



The Long Arm of Vladimir Putin:

How the Kremlin Uses Mutual Legal Assistance
Treaties to Target its Opposition Abroad

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Dr Andrew Foxall

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Summary

- Over the past 15 years, there has been - and continues to be - significant interchange between Western and Russian law-enforcement agencies, even in cases where Russia's requests for legal assistance have been politically motivated. Though it is the Kremlin's warfare that garners the West's attention, its 'lawfare' poses just as significant a threat because it undermines the rule of law.
- One of the chief weapons in Russia's 'lawfare' is the so-called 'Mutual Legal Assistance Treaty' (MLAT), a bilateral agreement that defines how countries co-operate on legal matters. Typically, the Kremlin will fabricate a criminal case against an individual, and then request, through the MLAT system, the co-operation of Western countries in its attempts to persecute said person.
- Though Putin's regime has been mounting, since 2012, an escalating campaign against opposition figures, the Kremlin's use of 'lawfare' is nothing new. Long before then, Russia requested - and received - legal assistance from Western countries on a number of occasions, in its efforts to extradite opposition figures back to Russia.
- Western countries have complied with Russia's requests for legal assistance in some of the most brazen and high-profile politically motivated cases in recent history, including: individuals linked with Mikhail Khodorkovsky and the *Yukos* affair; Bill Browder and others connected to *Hermitage Capital Management*; and Andrey Borodin and *Bank of Moscow*.
- The MLAT system is in need of reform. As a matter of urgency, MLATs should have human-rights conditions attached and should be far more transparent; this would ensure that they are not used as a vehicle for arbitrary and unlawful persecution.

1. Introduction

The Kremlin's opponents used to be sure of two things: that they would be attacked within Russia and that they would be protected in the West. Not anymore. Over the past 15 years, there has been – and continues to be – significant interchange between Western and Russian law-enforcement agencies, even in cases where Russia's requests for legal assistance have been politically motivated. Though it is the Kremlin's warfare – with Chechnya, in the early 2000s; with Georgia, in 2008; and with Ukraine, since 2014 – that garners the most media attention, its 'lawfare' poses just as significant a threat to the West because it undermines some of the West's core values, in particular the rule of law. Vladimir Putin enjoys talking about the importance of national sovereignty, but he has stretched the long arm of Russia's law into Western capitals.

Since Putin first became President in 2000, the Kremlin has perfected the art of the fabricated criminal case against its opponents. These cases are not designed to be realistic, or even remotely convincing. Rather, they are there to maximise the inconvenience and suffering caused to their targets and others who can be implicated. The Kremlin has opened dozens of such lawsuits in Russia and has requested legal assistance from Western countries, in its attempts to lock individuals into an ongoing, seemingly never-ending series of Kafkaesque trials. While Russia has used Interpol's 'Red Notice' – a demand that encourages, though does not oblige, the more than 190 countries co-operating to detain the person named – in the war against its opponents abroad, the Kremlin's preferred weapon is the so-called 'Mutual Legal Assistance Treaty' (MLAT), a bilateral agreement that defines how countries co-operate on legal matters.

Though Putin and his regime have, since he began his third presidential term in 2012, been mounting an escalating campaign against opposition figures, the Kremlin's use of 'lawfare' is nothing new. Long before then, Russia requested legal assistance from Western capitals on a number of occasions, in its efforts to extradite troublesome figures back to Russia. In 2001, for example, the Kremlin sought the UK's assistance in extraditing the businessman Boris Berezovsky.¹ Two years later, it was the turn of Chechen politician Akhmed Zakayev.² On both occasions, the UK refused Russia's request because the cases were politically motivated.

The UK, however, is an exception to the rule. European law-enforcement agencies regularly co-operate with their Russian counterparts in such cases. In Berezovsky's case, both France and Switzerland were working with Russia (through MLATs) as late as 2012.³ In Zakayev's, Danish police, responding to Russia's request for legal assistance, arrested him in October 2002, and held him for over a month. Denmark eventually rejected Russia's request for Zakayev's extradition, in December 2002, but not because the case was politically motivated – instead, because Russia had supplied "insufficient" evidence.⁴ Putin understands the West's attachment to the rule of law and

¹ Jones, C., 'Boris Berezovsky: timeline', *The Guardian*, 23 March 2013, available at: <http://www.theguardian.com/world/2013/mar/23/boris-berezovsky-timeline-found-dead>.

² Judge rejects bid to extradite Chechen rebel leader', *The Guardian*, 13 November 2003, available at: <http://www.theguardian.com/uk/2003/nov/13/world.russia>.

³ 'We offer to your attention an interview with the head of the Main Department of international legal cooperation of the General Prosecutor's office of the Russian Federation Sahak Karapetyan to the information agency «Interfax»', *The Prosecutor General's Office of The Russian Federation*, 30 May 2012, available at: <http://eng.genproc.gov.ru/smi/news/news-80978/?print=1>.

⁴ Myers, S., 'Rebuffing Russia, Denmark Frees Chechen Envoy It Detained', *The New York Times*, 4 December 2002, available at: <http://www.nytimes.com/2002/12/04/world/rebuffing-russia-denmark-frees-chechen-envoy-it-detained.html>.

its sensitivities about international obligations, and he is willing to use that sensibility to his advantage.

This paper details the extent to which Western law-enforcement agencies collaborate with their Russian counterparts in cases where Russia's requests for legal assistance are politically motivated. It hardly goes without saying, however, that Russia is not unique in abusing MLATs. Nevertheless, some of the most egregious examples of MLAT abuse concern Russia. This paper shows that Western countries are complicit in the Kremlin's use of MLATs to target its opponents in a number of high-profile cases, including: individuals linked with Mikhail Khodorkovsky and the *Yukos* affair; Bill Browder and others connected to *Hermitage Capital Management*; and Andrey Borodin and *Bank of Moscow* (BoM). Far from upholding the rule of law, Western countries that comply with the Kremlin's requests for assistance are subverting it to Russia's whims. The paper calls for Western countries to recognise the extent to which law and politics are intertwined in Russia, and suggests a number of policy recommendations.

2. What is a 'Mutual Legal Assistance Treaty'?

A 'Mutual Legal Assistance Treaty' (MLAT) is a method of co-operation between countries, for obtaining assistance in the investigation or prosecution of criminal offences. MLATs are generally used for obtaining material that cannot be obtained through police co-operation, particularly enquiries that require coercive means.⁵ Under the MLAT, each country is obliged to assist the other in the investigation, prosecution, and other proceedings related to criminal matters. Assistance may include: taking testimony or statements, obtaining documents or items through seizure or other means; intercepting electronic communications; freezing assets to secure confiscation orders; and, co-operating on investigations. MLATs usually provide for assistance, without regard to whether the matter under investigation would be a crime in both countries.

Typically, an MLAT will address some or all of the following points:

- its jurisdictional scope (i.e. which territories, types of criminal activity, and types of juridical proceedings fall within its scope; which types of requested assistance must be provided, and which may be refused; and how the MLAT interacts within other treaties, and whether the treaty of national law ultimately prevails);
- the process for assistance requests (i.e. what are the various procedural issues for legal-assistance requests);
- confidentiality and data protection (i.e. provisions on confidentiality of the information transferred);
- the cost of assistance between the requesting and requested country; and
- how a country may join the Treaty and how the MLAT enters into force.⁶

⁵ It is common practice for extradition to be dealt with in a separate treaty, even though there is no reason that it cannot be combined, in a single agreement, with mutual legal assistance.

⁶ 'Document No. 373/512: ICC Policy statement on Using Mutual Legal Assistance Treaties (MLATs) To Improve Cross-Border Lawful Intercept Procedures', *International Chamber of Commerce*, 12 September 2012, available at: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2012/mlat/>.

At the time of writing (10 April 2015), Russia had signed 58 “bilateral agreements”, with 58 countries, and a further 33 so-called ‘co-operation agreements’, with 33 countries^{7 8} (some 16 of which were signed by the USSR and inherited by post-Soviet Russia). Although Russia has only three ‘Agreements on Legal Assistance and Cooperation’, provisions for mutual legal assistance are included in the majority of the two aforementioned, much-broader named, agreements.⁹ It should be noted, as well, that Russia, in some cases, has multiple agreements with the same country: for example, Russia has MLATs with several Council of Europe member states, and is a signatory to the multi-lateral European Convention on Mutual Assistance in Criminal Matters (1959) in conjunction with the Additional Protocol (1978), which is a mutual legal assistance treaty governing Council of Europe members.^{10 11}

3. How has Russia used MLATs to Target Opposition Figures?

Ever since he came to power in Russia, in August 1999, Vladimir Putin has waged a war against opposition business and political figures, as part of his broader effort to reassert federal authority and concentrate power in his own hands. Yet, this is not a conventional war. Instead, it is one of ‘lawfare’, in which Putin has weaponised Russia’s legal system and abused Western laws and judicial process, to achieve political ends. In doing so, Putin has created an atmosphere in which it is permissible for state officials to fabricate court cases, expropriate businesses, steal from the state’s coffers, assassinate some individuals, and torture others to death. Along the way, Russia has used the MLAT system to ensure the complicity of a number of Western countries in this.

One of Putin’s first targets was the businessman Boris Berezovsky. Once one of Russia’s most powerful men, Berezovsky fell out with Putin in 2000, after his *Channel One* TV station began questioning the Kremlin’s handling of the Kursk submarine disaster of August 2000, in which 118 sailors died, and exploring the possibility that security services were involved in the series of deadly apartment bombings, in September 1999, that provided the catalyst for the Second Chechen War (and, ultimately, Putin’s rise to the presidency).

Putin threw the full power of the Russian state against Berezovsky: he was accused of embezzling nearly US\$23 million from the state-controlled *Aeroflot*; state officials attempted to expropriate *Channel One*; and Nikolai Glushkov, one of his associates, was arrested. In December 2000, shortly after Glushkov’s arrest, Berezovsky left Russia for self-imposed exile in the UK.¹² In 2001, the

⁷ ‘Dvustoronnii dogovorennosti’ [Bilateral agreements], *The Prosecutor General’s Office of The Russian Federation*, available at:

http://genproc.gov.ru/ms/ms_documents/betw/sogl/.

⁸ ‘Dvustoronnii dogovori’ [Bilateral agreements], *The Prosecutor General’s Office of The Russian Federation*, available at:

http://genproc.gov.ru/ms/ms_documents/megdu2/dog/.

⁹ Russia does not have any treaties concerning extradition, as Article 61 of the federation’s constitution states: “A citizen of the Russian Federation may not be deported from Russia or extradited to another state.”

¹⁰ ‘EU-RUSSIA COOPERATION IN CRIMINAL MATTERS COMPILATION OF REPLIES FROM THE EU MEMBER STATES TO 13424/12’, *Council of the European Union*, 3 October 2012, available at: <http://www.statewatch.org/news/2012/oct/eu-council-russia-criminal-matters-14316-rev1-12.pdf>

¹¹ ‘European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20.IV.1959’, *Council of Europe*, available at:

<http://conventions.coe.int/treaty/en/Treaties/Html/030.htm>

¹² A little earlier, the media tycoon Vladimir Gusinsky had been forced into exile in Spain. Gusinsky had been charged, in June 2000, with embezzling state property and released, three days later, after agreeing to sell his *Media-Most* empire to state-controlled *Gazprom*. Russia’s Prosecutor General dropped the charges, but then announced a new investigation after Gusinsky had fled to Spain and claimed to have only agreed to sell *Media-Most* under duress. The new investigation accused Gusinsky of embezzling US\$300 million from *Gazprom*. With Gusinsky exiled in Spain, Russia issued a number of MLAT requests. In 2001, with the *Media-Most* empire being dismantled and expropriated by *Gazprom*, Spain refused Russia’s request to extradite Gusinsky. Despite the clear political motivations behind the requests for legal assistance, Gusinsky was detained, in 2005, at Athens airport, by Greek

Kremlin sought Berezovsky's extradition, on fraud and money-laundering charges, but Bow Street Magistrates' Court – which had jurisdiction, in England and Wales, for deciding extradition requests – refused because of the political motivations behind Russia's request.¹³ Berezovsky was subsequently granted political asylum, two years later.

In spite of the UK exposing Russia's case against Berezovsky as being politically motivated, the Kremlin successfully requested and received co-operation from a number of other Western jurisdictions, who seized his property and targeted his financial transactions on allegations of money laundering. In 2005, for example, French authorities raided Berezovsky's villa in Nice, in search of documents.¹⁴ They also seized two of his yachts on the French Riviera, in 2011.¹⁵ In 2009, meanwhile, Swiss authorities agreed to help Russia investigate Berezovsky's finances.¹⁶

The blueprint for using MLATs to target individuals outside of Russia had been created, although its procedures were not perfected until the *Yukos* affair (described below), when the Kremlin's campaign of fabricating financial crimes – which involved a process known as *gosudarstvennoe reiderstvo* ('state raiding') – reached levels unsurpassed before or since.¹⁷ As the academic Philip Hanson explains, *reiderstvo* ('raiding') is:

the acquisition of business assets by means that involve manipulation and distortion of the law, albeit often with the active involvement of law-enforcement officers and the courts. The implication is that this involvement is corrupt.¹⁸

From the high-profile dismantlement of *Yukos*, beginning in 2003, to the attempt to steal subsidiary companies of the Western investment fund *Hermitage Capital Management*, in 2006, and the state-owned *VTB Bank's* acquisition of the independent *Bank of Moscow* (BoM), in 2011, the Kremlin has practiced *reiderstvo* as a precursor to issuing requests for legal assistance.¹⁹

A typical story is that of an individual (an opposition political figure, or a businessman who owns assets coveted by the Kremlin) who is based outside of Russia but who is charged with an 'economic crime' inside of Russia. If the 'economic crime' has not been freely invented, it will be perpetrated – or part-perpetrated – by any or all of the tax, security, law-enforcement, and judicial authorities; these same authorities will then cover up their involvement. Next, criminal charges will be brought against the individual. Russia will then issue a request for legal assistance to the Western country – or to a number of Western countries – where the individual is based or has assets. This will usually be followed by an attempt, by Russia, to extradite the targeted individual, either through an MLAT or a separate extradition treaty (often involving the issuing of an Interpol 'Red Notice').

authorities acting on behalf of Russia. See, for example: 'Russian General Prosecutor's Office to formalise documents for extradition of Gusinsky from Greece', *Pravda.ru*, 26 August 2003, available at: <http://english.pravda.ru/news/russia/26-08-2003/52150-0/>.

¹³ The court was closed in 2006. See: 'Bow Street court closes its doors', *BBC News*, 14 July 2006, available at: <http://news.bbc.co.uk/1/hi/england/london/5179270.stm>.

¹⁴ 'Russian tycoon's villa raided', *Associated Press*, 13 May 2005, available at: <http://www.theguardian.com/world/2005/may/13/france.russia?INTCMP=SRCH>.

¹⁵ 'Criminal probe targets Russian's yachts', *The Telegraph*, 19 February 2011, available at: <http://www.telegraph.co.uk/news/worldnews/europe/russia/8334916/Criminal-probe-targets-Russians-yachts.html>.

¹⁶ 'Swiss ready to help Russia over legal case', *swissinfo.ch*, 28 September 2009, available at: <http://www.swissinfo.ch/eng/swiss-ready-to-help-russia-over-legal-case/1010384>.

¹⁷ Meier, A., 'Who Fears a Free Mikhail Khodorkovsky?', *The New York Times*, 18 November 2009, available at: http://www.nytimes.com/2009/11/22/magazine/22khodorkovsky-t.html?pagewanted=all&_r=0.

¹⁸ Hanson, P., '*Reiderstvo*: Asset-Grabbing in Russia', Chatham House (2014), available at: http://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140300AssetGrabbingRussiaHanson1.pdf.

¹⁹ The practice of *reiderstvo* is widespread in Russia, though it is not just confined to there. It should be noted that not all cases end with a 'successful' asset-grab.

The MLAT is a way for the Kremlin to gain control over an individual outside of its jurisdiction. Through the MLAT system, Russia is able to issue warrants, obtain testimony, freeze bank accounts, or repatriate seized assets. Russia, in most of its MLATs, is under no obligation to provide any substantive information, about the underlying criminal allegations and the evidence it has compiled to justify the request, to the country from which it is requesting assistance. This means, in short, that the Kremlin is able to freely fabricate court cases in Russia and then request the co-operation of Western countries in those cases.²⁰ For their part, the Western bodies charged with acting on MLAT requests are often wary of making the politically-controversial decision that any particular request is politically motivated.²¹ In most cases, these bodies also do not have the resources necessary to properly investigate accusations that requests are politically motivated.

3.1 Mikhail Khodorkovsky and *Yukos*

Over the past 15 years, few political acts have been quite as brazen as the Russian government's dismemberment of *Yukos*. In a few cynical moves, just over a decade ago, Putin destroyed a political opponent, Mikhail Khodorkovsky, and seized control of his business, *Yukos* – Russia's then-largest oil company (whose value was estimated, in 2007, to have been US\$60 billion at the time it was dismantled, in 2004).²² An action ostensibly aimed at reining in an insatiable oligarch was, in reality, used to bolster the Kremlin's own power and patronage.²³

In a story now well known, Mikhail Khodorkovsky was arrested in October 2003, and, in May 2005, after a long period of pre-trial detention, was sentenced to nine years in jail, for fraud and tax evasion. After an appeal reduced his sentence to eight years, and having served half of his initial sentence, Khodorkovsky would have become eligible for parole in May 2007. In February 2007, however, state prosecutors brought new charges. This led to a second trial, which started in March 2009, in which Khodorkovsky was found guilty of embezzlement and money laundering and sentenced to seven years in jail (subsequently reduced to six years). Khodorkovsky's sentence was further reduced in March 2012, after a review of the second trial. He was released, at Putin's behest, in December 2013.

With Khodorkovsky in jail, Russia set about targeting assets connected to *Yukos*. From late 2003 onwards, the Kremlin sent requests for mutual legal assistance to a number of countries, including Luxembourg, the Netherlands, and Switzerland. Authorities in Luxembourg and the Netherlands refused comply with Russia's requests, but Swiss authorities duly obliged: *Yukos'* offices were raided, in March 2004,²⁴ and US\$5 billion of *Yukos*-related assets were frozen. Shortly afterwards, in June 2004, Swiss authorities overturned the freeze order for 90% of these assets.²⁵

Over the following years, Swiss courts received numerous mutual-legal-assistance requests for searching for and seizing of documents relating to various *Yukos*-linked entities. This culminated, in 2007, in the Swiss Federal Tribunal – Switzerland's highest court – ruling that the case against

²⁰ It is important to note that individuals and corporations whom are the subject of MLAT requests do not have to co-operate and cannot be forced to.

²¹ In the case of England, Wales and Northern Ireland, the body charged with dealing with MLAT requests is the Home Office.

²² Usoskin, S., 'Newly Released Arbitration Award Says Yukos Was Expropriated', *CIS Arbitration Forum*, 27 July 2012, available at: <http://www.cisarbitration.com/2012/07/27/newly-released-arbitration-award-says-yukos-was-expropriated/>.

²³ 'A damning verdict in the Yukos case', *The Financial Times*, 28 July 2014, available at: <http://www.ft.com/cms/s/0/a79bf3dc-1654-11e4-93ec-00144fcabdc0.html#axzz3VblO53ji>.

²⁴ Gattton, A. and Abigail Townsend, 'Russians apply to raid London offices of jailed Yukos oligarch', *The Independent*, 02 May 2004, available at: <http://www.independent.co.uk/news/business/news/russians-apply-to-raid-london-offices-of-jailed-yukos-oligarch-6170471.html>.

²⁵ 'Swiss Federal Tribunal', *Khodorkovsky.com*, available at: <http://www.khodorkovsky.com/resources/swiss-federal-tribunal/>.

Khodorkovsky was politically motivated and that Switzerland must not comply with Russia's requests for assistance concerning Khodorkovsky and *Yukos*.²⁶ That Switzerland complied with Russia's MLAT requests until 2007, however, suggests that the country's lower courts were unwilling to consider the case against Khodorkovsky; what was, by any standard, an egregious case of politically-motivated persecution.

At the same time, the Kremlin also set about targeting individuals connected to *Yukos*. Given the very dim view formed by the UK's authorities, of Russia's behaviour in the cases of Boris Berezovsky and Akhmed Zakayev, many high-profile individuals connected to *Yukos* moved there. By 2007, Russia had lodged multiple requests for mutual legal assistance from the UK, including 21 applications for the extradition of Russian citizens (almost all of them related to *Yukos* -²⁷ such as Natalia Chernysheva and Dmitri Maruev, both former *Yukos* managers). In all cases, the Bow Street Magistrates' Court refused Russia's request because of its political motivations.

Alexander Temerko, a top *Yukos* executive, is a case in point. Following Khodorkovsky's arrest in 2003, Temerko became the company's Vice President. Under mounting pressure from the Kremlin, Temerko left Russia for the UK, in 2004. The following year, Russia requested mutual legal assistance to extradite him on fraud charges. Temerko, it was alleged, had defrauded *Rosneft*, Russia's state-controlled oil company, of its rightful ownership of 75,313 shares in a business called *Yeniseftgaz* (YNG), in 2002.²⁸ In his judgement on the case, Judge Timothy Workman stated:

I have come to the conclusion that the motivation for the charges against Mr Temerko is inextricably entwined with the motivation for the prosecution of Mr Khodorkovsky. I therefore find that the prosecution of Mr Temerko is politically motivated and the request for his extradition is made for the purpose of prosecuting or punishing him on account of his political opinions.²⁹

The indictment of the politically motivated nature of Russia's case against *Yukos* could hardly have been more comprehensive.

The extent to which the Kremlin used mutual-legal-assistance requests to target individuals and assets connected to *Yukos* was laid bare in a judgement made by an international tribunal based in The Hague, in July 2014. The judgement, based on a claim made by *Yukos* shareholders (that Russia had violated the Energy Charter Treaty when it stole *Yukos*), found the company to be the victim of "a series of 'politically motivated' attacks" by the Russian authorities, whose aim was "to destroy Yukos and to put its main shareholder, Mikhail Khodorkovsky, in jail."³⁰ It also stated:

Starting in the summer of 2003, the Russian Federation took a series of actions aimed at undermining the ability of the Company's management to run the business. These included [...] the numerous mutual legal assistance [sic] requests and extradition proceedings to affect

²⁶ Judgment of the Swiss Federal Tribunal, 13 August 2007, Mikhail Khodorkovsky v. Swiss Federal Prosecutor's Office.

²⁷ Harding, L., *Mafia State: How One Reporter Became an Enemy of the Brutal New Russia* (London: Guardian Books, 2012), p. 50.

²⁸ Hope, C., 'Ex-Yukos chief can stay in Britain', *The Telegraph*, 24 December 2005, available at: <http://www.telegraph.co.uk/finance/2929018/Ex-Yukos-chief-can-stay-in-Britain.html>.

²⁹ Sixsmith, M., *Putin's Oil: The Yukos Affair and the Struggle for Russia* (London: Continuum, 2010), p. 273.

³⁰ Buckley, N., Hille, K., and Peter Spiegel, 'Yukos ruling adds to Russia isolation', *The Financial Times*, 28 July 2014, available at: <http://www.ft.com/cms/s/0/b6c67dba-1674-11e4-8210-00144feabdc0.html?siteedition=uk#axzz3VrTAkko3>.

Yukos and entities/persons associated with the Company abroad; [...] These actions were taken in violation of the most basic standards of due process and fair treatment.³¹

Though the tribunal's judgement made headlines in both Russia and the West because it ordered Russia to pay US\$50 billion in damages to *Yukos* shareholders – a figure 20 times larger than the next-biggest award the tribunal had ever made, and equivalent to 10% of Russia's national budget or 2.5% of Russia's GDP –³² it was equally notable because it explained how the Kremlin's issuing of requests for mutual legal assistance was central to its campaign against *Yukos*.

3.2 Bill Browder and *Hermitage Capital Management*

Created in 1996, by Bill Browder, *Hermitage Capital Management* was, at one time, the largest foreign investor in Russia, with US\$4.5 billion invested in the Russian economy. After exposing corruption at Russian businesses in which *Hermitage* was investing – a number of which were state-controlled, including the energy giant *Gazprom* – Browder was expelled from Russia, in November 2005; he was denied entry to the country and declared a “threat to national security”, by the Kremlin.³³ *Hermitage's* offices were subsequently raided by Russian authorities, and its investment companies were seized. As the Kremlin ramped up its campaign against *Hermitage*, most of Browder's staff left Russia.

Two years or so later, Browder's lawyer, Sergei Magnitsky, uncovered a massive fraud, committed by Russian government officials, that involved the theft of US\$230 million of taxes which had been paid by *Hermitage* in 2006. After testifying against those involved, Magnitsky was arrested and imprisoned without trial, by those very same government officials. He was tortured, in an attempt to force him to retract his testimony and to falsely incriminate himself and Browder in the crimes – which he refused to do. For almost a year, Magnitsky suffered horrifying detention conditions, and, when this led to a drastic deterioration in his health, he was denied any medical attention. He died on 16 November 2009, at the age of 37.

Since his lawyer's death, Browder has led a worldwide campaign to expose and punish Magnitsky's persecutors, turning the case into an international *cause célèbre*. Browder's efforts helped pressure the US Congress to pass a law, in late 2012, commonly known as the ‘Magnitsky Act’, which barred 18 Russian officials connected with Magnitsky's death from entering the US or using its banking system and set a precedent for future visa sanctions and asset freezes. In 2014, the European Parliament passed its own version of the ‘Magnitsky Act’. The following year, in March 2015, Canada signalled that it, too, would adopt a ‘Magnitsky Act’.

In retaliation for these efforts – according to evidence submitted by *Hermitage*, in 2013, to a committee of the UK House of Commons – the Kremlin:

issued an *in absentia* arrest warrant for Mr Browder [...and] abused international channels by pursuing Mr Browder through mutual legal assistance [sic] requests and INTERPOL

³¹ ‘PCA Case No. AA 227: In the Matter of an Arbitration Before a Tribunal Constituted in Accordance with Article 26 of the Energy Charter Treaty and the 1976 UNCITRAL Arbitration Rules - between - Yukos Universal Limited (Isle of Man) - and - The Russian Federation - Final Award’, (2014), available at: <http://italphaville.ft.com/files/2014/07/Final-Award-18-July-2014-Yukos-Universal-Limited-v.-Russian-Federation-1.pdf>, p. 22.

³² ‘A damning verdict in the Yukos case’, *The Financial Times*, 28 July 2014, available at: <http://www.ft.com/cms/s/0/a79bf3dc-1654-11e4-93ec-00144feabdc0.html#axzz3VblO53ii>.

³³ Lambert, V., ‘Bill Browder: why I fear for my life’, *The Telegraph*, 11 March 2015, available at: <http://www.telegraph.co.uk/news/worldnews/europe/russia/11453125/Bill-Browder-why-I-fear-for-my-life.html>.

[...] Furthermore, Russia has initiated a posthumous prosecution of Mr Magnitsky (and *in absentia* of Mr Browder) in a clear attempt to defame his legacy and intimidate his supporters.³⁴

In 2010, for example, Russia requested legal assistance from the UK, in searching Browder's London home.³⁵ Two years later, it requested further assistance from the UK, in extraditing Browder to Russia.³⁶ On both occasions, the UK refused the request. In 2013, Russia accused Browder of having illegally bought shares in *Gazprom*, in 1997, and requested legal assistance from a number of European countries – including Cyprus and Switzerland – to provide information on the flow of money, from companies controlled by Browder, through the countries' banks.³⁷ The same year, Russia requested assistance from Sweden, in their attempts to arrest Browder; Swedish authorities neither declined Russia's request nor guaranteed Browder safe passage should he travel to the country.³⁸

Yet, it is not only Browder whom the Kremlin has targeted through mutual-legal-assistance requests. Some of the information which allowed *Hermitage* to identify the US\$230 million fraud was provided by Alexander Perepilichniy, a Russian whistle-blower who fled to the UK in 2009 (where he died mysteriously, in November 2012). Perepilichniy's information suggested that corrupt Russian government officials had used Swiss bank accounts, together with a shell company in Cyprus, to hide some of the 'profits' of the fraud. Perepilichniy provided this information to Swiss authorities, who opened an investigation in March 2011. In response, Russia requested mutual legal assistance from Switzerland, as part of an orchestrated campaign to target Perepilichniy. In September 2011, Swiss authorities duly complied with the request.³⁹

In an attempt to halt Russia's politically motivated abuse of the criminal justice system, the Council of Europe, in 2009, called on all member states to deny any Russian requests for mutual legal assistance targeting *Hermitage* executives and lawyers.⁴⁰ Despite this, as the above suggests, European countries continue to assist Russia.

3.3 Andrey Borodin and *Bank of Moscow*

Established in 1995, *Bank of Moscow* (BoM) is Russia's fifth-largest bank. It was formed as a joint-stock company, in which the City of Moscow held a 51% stake and the remaining shares were divided between a small number of shareholders (none of whom owned more than 5%), and was headed, from the start, by Andrey Borodin. After Yury Luzhkov was ousted as Mayor of Moscow, in September 2010, by President Dmitry Medvedev, and replaced, the following month, by

³⁴ 'Written evidence from Hermitage Capital Management', *UK House of Commons Foreign Affairs Select Committee*, 10 June 2013, available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmfafl/267/267vw13.htm>.

³⁵ Bowker, J., 'Hermitage: Russia seeks to search exec's London home', *Reuters*, 31 August 2010, available at: <http://uk.reuters.com/article/2010/08/31/heritage-russia-idUKLDE67U1CU20100831>.

³⁶ 'Britain refuses to offer Russia legal assistance in Hermitage Capital case - Interior Ministry', *Interfax*, 02 July 2012, available at: http://rbth.co.uk/articles/2012/07/02/britain_refuses_to_offer_russia_legal_assistance_in_hermitage_capita_16043.html. See also: Hovington, K., 'UK refuses mutual legal assistance to Russia in the posthumous prosecution of Sergei Magnitsky', *International Criminal Law Bureau*, 09 July 2012, available at: <http://www.internationalcrlawbureau.com/index.php/uk-refuses-to-extradite-william-browder-to-russia/>.

³⁷ 'Russia asks for legal assistance on case involving the stealing of Gazprom shares by Browder - source', *Interfax*, 06 March 2013, available at: http://rbth.co.uk/news/2013/03/06/russia_asks_for_legal_assistance_on_case_involving_the_stealing_of_gazpr_23559.html.

³⁸ Rettman, A., 'Sweden declines safe passage to Magnitsky campaigner', *EUobserver*, 30 September 2013, available at: <https://euobserver.com/foreign/121613>.

³⁹ Reynolds, E., 'Russian supergrass, 44, found dead outside leafy Surrey mansion (and he's the FOURTH person linked to multi-million pound tax fraud to die mysteriously)', *Daily Mail*, 29 November 2012, available at: <http://www.dailymail.co.uk/news/article-2239608/Russian-supergrass-Alexander-Perepilichniy-44-dead-outside-leafy-Surrey-mansion.html#ixzz3W9JHAMB8>.

⁴⁰ 'Doc. 11993: Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states', Parliamentary Assembly of the Council of Europe (2009), available at: <http://www.refworld.org/pdfid/4a9b8f1b2.pdf>.

Kremlin-loyalist Sergei Sobyenin, BoM was subjected to a hostile takeover by the state-controlled *VTB Bank*. Following the takeover, *VTB* went about exerting pressure on BoM's remaining shareholders, singling out Borodin – who had opposed the takeover – for particularly harsh treatment.

In December 2010, as *VTB* was holding discussions to buy the City's stake in BoM, Russian investigators launched an audit of BoM, at Sobyenin's request.⁴¹ The same month, a criminal investigation into an alleged embezzlement – which investigators had originally called-off in September 2010, saying that there not enough grounds to launch an investigation – was launched by Russia's law enforcement agencies. It was alleged that Borodin had embezzled US\$373 million from the City of Moscow's budget, by loaning money to shell companies that then transferred the cash to Yury Luzhkov's billionaire wife, Yelena Baturina (the owner of property-development company *Inteco*).⁴²

In February 2011, *VTB* completed its purchase of the City's shares in BoM – which had been reduced to a 46.5% stake following a selloff in 2008 – for US\$3.5 billion, as well as a block minority stake in an insurer that owned a further 17% of shares. In June, despite *VTB* having conducted due diligence prior to its purchase of BoM, a review – conducted by Russia's Central Bank – found that BoM's books contained bad loans totalling US\$9 billion, or nearly one-third of its assets. BoM was subsequently given a bailout, by the Russian government, of US\$14 billion – the largest bailout in Russian banking history.⁴³

In the midst of this, a Moscow court removed Borodin from his position as the bank's president. In spite of the fact that a criminal investigation was ongoing, a number of senior Russian officials and politicians made statements prejudging Borodin's guilt. In April 2011, Sergey Stepashin, chairman of Russia's Audit Chamber, announced: "He [Borodin] earned 1 billion USD, and therefore we will claim 1 billion USD back in court in order to repay Russian and Moscow budgets".⁴⁴ Three months later, in July, Alexey Kudrin, Minister of Finance, declared that the former management of BoM was solely responsible for the dire state of BoM's finances, which had led to the record bailout.⁴⁵ With the pressure from Russia's authorities increasing, Borodin fled to the UK, in April 2011.⁴⁶ The Kremlin then began orchestrating a campaign of 'lawfare', to harass him.

In February 2012, Russia's Ministry of Internal Affairs (MVD) opened a criminal case against Borodin – as well as Dmitry Akulinin, BoM's former first deputy – over the alleged theft of US\$220 million from BoM.⁴⁷ Again, this was accompanied by rhetoric pre-judging Borodin's guilt. In October 2012, Sergey Gavrilov, a member of Russia's State Duma, declared that "As a result of

⁴¹ Belton, C. and Isabel Gorst, 'Bank of Moscow in embezzlement probe', *The Financial Times*, 21 December 2010, available at: <http://www.ft.com/cms/s/0/21e0df92-0d3a-11e0-82ff-00144feabdc0.html?siteedition=uk#axzz1tG1sVS5y>.

⁴² Lammey, M., 'Ex-Bank of Moscow Head Charged With Stealing \$29 Million', *The Moscow Times*, 03 July 2014, available at: <http://www.themoscowtimes.com/business/article/ex-bank-of-moscow-head-charged-with-stealing-29m/502915.html>.

⁴³ Busvine, D. 'UPDATE 4-Accusations fly as Bank of Moscow gets record bailout', *Reuters*, 1 July 2011, available at: <http://www.reuters.com/article/2011/07/01/vtb-bankofmoscow-idUSLDE7600ED20110701>.

⁴⁴ Voronova, T. and Nailya Asker-Zade, 'Schetnaya palata obeshchayet vzykat' s Andrey Borodina \$1 mlrd' ['Accounting Chamber promises to recover \$1 billion from Andrey Borodin', *Vedomosti*, 26 April 2011, available at: http://www.vedomosti.ru/finance/articles/2011/04/26/schet_borodinu.

⁴⁵ 'Sanatsiya Banka Mosky bez VTB oboshlas' by gorazdo dorozhe, zayavil Kudrin' ['Rehabilitation of the Bank of Moscow without VTB would be no more expensive, said Kudrin'], *RIA Novosti*, 1 July 2011, available at: <http://ria.ru/economy/20110701/396147478.html>.

⁴⁶ Kelly, L., Kobzeva, O., and Gleib Stoljarov, 'Bank of Moscow allots most of 2010 profit to reserves', *Reuters*, 17 June 2011, available at: <http://www.reuters.com/article/2011/06/17/russia-bank-of-moscow-idUSLDE75G0K320110617>.

⁴⁷ 'Former Bank of Moscow Heads Face New \$220 Mln Theft Charge', *Sputnik News*, 22 February 2012, available at: <http://sputniknews.com/russia/20120222/171457829.html>.

mass embezzlement which was found after the change of bank [BoM] management, the Central Bank, Deposit Insurance Agency and VTB had to put in a lot of effort and invest much funds for the sanitation of the bank.”⁴⁸ In the midst of the case, in July 2013, Stepashin again interfered when he stated: “As the Audit Chamber’s investigation has shown, he [Borodin] transferred illegally 7 billion USD of BoM’s money from Russia into the accounts of bogus and offshore companies”.⁴⁹ With Borodin’s guilt already having been decided, the Kremlin, in March 2012, requested that the UK provide legal assistance in extraditing him;⁵⁰ the UK refused to comply with the request, and Borodin was subsequently granted political asylum, in 2013.

Yet, Russia’s campaign had some success. In October 2012, more than US\$400 million worth of assets belonging to Borodin (and Akulinin) were frozen in bank accounts in Luxembourg and Switzerland.⁵¹ In April 2013, Liechtenstein froze over US\$10 million of cash he had deposited into a bank account.⁵² The following month, Swiss authorities froze around US\$368 million of his money in his Swiss bank accounts.⁵³ In August 2013, meanwhile, Latvia seized Borodin’s property, in response to Russia’s request for legal assistance.⁵⁴

The Kremlin redoubled its efforts to target Borodin last year, in 2014, when Russian investigators opened a case against him for embezzling US\$29 million from BoM, between 2008 and 2010. Borodin, it was alleged, was part of an organised group that made fictitious foreign-currency transactions while skimming off the difference between exchange rates.⁵⁵

By the summer of 2014, the Kremlin had opened five criminal cases against Borodin – each as politically motivated as the others –⁵⁶ and it had received assistance from Western law-enforcement agencies in each one.

4. POLICY RECOMMENDATIONS

Russia’s abuse of the ‘Mutual Legal Assistance Treaty’ (MLAT) system is a stark reminder of the Kremlin’s long-established efforts to target its political opponents outside of Russia, and the West’s complicity in helping it to do so. From Russia’s requests for mutual legal assistance in its persecutions of Bill Browder and other individuals connected to *Hermitage*, to the aid provided by Switzerland in the persecution of Andrey Borodin, the Kremlin has used ‘lawfare’ to intimidate and paralyse individuals within its sights.

⁴⁸ Tsipin, A. ‘Komitet Gosdumy po sobstvennosti obsudit informatsiyu po khishcheniyam v Banke Moskv’ [‘The State Duma Committee on Property will discuss information on the theft within the Bank of Moscow’], *ITAR-TASS*, 25 October 2012, available at: <http://tass.ru/obschestvo/643772>

⁴⁹ ‘Stepashin soobshchil britanskim auditoram o narusheniyakh Borodina v Banke Moskv’ [‘Stepashin told a British audience about Borodin’s abuse of the Bank of Moscow’], *Vedomosti*, 6 June 2013, available at:

http://www.vedomosti.ru/finance/news/2013/06/04/stepashin_soobshchil_britanskim_auditoram_o_narusheniyakh

⁵⁰ ‘Russia requests Bank of Moscow head extradition from UK’, *RAPSI (Russian Legal Information Agency)*, 16 March 2012, available at: http://rapsinews.com/judicial_news/20120316/262105406.html

⁵¹ ‘Russian ex-banker Andrei Borodin wins asylum in UK’, *BBC News*, 01 March 2013, available at: <http://www.bbc.co.uk/news/world-europe-21627481>

⁵² ‘Russian prosecutors achieve seizure of Borodin’s accounts in Lichtenstein, Berezovsky’s assets in Ukraine (Part 2)’, *Interfax*, 17 April 2013, available at: <http://www.interfax.com/newsinf.asp?id=410663>

⁵³ ‘Swiss prosecutors go after ex-Bank of Moscow CEO’s assets - report’, *RAPSI (Russian Legal Information Agency)*, 27 May 2013, available at: <http://rapsinews.com/news/20130527/267366970.html>

⁵⁴ ‘Former Bank of Moscow CEO’s property seized in Latvia’, *RAPSI (Russian Legal Information Agency)*, 21 August 2013, available at: http://rapsinews.com/judicial_news/20130821/268610927.html

⁵⁵ Lammey, M., ‘Ex-Bank of Moscow Head Charged With Stealing \$29 Million’, *The Moscow Times*, 03 July 2014, available at: <http://www.themoscowtimes.com/business/article/ex-bank-of-moscow-head-charged-with-stealing-29m/502915.html>

⁵⁶ ‘Eks-glava Banka Moskv Andrey Borodin: ya ne khochu provesti ostatok zhizni v sudebnikh razbiratel’stvakh v Londone’ [Ex-head of the Bank of Moscow Andrey Borodin: I do not want to spend the rest of my life in litigation in London], *Dozhd*, 09 July 2014, available at: http://tvrain.ru/articles/eks_glava_banki_moskvy_andrey_borodin_ia_ne_hochu_provesti_ostatok_zhizni_v_sudebnih_razbiratelstvakh_v_londone-371966/

The MLAT system is challenging; legal practitioners describe it as slow, underfunded, and in need of reform. The most pressing problems with MLATS relate to policy, rather than to law. In this context, there are a number of policy recommendations which emerge from this paper:

- **Human-rights conditions should be attached to MLATs.** International legal co-operation raises questions about the extent to which countries respect human rights. In the same fashion as other bilateral and multilateral treaties that control such co-operation (for example, trade agreements), MLATs must include human-rights conditions. If certain clauses (for example, the right to life and prohibition of torture) are not respected, the agreement and any request made on the basis of it should be void. This protection would ensure that MLATs are not used as a vehicle for arbitrary and unlawful surveillance.
- **MLATs should include an assessment of human-rights conditions in each signatory country.** MLATs are not, nor should be treated as being, too different from an asylum process, which inherently requires an estimation of the country of origin's human-rights situation. While such assessment is not strictly required, and domestic courts are arguably not best placed to make an assessment of human-rights conditions in another country, it is, nevertheless, a standard component of the procedure. Such analysis should be accepted more readily as part of the MLAT procedure, in order to protect human rights. In short, the country requesting legal assistance should be required to certify that it has adequate human-rights protections in place.
- **Countries should enhance the transparency of the provision of information about the subject(s) of MLAT requests.** As things stand, it is difficult for countries to assess, in any systematic way, which MLATs work well and which work poorly, because most countries do not record and publicly release data about the MLAT requests they receive. Countries should, therefore, publish regular transparency reports about what data is being requested, when, by whom, and for what purposes. This would also help officials to understand where to direct attention to make the MLA regime run more effectively.
- **MLATs should include a clear timetable for responding to requests.** While most MLATs include a provision mandating that assistance be executed "promptly", in practice the process is slow. MLATs should, therefore, identify a clear timetable – and set of benchmarks – for processing and responding to requests. Each signatory country should appoint a central point of contact, someone who is responsible to the requesting state for updates and for meeting the compliance deadline.

About the Author

Dr Andrew Foxall is Director of the Russia Studies Centre at *The Henry Jackson Society*. His research focuses on economic, political, and security trends in Russia and the Former Soviet Union. Andrew is the author of numerous articles, book chapters, policy papers, reports, and opinion pieces on Russia. His first book, *Ethnic Relations in Post-Soviet Russia*, was published by Routledge, in October 2014. Andrew holds a DPhil from the University of Oxford.



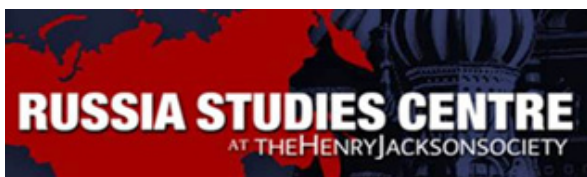
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The Henry Jackson Society
Millbank Tower,
21-24 Millbank, London, SW1P 4QP
Tel: 020 7340 4520

www.henryjacksonsociety.org
Charity Registration No. 1140489

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