Tom. Int

Testimony of Tom Malinowski
Washington Director, Human Rights Watch:

Senate Foreign Relations Committee
Subcommittee on European Affairs
December 14, 2011

The State of Human Rights and the Rule of Law in Russia: U.S. Policy Options

HUMAN
RIGHTS
WATCH

Madam Chairman, members of the Committee, thank you for your invitation to testify this morning.

Over the last several days, Russians have come out in numbers not seen in years to express frustrations long simmering beneath the surface – about abuse of power, corruption, and their political leaders' complete lack of accountability and infantilizing of the public. We do not know where this popular awakening will lead. But it is safe to say that Russia is not going back to what it was before it began. We've heard a lot about "resets" with respect to Russia in the last three years. The Russian people have now brought about the biggest reset of them all.

The concerns that led to these demonstrations have been building among Russians for some time. To many Russians, their country in the last few years has once again become a place where those with political power, or political connections, can do what they want without regard to the law or to the will of the people they are supposed to serve. As the death of Sergei Magnitsky and other activists who have challenged the authorities suggests, it has again become a place where the powerful can, literally, get away with murder.

That's not to say that Russia today is what it was during the days of the Soviet Union. Russians enjoy vastly more freedoms in their personal lives than they did then. They can own property. They can travel throughout the country and abroad. They can inform and express themselves more or less freely through the internet. Opposition parties struggle, but do exist. There are still newspapers critical of the government. Some of the forms of democracy are still respected, including semi-competitive elections. But the substance of democracy – the checking and balancing of authority that make governments answer to people – has gradually evaporated.

During the presidency of Vladimir Putin, the Russian government weakened or dismantled every institution that might have limited the power of its leaders or increased the power of its citizens. Under President Medvedev, some reforms were carried out, such as the decriminalization of libel, improvements to the criminal code, and somewhat greater openness to domestic and international scrutiny of government policies. But there was no notable improvement in respect for civil and political rights. Over the past decade, local and provincial elected governments were made subservient to the Kremlin. Strict and arbitrary registration requirements made it hard for opposition parties to function (practices that the European Court for Human Rights

found in 2011 to violate the European Convention on Human Rights). Television networks that once featured independent political coverage and commentary were brought to heel. Courts, never fully independent after the fall of the Soviet Union, increasingly became tools of the state – or of those who could afford to purchase the legal judgments that served their interests.

The most terrible consequences of these policies have been felt by people in the North Caucasus region. In Chechnya, ruled by the brutal pro-Kremlin warlord Ramzan Kadyrov, the 99.5% support that the pro-Kremlin United Russia Party was recorded as receiving in the recent Duma elections testifies to the shameless rigging by local authorities there, and the degree of control they exercise. Law enforcement and security agencies in Chechnya have routinely forcibly disappeared people suspected of supporting insurgent groups and those who challenged Kadyrov's authority. The European Court of Human Rights has ruled over 185 times that the Russian government and its proxies were responsible for extrajudicial executions, torture, and enforced disappearances in Chechnya; in none of these cases have those responsible been brought to justice. Far from eliminating terrorism, this repression has contributed to the spread of violence – by insurgent groups and state security forces alike –to other provinces, such as Dagestan, Ingushetia, and Kabardino-Balkaria.

But serious abuses of human rights in Russia have not been limited to conflict areas – far from it. Though small freedom assembly rallies have been permitted in Moscow on the 31st day of each month, similar demonstrations have rarely been allowed in other cities. In all parts of Russia, torture and abuse is common in prisons and pre-trial detention facilities. Powerful individuals and well-connected companies can arrange to have their political enemies or business competitors placed in detention as a form of revenge or extortion.

Many human rights defenders and those who challenge these injustices risk harassment and violent attack, whereas those who threaten them enjoy continued impunity. Those responsible for ordering the murder in Moscow of Anna Politkovskaya, the courageous journalist who exposed atrocities committed in the North Caucasus, remain unpunished. No one has been brought to justice for the murders of three activists in Chechnya in 2009 – Natalya Estemirova, Zarema Saidulaeva, and Alik Dzhabrailov. Local citizens and journalists who protested the construction of a highway through the once protected forest reserve of Khimkhi near Moscow have been subjected to brutal assaults. Whistle blowers, like Sergei Magnitsky, have been persecuted by the same judicial system that should be protecting them.

All of this has been clear for some time. Many people have therefore wondered why most Russians seemed so passive in the face of such injustice and indignity. It was often said that Russians were somehow historically apathetic or apolitical or simply cynical and resigned. Or

that they had simply been bought off by the greater prosperity that came to them, courtesy of Russia's energy exports, during the Putin era.

And so, the sudden outburst of protest in Moscow and other big Russian cities in the last week took many observers by surprise.

Then again, so did the revolution in Tunisia, where a repressive government had also maintained stability for years by making its people more prosperous than their neighbors. When the government in Tunisia was toppled, many experts quickly cautioned that the same could not happen in Egypt, given how weak and divided the pro-democracy activists there had been, for as long as anyone could remember. When revolution did spread to Egypt, it was said that the same lightning could not strike in Libya or Syria, where dictators exercised near complete control, and where civil society barely existed.

The absence of popular resistance to repression is rarely a sign of true apathy; more often, people choose not to resist because their governments work hard to make resistance futile. This has been the Russian government's strategy (just as it was the strategy of the Egyptian government under Mubarak) – to persuade people that if they challenge the state, they will stand alone and surely lose, and thus endanger themselves for nothing.

But beneath the surface in such societies, a different kind of resistance can gradually erode the legitimacy of a state. People share their disgust with their families, co-workers, and friends. They lose respect for their leaders and greet their pronouncements with ridicule. Children of the elite confront their parents and ask how they can be part of such a lie. Members of the elite project confidence to the outside world, but often recognize, privately, that they are not telling the truth, and sometimes feel doubt and even shame as a result. Under such circumstances, a single spark can ignite unstoppable movements for change and cause a seemingly powerful state's authority to crumble.

There were always reasons to believe that this would be an interesting period in Russia, because of the parliamentary elections and next year's presidential transition. You can stage-manage an election, but it is hard to control, or predict, how people will react to being managed on such a massive scale. But the real spark turned out to be Prime Minister Putin and President Medvedev's public announcement back in September, more than two months before the parliamentary vote, that they would switch places and even more so, that this decision was made "years ago." This was not even the pretense of democracy. Two men – or more likely one – would decide who would rule Russia. They weren't even going to pretend that the views of the millions of Russians they were asking to "vote" to confirm their arrangement mattered.

Even worse, it became clear that the injustices and indignities many Russians had been enduring would continue for perhaps another twelve years. And then, adding injury to insult, observers found widespread evidence of cheating in last week's Duma elections, soon confirmed by videos showing just how brazenly, and clumsily, pro-Kremilin forces tried to increase their advantage.

And so, activists took to the streets in protests. Security forces, behaving as usual, violently suppressed those protests and arrested hundreds of people. But this time, ordinary Russians responded by coming out in even greater numbers – tens of thousands over the weekend. This time, they seemed to know that they would not be standing alone. And it was the government, for once, that decided resistance would be futile. Indeed, police worked cooperatively with protest organizers, discussing security arrangements well in advance of the rally – hopefully a precedent for the coming months.

During the period between now and the presidential election, scheduled for March 4 next year, we will see if the protests continue to grow, and if so, how the state will respond. A critical question will be whether the government allows a credible, independent investigation of allegations of vote rigging during the Duma elections. Of course, no one can know now what will happen. The Russian state is still strong. Civil society is still rather weak. Putin and his security apparatus may lash out in ways that increase the degree of repression in Russia in the short term. We have already seen some signs of that – the government has pressed online social networks to censor calls for demonstrations, and prosecutors have questioned executives of networks that have refused to do so.

But many of their old tactics – whether arresting protest leaders, or blaming the West – not only are not working, but are backfiring.

What can the United States do to support the Russian people and to increase the chance that they will be able to exercise their rights and freedoms? Of course, the United States cannot play a decisive role in these events, and should not try. But there are some steps the U.S. could take that would help.

First, the Obama administration and members of Congress should keep speaking – calmly but firmly and publicly – against abuses by the Russian government and in favor of Russian's struggling for universal rights. The more angrily Russian leaders insist that they do not care what the world thinks, the more I think that they care a great deal. International legitimacy matters to the Russian political elite, as it does to elites in most countries. They would prefer to be respected than looked down upon. Many value their connections to the West and abilities to travel and do business internationally. They try to convince their people that all this Western

talk about human rights is insincere and inconsistent; that Americans will bend their principles whenever it suits them. It is important to disprove that argument.

Secretary of State Clinton does not need me to praise her for her recent words about the Russian elections, since she's already received the best compliment any Secretary of State can ever get – a denunciation from Vladimir Putin. But I thought that her comments – her insistence that Russians, like people everywhere, have a right to choose their leaders and have their voices count – were eloquent, principled, and effective. I hope that she and President Obama will continue to speak out.

Second, the United States should apply targeted pressure against those elements of the Russian security apparatus that have tortured and killed the very individuals who are trying to make the government accountable. This is what Senator Cardin's legislation – the Sergei Magnitsky Rule of Law Accountability Act – seeks to do. It is not designed to sanction Russia or the Russian government or to interrupt any diplomatic or economic cooperation between the United States and Russia. It targets individuals inside Russia who are reasonably and objectively suspected of having committed terrible crimes – such as extrajudicial executions and torture – and whom the Russian government cannot legitimately embrace or seek to protect. It says that such people should not be allowed to travel to the United States or to pass their money through U.S. banks – something that the U.S. government has a legitimate interest in preventing.

Especially if joined by the European Union, such measures would help to isolate and disadvantage these elements in Russia vis a vis other members of the elite who are more open to reform and respectful of dissent. Targeted visa and financial restrictions would also help to cut off the escape valve enjoyed by many of the worst human rights violators in Russia – their ability to convert power into wealth and then to spend and store that wealth from New York to London to the French Riviera.

Now, the State Department has said that this legislation is not necessary because it has already imposed sanctions against Russian officials linked to the death in custody of Sergei Magnitsky. I appreciate the administration's action in that case. But the administration has not announced whether it has taken such measures against those responsible for other, less prominent, but equally horrible crimes committed against Russians fighting for their rights and freedoms. Any targeted measures imposed by the United States should address all such cases in a principled and consistent way, not just one emblematic case. The administration should also exercise its existing legal authority to deny visas to Russian officials implicated in corruption. And – very importantly – it should make it a priority to persuade the European Union to apply similar visa and financial restrictions as well.

At the end of the day, it doesn't matter whether all this is done through legislation or executive action. But it should be done right. It should be done publicly. It should be done as much as possible in concert with other nations. It should be done as part of a real strategy to support the cause of human rights in Russia, not as a do-no-more-than-is-necessary response to pressure from the Congress or activist groups. If the administration won't act in this way, then the Congress should advance and ultimately enact Senator Cardin's bill.

I appreciate the concerns some in the administration have expressed that such measures might undermine the bilateral relationship between Russia and the United States, and cooperation on important issues such as non-proliferation and maintaining transit routes to Afghanistan. Russian officials must, of course, try their best to convince you that this will be the case. I cannot guarantee that it will not be. But keep in mind that the people targeted by Senator Cardin's bill and the visa bans already imposed by the administration are despised by many Russians. Many Russians would be happy to learn that these people will no longer be able to make shopping trips to the United States or to park their money overseas, adding to the capital flight that so hurts prospects for broad based prosperity in Russia. If push comes to shove, it will be risky for the Russian government to defend the targets of this legislation, or to denounce international action against them, or to use such action as a pretext to end cooperation with the West that advances Russia's national interests.

Finally, Madam Chairman, it is very important that the United States have the best possible diplomatic representatives on the ground in Russia as these historic events unfold. The United States should have an ambassador in Moscow who is not only a good diplomat, but who sincerely believes in the cause of human rights, and can convey that conviction effectively to the Russian government and to the Russian people. I hope that the Senate will act to ensure that such an ambassador is in place the moment America's current ambassador to Russia leaves his post. Whatever the reasons for delay – and I do not question their sincerity – what should matter to the Senate now, above all else, is how best to seize the historic moment presented by Russia's political awakening and the promise it holds.

This is one more lesson of the Arab Spring that perhaps does apply to Russia and indeed universally. Whether one believes that these struggles for dignity and freedom that have been joined by millions of people around the world should be a primary preoccupation of American foreign policy is academic. For wherever such struggles arise, they will be a central preoccupation. Most foreign policy experts never imagined two years ago that the president of the United States would spend far more time thinking about how to promote democratic change in Egypt than he's spent contemplating Egypt's role in the Middle East peace process.

But he has. Few imagined that any issue would be more important to America's relationship with Syria than the complex role it plays in supporting or undermining regional security in the Middle East. But the Syrian people did something this year that caused us to set aside those concerns to defend a set of values that trump all else.

What happens next in Russia is up to the Russian people. But if they choose to keep taking risks to regain their democratic freedoms, then their struggle will become everyone's preoccupation. The ways in which the United States relates to Russia not only should change, but will change. The question will not be whether to support a democratic struggle, but how to do so most appropriately and effectively. For virtually everything that matters in this relationship to Russians and Americans alike will depend on the outcome.