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POST-SOVIET ORGANIZED CRIME AND THE RULE OF LAW

LOUISE SHELLEY*

INTRODUCTION

Post-Soviet organized crime is one of the greatest threats to human rights, the development of the rule of law, democracy and free regulated markets in the successor states. The existence of organized crime on such a pervasive scale undermines incipient democratic institutions, freedom of the press and the redistribution of private property among the citizenry in an equitable manner.

The authoritarian controls of the Soviet period, which upheld the Communist Party, may be reintroduced to justify the control of organized crime. As Russian TV chairman Oleg Poptsov said following the killing of the prominent journalist Vladislav Listev, "Nothing changes, but they want to increase the strength of the militia and the Federal Counterintelligence Service, they want to have the right to bug, to spy, to compile dossiers on citizens."¹

Since mid-1994, presidential, police and military actions directed against organized crime have resulted in gross violations of human rights in Russia. President Yeltsin's June decree on banditism,² the brutal war in Chechnya,³ the evening assault on MOST bank in December, 1994 by the presidential guard⁴ and the recently enhanced authority of the Federal Security Service (FSS),⁵ the heir of the Russian KGB, have all been justified by the need to fight organized crime.⁶ The Russian government has

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1. *Yeltsin Sacks Moscow MVD Chief and Prosecutor*, OMRI DAILY DIG., Mar. 3, 1995, No. 45, Part 1.

2. The Presidential decree No. 1226, issued on June 14, 1994 was entitled *On the Urgent Measures for the Protection of Citizens of Russia from Banditry and Other Types of Organized Crime*, IZVESTIYA, June 15, 1994, at 1 [hereinafter *Urgent Measures*].

3. Yeltsin and a member of his Advisory Council have revealed this through their statements. Otto Latsis, *Who Wanted this War*, MOSCOW TIMES, Jan. 11, 1995, at 8.

4. *Security Agents Raid MOST Corporation*, RFE/RL DAILY REP., Dec. 5, 1994, at 2 [hereinafter *MOST Raid*].

5. Hereinafter FSS.

6. *CIS Secret Service Chiefs Meet*, OMRI DAILY DIG., Mar. 15, 1995, No. 53,

used the fight against organized crime as a pretext for state repression and the restriction of incipient liberties.

The collapse of communism may not lead to democratization, the rule of law and the transition to a competitive capitalist economy. Instead, the pervasiveness of organized crime may lead to an alternative form of development: political clientelism, controlled markets and a reconstituted security apparatus justified in terms of the threat of organized crime. Moreover, the power of regional crime bosses may undermine the rule of law in diverse regions of the country.

This article focuses primarily on developments in Russia. However, the conclusions are applicable to many of the successor states of the former Soviet Union. In almost all of the Commonwealth of Independent States (CIS),⁷ political corruption undermines the adoption of the legal framework necessary to fight organized crime or establish a legitimate market economy. A return to state authoritarianism in the name of the fight with organized crime remains a real threat in many of the successor states.⁸

I. THE THREAT OF ORGANIZED CRIME TO THE RULE OF LAW

A. *The Scope of Post-Soviet Organized Crime*

Many organized criminals were formerly members of the *nomenklatura*, the party elite and are accustomed to using the institutions of state power to protect their political and economic interests. Therefore, both the organized crime participants and the manner of protecting organized crime activities represent a continuity with the past.

The collapse of the Soviet state provided a tremendous impetus for the growth of organized crime.⁹ The truly global dimensions of organized crime operations and organized crime's major role in international money laundering¹⁰ are phenomena that follow from the collapse of the Soviet state. Post-Soviet organized crime has proliferated rapidly compared to that of other transnational crime groups.¹¹ Developments that have taken decades in other societies have occurred within a few years in the former

Part I.

7. Hereinafter CIS.

8. Leading Kazakh legal officials, in February 1995, and the head of the organized crime committee of the Ukrainian parliament, in March 1995, recognized the danger of a return to state authoritarianism.

9. See generally, A.I. Dolgova and S.V. D'iakova, *Organizovannaia prestupnost'*, 2 MOSCOW: KRIMINOLOGICHESKALA ASSOTSIATSIIA (1993).

10. E.A. Abramov, *'Griaznye' den'gi i zakon*, MOSCOW: INFRA-M, 1994, at 8-11.

11. See Louise I. Shelley, *Transnational Organized Crime: An Imminent Threat to the Nation-State?*, 48 J. INT'L AFF. 463, 481 (1995).

Soviet Union. Organized crime groups have simultaneously penetrated illicit and licit markets and become major actors on the international arena. In most other societies, these are distinct stages in the development of organized crime. In the former Soviet Union, the developmental stages have been compressed.

Post-Soviet organized crime exploits the market for illicit goods and services. These goods and services include prostitution, gambling, drugs, contract killing, stolen automobiles and supplying cheap illegal labor.¹² Organized crime also engages in the illegal export of oil and valuable raw materials and the smuggling of weapons, nuclear materials and human beings.¹³ Additionally, organized crime has extorted legitimate businesses and manipulated the privatization process.¹⁴

Many transnational organized crime groups specialize in a particular area such as drug trafficking, prostitution, gambling or weapons smuggling. Post-Soviet organized crime engages in a full range of illicit activity and has penetrated the emerging licit economy on a large scale. Its entry into legitimate businesses is facilitated by the large scale privatization of the economy that is presently underway. This major economic transformation permits the laundering of money from its illicit activities into the legitimate sphere.¹⁵

B. *The Participants in Post-Soviet Organized Crime*

The participants in post-Soviet organized crime pose a particular danger to the society and the rule of law. These are not individuals outside the power structure, but individuals representing a continuity from the old Communist power structure to the post-Soviet political arrangement.¹⁶ Once these individuals only had the use of state property. Now they have appropriated it and can send the proceeds outside the country.

The unusual coalition of professional criminals, former members of the underground economy, members of the former Party elite, and the security apparatus defies traditional conceptions of

12. See generally, Leonid I. Fituni, *CIS: Organized Crime and Its International Activities*, CENTER FOR STRATEGIC AND GLOBAL STUDIES, Russian Academy of Sciences, (Wilbad Kreuth 1993).

13. Rensselaer W. Lee, III, *The Organized Crime Morass in the Former Soviet Union*, 2 DEMOKRATIZATSIYA, 392, 392-411 (1994).

14. See generally, Abramov, *supra* note 10, at 8-11.; Fituni, *supra* note 12; Lee, *supra* note 13, at 392-411.

15. Abramov, *supra* note 10, at 8-11; Svetlana Glinkina, *Privatizatsiya and Kriminalizatsiya*, 2 DEMOKRATIZATSIYA, 385, 385-91 (1994).

16. J. Michael Waller, *Organized Crime and the Russian State*, 2 DEMOKRATIZATSIYA, 370, 373-78 (1994).

organized crime groups, although much of their activity is conducted with the threat of violence. With the exception of the post-Soviet narcotics trade, there is no cartel operating within the former Soviet Union.¹⁷ Different ethnic groups form loose associations within the former Soviet Union and with compatriots abroad to market goods and launder money. The associations are particularly active along the old silk routes where drugs are transported from the Golden Triangle, Pakistan and India.¹⁸ There are approximately 5,000 organized crime groups, many of them with only limited numbers.¹⁹ Several hundred of these groups have international ties.

C. Privatization, Capital Formation and Organized Crime

The large scale privatization of the late Soviet period fueled the entry of criminal capital into the commercial sector. Privatization invites participation by organized crime due to the need for a large influx of capital, little of which is held by ordinary citizens.

1. Lack of Legal Framework

In the absence of a capitalist infrastructure, any capital is at risk. Russia has been slow to develop legal regulations concerning banking, commodities and stock and voucher funds. This is partially due to the impediments created by organized crime.²⁰ For example, the legislation that is developing in this area has been subject to intense lobbying by the banking sector which is penetrated by organized crime.²¹ Furthermore, corrupt politicians have slowed the adoption of legislation in this area. These politicians either represent organized crime interests or will respond to its inducements.²² Therefore, organized crime is undermining the rule of law not only in the areas of justice and human rights, but also in the commercial sector.

In the absence of a legal framework, the availability of large scale capital for redistribution can be exploited by both foreign

17. *Increased Drug Trade Expected, Antidrug Campaign Urged*, F.B.I.S. DAILY REP., May 29, 1992, at 48-50.

18. Rensselaer Lee & Scott MacDonald, *Drugs in the East*, FOREIGN POL'Y, Spring 1993, at 96.

19. *The Growth of Organized Crime in the Russian Federation & Its Effect on Int'l Security*, Hearing on Int'l Organized Crime & Its Impact on the U.S., Before the Senate Subcomm. on Investigations of the Senate Comm. on Gov't. Affairs, 103d Cong., 2d Sess. 3-4 (1994) (statement of First Deputy Minister of Interior Mikhail Yegorov).

20. Scott Horton & Mikheil Saakashvili, *Stage is Set for the Russian Securities Market*, CIS L. NOTES, Feb. 1995, at 3-5.

21. Interview with lawyer for major Russian bank, Nov. 1994.

22. Aleksandr Danilkin, *Mafia—nash rulevoi*, TRUD, Dec. 10, 1994, at 6.

and domestic organized crime groups. Organized crime groups, with their ready supply of money, are more willing to take risks than legitimate international businesses which are accountable to their stockholders and to the government.

2. Banking

Illicit entrepreneurs establish accounts in banks that have little regulation and do not question the source of badly needed capital. The possibility of establishing a bank in Russia with very low capital requirements allows many questionable individuals to establish banking institutions. Furthermore, confidentiality laws forbid bankers from disclosing information about accounts to anyone but the tax police,²³ a recently established body that is already notoriously corrupt.

Many banks are established and survive because of their close links with politicians at all political levels.²⁴ The close links between MOST bank and Moscow's mayor, Yuri Luzhkov, have permitted MOST to develop into one of the largest banks in Russia.²⁵ Yet this situation is distinctive only because of the major financial resources that Moscow's mayor can put at the disposal of his banking associates. The alliances between the banking structures and politicians provide a political and economic clientelism that severely limits the emergence of democracy and free markets.

Many banks survive by laundering money both for Russians and citizens of other CIS states who want to move their capital abroad. However, the banks also provide this service for foreign organized crime groups. Latin American crime groups appear to be capitalizing on the absence of banking regulations to launder their money in Russia.²⁶

Foreign intelligence and law enforcement bodies investigating money laundering from the former Soviet Union are disclosing close links between high ranking government officials and banks with known organized crime links. Corrupt officials are placing their rake-offs from lucrative contracts in Russian banks which then transfer their funds into banks in Europe, Asia, North and South America, and offshore locations known as havens for money laundering. The sums involved total in the billions of dollars.²⁷

One of the most significant violations of law enforcement power in the post-Soviet period occurred on the pretext of illicit

23. Glinkina, *supra* note 15, at 390.

24. Abramov, *supra* note 10, at 19.

25. David Remnick, *The Tycoon & the Kremlin*, NEW YORKER, Feb. 20, 1995, at 125.

26. *Global Mafia Laundering its Money in Russia*, RFE/RL DAILY REP., Oct. 27, 1994, at 2.

27. Abramov, *supra* note 10, at 10.

bank misconduct. On December 2, 1994, Yeltsin's private guard, engaged in an assault on MOST bank.²⁸ This bank is closely linked with the mayor of Moscow, Luzhkov, who is a political rival of President Yeltsin.²⁹

The alleged reason for the raid of MOST bank, as Korzhakov, Yeltsin's security chief, subsequently explained to the press, was to investigate the bank's role in the sharp fall of the ruble in October 1994 and to obtain documents showing links between bank board members and corrupt officials in state and municipal government.³⁰ The night raid on the bank was conducted by troops armed with assault rifles and wearing black ski masks.³¹ They assaulted and injured the leader of the bank's security team and wounded the bank president's driver.³² The raid was subsequently justified to the press as being in accord with Yeltsin's decree on combatting organized crime.³³ As the progressive newspaper *Izvestiia* commented on this abuse of presidential power it "could bring on a police state."³⁴

3. Trade and Commerce

While banking is a nexus of illegitimate activity, it is only one of many ways that organized crime enters into illegal activity. Organized crime uses ancient and new trade routes for the movement of illicit goods. Organized crime exploits the legitimate economy while simultaneously limiting development of certain legitimate forms of investment and open markets that benefit a cross-section of the population. Research by the Russian Academy of Sciences' Analytical Center indicates that fifty-five percent of joint stock companies and eighty percent of voting shares were acquired by criminal capital.³⁵ Therefore, legitimate investors cannot exercise their rights within these corrupt structures.

The predominance of illicit trade means that the economy becomes dependent on illegitimate rather than legitimate economic activity. These commodities become central to the state's participation in international markets. This dependence on illegal economic activity is probably the greatest threat to the post-Soviet economies and citizenry.

The post-Soviet economy is similar to the economies of south-

28. *MOST Raid*, *supra* note 4, at 2.

29. Remnick, *supra* note 25, at 122.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Remnick, *supra* note 25, at 125.

35. Ninel Kuznetsova, *Crime in Russia: Causes and Prevention*, 2 DEMOKRATIZATSIYA, 444, 444 (1994).

ern Italy and Colombia which are heavily dependent on their illicit commerce in drugs. This activity discourages foreign investment and does not allow the economies to diversify. Many citizens already depend on this illicit commerce for their livelihoods. An economic system in which organized crime assumes an important role in banking, commerce and large companies is not any more accountable to the citizenry than an economy controlled by the Communist Party. The post-Soviet economic system is a far cry from publicly held companies that are accountable to their shareholders, the economic model favored by western democracies.

4. Robber Baron Model

The dependency of post-Soviet economies on illicit commerce is an important distinguishing feature from the American "robber barons" of early American capitalism to which they are often compared. Except in rare instances, post-Soviet organized crime is not engaged in production or the development of the infrastructure. Unlike the industrialists of the nineteenth century who built railroads and factories, post-Soviet organized criminals often drain the assets of the industries they acquire, depositing their profits in bank accounts and investing in foreign real estate.

Often, the wealth of the gangster capitalists is not available to the legitimate economy to employ individuals, update factories or build new technology. The only exceptions to this are the renovation of real estate in both central Moscow and St. Petersburg and the large scale housing construction in major urban centers and along the Volga River.³⁶

5. Vulnerability of Business Personnel

Even those people who enter into the business world with the desire to work legitimately often find themselves unable to avoid compromise with organized crime personnel. They cannot work within a legal framework or resolve their financial disputes within established legal structures. Therefore, the protection provided by organized crime provides a means of protecting businesses and their persons.

Protection provided by organized crime, rather than by legal mechanisms, leaves business personnel vulnerable to extortion threats. Failure to make pay-offs or the existence of rivalries between groups often leads to murder. Large scale businessmen, aware of their vulnerability, use private bodyguards. However, this is often insufficient. In Moscow, during the first ten months

36. Interviews with leading MVD personnel and Russian researchers on organized crime (1994).

of 1994, 2,344 people were murdered.³⁷ This unusually high homicide rate can be explained by the large number of contract killings of business personnel. Contract killings are not confined to the capital but occur throughout the country. One arrested suspect confessed to killings both in Moscow and in Tyumen, the West Siberian oil city, 1000 miles from the capital.³⁸ One of the most recent killings was the assassination of prominent businessman, Oleg Zverev, the head of the Union of Entrepreneurs, in mid-March 1995.³⁹ Such killings and assassination threats affect not only businessmen, but undermine the entire rule of law in Russia.

D. Organized Crime and State Authority

The rise of organized crime has important implications for the development of post-Soviet political authority. Organized crime has undermined the electoral process and the emergence of a viable multi-party system. Furthermore, organized crime has perpetuated the endemic corruption of the late-Soviet period.

1. Organized Crime Supplanting the State

Organized crime has supplanted many of the functions of the state. A coalition of organized crime and former Party elites serves as the ruling elites of many regions of Russia and many of the CIS states. Organized crime provides many of the services that the collapsed social welfare state can no longer provide. Citizens receive services from organized crime that were once furnished by the state-protection of commercial businesses, including employment for citizens and mediation in disputes. Private security, often run by organized crime, is replacing state law enforcement. Viktor Ilyukhin, the Chair of the Duma Committee on State Security, estimates that 100,000 private law enforcers presently operate without any regulation.⁴⁰ While this number is far fewer than are thought to exist in Poland, it is still a large autonomous force that is increasingly visible in Russian society.⁴¹

Organized crime figures curry favor with the citizenry by contributing to various philanthropic organizations. They have also substituted for the state by staffing hundreds of private secu-

37. *Duma Debates MVD and Organized Crime*, RFE/RL DAILY REP., Nov. 17, 1994, at 1.

38. Pyotr Yudin, *Detainee Admits to Contract Killings*, MOSCOW TIMES, Nov. 15, 1994, at 3.

39. *Crime Roundup*, OMRI DAILY DIG., Mar. 17, 1995, No. 55, Part 1.

40. Interview with Victor Ilyukhin, Chair of the Duma Committee on State Security, in Moscow, Russia (July, 1994).

41. Michael Specter, *Guns for Hire: Policing Goes Private in Russia*, N.Y. TIMES, Aug. 9, 1994, at A4.

rity organizations which contract with citizens and private businesses.

2. *Organized Crime and the Political Process*

Organized crime has financed the election of candidates and members of the newly elected Russian parliament, as well as those of other CIS states.⁴² Some current members of the Russian parliament have close ties to organized crime groups. The gang style killing of two members of parliament, Andrei Aizderzis and Valentin Martemyanov, has undermined the credibility of legislators as honest politicians or an alternative political force to organized crime.⁴³ Moreover, the inability of the state to apprehend their assailants has emphasized the impotence of law enforcement in the face of organized crime.

Corrupt legislators have sought to maximize their influence by seeking committee assignments in areas of greatest interest to them: the regulation of markets and the legal controls over organized crime. Through their roles on committees and in public fora, they have managed to weaken the effectiveness of proposed legislation. Officials and legislators with ties to organized crime have impeded the introduction of legislation that might circumscribe organized crime activity. The legislative framework needed to combat organized crime, including banking laws, insurance laws, securities regulation, a RICO statute, laws against money laundering and a witness protection program, has yet to be adopted. For example, members of the Duma complained in July 1994 that their proposed law on corruption had its provisions concerning corruption in banking deleted at the presidential level.⁴⁴ Furthermore, in hearings before the Federation Council, legislators with questionable financial holdings used highly suspect arguments to prevent consideration of the corruption law.⁴⁵ Many of the legal measures under consideration in Russia have already been adopted in several Eastern European countries.

The impact of corrupt legislators is particularly important at this crucial stage where legislation that will govern the country in subsequent decades is now being implemented. Once the basic framework is enacted, vested bureaucratic and financial interests combined with inertia will make it difficult to implement fundamental change.

42. Danilkin, *supra* note 22, at 6; Interviews with legislators and informed observers in CIS states (1994).

43. Charles Hecker and Pyotr Yudin, *Deputy's Murder Shakes Duma*, MOSCOW TIMES, Nov. 13, 1994, at 14.

44. Interviews with members of the Committee on State Security, in Moscow, Russia (July 1994).

45. Danilkin, *supra* note 22, at 6.

The organized crime-political nexus is poised for future growth because it has the resources to fund candidates in forthcoming elections at the local and national levels. The legislative system, which grants immunity to members of parliament, provides an additional incentive for organized criminals to penetrate the political process. Illustrative of this is the case of the infamous Mavrodi, the head of the MMM pyramid stock fund that collapsed. Following the loss of its assets in which millions of citizens were deprived of their life savings, he was elected to the Duma in an interim election. This has forestalled investigation of his misconduct by internal affairs bodies.⁴⁶

There are already strong indications that corrupt banks are supporting candidates in different regions of the country. In the absence of legal regulations concerning campaign funding, no accountability exists concerning the source of funds for different political parties. As banks acquire major shares in the mass media they will be able to influence the election of candidates by choosing who has access to television air time.

3. Organized Crime and Regional Power

Organized crime is assisting in the rise of regional powers in Russia. This is not the decentralization and federalism sought by American promoters of democracy. Instead, it represents the rise of local fiefdoms protected by armed bands loyal to local leaders seeking political and economic controls over their regions. These local leaders may enjoy more power than in the Soviet period because they own, rather than control, property and the "law enforcers" are employed by them rather than the state. In the absence of a legal framework, citizens outside major urban centers may have great trouble protecting themselves from the abuses of organized crime.

According to one long term observer of organized crime, five main criminal groups in Krasnoyarsk "control all the region's banks and markets, ninety percent of the privately owned stores and forty percent of state owned stores."⁴⁷ As is typical of other locales, the city is divided into eight zones of influence and no manager is appointed without the permission of the party boss.⁴⁸ Those who resist, such as the manager of a department store, are subject to a gangland execution.⁴⁹ In this way, organized crime control over the managerial elite resembles the *nomenklatura*

46. *Mavrodi Holds News Conference*, RFE/RL DAILY REP. Oct. 17, 1994, at 1.

47. Igor Gamayunov, *Thieves-in-Law: Devils Dressed as Robin Hood*, MOSCOW TIMES, Jan. 11, 1995, at 9.

48. *Id.*

49. *Id.*

system of Party appointments.

4. *Organized Crime and Penetration into the State*

Organized crime has penetrated both the bureaucratic structures of the state and the newly elected legislatures. In many respects this penetration bears similarities to the corruption of the Soviet period. However, an important difference exists. While in the final years of the Soviet period, tens of thousands of individuals were expelled from the internal organs for corruption and abuse of their positions,⁵⁰ no such large scale disciplinary action exists today.

In 1993, law enforcement organizations investigated 15,500 cases of corruption and abuse of public office. Among those investigated, forty-three percent were federal and regional officials, twenty-five percent were law enforcement officers, including members of the Federal Counterintelligence Service, four percent were from presidential and federal oversight bodies and two percent were members of federal and regional legislatures.⁵¹

According to Duma Security Chairman Viktor Ilyukhin, criminals are increasingly penetrating state bodies.⁵² In reaction, the All-Russian Association of Independent Professionals and the Soldiers' Mothers group have set up an electoral association called "Against Crime and Corruption."⁵³ This electoral association seeks to combat the problems of corruption in the judiciary, the use of gangster methods over arbitration and the penetration of the police by organized crime.⁵⁴ To restore justice and the rule of law, they seek to elect members to parliament who will enact fair legislation in the commercial and tax arenas.⁵⁵

5. *The War in Chechnya*

The Western press has not addressed the extent to which the war in Chechnya has been justified in terms of the criminal activity of the Chechens. As presidential advisor Latsis said, "the real problem of Chechnya was the criminal character of Dudayev's regime. It was essential to combat Chechnya's criminal elements."⁵⁶ As Solzhenitsyn pointed out in an interview on Chechnya, the criminal activity of the Chechens and their central

50. See Louise I. Shelley, *POLICING SOVIET SOCIETY* (forthcoming 1995).

51. *Hearings on Corruption and Bureaucracy*, RFE/RL DAILY REP., Nov. 17, 1994, at 1.

52. *Crime Roundup*, *supra* note 39, at No. 55, Part 1.

53. *Professional and Soldiers' Mothers to Form Anti-Crime Bloc*, RFE/RL DAILY REP., Nov. 23, 1994, at 1.

54. *Id.*

55. *Id.*

56. Latsis, *supra* note 3, at 8.

role in the shadow economy dates back fifteen years.⁵⁷

This war has led to massive violations of human rights⁵⁸ and international conventions,⁵⁹ gross misinformation carried in the mass media, censorship and deception of fighting personnel.⁶⁰ This war, fought in the name of organized crime, has struck a major blow to important elements of the democratic process by undermining governmental accountability and strengthening the hand of the most repressive elements of the state. Because the war is still underway, it is premature to assess its full impact on the development of the rule of law.

There are strong democratic tendencies in the society, in the military, and in the press that have opposed the war. At least four generals refused to carry out orders to fire on civilians.⁶¹ Journalists and some television stations have taken a very strong stance against the methods used in the war and the governmental deception of the public.⁶² Furthermore, public opinion polls revealed that citizens did not view criminal activity as sufficient justification for military action.⁶³ Therefore, while the war has eroded the rule of law, it has not suppressed all signs of democracy.

E. Organized Crime and Civil Society

The establishment of institutions independent of the state is a fundamental prerequisite to the creation of civil society. Organized crime is impeding the development of civil society. Its presence is seen in sports clubs and charities. However, the greatest concern is the impact of organized crime on the mass media.

The assassination of the highly popular Vladislav Listev, in March 1995, has brought public attention to threats to members of the press. Listev's death followed by several months the death of Dmitri Kholodov who was investigating corruption in the western forces of the Russian military. Journalists are too intimidated

57. *Solzhenitsyn o Chechne*, 1-2 ARGUMENTY I FAKTY, 1, 1 (1995).

58. Since the early stages of the war, major atrocities have been committed. *Eg.*, Carlotta Gall, *The Villager's Tale: Murder and Rape*, MOSCOW TIMES, Jan. 11, 1995, at 1.

59. *Polozheniia mezhdurnarodnogo prava, kotorye mogut byt' primeneny k konfliktu v Chechne*, KOMMERSANT, Jan. 10, 1995, at 1; Igor Petrukhin, *The Chechen War is Unlawful*, MOSCOW NEWS, Jan. 13, 1995, at 3.

60. *Komandir Batal'ona morskoi pekhoty Tikhookeanskogo flota otkazalsia otravliat' 'neobstreliannykh' soldat v Chechniu*, IZVESTIIA, Jan. 14, 1995, at 2.

The deception of an OMON battalion from Ekaterinburg was reported in the mass media and in an interview with Valerii Inozemstev, the head of the independent police union of Ekaterinburg (June 7, 1995).

61. Latsis, *supra* note 3, at 8.

62. *Id.*

63. *Id.*

to write stories implicating businesses or individuals involved in organized crime.⁶⁴ Bribes are offered to journalists not to publish specific stories.⁶⁵ Articles on organized crime may be purposely inaccurate because organized crime figures plant stories against their rivals or purposely mislead the public.⁶⁶

An even greater potential threat to the freedom of the press is the acquisition of the mass media by groups and organizations with known organized crime links. For example, MOST owns *Segodnia* newspaper and has established MTV television.⁶⁷ While *Segodnia* and MTV are two of the most independent and hard-hitting members of the mass media, many analysts wonder whether their independence will eventually be undermined by their owner. The banking sector, dominated by organized crime, has also been able to enter into television through the privatization process. When Ostankino, the most widely viewed national channel, was sold, forty-nine percent of its shares were acquired by banks.

Following Listev's murder, the head of Ostankino, Aleksandr Yakoklev, resigned acknowledging mass corruption at the television station. An initial explanation of the rationale for Listev's murder was the intense competition for the advertising revenues of the television channel.

The ability to report objectively and access to the mass media for candidates will be important in determining the future political development of Russian society. It is premature to tell whether the dominance of the corrupt banking sector over the mass media will be used to influence the outcome of elections.

II. RESPONSE TO ORGANIZED CRIME

The former Soviet Union has neither the legal infrastructure nor the law enforcement apparatus necessary to combat organized crime. The centralized law enforcement apparatus of the Soviet Union collapsed along with the state. The dissolution of the U.S.S.R. into numerous separate countries means that there are no border controls, no legal norms common to all the successor states and limited coordination among justice systems. Even without this collapse, the success of legal measures would be restricted by the close links between organized crime and the economic and political elites of the successor states.⁶⁸ The criminals who maintain

64. Interview with journalists writing on organized crime in Moscow (July 1994 & Jan. 1995).

65. *Id.*

66. *Id.*

67. Remnick, *supra* note 25, at 118.

68. Fred Hiatt, *Political Elites Vie for Power in Russian Quasi-Democracy*, WASH. POST, Mar. 26, 1995, at A1, 28.

their ties from the Soviet period benefit from the lack of legal regulations to launder their money both at home and abroad. They also provide financial services to foreign criminal groups within the CIS.

The transnational nature of post-Soviet organized crime means that no individual country can launch an effective fight against these groups. The penetration of organized crime into the successor states and the pervasive corruption of members of the law enforcement apparatus have immunized most post-Soviet groups from the law enforcement controls of their home countries. Moreover, many who might combat this activity are rendered impotent through intimidation of law enforcement personnel and targeted attacks on selective members of the procuracy and the judiciary. Although legislation has been passed to enhance protection for justice personnel, the state has neither the resources nor the will to ensure compliance with these laws.⁶⁹ In Russia, there are currently 1,000 vacancies in the judiciary, many of them unfilled because members of organized crime groups intimidate judges.⁷⁰

Successful efforts to control organized crime require a coordination of national resources with international law enforcement efforts. A coordinated strategy at the national and international level must be developed which involves countries in which post-Soviet groups are operating. Legislation and law enforcement efforts must be harmonized among the successor states and with countries in Europe, North and South America and Asia. Such efforts are only beginning and must be sustained before the economic and political penetration of the successor states is so complete as to derail the transition to democracy and a market economy.

An unusual consensus exists among different parts of the citizenry and the professional legal community regarding the need to find legal and democratic means to deal with the organized crime problem. In the absence of an effort to inform policy makers and the public on democratic alternatives to fight organized crime, there is a real danger that the Russian authorities will feel compelled to resort to further authoritarian tactics that could undermine Russian democracy.

A. The Preconditions for a Broad Response to Organized Crime

There are many parallels between the conditions that prevailed in Western countries when criminal organizations emerged and the conditions existing in Russian society today. For that

69. *Newscast* (Ostankino television broadcast, Mar. 1995).

70. *Id.*

reason, the experience gained by Western democracies in their fight against organized crime can be helpful in Russia. Italian specialists on the rise of the mafia point to similarities. They suggest the emergence of organized crime occurred in a period of land redistribution, the rise of private property and entrepreneurship in a society without a legal consciousness or law enforcement institutions capable of combatting the mafia.⁷¹

The struggle against organized crime in Italy in the last fifteen years has been so successful because the following important factors:

- 1) An informed populace has finally emerged ready to fight the issue;
- 2) A legal framework has been adopted that has made it possible to fight organized crime;
- 3) A law enforcement apparatus exists which has the capabilities to address the problems of organized crime at all levels;
- 4) An informed media has addressed the issue of organized crime with sophistication and the advocacy of democratic approaches;
- 5) The development of significant literature has kept the citizenry informed; and,
- 6) Law schools have taught students about the problems of organized crime as part of their curriculum.⁷²

Before 1980 almost none of these preconditions existed. Moreover, these results occurred with a great deal of assistance from the United States. This assistance included the establishment of an Italian-American working group on organized crime. Moreover, several of the top experts on Italian organized crime spent time in the United States examining American research, laws and legal strategies.⁷³

Many of the preconditions necessary for an effective fight against organized crime currently exist in Russia. There is a concerned citizenry which is willing to take action, journalists and academics who have the courage to write truthfully about organized crime and legislators who are willing to adopt laws. The U.S. government is attempting to replicate its law enforcement efforts by establishing working groups in the law enforcement area with the Russian police. The United States is also providing technical assistance in the development of a legal framework. But while the preconditions for an anti-organized crime effort exist, they have not yet been galvanized.

71. Frederico Varese, *Is Sicily the Future of Russia? Protection & the Rise of the Russian Mafia*, 35 ARCHIVES EUR. SOC. 222, 224-25 (1994).

72. See generally, DIEGO GAMBETTA, *THE SICILIAN MAFIA: THE BUSINESS OF PRIVATE PROTECTION* (1993).

73. *Id.*

B. Repression of Organized Crime

The Ministry of Internal Affairs and the Security police bear the prime responsibility for the fight against organized crime.⁷⁴ The Ministry of Internal Affairs has a special branch devoted to the fight against organized crime and it employs over twenty thousand individuals nationwide.⁷⁵ Important police units exist in Moscow and St. Petersburg but their activities are hampered by political pressures. In addition, these units are not as well equipped as the criminals they are fighting. Police demoralization and corruption are constant problems in the fight against organized crime.

The security police, FSB, searching for a new mission in the post-Soviet period, is attempting to assume a larger role in the fight against organized crime.⁷⁶ Its activities in this area are used as justification for enhancing FSB links across the CIS states and expanding surveillance and undercover activities within Russia.

The most significant measure presently used by the Russian state to combat organized crime is the previously mentioned June decree issued by President Yeltsin.⁷⁷ At the time of its adoption, the June decree was strongly criticized by both the Duma⁷⁸ and the Russian Ombudsman for its violation of the Constitution. In contrast, the head of the Federal Counterintelligence Service, S. Stepashin, commented on the decree, "I am in favor of violating the rights of the individual if that person is a criminal."⁷⁹

The decree, as one commentator pointed out, did not replace existing legislation but gave the operational services greater ability to gather information.⁸⁰ The most strongly criticized provision of the decree was that it allowed suspects to be detained for thirty days⁸¹ in violation of the Constitution. There are other important potential violations. Suspects can be detained without a prosecuto-

74. V.S. Ovchinskii & S.S. Ovchinsii, *Borb'a mafiei v Rossi*, in MOSCOW: KODEKS, 50, 50-56 (1993).

75. *Id.*

76. *CIS Secret Service Chiefs Meet*, OMRI DAILY DIG., No. 52, Part I, Mar. 14, 1995; *Russian, Georgian Intelligence Chiefs Sign Cooperative Agreement*, OMRI DAILY DIG., No. 52, Part I, Mar. 14, 1995; Waller, *supra* note 16, at 370.

77. Interview with V.S. Ovchinskii (May 1995).

78. *O zashchite konstitutsionnykh prav i svobod grazhdan pri osyshchestvlenii mer po bor'be s prestupnost'iu*, ROSSIISKAYA GAZETA, July 7, 1994, at 1.

79. *Prosecutor's Office Discusses Organized Crime*, F.B.I.S. DAILY REP., June 27, 1994, at 22.

80. Nikolai V. Kachev & Alexander G. Pipiya, *Crime and Human Rights in Russia*, 2 DEMOKRATIZATSIYA, 360, 360 (1994).

81. *Provisions of Anticrime Edict Assessed*, F.B.I.S. DAILY REP., June 27, 1994, at 23-24.

r's warrant.⁸² Authorities may deny the right to bail. Defendants cannot examine documents before the opening of a criminal case.⁸³ Commercial and banking privacy may be voided for those suspected of organized criminal activity.⁸⁴ Additionally, the regulations regarding searches give more power to law enforcement.⁸⁵

According to the head of the Moscow Helsinki Group, Kronid Liubarsky, human rights have often been violated in the name of the decree.⁸⁶ A member of the Duma Committee on Security found that in the initial months of the decree, the MVD reported that only ten percent of the individuals detained under the decree were bandits although bandits were the decree's primary focus.⁸⁷

C. Legislative Framework

The June decree remains in force because there has been no alternative organized crime legislation. A new criminal code, a law on organized crime and a new code of criminal procedure are needed to effectively combat organized crime. Unfortunately, none of these laws has been passed by both houses of parliament.

One of the greatest threats to the democratic transition is that state authority may be augmented in the name of the struggle with organized crime. For example, the new law on the FSB enhances the power to engage in surveillance without adequate provisions for legal oversight.⁸⁸ Once this law is passed by the Federation Council, the FSB will have powers that were not envisaged when the Soviet period ended. Reformers thought that there would be the possibility of dismantling the power of the security police but these hopes were derailed, in part, by the organized crime threat.

The State Duma in mid-November adopted a draft law on the struggle against organized crime.⁸⁹ This comprehensive law, which uses elements of American RICO and the corresponding Italian law, has harsh penalties for perpetrators.⁹⁰ The prime concerns raised by the organized crime law adopted were: the

82. Kachev & Pipiya, *supra* note 80, at 362-63.

83. *Id.*

84. *Id.*

85. *Id.*

86. Kronid Liubarsky told of a professor who was searched on the grounds of Moscow State University. Interview with Kronid Liubarsky, Head of the Moscow Helsinki Group (July 1994). The decree was used as a pretext for the search. *Id.*

87. Interview with Deputy S. Boskholov, in Washington, D.C., (Aug. 1994).

88. Michael Waller, *Report to U.S. Senate Foreign Relations Comm.* (forthcoming 1995).

89. Interviews with Duma Committee Members responsible for drafting the organized crime law (Jan. 1995); Interviews with Members of the Duma Committee on State Security (May 1995).

90. *Id.*

imprecise definition of criminal groups, the authorized detention of suspects for thirty days, the ability of law enforcers to intervene in the commercial activities of enterprises and bank structures suspected of laundering money and the failure to specify penalties for the unlawful activities of investigating bodies.⁹¹ Political expediency and the crime situation led to the bill's passage over objections concerning its violations of legal norms.

The increasing popular sentiment against organized crime clearly figured in the Duma's adoption of the bill. Its fate at the Federation Council level is not clear. A bill on corruption, developed by many of the same individuals who drafted the law on organized crime, was allegedly rejected for its legal shortcomings. But the bill's provisions on economic disclosure threatened the financial interests of many wealthy members of the Federation Council.⁹²

The criminal code that is presently under consideration does not contain a corresponding provision on organized crime. Even though the individuals drafting the different laws in the crime area are in close personal contact, ideological differences as well as questions of turf impede the necessary coordination. It remains to be seen whether the legislature will reconcile the different laws before they are implemented or adopt a criminal code without a separate organized crime law.

Mobilization of public opinion throughout the country following the killing of the popular journalist, V. Listev, is leading to pressure on legislatures at the regional level to introduce their own organized crime laws.⁹³ As centralized power is proving increasingly ineffective and regional authority is growing, different regions are developing their own legal framework to respond to the organized crime problem. Even in such hot-spots of organized crime as Ekaterinburg, a law on organized crime is progressing through the legislature. The crime issue will be at the top of the political agenda in the new Russian elections in 1996.

CONCLUSION

Organized crime is a major threat to human rights and the rule of law. The killings of journalists and politicians strike at the very core of the democratic process. Yet the legal measures and enhanced law enforcement powers advocated to suppress organized crime undermine the transition to a rule of law state and

91. *Shortcomings of Draft Organized Crime Law*, F.B.I.S. DAILY REP., Dec. 20, 1994, at 28-29. There was also discussion of the law at the meeting of the Russian Criminological Society attended by the author in Moscow (Jan. 7, 1995).

92. Danilkin, *supra* note 22, at 6.

93. Interviews with legal personnel in Russia (Apr./May 1995).

legitimize a return to authoritarian rule.

State actions which have led to large scale violations of human rights have characteristically been executed in the name of the fight against organized crime. Illustrative of this are the expulsion of 10,000 people in 1993 following the storming of the Supreme Soviet, the attack on MOST bank and the War in Chechnya. The augmentation of the Ministry of Interior's power and of the Security apparatus in the name of the fight with organized crime suggests that more violations will follow.

Serious violations of human rights will continue to occur if the newly adopted laws fail to safeguard citizens' rights and law enforcement personnel fail to comply with the laws. It is imperative that Russians learn that American and Italian successes in fighting organized crime have been achieved by working within a democratic framework.

