears to have protected highly placed allies and meted out punishment to critics with impunity.¹¹¹

108. Although it seems unlikely that Mr. Medvedev has a pressing desire to challenge policies put into place by Mr. Putin, in certain instances he has replaced officials appointed by the former president with individuals who will owe their positions to the new President. For example, he has appointed Aleksandr Konovalov the new Minister of Justice and relieved Vladimir Ustinov's former deputy Nikolai Savchenko of his position. See Ivan Petrov, *A Purge at the Justice Ministry: New Justice Minister Is Getting Rid of His Predecessor's People*, ROSBUSINESS CONSULTING DAILY, June 18, 2008, at 2.

109. *Id.*

110. *Id.*

111. Mr. Chaika has been quoted as describing the Procuracy's activities in this case as being an example of "commissioned criminal cases." The Procurator General allegedly stated, that "we inspected the Central Federal District and discovered that about 20 criminal cases had been initiated without any sufficient grounds." See *Yurii Chaika Admits [There Were] "Ordered Cases" by the Procuracy*, NOVOSTI ROSSII, Aug. 17, 2006. See also Andrei Sharov & Borish Yamshanov, *Evidence from the General Prosecutor: Yurii Chaika Answers Questions from Rossiyskaya Gazeta Readers*, ROSSIYSKAYA GAZETA, Aug. 22, 2006.

D. Role in Government Expropriations

The Procuracy has played a role in many *de facto* nationalizations of natural resources since 2000. There are probably many more cases of threatened and actual government expropriation than we know about. In theory, the Procuracy should prevent unlawful nationalization, and in cases where nationalization occurs, it should ensure that courts award compensation to the owner. Below are some of the most prominent examples of threatened or actual expropriation, without resort to the courts and without fair compensation.¹¹² It is difficult, if not impossible, to accurately estimate the value of the expropriated assets.

- BP-Amoco: The company acquiesced in a *de facto* expropriation of a large undeveloped Siberian Kovyta gas field [owned by TNK-BP (owner of Russia Petroleum)] to Gazprom under threat of having its production license withdrawn in 2006.¹¹³
- BP-TNK: The Russian government created numerous obstacles to the proper functioning of the joint venture, including refusing to grant visas to BP personnel.¹¹⁴
- Norilsk-Nickel: Mikhail Prokhorov was forced to sell his 26 percent stake in Norilsk Nickel to Kremlin ally Mikhail Potanin.¹¹⁵
- Royal Dutch Shell PLC: The company was forced to sell a portion of its rights to oil and natural gas in the Sak-

112. For a fascinating, detailed account of state expropriation in Sverdlovsk, including a discussion of the role of the courts, see Anna Politkovskaya, *How to Misappropriate Property with the Connivance of the Government*, in PUTIN'S RUSSIA: LIFE IN A FAILING DEMOCRACY 114-59 (2004).

113. Catherine Belton & Ed Crooks, *BP Submits to Kremlin Pressure and Hands Kovyta to Gazprom*, FIN. TIMES, June 23, 2007, at 1.

114. See Catherine Belton et al., *Russia to Speed Up TNK-BP Visas' Renewal*, FIN. TIMES, July 1, 2008, <http://www.ft.com/cms/s/0/454bf7f8-4898-11dd-a851-000077b07658.html>; Irina Bogdanova, *TNK-BP CEO Fined \$125 for Breaking Russian Labor Code Rules*, RIA NOVOSTI, June 23, 2008; *Joint Aversion: BP Demands \$352 Million from Russian TNK-BP Shareholders*, KOMMERSANT, July 7, 2008, http://www.kommersant.com/p909848/r_529/BP_demands_compensation_from_AAR/; Andrew Osborn & Guy Chazan, *BP Venture in Russia Hit as CFO Steps Down*, WALL ST. J., Aug. 5, 2008, at A-1.

115. Andrew E. Kramer, *Kremlin Flexes and a Tycoon Reels*, N.Y. TIMES, July 8, 2007, available at http://www.nytimes.com/2007/07/08/business/yourmoney/08nickel.html?_r=1&oref=slogin.

halin II Project to Gazprom, as well as to make certain other major financial concessions.¹¹⁶

- RUSSNEFT: The principal owner of Russia's 7th largest oil company is likely to lose control of the company due to alleged tax violations amounting to approximately \$800 million.¹¹⁷

- Sibneft: Gazprom acquired Sibneft from Roman Abramovich in 2005.¹¹⁸ Roman Abramovich allegedly intimidated Boris Berezovsky, then living in exile in London, into selling his shares in Sibneft, threatening that Gazprom would ultimately take over the company, which indeed occurred.¹¹⁹

- Tomskneft: Alleged embezzlement by an employee and tax evasion led to its auction—state controlled Rosneft was the winning purchaser.¹²⁰

- YUKOS: The forced sale of Russia's most successful and transparent oil company, estimated to have been worth \$100 billion, occurred for alleged tax violations. Imprisonment of its owners and several employees on criminal charges followed.¹²¹

116. Carola Hoyos, *A New Era of Nationalism in the New Seven Sisters*, FIN. TIMES, June 19, 2007, at 2.

117. Catherine Belton, *Glencore Makes a Move on RussNeft*, FIN. TIMES, Oct. 25, 2007, at 20; Catherine Belton, *Russia Starts to Pay Price for Its Energy Strategy*, FIN. TIMES, Apr. 21, 2008, at 4.

118. Toby Shelley, *Siberia Oil Field Helps Sibir Lift Output by 80%*, FIN. TIMES, Feb. 7, 2008, at 21.

119. Megan Murphy, *Russian Oligarchs Square up for £2bn Court Fight*, FIN. TIMES, Apr. 19, 2008, at 4. (Berezovsky sued Abramovich—who also lives in London, England—in connection with this transaction).

120. Catherine Belton, *Rosneft Set for Final Section of Yukos Jigsaw in South of Russia*, FIN. TIMES, June 15, 2007, at 13.

121. It will be years before definitive works on Yukos are produced by disinterested individuals, and even then, there will always be concerns about incomplete information. New York Times maintains an archive of its stories about Yukos, available at <http://topics.nytimes.com/top/reference/timestopics/organizations/y/yukos/index.html> (last visited Nov. 2, 2008). See also SHEVTSOVA, *supra* note 10, at 275-82; Catherine Belton, *Khodorkovsky Defense Seeks Chevron Subpoena*, FIN. TIMES, Aug. 31, 2007, at 21 (noting the Swiss Supreme Court's decision to reject the Russian Procuracy's request for legal assistance. This ruling described the Russian government's pursuit of Mr. Khodorkovsky as "politically motivated" and designed to "go after a class of rich oligarchs and push aside . . . political adversaries."); Clifford J. Levy, *Swiss Reject Request for Yukos Records*, N.Y. TIMES, Aug. 25, 2007, at A7 (characterizing the Swiss High Court's view of the Procuracy's actions as constituting an abuse of power); and Anton

The Yukos expropriation is especially important because the assets were so enormous; the Presidential Administration's and Procuracy's methods against Yukos, its owners and employees, so severe; and the prosecutions have had such symbolic impact both in Russia and abroad. Former economic adviser, Andrei Illarionov, characterized the seizure and reselling of Yukos' assets to Rosneft as "the biggest scam of 2006." He said, "this falls under the category of what people call the sale of stolen property."¹²² These actions against Yukos undermined property rights, discouraged investment and sparked capital flight.¹²³

Based on conversations with people in the energy sector, *Financial Times*' Catherine Belton writes:

The few remaining independent and foreign oil majors operating in Russia question how much further the state control drive will go. In a global energy environment of high prices and increasing clout by state-owned companies, 'not one asset that belongs to a major foreign corporation in Russia is free from the risk of being swallowed by a state company,' says Vladimir Milov, former Deputy Energy Minister. In four years, foreign oil majors have gone from nearly landing a significant stake in Yukos—which could have given direct access to nearly a quarter of Russia's oil reserves—to being squeezed on all fronts. 'The rules are clear if you want to be in the game,' says Chris Weafer, head strategist at Alfa Bank. 'The state has direct control and will selectively bring minority partners in.'¹²⁴

First Deputy Prime Minister Sergei Ivanov has been candid in describing Russian state policy in the natural resource sector. According to Mr. Ivanov, the state's share in the energy sector will "always be higher than 75 percent by definition" for national security reasons. Mr. Ivanov justifies state control of oil and natural gas by remarking, "[t]hey are our resources and how to develop them and where to get funds from is our business." Thus, while

Troianovsky, *Swiss Court: Yukos Case is Political*, WASH. POST, Aug. 25, 2007, at A11 (seeing the Swiss Court's decision as a "rebuke" to the Kremlin). The Swiss Court's decision may reduce the likelihood that future Western judges will grant comity to Russian courts' decisions in high profile cases.

122. *Rosneft IPO Biggest Scam of 2006—Illarionov*, RUSS. & CIS BUS. & FIN. NEWSWIRE, Dec. 28, 2006.

123. McFaul & Stoner-Weiss, *supra* note 28, at 82.

124. Catherine Belton, *State's Unsaturated Appetite: By May, the Government's Share of Crude Output Could Reach 55%*, FIN. TIMES, Apr. 20, 2007, at 4.

foreign companies may participate as investors or contractors, he does not “think that in the foreseeable future we will allow any foreign company to own any major field.”¹²⁵ Mr. Ivanov did not clarify how the government would always maintain at least a 75% stake in the energy sector. President Putin, and the Procuracy, however, have made that clear.

The Procuracy, together with other law enforcement agencies, played an active and analogous role in taking government ownership and control of the major television networks NTV and ORT. According to one report on the raiding of Russian public television offices:

Agents of the FSB, MVD, and Procuracy, supported by masked OMON officers, raided the offices of Russian Public Television (ORT) and confiscated financial and business documentation ORT General-Director Konstantin Ernst denied the charges and expressed his surprise at this “massive demonstration of power” given the company’s record of fully cooperating with the authorities. *Nezavisimaya Gazeta* reported on 6 December that this act of intimidation against ORT resembled those taken against Gusinsky’s mass media outlets [NTV] and is almost certainly connected with Kremlin efforts to squeeze out Boris Berезovsky, who now controls 49 percent of ORT.¹²⁶

Oleg Shvartsman, head of Russian Finansgrupp, which allegedly manages \$3.2 billion in assets for “the Party, the power block headed by Igor Ivanovich Sechin,” gave a revealing interview to *Kommersant* newspaper in November 2007 about government expropriation methods.¹²⁷ He explained that one of the government’s tasks is to increase the tax base in poorer regions, so that state salaries and pensions are paid on time. To do this, he said:

125. Catherine Belton & Neil Buckley, *Steeled to Succeed—Ivanov Sets Out His Tough Vision for Russia’s Future*, FIN. TIMES, Apr. 15, 2007, at 15.

126. *Security Watch: December 11, 2000—ORT Office’s Raided*, RADIO FREE EUROPE/RADIO LIBERTY, Dec. 11, 2000, <http://www.rferl.org/reports/securitywatch/2000/12/21-111200.asp>.

127. Interview by Maksim Kvasha with Oleg Shvartsman, “Партию для нас олицетворяет силовой блок, который возглавляет Игорь Иванович Сечин” [For Us, the Party is Represented By the Power Bloc Headed by Igor Ivanovich Sechin], KOMMERSANT, Nov. 30, 2007, available at <http://www.kommersant.ru/doc.aspx?DocsID=831089> (trans. available at http://www.robertamsterdam.com/2007/11/russias_velvet_reprivatization.htm).

We don't take over companies, we minimize their market value using various instruments. Generally these are voluntary-compulsory instruments—market value, the mechanism of blocking growth, all sorts of administrative matters....Essentially we're carrying out a state task—everyone understands we have been instructed to do this . . . This is current state policy.¹²⁸

The Procuracy played the leading role in the expropriations of Yukos, ORT and NTV of Khodorkovsky, Berezovsky and Gusinsky respectively. After these high profile expropriations, criminal prosecutions against business people and expropriation of their assets became a credible threat. Although under the Constitution and statutes, the Procuracy should protect private property, it instead played a direct role to facilitate nationalizations and has played an indirect role in many others. The Procuracy has helped to renationalize private assets as part of “current state policy.”

E. Illusory Anti-Corruption Campaigns

The “war on corruption” is clearly the right bandwagon to be on in Russia today. In Mr. Medvedev's first major campaign speech, he decried Russia's “legal nihilism” and ubiquitous corruption.¹²⁹ In February 2008, Prime Minister Zubkov condemned corruption at a meeting of Procuracy officials, by saying “[i]t takes our Western colleagues just six minutes to let pass one automobile, and we spend six hours on this.”¹³⁰ He noted that this is because of “brib-

128. *Id.*

129. Vladimir Isachenkov, *Putin Choice Criticizes “Legal Nihilism,”* INT'L BUS. TIMES (AUSTL.), Jan. 22, 2008.

130. *Zubkov Urges Lowering Administrative Barriers to Combat Corruption*, ITAR-TASS, Feb. 19, 2008. When one hears such rhetoric, it is only natural to wonder why President Putin came to select an individual like Mr. Victor Zubkov to become Prime Minister. President Putin may have selected Mr. Zubkov because not only did he have an “intelligence background,” but he also lacked any constituency that would preclude him from being replaced at Mr. Putin's whim. Mr. Zubkov, just prior to being named Prime Minister, was the head of Russia's Financial Intelligence Unit (known as the Federal Financial Monitoring Service)—the body that is responsible for monitoring and limiting money laundering. He is an individual with potentially a lot of information that can be used to not merely discredit or prosecute a Russian government official, but also if so inclined he would be in a position to provide such information to counterparts working for foreign governments. Being “rewarded” with the Prime Ministership may have been one way for Mr. Putin to ensure Mr. Zubkov's loyalty. See *A Curious Change at the Kremlin*, ECONOMIST, Sept. 12, 2007, available at http://www.economist.com/daily/news/displaystory.cfm?story_id=9790157.

ery, corruption—impudent and open.”¹³¹ Procurator General Chaika recently said, “war on [corruption] is one of our priorities.”¹³²

Chairman of the Investigative Committee Aleksandr Bastrykin has stated that the Procuracy opened more than one thousand criminal cases in 2007 against Russian officials with special legal status, meaning prosecutors, judges and legislative deputies of various levels, with many related to corruption.¹³³ Despite these proclamations, in the words of the newspaper *Moscow News*, “the fight against graft and corruption in Russia usually targets small fry, low-level bureaucrats. Investigation, let alone prosecution, of officials in the upper reaches of power are extremely rare.”¹³⁴ The Procuracy usually accuses low- and mid-level officials, and the sums of money at stake are comparatively small.¹³⁵

On May 19, 2008, President Medvedev gave a significant address in which he readily acknowledged the pervasiveness of corruption at all levels of the Russian government and the pressing need to take systematic action.¹³⁶ His remarks provided context for the issuance of an edict requiring the formation of a Presidential Anti-Corruption Council. Within several days, the State Duma formed a commission to develop new anti-corruption legislation.¹³⁷ Similarly, the National Strategy Institute produced a document aimed at producing the legal and institutional foundation for an effective anti-corruption policy in the country. Not to be left out, the Investigative Committee developed its own draft anti-corruption program¹³⁸ These documents set out a range of ideas from the mundane to the innovative, such as strengthening the ju-

131. *Id.*

132. Andrei Sharov, *Yuri Chaika Counts on Defense*, AGENCY WPS, January 11, 2008.

133. *Over 1,000 Senior Russian Officials Prosecuted in 2007—Chief Investigator*, INTERFAX, Feb. 19, 2008.

134. Yekaterina Zabrodina, *Russia's Anti-Corruption Drive Impeded by Selective Justice*, MOSCOW NEWS, Dec. 8, 2006.

135. See Prosecutor General's Office of the Russian Federation, <http://eng.genproc.gov.ru/> (last visited Nov. 2, 2008).

136. Dmitri Medvedev, President of Russia, Opening Remarks at a Meeting on Fighting Corruption (May 19, 2008) available at http://www.kremlin.ru/eng/speeches/2008/05/19/1810_type82912type82913_200951.shtml.

137. *Russian Duma Forms Commission to Wipe out Corruption*, ITAR-TASS, May 21, 2008 (discussing the composition of the commission).

138. *Investigation Committee Sends Anti-Corruption Plan To Russian president*, RIA NOVOSTI, June 25, 2008, available at <http://en.rian.ru/russia/20080625/112005192.html>.

diciary to counterbalance law enforcement bodies,¹³⁹ prohibiting gifts to government officials,¹⁴⁰ defining more precisely the scope of immunity of legislators and other government officials, expanding public disclosure requirements for state officials and legislators¹⁴¹ and providing internet access for citizen complaints to the Procuracy.¹⁴² On June 25, 2008, Sergei Naryshkin, Interdepartmental Anti-corruption Work Group Head and Presidential Administration Director, presented the official draft national anti-corruption plan to President Dmitri Medvedev, which will presumably be refined by the Working Group.¹⁴³

139. Konstantin Gaaze et al., *Dealing with Crooks*, RUSSIAN NEWSWEEK, June 9-15, 2008, at 17-20 (discussing the idea of increasing the number of checks and balances on the activities of Russian law enforcement); Yevgenia Zubchenko et al., *AboveFight*, NOVYE ISVESTIA, June 10, 2008, at 2 (stating that President Medvedev wants to increase the level of rivalry between the Procurator General and the Chairman of the Investigative Committee); Mikhail Vinogradov & Marina Yurshina, *Have Him on Trial*, GAZETA, June 10, 2008, at 2 (describing how the Investigative Committee favors more aggressive investigations and prosecutions of persons enjoying some form of legal immunity). Timur Doktorov, *SS-20 for the Investigative Committee*, TVOI DEN, May 31, 2008, at 2 (noting that certain members of the Investigative Committee believe that its personnel need to be armed to be able to carry out duties).

140. See Mariam Magomedova, *A Dangerous Present: Moves to Deprive Officials and Bureaucrats of Gifts*, NOVYE ISVESTIA, June 16, 2008, at 2. Pursuant to Article 574 of the Civil Code of the Russian Federation, government officials may legally receive "gifts" having a value up to five times the Russia minimum monthly salary (i.e. approximately 11,500 Russian Rubles or roughly \$500 at current exchange rates), while under the Criminal Code of the Russian Federation it is a crime for a government official to accept a bribe.

141. Vinogradov & Yurshina, *supra* note 139, at 2 (stating that Russian Supreme Court Judge Vyacheslav Lebedev has sought to establish certain reforms to make it easier to prosecute officials having immunity in some form, such as ex-presidents, judges, procurators, legislators, and senior officials).

142. *Businessmen May Visit Prosecutor's Web Site To Ask For Protection*, ITAR-TASS, May 29, 2008 (describing the official opening of a portal on the Procurator General's website, entitled "Prosecutor Supervision of the Observance of Rights of Economic Entities," where persons would have the opportunity to report about instances where their rights had been violated by corrupt officials). This website is now operational and procedures for following up citizen complaints have been issued. It remains to be seen what the characteristics are of persons willing to use this system and the nature of their complaints. See Procuracy Home Page, <http://www.genproc.gov.ru/contacts/> (providing contact information and describing how citizen complaints are dealt with) (last visited Aug. 12, 2008).

143. Alexander Sadchikov, *Four Strikes at Corruption: The Presidential Administration Came Up with the National Anti-Corruption Plan*, IZVESTIYA, June 26, 2008 (discussing how the draft plan consists of four parts: (i) preparation of a proposed draft law on corruption, (ii) development of requirements such as enhanced income disclosure

Despite this flurry of activity, considerable skepticism exists about these latest anti-corruption proposals. One of the members of the State Duma Commission on Legislative Support for Countering Corruption, Gennadi Gudkov, expressed the belief that even if President Medvedev seeks to establish new anti-corruption norms, given the government opposition to improvements in this area and a lack of political will to vigorously implement them, the new anti-corruption measures are doomed to failure.¹⁴⁴

Kirill Kabanov, Director of the National Anti-Corruption Committee, indicates that a true measure of a war on corruption would be a case against someone close to those in power. He remarked that “[i]n Russia it is always the case some people are found at the lower or middle level, while no one at the top is . . . That is why I think this is just a PR campaign and nothing more.”¹⁴⁵ Georgy Satarov, a former Yeltsin aide and the director of the think tank INDEM, calls the rise in corruption from 2001 to 2005 “catastrophic”:

The growth of the average size of a bribe during the period can be characterized as follows, taking into consideration inflation, GDP growth, the turnover of firms, and other economic dynamics. In 2001, an average-sized bribe could buy 30 square meters of habitation according to the average Russian prices on the primary [real estate] market (a piece of a single-room apartment). In 2005, an average sized bribe could buy 209 square meters [a few] apartments. Is it any surprise that youth now want to be officials, and not businessmen?¹⁴⁶

Evidence abounds that the fight against corruption in the legal system is illusory. According to the Chairman of the Supreme Court, sixty nine judges, including chairmen of specific courts, were suspended on corruption charges and 224 judges received disciplinary warnings in 2003. Nonetheless, then-Procurator Gen-

aimed at reducing the risk of corruption, (iii) steps aimed at enhancing the professionalism of lawyers and (iv) an implementation plan.)

144. Kseniya Nechayeva, *Government Could Not Care Less About President's Instructions for Combating Corruption*, GAZETA, June 15, 2008.

145. Steven Lee Myers, *Public Still Skeptical About Russian Justice: Putin's Efforts on Corruption Doubted*, INT'L HERALD TRIBUNE, June 12, 2006, available at <http://www.iht.com/articles/2006/06/11/news/russia.php>.

146. Jonas Bernstein, *Will Russia's Next Anti-Corruption Campaign Succeed Where Others Failed?*, 5 EURASIA DAILY MONITOR, Jan. 30, 2008 (citing Satarov article in EZ-HEDNEVNY ZHURNAL).

eral Vladimir Ustinov indicated that only four were prosecuted.¹⁴⁷ The Three Whales case discussed above is testament to the illusory nature of the government's anti-corruption campaign.

The Soviet legacy of "telephone justice," when Party or government authorities telephoned orders to judges on how to rule, is alive and well.¹⁴⁸ Former investigator Boris Uvarov told one newspaper that even under Soviet totalitarianism, there was "more legality" than since the Soviet Union's demise. While "telephone justice" existed in Soviet political cases, the situation has devolved to the point now where "all cases connected with highly placed personages are 'telephone' cases."¹⁴⁹

It is the Procuracy's job to investigate and prosecute corruption. Yet the public perception is that the Procuracy serves corrupt elites and will stop short of investigating them. The public recognizes that violent crime rates have not diminished and corruption is burgeoning. While the government and the Procuracy surely do recognize corruption as one of Russia's core challenges, their anti-corruption campaigns against low- and mid-level actors deflect attention from high-level corruption, such as the Three Whales case or the activities of Russia's recognized billionaires. Thus, through selective investigation and prosecution, support for government expropriations and illusory anti-corruption campaigns, the Procuracy fulfilled a highly political function under the Putin Administration. And the President rewarded the Procuracy for this loyal, politically important service. Until the time when Procurator General Ustinov resigned in the summer of 2006, the Procuracy was secure and privileged among the Russian power agencies.¹⁵⁰

V. PART THREE: THE INVESTIGATIVE COMMITTEE UNDER THE AUSPICES OF THE PROCURACY

A. Creation of the Investigative Committee

The Procuracy's protected status began to change radically in early 2007. At an ordinary Procuracy meeting with journalists,

147. *Id.*

148. Alena Ledeneva, *Behind the Façade: Telephone Justice in Putin's Russia*, in *DICTATORSHIP OR REFORM? THE RULE OF LAW IN RUSSIA* 1-8 (Mary McAuley et al. eds., 2006).

149. *Prosecutors Say Russia Far From Law-Based State*, RADIO FREE EUROPE/RADIO LIBERTY, Jan. 15, 2001, <http://www.rferl.org/newsline/2001/01/1-rus/rus-150101.asp>.

150. See Gordon Smith, *supra* note 24, at 120-22.

Procurator General Chaika surprisingly announced that he was an “active proponent” of a new law enforcement agency to unite investigative subdivisions of all law enforcement agencies, including the MVD, FSB and Narcotics.¹⁵¹ While not a new idea in Russian law reform, it was one that had been dormant for many years; and it is one the Procuracy had consistently opposed as it would diminish its power and prestige. But Mr. Chaika’s endorsement for a new federal investigative service came in the context that he would not want the Procuracy to lose all powers of criminal investigation. He stated that even in a new unified service, the Procuracy should be able to “take over the investigation of any criminal case.”¹⁵² Mr. Chaika’s defensive stance seemed to counter rumors among law enforcement personnel that a reorganization of investigation structures was imminent.

After six months in office, Mr. Chaika’s detractors in other law enforcement agencies had apparently united to revive the federal investigative service idea:

[T]he emergence [of the federal investigative service] was attributed to a struggle between different security and law enforcement groups in the President’s circle....Past experience shows that steering the launching or investigation of criminal cases ‘in the right direction’ is an inalienable part of political and business wars in Russia....[T]he idea of

151. Victor Paukov, *Selective Responsibility for Investigation*, VREMYA NOVOSTEI, Jan. 17, 2007, at 1 (trans. in 59 CURRENT DIGEST OF THE POST-SOVIET PRESS, Feb. 14, 2007). Indeed, a proposed “audit” of the Investigative Committee might uncover evidence that will be the impetus to disband the Investigative Committee and combine the investigative functions of the Procuracy, MVD and other state bodies in a single organization. This concept has been proposed previously. Its supporters point to the U.S. Federal Bureau of Investigation as a model (forgetting that within most U.S. federal organizations there are also offices of the Inspector General, whose function is to uncover corruption and other wrongdoing). See Editorial, *Investigation*, VEDOMOSTI, Apr. 4, 2008 at A1, A4, (arguing that “economic considerations” explain why there is opposition to a single investigative body like the FBI). It seems that the preferred Russian term is the Federal Investigative Agency. See Alexander Melenberg & Sergey Mikhalych, *Audits as an Investigation: The Prosecutor General’s Office Uses the Last Opportunity to Filter Out a Competitor*, NOVAYA GAZETA, Mar. 20, 2008, at 6. Furthermore, when there are reports of corruption or abuse of power within the Investigative Committee, its opponents are strengthened. See Ekaterina Karacheva, *An Investigator Changes His Testimony: Dovgii Says the Scandal Was Started Outside the Investigation Committee*, VREMYA NOVOSTEI, Apr. 2, 2008, at 1 and 3, (discussing an alleged “well-planned campaign” alleging the corruption of Alexander Bastykin and Dmitrii Dovgii, the suspended Head of the Investigation Committee’s Main Investigation Directorate).

152. *Id.*

stripping the prosecutor's office of important functions is now being promoted by the same people who earlier helped the previous Prosecutor General keep the brakes on that reform.¹⁵³

After Mr. Chaika's unexpected remarks, legislative proposals to remove the Procuracy's investigative function surfaced quickly in the Russian Parliament. The Duma reviewed a draft law to create an autonomous investigations unit. The Procuracy strenuously opposed the new law. Deputy Procurator General Sabir Kekhlerov stated in the Federal Council that the draft law violated the Russian Constitution's requirement of a "single centralized system" and international law.¹⁵⁴

Some journalists saw the effort to strip the Procuracy of the investigative function as retribution. They argued that people at the top of the FSB and MVD sought revenge against Mr. Chaika for having implicated their agencies in wrongdoing in the Three Whales scandal. That case arose precisely because the Procuracy took over an MVD and Customs Agency criminal investigation. Although the Procuracy would retain formal oversight over investigations in the MVD, FSB and other agencies, its real ability to exercise oversight would be extremely limited if it no longer controlled its own investigators.¹⁵⁵

Despite the Procuracy's opposition and that of many Duma members, including the Communists who unanimously opposed the bill, President Putin signed amendments to the Criminal Procedure Code and the Law on the Procuracy creating a separate Investigative Committee "under the aegis" of the Procuracy in June 2007.¹⁵⁶ The Chairman of the Investigative Committee is Aleksandr Bastrykhin. He has held a variety of jobs within the Ministry of Justice and the MVD, where he was involved in the conduct of criminal investigations. A former university classmate of Mr. Putin's, he reports to President Medvedev.¹⁵⁷ The Investigative

153. *Id.*

154. Victor Paukov, *General'nyy Stanet Sledovatel [The Investigator Becomes Investigator General]*, VREMIA NOVOSTEI, June 7, 2007.

155. *Id.* See also Brian Whitmore, *Russia: Powerful New Investigative Body Begins Work*, RADIO FREE EUROPE/RADIO LIBERTY, Sept. 10, 2007.

156. Federal Law, No. 87-FZ of June 5, 2007 "On Amending the Criminal Procedural Code of the Russian Federation and the Federal Law on the Procurator's Office of the Russian Federation."

157. Information about Mr. Bastrykin's career is available at <http://www.lenta.ru/lib/14181282/> (last visited July 15, 2008).

Committee is now in charge of all preliminary criminal investigations within the Procuracy.¹⁵⁸ It took over a significant part of Procurator General Chaika's portfolio, assuming responsibility for 18,000 federal Procuracy investigators and jurisdiction over 60,000 pending criminal investigations, including high profiles ones like the murders of Anna Politkovskaya and Aleksandr Litvinenko.¹⁵⁹

While this separation of investigation from prosecution appears constructive at first blush, it seems less so on closer examination. If it had been done for all law enforcement agencies, then the principled argument for separation would make sense. But making this change in the Procuracy alone, and creating a second autonomous unit "under the aegis" of the institution seems likely to create and exacerbate existing tensions.

Many commentators, including Dr. Stephen Blank of the U.S. Army War College, argue that the creation of the Investigative Committee altered the playing field in the struggle for power between rival *siloviki* groups. With the creation of the Investigative Committee, President Putin allegedly conferred greater resources on the Sechin clan, with whom the Investigative Committee Chairman Bastrykhin appears affiliated. Commentators also argue that the Investigative Committee was a blow to the Cherkesov clan, with whom Procurator General Chaika appears affiliated.¹⁶⁰ The remarkably public disputes that ensued between the Investigative Committee and the Procurator General's office lend credence to the theory that the Committee is a creature of politics, not law.

B. The Bulbov Arrest and Prosecution

Having started operations in September 2007, the Investigative Committee made a high profile arrest on October 2: Lieutenant General Alexander Bulbov, head of the Operations Support Department at the Federal Narcotics Control Service (FSKN), a power ministry created in 2003 on the basis of the now defunct tax police. The Investigative Committee searched Lieutenant General Bulbov's apartment and then arrested this right-hand man to FSKN

158. See *Chaika Tells Putin How Investigation Committee Creation Is Going*, ITAR-TASS, July 11, 2007 (noting that the Federation Council approved Alexander Bastrykin as the President's choice to be the Chairman of the Investigative Committee).

159. *Id.*

160. Policy Paper, Stephen Blank, *The Putin Succession and its Implications for Russian Politics*, Institute for Security and Development Policy (Feb. 2008).

Director Viktor Cherkesov with several other FSKN officers on charges of abuse of office, illegal wiretapping and bribe taking.¹⁶¹ Bulbov had been leading the FSKN's investigation of the Three Whales corruption investigation, discussed in Part Two above. Bulbov and other FSKN investigators reportedly compiled extensive information on the activities of criminal groups connected to the security ministries, including the FSB, the MVD, and the Procuracy. One insider quoted in the newspaper said the "campaign against the FSKN is actually an offensive against Cherkesov...[to] prevent him from using the damning evidence his men collected."¹⁶² A Moscow City Court held Bulbov's arrest lawful, rejecting an appeal from the Procurator General's office for a new trial in a different court. Still in custody, Bulbov argued that three FSB generals ordered the Investigative Committee to arrest him as revenge for the investigation.¹⁶³

C. Cherkesov's Response to Bulbov's Arrest

In direct response to his deputy Bulbov's arrest, Viktor Cherkesov, Director of the FSKN, published a remarkable article in *Kommersant* on October 9, 2007 confirming the criminalization of the power ministries and calling for a truce.¹⁶⁴ In doing so, he violated the Kremlin's code of secrecy and described the "feud within the so-called *chekist* community." He wrote that the "*chekist* community"

must be a keeper of norms. It is preferable that these norms be not only internal, but also nationwide. But first and foremost, they must be norms. If norms disappear and arbitrariness sets in, the corporation falls apart. Already now, experts and journalists are speaking of a 'war of the groups' within the special services. There can be no victors in this war....A caste gets destroyed from within when warriors start to become traders.

161. Jonas Bernstein, *St. Petersburg Poisonings: Part of Siloviki Factional Fight?*, EURASIA DAILY MONITOR, Nov. 2, 2007.

162. Natalia Morar, *War of Security Structures Breaks through to the Surface*, NEW TIMES, Oct. 8, 2007, available at <http://newtimes.ru/magazine/2007/issue035/doc-22233.html>.

163. *Id.*

164. Viktor Cherkesov, *Warriors Must Not Turn into Traders*, KOMMERSANT, <http://www.kommersant.ru/doc.aspx?DocsID=812840> (trans. at http://www.robertamsterdam.com/2007/10/viktor_cherkesov_on_the_spy_wa.htm (last visited Feb. 5, 2008)).

Cherkesov went on to state that the motive to search Bulbov's apartment was to compromise the evidence Bulbov had gathered in the Three Whales investigation.¹⁶⁵ Cherkesov's *de facto* acknowledgement of rampant official corruption ("warriors as traders") and lawlessness (the need for "norms") was striking. It certainly implied that the Procuracy did little among the ruling elite to enforce the law or stop corruption.

Olga Kryshantovskaya, a prominent sociologist, described the open letter as "a volcanic eruption" at the very top of the country.¹⁶⁶ Then President Putin publicly rebuffed Cherkesov the next day, but in a characteristic move to mediate among rivals, he promoted Cherkesov to head a new intergovernmental commission to fight illegal drugs, elevating his institutional status.¹⁶⁷

The apparent response from the *chekist* rivals to Cherkesov's open letter was stark: on October 27, two men affiliated with the FSKN were found dead in St. Petersburg, apparent victims of poisoning. On October 31, a spokesman for the FSKN confirmed that the former FSKN employees had been poisoned, and that their deaths were "strange."¹⁶⁸ The press viewed these murders as part of a mafia-like turf wars among rival "law enforcement" clans jockeying for power.

One of the Investigative Committee's first high profile cases led to a politically motivated arrest followed by the murders of rival security officers. Far from acting as a body to enforce the law, it appears that the Investigate Committee was acting to settle political scores and to protect the powerful in the FSB.

D. The Arrest and Detention of Deputy Finance Minister Sergei Storchak

Shortly after these events, on November 15, the Investigative Committee arrested Deputy Finance Minister Sergei Storchak, one of Russia's top international finance officials. The Investigative

165. *Id.*

166. David Holley, *Kremlin Infighting Gets an Airing*, LOS ANGELES TIMES, Oct. 10, 2007.

167. See David Satter, *Russia Incorporated: Why Vladimir Putin Dare Not Give Up His Position As Capo*, 13 WEEKLY STANDARD, Dec. 17, 2007, http://www.weeklystandard.com/Utilities/printer_preview.asp?idArticle=14461&R=11628E6.

168. Jonas Bernstein, *supra* note 161 (citing www.strana.ru of Oct. 31, 2007).

Committee also searched his home and office on suspicion of attempted embezzlement. A spokesperson for the Investigative Committee told a television reporter that Storchak and two businessmen were being investigated for plotting to defraud the state of “large sums of money.” Storchak was the individual most responsible for oversight over the country’s \$147 billion stabilization fund, and one of its key international debt negotiators.¹⁶⁹ Control of the stabilization fund, which was split into a Reserve Fund and a National Welfare Fund on February 1, was one of the key points of contention in the transition period.¹⁷⁰

On November 23, while Storchak was in pretrial detention at the FSB’s Lefortovo prison,¹⁷¹ the Investigative Committee charged him with attempted embezzlement of \$43 million in government funds. Finance Minister Kudrin vociferously objected and appealed for Storchak’s release on bail. The court refused. On December 3, the Investigative Committee filed new charges against Storchak, in addition to the fraud and embezzlement charges, for abuse of his official position, after allegedly finding almost a million dollars in cash in his apartment. On December 5, the Procurator General’s office ordered the Investigative Committee to drop the new charges. The Investigative Committee then countermanded the Procurator General’s order, calling it “illegal and baseless,” and implying that the Procurator General had forged the date of its order, which must be made within 24 hours of new charges.¹⁷²

On December 14, 2007, the Procurator General’s Office ordered an inspection of the Investigative Committee’s offices to check whether the Investigative Committee had been acting in compliance with law. The Procurator General’s order demanded details on employees’ personnel files and investigation case files. Some speculate that Procurator General Chaika was affiliated with then Deputy Prime Minister Medvedev, who had been tapped to be

169. See, e.g., *Russian deputy Finance Minister Detained*, ASSOCIATED PRESS, Nov. 16, 2007; Torrey Clark, *Russian Deputy Finance Minister Held in Fraud Probe*, BLOOMBERG, Nov. 17, 2008.

170. There has been speculation, including in the Shvartsman interview discussed above, that the Sechin clan has particular designs on the National Welfare Fund.

171. During Soviet times, Lefortovo prison was sometimes used to house some prominent dissidents such as Vladimir Bukovsky, Yevgenia Ginzburg, Natan Sharansky, Andrei Sinyavsky and Aleksandr Solzhenitsyn.

172. *Russian Investigative Agencies Clash Publicly in Probe of Deputy Finance Minister*, ASSOCIATED PRESS, Dec. 5, 2007.

President earlier that week.¹⁷³ Later, Procurator General Chaika publicly denied that there was any confrontation between the Investigative Committee and the Procurator General's Office, calling it "stuff and nonsense."¹⁷⁴ But actions speak louder than words.

In an insightful analysis of the Storchak case, which potentially carried ten years' imprisonment, one analyst compared Storchak's arrest to the NTV and Yukos arrests and expropriations. In those criminal cases, the Procuracy first arrested the deputies of the real prosecutorial targets. These deputy arrests served a hostage-taking function, forcing the true targets (Gusinsky, Khodorkovsky, or, in this case, Finance Minister Kudrin) to defend themselves in a hostile setting. Next, the deputies' arrests identified the target's allies. Finally, the deputies might provide incriminating information that could then be used against the primary target.

The author explained a similar pattern of criminal charges with Storchak as in these prior high profile prosecutions. Rather than use spurious charges, the authorities "arbitrarily criminalized" routine professional activities. The author wrote:

[I]nvestigators just re-write readily available open documents, attaching smears at the end of key sentences. Thus, if a company enters into a legal contract, open, declared and disclosed long ago to the authorities as part of statutory reporting, the prosecutors describe it as a "criminal scheme aimed at illegal profiteering." No further proof is needed, the pliant courts would rubberstamp the insinuation. Settlement of stale debts at discount openly discussed for years and agreed with every competent person in the Government becomes a criminal scheme to defraud the state of due money. The assumption is that the pliant courts would rubberstamp the accusation in this case as well. Since the normal business/bureaucratic activities are criminalized with full cooperation of the judiciary, no one, even outside the case, can feel safe. The Yukos case was the starting point for the ongoing takeover of all important business assets in the country. The Storchak/Kudrin case is obviously

173. Francesca Mereu, *Sechin's Clan the Loser in a Week of Surprises*, MOSCOW TIMES, Dec.17, 2007.

174. Oleg Fochkin, *Separate, but Verify; Yuri Chaika: "We're Helping the Investigative Committee,"* MOSKOVSKII KOMSOMOLETS, Dec. 26, 2007.

meant to be a starting point for takeover of the key levers of economic power in Russia.¹⁷⁵

On January 10, 2008, the Moscow Basmanny court accepted the Investigative Committee's new charges against Storchak for abuse of office and extended his pretrial detention until April 9, on the grounds that the investigation is complex and that Storchak cannot be trusted on bail. Storchak told reporters that investigators had met with him for a total of four hours since his arrest almost two months before, and that he was unaware that any other investigatory actions had occurred.¹⁷⁶ Storchak's earliest possible release from prison came after the Presidential elections and after the Stabilization Fund had been divided. It is hard to imagine the timing was coincidental. He was finally released from prison after almost one year on October 21, 2008, although he still faces fraud charges.¹⁷⁷ Commentators speculate that the government released him so that he could mitigate the financial crisis in Russia.¹⁷⁸

The Investigative Committee's role in Storchak's high profile case appeared more political than legal.¹⁷⁹ Among the details that support this view are the second set of charges, opposed by the Procurator General, that extended his pretrial detention until after the Presidential elections and the improbability that a Deputy Minister was a true flight risk.

E. The Detention and Inhumane Treatment of Vasili Aleksanian

Vasili Aleksanian's tragic pretrial detention at Mattroskaya Tishina prison was another example of the lawless actions of the Investigative Committee and Procuracy. Mr. Aleksanian, a lawyer

175. Robert Amsterdam: Perspectives on Global Politics and Business, Insider: Familiar Pattern in Russia's Instability (Dec. 3, 2007), http://www.robertamsterdam.com/2007/12/insider_familiar_patterns_in_r.htm.

176. *Russian Deputy Finance Minister to Remain in Custody Until April 9*, ITAR-TASS, Jan. 10, 2008.

177. *Storchak Takes Two-Month Vacation After Release from Custody*, INTERFAX, Oct. 29, 2008.

178. Yulia Latynina, *Storchak and Stabilization Trust*, NOVAYA GAZETA, Oct. 2008.

179. Nonetheless, Investigative Committee Head Alexander Bastrykin has attempted to place the case within the context of a wider anti-corruption effort. See *Over 500 Officials Brought To Justice On Corruption Charge—Bastrykin*, INTERFAX, Mar. 25, 2008; See also Alexei Grishin, *Alexander Bastrykin: The Investigation Committee Gets Results*, VREMYA NOVOSTEI, Mar. 26, 2008.

and former Yukos Vice President, was seriously ill with AIDS and had been denied medical treatment. He worked for Yukos for many years as a lawyer and became a Vice President in March 2006 at a time when the company was about to be dissolved. He was accused of embezzlement and tax fraud. The trial was postponed due to his illness.

Mr. Aleksanian was detained on April 6, 2006 and was kept in pretrial detention until early February 2008, when the Russian authorities relented and transferred him to a civilian medical facility.¹⁸⁰ In October 2006, Mr. Aleksanian was diagnosed with HIV. A Procuracy official revealed this diagnosis on January 16, 2008, in violation of Mr. Aleksanian's right to privacy. In October 2006, his doctors recommended that he could remain in pretrial detention if he received antiretroviral drugs and other appropriate treatment. Mr. Aleksanian was refused HIV treatment. On October 23, 2007, several medical experts, including a doctor of the pretrial detention facility, found that Mr. Aleksanian should be transferred immediately to a public specialized medical facility.

Mr. Aleksanian petitioned the European Court of Human Rights to intervene. On November 27, 2007, the European Court ordered the Russian authorities to transfer him to a specialized hospital. The European Court repeated its appeal on December 6 and set a deadline of December 10, 2007 for his transfer. The Russian authorities again failed to hospitalize Mr. Aleksanian and failed to provide information about his treatment. On December 21, for a third time, the European Court repeated its order that he be transferred, and stated that it would consider it "a violation of the right to life and the right not be tortured or subjected to inhumane and degrading treatment" should Mr. Aleksanian die in detention or should his condition further deteriorate due to the lack of treatment.¹⁸¹

180. Benjamin Klein, *Russia Prison to Transfer Ex-Yukos Lawyer to Clinic for Medical Treatment*, JURIST LEGAL NEWS AND RESEARCH, <http://jurist.law.pitt.edu/paperchase/2008/02/russia-prison-to-transfer-ex-yukos.php>.

181. Amnesty International, Russian Federal: Health Concern/Unfair Trial: Vasilii Georgievich Aleksanian, Jan. 18, 2008, <http://www.amnesty.org/en/library/asset/EUR46/002/2008/en/EUR460022008en.html> (search EUR 46/002/2008 on Amnesty International Index); Letter from European Court of Human Rights, available at http://www.mka-london.co.uk/documents/ronald_13094.pdf (last visited Aug. 12, 2008).

As a result of his pretrial detention without treatment, Mr. Aleksanian suffered from partial blindness, lymphoma, and kidney and heart problems. Under Russian law, a person with such diagnoses should not be in pretrial detention. Mr. Aleksanian asked that the time to review his case be extended due to his illness, but the court refused.

Mr. Aleksanian stated that the Procuracy refused to provide him necessary medical treatment for over fourteen months in pretrial detention. He alleged that they did this to extract false confessions and incriminating evidence for new trials against jailed Yukos executives Khodorkovsky and Lebedev. He stated that the investigators promised him medical treatment in exchange for incriminating testimony.¹⁸²

Investigative Committee representatives claim that Mr. Aleksanian refused treatment; Mr. Aleksanian refuted those claims. To draw attention to Mr. Aleksanian's plight, Mr. Khodorkovsky observed a hunger strike to protest the inhumane treatment of his former colleague.¹⁸³ A Russian human rights appeal stated that "keeping the gravely ill Aleksanian in prison constituted outright blackmail by the investigators, a form of monstrous torture, both physical and moral, for Aleksanian and Khodorkovsky."¹⁸⁴ Reportedly, the Russian Human Rights Ombudsman Vladimir Lukin sent an official appeal to the Procurator General, and the Prison Administration at Matrosskaya Tishina itself requested that the court transfer Mr. Aleksanian to a specialized clinic.¹⁸⁵

In keeping a fatally ill man in pretrial detention, the Investigative Committee violated Russian law, orders of the European Court of Human Rights and moral norms. Its elevation of politics over law was overt. Only after international media attention highlighted its abuses did it move Mr. Aleksanian to a hospital. The Investigative Committee used its power of investigation and detention to unlawfully punish this former Yukos employee whom the Investigative Committee perceived as a political opponent.

182. Vasilii Aleksanian's statement to the Russian Supreme Court, Jan. 21, 2008, available at http://www.mka-london.co.uk/docsExtract.asp?document_id=19.

183. Catherine Belton, *Hunger Strike for Khordorkovsky*, FIN. TIMES, Jan. 31, 2008.

184. The Kremlin is Responsible for Vassilii Aleksanian's Life: A Statement, Feb. 1, 2008 (on file with authors).

185. *Id.*

F. What the Investigative Committee Means

In early 2008, Procuracy meetings and press round-ups reviewed the early workings of the Investigative Committee. Although Mr. Chaika and Mr. Bastrykin reaffirmed their formal cooperation and collegiality, the substance of Mr. Chaika's remarks were quite critical. He argued that the Investigative Committee was incompetent, and that it failed to open criminal cases in thousands of instances when it was required to do so by law. He said the Procuracy protested 23,000 "decisions not to bring charges" and only 600 were reversed. He also complained that the Investigative Committee was not giving the Procuracy timely notice of its decisions to open new investigations.¹⁸⁶

Another commentator, Aleksandr Khinshtein, a United Russia Duma member opposed to the Committee's creation, was harsher. He said, "[i]n the five months of the Investigative Committee's existence, it still has not been able to stand on its own legs, but it has succeeded in dirtying itself in a long line of scandals and squabbles."¹⁸⁷ He pointed out that Mr. Bastrykin and his chief deputies, Nyrkov and Sorochkin, had virtually no past investigative experience, although they have prior FSB experience. President Medvedev subsequently replaced these deputies with individuals having ties to both Mr. Bastrykin and Prime Minister Putin, suggesting that Medvedev's anti-corruption efforts likely will be limited to those of Mr. Putin's bidding.¹⁸⁸ And although the Committee could in fact hire more experienced staff, Khinshtein argues that the Committee does not select on professional criteria, but only on the principle of "ours—not ours" (*svoi-chuzhoi*). "Under the aegis of a war against unaccountability, an even more uncontrollable structure has appeared."¹⁸⁹ He concluded that the Investi-

186. Aleksei' Nikol'skii, *Chai'ka Bastykinu ne uka*, [Chaika Can't Order Bastrykin], VEDOMOSTI, Feb. 1, 2008.

187. See also Aleksandr Khinshtein, *Prokuratura Netraditsionnoi Orientatsii* [The Procuracy of Untraditional Orientation], MOSKOVSKII KOMSOMOLETS, Feb. 8, 2008.

188. See Alexei Nikolsky & Alexei Shaposhnikov, *Investigations Will be Headed by the Home Team*, VEDOMOSTI, at A2, June 11, 2008 (noting that Vasili Piskarev, Investigative Committee Process Oversight Directorate Head, Boris Salmakov, Investigative Committee Head for the Investigative Directorate for the Southern District, and Igor Sobolevsky, former Chief of the Russian Television Network NTV's Legal Affairs Department, are all persons with St. Petersburg connections).

189. *Id.*

gative Committee should be abolished, and that a federal investigative service, uniting all criminal investigations, should replace it.¹⁹⁰

For the time being, however, the Investigative Committee is an institution to be reckoned with. Based on its record so far, one can expect more politically-motivated investigations of opponents and no investigations of the Investigative Committee's patrons. Furthermore, requests from foreign prosecutors or courts in high profile cases, like British requests for assistance in the Litvinenko murder, or the European Court for Human Rights orders in the Aleksanian case, are likely to meet little fruitful cooperation. And although the Procurator General still wields oversight power over preliminary investigations, this check seems extremely weak.

VI. CONCLUSION

As Andrei Illarionov, the former economic adviser to President Putin, observed: "Russia's law enforcement agencies are going through a quick degradation."¹⁹¹ Politics, not law, seems to guide the Procuracy and the newly formed Investigative Committee in high stakes cases. Law enforcement agencies, and the Procuracy and Investigative Committee in particular, appear to enjoy impunity in the name of powerful elites. The Investigative Committee's short-lived existence has mirrored the struggle among rival *siloviki* groups for political and economic control.

Today's Russian law enforcement system, like the Soviet one before it, fails to protect the rule of law. The Russian Constitution has become almost as irrelevant today as it was in Soviet times. In cases that affect the elite, the only law today is "who's in favor with the Tsar?" Lenin's observation that "law is politics," made nearly one hundred years ago, remains true in contemporary Russia.

190. *Id.*

191. *Arrests Hint at Struggle for Power after Putin*, INT'L HERALD TRIBUNE, Oct. 10, 2007, available at <http://www.ihf.com/articles/2007/10/10/news/russia.php>.