January 19, 1994

A REFORM AGENDA FOR THE NEW RUSSIAN PARLIAMENT, PART II: POLITICAL AND LEGAL ISSUES

INTRODUCTION

The results of Russia's parliamentary elections are a sobering reminder of the political task facing the cause of reform in Russia. As a consequence of the elections, communists and fascists will have the largest block of seats in the lower house of parliament, the Duma. Reformers will have the second largest block of seats, but they are still badly divided on how quickly to proceed with economic reform. In such a political environment, it is vitally important that reformers form a united front against the "red-brown" extremists. To do this they must agree upon a dramatic and sweeping reformist agenda that promises quick results. The reformers are running out of time. If they do not show some positive results before the next presidential election, in 1996, Russia's next president surely will be an anti-democrat, and possibly even an extremist like Vladimir Zhirinovsky.

But the cause of democracy and free markets is not dead. If he wishes to act, Boris Yeltsin can exercise more powers than before, granted by his newly approved constitution, to push through economic and political change. Moreover, the reformist parties, from Yegor Gaidar's Russia's Choice to Grigory Yavlinsky's bloc, should have learned a valuable lesson from the December elections: bickering over petty differences is a recipe for disaster. If the democrats put aside their differences, and if the Russian president once again acts as a leader of the reformist movement rather than a passive observer, the democratic movement once again may become united behind a common agenda.

The arena for reinvigorating the this agenda will be the new Russian parliament, called the Federal Assembly. There reformers have the chance to create a bold and sweeping program that will produce results quickly. As they work to build democracy, a market economy, and the rule of law in Russia, members of the newly elected Russian parliament should:

- 1) Create a pro-reform coalition that will represent the commitment of the Russian people to freedom and free markets;
- 2) Adopt rules of parliamentary procedure that will reduce factionalism and enhance party discipline;
- 3) Create an independent judiciary;
- 4) Enact a new criminal code that conforms to international legal standards;
- 5) Make the fight against crime and government corruption a very high priority;
- 6) Bring the Defense Ministry, the Interior Ministry, and the Federal Counterintelligence Service firmly under civilian control;
- 7) Adopt laws that ensure a free mass media;
- 8) Pass federal legislation regulating election campaigns and political parties;
- 9) Adopt a new pro-market civil code, including laws on bankruptcy and intellectual property protection;
- 10) Strike "social rights," or entitlements, from the Russian constitution;
- 11) Create parliamentary committees that will organize and accelerate reform legislation;
- 12) Press for constitutional amendments that ensure a greater balance between the authority of the central government and the regions;
- 13) Adopt a law that will ensure the systemic cleansing of the government of its communist legacy.

STARK CHOICES FOR THE NEW PARLIAMENT

Reforms in Russia have stalled. Boris Yeltsin's political struggles with his hard-line opposition have distracted and divided the once united democratic movement. The challenge now for the new parliament will be to restore the momentum lost over the past year.

The slowdown began in December 1992 when Yeltsin dismissed economic reformer Yegor Gaidar as Prime Minister. Gaidar and other democrats, such as Gennady Burbulis and Galina Starovoitova, were fired in response to pressure from the Supreme Soviet Chairman, Ruslan Khasbulatov, and other hard-liners, who saw their political positions threatened by Gaidar's reforms. As a result, the influence of the former communist apparatchiki and nomenklatura in the central and regional governments grew. While privatization proceeded in the service sector and light industry, most large industrial enterprises remained in the hands of the state. Privatization of the land was not occurring at all. The Central Bank continued supporting state-owned industrial enterprises, collective farms, and the military-industrial complex with subsidies and cheap credit. The result was an enormous budget deficit and a near hyperinflation rate in August 1993 of 33 percent per month.

Instead of passing legislation to create a viable free market democracy, meanwhile, the Russian Supreme Soviet engaged in a political struggle against Yeltsin. The obstructionist policies of the legislature, led by Khasbulatov, frustrated Yeltsin's campaign of

reform, slowing the process and ultimately postponing the time when the reforms would show positive results. The widespread popular discontent expressed in the December 1993 parliamentary elections, when ultra-nationalist Vladimir Zhirinovsky's Liberal-Democratic Party won 24 percent of the vote, is indeed rooted in the slow pace of reforms. Far from conducting "shock therapy" on Russia, as Yeltsin's opponents often charge, the Russian president has not yet tried a policy of sweeping and rapid market reforms.

Russia's new parliament, which convened on January 12, 1994, has a choice: to continue the bitter political struggle with the president that could result in civil war, or to cooperate with him in a far-reaching and rapid campaign to create a market economy. Parliament must decide between trying to undermine a popularly elected president or finding a modus vivendi with him. It must choose also between continuing to entertain unrealistic ideas of imperial grandeur, as envisioned by Zhirinovsky, or living peacefully with Russia's neighbors and other nations, including the United States.

If market reforms are abandoned, democracy rolled back, and hard-line economic and foreign policies pursued, no tangible benefits will accrue to the people of Russia or its leadership. Russia's chances for continued integration into the international community and the world market will be lost, foreign investors will be scared away, and renewed hostility between Russia and her neighbors, as well as the West, will surely occur. The result will be more poverty, less security, and even greater humiliation for Russia and its people.

A REFORM AGENDA FOR THE NEW PARLIAMENT

While members of the new Russian parliament may have political choices, Russia itself has no choice: either it proceeds quickly toward establishing a constitutional democracy and market economy, or it will surely sink into an abyss that threatens harsh political repression, more grinding poverty, and possibly even bloodshed and war. The pace of reform cannot slow in Russia. Certainly it cannot stand still either. Russia's only choice is to move as quickly as possible toward creating a legal order that protects the freedom and security of each individual in the Russian Federation. Only when Russians are free, secure, and prosperous will Russia's neighbors be free, secure, and prosperous as well.

To bring their county forward, members of the new Russian parliament should:

✓ Create a pro-reform coalition that will represent the commitment of the Russian people to freedom and free markets.

Poll data show that the majority of Russians support the market reforms and multiparty democracy, and do not want to return to the times of Communist Party rule. A Russian exit poll on election day, December 12, 1993, indicated that 70 percent of the voters wanted Russia to develop a market economy. I

¹ The poll was conducted by Mitofsky International/Institute for Comparative Social Research. The results were reported in

Almost 60
percent of the
voters sup-
ported Yeltsin's
constitution,
which intro-
duces basic in-
dividual
freedoms and
recognizes
property rights.
In April 1993, a
majority of
voters approved
Yeltsin's
economic
reforms. At that
time, 53 percent
said they sup-
ported the crea-
tion of a free
market in Rus-
sia. Despite the
success of
Vladimir
Zhirinovsky's

RESULTS OF THE ELECTIONS TO	OTHE DUMA	.
PARTY:	Number of	Seats
Russic's Choice	96	
illoeral Democratic Party	70	
Communists	65	
Agraian	47	
YABLOC	33	
Independent:	30	
Russion: Unity	27	
Wornen of Russia	25	
Democratic Party of Russia.	21	
Clvic Union	18	
Dignity and Chartty:	-3	
Russici's Future	1	
Source: ITTAR-TASS: December 25, 1993		

ultranationalist Liberal-Democratic Party, the election results prove that most of the electorate favors President Yeltsin and his reforms. Russian voters have sent Yeltsin a message: they want the reforms to work, and work fast. In order to do that, more—not less—free market transformation has to take place.

The factional splits in the democratic camp and personal animosities between the reformers, as successfully exploited by Zhirinovsky and the communists, could be devastating for the cause of democracy in Russia. Zhirinovsky could torpedo the reforms and win the presidential elections in 1996 under such a scenario. Only a strong, tightly knit coalition of reformers is capable of enacting a program radical enough to show positive results before 1996.

The formation of such a coalition should be the first priority for the democrats. Candidates for a united anti-communist and anti-fascist front should include: Russia's Choice, the Yavlinsky-Boldyrev-Lukin bloc, and Sergei Shakhrai's Unity and Accord party, plus some newly elected deputies from the Women of Russia movement. Perhaps even some Zhirinovsky supporters could be persuaded to break ranks with their leader and join the reformist bloc.

Margaret Shapiro, "Russians Approve New Constitution," The Washington Post, December 13, 1993, p. A1.

Many independent and uncommitted deputies, elected from the single mandate districts, may wish to join a pro-reform coalition to work on the transformation of their country into a prosperous and democratic state. If reforms prove successful, more voters will support the reformers. By contrast, communists and ultranationalists promise disaster for Russia: international isolation, hyperinflation, and possibly even war.

The Federal Assembly must avoid the mistakes of its predecessor, the Supreme Soviet of Russia. A head-on confrontation with the president and the administration would be counterproductive. More efforts to seek compromise and cooperation with the president and reformist ministers of the government are needed.

Adopt rules of parliamentary procedure that will reduce factionalism and enhance party discipline.

Communists and other opponents of the reforms demonstrated discipline and effective organization in the former Supreme Soviet. This was not true for the democrats and the reformers. Some in the Democratic Russia movement, such as Ilya Konstantinov, Sergei Baburin, and Mikhail Astafyev often voted with the opposition or defected altogether to the anti-reform camp. The rules of procedure were often manipulated by the speaker, Ruslan Khasbulatov, to purge his opponents and mobilize the Supreme Soviet against Yeltsin. And Khasbulatov used his powers to purge disloyal parliamentary committee chairmen and to pass a hyperinflationary budget last summer.

To form a united front against hard-liners in the new parliament, the reformers should develop a whip system. Whips would maintain party discipline on votes by applying sanctions—including possibly expulsion—against party members who voted with the opposition.

✔ Create an independent judiciary system.

The Russian court system is notoriously inefficient, in part because it was never meant to function in a market economy. Haunted by its Soviet past, the Russian court system is wholly inadequate for resolving disputes between private businesses. A simple contract can hardly be enforced in Russian courts today. Speedy trials with professional judges and a reliable enforcement system are needed. Also necessary is a bottom-up reconstruction of the court system, including dismissal of incompetent and corrupt judges.

A market economy and a democratic system cannot function with such a court system. This will require retraining most judges and recruiting new ones.³ Western legal associations such as the American Bar Association could provide technical expertise.

² One half of the Duma (a total of 450 seats) was elected by party slates based on proportional representation, while the other half was elected based on the majority system, with one district sending the deputy who received the plurality of votes (single-mandate districts).

³ Professor Nina Belyaeva, President of Interlegal Foundation, personal interview, Washington, D.C., December, 1993.

✔ Enact a new criminal code that conforms to international legal standards.

For three generations Russians have suffered from a repressive and arbitrary criminal code. Under Soviet rule, the criminal code favored the state and the prosecution and guaranteed precious few constitutional rights for suspects. The current Russian criminal code contains remnants from the socialist past, such as clauses on preventing speculation, which under current law could include any sale of goods for profit.

The new parliament should pass a modern penal code that is compatible with international standards. Such a law would protect such individual rights as the inviolability of residences and the privacy of postal and telephone communications. It would shelter citizens from abuse and persecution by the state.

✓ Make the fight against government corruption a very high priority.

While protecting basic individual rights, the penal code also must be adequate to the task of fighting government corruption and organized crime, which have become rampant in the last couple of years. Russia has become one of the most corrupt states in the world. The main reason is a complete breakdown of law enforcement. But also important contributing factors are bureaucratic red tape and unabashed nepotism. Corruption has undermined the confidence of Russia's citizens in good government, making them cynical about their public servants and about politics in general. This cynicism is corrosive to the public spirit that is needed if democracy is to survive. In addition, corruption increases the costs of doing business in Russia for both domestic and international companies.

To solve the problem of government corruption, the new parliament should:

- ◆ Drastically cut the size of government bureaucracy, and curtail its authority, to reduce the opportunities for corrupt behavior.
- → Recruit and train a new civil service that is sympathetic to free market and democratic principles.
- → Draft and adopt a very strict ethics code for the civil service to stop corruption and nepotism, and to prevent conflicts of interest. Such a code, for example, would prevent government officials from taking equity, commissions, and consulting fees for transactions in which they are involved.
- ◆ Prevent civil servants from holding more than one government post, or owning private businesses related to their work, to prevent conflicts of interest.
- → Pass legislation that enables the court system to prosecute and punish quickly and justly those who are guilty of government corruption. The legislation should define corrupt behavior and specify open and competitive bids for contracts that involve government participation.

For a detailed discussion of the issue see Victor Yasmann, "The Russian Civil Service: Corruption and Reform," RFE/RL Research Report, Vol. 2, No. 16, April 16, 1993, p.18ff.

✔ Bring the Defense Ministry, the Interior Ministry, and the Federal Counterintelligence Service under firm civilian control.

Historically, it has been the executive, not the legislative or judicial branches, that has been guilty of the worst abuses of human rights in Russia. It allowed the Cheka, in revolutionary times, and later the KGB, to create "a state within a state" with great powers and privileges. Such "power ministries" as the Main Political Directorate (OGPU), the People's Commissariat for Internal affairs (NKVD), the Ministry of State Security (MGB), and the Committee on State Security (KGB) were internal security organizations controlled by the Communist Party elite, which violated the human rights of the population. These organizations were guilty of mass murder and conducted such destructive economic policies as the forced collectivization of agriculture and the heavy industrialization and militarization of the economy.

In order to prevent a re-occurrence of these disasters, the internal bureaucracies in the defense, security, and interior ministries must be placed firmly under the appropriate form of civilian control: in the case of the military, under the president, and in the case of the security apparatus and interior ministry, under the supervision of the Procurator General, the courts, and the parliamentary committees for National Security, Human Rights, and Judiciary.

Currently, the resistance of Russian generals to the conversion of the military industries and reform of the Russian armed forces threatens to bankrupt Russia. The top brass of the security apparatus, most of whom are survivors of the Soviet KGB, are still arguing for vast and uncontrolled powers. Meanwhile, the Foreign Intelligence Service (SVR) and the Military Intelligence Directorate (GRU) continue their activities against the West, despite declarations by Russian officials that Russia does not have foreign enemies. In the last two years, Russian diplomats have been expelled from Britain, Germany, and Scandinavian countries for espionage.

To increase the accountability of the security and military services to the people, the National Security, Judiciary, and Human Rights committees of the parliament must:

- ◆ Participate, through working groups, in the formulation of policy. This could be done by conducting hearings on important issues in the fields of defense and national security, such as policies in the "near abroad" (the former Soviet Union), relations with the U.S. and NATO, and the size and tasking of military forces.
- → Hold confirmation hearings for top nominations in the security and military ministries. Amend the constitution to allow parliamentary participation in military personnel questions. Greater openness in civil-military relations will advance the reform process.
- ★ Keep the military budget under strict control by the government. Military expenditures should not be allowed to derail economic reform by exceeding three percent to five percent of Russia's gross domestic product.
- ♦ Ensure that draft laws on key defense and security issues are published and circulated in advance, so that wide public scrutiny, analysis, and debate are encouraged.⁵

- Draft laws to purge the security organs of people who are holdovers from the communist era.
- ★ Legislate a "Freedom of Information Act" to allow citizens access to their domestic surveillance files.⁵
- ◆ Prevent the security services from controlling the freedom of movement and the approval of visas for foreign travel.⁶
- ♠ Revise the 1992 Law on Security, which gave the security ministries unprecedented authority to tamper with individual rights, including vast powers to search, arrest, and monitor private correspondence without court sanction and judicial control. The activities of the security apparatus should be brought into accordance with internationally accepted practices. Thus, the actions of state security organs should be sanctioned by independent courts and supervised by state prosecutors.
- ◆ Narrow the range of Federal Counterintelligence Service activities so that it is involved only in combating crime and terrorism, and not in domestic espionage.
- ◆ Curtail the use of secret informers (seksoty), permitting it only under a court order, and then only under strict supervision of the Procurator's office. The employment of informers recruited during the Soviet era should be stopped altogether.
- ♦ Observe international legal norms concerning the interception of mail and the tapping of telephones. A court order should be required for each intrusion on personal communications. Court orders should be issued only when there is a suspicion of criminal activity that can be supported by evidence.

✓ Adopt laws that ensure a free mass media.

The state should minimize its involvement in the media business. The Russian government subsidizes the majority of nationally circulated newspapers, controls printing plants, and is managing two national television channels and several national radio networks. Local governments are in charge of their own electronic and print media. The hard-liners in the former Supreme Soviet attempted numerous times to take over the daily newspapers and the Ostankino and Russian television stations.

Russia should now begin the privatization of television and radio stations. Newspapers and magazines should be allowed to function freely so that the state cannot control the publication of news and political commentary. Moreover, new private distribution chan-

J. Michael Waller, "When Will Democrats Control the Former KGB?" Demokratizatsiya: The Journal of Post-Soviet Democratization, Vol. 1, No. 1 (Summer 1993), pp. 27-37.

⁶ Ibid., pp. 34-35.

⁷ Vitaly Korotich, "On the Unpaved Road to Democracy," Propaganda, Disinformation, Persuasion, Vol. 5 (Summer 1993), pp. 13-15.

nels for the print media, instead of the old Soviet-style state-owned distribution agency (Soyuzpechat'), should be created. The government should encourage these new distribution channels by offering them tax benefits and by eliminating cumbersome regulations.

✓ Pass legislation on election campaigns and political parties.

The December elections clearly revealed several drawbacks in current electoral laws. For example, allowing a small plurality in electoral districts to send representatives to the State Duma was an unwise law. These small pluralities do not sufficiently reflect the popular will of the electorate. Also unwise was permitting extremist, anti-constitutional parties on the ballot.

To correct these and other problems, the Parliament should adopt laws on political parties and elections that:

- ◆ Require a longer notice for holding elections and a longer period (up to a month) for collecting qualifying signatures. This will allow small, nascent political parties the time to organize for an election campaign.
- → Permit run-off elections in single-mandate districts that currently send the winners of the smallest plurality to the Duma. This will prevent the election of deputies who win only a small percentage of the vote and thus do not adequately represent their constituencies.
- → Replace the choice of "voting against all candidates" on ballots with the option of writing in a vote. This will help to prevent attempts by extremist political groups to eliminate all candidates and annul the vote. They do this by urging their supporters to vote "against all candidates," thus denying a district the minimum number of votes required for a valid election.
- ◆ Permit pre-election agreements that would enable parties which fail to clear the five percent hurdle to reallocate their votes to parties that successfully cross it.⁸ This will allow losing parties to pass their votes to parties of their choice, thus providing for a more democratic reflection of the popular will.
- ◆ Ban members of the Duma and Council of the Federation (the upper house of parliament) from occupying posts in the executive branch. This should ensure the separation of powers and prevent conflicts of interest. 9
- → Add a clause in the criminal code banning any political organization that advocates the violent overthrow of the existing constitutional order. A similar code provision in Germany outlaws the Nazi Party.

Russian election law stipulates that a minimum of five percent of the vote must be attained for a party slate to qualify for seats in the parliament.

⁹ Uri Ra'anan, "A Problematic Electoral System," Perspective, Vol. IV, No. 1 (September-October 1993), p. 2.

Adopt a new pro-market civil code, laws on bankruptcy, and legislation protecting intellectual property.

Russian domestic and international investors are calling for the introduction of a modern civil law code that will ensure predictability in business transactions. Such a code would improve the business climate in Russia, increasing Western investment and contributing to the success of reforms. Major statutes should include a modern contract law, a bankruptcy law, a statute regulating the sale of goods, intellectual property protection, and an investor-friendly real estate and land use law. The latter should allow for the quick and orderly development of the real estate market and ensure a timely resolution of Russia's perennial housing shortage.

✓ Strike "social rights," or entitlements, from the Russian constitution.

Even in Bill Clinton's America, which is much richer than Russia, the government could not pay for all the social rights guaranteed by the Russian constitution. Although the U.S. Constitution lacks the many social rights found in the Russian constitution, Americans enjoy higher quality health care, housing, and education than do Russians. The government-guaranteed free medical care, free college education, minimum wages, and free housing promised by the new Russian constitution are echoes of the empty declarations of the Soviet era. To make these promises perpetuates the false notion that an all-powerful state, rather than the Russian people, is responsible for providing desired goods and services.

The many social rights found in the new Russian constitution are being abandoned throughout the industrialized world, even in such welfare-rights nations as Sweden and Germany. Any serious attempt to ensure these entitlements by the government would bankrupt the Russian state and the Russian people, who would have to endure very high rates of taxation to pay for them. Failure by the government to deliver on its promises, as will certainly be the case, would only contribute to the longstanding cynicism with which Russians historically have viewed their constitution. The current constitution should be amended to delete those social rights, which it lacks the resources and the authority to guarantee.

✔ Create parliamentary committees that will organize and accelerate reform legislation.

The chief task of the new parliament should be furthering economic and democratic reforms. The pro-reform coalition should assign its members to parliamentary committees according to their expertise and interests, with the most experienced and able politicians heading the key committees. In addition, committees must rely on competent, professional staffers with reformist credentials.

In order to facilitate its functions, the new Parliament should establish committees on:

- ◆ Economic reform;
- ♦ Constitutional reform and federal development;
- ◆ International affairs and foreign trade;

- Defense and national security;
- ◆ Individual freedoms and human rights;
- ★ Agriculture, land use, and environment;
- ♦ Social policy;
- ◆ Judiciary;
- ♦ Education, science, and health care.

These committees should reflect the reformist agenda and should institutionalize it by drafting appropriate legislation.

Press for constitutional amendments that ensure a greater balance between the authority of the central government and the regions.

The newly adopted constitution creates a strong federal government that denies many powers to the regions (oblasts) and the autonomous republics. ¹⁰ This situation creates an imbalance favoring federal power over local interests. As the constitution allows for an amendment process, a more equitable federal structure should be created that will diminish the authority of Moscow bureaucrats and empower the republics, regions, cities, towns, and rural administrations to find their own path to the free market. The conflict between Moscow and the regions is over the rate of taxation, decision-making in economic development, and control over local natural resources. While the federal government can provide binding laws outlining the reform path, the ultimate say in the way reforms should be implemented must be kept in local hands.

This can be done by reviving an old Russian practice and combining it with Western approaches to local government. From the 1860s to the early 1900s, Russia had a local administrative body (the zemstvo) that was in charge of education, health care, land use, and other local issues. This experience, together with electing local democratic bodies accountable to the voters, can be successfully updated and used in enhancing local government today. A law on local administration that envisages wide public participation in municipal and local government and full accountability to the electorate needs to be drafted. Doing this should reduce the current stranglehold of entrenched nomenklatura elites on local governments in Russia.

In addition, the newly adopted constitution assigns to the president judicial functions such as the settlement of disputes between the local and federal governments and guaranteeing the protection of human rights. These tasks should be defined by the constitution, and performed by the Supreme Court and the Procurator General. To maintain the separation of powers, the executive branch should not be excessively involved in matters best left to the judiciary.

¹⁰ The Federal Treaty, defining authority and relations between the regions and the center was signed in spring 1992. It was a part of all recent constitutional projects, but was dropped from the final Yeltsin constitutional draft.

✓ Adopt a law that will ensure the systemic cleansing of the government of its communist legacy.

After World War II, the allied powers required that West Germany adopt de-Nazification laws. These laws ensured that the grim legacy of Hitler's rule was put to rest once and for all. De-Nazification allowed Germany to accomplish its "economic miracle" of the 1950s and 1960s. A similar process took place in Japan. To complete the transition to democracy, and to do away with the legacy of communism, similar laws should be adopted for Russia as well. While avoiding witch hunts that create bitterness and only paralyze the country, the new Russian parliament nevertheless should:

- → Permit those who occupied party positions at the level of regional committee secretary and above to engage in politics as elected officials, but bar them from working in the government bureaucracy.
- → Prosecute Communist Party and KGB personnel for the worst abuses of the old Soviet system. Party and government functionaries involved in the mass deportations of the Balts, Chechens, and Crimean Tatars, as well as officials responsible for torture, human experimentation, and mass executions, should be prosecuted.
- **♦** Permit citizens access to their KGB and Communist Party files.
- ◆ Create job retraining programs for security services officers fired from the old KGB and Ministry of Security.

CONCLUSION

The newly elected Russian parliament will either make or break the cause of Russian democracy. To be sure, the temptation will exist to reject many democratic reforms as non-Russian. While it is true that democracy must be adapted to the Russian character, it is equally true that the principles of democratic capitalism are time-tested and universal.

Finding the Russian way to institutionalize the universal principles of democracy is the challenge of the new parliament. It will not be easy. Almost half of the new parliament will be composed of deputies who are clearly anti-democratic and hostile to the free market. But if Russia is to be free and prosperous, it has no choice but to destroy the old communist system and prevent the rise of fascism, while building a new democratic free market system.

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