

Spotlight on a Critical Threat: The Abuse and Exploitation of Red Notices, Interpol and the U.S. Judicial Process by Russia and Other Authoritarian States

Conference Report

Convened by the Terrorism, Transnational Crime and Corruption Center
at the Schar School of Policy and Government of George Mason University
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TraCCC

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About TraCCC

The Terrorism, Transnational Crime and Corruption Center (TraCCC) is the first center in the United States devoted to understanding the links among terrorism, transnational crime and corruption, and to teach, research, train and help formulate policy on these critical issues. TraCCC is a research center within the Schar School of Policy and Government at George Mason University.

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This report on *The Abuse and Exploitation of Red Notices, Interpol and the U.S. Judicial Process by Russia and Other Authoritarian States* summarizes a conference featuring distinguished scholars, legal professionals, and government officials. The conference looked at a critical threat for the United States and other democratic countries whose judicial systems and legal institutions are often misused by authoritarian regimes. A particular cause for concern is the abuse of Interpol's Red Notices by Russia, China, Turkey and other authoritarian countries to harass their political and economic opponents worldwide. The report contains a list of recommendations and suggestions to mitigate the problem. The conference report was written by Dr. Yulia Krylova, a research scholar at TraCCC, and edited by Louise Shelley, Director and Judith Deane, Deputy Director of TraCCC at George Mason University.

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Executive Summary

Overview of the problem

The abuse and exploitation of Red Notices, Interpol and the U.S. judicial process by authoritarian regimes constitute a rapidly growing problem for the United States and other democratic societies. *This problem is especially evident in the cases of political asylum seekers whose applications are denied by the U.S. immigration authorities based on abusive Red Notices requested by authoritarian governments.* There are multiple ways in which nondemocratic states abuse the U.S. judicial system, including, but not limited to:

- the misuse of Section 1782 of Title 28 of the U.S. Code that allows a party to a legal proceeding outside the United States to apply to an American court to obtain evidence for use in the non-U.S. proceeding;
- the misuse of Chapter 15 of the U.S. Bankruptcy Code that allows representatives of a foreign insolvency proceeding to bring an ancillary action in the United States, as well as to conduct further discovery regarding the debtor's property and assets;
- sabotage by authoritarian regimes of MLAT (mutual legal assistance treaty) requests filed by U.S. prosecutors in criminal and civil forfeiture cases in the United States.

Change of Policy Under the Trump Administration

Apart from furthering their corrupt interests, kleptocratic and authoritarian states abuse Interpol and the judicial process in rule-of-law countries, such as the United States, in order to undermine public confidence in the idea of an impartial and independent judiciary, to destroy the credibility of democratic systems in general, and to diminish public trust in the concept of the rule of law. They also undermine the practice of democratic societies serving as safe havens for individuals threatened in their home countries. This poses a severe national security threat not only for the United States, but also for the entire community of rule-of-law countries. Another threat to national security relates to the export of economic criminality from kleptocratic states through corrupt interference and manipulation of national laws and law enforcement mechanisms in the United States and other democratic countries.

Recommendations for Further Actions

GENERAL STRATEGY

- ***Advocate for Congressional responses to address the current gap in the judiciary's awareness about new threats that kleptocratic states pose for democratic institutions and the legal system in the United States.*** Providing legislative suggestions to address these problems should be at the top of the advocacy agenda.
- ***Increase information sharing among government agencies engaged in international law enforcement cooperation and policing, immigration courts, and other public actors.***

Information sharing between various public actors and agencies could potentially serve as a solution for cases in which U.S. immigration courts are required to enforce sometimes unjust judgements of foreign courts in authoritarian states.

- ***Rethink the roles of Western enablers of judicial interference.*** It is important to raise awareness of the role played by prestigious law firms and other enablers in the West who represent the interests of kleptocratic states in international litigations and transactions, helping them to manipulate the judicial and legal systems in democratic countries.

RESEARCH AND TRAINING

- ***Further research into the problem of abusive Red Notices and the misuse of Interpol, as well as judicial interference by kleptocratic states.*** There is insufficient research and analysis of the new threats and challenges to democratic institutions posed by kleptocratic states that abuse international organizations, such as Interpol, in their corrupt interests.
- ***Education and training of immigration judges on the abuse of Red Notices by nondemocratic regimes.*** Training programs are critical for preventing harassment of political dissidents, human rights activists, journalists, and whistleblowers who fled authoritarian countries. It is necessary to develop tailored training programs for immigration legal professionals, with a range of speakers, including immigration lawyers who specialize in defense and removal of abusive Red Notices.

INTERPOL'S REFORMS

- ***Collect statistics and create databases regarding abusive and noncompliant Interpol Notices.*** Currently, there are no exact statistics available regarding abusive and noncompliant Interpol Notices. The lack of statistics in this area, in turn, makes it difficult to conduct research into how effectively Interpol identifies and prevents its abuse by authoritarian states. The lack of statistics also makes it difficult to evaluate recent reforms made by Interpol.
- ***Develop comprehensive mitigation plans and risk assessments for the misuse of Interpol.*** It is important to identify the current vulnerabilities and potential risks in the Interpol Notice and information processing systems. Interpol can address this issue by making it much harder to get a Red Notice, for example, by setting a higher standard of proof and requiring a personal certification from a domestic minister of justice or attorney general in the requesting country. Interpol might also consider revising the class of crimes for which Red Notices are available.
- ***Develop human skills and strengthen tech capacities to identify and remove abusive and noncompliant Notices from the system.*** Currently, Interpol's bodies responsible for the review procedure regarding Notices are significantly understaffed. Interpol should

invest more human and financial resources in identifying and removing abusive and noncompliant Notices from the system.

- ***Further develop the Interpol repository of practice, including analytics regarding its prior decisions.*** The existing Interpol repository of practice needs to be expanded in order to provide transparency regarding its prior decisions.
- ***Assess the possibility of introducing bonds by the National Central Bureaus requesting Red Notices.*** Such bonds can be used to pay compensations to victims of abusive Red Notices.

PUBLIC-PRIVATE PARTNERSHIPS

- ***Develop public-private partnerships (PPP) in the sphere of the review procedure regarding Interpol Notices.*** Private law firms could provide pro bono services in reviewing Interpol Notices. Such measures can potentially increase the quality and thoroughness of its review procedure and alleviate the problem of abusive Red Notices.
- ***Introduce legislative incentives for the development and implementation of PPP in this arena.*** It is also necessary to remove barriers to PPP that exist within law enforcement agencies.
- ***Engage civil society organizations and legal professionals in policy discussions related to the abuse of Red Notices, Interpol and the judicial process by authoritarian regimes.*** It is important to invite various stakeholders from the private and nonprofit sectors to discussions about new threats posed by kleptocratic states to democratic institutions.

Foreword: Dr. Louise Shelley, Director of TraCCC

I want to welcome you all to this conference that puts a spotlight on the critical threat of the abuse and exploitation of Red Notices, Interpol and the U.S. judicial process by Russia and other authoritarian states. This conference is organized by the Terrorism, Transnational Crime and Corruption Center (TraCCC) with the support of the National Security Institute of the Antonin Scalia Law School at George Mason University.

It is a very timely topic because on November 21st, 2018, there was the election for the President of Interpol. Ahead of Interpol's presidential election, many critics raised alarms about the candidature of Alexander Prokopchuk, a general in Russia's Interior Ministry. Thanks to the media attention and political pressure, the Russian candidate lost the election to the South Korean candidate Kim Jong Yan. This election brought to the fore the problem of the abuse of Red Notices by Russia and other states which we will discuss today.

This is a very timely conference on an issue that has deserved much more attention because the United States is currently dealing with abuse of its legal process that had not been anticipated earlier. This conference convenes both professionals who have worked on the problem of the misuse of Interpol and victims of abusive Red Notices as well as individuals who have examined interference by other states in the American and British legal processes. I became personally aware of the abuse of Red Notices in a recent legal case in the United States where I served as an expert witness. I want to thank all the speakers who generously donated their time to share their unique perspectives on this issue.

This conference will discuss how Red Notices and the judicial process are being abused here in the United States and how it has become a threat to our national security. This topic is particularly important because the judicial process and the rule of law in our society are the central pillars of our democracy. The conference suggests that the United States needs to pay much more attention to the question of how we can strengthen Interpol and its system of Red Notices and understand and address efforts to address interference in the legal process. I look forward to today's discussions of these issues that are very important for our country and other democratic states.

Introduction: Dr. Mark J. Rozell, Dean of the Schar School of Policy and Government

The Schar School of Policy and Government at George Mason University is honored to host this conference which convenes a distinguished group of professionals engaged in a common cause. The Schar School houses *the Terrorism, Transnational Crime and Corruption Center (TraCCC)*, as well as other research centers and institutes, such as *the Hayden Center for Intelligence, Policy and International Security*; *the Center for Regional Analysis*; and *the Stephen S. Fuller Institute for Research on the Washington Region's Economy*, among others. The Schar School is one of the ten schools and colleges at George Mason University, with about 2,000 students on two campuses in Arlington and Fairfax. We have a wide variety of programs, starting from undergraduate to PhD programs in political science, public policy and biodefense.

We are delighted to collaborate today with the National Security Institute of the Antonin Scalia Law School at George Mason University. We have already worked together on several projects and it is a very productive collaboration for the Schar School at George Mason University. I would also like to thank the speakers for contributing their time and expertise to this event. I also want to congratulate Dr. Shelley and TraCCC scholars on their contributions to policy debates on a national and global scale, as evidenced by the very substantial media coverage of their work.

The Schar School cares very deeply about projecting our scholarly research externally. We care very deeply about the scholarly community and our contributions to the academic literature. In addition, scholars at the Schar School are very good at projecting the value of their research to the outside world by contributing to various policy debates at the local, national, and international levels. TraCCC has really been at the forefront of promoting its research and analysis that have a significant impact on the policy world. Welcome to the Schar School and George Mason University and thank you for your attendance.

Opening Remarks: Matthew Heiman, Associate Director for Global Security at the National Security Institute (NSI) of the Antonin Scalia Law School

On behalf of the National Security Institute, I want to thank and welcome the audience for attending the conference. I also want to thank our distinguished speakers and panelists. The National Security Institute is housed within the Scalia Law School at George Mason University. It includes experts and academics who are focused on national security topics, starting from intelligence and homeland security to cybersecurity and emerging technology. Our experts and academics write about these topics. They speak about these topics. They teach about these topics.

The National Security Institute is also responsible for guiding the national security curriculum at the Scalia Law School. In addition, we are focused on developing and proposing practical solutions to real-world problems, which is the motivating energy behind what the National Security Institute does. Given our mission, we are delighted to support today's event. We are happy to be working with the Terrorism, Transnational Crime and Corruption Center at the Schar School. We look forward to our continued collaboration and to today's discussions.

SESSION ONE: Setting the Stage, Identifying Major Violators

Thomas Firestone, Baker and McKenzie, LLP

It is the first major conference dedicated to the subject of the Interpol abuse, which is an extremely important topic. Interpol is the International Criminal Police Organization established in 1923. It is headquartered in Lyon, France. Unlike its popular movie portrayals, Interpol does not arrest people. Its main function is to disseminate law enforcement information among member countries. As of today, 194 countries are members of Interpol and they participate in its work through their National Central Bureaus (NCBs) represented by local and national law enforcement officers. Interpol provides training and data analysis, but its main function is to disseminate information among law enforcement agencies from member countries, mainly through its system of Notices. There are different types of Notices. For example, Black Notices seek information on unidentified bodies. Blue Notices seek information on the location of persons of interest in criminal investigations. Red Notices seek information on the location and arrest of persons wanted by legal jurisdictions with a view to their extradition and criminal prosecution in the requesting country. The abuse of Red Notices constitutes the main problem that we are concerned with today.

Cooperation between law enforcement around the world is essential to identify and prosecute transnational criminal organizations. Unfortunately, Interpol is subject to abuse by various bad actors. The problem with Red Notices is that it is extremely easy to issue a Red Notice. At the same time, it is extremely difficult for victims of abusive Red Notices to remove them from Interpol. Apart from arrests, there are several collateral damages of abusive Red Notices for their victims. First of all, it is very risky for subjects of Red Notices to travel internationally since they can be arrested in a foreign country. Second, Red Notices brand their subjects as criminals to the entire world. Finally, Red Notices make it very hard for subjects to do business, to get a loan, or to find a job.

Indeed, Red Notices can really sabotage the lives of people targeted by governments in non-democratic countries for political or economic reasons. It gives such governments an extra mechanism to harass their opponents worldwide. This is an issue that has come to the fore recently for a number of reasons. Based on my working experience, I distinguish at least three factors that have led to this situation over the last 15 years. The first one is the impact of 9/11 on promoting international law enforcement cooperation. 9/11 was a real push to facilitate and expedite international police cooperation, with a focus on catching terrorists and preventing other terrorist attacks, with insufficient attention paid to its potential negative effects and abuse.

Second, the collapse of the Soviet Union accelerated the rise of transnational organized crime, human trafficking, and money laundering. This, in turn, focused attention on the importance of international law enforcement cooperation and the development of new technology to facilitate

information sharing. In addition, the collapse of the Soviet Union facilitated the rise of a new and particularly pernicious form of organized crime – illegal corporate raiding, which is called *reiderstvo* in Russian. What distinguishes *reiderstvo* from ordinary organized crime is that it relies on the abuse of the legal system and corruptly obtained judicial orders to seize businesses and their assets. In many ways, the abuse of Interpol is the international equivalent as it uses the international criminal justice system to harass people. In many corrupt countries, it is easy to obtain criminal charges that can be used to get Red Notices against the target individuals to pressure them into transferring their assets to raiders.

Third, there are several technological developments analyzed in the 2013 and 2018 reports published by Fair Trials.¹ These technological developments make it easier to disseminate Red Notices and Diffusions, which are collectively referred to as Interpol alerts. For example, through the I-link system, member countries can submit Red Notices and Diffusions, with the related information accessible to the police around the world. As a result, we can see the rise in the number of Red Notices. In 2001, there were 1,418 Red Notices issued by Interpol.² In 2016, Interpol issued 12,878 Red Notices.³ According to Fair Trials, currently, there are about 50,000 Red Notices circulating in the world.⁴

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As for the ways to improve the Interpol system, the 2018 Fair Trials report has a number of recommendations which are in various stages of implementation by Interpol.⁵ In my opinion, over the last five years, the situation in this area has improved. There is increased scrutiny of Red Notices, which can be attributed to the work of such organizations as Fair Trials, as well as to efforts by some of the people who have been victimized by Interpol.

In terms of curbing potential abuse, on the front end, Interpol can address this issue by making it much harder to get a Red Notice. This could be done by setting a higher standard of proof and requiring a personal certification from a domestic minister of justice or attorney general confirming that they have reviewed the case and that the charges are not brought for a political purpose.

¹ Fair Trials. (2013). *Strengthening Respect for Human Rights, Strengthening Interpol*. London; Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London.

² Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London, p. 6.

³ Interpol. (2017). International Notices System, No. COM/FS/2017-02/GI-02. Geneva: Interpol.

⁴ Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London, p. 6.

⁵ Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London, p. 8.

Interpol might also consider limiting types of crimes for which Red Notices are available. The real goal of this system is to stop terrorism, violent criminals, drug traffickers and similar crimes. Prohibiting Red Notices in cases arising out of white collar and non-violent crimes might help to keep Interpol focused on the most serious forms of violent crime, terrorism and drug trafficking. Another recommendation might be to prohibit the use of Red Notices when the location of their subjects is known. There are cases where subjects of Red Notices live openly in foreign countries. In such cases, instead of Red Notices, governments can send extradition requests.

On the back end, there are various ways to make it easier for victims of abusive Red Notices to have their data and their Notices removed from the Interpol system. Interpol could put in place a rule to remove Red Notices against individuals who are subjects of extradition requests denied by the national court because of a determination of a politically motivated cases. It might also be possible to create a system where subjects of Red Notices may go to national courts, the Ministry of Justice, or some local agencies to get a declaratory judgment and review of their case. The current problem is that there is no real judicial review of Red Notices, which allows for severe violations of human rights. The creation of a judicial review system in the country where the subjects are residing could solve this problem.

The current problem is that there is no real judicial review of Red Notices, which allows for severe violations of human rights.

Finally, as the 2018 Fair Trials report notes, there is a problem of insufficient resources for the review procedure in Interpol.⁶ The Commission for the Control of Interpol's Files (CCF) and the Task Force which Interpol set up to review Red Notices are not adequately staffed to deal with the current 50,000 Red Notices circulating in the world. Law firms throughout the world could contribute to the review process on a pro bono basis. They could also help Interpol with its repository of practice to provide transparency regarding its prior decisions. It may also be possible for law firms to provide pro bono representation to individuals who are subjects of Red Notices. Such measures can potentially contribute to Interpol's transparency, increase thoroughness of its review procedure, and alleviate the problem of abusive Red Notices.

⁶ Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London, p. 34.

Robert L. Deitz, Professor of Public Policy at George Mason University

It is useful to put Interpol into a larger context of the development of due process of law. It is no accident that the Bill of Rights concerns process and procedure, not substance. From the beginning of legal development, thinkers have understood that for a judgment to be legitimate, a court must obtain personal jurisdiction over the defendant, whether in the criminal or civil context. How does one obtain jurisdiction over somebody? If the defendant is part of a community, this issue is relatively straightforward. But what if the defendant is residing in another state or country? The *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) was a landmark decision of the Supreme Court of the United States that set up the parameters for using so-called “long-arm jurisdiction,” according to which a party may be subject to the jurisdiction of a state court if it has “minimum contacts” with that state. Early on, courts tended to not really care how the defendant got into court. In a famous case, *Ker v. Illinois*, 119 U.S. 436 (1886), the defendant was kidnapped from Peru and found himself first in Hawaii, then in California, and ultimately in Cook County in Illinois. This was the state of law until quite recently.

Interpol is roughly 100 years old. It was created to bring the rule of law to efforts to gain jurisdiction over foreigners. Several years ago, there were severe problems with Red Notices, but the situation has improved recently. It is inevitable that an organization like Interpol will be misused by some people for a number of reasons. First of all, there is increasing recognition of the rule of law. By misusing Interpol, abusers are trying to launder their conduct because any media would approve of the use of the rule of law to further their interests. Second, undemocratic countries increasingly attempt to undermine international institutions, so that they become perceived to be illegitimate.

In our globalized world, there is no rational alternative other than an international organization to legitimize the search for international criminals. Therefore, Interpol is needed. But it needs greater protections and improvements inside the institution.

In our globalized world, there is no rational alternative other than an international organization to legitimize the search for international criminals. Therefore, Interpol is needed. But it needs greater protections and improvements inside the institution. One of the recommendations is to require bonds by those requesting Red Notices. Some of these claims are illegitimate and there ought to be a way for their victims to be compensated. It is not unusual for courts to require some sort of bond to be filed in order to participate in some legal activity.

There are serious national security concerns with the Red Notice system in the sense that it is known and common for them to be misused by bad governments. The rule of law is also a national

security issue. If international institutions cannot be trusted, that people do not have confidence in their legitimacy, it will have harmful consequences to the nation's security. People need institutions and they need them to work honestly and fairly. Finally, if Interpol does not cure itself, it will be cured for it. Some countries might not be willing to be associated with it or there might be some splinter groups. This is why it is so important that the new leadership of Interpol takes this issue seriously.

SESSION TWO: Abuse of Red Notices and the Interpol System

Introduction by the panel moderator Ariel Cohen, Atlantic Council

The key objective of our discussion is to find the best mechanisms to ensure that authoritarian regimes will not abuse Interpol to chase after their opponents, such as Mikhail Khodorkovsky, a Russian opponent of the Putin regime and a former owner of the YUKOS oil company, who was harassed and chased around the world. Another victim is Bill Browder, who was also harassed by the Russian regime. These are the most prominent people who have fought back against the abuse of Red Notices. However, there are many other people who do not have sufficient resources to fight back. How can Interpol ensure through its internal and external mechanisms that Red Notices and Diffusions are not abused for political purposes? How can we ensure that somebody “armed with a court decision” does not harass, chase, or expropriate assets of their rivals or economic competitors, whether it is in Russia or elsewhere? These are some of the questions that need to be addressed.

Melissa Hooper, Human Rights First

In countries where I worked, including Russia, Azerbaijan, Ukraine, Uzbekistan and Kazakhstan, I saw very clearly how their governments use fabricated criminal court cases and fraud cases against their opponents, critics and dissidents. They use the same strategies across borders. The way we see Interpol being coopted and changed by some of these authoritarian regimes relates to the way they coopt other multilateral organizations, such as the United Nations Human Rights Council and the Council of Europe. From a human rights perspective, the Red Notice abuse intersects with asylum rights. According to international law, individuals who gained political asylum cannot be sent back to their countries. Even countries that have not signed the related international protocols and conventions are required to not send people back to the countries they fled. However, right now, in the United States, there are situations where individuals requesting asylum from the Russian government may be sent back based on Red Notices issued against them by Russia. This is the problem that I have seen in many cases. In my presentation, I will give one pre-reform case and several post-reform cases as my examples. By the reform, I refer to the Working Group on the Processing of Information organized by Interpol in 2015 to improve its mechanisms of information processing and the review procedure.

Before 2015, a sample case is that of Petr Silaev, a Russian environmental activist who was one of the members in the Khimki forest movement who protested the destruction of this forest to build a highway. In 2010, he was charged with hooliganism and left Russia for Finland. In 2011, he was granted political refugee status in Finland. However, when he traveled to Spain on vacation in 2012, he was arrested and jailed in the well-known *Soto del Real* prison. He was charged with terrorism based on a Red Notice requested by the Russian government. Under pressure from international organizations such as Fair Trials, the Red Notice against Silaev was retracted. Yet, it took him over 18 months to defeat the Red Notice. One of the problems in this case was the accusation presented by Russia to Interpol. It alleged that Silaev joined a mob of 150 to 300 people

that marched to the administration building, and using rocks and paint bombs did some damage to the building. There was no evidence that Silaev did any damage. However, the alleged property damage was sufficient to issue the Red Notice against Silaev. This case raises the question of what type of criminal cases should be the basis for a Red Notice.

In 2015, there were attempts to reform the Interpol system in relation to asylum cases and asylum claims. According to the new policy, the processing of Red Notices and Diffusions against refugees will not be allowed if the status of a refugee or asylum-seeker has been confirmed; the Notice/Diffusion has been requested by the country where the individual fears persecution; and the granting of the refugee status is not based on political grounds vis-à-vis the requesting country. The third condition deserves an entire conversation because it could be misused by a receiving country to swallow up the asylum exemption itself. Apparently, it is related to Article 3 of Interpol's Constitution, which prohibits the organization from engaging in political matters.

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After 2015, we can see other cases in relation to political asylum. For example, Nikita Kulachenkov, who worked for Putin's political opponent Alexei Navalny's *Anti-Corruption Foundation*, was accused of stealing a \$2 poster from a street artist. In 2016, he fled to Lithuania where he was granted asylum. Later, he was arrested in Cyprus on a Diffusion notice submitted by Russia. The fact that this was a Diffusion notice meant that the reform which prohibited granting of Red Notices for grantees of asylum was of no help – because the Diffusion was processed under the auspices of the countries' bilateral relationship and requested outside of the Red Notice process.

In yet another case, Alexey Kharis, a businessman from Russia's Far East, was arrested on a Red Notice in the United States. Alexey and his partner, Igor Borbot, used to have a very successful business in Russia. In 2013, they started to blow a whistle on corrupt practices and bribe-taking by the Ministry of Industry and Trade in the Far East. The Ministry raided their company and seized their assets. In 2015, Russia's authorities accused Alexey of a massive fraud of \$200 million dollars because of his refusal to cooperate with the FSB to falsely testify against his partner. As a result, Alexey had to flee to the United States with his wife and children.

In the United States, his wife was accepted into a graduate program at the University of California, Santa Cruz, and received a student visa, while Alexey received a work permit and started a new business. He was also accepted by Stanford School of Business. To start a new life in the United States, Alexey applied for asylum. Unfortunately, in 2015, the Russian government successfully requested Red Notices against Alexey Kharis and Igor Borbot. Based on them, Igor Borbot was arrested in New Jersey in 2016 and Alexey's visa was revoked in 2017. When Alexey went to his asylum interview in August of that year, he was arrested there. Moreover, he was refused bail based on the Red Notice. In this case, there was no evidence that would hold up in a court of law in the United States. There were just false accusations by the Russian government that Alexey was involved in money laundering. Based on these allegations, Alexey may lose his opportunity to gain asylum in the United States. His case is now being appealed and he remains in jail in California.

This case highlights a serious issue with U.S. immigration courts and points to the importance of creating a system for exchange of information about asylum cases. To sum up my presentation, I would like to quote Vladimir Gusinsky, a Russian media mogul and yet another victim of Red Notices by Russia, who said: "The West must decide whether to sit by and make friends with Mr. Putin or stand up for human rights and freedom of expression."⁷

Ismail Shahtakhtinski, Founder and Principal Partner, I.S. Law Firm

As an immigration lawyer, I often deal with individuals who applied for asylum and were reported to Interpol through the Red Notice system by authoritarian countries from which they fled. It is easy to issue a Red Notice because there are no rigorous checks or verification processes inside Interpol. For example, in the case of Dogan Akhanli, who gained asylum and became a citizen of Germany, how difficult was it for Interpol to find out that this case is politically motivated? It suggests that currently, there is no rigorous review process within this organization.

Unfortunately, I am very skeptical of Interpol itself as an organization. There are many other cases where individuals who are featured in the news as political dissidents or journalists became subjects of Red Notices. Currently, in United States immigration courts, Red Notices are taken as truth, which was not the case under the previous administration. Nowadays, it seems to be part of a general policy to intimidate asylum applicants. It works in the following way: an individual comes into the United States from the country of persecution and applies for asylum, claiming that if he goes back to his country, he will be arrested. Then the country he fled requests a Red Notice against that individual and he does get arrested but not in that authoritarian country, but instead, by the United States.

⁷ "Putin is out to Get Me, Says Media Tycoon" (2001, April 24). *The Guardian*, available at <https://www.theguardian.com/world/2001/apr/24/russia.gilestremlett>

In such cases, the United States, unfortunately, is acting as a proxy for authoritarian regimes. Under the United Nations convention, the location of refugees and asylum applicants must be kept confidential. The most alarmingly trend, however, is that the United States government detains asylum applicants who are subjects of Red Notices and immediately informs the country of their persecution about their location. I was born and grew up in Azerbaijan during the Soviet times. Most of my clients come as asylum applicants from Kazakhstan, Russia, Azerbaijan, and Uzbekistan, which are the top Interpol abusers in the world. The most important question is what we can do to fix this problem and let Interpol remain a channel for reporting criminals and a platform for cooperation between law enforcement agencies in different countries.

The most alarmingly trend, however, is that the United States government detains asylum applicants who are subjects of Red Notices and immediately informs the country of their persecution about their location.

In my opinion, Red Notices requested from countries known as human rights abusers should be scrutinized, and the benefit of the doubt should be given to their subjects. There is no sense to ask for additional certifications from judges or law enforcement agencies in authoritarian countries that requested Red Notices because it will further legitimize their request. From my experience, the most common charges in the Red Notices cases that I worked on are tax evasion and embezzlement. The reason is that tax evasion and embezzlement are very difficult to disprove. Also, in those cases, it is very easy for authoritarian governments to provide further certifications. Corruption is so pervasive in these countries that one can buy any police report.

This is why Interpol must necessarily put under scrutiny those Red Notices that come from countries with corrupt judicial and law enforcement systems. Also, their subjects should not be detained in the United States, like in one of my cases where an asylum applicant from Azerbaijan was reported to Interpol and the DHS counsel tried to argue that Interpol is an investigative agency. This is simply not true. Interpol is just a channel for reporting individuals to law enforcement agencies in other countries. Part of the problem with Interpol is that in popular culture, it is described as an organization that conducts investigations and catches criminals. This suggests that more education is needed among the general public and public officials about Interpol and its functions.

**Bruce Misamore, Former CFO/Deputy Chairman Management Committee,
YUKOS Oil company**

I am a person who has been personally affected by the abuse of the judicial system by Russia. I also represent employees of YUKOS who were harassed by the Russian government through the Interpol system numerous times. In the case of rule-of-law countries, it is naive to accept verdicts from countries that are obviously not rule-of-law countries. The reason is that rule-of-law countries always feel that it is their obligation to enforce the law. In my case, not only did the Russian government expropriate YUKOS in the largest expropriation operation in history, but they also pursued a criminal case against Mikhail Khodorkovsky, its largest owner. Interpol issued multiple Red Notices against YUKOS employees who had fled Russia or had been living outside Russia working for YUKOS. In the YUKOS case, Red Notices were issued to pressure people to testify against Mikhail Khodorkovsky. The latter had two different convictions that were totally false and contradictory, but he ended up in prison for about 10 years.

In 2006, YUKOS decided to fight a battle to preserve its international assets. Once it was obvious that Russia was going to expropriate the company, YUKOS put its international assets into a couple of entities in the Netherlands. In 2006, YUKOS won its first big legal victory against the Russian Federation in Holland. But the very same day, Russia announced a criminal investigation against me and three other YUKOS-related persons, which was clearly fabricated to intimidate us. I am still under criminal investigation by the Russian Federation. They tied my case to the Khodorkovsky case. The latter will go on forever because the Russian authorities do not want Khodorkovsky to return to the country. The criminal investigation that Russia launched against me means that I must take severe precautions while I travel internationally. I often travel to testify against the Russian Federation in international arbitration cases and the only way for me to do this is to request a letter from the Minister of Justice or Minister of Foreign Affairs of the country I travel to. This letter guarantees to protect me in situations where the Russians could use the existing criminal investigation against me.

I have never had a Red Notice issued against me, but that does not mean that Russia cannot request one if they want to intimidate me. As far as other YUKOS employees are concerned, recently, Interpol made a decision that any case related to YUKOS is considered politically motivated. According to Interpol's Constitution, they ignore cases that they believe are purely political. My experience has primarily been with Russia, but it happens in other post-Soviet countries too.

[W]hen Interpol deals with countries lacking the rule of law, such as Russia that is infamous for its "telephone justice," the organization should not recognize the verdicts from those countries because they are largely politically motivated.

In terms of recommendations, when Interpol deals with countries lacking the rule of law, such as Russia that is infamous for its “telephone justice,”⁸ the organization should not recognize the verdicts from those countries because they are largely politically motivated. In most cases, they have nothing to do with criminality. In the YUKOS case, it was all about white-collar crime allegations, which were false. This is why it is important to figure out how to deal with authoritarian countries who abuse Interpol for their own political purposes. My other concerns relate to some prestigious international law firms that represent Russia’s interests in international arbitration and court cases. Russia doesn’t show up as Russians in international courts or arbitrations. They show up as highly respected international law firms. In my case, that has been Clifford Chance, Cleary Gottlieb, Baker & Botts and Debevoise and Plimpton, among others. These are the types of people that judges or arbitrators play golf with on weekends. In one recent case, the Russians have hired Baron Peter Goldsmith of Debevoise and Plimpton, a former Attorney General for England and Wales and for Northern Ireland, to represent their interests. Such practices often facilitate the abuse of the international justice system by Russia and other authoritarian states.

Bruno Min, Senior Policy Advisor, Fair Trials

Fair Trials is a global criminal justice watchdog, headquartered in London with offices in Washington, D.C. and Brussels. We promote the right to a fair trial in criminal cases, in accordance with international standards of justice. One of our important cross-border justice campaigns focuses on Interpol. Its objective is to highlight the misuse of the system and to find ways of fixing the problems. Fair Trials has been working on these issues since 2012, and we produced a major report in 2013 in which we identified what we believed to be the main causes of the problems. In 2018, we published a new report that highlights some of the changes in the organization.⁹

I want to start my presentation by clarifying some misconceptions about Interpol. The first misconception relates to the role of Interpol’s President. This role is very much limited to a figurehead and has very little or practically nothing to do with the day-to-day running of the organization. For example, in 2016, the Chinese candidate Meng Hongwei was appointed as the President and at that time, many critics raised alarms that China would use its position to abuse Red Notices. However, in the case of Dolkun Isa, a Chinese Uyghur rights activist who had been subject to an Interpol Red Notice for over a decade, the Commission for the Control of Interpol’s Files removed it in February 2018 due to his previous refugee status in Germany. This case

⁸ “Telephone justice” means informal influence or pressure exerted on the judiciary.

⁹ Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London, p. 6.

suggested to us that the role of Interpol's President influence over the day-to-day functioning of the whole organization might be exaggerated.

We do not actually know how many Red Notices are requested by every country. We do not know how many of those Red Notices and Diffusions are found to be not compliant with Interpol's rules.

The second misconception relates to statistics. Russia is often cited as the worst abuser of Red Notices and Diffusions. Also, according to some estimates, 97 percent of Red Notices are not being checked properly.¹⁰ However, the problem is that there are no exact statistics from Interpol that can confirm these statements. We do not actually know how many Red Notices are requested by each country. We do not know how many of those Red Notices and Diffusions are found to be not compliant with Interpol's rules. The statements that Russia, China, Turkey, or any other country is the largest abuser of Red Notices are not based on reliable statistics.

As for the 97 percent of unchecked Red Notices, since 2013, there have been certain reforms implemented within Interpol, which raise questions about the reliability of this statistic now. Some of these reforms have been mentioned already, including the refugee policy, and new procedures ensuring that Red Notices are checked before they are disseminated. In 2009, Interpol launched the I-link system to disseminate alerts. The procedures for uploading Red Notices have changed since then and now these requests are not visible until they have been reviewed by Interpol. Also, Interpol set up the Notices and Diffusions Task Force (NDTF) consisting of around 30 people in the General Secretariat to review Red Notices and Diffusions. The third major change was a major overhaul on the Commission for the Control of Interpol's Files (CCF). Those reforms helped its procedures more transparent and much more efficient.

One reason for the bad publicity about Interpol is its lack of transparency. There are really no statistics that helps us understand what is happening within the organization. As for positive changes happening in Interpol, we do not have any statistics to assess their impact. Thus, we do not know how many requests for Red Notices and Diffusions are being rejected by the General Secretariat or how many cases are reviewed by the existing NDTF. This information is needed especially because we are continuing to see cases in which Interpol has clearly failed to weed out abusive requests for Red Notices. For example, in the case of Muhiddin Kabiri, a Tajik political activist, there were public reports that he was claiming asylum in a European country, which would have meant that according to Interpol's refugee policy, a Red Notice request against him would have been invalid. Yet, Interpol let Tajikistan issue a Red Notice against him. This raises the

¹⁰ Bromund, T., and Kopel, D. (2013). *Necessary Reforms Can Keep Interpol Working in the US Interest*. Heritage Foundation Backgrounder, 2861, p. 12.

question: If Interpol is carrying out the review process, what kind of information and sources are they relying on?

[I]n the case of Muhiddin Kabiri, who is a Tajik political activist, there were public reports that he was claiming asylum in a European country. Yet, Interpol let Tajikistan issue a Red Notice against him. This raises the question: If Interpol is carrying out the review process, what kind of information and sources are they relying on?

The other problem is a serious lack of staffing. The NDTF is a team of around 30 people, while Red Notices get issued at the rate of over 10,000 per year, and last year over 50,000 Diffusions were issued. The NDTF cannot review all of them. Another concern is that there is also a distinct lack of support for the CCF. More and more people are litigating on the issue of Red Notices, which means increased workload for the CCF. Also, there are new rules which, for example, require the CCF to produce written decisions, that makes the work of the CCF more demanding on its staff resources. Recently, the CCF's budget was cut, whereas the number of the people in the CCF has increased by one. Therefore, there are questions that need to be addressed, including issues around how we are going to support the CCF and the NDTF in order to protect Interpol.

In my opinion, the solution to this problem is not to exclude some countries from Interpol. Interpol's work is crucial, because it helps to tackle the very real risks of dangerous organized crime and terrorism, and Interpol is able to do this legitimately because of its global coverage. If you exclude some countries, it undermines the ability of this organization to perform its duties to keep the world a safer place. The other problem is that the exclusion of some member countries risks the creation of safe havens for criminals in countries like Russia or Turkey. And vice versa, it might expose the streets of Berlin, Paris or New York to criminals who fled those countries. It must also be recognized that authoritarian countries use alternative systems to catch political dissidents. For example, Turkey launched its alternative terrorist search system called *Terör Arananlar*, which looks like a counterfeit version of Interpol's website. They have Notices coded in various colors, depending on the amount of bounty on individuals listed in the *Terör Arananlar* system. The website is available in Turkish, English, Arabic, and German, suggesting that the website specifically targets diaspora communities, including those in which exiled dissidents have found a safe place to live. There are also other systems at the regional level that authoritarian countries abuse to harass political dissidents.

In the case of Sayed Abdellatif, a political activist from Egypt, he spent five years in immigration detention in Australia. The key solution in such cases is to sensitize and take appropriate steps to prevent the abuse within democratic countries.

One of the answers to the problem of abusive Red Notices is for the authorities, including immigration authorities, immigration courts, and law enforcement agencies, to be better sensitized to the issues of Interpol's abuse. There is a distinct lack of understanding of this issue amongst certain public authorities, as we can see in the cases of multiple arrests in Spain on abusive Red Notices and in the previously mentioned decisions made in the U.S. immigration courts based on Red Notices issued against political opponents. This problem is particularly serious in relation to asylum cases. In the case of Sayed Abdellatif, a political activist from Egypt, he who spent five years in immigration detention in Australia, because under local laws the Red Notice prevented him from applying from applying for asylum. The key solution in such cases is to sensitize and take appropriate steps to prevent the abuse within democratic countries. There should be better communication between different authorities at the country level because law enforcement authorities who deal with international cooperation and policing are most likely to be aware of Interpol's difficulties, whereas immigration authorities are less likely to be informed about these issues. This gap needs to be bridged.

SESSION THREE: Judicial Interference

Introduction by the panel moderator Michael Geffroy, the Scalia Law School

This session is devoted to foreign interference in our legal and judicial systems. The panelists will offer their unique perspectives on this issue from their own practices, experiences, and outstanding academic studies. Much has been written about the regime of President Putin and how it manipulates the Russian law enforcement and judicial communities to support its kleptocratic efforts. I can refer you to a great paper by Anders Åslund published by the Atlantic Council, where he writes:

Russian state power legitimizes this lawlessness and gives it an official state sanction. This makes it easier for these actors to successfully use the United States legal system, which tends to give foreign governments the benefit of the doubt in legal cases. Thus, the Kremlin has exploited the US judicial system to advance the Russia state's corrupt corporate raiding and expropriation schemes.¹¹

Just as the Russians have recently attacked our electoral system, they appear to abuse our legal and financial systems to further the expropriation of private property, corporate raiding and political persecution. In the United States, the Russian actors have misused various national laws. Just to give some examples, Section 1782 of Title 28 of the U.S. Code allows a party to a legal proceeding outside the United States to apply to an American court to obtain evidence for use in the non-US proceeding. Chapter 15 of the U.S. Bankruptcy Code allows representatives of a foreign insolvency proceeding to bring an ancillary action in the United States and to conduct discovery regarding the debtor's property and assets. The principles of international comity support that U.S. courts frequently enforce judgments of foreign courts.

The additional areas where Russia has made deliberate efforts to misuse the international and U.S. legal systems are Interpol, Red Notices and the related processes. Interpol makes it possible for 194 member states to exchange information on criminal activity that crosses national borders and to seek the location and arrest of wanted persons with a view to extradition and similar legal actions. In principle, the Interpol system is an outstanding tool. Problematically, however, Red Notices, Diffusions, and Blue Notices have increasingly been used not just by Russia, but by several nations to target political opponents, journalists, or refugees, and to further their kleptocratic ends. This is happening despite Article 3 of Interpol's Constitution adopted in 1956, which specifically prohibits the organization from engaging in matters of political, military, religious, and racial character.

¹¹ Åslund, A. (2018). *Russia's Interference in the US Judiciary*. Washington, D.C.: Atlantic Council, p. 2.

The use of Red Notices has dramatically increased over time, partly because of technological developments. In 1998, Interpol published 737 Red Notices.¹² In 2017, they published 13,048 Red Notices.¹³ The dramatic increase in Red Notices is due in part to the launch of the I-24/7 system, which allows police agencies around the world to communicate directly with each other, not just with Interpol. However, it also increases the opportunity for abuse. For example, in 2016, following the coup in Turkey, the Turks requested the issuance of over 60,000 Red Notices, which were declined by Interpol.¹⁴

The dramatic increase in Red Notices is due in part to the launch of the I-24/7 system, which allows police agencies around the world to communicate directly with each other, not just with Interpol. However, it also increases the opportunity for abuse.

Recently, there have been many excellent academic works on the abuse of Interpol and foreign interference in the U.S. judicial system published by the Atlantic Council,¹⁵ the Henry Jackson Society,¹⁶ and the Heritage Foundation.¹⁷ In April 2018, Sens. Pat Leahy (D-Vt.), Marco Rubio (R-Fla.), John Cornyn (R-Texas), Steve Daines (R-Mont.), Cory Gardner (R-Colo.), Tom Cotton (R-Ark.) and Richard Blumenthal (D-Conn.) sent a letter to Attorney General Jeff Sessions citing a Human Rights Watch finding that Chinese authorities are using Interpol Red Notices as a justification to systematically harass political dissidents.¹⁸ Several of them were living in the United States. On November 25, 2018, *the New York Times* published an article about a travel ban that the Chinese imposed upon Victor and Cynthia Liu and their mother Sandra Han, who are all American citizens.¹⁹ They went to visit their grandfather and were detained in China because the Chinese wanted to locate and return their father for criminal prosecution. This suggests the importance of this panel discussion for the United States and other democratic countries.

¹² Interpol (1999). *Annual Activity Report*, p. 6, available at <https://www.interpol.int/en/News-and-media/Publications2/Annual-reports/1999/>

¹³ Interpol. (2018). International Notices System, No. COM/FS/2018-03/GI-02. Geneva: Interpol.

¹⁴ “Interpol Denies Reports of Turkey’s Removal from Database after Listing 60,000 ‘wanted’” (2017, May 5). *Daily News*, available at <http://www.hurriyetdailynews.com/interpol-denies-reports-of-turkeys-removal-from-database-after-listing-60000-wanted-gulenist-names-115135>

¹⁵ Bertrand, M. (2018). *How Russia Persecutes its Dissidents Using U.S. Courts*. Washington, D.C.: The Atlantic Council.

¹⁶ Satter, D. (2015). *Russia’s Abuse of Interpol*. London: The Henry Jackson Society.

¹⁷ Bromund, T. R., & Kopel, D. (2013). *Necessary Reforms Can Keep Interpol Working in the U.S. Interest* (No. 2861). Washington, D.C.: Heritage Foundation.

¹⁸ The full text of the letter is available at https://www.rubio.senate.gov/public/_cache/files/5e3415d0-03c5-473d-892d-eb3f838cc2d7/D13803333C95F334AF0A64330B8B52EB.4-26-18-letter-to-doj-re-interpol.pdf

¹⁹ Wong, E., & Forsythe, M. (2018, November 25). China’s Tactic to Catch a Fugitive Official: Hold His Two American Children. *The New York Times*, available at <https://www.nytimes.com/2018/11/25/us/politics/china-exit-ban.html>

Jaimie Nawaday, Kelley, Drye and Warren, LLP

The Prevezon Holdings case was my introduction to this topic. This case involved a tax fraud of more than \$200 million against the Russian government, a corporate raid, the investigation of Sergey Magnitsky who was detained and murdered in Russia, and a worldwide money-laundering scheme that involved moving the proceeds through Moldova and shell companies located in other countries around the world. A small portion of these proceeds eventually ended up purchasing New York City real estate.

The Prevezon Holdings case is a civil forfeiture case, which represents a mix between a civil and criminal case. It means a civil proceeding to seize and forfeit property by the U.S. government because of its connection to some underlying criminal activity. This proceeding requires prosecutors to prove that an underlying crime occurred and that the property is connected to that crime. The action that was brought in the Southern District of New York was a civil action to seize and forfeit several New York City real estate properties because of their connection to this underlying crime in Russia.²⁰

In the Prevezon Holdings case, there were two major challenges. The first one was the intimidation of witnesses. The other one was the difficulty of getting tax records, bank records and similar documents from Russia to prove the existence of the underlying crime. All of these documents have to be obtained from Russia through the MLAT (Mutual Legal Assistance Treaty) process, which is a written request for legal assistance from prosecutors in one country to prosecutors in another country. The action was filed in 2012 and the U.S. prosecutor sent the MLAT request for assistance to Russia. This request described the nature of the complaint, records that were needed in order to prove the case, their relevance and the reason explaining why they were necessary. Several months later, the Russian government refused to provide any records, stating that there was no connection at all between the Russian tax fraud and the New York City real estate purchases. Instead, they proposed to investigate Bill Browder who referred this case to the Southern District of New York.

[T]here was a lengthy court battle with multiple motions filed to try to get documents by other means and to argue for their admissibility in the proceeding in New York. Meantime, there were significant witness issues, most obviously, with Nikolai Gorokhov who fell from his fourth floor apartment in Moscow in 2017.

²⁰ U.S. Attorney's Office, Southern District of New York (2017, May 12). Acting Manhattan U.S. Attorney Announces \$5.9 Million Settlement of Civil Money Laundering and Forfeiture Claims Against Real Estate Corporations Alleged to Have Laundered Proceeds of Russian Tax Fraud, available at <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-59-million-settlement-civil-money-laundering-and>

As a result, there was a lengthy court battle with multiple motions filed to try to get documents by other means and to argue for their admissibility in the proceeding in New York. Meantime, there were significant witness issues, most obviously, with Nikolai Gorokhov who fell from his fourth-floor apartment in Moscow in 2017,²¹ even though the United States went to extensive lengths to try to protect him and his family. Eventually, the documents were admitted, and the case was settled shortly before trial. The settlement seemed to end that chapter, but there was an epilogue about a year later. In the spring of 2018, I got a call and emails from the producers at MSNBC who showed me some correspondence between the Russian prosecutor who responded to the MLAT request and one of the attorneys on the defense side, Natalia Veselnitskaya. This correspondence showed that not only was the MLAT request shared with the defense counsel, but Veselnitskaya allegedly drafted its final version that the U.S. court received from Russia. This suggests that the process was not only insecure, but also rigged.

The damage could have been even worse if this case had been a pending criminal investigation and the MLAT request had been shared with the subject's counsel. This would have compromised the entire investigation and endangered witnesses. This case raises the question of what prosecutors could do in the case when the litigation process is corrupted. Is it better just not to ask for mutual assistance in such cases, meaning the impossibility of opening certain cases at all, or is it better to put in the MLAT request without confidence in the system, knowing that it could compromise the investigation and jeopardize witnesses? This is a question that needs to be addressed.

Tom Firestone, Baker McKenzie

I specialize in cases involving Russia and other former Soviet countries in Eastern Europe and Central Asia. When I was a prosecutor, I often saw cases of foreigners living in New York with a lot of money and there were great suspicions that the money is of criminal origin. The Hudson Institute has done a lot of work trying to address the question of what to do about kleptocratic proceeds filtering into the United States and the West. It is often very difficult to prosecute such cases. The problem in money-laundering cases is that prosecutors need to prove the criminal origin of the funds. For example, they might need to prove that some factory that was privatized, say, in Irkutsk in 1997 was privatized through bribery. It is impossible to do this without assistance from the foreign government. However, when prosecutors reach out for assistance from corrupt foreign governments, they often get nothing. In some cases, they may even encounter sabotage in the form of fabricated, bought and paid for exculpatory evidence, which might ruin the whole case.

²¹ Pagliery J., Sebastian C., and M. Weiss (2017, April 27). US Feared for Safety of Russian Money-laundering Witness. *CNN*, available at <https://www.cnn.com/2017/04/26/world/prevezon-witness-lawyer-gorokhov/index.html>

The abuse of Interpol is another manifestation of this problem that goes back to the absence of the rule of law in so many countries around the world. This suggests that we need to take into account potential negative consequences of an exclusive focus on law enforcement cooperation at the expense of the due process issues associated with it. After 9/11, there have been significant efforts to get countries to increase their capacity to identify terrorist financing, counter money laundering, and track flows of illegal proceeds. However, what I have seen in many cases is that the money laundering statutes which work fine in advanced countries with relatively stable legal systems do not work effectively in other countries where there is no rule of law.

I have seen many fabricated criminal charges based on money laundering in Russia... In such cases, the Russian authorities extort money from many businesses, threatening them with the money laundering charges, which is a relatively new instrument not available before. This is not specific to Russia. We can see this tendency in many countries around the world.

I have seen many fabricated criminal charges in the former Soviet Union and Eastern Europe. In some cases, law enforcement agencies or tax authorities would find some technical violation in a business' paperwork and declare that the business was operating illegally, laundering its proceeds. In such cases, the authorities extort money from businesses, threatening them with the money-laundering charges, which is a relatively new instrument not available before. We can see this tendency in many countries around the world. Efforts to strengthen law enforcement cooperation are absolutely necessary, but they need to be balanced with the same attention paid to the due process.

As far as the abuse of Red Notices is concerned, there is increased transparency now than there used to be several years ago. Recently, Interpol published a repository of practice that describes cases and decisions that have been reached, which can be used to advocate on behalf of clients. I have a case right now involving an East European country where a Red Notice against the main defendant was issued based on some fabricated domestic charges as part of a business dispute that the subject had with certain powerful political figures in this country. They destroyed his business and drove him out of the country. He started to fight back and they responded with the Red Notice against him. He disclosed their corruption in the press in his home country and he also tried to get his persecutors using the Global Magnitsky Act. At that point, the local government brought additional charges against his wife and daughter who had nothing to do with any of his alleged crimes. The local government also requested a Red Notice against his wife and filed a Diffusion notice against his daughter.

We presented all the facts and evidence to Interpol. We showed that all the charges were essentially related to the same scheme by corrupt government officials seeking to steal his business. We also showed that the charges against his wife and daughter served as his punishment for having exposed corruption in his home country. As a result, Interpol agreed to delete the charges against his wife and daughter pending a final review. However, the father remains on the Interpol list because the foreign government came back with additional charges just to keep him on that list. These additional charges were published on the Interpol website. At the same time, lawyers and the General Prosecutor's office in his country failed to produce any domestic charges. Apparently, the foreign government was able just to tell Interpol that they had some charges against the subject, but these charges were not documented or substantiated in any way. This case points to the importance of one of the recommendations in the 2018 Fair Trials report, according to which charges should always be substantiated by a domestic arrest warrant.²² This would be a very worthwhile amendment to the Interpol system because it would decrease the amount of abusive Red Notices.

Benjamin Wittes, Editor in Chief, Lawfare

As a starting point, I would like to use Tom Firestone's statement that the fundamental problem in all of these cases is countries in which the rule of law does not function. I would amend this statement and suggest that the real problem is situations where countries without a functioning rule-of-law system have to interact with countries with the rule of law. What is the nature of the interaction between rule-of-law and non-rule-of-law countries? There are a few points I would like to make regarding this question. First of all, broadly speaking, the problem of the abuse of Interpol is simply a reflection of that general interaction problem. In the globalized world where people travel internationally, countries must have some ability to alert each other as to pending warrants and pending legal actions against people. Countries need a system in which they resolve these questions in the face of people's mobility. The first broad point is that there is no escaping this problem.

By the way, this problem shows up in a hundred different areas. For example, it relates to the previously mentioned question of how respectful the United States court should be to a particular judgment of a foreign court. Should the United States court enforce this judgement? For example, until its amendment in 2005, Chapter 15 of the U.S. Bankruptcy Code had not had an answer to that question. The importance of that amendment relates to the fact that in today's globalized economic world, bankruptcies in one country often involve people and assets that are in another country. In the same vein, the question regarding Section 1782 of Title 28 of the U.S. Code would be the following: If a litigation exists in one country, but the person who is relevant to that litigation is living, residing, hiding, or vacationing in another country, should a court in country B assist

²² Fair Trials. (2018). *Dismantling the Tools of Oppression: Ending the Misuse of Interpol*. London.

country A with its litigation by supervising and compelling discovery? These are the questions that need to be addressed.

The title of this panel is judicial interference and some people use the word “abuse.” In my opinion, this word is a little bit mischievous in the nomenclature. When you build a legal system, when you answer the abovementioned legal questions, you create certain litigation opportunities, either broadly or narrowly. Good lawyers will advise their clients how to navigate foreign judicial systems. We can call it interference or abuse. But I just want to describe it very neutrally as people exploiting their legal entitlements and possible rights and making aggressive legal arguments within the contours of rule-of-law legal systems. In such cases, it is important to isolate the policy questions and define what is being permitted to whom that we do not want to be permitted.

To go back to the original issue about an environment in which we cannot get any routine help with MLAT requests. These requests are an essential core of all international law enforcement because they represent assistance provided by one sovereign state to another. Cases where foreign governments respond to MLAT requests with a set of lies written by defense attorneys show the extent to which their legal systems are not working. By the way, *The Clarifying Lawful Overseas Use of Data Act* (or CLOUD Act) enacted in 2018 represents the other end of the spectrum. Under the CLOUD Act, the United States government can sign agreements with foreign governments, such as, for example, the existing agreement with the United Kingdom that allows the latter to go into American courts directly and to seek evidence. This agreement basically delegates some of the investigative sovereign authority of the United States to a foreign sovereign. The CLOUD Act shows the existing range of possible solutions in relation to sovereignty.

The principal of comity... means that all countries are equal, which is sometimes referred to as the sovereign equality of states. According to this principle, Barbados is equal to the United States. One of the ideas inherent in the principle of comity is that countries owe one another certain respect in relation to their legal processes. This has always been a difficult idea from a legal perspective.

The principal of comity, which is a fiction in international law and to some extent in domestic law, means that all countries are equal, which is sometimes referred to as the sovereign equality of states. According to this principle, Barbados is equal to the United States. One of the ideas inherent in this principle of comity is that countries owe one another certain respect in relation to their legal processes. This has always been a difficult idea from a legal perspective. However, this fundamental question unifies the abuse of Interpol with civil discovery in U.S. courts that is used

to harass people who fled Russia to the United States. The U.S. Bankruptcy Code is also vulnerable to such misuse. This is why we need to ask ourselves the question about the minimum standards of the rule of law that a country needs to have before U.S. courts will show that level of comity that is stated in Section 1728 of Title 28 and Chapter 15 of the U.S. Bankruptcy Code. Another important question is about consequences of giving courts more latitude to say that they would comply with court judgements made, say, in the United Kingdom, but not with court judgments made, for example, in Russia. It would be difficult to write such laws.

Finally, not all failures of rule-of-law systems are the same. Russia is a good example. First, it is possible for a country to have many forms of some rule of law, none of which represents the reality. This is a very hard problem. Second, in some cases, the manipulation of the United States legal system by such regimes is ancillary to the use of some other countries' legal systems. Thus, it is a relatively easy for the Southern District of New York to decide whether to enforce or not a judgment against the dissident made in some Russian court. But what if the litigation takes place not in a Russian court, but in a Dutch court? What if the initial manipulation is not the abuse of the United States legal system but the Dutch one? Will the United States enforce the Dutch legal judgment in such a case? This is a hard question.

The core of this discussion is all about the limits of comity when rule-of-law legal systems must interact with non-rule-of-law systems. There is no escaping the aforementioned questions. It is a complicated set of problems, but we should not turn away from them because of that.

SESSION FOUR: Red Notices in Context

Introduction by the panel moderator Ellen Laipson, Director of the International Security Program at the Schar School and Distinguished Fellow & Chairman Emeritus, Stimson Center

This panel will analyze the issues of judicial interference and the abuse of Interpol from a broader perspective. It will look at the problems that are manifested in abusive Red Notices as part of a larger problem of how the interstate system works when there are shared concerns about transnational crime, criminal activity, and terrorism. Based on their various experiences, the speakers will provide their unique institutional perspectives on these issues. The panel will also look at some other institutions in which information sharing, cooperation, or, perhaps, failures to cooperate on the questions of criminality and extradition of nationals accused of crimes take place. To open our discussion, I would invite the panelists to bring their institutional perspectives on international law enforcement. One of the questions to discuss is how countries that have a rule-of-law culture and tradition interact with countries that do not. We are particularly concerned with the cases of Russia and some other authoritarian countries because we are deeply aware of how multilateral institutions can be misused by these countries. The reason is that such countries have a very different concept of the law as a prerogative of the executive authority rather than a rule-of-law culture. The panel will discuss problems and challenges of cooperation with non-rule-of-law countries on such issues as criminality and counterterrorism.

Michael Chertoff, Former Secretary of Homeland Security and Executive Chairman, The Chertoff Group

Since 9/11, the United States has prioritized counterterrorism issues. In my capacity as the Secretary of Homeland Security, I frequently had to engage with the Russians on these issues. We periodically met with seven Interior Ministers from Europe, as well as the Russian Interior Minister and the head of the FSB, to discuss areas for cooperation. At the time, the Russians had a keen interest in counterterrorism and we were eager to see if we aligned on how to tackle these emerging threats. This was in the 2000s and the nature of our relationship with Russia has declined since then, but I have also engaged with the Russians on matters related to cybersecurity. As a security advisor and consultant, I had the opportunity to participate in so-called *Track 1.5 diplomacy*, which is the practice of having non-governmental, informal and unofficial contacts and activities between private citizens or groups of non-state actors.

From my experience, I am very well aware of fundamental differences between our countries. There may be some opportunities where we can leverage their support. But I am cognizant of the

limitations. One of the challenges with the Russians is that the line between private activity and government activity that exists in the West is not observed in Russia.

[T]he Russian government used criminal organizations to carry out their operations internationally in exchange for providing government resources to assist with cybercrime and other criminal activity.

As far as I know, the Russian government outsourced criminal organizations to carry out their malign operations internationally in exchange for providing government resources to assist with cybercrime and other criminal activity. This suggests that the judicial system in Russia is skewed by an overarching objective to make sure that individuals who are carrying out cybercrime are protected by the Russian state in order to commit the same crimes on its behalf.

Ben Emmerson, QC, International Lawyer

The current challenge for the United States and other democratic countries is to find some ways to examine and identify cases of manipulation and abuse of their rule-of-law systems. My experience comes from a number of contexts in which I have found myself in opposition to the Russian Federation. Thus, I represented the family of Alexander Litvinenko, a former Russian secret service officer who was murdered in London in 2006 using polonium as an instrument of murder, in the public inquiry which took ten years. During that time, I became familiar with the ways in which the Russian state engages with international structures. In that case, all what could possibly be done to obstruct and frustrate justice was done by the Russian central authorities and the Investigative Committee of the Russian Federation, ranging from nondisclosure to nonparticipation to provision of false information. It was a deliberate state-sponsored attempt to disrupt and manipulate the judicial process in the United Kingdom, the objective of which was to protect the two individuals who were conclusively proven to have committed the murder. This is evident from the fact that after the evidence had been elicited, with traces of polonium being found in the hotel room where the two assassins stayed during the night before the murder, Vladimir Putin awarded the medal of honor for services to the motherland to Andrei Lugovoi, one of the murderers.

Since then, I found myself representing the Government of Georgia in the interstate litigation against Russia in the European Court of Human Rights for the invasion of South Ossetia and Abkhazia in 2008 and now the Government of Ukraine in the interstate litigation in Strasburg against Russia for the annexation of Crimea and the sponsorship of the war in eastern Ukraine. In all of these situations, the pattern has been the same. These cases go to the very heart of the interests

of the Russian state, but their behavior has been that of low-level mafia criminals. For them, it does not really matter whether anybody else believes their explanations or not. When I cross-examined a senior Russian general in the European Court of Human Rights and put in front of him photographs with serial numbers from rockets sent in by the Russian forces into a civilian area in Grozny and asked him to explain them, his reply was that they were fake, and no one died, which was completely shameless.

The question is whether our institutions are robust enough to overcome this problem. I think when you have a state which has repeatedly violated the fundamental principles of institutions like Interpol, at some point those institutions must intervene to protect themselves. One of the problems is that all of these international institutions are built upon the mythical principle of comity. In other words, they do not have built-in safeguards that are necessary to protect themselves against deliberate abuse by states where the line between government agencies and organized crime is indistinguishable.

In my opinion, Interpol does not have the tools at its disposal to expose the political abuse of its own processes. Its decisions are superficial and arbitrary. There is no real analysis or review process. Interpol is extremely reluctant to recognize the inherent political nature of the way in which Russia uses Red Notices. I personally do not think this is a relationship which is capable of being remedied by minor change. There are three ways in which it can be done, though. Number one is for Interpol to require that the CCF takes account of the identity of the National Central Bureau which requests a Red Notice. When some case with inadequate evidence comes from the Russian Federation that has repeatedly abused the system, there needs to be a presumption that there is other motivation behind that case than the administration of justice. Another option for Interpol is to consider its powers to suspend the Russian Federation from the organization for a period of time. The final option relates to the situation where Interpol cannot defend itself against the abuse of its system by Russia and other post-Soviet countries, which raises the question of whether Interpol is the right vehicle for international law enforcement cooperation between rule-of-law states.

The system operates at the moment in such a way that there are individual defendants who are struggling to persuade Interpol that their cases are in violation of Article 3 of Interpol's Constitution. In reality, though, the burden of proof ought to be reversed in those cases because otherwise victims of abusive Red Notices are bearing the burden of proof trying to protect our international cooperation institutions from abuse.

These are very real issues. The system operates currently in such a way that there are individual defendants who are struggling to persuade Interpol that their cases are in violation of Article 3 of Interpol's Constitution. In reality though, the burden of proof should be reversed in those cases because otherwise victims of abusive Red Notices are bearing the burden of proof trying to protect our international cooperation institutions from abuse. If we all agree that there needs to be an effective and just system of international law enforcement cooperation, it should not be up to individuals who are being hounded by the Russian authorities to try and protect that system. It should be up to the rule-of-law democratic states to stand up and make sure that international institutions work effectively.

Suzanne Spaulding, Senior Advisor, CSIS and Former Under Secretary DHS

I would like to expand this discussion from my experiences in dealing with nondemocratic states, namely China and Russia, in the context of my role at DHS where I was responsible for cybersecurity and critical infrastructure protection. In 2015, several weeks before the first official visit of China's President Xi to the United States, *the Washington Post* published an article according to which the administration was seriously considering imposing sanctions on China for cyberspying and other malicious cyberactivity.²³ China's President Xi, who apparently wanted to demonstrate his arrival on the world stage as an equal partner, did not want anything to mar his visit to the United States. Thus, he sent a delegation of senior officials on an emergency basis to the United States to see what they could do to avoid those sanctions being imposed on China.

Following several days of negotiations, the United States finally did reach an agreement with China, according to which the latter agreed for the first time that countries should not steal sensitive business information from another country for the purpose of providing a commercial advantage to their own companies. It was a very significant agreement because previously, the line between industrial espionage and national security espionage had not existed in China. After the 2015 agreement signed by President Xi and President Obama, there has been a dramatic decline in cyber-activity by the Chinese.

[T]he bottom line in dealing with nondemocratic states is to find out what motivates them. Russia, China, North Korea, and Iran are concerned with their regime preservation.

This example shows that the bottom line in dealing with nondemocratic states is to find out what motivates them. Russia, China, North Korea, and Iran are concerned with their regime

²³ Nakashima, E. (2015, April 2). U.S. Establishes Sanctions Program to Combat Cyberattacks, Cyberspying. *Washington Post*.

preservation. In particular, China cares about the growth of its economy and control over information that reaches its population. China's economic growth requires it to have a certain reputation on the world stage because it allows them to exert their influence and gain economic advantage around the world. In my example, that leverage worked with China.

In contrast, the discussions between the United States and Russia around cybersecurity cooperation did not go anywhere, as we could see in the case of Russia's meddling in the 2016 elections. The difference between Russia and China is that President Xi effectively controls information that gets to the population, while President Putin is not able to do that. Instead, Putin overwhelmed the information sphere within Russia with false information in order to create a feeling that there is no objective truth and everyone is corrupt. This strategy has worked pretty well in Russia. Putin knows that he has no strong economy to compete effectively around the world. This is why he has adopted this scorched-earth policy that aims to destroy anything that might be useful to his enemy.

Putin knows that he has no strong economy to compete effectively around the world. This is why he has adopted this scorched-earth policy that aims to destroy anything that might be useful to his enemy... The objective is not only to abuse the justice system to achieve their corrupt ends, but also to undermine public confidence in the idea of an impartial and independent judiciary altogether.

Russia cannot rise to the level of the United States or even China, and instead Putin tries to pull everyone down and to show that all international institutions are corrupt. What we saw in the 2016 elections was an attempt to undermine the credibility of their outcome. In addition, their objective was to undermine public trust in democratic institutions and in the concept of democracy and the rule of law. Also, they went after the justice system. The objective is not only to abuse the justice system to achieve their corrupt ends, but also to undermine public confidence in the idea of an impartial and independent judiciary altogether. Last year, we gathered a growing body of evidence that this is a very specific campaign aimed to take advantage of weaknesses and divisions of our own system. We see the ways in which Russia, including President Putin's statements, Foreign Minister Lavrov's statements, *Russia Today*, *Sputnik* and social media, destroy the idea of an impartial and independent judiciary. Russia is pushing that narrative every day.

CONCLUDING SESSION: Solutions and Recommendations

Introduction by the panel moderator Paul Massaro, the Helsinki Commission

The U.S. Helsinki Commission is an independent agency of the U.S. Federal Government led by nine Senators and nine Representatives. The Commission advances comprehensive security through monitoring all sorts of foreign interference in democratic institutions, including judicial interference. The abuse of Interpol is one aspect of a larger trend that we are seeing today, such as the abuse of the globalized financial and legal systems. This is why it is useful to frame the discussion of solutions and recommendations in terms of a new foreign policy paradigm faced by the United States and other democratic countries. Today's globalized world can be seen as a competition between two normative systems: one is based on democracy and the rule of law, which includes civil society and free media, and the other is based on corruption, authoritarianism and transnational organized crime. Unlike during the Cold War, nowadays these two systems interact every single day. The key question is how Congress can address the problem of the abuse of the U.S. judicial system by non-rule-of-law countries.

Charles Davidson, Publisher of *The American Interest*

It seems to me absurd that the United States is in the Interpol system together with Russia, an authoritarian kleptocratic regime, or with China, which seems to have turned into an Orwellian dystopian dictatorship. Sharing our justice system with such countries seems completely absurd. One obvious thing that can be proposed is that free democracies withdraw from the Interpol system and create their own system. Then they can find some way to interact with other regimes that are problematic, that do not have any interest in liberty, that do not have rule of law.

Another concern is the way we deal with adversary companies that enable nondemocratic regimes to abuse democratic systems, such as the most prestigious law firms representing “bad guys.” In the West, we need to reform the enabling industry used by kleptocratic states.

In May 2018, I hosted via the Hudson Institute's Kleptocracy Initiative a discussion with the Spanish Special Prosecutor José Grinda Gonzalez and U.S. experts about investigating and prosecuting Russian organized crime, defending democracy and the rule of law, and pushing back against the Kremlin's kleptocratic encroachment.²⁴ José Grinda Gonzalez was talking about the ways he interacts with Russian law enforcement. We were puzzled as to why he interacts so much

²⁴ Hudson Institute (2018, May 25). Dismantling Russian Transnational Crime Organizations: A Conversation with José Grinda Gonzalez, available at <https://www.hudson.org/events/1560-dismantling-russian-transnational-crime-organizations-a-conversation-with-jose-grinda-gonzalez52018>

with them. Normal collaboration between law enforcement agencies was not what he was describing. It is a bizarre zone indeed where democratic, free, rule of law countries interact regarding law enforcement with authoritarian states that are actively trying to destroy democracy, rule of law, and freedom.

Another concern is the way we deal with private sector professionals who enable nondemocratic regimes to abuse democratic systems, such as prestigious law firms representing what Bill Btowder calls “bad guys.” In the West, we need to reform the enabling industry used by kleptocratic states and non-state actors.

The last point I would like to make in our discussion is that apart from the abuse of Red Notices, there are many other ways that our judicial system is being misused by bad actors. We really need our best minds to think about how we can shut down loopholes in our legal and financial framework that they exploit.

Bruno Min, Senior Policy Advisor, Fair Trials

I would just like to state my opposition to this idea of suspending some Interpol member countries for being authoritarian regimes and the idea of creating an alternative police organization only for democratic states. First, there are some very serious problems within Interpol which need to be fixed, but on the whole, it functions fine. Obviously, even one individual arrested on an abusive Red Notice is a problem that needs to be addressed. But it does not mean that the whole organization is completely useless. Second, an international police organization needs to be global to be able to function properly. Third, regarding the development of multiple systems of police cooperation arrangements between democratic states, there are a lot of other mechanisms in place already that facilitate police cooperation between like-minded states, especially in the European Union.

Red Notices do not have any legal value of their own. It is up to Interpol member countries to decide whether they want to enforce Red Notices. Therefore, a very simple solution for the countries is to be better aware of what Interpol’s Red Notices are and what risks are associated with their potential abuse by some states.

Another problem is the likelihood of suspension of some Interpol members. If a country like Russia gets suspended, it does not necessarily put an end to the abuse of Red Notices. Also, side effects of such actions could be much more dangerous, as we have seen in the Turkish example. Such countries can use more clandestine ways of catching their opponents. The solution that Fair Trials

is proposing is a caution exercised by member states and Interpol regarding Red Notices. The latter are not arrest warrants. Red Notices do not have any legal value of their own. It is up to Interpol member countries to decide whether they want to enforce Red Notices. Therefore, a very simple solution for countries is to be better aware of what Interpol's Red Notices are and what risks are associated with their potential abuse by some states.

Louise Shelley, Director of TraCCC

In our discussions, we focused mostly on authoritarian states, such as post-Soviet countries, Turkey, and China. But the problem of the misuse of Red Notices and Interpol is broader than that. There are problems emanating out of Latin America, not just Venezuela. The problems also come out of some African states. For example, last week, there was an article *the New York Times* about two Canadian women who were targeted by Red Notices as a result of their relationship with Nigeria's oligarchs.²⁵ This problem is global, and as one expert on Interpol in the last administration said: "It used to be a problem of smaller countries and now it is bigger and more powerful countries that are abusing this mechanism, which is a very dangerous tendency."

One of my concerns is what is currently going on in the United States. In the spring of 2018, I was in the U.S. immigration court in Atlanta, which reminded me of sitting in Soviet courtrooms in the 1970s. I was called down to testify in the case of a Kalmyk who had been arrested on a Red Notice. Kalmykia is an obscure Buddhist region in southern Russia, whose former head was sanctioned by Treasury in 2015 for providing support to the Government of Syria, including for facilitating Syrian Government oil purchases from ISIL. The Kalmyk was sitting in detention for protesting against Kalmykia's leader whom the U.S. has identified as an enemy of the U.S. government.

According to the prosecutor in the Kalmyk's case, the Russian justice system has improved in its quality in the last six years. Also, according to the judge's decision in that case, Russia does not target small-scale dissidents. Such statements, which are blatantly false, undermine the quality of our justice system and allow for detention of law abiding individuals who apply for asylum in the United States.

This is a serious problem. We do not have enough review within DHS and awareness of various problems with Red Notices and the increasing volume of Interpol's alerts. This is a resource allocation problem. As a result, the United States detains individuals who are courageous, who are brave, and who are opposing people sanctioned by the U.S. Treasury.

²⁵ Levin, D. (2018, November 10). How to Date a Lot of Billionaires. *The New York Times*.

There needs to be more education among our judiciary on the new risks and threats that the abuse of Interpol and judicial interference pose for the United States... It is not always necessarily a legislative process, but it is part of the role that Congress plays in oversight of how some of U.S. agencies need to operate and what needs to be done to increase awareness about new threats of transnational crime.

Another concern in this area is a serious problem with discovery in U.S. courts. This is an extremely important issue because Russia and other countries misuse the process of discovery to collect financial information on their political and economic opponents. This issue deserves much more attention because U.S. courts fail to identify various risks related to the misuse of our justice system, as shown in a recent report by Anders Åslund.²⁶ There needs to be more education among our judiciary on the new risks and threats that the abuse of Interpol and judicial interference pose for the United States. In its oversight function, Congress needs to pay much more attention to what DHS is doing regarding Red Notices and other international agreements. It does not necessarily require new legislation but there is much that Congress could do in the role it performs in oversight of U.S. agencies. This needs to be part of a broader understanding of the challenges that come to our system as we address the new threats posed by the increasing prevalence of transnational crime.

Another area that deserves more attention is cybercrime, which is an increasing problem for the United States. My recent book *Dark Commerce* shows the parallels between contemporary cybercriminals with the pirates of the 1600s, who originally were engaging in piracy for their personal profit but at some point, started engaging in piracy on behalf of the state. An example of this is Sir Francis Drake.²⁷ Now, we are dealing with cyberpirates who also at some point were making money for themselves, but then got offers they could not refuse and became cyberpirates for Russia or for other states. Therefore, this is a very complex question of how to deal with international requests related to cybercriminality, when at one point, they involve criminals, and at another, they involve actors acting on behalf of the state. The United States still needs to figure out a way to process and analyze this increasing tendency that has major national and global security implications. This is not just a problem of cooperation on transnational crime, but on transnational threats that undermine individual, national and global security. Therefore, we need to think more broadly about this tendency while engaging with multinational institutions. We need to be aware of new trends related to transnational crime and their implications for our legal institutions because the rule of law is absolutely central to our democracy. When the rule of law is undermined and abused, this undermines our democracy.

²⁶ Åslund, A. (2018). *Russia's Interference in the US Judiciary*. Washington, D.C.: Atlantic Council.

²⁷ Shelley, L. (2018). *Dark Commerce: How a New Illicit Economy Is Threatening Our Future*. Princeton University Press.

Participant Biographies

Michael Chertoff is the Executive Chairman and Co-Founder of The Chertoff Group, a global advisory services firm that applies security expertise, technology insights and policy intelligence to help clients build resilient organizations, gain competitive advantage and accelerate growth. In this role, he counsels global clients on how to effectively manage cyber risk while incorporating a proper mix of people, process, and technology to achieve their security goals. He serves on the board of directors of several security companies and is a frequent speaker on security and risk management issues. From 2005 to 2009, Mr. Chertoff served as Secretary of the U.S. Department of Homeland Security. Earlier in his career, Mr. Chertoff served as a federal judge on the U.S. Court of Appeals for the Third Circuit and head of the U.S. Department of Justice's Criminal Division. He is the author of the recently published book *Exploding Data: Reclaiming Our Cybersecurity in the Digital Age*.

Ariel Cohen L.L.B., Ph.D., is an international recognized authority on the rule of law; human rights; property rights; governmental expropriations; crime and corruption; and other aspects of state/business relations in Eastern and Central Europe, Russia, Eurasia and the Middle East. He directs highly sensitive policy interventions on behalf of corporations and high net worth clients, including legal action, public relations, and government relations at the highest levels. Dr. Cohen has extensive expertise in Russian/Eurasian politics and economics, with particular emphasis on international energy and security policy. He is a Senior Fellow with the non-profit International Tax and Investment Center (ITIC) and is Director of their Energy, Growth, and Security Program (EGS). Dr. Cohen also holds a Senior Research Fellowship at the Global Energy Center and Eurasia Center at the Atlantic Council with a regional focus on Russia/Eurasia, Eastern Europe and the Middle East. Ariel is also the Principal of International Market Analysis, a boutique advisory firm. For over 21 years, until July 2014, he served as a Senior Research Fellow in Russian and Eurasian Studies and International Energy Policy at the Heritage Foundation. He headed the Russian Policy Project, and has led Global Energy Competitiveness Project, which examined investment energy sector environments among principal energy-producing states. College. He is a Member of the Council of Foreign Relations, American Bar Association, and American Council on Germany.

Charles Davidson is Publisher of *The American Interest*. He co-founded the think tank Global Financial Integrity with Raymond Baker in 2006, chaired its Board, was instrumental in the founding of the FACT Coalition with Jack Blum and Conrad Martin, and instigated and was Executive Producer of *We're Not Broke* (premiered at the Sundance Film Festival in 2012). On the subject of Kleptocracy, the program he directed at Hudson has published twelve papers, and held innumerable events -- he has testified multiple times on the Hill and co-authored various op-eds. Prior to 2005, Davidson spent his career in the information technology industry, in various

technical and managerial functions, as CIO of a major European logistics company (“Walon”), and most recently in a venture capital partnership (Lafayette Development LLC) where he negotiated early-stage and first-round deals, served on the boards of various private companies. He is a graduate of Bowdoin College and Duke University’s Fuqua School of Business.

Robert L. Deitz is a Professor of Public Policy at George Mason University. He was Senior Councilor to the Director of the Central Intelligence Agency from 2006 until February 2009. From September 1998 to September 2006 he was the General Counsel at the National Security Agency where he represented the NSA in all legal matters. He has also held positions as Acting General Counsel at the National Geospatial-Intelligence Agency and as Acting Deputy General Counsel, Intelligence, at the Department of Defense. Professor Deitz began his career as a law clerk to the Honorable Justices Douglas, Stewart, and White of the United States Supreme Court. He has also been in private practice and was Special Assistant to Deputy Secretary of State Warren Christopher and to Secretary of Health, Education and Welfare Joseph Califano during the Carter Administration. Professor Deitz received his J.D. (magna cum laude) from Harvard Law School, where he was the Supreme Court Note and Note Editor of the Harvard Law Review. He received an M.P.A from the Woodrow Wilson School of Public and International Affairs at Princeton University, where he studied international politics and economics. He majored in English literature at Middlebury College where he received a B.A. (cum laude) and became a member of Phi Beta Kappa.

Ben Emmerson QC, is an international lawyer, specializing in national security and counter-terrorism, international human rights and humanitarian law, and international and extra-territorial criminal law. He regularly represents states, heads of state and private clients on issues connected with international justice, national security, and rule of law issues. He was formerly Special Adviser to the Prosecutor at the International Criminal Court, and Special Adviser to the Appeals Chamber of UN-backed Khmer Rouge Tribunal in Cambodia. Between 2011 and 2017 Emmerson was UN Special Rapporteur on Counter-Terrorism and Human Rights. He currently sits as a judge on the Appeals Chamber of the International Criminal Tribunals for Rwanda and the Former Yugoslavia. He is a Visiting Professor at the University of Oxford, an Honorary Fellow of Mansfield College, Oxford, a Master of the Bench at Middle Temple and a Deputy High Court Judge in the UK.

Tom Firestone is a partner in the law firm Baker McKenzie, where his practice focuses on white collar criminal defense at the international level. He serves as co-chair of the firm’s North America Government Enforcement Practice and as a member of the firm’s Global Compliance and Investigations Steering Committee. Prior to joining Baker McKenzie, he spent 14 years with the US Department of Justice. At DOJ, he worked as an Assistant U.S. Attorney in the Eastern District of New York, where he specialized in transnational organized crime cases. He also served as the

DOJ Resident Legal Adviser at the US Embassy in Moscow, where he worked on issues related to organized crime and corruption in Russia. He is currently representing three individuals in proceedings before Interpol and recently obtained favorable rulings from Interpol on behalf of clients who were the subjects of a Red Notice and a diffusion.

Mike Geoffroy, NSI Visiting Fellow, Scalia Law School, GMU, former US General Counsel for the US Senate Select Committee on Intelligence and Deputy Chief of Staff/ Chief Counsel for the House Committee on Homeland Security. Michael Geffroy is Senior Vice President in HSBC Bank USA, N.A.'s Office of Public Affairs, where he is responsible for public policy and government affairs at the federal level. Prior to joining HSBC, Mr. Geffroy had extensive experience in the U.S Congress, and in the Executive Branch. Most recently, he was the General Counsel for the U.S. Senate Select Committee on Intelligence (2014-2017), and he previously served in the U.S. House of Representatives as the Deputy Chief of Staff and Chief Counsel to the Committee on Homeland Security (2012-2014). Mr. Geffroy's tenure in the Executive branch includes his time as the Assistant Director for Enforcement at the Department of the Treasury's Office of Foreign Assets Control, Counselor to the Assistant Attorney General of the Criminal Division, Department of Justice, and as an Assistant U.S. Attorney in the District of Columbia. Mr. Geffroy is a Lieutenant Colonel in the U.S. Marine Corps Reserve (ret). His military service includes tours of duty in Afghanistan and Iraq. Mr. Geffroy is admitted to practice law in the District of Columbia, Maryland, Rhode Island, and Massachusetts. He is a graduate of Brown University and the Columbus School of Law at the Catholic University of America.

Seth Hettena is an investigative journalist and author of author of Trump/Russia: A Definitive History and Feasting on the Spoils. His work has been featured in The New York Times, The New Yorker, Rolling Stone, The Los Angeles Times, and The American Lawyer. Hettena is a former correspondent for The Associated Press. He lives in San Diego.

Melissa Hooper is a lawyer and rule of law expert at Human Rights First. Her recent work focuses on anti-democratic developments that threaten human rights and rule of law in Central and Eastern Europe, and Russia's contributions to the deterioration of norms in the region. Prior to Human Rights First, she was Regional Director for the American Bar Association Rule of Law Initiative based in Moscow, where she led anti-corruption programs focused on reforms to procurement and customs systems, as well as pro-transparency projects focused on provision of services at the municipal level. Her recent writing assesses attempted reforms in Poland that undermine judicial independence and urges the U.S. government to apply specific accountability measures such as Global Magnitsky sanctions to stem Russian-linked corruption in Hungary.

Ellen Laipson is the Director of the International Security program at the Schar School of Policy and Government at George Mason University. She joins GMU from the Stimson Center, where she was president and CEO (2002-2015) and continues as President Emeritus and Distinguished Fellow. Her tenure at Stimson followed a quarter century of government service. She serves on a number of academic and other non-governmental boards related to international security and diplomacy and is a columnist for worldpoliticsreview.com. Her last post in government was Vice Chair of the National Intelligence Council (1997-2002). She also worked on the State Department's policy planning staff, the National Security Council staff, and the Congressional Research Service. A member of the Council on Foreign Relations, she currently serves on the Advisory Councils of the International Institute of Strategic Studies, the Chicago Council on Global Affairs, and Georgetown University's Institute for the Study of Diplomacy. From 2003 to 2015, she was a member of the board of the Asia Foundation. She was a member of the CIA External Advisory Panel from 2006-2009, President Obama's Intelligence Advisory Board from 2009-2013, and on the Secretary of State's Foreign Affairs Policy Board 2011-2014. Laipson has an M.A. from the School of Advanced International Studies, Johns Hopkins University and an AB from Cornell University.

Paul Massaro joined the U.S. Helsinki Commission in 2013. He serves as the policy advisor responsible for OSCE “second dimension” issues, or economic and environmental policy. His portfolio includes topics such as anti-corruption, sanctions, finance, trade, Arctic issues, and energy security. He is also responsible for Mongolia and the OSCE Asian Partners for Cooperation (Japan, Korea, Thailand, Australia, and Afghanistan). Paul holds a Master of Public Policy with a specialization in international security and economic policy from the Maryland School of Public Policy, where he graduated top of his class. He also holds two bachelor's degrees in government and politics and Germanic studies from the University of Maryland, College Park, where he graduated summa cum laude. He is also fluent in German.

Bruno Min is the Senior Policy Advisor at Fair Trials. Fair Trials is a global criminal justice watchdog focused on improving the right to a fair trial in accordance with international standards. Since 2012 Fair Trials has been working to highlight the misuse of INTERPOL's Red Notices and Diffusions as part of its broader campaign to improve respect for human rights in cross-border criminal cases. Bruno leads Fair Trials' legal and policy work in the London office, focusing on the organization's work on cross-border justice, and he authored Fair Trials' latest report on the misuse of INTERPOL 'Dismantling the Tools of Oppression' in 2018. Before joining Fair Trials, Bruno gained experience at a number of charities and organizations, and at a London firm specializing in asylum and human rights.

Bruce Misamore from early 2001 until the end of 2005, was the Chief Financial Officer of YUKOS Oil Company in Moscow, Russia, and served as a member of the YUKOS Management

Committee. YUKOS was the then largest Russian oil company and the 4th largest oil producing company in the world. For periods during that time he was Deputy Chairman of the Management Committee and a member of the Executive Committee of the Board of Directors. Since 2005 Mr. Misamore has been one of the leaders of the successful efforts in courts around the world to hold the Russian Federation responsible for the expropriation of YUKOS. Prior to joining YUKOS, Mr. Misamore had been Senior Vice President – Finance and Treasurer of PennzEnergy Company. Mr. Misamore’s prior positions also included Vice President and Treasurer of Pennzoil Company, various middle and upper middle financial management financial positions with Marathon Oil Company/USX Corporation, investment portfolio management for a large trust company and teaching finance at Bowling Green State University (BGSU). In 2004 he was named the top CEO/CFO in Russia for investor relations by IR magazine, and was recognized as an Outstanding Graduate of BGSU. An active alumnus of BGSU, he is a member of its President’s Club, the Dean’s Council of the College of Business Administration, has served on the Board, the Executive Committee and was Treasurer of the BGSU Foundation and has been a member of the Campaign Steering Committees for both of BGSU’s fund raising campaigns. He earned both his BSBA in finance in 1972 and his MBA in 1973 from BGSU. Mr. Misamore was born in Findlay, Ohio in 1950.

Jaimie Nawaday is a partner at Kelley Drye & Warren LLP. She focuses her practice on government investigations, white collar defense, and civil litigation. She advises and represents organizations and individuals in government investigations relating to potential violations of federal criminal law, the False Claims Act, and asset forfeiture matters. She has also repeatedly appeared on MSNBC to explain and comment on developing issues in federal criminal law. As an Assistant United States Attorney in the Southern District of New York (SDNY) for seven years, Jaimie served in both the Civil and Criminal Divisions and successfully handled both civil and criminal jury trials. Jaimie’s broad experience in handling large, complex cases gives her a unique perspective in guiding clients through government investigations and high stakes litigation. She uses that experience to steer companies through a range of issues that accompany challenging investigations, including parallel inquiries from regulators and press coverage. She also represents companies operating in the state-legal cannabis market both on compliance issues and in law enforcement or regulator inquiries. As a member of the Civil Division’s Civil Fraud Unit, Jaimie spearheaded significant fraud cases, notably, the Bank of America fraud trial, the first case the Department of Justice tried under FIRREA and the first trial by the Department of Justice against a major financial institution in the wake of the 2008 financial crisis. In 2015, Jaimie received the Attorney General’s Distinguished Service Award in connection with negotiating a global settlement of federal and state civil fraud actions. As a prosecutor, Jaimie served as co-lead trial counsel in a month-long RICO conspiracy trial that involved securities and health care fraud and money-laundering schemes and was co-lead trial counsel in a civil asset forfeiture trial—the first such case that the government tried in more than seven years. Jaimie was also a member of the Criminal Division’s Money Laundering and Asset Forfeiture Unit.

Ismail Shahtakhtinski is the founder and principal attorney at I.S. Law Firm, PLLC, an immigration law firm representing individuals and organizations in a broad range of immigration matters with an emphasis on US asylum law. Ismail was born in the Republic of Azerbaijan during the Soviet Union and lived there through Azerbaijan's post-Soviet transitional times until he immigrated to the United States 18 years ago. Ismail is a graduate of Loyola University School of Law with a degree of Juris Doctor. He is an active member of American Immigration Lawyers Association (AILA) and is licensed to practice law in 4 states. Through over 12 years of his practice, Ismail represented many asylum seekers from Russia, FSU countries and parts of the world, including dissidents who have been falsely reported to the Interpol on account of their political opinions. Over the years of his practice, Ismail participated as a speaker on panels of many forums and conferences and had been interviewed by international news broadcasts on developments in U.S. immigration laws.

Dr. Louise Shelley is the Omer L. and Nancy Hirst Endowed Chair and a University Professor at Schar School of Policy and Government, George Mason University. She founded and directs the Terrorism, Transnational Crime and Corruption Center (TraCCC). Her most recent books are: *Dirty Entanglements: Corruption, Crime and Terrorism* (Cambridge University Press, 2014) and *Human Trafficking: A Global Perspective* (Cambridge 2010). Her latest book, *Dark Commerce: How a New Illicit Economy is Threatening our Future* (Princeton University Press) was written while an inaugural Andrew Carnegie fellow. Professor Shelley has received Guggenheim, Fulbright, Rockefeller, NSF and many other fellowships and grants to support her research. She served for six years on Global Agenda Councils of the World Economic Forum first on the illicit trade council and then as the inaugural co-chair of organized crime. Dr. Shelley appears frequently in the media, lectures widely at universities and multinational bodies and has testified repeatedly before Congress and foreign and multinational organizations on financial crime and illicit flows, illicit trade, human trafficking, and the crime-terror relationship. She is a life member of the Council on Foreign Relations and the Global Initiative against Transnational Organized Crime.

Suzanne Spaulding served as Under Secretary for cybersecurity and critical infrastructure protection at the Department of Homeland Security, with a rank equivalent to a four-star general, managing a \$3 billion budget with a workforce of 18,000. She led the transformation of budget, acquisition, analytic, and operational processes and initiated the strategic planning and multi-year legislative effort that led to the establishment of the first new operational component since the Department was created, the Cybersecurity and Infrastructure Security Agency (CISA). Throughout her career, Ms. Spaulding has advised CEOs, boards, and government policymakers on how to manage complex security risks, across all industry sectors. She served in Republican and Democratic Administrations and for both sides of the aisle in Congress. She was General Counsel for the Senate Select Committee on Intelligence and Minority Staff Director for the U.S. House of Representatives Permanent Select Committee on Intelligence. She also spent six years

at the Central Intelligence Agency, where she was Legal Adviser to the Director of Central Intelligence's Nonproliferation Center. She is currently Senior Adviser for Homeland Security at the Center for Strategic and International Studies; on the Board of Directors for George Washington University's Center for Cyber & Homeland Security; the Advisory Board of Harvard University's Defending Digital Democracy project; and the faculty of the National Association of Corporate Directors.

Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. He co-founded and is the editor-in-chief of the Lawfare blog, which is devoted to sober and serious discussion of "Hard National Security Choices," and is a member of the Hoover Institution's Task Force on National Security and Law. He is the author of *Detention and Denial: The Case for Candor After Guantanamo*, published in November 2011, co-editor of *Constitution 3.0: Freedom and Technological Change*, published in December 2011, and editor of *Campaign 2012: Twelve Independent Ideas for Improving American Public Policy* (Brookings Institution Press, May 2012). He is also writing a book on data and technology proliferation and their implications for security. He is the author of *Law and the Long War: The Future of Justice in the Age of Terror*, published in June 2008 by The Penguin Press, and the editor of the 2009 Brookings book, *Legislating the War on Terror: An Agenda for Reform*. Between 1997 and 2006, he served as an editorial writer for The Washington Post specializing in legal affairs. Before joining the editorial page staff of The Washington Post, Wittes covered the Justice Department and federal regulatory agencies as a reporter and news editor at Legal Times. His writing has also appeared in a wide range of journals and magazines including The Atlantic, Slate, The New Republic, The Wilson Quarterly, The Weekly Standard, Policy Review, and First Things. Benjamin Wittes was born in Boston, Massachusetts. He graduated from Oberlin College in 1990, and he has a black belt in taekwondo.