

# Organized Crime and the Rule of Law in the Russian Federation

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## Abstract

This article examines the popular perceptions of ‘organized crime’, its manipulation by various individual and institutional entities, and the effect such manipulation has on the development of trust in the rule of law in the Russian Federation. It explores the complex relationships between the discourses on criminality, the root causes of crime, authoritarian state policies and human rights. The article commences with an historical overview of the utilization of the concept of ‘organized crime’ by political elites to pursue ulterior motives related to the accumulation and retention of power. It further explores how the misuse of the concept of ‘organized crime’ by the government has shaken popular trust in state reforms and displaced the emerging humanistic attitudes of the public. It shows how this public insecurity was used to pursue authoritarian policies under the guise of combating organized crime. The article then moves on to discuss contemporary policies directed against organized crime within the context of the Yukos case. Subsequently, the article concentrates on exploring how the misuse of the concept of organized crime undermines popular trust in the rule of law and results in the population finding private means of co-existing with criminal elements. It then discusses the failure of various institutions outside the executive branch of government to generate sufficient momentum for anti-organized crime reforms. Finally, the ‘Americanization’ of the global fight against organized crime and its impact on Russia is examined. The author concludes that the extension of intrusive measures beyond the realm of organized crime control and the utilization of such measures for political ends, undermines popular trust in the ability of the government to create a system that is subject to the rule of law. This entrenches the popular perception of democratic reforms as something that is foreign to the Russian way of life.

## 1. Introduction

This article examines the popular perceptions of ‘organized crime’, its manipulation by various individual and institutional entities, and the effect such manipulation has on the development of trust in the rule of law in the Russian Federation. It notes the gross violations of basic human rights, which are justified by the state as a necessary part of its struggle against organized crime, when in reality such actions have to do more with catering to the popular perception of the inherent criminality of certain groups or the redistribution of control over key sectors of the economy. The article also discusses some of the reasons that make enactment and implementation of legislative measures against organized crime more complicated in post-Soviet society. It has to be noted that, apart from the problem of popular distrust of governmental policies directed against organized crime, which retards the implementation of such policies, the government is often unwilling, and in some cases unable, to truly address the underlying root causes of criminality, such as unemployment,

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homelessness, the presence of refugees, etc. However, without tackling these complex socio-economic issues in a comprehensive fashion, simple recourse to tough legislative measures and increased law enforcement funding will not have the desired impact of reducing the proliferation of organized crime. The article also explores the ‘Americanization’ of organized crime discourse and methods for its control, and the impact of such ‘Americanization’ on the development of society governed by the rule of law.

## 2. Elites and Policies towards Criminality: Historical Overview

In Russia today, the terms ‘organized crime’ or ‘mafia’ are used by many to refer to a variety of individuals and occurrences. For many Russians, anyone who engages in commercial activity, is involved in politics, or is from the Caucasus region, is labelled a member of the ‘mafia’.<sup>1</sup> The public perception of organized crime tends to be further moulded by the often sensationalist reporting of the Russian media, which primarily concentrates on the number and graphic details of various murders and the lifestyles of so-called ‘mafia bosses’.<sup>2</sup> It is worth noting that many Western publications (even those outside the realm of journalism) also convey the above-noted sense of crisis, and are not immune to the reporting style that sensationalizes organized crime’s activities.<sup>3</sup>

Due to the absence of a popular understanding to what exactly the terms ‘organized crime’ or ‘mafia’ refer, successive Russian governments have undertaken a wide array of actions governed by motives unrelated to fighting organized crime, under the guise of combating this phenomenon. For example, campaigns directed against organized crime have been utilized on numerous occasions to justify internal struggles for power between Russian political elites. In the 1960s Yuri Andropov, the newly appointed chief of the then Russian secret police (KGB), made the struggle against organized crime his personal crusade. However, despite having been launched ‘for the good of the socialist community’, this campaign was rapidly transformed into a play for power which placed Andropov’s protégés – Mikhail Gorbachev in Stavropol, Grigory Romanov in Leningrad, Yegor Ligachev in Tomsk, Edvard Shevardnadze in Georgia and Gaidar Aliyev in Azerbaijan – in key political posts.<sup>4</sup>

Overall, however, during the 1960s and 1970s organized crime was not highly visible to the public. Such lack of public awareness was in large part due to the absolute control exercised over the media by the Soviet state. The media propagated the state line that the social grounds for the emergence of all crime in general and organized crime in particular had been eliminated in the USSR. Thus, crimes that became public knowledge were

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<sup>1</sup> Scott P. Boylan, ‘Organized Crime and Corruption in Russia: Implications for U.S. and International Law’ (1996) 19 *Fordham International Law Journal* 1999 at 2011-2012.

<sup>2</sup> V. Zainetdinov, ‘Russian Mafia Was Made Up By Our Journalists’, *Izvestia*, 26 Nov. 1997.

<sup>3</sup> For example, the 1997 Center for Strategic and International Studies (CSIS) report entitled *Russian Organized Crime: Global Organized Crime Project* contains a 10-page annex graphically listing attacks by Russian organized crime against various individuals such as businessmen and journalists. See William H. Webster and Arnaud de Borchgrave, *Russian Organized Crime. Global Organized Crime Project* (Washington D.C.: Centre for Strategic and International Studies, 1997) at 25.

<sup>4</sup> For further discussion see Virginie Coulloudon, ‘The Criminalization of Russia’s Political Elite’, (1997) 6 *East European Constitutional Review* 73.

attributed to individual mental disorders or to shortcomings in the work of various educational institutions, and never to systemic problems.<sup>5</sup>

However, as state control over the media began to weaken, the discussion surrounding organized crime came to the forefront, especially after 1987, and occupied a prominent position in public discourse on the political and economic fate of the country. The ability of competing political forces to utilize the media, combined with the partial declassification of crime statistics, proved to be an extremely powerful propaganda weapon and was utilized by all sides in the ensuing struggle for power after the collapse of the USSR.<sup>6</sup>

For example, Mikhail Gorbachev declared war on organized crime in May 1989 at the first Congress of People's Deputies. This campaign resulted in the infamous trial of Yuri Churbanov, Leonid Brezhnev's son-in-law, who was implicated in the 'Uzbek cotton affair'. Once the trial was over, 'Uzbekistan was rid of its Brezhnevites, not of organized crime'.<sup>7</sup>

Furthermore, in the spring of 1991, just a few weeks before the Russian Federation presidential elections, the deputy Prime Minister of the Russian Soviet Federative Socialist Republic (RSFSR) and Yeltsin ally, Gennady Filshin, was accused of conducting suspect transactions with a sham enterprise in order to acquire cash assets. It was claimed that Filshin exchanged 140 billion roubles for US\$7.8 billion (an amount equal to the entire Russian Federation budget). The case against Filshin was dismissed immediately after the conclusion of the 1991 elections. Many labelled this an anti-Yeltsin ploy, as Gorbachev realized the importance of the position of the president of Russia at a time when the Soviet Union was crumbling.<sup>8</sup>

The Yeltsin administration, in turn, utilized the theme of the struggle against organized crime on numerous occasions to ensure its own political survival. For example, during the 1993 confrontation between the Kremlin and the Supreme Soviet,<sup>9</sup> Yeltsin used the fight against organized crime and corruption to discredit his vice president, Alexander Rutskoi. In early 1993, Rutskoi, with the backing of the Supreme Soviet, accused Yeltsin of inaction with respect to official crime and corruption. He claimed to possess 'suitcases' of evidence implicating various corrupt government officials. In response to such accusations, Yeltsin set up a commission on crime. Not surprisingly, the commission's first action was to accuse Rutskoi himself of holding a large monetary deposit on account in a firm registered in Switzerland. The case of 'Rutskoi's trust' gained further prominence when the Moscow public prosecutor's department dismissed it, stating that the presidential commission's documents implicating Rutskoi had been falsified. Shortly thereafter, Yeltsin issued Presidential Decree No. 1400 that dissolved the Supreme Soviet.<sup>10</sup> Yeltsin employed similar tactics on the eve of the 1996 presidential elections in order to 'bolster his image as incorruptible and to eliminate political rivals'.<sup>11</sup>

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<sup>5</sup> Viktor M. Sergeev, 'Social Change, Legislation and Crime in the USSR and Russia' (1998) 36 *Russian Politics and Law* 3 at 19-20.

<sup>6</sup> *Ibid.* at 20.

<sup>7</sup> V. Coulloudon, n. 4 above at 77.

<sup>8</sup> See *ibid.* for further discussion.

<sup>9</sup> Prior to its dissolution in 1993, the Supreme Soviet was the Upper House of the Russian Legislature.

<sup>10</sup> V.M. Sergeev, n. 5 above at 25.

<sup>11</sup> V. Coulloudon, n. 4 above at 77.

### 3. Political Consequences – Human Rights and Authoritarianism

These struggles for political power have shaken public trust in governmental reforms. Using the fight against ‘organized crime’ as a front for unbridled political ambition, especially during the Yeltsin administration, has significantly undermined the public’s confidence in the government’s ability to deal effectively with problems perceived as important for public security and welfare. This has generally dampened public confidence in democratic reform, an elected parliament and a free press, with these ‘democratic adornments’ being seen simply as tools in the political struggles of the wealthy and the powerful. What is more, the public started to view the concepts of democracy and freedom as synonymous with ‘unlimited license’ granted to the powerful to pursue particular courses of action.<sup>12</sup>

Popular disappointment and disillusionment displaced the emerging humanistic attitudes of the Russian public, for example, towards the protection of the individual in priority to the state, the guarantees of basic procedural rights and the rehabilitative purpose of punishment, to name just a few. Instead, a punitive mindset more characteristic of Soviet times reasserted itself. Attitudes such as ‘criminals should be shot without trial’, ‘the regimen of serving a sentence must be made as severe as possible’, and ‘[the] crime was self-evident and there was no need to secure procedural guarantees for the accused, since the latter was a criminal’ became prevalent, and to a large extent persist to this day.<sup>13</sup>

The general sense of insecurity due to ineffective government campaigns against organized crime, as well as the emerging public perception that equated democracy with lawlessness and a sharp decrease in personal safety, was exploited by the Yeltsin administration in order to create a new authoritarianism, draped in the language of strong actions taken against organized crime.<sup>14</sup> These measures also catered to some extent to the Russian public’s perception of the inherent dangerousness of certain ethnic groups generally associated with organized crime.<sup>15</sup>

In 1993 Yeltsin ordered the deportation of all ‘undocumented aliens’ from Moscow. This operation mainly targeted visible minorities from the Caucasus region. The Moscow police detained 14,000 people who did not possess Moscow residence permits and deported 5,000 of them to provincial Russia or to the Caucasus region. During this ‘deportation campaign’ entitled ‘Operation Signal’, Moscow mayor Yuri Luzhkov called upon city residents to inform on their neighbours who were living there without residency permits. After the conclusion of this operation, mainly targeting fruit and vegetable vendors selling their produce in Moscow markets, the Moscow police claimed that this measure reduced

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<sup>12</sup> German G. Diligenskii, ‘Individualism, Old and New. The Individual in the Post-Soviet Social Organism’ (2000) 38 *Russian Politics and Law* 30 at 39 and 41.

<sup>13</sup> V.M. Sergeev, n. 5 above at 23.

<sup>14</sup> See Aleksandr V. Lukin, ‘The Transitional Period in Russia. Democratization and Liberal Reforms’ (2000) 38 *Russian Politics and Law* 6 at 17 and 27.

<sup>15</sup> See Peter D. DiPaola, ‘The Criminal Time Bomb: An Examination of the Effects of the Russian *Mafiya* on the Newly Independent States of the Former Soviet Union’ (1996) 4 *Indiana Journal of Global Legal Studies* 145 at 174 for a discussion of how Yeltsin’s edict ‘On Urgent Measures to Protect the Population from Banditry and Other Manifestations of Organized Crime’ and ‘Operation Signal’ contributed to the rise of authoritarianism due to their significant infringement on individual civil liberties. Also see Eugene Solomonov, ‘U.S.-Russian Mutual Legal Assistance Treaty: Is There a Way to Control Russian Organized Crime?’ (1999) 23 *Fordham International Law Journal* 165 at 188 for a discussion of how public opinion attributed organized crime in Russia to criminals from Chechnya and other parts of the Caucasus.

crime by 16.5 per cent.<sup>16</sup> However, various sources suggest that Operation Signal failed to produce any great measure of success against organized crime, and at best was only a temporary victory, which depleted the criminal organizations of their lowest ‘rank and file’ members.<sup>17</sup> One is left to speculate to what extent organized crime in Moscow was dependent upon the services of ‘alien’ fruit vendors operating without residency permits in the first place.

In furtherance of Operation Signal, on 14 June 1994, Yeltsin issued the Presidential Decree ‘On Urgent Measures Aimed at Protecting the Population from Banditry and Other Manifestations of Organized Crime’ (the 1994 Decree).<sup>18</sup> This Decree arguably permitted a number of activities that unduly restricted both the civil liberties and constitutional rights of Russian citizens without sufficient basis.<sup>19</sup> Among other powers, the 1994 Decree enabled the government to deny bail and detain individuals suspected of being involved in organized criminal groups for up to thirty days without formal charges.<sup>20</sup> Additionally, the Decree required the executive authorities throughout the Russian Federation to prepare a list of localities that required special attention due to the ‘prevalence ... of banditry and other manifestations of organized crime’. Additional law enforcement personnel were to be assigned to these localities and extra funds to be apportioned in order to provide these personnel with material incentives.<sup>21</sup>

Most Russians did not object to the 1994 Decree, as, like Operation Signal, it was for the most part applied to the type of persons (i.e. Caucasus ethnic minorities) that the population associated with organized crime, and thus it was perceived as a ‘strong’ measure,

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<sup>16</sup> See P.D. DiPaola, *ibid.* at 174; and E. Solomonov, *ibid.* at 188-189 for further discussion of the details of ‘Operation Signal’.

<sup>17</sup> Stephen Handelman, *Comrade Criminal. Russia's New Mafia* (New Haven and London: Yale University Press, 1995) at 290.

<sup>18</sup> 17 June 1994, BBC Worldwide Monitoring, available in LEXIS, News (Country and Region), BBCMIR file. This Decree was weakened by the 1995 federal law entitled ‘On Confinement Under Guard of Persons Suspected or Accused of Committing Crimes’, SZRF (1995) no. 29, item 2759. Article 5 of this federal law stated that the period of detention might not exceed 72 hours. In 1997 the President of the Russian Federation cancelled the 1994 Decree after it had been held to be unconstitutional – see A. Feofilantov and A. Grishin, ‘Prezident Otmenil Nekonstitutsionnye Ukazy’, *Segodnya*, 18 June 1997 [in Russian]. Currently, Article 22(2) of the Russian Constitution states that ‘[b]efore a judicial decision a person may not be subjected to detention for a period of more than 48 hours’. However, under s. 108.7 of the Criminal Procedure Code, which came into effect on 1 July 2002, an investigator may ask a judge to authorize an extra 72 hours of detention in addition to the usual 48 hours.

<sup>19</sup> See S.P. Boylan, n. 1 above at 2007 and Viktor Shabalin et. al., ‘The New Stage of the Fight Against Organized Crime in Russia’, available at: <http://members.tripod.com/~orgcrime/rusnewstage.htm> (last visited Feb. 2005) for a critique of the decree.

<sup>20</sup> This part of Article 1 stated: ‘[W]ritten undertaking not to leave the area, a personal guarantee or guarantee provided by a public organization, or bail may not be applied as restrictive measures against those suspected or accused of the aforementioned crimes, they may be detained for up to thirty days.’

<sup>21</sup> Article 2 stated: ‘[T]he heads of executive authorities in the component parts of the Russian Federation are to draw up a list of towns and individual localities to be placed under special control because of the prevalence in those areas of banditry and other manifestations of organized crime. They are to advise ministries, internal affairs directorates and directorates of the Federal Counterintelligence Service to place officers and men of the internal affairs and counterintelligence bodies in those towns and localities on an intensified operational footing for the purpose of conducting special operations in the drive against banditry and other manifestations of organized crime. They are to make funds available for the specific purpose of providing material incentives for internal affairs and counterintelligence personnel and the Interior Ministry forces taking part in special operations against banditry and other manifestations of organized crime, as well as for personnel engaged in intensive duties in towns and individual localities.’

necessary to deal with organized criminal groups. However, any encroachment on individual civil liberties has to be regarded with suspicion, regardless of how small the group affected by such an encroachment is, especially in a country like Russia with a long history of governmental disregard for basic human rights and welfare. What is more surprising is that the 1994 Decree received strong support from some in the West. For example, Louis Freeh, the Federal Bureau of Investigation (FBI) Director at the time the Decree was issued, expressed his unconditional support for the measure, stating that it ‘harmoniously combined a respect for human rights with a necessity to protect the security of ordinary people’.<sup>22</sup> The desire of Yeltsin’s government to ‘protect the security of ordinary people’ by taking strong measures against organized crime was dubious at best, as many of the officials in the administration profited precisely due to the ‘legal chaos of New Russia’.<sup>23</sup>

#### 4. The Contemporary Struggle with Criminality – the Yukos Case

As his predecessors had done before him, the current President, Vladimir Putin, has announced his intention to fight organized crime and corruption through a so-called ‘dictatorship of law’. Putin’s aim was and remains the creation of a strong, integrated and effective government authority, aimed at curtailing arbitrary bureaucratic power and centralizing it in the hands of the presidency. Following on from Putin’s initiatives, several investigations into the financial dealings of some of Russia’s largest companies and influential persons were launched. Additionally, there has been increased cooperation with foreign law enforcement agencies and international bodies in an effort to investigate money laundering and capital flight. However, Putin’s initiatives, whether in the legal, political or economic realm, often rely on authoritarian methods, such as the ‘massive use of force to suppress separatism in Chechnya, the drive to secure the Kremlin’s control over the parliament, the party system, regional governments and mass media, [and] the rising influence of security organs and the military’.<sup>24</sup> Although it appears that some progress has been achieved in curbing the rise of crime and although Putin’s reforms generally receive popular support in Russia as well as in the West, some still perceive Putin’s ‘dictatorship of law’ policy as a ploy to entrench his political position and purge the remains of Yeltsin’s ruling class, all at the expense of civil liberties and in the name of stronger laws.<sup>25</sup>

An illustration of Putin’s seeming disregard for the rule of law is the legal action taken against Mikhail Khodorkovsky - the former head of Yukos, one of Russia’s largest oil companies – where Putin presented Khodorkovsky’s arrest as part of a law and order campaign.<sup>26</sup> Khodorkovsky was arrested on charges of tax evasion, fraud, forgery and embezzlement largely stemming from the ‘loans-for-shares’ privatization deals concluded in 1994 and 1995.<sup>27</sup> Putin has commented regarding the arrest that ‘[e]veryone must be equal in

<sup>22</sup> See Shoshanah V. Asnis, ‘Controlling the Russian Mafia: Russian Legal Confusion and U.S. Jurisdictional Power-Play’ (1996) 11 *Connecticut Journal of International Law* 299 at 312.

<sup>23</sup> See S. Handelman, n. 17 above at 285.

<sup>24</sup> Sergei Plekhanov, ‘Organized Crime, Business, and the State in Post-Communist Russia’ in Felia Allum and Renate Siebert (eds.) *Organized Crime and the Challenge to Democracy* (London, New York: Routledge 2003).

<sup>25</sup> See *ibid.* for critiques of Putin’s reforms.

<sup>26</sup> Seth Mydans, ‘Putin Says Oilman’s Arrest is No Threat to Private Enterprise’, *New York Times*, 7 Nov. 2003.

<sup>27</sup> Leon Aron, ‘The Yukos Affair’ *American Enterprise Institute for Public Policy Research*, 29 Oct. 2003. Also see Peter Baker, ‘1994 Deal Comes Back to Haunt Oil Tycoon in Russia’, *Washington Post*, 7 Nov. 2003, describing Khodorkovsky’s involvement in the 1994 privatization of a fertilizer company, Apatit, and the 1995 privatization of a fertilizer research institute called NIUIF.

the eyes of the law... Everyone must be equal, no matter how many billions he has in his private accounts'.<sup>28</sup> Despite such statements, however, it is doubtful that the 'Yukos affair' was prompted by strictly legal considerations. Without justifying the actions of various oligarchs during the privatization deals of the early and mid-1990s, it must be pointed out that, despite past misdeeds, under Khodorkovsky Yukos has become the most transparent of Russia's large businesses and the first large Russian industrial corporation to switch to international accounting principles. Yukos, under Khodorkovsky's leadership, contributed significantly to charity, became profitable enough to pay dividends to its shareholders, and employed many Western accountants permanently on its staff.<sup>29</sup> Furthermore, allegations similar to the ones presented against Khodorkovsky may be made against practically all big business owners that made their fortunes during the privatization period.<sup>30</sup> So, at first glance, the targeting of Yukos, the most transparent and accountable company in Russia, may seem counterintuitive from the point of view of curbing corruption and promoting economic stability and greater respect for the rule of law. However, if the arrest and detention of Khodorkovsky is viewed as a politically motivated prosecution, as many commentators suggest, then things fall into perspective.

Various reasons are put forward for Khodorkovsky's arrest. Some commentators concentrate on the fact that Khodorkovsky has openly funded opposition parties, such as Yabloko and the Communist Party, as well as openly criticized President Putin and his government.<sup>31</sup> Similar actions have been taken by the Putin administration against two other 'politically over-active' oligarchs – Boris Berezovsky and Vladimir Gusinsky, both currently residing overseas.<sup>32</sup> However, a more convincing argument is that Khodorkovsky's arrest is the culmination of the struggle between big business (represented by the so-called 'oligarchs') and the state as to which will dominate the Russian economy.<sup>33</sup> It was prompted by the state wishing to retain control over the country's natural resources as an important tool in the conduct of foreign policy.<sup>34</sup> The recent non-transparent sale of Yuganskneftgas (Yukos' core production unit) to a company fully owned by the Russian state, despite an injunction issued by a US court to prevent such a sale, further illustrates governmental disregard for the rule of law.

In any case, it is clear that Putin, not unlike his predecessors, has utilized the legal system to achieve political aims and garner public support by 'oligarch-bashing'<sup>35</sup> – all under the guise of combating crime and corruption. As was astutely pointed out by Viktor M. Sergeev in his writings on crime in the USSR and Russia, the main purpose of organized

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<sup>28</sup> 'Law and Order in Russia', *News Hour with Jim Lehrer*, 28 Oct. 2003 (transcript) available at [http://www.pbs.org/newshour/bb/europe/july-dec03/russia\\_10-28.html#](http://www.pbs.org/newshour/bb/europe/july-dec03/russia_10-28.html#) (last visited Feb. 2005).

<sup>29</sup> L. Aron, n. 27 above.

<sup>30</sup> *Ibid.*

<sup>31</sup> Susan B. Glasser and Peter Baker, 'Prosecution Puts Russian "Rule of Law" on Trial', *Washington Post*, 30 Oct. 2003. Also see 'Law and Order in Russia', n. 28 above.

<sup>32</sup> Jim Heintz, 'Russia's Richest Man Detained, Charged', *Associated Press*, 25 Oct. 2003. Also see David Remnick, 'Post-Imperial Blues', *The New Yorker*, 13 Oct. 2003, 85.

<sup>33</sup> Masha Lipman, 'Lawless Russia', *Washington Post*, 31 Oct. 2003. Also see Jefferson Morley, 'In the Last Week, Russia Changed', *Washington Post*, 4 Nov. 2003.

<sup>34</sup> Harley Balzer, 'YUKOS and Putinomics or Russia Opts for State Power over Free Markets or Why is Khodorkovsky in Jail?' *American Enterprise Institute for Public Policy Research (AEI)*, 4 Nov. 2003.

<sup>35</sup> According to public opinion polls, more than 70 per cent of persons polled indicated that they disliked the oligarchs and 60 per cent stated that oligarchs are not good for Russia – see Susan B. Glasser, 'Lonely at the Top for Russia's Billionaires', *Washington Post*, 23 Oct. 2003.

crime discourse in Russia, be it under Gorbachev, Yeltsin or Putin, was and arguably continues to be:

[The] search for arguments in the struggle among political rivals striving to influence public opinion rather than to clarify the actual state of affairs and take effective measures against crime... The crime problem turned into an instrument to intimidate people and, especially, to help bureaucracy violate civil rights, thereby reverting to the traditional unlawful system so characteristic of the Russian state.<sup>36</sup>

Hence, as demonstrated by various governments' resort to anti-organized crime rhetoric in their efforts to consolidate power, one of the main advantages of the term 'organized crime' or 'mafia' is that 'it can be whatever the speaker wants it to be – a massive threat, a theatrical legacy, or petty criminals'.<sup>37</sup> The term is a convenient ruse to satisfy various agendas without (at least initially) raising suspicions about the motives behind these various programmes and initiatives. Due to the fact that 'organized crime' is an easily manipulated concept, the fight against organized crime often serves as a convenient justification for pre-existing institutional practices. Once a particular perception of 'organized crime' or 'mafia' is developed, a whole institutional culture emerges around this concept; and frequently ample data is supplied to justify this institutional vision, while anything contradicting the official vision is discarded.

Thus, in a sense, 'organized crime' is made to correspond exactly with a particular institutional vision.<sup>38</sup> For example, Russia's Ministry of Internal Affairs (*Ministerstvo Vnutrennykh Del*, or MVD) is the government agency responsible for combating organized crime. When the MVD states that '40 per cent of private businesses, 60 per cent of state-owned enterprises, and between 50 per cent and 85 per cent of the banks are controlled by organized crime... [a]ll told, roughly two-thirds of Russia's economy is under the sway of the crime syndicates,<sup>39</sup> one cannot help but wonder what these statistics mean. Perhaps in order to justify the seriousness of its role and to obtain significant governmental funding, the MVD characterizes many types of activities as organized crime that would not necessarily be characterized as such by other agencies with different agendas.<sup>40</sup> What is additionally troubling is that the MVD becomes unreceptive to different visions of organized crime and, hence, to different strategies (aimed at combating it) that do not correspond to pre-existing MVD strategies.<sup>41</sup>

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<sup>36</sup> V.M. Sergeev, n. 5 above at 26.

<sup>37</sup> Margaret E. Beare & R.T. Naylor, *Major Issues Relating to Organized Crime: Within the Context of Economic Relationships*, paper prepared for the Law Commission of Canada, 14 Apr. 1999, at 1, also available at: <http://www.ncjrs.org/nathanson/organized.html> (last visited Feb. 2005).

<sup>38</sup> See *ibid.* at 1-18. Also see R.T. Naylor, who states that the genuine desire by an entity that is designated to fight organized crime often 'begins to take second place to the wish to promote hidden agendas', such as increased funding and expanded scope of powers, etc. – see R.T. Naylor, 'Predators, Parasites, or Free-Market Pioneers: Reflections on the Nature and Analysis of Profit-Driven Crime' in Margaret E. Beare (ed.), *Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption* (Toronto, Buffalo, London: University of Toronto Press, 2003) 35-54 at 48.

<sup>39</sup> See W.H. Webster and A.D. Borchgrave, n. 3 above at 2.

<sup>40</sup> Viktor Luneev, *Prestupnost' XX veka. Mirovye, Regional'nye i Rossiiskie Tendentsii* (Moskva: Norma, 1999) at 305 [in Russian].

<sup>41</sup> According to the Washington-based Center for Strategic and International Studies (CSIS), the MVD's and the FBI's definitions of what constitutes a 'criminal group' and a 'criminal act' are substantially different. Thus, the statistics kept separately in the United States and Russia are virtually irreconcilable and are therefore of limited utility – see W.H. Webster and A.D. Borchgrave, n. 3 above at 23.

<sup>42</sup> Kathryn Hendley, 'The Spillover Effects of Privatization on Russian Legal Culture' (1995) 5 *Transnational Law & Contemporary Problems* 39 at 41.

## 5. The Misuse of the Concept of ‘Organized Crime’ and the Rule of Law

Apart from the obvious dangers which stem from the misuse of the concept of organized crime (such as its use to accomplish unrelated goals and to justify pre-existing, if less effective, institutional practices), there is a more subtle and often unrecognized danger: its corrosive effect on the population’s trust in the ‘rule of law’. The core element of the rule of law is that all official policies, including legislation, are applied equally to both the powerful and the powerless. Official institutions, including legal institutions, have sufficient authority and independence to make the strictures imposed upon the powerful meaningful. Hence, in a system governed by the rule of law, official policies are clear, transparent and feasible, so that the citizenry may derive actual guidance from such policies more generally, and impart their trust in them.<sup>42</sup>

Under the Soviet regime, there existed certain ‘double standards’, that is, a clear separation of official policies and unofficial actions. On the one hand, official policies prohibited any form of private profit-driven economic activity; on the other hand, the only way to satisfy the economic demands of the Five Year Plans was to engage in precisely the type of activities that were prohibited. Hence, to satisfy the ever increasing demands of official policies, many people had to resort to the underground economy (the so-called *tenevaya ekonomika*), which functioned according to the rules of supply and demand rather than the artificially imposed official guidelines. As Patricia Rawlinson states:

[W]hat began as a temporary means of alleviating shortages, a negotiation with structures outside the dominant economic system, that is, with the penumbral world of the second and shadow economies, became an eventual cause of those shortages and the nemesis of a system it was supposed to support.<sup>43</sup>

Thus, in the USSR, the general population developed a healthy distrust for official policies. Such policies were seen as the triumph of politics over the general welfare in an atmosphere of official dishonesty. Consequently, any official reforms in Russia, after the collapse of the USSR, were already at a disadvantage, due to the seventy-year-old ‘habit’ of the population of searching for ulterior motives in government policy. Moreover, the ineffectiveness of the campaigns against organized crime of the Yeltsin and, to some extent, Putin regimes, and the prevalence of institutions suffering from self-imposed ‘tunnel vision’ with respect to organized crime, further deepened the public’s distrust of government campaigns in general and of democratic reforms in particular, which were perceived as a ‘façade for the ruthless plunder of Russia’ by those who achieved political and economic influence under the pretence of fighting organized crime.<sup>44</sup> A distorted view of liberty that came to be associated with insecurity prompted popular acceptance of an equally distorted ‘rule of law’ that in turn came to be associated with restriction of civil liberties to achieve a ‘greater good’.<sup>45</sup>

When politics consistently ‘trumps’ official reforms, it creates a general distrust of official policies and results in the population’s resort to various alternative channels for dispute resolution, contract negotiation, etc. This, in turn, results in people finding private means of co-existing with the criminal element (whether it is organized or not). Criminality, often at its most serious levels, starts to be incorporated and intertwined in the fabric of social relations to such an extent that it becomes an accepted element of daily life. Hence,

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<sup>42</sup> Patricia Rawlinson, ‘Russian Organized Crime: A Brief History’ in Phil Williams (ed.), *Russian Organized Crime: The New Threat?* (Portland, OR: Frank Cass, 1997) 28-52 at 35.

<sup>44</sup> See S. Plekhanov, n. 24 above at 10 for further discussion of how governmental limits on civil freedoms were imposed with relative ease due to the discrediting of democratic reforms.

<sup>45</sup> A.V. Lukin, n. 14 above at 17 and 27.

any official reform designed to disturb the *status quo* begins to be seen as unnecessary or even disruptive. Unless the state is willing and able to enact and implement official policies, including legal reforms, even when such policies run counter to powerful political interests, respect for official action will be absent and private means of coping with crime – such as the payment of protection (*krysha* money) – will become the stabilizing regime.

## 6. A Hope for the Future? Failure of Local Institutions to Generate Momentum for Reforms

The general distrust of official policies along with the lack of domestic pressure for reform have militated against the creation and implementation of effective anti-organized crime legislative regimes. Currently, the enactment of legislation is frequently a result of international pressure, accompanied by threats of aid or investment withdrawal, as opposed to sustained domestic initiatives. For example, both Russia's anti-money laundering and anti-human trafficking legislation were a result of it being 'blacklisted' by the Financial Action Task Force and by the 2002 US Trafficking in Persons Report. Such an absence of a domestic push for reforms is in part explained by the inability of various players in society, outside the executive branch of the government, to generate sufficient momentum for change that will ultimately result in legislative action. Even if a particular player is successful in generating such momentum, the current political climate calls for the consent of the Office of the President to carry out the proposed reforms. Indeed, it seems that the effectiveness of any reform is directly dependent on President Putin's desire to proceed with it.

Nascent civil society organizations in Russia, such as trade unions, social networks, private business associations, NGOs and religious groups etc., are unable at this stage in their development to coalesce into a powerful lobby. In part, the virtual absence of civil society organizations and the disorder among existing ones is due to the deliberate and systematic policy pursued by the former Soviet state,<sup>46</sup> in which it attempted to 'destr[o]y... the space between the individual and the state'<sup>47</sup> – i.e., the space occupied by these civil society groups. These institutions were either eliminated or absorbed into the state and the Communist Party. Hence, it is not surprising that the efforts of various non-state groups, however laudable, remain to this day largely ignored by government policy makers.

Despite the sporadic efforts of individual politicians, the current Duma also lacks the capacity to become a driving force behind serious reforms. The Duma, for the most part, has become a 'rubber-stamping' body for the President.<sup>48</sup> During the December 2003 Duma elections, the pro-presidential party (United Russia) won two-thirds of the seats in the legislature. United Russia's platform largely consisted of pledging its unequivocal support for the President.<sup>49</sup> Although some may view the new disposition of the Duma as a welcome break from the turmoil of the Yeltsin years, where the President and the Duma were often at

<sup>46</sup> Michael McFaul, Nikolai Petrov and Andrei Ryabov, *Between Dictatorship and Democracy. Russian Post-Communist Political Reform* (Washington D.C.: Carnegie Endowment for International Peace, 2004) at 14.

<sup>47</sup> Ibid.

<sup>48</sup> Ksenia Yudaeva, 'The Russian Political System and Economic Growth' (2004), available at: <http://www.carnegie.ru/en/print/70011-print.htm>, Carnegie Endowment for International Peace (Moscow Centre), last visited Feb. 2005.

<sup>49</sup> See Alexander Lukin, 'Authoritarianism Deposing "Clan Democracy"', *Moscow Times*, 21 Jan. 2004; Sergei Markov, 'The Future of Managed Democracy', *Moscow Times*, 27 Jan. 2004; STRATFOR, 'Russia: Putin's Re-Election in the Bag?' available at: <http://www.stratfor.biz> 15 Jan. 2004 (last visited Feb. 2005).

odds, the ability to pass legislation in a speedy and uncontested manner should not be regarded as an end in itself. The virtual absence of checks and balances from the legislative and judiciary branches of government as well as from civil society groups means that currently no force is capable of blocking bad policy decisions undertaken by the President.<sup>50</sup>

In addition to the difficulties in passing the necessary laws, the implementation of any legislation is made more challenging in Russia, as the perception of the general public and various governmental and private institutions is that most laws are negotiable or can be bartered around.<sup>51</sup> Such an attitude stems from decades of resistance to state policies. Common customs that developed and became pervasive centred on avoidance of state legislation, which was viewed as a punitive tool. Thus, singling out a particular case of money laundering or corruption automatically raised questions as to why this particular case was chosen, with the punishment seen as selective and imposed for ulterior motives.<sup>52</sup> The end result is that a generally cynical and suspicious view of state legislation dominates.<sup>53</sup> This mentality constitutes one of the major barriers to effective implementation of legislation.

The above-mentioned difficulties of creating and implementing requisite legislative regimes may lead to a separation of official reform from customary practices. When such a separation of official reform from custom occurs, it matters little what sort of governmental policies are enacted in the official sphere, as the *status quo* that involves dependence and compromise with the criminal element is viewed as more honest and stable.<sup>54</sup> In other words, any attempts to ensure the functioning of the rule of law through governmental reforms become irrelevant.

## 7. The ‘Americanization’ of the Global Fight against Organized Crime and its Impact on Russia

It is worth noting that the pursuit of ulterior motives under the guise of the ‘war on crime’ is frequently justified by pointing to the practice in other jurisdictions, where apparently the organized crime problem has been subdued. In fact, starting in the late 1980s and in the years following the collapse of the Soviet Union, the global discourse around organized crime became increasingly ‘Americanized’.<sup>55</sup>

Although numerous works have attempted to challenge the dominant governmental and popular views of what constitutes organized crime, most popular and professional understandings of organized crime are still based on the American-inspired ‘Mafia paradigm’,

<sup>50</sup> Jeremy Bransten, ‘Russia: Having Secured Near-Absolute Power, What Will Putin Do With Second Term?’ (2004), available at <http://www.rferl.org> (Radio Free Europe/Radio Liberty) (last visited Feb. 2005).

<sup>51</sup> See Caroline Humphrey, ‘Dirty Business, “Normal Life”, and the Dream of Law’ in Alena V. Ledeneva and Marina Kurkchyan (eds.), *Economic Crime in Russia* (The Hague, London, Boston: Kluwer Law International, 2000) 177-190 at 183.

<sup>52</sup> R.T. Naylor states that police authorities frequently utilize selective targeting with respect to market-based offences, resulting in the prosecution of the most visible and vulnerable perpetrators, largely ‘leaving the illicit market operating ... unscathed’ – see R.T. Naylor, n. 38 above at 39.

<sup>53</sup> Alena V. Ledeneva, ‘Introduction: Economic Crime in the New Russian Economy’ in Alena V. Ledeneva and Marina Kurkchyan, (eds.), *Economic Crime in Russia* (The Hague, London, Boston: Kluwer Law International, 2000) 1-15 at 8-9.

<sup>54</sup> See K. Hendley, n. 42 above at 40-48 for further discussion of how the desire for stability may be satisfied by means that do not include clear and transparent government policies that apply equally to divergent social groups.

<sup>55</sup> *Ibid.* at 379-389.

that sees the so-called Mafia as an outside threat rather than a part of society.<sup>56</sup> This view of organized crime was in great part derived from the findings of US Presidential task forces during the 1950s, 1960s (the 1967 President's Commission being particularly significant), 1970s and 1980s, which were charged with the task of studying and defining organized crime.<sup>57</sup> These Presidential task forces for the most part labelled organized crime as the 'Mafia' and characterized it as a predominantly Italian-American phenomenon.<sup>58</sup> However, by the end of the 1980s, the idea of one organization (the so-called *Pax Mafiosa*)<sup>59</sup> dominating organized crime had become outdated. With the end of the Cold War, the Mafia mythology was updated to fit the new era. It was claimed that various crime cartels, most of them ethnically based, had emerged to replace the once dominant Mafia organization.<sup>60</sup>

The culmination of this 'Americanization' of the organized crime discourse came in 1994 with the Washington D.C. conference involving high-level American law enforcement and intelligence community personnel, entitled 'Global Organized Crime: The New Empire of Evil'. The participants at this conference discussed the necessity of utilizing US-style organized crime control techniques internationally. Two months after the September 1994 Washington Conference, the United Nations held the World Ministerial Conference on Organized Trans-national Crime. The view of organized crime espoused by the participants from 142 countries was highly reminiscent of the Washington Conference. However, as pointed out by Michael Woodiwiss, Western governments 'had been clearly moving towards the American organized crime control model even before the [UN] conference'.<sup>61</sup>

Yet an oversimplification of the global perception of organized crime impedes efforts to combat this phenomenon, as such efforts are designed to meet a largely erroneous vision of organized crime. Hence, these efforts can be and often are 'damaging and destructive at local, national and international levels'.<sup>62</sup> Frequently, the proponents of 'tough' measures supposedly aimed at organized crime do not even define what they mean by the term, but proceed on the assumption that everyone knows what it means.<sup>63</sup> They call for a

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<sup>56</sup> See *ibid.* at 5 and 11.

<sup>57</sup> See the McClellan Committee in the early 1960s; the President's Commission on Law Enforcement and the Administration of Justice in 1967; the Pennsylvania Crime Commission in 1978 and in the 1980s, etc. – described in Michael D. Lyman & Gary W. Potter, *Organized Crime* (Upper Saddle River, New Jersey: Prentice Hall, 1997) at 14-15.

<sup>58</sup> M.D. Lyman & G.W. Potter, *ibid.* at 4.

<sup>59</sup> The writings of Claire Sterling exemplify this perception of organized crime. In the 1980s Sterling's writings concentrated on a global cartel of terrorist groups receiving their orders from Moscow – see Claire Sterling, *The Terror Networks: The Secret War of International Terrorism* (New York: Holt, Rinehart & Winston, 1981). With the collapse of the USSR, Sterling has written about the rise of the Russian mafia, mainly composed of black-market entrepreneurs, ex-KGB and former government *apparatchiks* in league with Colombian cartels and various other mafia families, and the combined desire of these criminal enterprises to divide the whole world into criminal spheres of influence – see Claire Sterling, *Crime Without Frontiers: The Worldwide Expansion of Organized Crime and the Pax Mafiosa* (London: Little, Brown and Company, 1994).

<sup>60</sup> Michael Woodiwiss, *Organized Crime and American Power* (Toronto: University of Toronto Press, 2001) at 11.

<sup>61</sup> Michael Woodiwiss, 'Transnational Organized Crime: The Strange Career of an American Concept' in Margaret E. Beare, (ed.), *Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption* (Toronto, Buffalo, London: University of Toronto Press, 2003) 3-34 at 26-28.

<sup>62</sup> *Ibid.* at 14.

<sup>63</sup> James Sheptycki, 'Against Transnational Organized Crime' in Margaret E. Beare, (ed.), *Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption* (Toronto, Buffalo, London: University of Toronto Press, 2003) 120-144 at 125.

simple solution to the organized crime problem: ‘Give the government more power to get the bad guys’.<sup>64</sup>

This approach, based on the ‘mafia paradigm’, may lead to severe incursions upon civil liberties without posing much of a threat to criminal enterprises.<sup>65</sup> In the United States such efforts arguably led to the ‘reversal of the burden of proof at trial, to the undermining of due process, and to the smearing of citizens with the taint of criminality while denying them the right to a criminal trial that might test the truth of the accusations’.<sup>66</sup>

Moreover, as was mentioned above, the US-style approach for dealing with organized crime, despite the lack of evidence of its success, has spread to other countries including Russia. In fact, both Yeltsin’s, and to some extent Putin’s, policies, which were designed to combat organized crime and invoked the popular image of the mafia as a group comprised of ethnic outsiders, resulted in precisely such restrictions on human rights and civil liberties as discussed earlier in this article.

Various Russian academics and politicians, in an attempt to legitimize and justify the circumvention of civil liberties, refer to the success of similar practices in combating organized crime in the United States as, for example, the Racketeer Influenced and Corrupt Organizations (RICO) statute and regulations directed against money laundering.<sup>67</sup> However, these writers fail to point out that the legislation directed against money laundering in the United States was in large part prompted by the failure of RICO to have any significant impact on the drug market, despite hopes that utilizing RICO prosecutions to jail major mafia bosses would diminish the drug trade. Furthermore, it is at best unclear whether the regulations currently ‘in vogue’ directed against money laundering are living up to the expectations of their drafters, and moreover, there is some evidence to the contrary.<sup>68</sup> As succinctly stated by Woodiwiss:

After decades of intense efforts against gangsters, US organized crime measures have done little to control organized criminal activity in either legal or illegal markets. Since the 1970s, undercover policing operations, witness-protection programs, and asset forfeitures have made US organized crime problems more complex, but they have not come close to solving or ‘marginalizing’ them.<sup>69</sup>

Overall, the ‘Americanization’ of the organized crime concept has reinforced the well established practice in Russia of using this concept for ulterior purposes, often at the expense of civil and procedural guarantees that are some of the basic elements of the rule of law.

## 8. Conclusion

The rhetoric of fighting ‘organized crime’ has been used to build or shatter political careers, just as it has been employed to justify the government’s inability and, in some cases, unwillingness to address the underlying causes of criminality such as unemployment, refugee crises, homelessness, corruption, etc. The majority of state actions that claim to target

<sup>64</sup> M. Woodiwiss, n. 61 above at 11.

<sup>65</sup> See *ibid.* at 1-14 for a discussion of ‘mafia myths’ and the idea that such mythology, when transformed into government policies, often results in the undermining of civil liberties.

<sup>66</sup> R.T. Naylor, *Wages of Crime. Black Markets, Illegal Finance, and the Underworld Economy* (Montreal & Kingston: McGill-Queen’s University Press, 2002) at 2.

<sup>67</sup> For example see V.V. Luneev, n. 40 above at 269-299 and 325; also see Vladimir Nikeshkin, ‘Dokazyvanie Po Delam, Svyazannym s Organizovannoi Prestupnost’u’ (2001) 8(802) *Zakonmos’* 36 at 37 [in Russian].

<sup>68</sup> R.T. Naylor, n. 66 above at 17-18.

<sup>69</sup> M. Woodiwiss, n. 56 above at 31.

organized crime concentrate on low-level criminals, most of whom may be classified as engaging in predatory crimes as opposed to market-based supply and demand offences and come from socially vulnerable population strata.<sup>70</sup> Some of these people hardly deserve the label of ‘organized criminals’. As was discussed earlier in this article, state campaigns pursued in the name of taking a tough stance on crime frequently result in massive violations of human rights, and simply cater to the public perception of certain ethnic groups as prone to criminality.

Governmental disregard for the basic human rights and welfare of even a selected group of individuals has to be viewed with great suspicion, as such state actions undermine the basic premise of the rule of law which requires that various groups in society, regardless of their social, ethnic, religious, etc. status be given equivalent treatment when the law is applied. Cases involving ‘high-level officials, corruption, and the movement of large sums of money by politically connected individuals’ are rarely pursued at either the national or international level.<sup>71</sup> However, if and when such cases are pursued, the prosecution tends to be selective and politically motivated.<sup>72</sup> It may be argued that the campaign against Mikhail Khodorkovsky, for example, is not really about combating crime and corruption but rather about consolidating state influence over a strategically important area of the economy and pursuing a political vendetta against an oligarch who has fallen out of favour with the President.

In addition to the general lack of political will to pursue more market-based organized criminals in a systematic fashion, the limited state actions that are taken, often due to international pressure, suffer from excessive concentration on the ‘supply side’ of organized crime.<sup>73</sup> The ‘demand side’ of such market-based offences is virtually ignored, at the same time as the demand for the particular services provided by organized crime is growing.

Moreover, targeting solely the supply side of organized crime, while perhaps appropriate when dealing with predatory offences, has yet to substantially disturb the activities of the market-based operators who form part of organized crime. To be fair, one needs to realize that some of the methods proposed for fighting organized crime, especially ones coming from the international community, are not optimally effective in the narrow sense of controlling organized criminal activity, in part due to their respect for basic guarantees of civil liberties entrenched in democratic societies. According to Viktor Luneev,

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<sup>70</sup> Viktor V. Luneev, ‘Pravovoe Regulirovanie Obschestvennyh Otnoshenii – Vazhnyi Faktor Preduprezhdeniya Organizovanoi I Korrupsionnoi Prestupnosti (Tezisy Doklada)’ (2001) 5 *Gosudarstvo i Pravo* 106 at 108. [in Russian]; also see Anatolyi V. Naumov, ‘Dva Goda Deistviya Ugolovnogo Kodeksa RF: Dostizheniya i Proschety’, (1999) 9 *Rossiiskaya Ustitsiya* 28 at 28 [in Russian].

<sup>71</sup> Louise I. Shelley, ‘Transnational Crime: The Case of Russian Organized Crime and the Role of International Cooperation in Law Enforcement’ (2002) 10 *Demokratizatsiya* 49 at 64; also see V.P. Korzh, ‘Korrumpirovannye Svyazi Organizovannyh Prestupnyh Obrazovani: Kriminalisticheskii Analiz’ (2002) 8 *Gosudarstvo i Pravo* 55 at 58 [in Russian].

<sup>72</sup> See L.I. Shelley, *ibid.* at 60-61, stating that there has been very little progress in the investigation involving the Harvard Institute for International Development (HIID) case. This case involves two members of the Institute who are alleged to have utilized their personal relationships for private gain while employed under US government contract, the purpose of which was the promotion of rapid privatization in Russia. In part the investigation has stalled due to the fact that the Russian partner of these two individuals was Anatoly Chubais, a leading proponent of privatization during the Yeltsin administration. Chubais’ past and current political connections ensure the lack of any substantive action.

<sup>73</sup> R.T. Naylor, n. 66 above at 42.

both fascist and communist governments proved very effective at restraining the spread of organized crime in the past, but at the cost of massive victimization of society at large and the erosion of the rule of law. Hence, it seems that the 'optimal' solution to the problem of organized crime is also the worst one.<sup>74</sup>

Finally, current attempts to deal with organized crime by utilizing an expanded scope of criminal law in addition to tougher law enforcement measures are not adequate responses to the complex socio-economic problems that account for the spread of organized crime.<sup>75</sup> But of greatest concern for the long-term development of Russian society is the extension of intrusive measures outside the realm of organized crime control, and the utilization of such measures for political ends. This process undermines popular trust in the ability of the government to create a system that is subject to the rule of law and entrenches the popular perception of democratic reforms as something that is foreign to Russian way of life.

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<sup>74</sup> V.V. Lunev, n. 70 above at 108-9.

<sup>75</sup> See R.T.Naylor, n.38 above at 36 and 50-52.